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REGULATION AND REGULATORY MODES
IN CANADIAN AGRICULTURE

by
Grant Vinning

A thesis submitted to Carleton University
in partial fulfilment of the requirements
for the degree of
Master of Arts
in
Public Administration

School of Public Administration
Carleton University

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July 1978

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The undersigned recommend to the Faculty of
Graduate Studies acceptance of the thesis

Regulation and Regulatory Modes
in Canadian Agriculture

submitted by Grant Vinning
in partial fulfilment of the requirements for the
degree of Master of Arts in Public Administration.

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ABSTRACT

The study of agricultural marketing boards has been typically the province of economists. The thesis breaks from that perspective. Instead, it examines marketing boards as being part of the regulatory process. It is concerned with the regulation of agricultural marketing and the particular regulatory mode of self-regulating marketing boards.

The thesis outlines a number of hypotheses posited by the public interest and self-interest schools of regulatory theory to explain the introduction of regulation. The hypotheses are tested briefly against the general background of agriculture and in more detail with respect to the 1927 Produce Marketing Act of British Columbia and the 1934 Dominion Natural Products Marketing Act. These two Acts constituted the first Canadian marketing boards.

The thesis concludes that the origins of the first marketing boards are to be more correctly found in the attempts of agriculturalists to internalize the externalities created by cooperative marketing than in the attempts of benign governmental action to counter the adverse effects of unequal marketing opportunities experienced by the agricultural sector.

To Anne,
who once again put up

and

To Scott,
with whom I'll spend all tomorrow
throwing stones in the Rideau

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CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

In the ten-year period 1926 to 1936, the concept of regulating agricultural marketing was established on a global basis. Two basic approaches were adopted. One was to posit the power of regulation with a state-directed apparatus. Here the role of the producer was minimized. The other approach was to posit the regulatory powers with the producers themselves. The principle employed in the latter technique was that of the marketing board.

Australia was the first country to utilize marketing boards to regulate agricultural marketing. Its legislation in 1926 was closely followed by the Produce Marketing Act, enacted in 1927 by the British Columbia legislature. In 1931, the United Kingdom enacted its Agricultural Marketing Act and two years later the United States enacted its Agricultural Adjustment Act.

The British Columbia Act was declared ultra vires in 1931. Subsequently, the Dominion Parliament enacted in 1934 the Natural Products Marketing Act. Under this legislation, twenty-two Schemes were administered by either the

Dominion Marketing Board or local marketing boards supervised by the Dominion Board. At the same time, the United States had in operation sixteen Marketing Agreements related to fruit and vegetables and fifteen Agreements related to milk, and Australia had twenty-four marketing boards operating in all six states.

In 1934, the nine provinces had enacted complementary legislation to the Dominion's Natural Products Marketing Act. These provincial Acts became inoperative with the Privy Council's 1937 declaration that the Dominion Act was ultra vires. Subsequent to this judgment, British Columbia passed another act respecting the regulation of agricultural marketing. The Privy Council held that this Act was intra vires, thus clarifying to a large extent the imprecision that had existed with respect to the powers of the two levels of government concerning the regulation of agriculture.

The response to the clarified legal parameters was less uniform. Manitoba, New Brunswick and Ontario enacted within a comparatively short period competent provincial legislation which regulated agricultural marketing. The other provinces responded more slowly. It was not until 1956 that all the provinces had provided for orderly marketing legislation.

Canada, circa May 1977, has 121 agencies which regulate the marketing of agricultural products. Specifically, there are a total of 101 marketing boards in the ten provinces, nine marketing commissions in six provinces, five provincial public utility boards whose duties include the regulating of an agricultural product, four federal Crown Corporations whose prime responsibilities relate to the regulating of the marketing of an agricultural product and two federal marketing agencies which regulate the marketing activities of a total of seventeen provincial marketing boards.

This dissertation shall be a study of Canadian agricultural marketing boards.

1.2 EXISTING LITERATURE

The study of marketing boards has usually been from the perspective of micro economics. The root aim of these studies has been to examine the effectiveness of marketing boards. The literature can be seen as being of two basic approaches.

One approach accentuates the various institutional features of either a specific marketing board or a specific group of marketing boards. The examination of structure leads to the establishment of criteria as to how effective the marketing board(s) have been with respect to being an efficient prices and resource allocator. Writers who have adopted this course with respect to Canadian marketing

boards are, for example, Arcus, de Leeuw, Copeland, Forbes and Hawkins.¹

The second approach concentrates upon the specific techniques employed by marketing boards, i.e., quotas, two-tier pricing and market development. The approach, based largely upon historical data of price and quantity relationships, attempts to conclude that price, and thus supply and resource allocation, with the marketing board would have been \$x and without it \$x - a. Writers who have adopted this approach are, for example, Ball, Crown and Heady, Dixon and Grubel.²

Two weaknesses permeate the literature. The first weakness regards the methodology employed.

On the one hand, the studies of either specific marketing boards or groups of marketing boards and the studies of specific regulatory techniques employed by marketing boards tend to lack a perspective of all marketing boards. One is left with a plethora of theories and arguments based on single case studies. The divergence among Canadian marketing boards is sufficiently wide that the mere choosing of one specific marketing board or industry can virtually "prove" any hypothesis. A good example of the genre is Herbert Grubel's The Costs of Agricultural Marketing Boards and a Proposal for Controlling Them. Based on his analysis of the British Columbia Milk Board, Grubel contends that agricultural marketing boards in Canada should

be abandoned.³ Grubel ignores that the British Columbia Milk Board is not constituted under the Provincial orderly marketing legislation which constitutes the Province's ten marketing boards and one marketing commission. The Board consists of three full-time public servants, whereas the 101 provincial marketing boards have solely producer-directors. The British Columbia Milk Board operates a quota scheme, as do 61 percent of Canadian marketing boards.⁴ Finally, Grubel fails to delineate between production quotas and marketing quotas.

On the other hand, the general studies gloss over the very richness and diversity of Canadian agriculture which gives rise to over 100 separate agencies in the first place. Such general studies would be, for example, those of Crown and Heady, Forbes and Hiscocks. Their general explanations tend to accommodate the aggregative phenomena of "agriculture" but are inappropriate explanations for numerous specific instances.

The second weakness is that the literature either ignores or gives only cursory treatment to the question as to why marketing boards are formed. When the question is discussed, the focus is invariably upon the economic consequences. Political "causes" are usually ignored.

This thesis seeks to escape the preoccupation with economics in analysing marketing boards. It does this by

reference to the literature which discusses the regulatory process.

Insofar as marketing boards regulate the price and/or supply of agricultural products, marketing boards are part of an overall governmental process which also provides for the regulation of the price and/or supply of, say, airline services, telephones, energy and trucking.

The purpose of the 101 Canadian provincial marketing boards is to regulate the marketing of a particular province's industry. Each piece of provincial orderly marketing legislation, pursuant to which marketing boards are constituted, employs the term "regulate": marketing boards may regulate the time and place of delivery of the produce; they may regulate the quality of the produce delivered by the producer to those in the distribution chain; they may regulate prices; they may regulate what a producer can market through a quota system; they may regulate who may produce, ship or process through a licensing system; they may even regulate the behaviour of retailers in certain particulars.

While certain parallels may be drawn between marketing boards and regulatory agencies such as the Canadian Transport Commission, Canadian Radio-Television and Telecommunications Commission and the National Energy Board, a major divergence occurs with respect to the membership of the agencies' directorates.

The directorates of the 101 provincial marketing boards are filled solely by persons elected by the producers of the regulated product. The state does not appoint anyone. In contrast, the state appoints the directorates of the three agencies named above. Furthermore, as Andrew and Pelletier⁵ show in some depth, the persons appointed as members of these agencies' directorates need not come from the production sector of the regulated industry. Direct consumers, public interest groups and even totally disinterested persons such as academics and public servants may be appointed.

Plott⁶ sees self-regulation where there is a board vested with power to determine the necessary qualifications of new entrants into the occupation and to govern occupational practices through licensing procedures and, crucially, where that board is comprised solely of members from that occupation. Marketing boards and, say, the Canadian Transport Commission and Canadian Radio-Television and Telecommunications Commission exemplify the first part of Plott's criteria. However, only marketing boards fulfill the second criteria.

Thus, with agricultural marketing boards, one is not only dealing with regulation but specifically with the self-regulatory mode of regulation.

These then are the three elements of the thesis: marketing boards, the regulatory process and self-regulation.

1.3 THE THESIS

The thesis seeks to explain the establishment of Canadian marketing boards in terms of the literature used to analyse the regulatory process. The thesis does not propose to establish a single hypothesis. In view of the richness and diversity of Canadian agricultural marketing boards, it is doubtful if any single meaningful and testable hypothesis could be generated. Instead, the thesis proposes developing the theories relating to regulation and self-regulation in order to establish how well these theories explain the existence of Canadian marketing boards.

The theories relating to the regulatory process can be seen as being one of two general schools of literature.

One school argues that regulation is introduced by government because the government perceives that the public interest is being adversely affected by some form of market failure. This school shall be termed the "public interest" theory of regulation. It shall be developed in Chapter 2 with reference to Kahn, Wernette, Pegrum, Wilcox, Daly and Bradley, Noll and Scherer.

In contrast, the second school of regulatory theory argues that the basic motivational force behind the regulatory process is self-interest. The self-interest school of regulation is developed by writers such as Tullock, Breton,

Downs, Baldwin and Stigler. Their theories shall be developed in Chapter 3.

The third area of examination is that of self-regulation. Two schools of literature shall be examined. The first school accentuates the professions, the most predominant self-regulatory mode of regulation. The literature concentrates on those features of the professions, such as professional responsibility, specialized knowledge and the much vaunted "special client relationship", which virtually necessitate that the professions be self-regulating. The other school is that of demand-decisional theory. Its main proponents, Salisbury and Heinz, build upon the work of Theodore Lowi in order to analyse all policy outputs, one of which is self-regulation. The two approaches to self-regulation shall be developed in Chapter 4.

1.4 TESTING THE EXPLANATIONS

The testing of the various theories of regulation and self-regulation against observed phenomena of Canadian marketing boards presents problems.

This thesis rejects the case study approach, even in its extended form of applying to a group of marketing boards. Over 100 marketing boards were established in the ten provinces over a forty-year period. They regulate nine major industries and a total of about 110 specific commodities. Given such an array one may prove virtually any hypothesis by adroitly choosing one's marketing board. Similarly, such

richness of diversity presents too much detail to comfortably test any hypothesis on a board by board and commodity by commodity basis. To illustrate this, consider The Ontario Vegetable Growers Marketing Board. It was a consolidation, in 1946, of two earlier marketing boards, The Ontario Pea, Corn and Green Bean Growers' Marketing Board and The Ontario Tomato Growers' Marketing Board. In 1949, a plebiscite authorized that beets, carrots and cabbage be added to the Scheme. The vote on pumpkins failed to receive the required majority. Seven years later growers voted to add long green cucumbers and lima beans but the plebiscite to add pickling cucumbers failed. Pumpkins have subsequently been added to the list of prescribed products regulated by the Board.⁷

Alternatively, one may test the various theories of regulation and self-regulation by concentrating upon the aggregative nature of marketing boards and agriculture. This technique is similarly rejected because it results in explanations so general as to have no meaningful explanatory powers. Moreover, the approach would ignore the richness and diversity of Canadian agriculture, the very reason why the case study approach is rejected.

There are two other ways to test the various theories to be outlined in Chapters 2, 3 and 4. One method involves the random selection of marketing boards based upon some classification scheme. The other involves an examination of the statutes.

1.4.1 Classification

The methodology involved here is to categorize Canada's marketing boards, make random selections from the categories and then test the various theories against these representative marketing boards. This methodology presents two problems.

The first problem relates to the classification scheme.

Five classification schemas relating to North American agencies which regulate agricultural marketing have been examined in the literature. Three related to Canada and two to U.S. marketing agreements.

In the United States, Armbruster, Graf and Manchester⁸ examined forty-seven federal marketing agreements using nine categories, to wit, powers relating to grade, size, pack and containers, flow to market, market allocation, reserve pool, producer allotment, research and development and advertising. In an earlier study, Benedict and Strine⁹ examined a total of ninety-two federal marketing agreements operative between 1933 and 1955. They used a simple two date schema (effective and termination) and eight classifications of the regulations permitted, to wit, grade, size, rate of flow, maximum rate on marketing service charges, "holiday", (i.e., packing, loading, and shipping), price determination, inspection requirement and surplus control. Having established their

categories they concluded that "a case by case listing of the numerous agreements would be repetitive and would contribute little to clearer understanding of these operations . . . instead [the procedure] is to describe in some detail the experiences in a number of representative cases and to draw from them such conclusions as seen warranted"¹⁰ (emphasis added).

In Canada, J. Neil¹¹ established an elaborate categorization to examine Ontario's ten fruit and vegetable boards in 1969. He examined seventy-seven activities and used a six-part scoring criteria, i.e., undertaken occasionally, undertaken on a minor basis, undertaken normally, undertaken informally, not undertaken, not applicable. Not one activity received the same score for all ten boards. There was also a number of one-board activity categories.

Four years later, Geoffry Hiscocks¹² classified eighty-seven agricultural marketing agencies with respect to the powers related to fourteen criteria: pooling, consumer and wholesale pricing, producer pricing, price type, quota, licensing, seize and dispose, interprovincial and export trade, import control, purchase and sell, market information, domestic, export and promotion. Hiscocks treated as synonymous the regulatory modes of marketing boards, marketing commissions and the five provincial public utilities which regulate, inter alia, milk prices. He omitted twenty-three marketing boards which were

constituted at the time of his study. Four of his criteria had a total of ten entries, with two having only three. Finally, his third most employed category, "licensing", with seventy-three entries, failed to delineate between legislative power and intent of the marketing board. It did not delineate between the licensing requirements of producers and/or dealer-shippers and/or processors. Some boards license only the one of these three groups, others license all three and some license only two groups in various combinations. Moreover, the term fails completely to delineate the purposes of licensing. Pursuant to the landmark cases of Prince Edward Island Potato Marketing Board v. H.B. Willis Inc. and Attorney-General for Canada¹³ and the Ontario Reference¹⁴ marketing boards may license producers merely as a means of raising revenues in order to fund the operations of the board. In a large number of cases, marketing board licensing has no relation to the pejorative sense as it is used by Reich,¹⁵ Moore¹⁶ and McRuer in Chapters 75 and 112 of his Report.¹⁷ In short, despite his detail, Hiscocks classification of "licensing" should have been expanded to accommodate boards which license separately or jointly producers, dealer-shippers and processors, and where the licensing is designed merely to raise revenue. In the latter regard, the criteria of issuing licenses based on experience, financial responsibility and appropriate equipment, vide Ontario's Farm Products Marketing Act, could be used.

Hiscocks' classification was faithfully reproduced by Forbes in his 1974 Report on Consumer Interest in Marketing Boards.¹⁸ Forbes made no effort to correct the weaknesses of the Hiscocks classification. What makes Forbes's acceptance of Hiscocks' work interesting was that his Report was the culmination of four research papers related to Canada's fruit and vegetable marketing boards, dairy boards, hog boards, poultry boards as well as Forbes's own work on the Canadian Wheat Board and The Ontario Flue-Cured Tobacco Marketing Board. It is possible that because of, and not in spite of, this wealth of data, Forbes chose an existing classification. That is, since each of the six studies examined consumer interest with respect to that group of boards and that perspective differed widely between the board groupings, Forbes found little common ground on which to erect a meaningful classification.

The five classifications discussed above referred primarily to the regulatory functions of the agencies. As such, they provide either a wealth of detail on a few marketing agencies or broad data on a large number of agencies.

These stark alternatives lead to the second problem.

To choose from the former methodology, i.e., great detail on a few marketing boards, raises the problem of selection. Neil chose to study the fruit and vegetable marketing boards of just the one province. The Canadian

Consumer Council studies chose six specific marketing board groups. Which is the more appropriate? Which boards should this thesis choose? In which provinces? The second methodology, broad data on all marketing boards, ignores the peculiarities of individual marketing boards, vide Hiscocks. Both methodologies are thus subject to the same criticism discussed earlier with respect to selectivity.

Notwithstanding this, the classification approach is rejected for another reason.

Quebec has, circa May 1977, twenty-five marketing boards. Data in English exists for only certain aspects of ten of those boards. Not speaking French raises the problem of obtaining data on all of Quebec's marketing boards. Without this data it is impossible to establish a complete enumeration of all of Canada's provincial marketing boards, let alone a valid classification schema.

1.4.2 Examination of Statutes

Marketing boards are established pursuant to an enabling act. In Ontario, for example, twenty marketing boards and one marketing commission are established pursuant to the Farm Products Marketing Act. Two marketing boards, The Ontario Milk Marketing Board and The Cream Producers Marketing Board, are constituted pursuant to the Milk Act. In all, the 101 provincial marketing boards are constituted pursuant to seventeen pieces of enabling legislation in the

ten provinces. This number specifically excludes the public utilities which regulate milk in British Columbia, Alberta, Saskatchewan and Manitoba. However, it does recognize that a number of the Acts dovetail with a province's major orderly marketing legislation.

The ten provincial orderly marketing pieces of legislation are:

Alberta:	<u>The Marketing of Agricultural Products Act, 1955</u>
British Columbia:	<u>Natural Products Marketing (British Columbia) Act, 1936</u>
Manitoba:	<u>Natural Products Marketing Act, 1939</u>
New Brunswick:	<u>The Natural Products Act, 1937</u>
Newfoundland:	<u>Agricultural Marketing Act, 1952</u>
Nova Scotia:	<u>Natural Products Marketing Act, 1946</u>
Ontario:	<u>Farm Products Marketing Act, 1946</u>
Prince Edward Island:	<u>Agricultural Products Marketing Act, 1940</u>
Québec:	<u>Agricultural Marketing Act, 1956</u>
Saskatchewan:	<u>Natural Products Marketing Act, 1945</u>

The dovetailing acts refer largely to the dairy industry, vide:

New Brunswick:	<u>Dairy Products Act</u>
Nova Scotia:	<u>Agriculture and Marketing Act</u>
Ontario:	<u>Milk Act</u>

Prince Edward Island: Milk Act

Other Acts relating to the regulation of agricultural marketing are:

Newfoundland: The Natural Products Marketing Act

Prince Edward Island: Natural Products Marketing Act

In theory, the number of marketing boards which may be constituted pursuant to any one of the ten basic Acts is limited only by the products which may be produced within the province and the degree to which production regions within the province can be delineated.

It is posited that the forces which give rise to the introduction of a province's orderly marketing legislation are representative of the forces which give rise to the introduction of a marketing board within that province. Thus, an understanding of the former will lead to an understanding of the latter.

The problem then is to establish which Act to study. Again, a study of all ten Acts leads one into the bind of too much detail and the study of any one Act produces the bias of selectivity.

It is further posited that the historical development of Canadian orderly marketing legislation presents a solution to the above dilemma.

As outlined earlier, the historical precedents for the introduction of competent provincial legislation to regulate agricultural marketing are clear cut: British

Columbia's pioneering 1927 Produce Marketing Act was declared ultra vires in 1931;¹⁹ the Dominion's pioneering 1934 Natural Products Marketing Act was similarly found ultra vires in 1937;²⁰ British Columbia's response to these legal setbacks, Natural Products Marketing (British Columbia) Act Amendment Act, 1936, was eventually declared intra vires in 1938;²¹ within ten years of that decision seven of the provinces had enacted similar orderly marketing legislation.

The 1927 Produce Marketing Act established three concepts which have been adopted, albeit in an adapted form, by all subsequent pieces of provincial orderly marketing legislation: the agency; the grower plebiscite; and, the powers of the agency.

Firstly, the agency. The Act provided generally for Committees of Direction. Specifically, it named the Interior Tree-Fruit and Vegetable Committee of Direction. This Committee had the "exclusive power to control and regulate . . . the marketing of all tree-fruits and vegetables . . . being grown or produced . . . within the following boundaries . . ." (Section 3 (1)). All subsequent provincial Acts have provided for Committees, now termed "local boards", to have exclusive power to control and regulate the marketing of prescribed products within prescribed regions.

Secondly, the grower plebiscite. The Act established the procedure by which a Committee of Direction could be

constituted. In brief, producers wishing to have a Committee constituted to regulate the marketing of their product may petition the Lieutenant-Governor in Council. Two principles followed. Firstly, if it was the wish of the majority of the producers that the course of action outlined in the petition be followed, then that course of action became obligatory on all producers of the regulated product in the prescribed area. Secondly, a simple majority was not sufficient. The Act stipulated that seventy-five percent of all concerned growers must be in favour of the petition. There has been a number of mechanical changes to the two principles but the fundamentals have not altered.

Finally, the powers of the agency. The Act provided for Committees to have powers which, in sum, enabled it "to determine at what time and in what quantity, and from and to what places, and at what price the product may be marketed" (Section 10). The Act's rather humble listing of ten specific powers has been expanded in all subsequent provincial Acts. All current Acts employ, with virtually the same phrasing, the same powers to determine the time, place and quantity of marketing and the price of the product.

It is posited then that the pioneering Act of British Columbia established the framework for all subsequent provincial orderly marketing legislation. From this it follows that one may test the various theories of regulation

and self-regulation, developed in Chapters 2, 3 and 4, against the Produce Marketing Act.

It is considered irrelevant that the Act was declared ultra vires in 1931. As the above has shown, the principles established by the Act have been adopted by all subsequent relevant provincial Acts. Moreover, the Supreme Court merely held that mechanics employed by the Interior Committee were unconstitutional, not the principle.

The above three concepts were also applied with the 1934 Natural Products Marketing Act, the first federal agricultural marketing Act.

The Dominion Act established one other concept which has since been adopted by every subsequent provincial legislation. The Act provided for the establishing of a Dominion Marketing Board and of local boards. Local boards were to be constituted pursuant to the principles established in the 1927 British Columbia Act. This is, growers would petition the Governor in Council for the constituting of a local board and after the Governor in Council was satisfied that this was the wish of the majority of concerned producers he could constitute a board. The Act detailed the regulatory powers of the Dominion Board and provided for the Board to delegate some or all of its powers to local boards. The concept of a supervisory board has since been adopted in all provinces, viz:

Alberta Agricultural Products Council
British Columbia Marketing Board
Manitoba Marketing Board
New Brunswick Natural Products Control Board
Newfoundland Agricultural Products Marketing Board
Nova Scotia Marketing Board
Ontario Farm Products Marketing Board
Prince Edward Island Marketing Board
Quebec Agricultural Marketing Board
Saskatchewan Natural Products Marketing Council.

It is thus posited that because of the pioneering basis of the 1927 Produce Marketing Act and the 1934 Natural Products Marketing Act for all subsequent provincial agricultural marketing legislation this thesis may test the various theories of regulation and self-regulation against the Produce Marketing Act and the Natural Products Marketing Act.

1.4.3 Procedure

Chapter 5 shall detail the 1927 Act and Chapter 6 the 1934 Act. Both Acts provided for separate regulatory agencies. The 1927 Act constituted the Interior Tree-Fruit and Vegetable Committee of Direction and the 1934 Act constituted the Dominion Marketing Board. Both of these regulatory agencies shall be detailed in Chapter 7. The final chapter, Chapter 8, shall discuss the usefulness of the various theories as a means of explaining the two Acts.

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CHAPTER 2

PUBLIC INTEREST THEORIES OF REGULATION

2.1 INTRODUCTION

Theories relating to the introduction of regulation may be grouped into two diametrically opposed notions.

One notion concerns the failure of the market system. According to Posner, regulation is introduced "because of the inherent failure of the market economy and the distrust of its ability to operate efficiently and equitably."¹ Regulation is designed to protect the public interest. These theories shall be examined in this chapter.

The other notion is that regulation is introduced not to protect the public interest but rather to enhance the self-interests of the petitioning groups. These theories shall be examined in Chapter 3.

2.2 MARKET FAILURE

Shepard has declared that "regulation is a distinctively American experiment."² This is patently not true. Harold Koontz began his Government Control of Business by outlining the role of the state in early Rome and Greece.³ Robert Cushman examined the guild principle with respect to medieval English economic regulation.⁴

One can understand Shepard's chauvinistic myopia when one considers that it has been traditional to accept that American economic philosophy has been that of laissez faire. The market mechanism was accepted as being the most efficient method of determining the quality and quantity of supplies of goods and services at various price levels. Moved by an invisible hand, society advanced by the aggregative but uncoordinated efforts of individuals seeking to advance their own interests. \

By the late nineteenth century, the American laissez-faire market economy was the stuff of myth and legend.⁵ Koontz, for one, denies that there ever was a period of laissez faire in the sense envisaged by the phrase's originators, the French mercantilists.⁶ Stigler and Cohen's much cited cynical comment has long historical precedents: "competition, like other therapeutic forms of hardship, is by wide and age-long consent, highly beneficial to society--when imposed upon other people."⁷

The break between the apparent laissez faire of the United States and the rise of the modern regulatory state is clear-cut. It is perhaps because of the clear-cut nature of the issue that Shepard can talk of his "distinctively American experiment."

Following Anderson,⁸ Kahn,⁹ Koontz,¹⁰ Pegrum,¹¹ Wernette¹² and Wilcox,¹³ this paper marks the rise of the modern regulatory state with the 1877 landmark case

Munn v. Illinois. The case had a number of distinctive features which allow it to be viewed as a virtual watershed between laissez faire and the regulatory state. The case itself involved an elevator operator, Munn, protesting against the state's right of regulating prices "in the public interest." The state, Illinois, had enacted such a law in response, in essence, to what Benedict,¹⁴ Knapp,¹⁵ and Sharp¹⁶ summarize as the Grange movement of farmers. Once enacted, Illinois' law was challenged, and upheld, in the courts. In contrast, previous state intrusions into the market place had not been in response to such direct popular pressure. Nor was there an immediate challenge in the courts. Finally, the courts gave legitimacy to the term "in the public interest".

Subsequent to Munn v. Illinois, there was a steady increase in both the number and type of instruments introduced by the state to regulate the market.

A relationship evolved: the more complex business grew, the greater became the number of state imposed regulations. At the root of the relationship lay the individual. On the one hand, it became apparent that what was best for the individual, either as producer or consumer, need not be the best for society as a whole. On the other hand, it was equally apparent that the safeguards concerning individuals in the market place were becoming less and less effective.

Regulation of the market mechanism became the key to safe-guarding both the individual and society. Specific regulatory instruments related to (a) the regulation of entry to the market and (b) the regulation of minimum standards of quality and quantity of the supplied product. Clair Wilcox states "the crux of regulation is the control of rates."¹⁷

An explanation of the specific theories advanced to explain regulation of the market mechanism behooves an appreciation of some of the philosophies relating to the state imposing regulations upon the market.

Anderson notes¹⁸ that from the mid-nineteenth century onwards, there was felt the need to balance the strides being made in economics with the lagging concepts in political science. The economic "laws" pertaining to the individual and the individual business were no longer relevant in the context of the individual and the large corporations and combines. At the same time, there were changes in the attitude towards the concept of law. Under the influence of what Anderson calls the sociological jurisprudence school, the concept of law was changed from being a fixed static institution to a social institution which could be improved by human intelligence and legislation. This, in turn, led to changes in the attitude towards private property and public interest, vide Munn v. Illinois. The role of the state was seen as a promoter of individual

freedoms, not a destroyer of freedom. Pursuant to these evolving fundamental philosophies, the state imposed regulations restricting the free operation of the market.

This paper will outline four specific theories which seek to explain the introduction of regulation with respect to the market failure concept. To a large extent the division of the hypotheses into four theories is somewhat arbitrary. Daly and Brady¹⁹ cite six rationales, of economic efficiency, for regulation: natural monopolies; public goods; third-party effects; the absence of competition; informational deficiencies, and inefficient extraction of natural resources. Doern, Hunter, Swartz and Wilson cite only the two economic justifications for the regulation of economic activity: "to control and prevent the improper allocation of resources that may be caused by either excessive competition or natural monopoly."²⁰ Stigler subsumes the various theories under the three headings of externalities, public goods, and "erroneous decisions".²¹ Finally, Trebilcock, Waverman and Prichard cite five economic efficiency rationales for regulation: natural monopolies; destructive competition--infrastructure; information limitations; uncertainties; and, externalities--irreversibilities.²²

The four theories that will be discussed are:

- (i) natural monopolies,
- (ii) cream-skimming
- (iii) buyer ignorance, and
- (iv) destructive competition.

2.3 NATURAL MONOPOLIES

According to Wilcox "natural monopolies . . . are set apart for special treatment by the state."²³ It is necessary to examine those features of natural monopolies which warrant such special treatment.

The outstanding feature of a natural monopoly is that it possesses internal economies of scale. There are two basic reasons for economies of scale: they may result from the indivisibility of some of the factors of production; and, they may result from the increased specialization. In the latter regard, reference is made to the specialization of labour, particularly management, and capital, where the term refers to physical plant and machinery as well as financing.

The tenet of economies of scale with respect to natural monopolies is that as more and more output is concentrated in the hands of a single supplier unit costs drop. However, as Kahn has stressed, it is essential to recognize that the economies of scale accruing to a natural monopolist must be internally generated.²⁴ It is possible, for example, that a decrease in unit cost may occur where a firm, because of its size, is able to generate decreased costs of inputs from its supplier. The firm may pass these costs onto its customers, generating greater demand for the firm's product. This, in turn, leads to an even greater capacity to generate lower costs of input. Such a phenomenon

is a function of size and may be associated with any type of firm, i.e., purely competitive, monopolistic, oligopolistic or monopoly.

Internal economies of scale result from large investments made by the firm in order to be able to meet consumer demand. The more it invests, the lower the unit costs of meeting consumer demand. The caveat must be made that there are limits to this argument. The limits are related to the phenomenon of diseconomies of size. In this regard, the weaknesses of large-scale firms can best be analysed in terms of the dysfunctionalisms of bureaucracy as outlined by Charles Perrow in his Complex Organizations.²⁵

The general features of natural monopolies are: they involve a fixed and essentially immovable connection between supplier and customer, e.g., telephone, railway, electricity and gas lines; the service rendered is generally non-storable; the service rendered is required virtually instantaneously, e.g., gas, electricity, lighting and telephone services are expected to be available at the flick of a switch; demand is generally of a peak demand; and, the facilities of existing natural monopolies can be duplicated or expanded at lower incremental costs than another firm starting afresh in that business. Together, these features form what Pegrum calls the "concomitance of production and consumption."²⁶

Two principles are used to explain why natural monopolies are held to be optimum methods of producing certain types of goods and services. Firstly, natural monopolies provide a variety of essential services. Clair Wilcox puts it squarely: " [natural monopolists'] services were indispensable."²⁷ Wernette goes further. He says that natural monopolists "have a duty to maintain a certain standard of service."²⁸ Secondly, because the provision of these services are associated with certain economic phenomena discussed above, to duplicate the facilities providing the services would result in waste.

The concept of waste must be seen in the context of demand. Waste need not occur just because existing facilities are duplicated or, as Trebilock et al. state, because duplication is associated with heavy fixed costs.²⁹ Waste occurs when facilities are duplicated but existing facilities can satisfy current demand and likely increases in demand. Thus, if one set of telephone lines can supply existing, and likely future, demand, then for another company to erect another set of lines to meet the same demand is wasteful.

The state can prevent this sort of waste by regulating that no other firm may enter the industry. The fear is, however, that the natural monopolist, being devoid of competition, will abuse his position with respect to pricing and supply. Regulation is then introduced to act as a surrogate for the market mechanism. Thus, rates are fixed

and quality of the product to be supplied is regulated. Quantity is also occasionally regulated.

The above outline of the natural monopoly hypothesis of regulation has been couched in economic terms.

A non-economic argument advocating the same result is advanced by relating to one of the features of natural monopolies outlined above. Natural monopolies typically involve fixed connections between suppliers and customers: Pegrum refers to "the extreme immobility of natural monopolists' production facilities."³⁰ If any firm were allowed to enter one such industry, the general public would be inconvenienced by interminable interruptions in the public domain in order to establish the necessary immovable fixed supplier--customer link. For the "convenience of inconvenience," state regulation is required to limit the number of firms which may cause such inconvenience. Wilcox even argues that some services are of such a nature that interconnection is more convenient than competition.³¹ As evidence she cites the pooling of cars for urban transit and the interconnection of telephones through the switchboard of a single company.

2.4 CREAM-SKIMMING

Some segments of a market are more profitable than others. *Ceteris paribus*, the major factor influencing the profitability in a market relates to density. Generally,

high density markets are associated with low costs and high profitability with the opposite for low density markets.

While density is usually associated with spatial dispersal, the term also has a time frame application. The time frame can be either short-run in nature, i.e., peak and non-peak within a daily basis, or long-run, as with winter and summer. The following shall refer to the short-run basis but the analysis can be applied to the long-run.

For most markets, the period from midnight to dawn is the low density market. Demand for goods and services contrasts dramatically with the high density market. Nonetheless, the firm is expected to supply their products to the market. This becomes costly where the labour cost is disproportionately high compared with that of the high density period. This occurs because of higher shift rates or penalty rates, costs which are accentuated on public holidays. On the other hand, the market to finance these higher costs has decreased. Suppliers of the goods and services usually service the lower market with its higher-priced costs by charging higher prices.

The state may hold that it is desirable that uniform rate structures exist across the entire market independent of either the spatial or time density features of the market. One technique which may secure this objective is to allow firms to maximize their profits on the high density market

in order to cross-subsidize their losses on the low density markets.³²

The unencumbered market philosophy refers to an undifferentiated market. That is, if excess profits are being made in a market, firms will enter that market. Lower prices and lower profits are the results. If this were to be so in a differentiated market, then those firms thinking of servicing the low density market would be unable to cross-subsidize their profits. Two alternatives follow. On the one hand, the firms would not service that market at the existing prices. Alternatively, the firm will raise its prices, or reduce the quality and supply of the service to the point where price covers costs.

Firms which enter just the profitable high density market without undertaking to service the low density market on the same rate structure basis are held to be "skimming the cream" from the market.³³

If the state holds that the low density market should be serviced on the same rate structure basis as the high density market, then it can prevent cream-skimming through regulation. The usual regulatory action is to restrict the number of firms which may enter the high density market, thus, as Noll says, "guaranteeing the provision of a specific service to a specific locality and assuring the continued viability of an existing firm."³⁴

An extension of the cream-skimming hypothesis of regulation is the argument that the state should support a firm which is engaged in what is considered necessary infrastructure development. The hypothesis relates to the introduction of those goods and services which are considered necessary prerequisites for further development. Trebilcock et al. cite transportation and communications as such necessary pre-conditions.³⁵ The argument is that since there is usually a substantial lag between the introduction of the specific service and the establishment of the break-even point, at which time other firms will enter the market, the state ensures incentives for the provision of infrastructure by regulating the number of firms which may enter the market.

Given that infra-structural development is usually associated with capital-intensive facilities and that these have a propensity for evolving into natural monopolies, the infra-structure hypothesis of regulation blurs easily with the natural monopoly hypothesis.

2.5 BUYER IGNORANCE

The paradigm of perfect competition tends to implicitly accept two features which, strictly speaking, should be correctly characterized with pure competition. They are perfect knowledge and perfect mobility of the factors of production. It is the former feature upon which the buyer ignorance hypothesis of regulation is premised.

The philosophy of the market mechanism, i.e., perfect competition, states that a consumer is free to choose the goods and services for which he is prepared to pay. If the choice is unsatisfactory, the consumer is free to seek an alternative source of supply next time: "competition arises, therefore, because of the opportunity of choice and the necessity of exercising it."³⁶

The philosophy has three weaknesses. Singularly and in combination, these weaknesses require the regulation of the market.

The first weakness relates to the good or service itself. On the one hand is the extreme case that the original poor choice by the consumer may be fatal. Here, there is not a "next time." The less extreme case is where consumption while not fatal is certainly damaging. In this regard, Stigler talks of impure food, incompetent doctors and trucks with no brakes.³⁷ Concomitant with the above point is the fact that many services cannot be fairly compared. This is particularly true of the personalized services offered by the medical and legal professions. In making such comparisons, one needs to be able to examine not only the service rendered but also the initial degree of say, sickness or the legal problem being dealt with. A related problem is that a consumer may have such infrequent recourse to a service that the ability to remember accurately the quality of the service is impaired.

Secondly, the market philosophy holds the view that "the whole concept of efficient resource allocation is built upon the fundamental belief that the consumer is sovereign."³⁸ Inherent in this is the assumption that consumers can competently measure the quality of the goods or services. When one considers the many facets of safety, regularity and frequency, the average consumer is not in a position to assess if he is getting the quality for which he is being charged. In short, the consumer is not sovereign and, as Stigler has said, the individual is "losing the competence to make his own decisions."³⁹

A final weakness of the market philosophy is that it implicitly assumes that all ramifications of a consumer's choice are made known, virtually immediately. Moreover, any adverse effects will affect only the particular consumer. The market philosophy ignores that often defects in goods and services may take a while to become apparent. This problem is accentuated if the project is required by the consumer on a non-postponable basis and there is no acceptable alternative, vide the utilities. In assuming that the direct consumer is the only party to suffer adverse effects, one ignores that in an effort to maintain prices with respect to average variable cost in the face of intense competition producers may affect costs where the short-term effects are not obvious. Firms may externalize their internal costs and thus transfer, for example by pollution, the real costs to

the environment.⁴⁰ Reduction in worker safety is another method of affecting short-run costs.

For these reasons, the buyer ignorance hypothesis posits that in order to protect consumers, regulation of the market mechanism is required. The thrust of the regulation is either to make known or, better still, guarantee the quality of the good or service in advance of consumption.

The problems of ensuring consumer protection in a competitive market, given the existence of buyer ignorance, are compounded when monopolies exist. Monopolists may abuse their monopoly power not only with respect to price and supply but also with respect to those aspects of quality mentioned above, i.e., safety, regularity and frequency.

2.6 DESTRUCTIVE COMPETITION

Bruce Doern has stated that "the basic traditional economic justification for the regulation of economic activity is to control and prevent the improper allocation of resources that may be caused by either excessive competition or natural monopoly."⁴¹

The implication in Doern's statement is that every time there is excessive competition, regulation is introduced to limit its adverse effects. Again, Doern is implying that regulation is introduced to protect the producer. Alfred Kahn, on the other hand, accentuates what is the key in the destructive competition hypothesis of regulation, that is,

the consumer. He claims that the reason for regulating destructive competition is that "it tends to be . . . ultimately destructive to the ability of the industry to offer good service."⁴² Similarly, Trebilcock et al. talk of instabilities in essential services which would damage "social welfare over and above the losses incurred in the sectors themselves."⁴³

The destructive competition hypothesis does not refer to keen or excessive competition. It refers to destructive competition. Two critical features delineate the three terms "keen", "excessive" and "destructive". The first feature refers to the period analysis of economics. Thus, keen competition is a short-run phenomenon while excessive and destructive competition are long-run phenomena. Secondly, unlike excessive competition, destructive competition is associated with sporadically idle excess capacity.

Destructive competition thus occurs in the long run where sporadically idle excess capacity is found. It is because it eventuates in the inability to offer consumers good service that regulation is introduced. In order to understand the rationale more clearly, it is useful to analyse the short-run keenly competitive situation.

In short-run periods, producers may be prepared to operate at a loss. This proposition can be examined by reference to, firstly, why there can be periods of short-run losses and, secondly, why would a producer operate at a loss.

A loss generally, but not always, occurs when a producer's selling price is less than his short-run marginal cost. Such a situation can occur by disequilibrating factors on the demand side or the supply side.

With regard to the former, demand may fail to rise with the increase in supply. Increases in demand may have kept constant with supply increases but, due to satiation, demand increases can no longer keep pace with supply increases. Demand may also be seasonal or cyclical.

With regard to supply disequilibrium, supply may outstrip demand due to sudden increases. Three reasons are posited for such sudden surges: seasonal conditions; cyclical impacts; and endogenous variables in the external sector with sudden variations in imports and exports.

For these reasons, a producer may suddenly find that the selling price necessary to cover marginal costs will not equate supply to demand. A producer then has two basic options. He can either cease operations, either permanently or temporarily, or he can operate at a loss. For a number of reasons, most producers choose to operate at a loss. Most of the reasons evolve around the producer's expectation that eventually, under stable supply and demand equilibrium, he will be able to recoup his losses. Crucial to this expectation is the producer's time horizon with regard to the long-term profitability of the industry. Within this perspective, the producer will have the positive view of his

need to ensure maintenance of customer good-will and the negative view of his need to maintain a continued presence and visibility in the market place in order to discourage his replacement by a competitor. He will also be conscious of the need to cover his fixed costs. Current short-run losses are judged in terms of anticipated long-run profits.

Keen short-run competition evolves into long-run destructive competition in the absence of one of the assumptions implicit in the governing of short-run behaviour. That is, the above short-run analysis implicitly assumes that the lag necessary to adjust supply to demand is essentially short run. This implicit assumption is inapplicable in those instances where there are long lead times.

Generally, industries with long lead times have three characteristics.

Firstly, once they are eventually brought on-stream they acquire a high degree of self-perpetuation. They may produce virtually independently of the actions of the producer. This is particularly true for agricultural crops. Thus, it takes several years to bring an orchard or vineyard to production, but once on-stream, the commodity is produced virtually both automatically and, albeit seasonally, continually.

The second feature is perhaps the more important to the destructive competition hypothesis. That is, once on-stream, it may impede the ability of the production unit

to be technically and economically reactivated if one ignores an on-stream project. It has been traditional, after, say, Kahn⁴⁴ and Trebilcock,⁴⁵ to illustrate this point by reference to agriculture.⁴⁶ However, the current preoccupation with energy has focused attention not only on the long lead times of projects but also on the need to maintain at least a minimum level of activity once they are activated. Some idle coal mines need to be pumped if they are to be reactivated one day. Similarly, all idle underground mines require constant vigilance with respect to pit props as failure to maintain some minimum maintenance on such idle mines may result in irreparable damage. Consumers are thus denied access to the mine's output. A less extreme outcome is that the mine can only be reactivated at considerable cost, which in the final analysis will be borne by the consumer.

The third characteristic of industries with long lead times is that production is lagged. There is no uniformity as to when a new project may commence and thus an industry may have a plethora of final on-stream commencement dates. When all production potential is eventually on-stream, the result is usually production capacity in excess of that needed to meet the market's requirements. Until the market expands to the production potential, excess production capacity will be idle.

The three characteristics analysed above, i.e., self-perpetuation, the need to make out of pocket maintenance

expenditures and excess idle capacity, lead to destructive competition.

Reynolds stresses that it is not excess idle capacity per se which leads to "cut-throat competition"⁴⁷ but the failure to keep it idle. His point is demonstrated in the above analysis: even though he has excess capacity, a producer is required to make out of pocket payments in order to ensure that that production unit remains as a potentially profitable unit. It is the need to recoup out of pocket payments that leads to destructive competition.

If the excess capacity were to be permanently idle then there would be no need to make out of pocket payments. Excess capacity which is idle on a regular basis poses no real financial problem to the producer because all he has to do is treat the idle excess capacity and, if relevant, its concomitant maintenance costs as part of the total long-run costs and budget accordingly. The economics of peak-load pricing is both the higher development of this analysis and proof that regularly idle excess capacity does not lead to destructive competition.⁴⁸

Excess capacity which is only sporadically idle presents a different situation. Two rationales lead from the difference as to why regulation should be introduced.

The first rationale relates to out of pocket expenditures. Producers make out of pocket expenditures in order to maintain the potential income-earning capacity

of the production unit. Such expenditures have two premises. Firstly, they allow the production unit to be reactivated at a later date and, secondly, they allow the reactivation to occur at a cost lower than if no out-of-pocket expenditures were made in the first place.

Given that the consumer benefits by having both the production unit available and available at a lower than otherwise cost, the producer should be able to recoup his out of pocket expenditures. However, recoupment is made difficult by the freedom of entry of other producers when the market strength returns. Hence, to ensure that producers have incentives to make out of pocket expenditure to maintain their excess idle capacity, regulations restricting the number of producers to the market are introduced. This hypothesis is analogous to the cream-skimming hypothesis of regulation discussed earlier. In the same vein, it can be argued that if society values the output of industries with long lead times and which require continual expenditure, action should be taken to ensure that those producers can recoup their out of pocket expenditures. Friend,⁴⁹ Kessel,⁵⁰ Pegrum⁵¹ and Reschenthaler,⁵² for example, cite as instances of socially valued long lead time industries air transportation, common carriers, electricity, gas, telephones and milk supplies. Restrictions are placed upon firms which may enter the industry, limiting the potential for destructive

competition. Again, this hypothesis is analogous to the cream-skimming hypothesis of regulation.

The second rationale relates to when an industry seeks to reduce sporadically idle excess capacity. This can be done in two basic ways. The first is by a pro rata reduction of each producers excess capacity. Usually this requires either industry collusion or government fiat. The second method involves the outright elimination of some producers, thus reducing the total industry's excess idle capacity. The usual technique of achieving this goal is a price war and those producers least able to sustain losses are eliminated. The problem is that the next time demand expands to utilize excess idle capacity, the industry will not have the necessary production capacity and consumers will suffer. The introduction of regulation has a two-fold purpose. It is required to prevent the deprivation of goods and services as well as protect the producer.

However, it is necessary to bear in mind that a producer can minimize his losses if he minimizes his costs. This may be done in two ways: (a) by reducing the direct costs of input of the good; or (b) reducing the indirect costs of the inputs. The former course of action can be done by reducing the quality of the goods. If the good is a service, this can be done by affecting the regularity and reliability of the service. Deterioration in the quality of electricity supply can be seen in "brown-outs" and

deterioration in the regularity and reliability of electricity supply can be seen in "black-outs". With regard to the latter course, reduction of indirect costs of inputs can be seen where a firm lowers its worker safety standards or minimizes its activities under the rubric of "good corporate citizenship." Regulation is introduced to guard against these two potential courses of action stemming from destructive competition. In this regard, the destructive competition hypothesis of regulation blurs into the buyer ignorance hypothesis.

2.7 AGRICULTURE AND MARKET FAILURE

In Section 2.3 to Section 2.6 above, four basic theoretical reasons were posited as to why the state should intervene to correct market failure. Of the four hypotheses, only one, that of destructive competition, has any significant relevance to agricultural regulation. However, as shall be explained, while the hypothesis has relevance to agriculture in its broadest sense, it loses relevance when applied to all but one segment of agriculture. A second hypothesis, that of buyer ignorance, is sufficiently general as to be an explanation for any industry's state intervention.

The following section shall briefly examine agriculture with respect to the first three hypotheses.

2.7.1 Agriculture and the Three Public Interest Hypotheses

Natural Monopolies.--Agriculture has none of the features usually associated with natural monopolies: there are no fixed connections between the supplier and the customer; most agricultural output is storable; albeit with varying costs; demand, while seasonal, is not peaked to the degree evident with natural monopolies, nor with the same requirement of being met instantaneously; and, facilities are usually duplicated relatively easily.

One of the principles of the hypothesis is the concept of waste associated with the duplication of heavy fixed costs. While agriculture has the phenomenon of heavy fixed costs, the duplication of production facilities is not associated with waste because the output, as noted immediately above, is storable.

Cream-Skinning.--The cream-skimming hypothesis argues that there are high and low density markets associated with high and low profitability. This phenomenon is evident in agriculture. That is, most products have a high-priced domestic or local market and a low-priced export market. This certainly was the case for much of Canadian agriculture prior to the introduction of the 1927 and 1934 Acts. However, there appears little evidence that Canadian governments felt obliged to ensure that the non-Canadian consumer should pay

the same prices as the Canadian consumer. However, that is the premise to the hypothesis--that consumers in the two markets should be treated similarly.

On the other hand, it is common that consumers in outlying regions pay more than those in regions more approximate to the production locus. Where this has occurred with respect to Canadian agriculture and the state considers that the more outlying consumers should be treated the same as the local consumer, the state has invariably not regulated agriculture so as to ensure profit cross-subsidization, i.e., prevent cream-skimming. Instead, it has adopted more general policies, such as affecting transportation rates and adjusting net disposable incomes.

Buyer Ignorance.--The hypothesis of regulation postulates that the state intervenes to compensate for the existence of buyer ignorance by regulating to guarantee the quality of the good or service. The state has a long history of regulating to ensure that consumers of agricultural products are protected. In Canada, Booth traces such state action back to a 1689 Statute in Quebec which regulated the standards of weights and measures with respect to grain, flour and bread.⁵³ By 1934, with the enactment of the Natural Products Marketing Act, Canada had a number of statutes relating to the quality of agricultural products: An Act to Regulate the Sale and Inspection of Root Vegetables, (Root Vegetable Act, 1922); An Act respecting the Inspection

of Meat and Canned Food (Meat and Canned Food Act, 1907);
 An Act to Regulate the Sale and Inspection of Fruit and
 Fruit Containers (Fruit Act, 1923).

While the buyer ignorance hypothesis may explain state intervention for the grading and inspecting of agricultural products, it is equally an explanation for all such state intervention in all other industries. Moreover, such regulations are only one aspect of state intervention in agriculture.

2.7.2 Destructive Competition Hypothesis

A priori, the destructive competition hypothesis is a good explanation for state regulation in agriculture.

Agriculture has two main features: the gradual evolution of satiated demand and the concomitant inelastic response of demand to price; and, the general lagged aspects of supply and the concomitant inelastic response to price. The latter feature requires more analysis to demonstrate more fully the applicability of the theory of destructive competition to agriculture.

Of the several time frames provided in economic analysis, two reflect the true state of agriculture. Short-run analysis is generally inapplicable because it is premised on the capacity to make non-permanent re-arrangements of the production process in order to increase production. The normally cited re-arrangements are additions to the labour

force, overtime and double shifts and continuous working of machinery. While one can make similar adjustments in agriculture, e.g., hire more pickers and more harvesting capacity, one is merely speeding up the production process, not increasing it.

Only the very short-run and long-run periods are applicable because of the essential nature of agriculture. Once agriculture production is on-stream, that is, once growth has started, there is no response which can be made which alters actual production until next season. Thus, pursuant to short-run analysis, no response in the very short run is possible. If long-run analysis is defined as that period wherein a producer may change all aspects of his physical plant, including additions, alterations and replacement, and since an agriculturalist has this opportunity only at the commencement of each season, then the long-run situation reflects the true state of agriculture. A corollary of the above is that it is at the end of the growing period that an agriculturalist may radically vary production by deciding not to proceed with the harvest. Mid-season partial abandonment decisions, e.g., not proceeding with a regular spraying program, appear to present an exception but usually such steps are part and parcel of a total abandonment decision. It is the rare exception when a mid-season partial abandonment decision is not accompanied by total crop abandonment.

The above analysis implies that the long run in agriculture is the one growing season. In some cases, this is true, as with most vegetable and grain crops. Where this is so, the lag effect leading to excess capacity is not really a problem as adjustments to industry's total production capacity can be readily made. On the other hand, where the growing season required for on-stream production involves a number of years, then the problems of lagged excess capacity, as indicated by the destructive competition thesis, arise.

A priori, where the period required for on-stream production is just the one season, at worst one has excess capacity for only the one season, and, given the freedom to change production from one crop to another, one normally does not expect excess industry capacity to last longer than the one season. Destructive competition is thus not the expected outcome of excess capacity. The term "freedom to change production" implies two types of "freedom": freedom of market entry and freedom of mobility of factors. Assuming aside the former, the traditional state of agriculture, it is the latter which dictates further examination of the a priori statement.

It is unreasonable to assume that, in agriculture, all factors of production are fully mobile because this requires that there be perfect substitutability. This is patently not so with respect to the crucial factor of

virtually all agricultural production, land. It is the lack of substitutibility in land which leads to excess capacity and destructive competition in those crops where the long run is just the one season.

More often, however, the long-run situation in agriculture involves a number of years. As such, the phenomena of lagged production, excess industry capacity and destructive competition are more usually encountered.

In the long-run situation the focus is upon the production process, not production per se. Once the production unit has come on-stream, the production itself may occur daily, as with cows and fowls, or seasonally, as with most tree crops and some speciality vegetable crops. Price variations are largely irrelevant. With a low price, a producer does have one possible response. He may refuse to collect the product for sale. In tree crops this is a simple enough measure: the crop normally falls to the ground and by not collecting the produce, the agriculturalist incurs no harvest and post-harvest costs. Refusal to collect the produce of animal production units is possible in only the shortest period as problems of hygiene develop. The latter is a crucial factor in dairy herds. Unless milked, cows contract mastitis and, if untreated, this can eliminate the cow as a future production unit.

It is this latter point which is the crux of excess industry capacity in agriculture. Friesian Holstein dairy

cows, Winesap apple trees and Merino sheep are not inert objects. They require constant attention if one anticipates them to be long-run production units. While the level of attention may be minimized in some periods, it is only so at the cost of high resurrection costs. Generally, the producer finds it cheaper to undertake continual maintenance expenditures in periods of excess production and subsequent low incomes than risk unknown future resurrection costs.

It is the need to recoup some of his out of pocket expenses which forces the producer of long-run agricultural commodities to engage in destructive competition. The degree of the intensity of destructive competitiveness is directly related to: the lag effect which exacerbates the excess capacity; and, the extent of the commitment a producer must make to the continual well-being of his producing unit.

In theory, some recoupment is possible if the producer can differentiate his product and thus carve out some market niche.

Unfortunately, agriculture offers only limited capacity to effect product differentiation. This is because the only real avenue for differentiation lies in quality emphasis. However, given the standardizable nature of the agricultural products this approach has limited prospect. All it will really do is divide available supply into a number of quality groupings, such as highest, medium and lowest quality. Another approach may be to promote the

region of production and with consumers expressing a preference for, say, Niagara grapes the producer of Niagara grapes has some market niche.

Agriculture then can be considered as an industry with an inherent propensity for destructive competition.

State intervention in agriculture then appears to be capable of being explained by reference to the destructive competition hypothesis. However, as Section 2.6 demonstrated, the premise of the destructive competition thesis is that society values the output of industries which have long lead times, are subject to sporadically idle excess capacity and which require continual expenditures.

Insofar as no significant society in history has been prepared voluntarily to let itself be totally dependent upon external societies for the supply of its food needs, then agriculture can be held to be a socially valued output. It follows then that, pursuant to the hypothesis, agriculture should be regulated.

The weakness of the applicability of the hypothesis to agriculture is the aggregative nature of agriculture. What aspects of agriculture, and food, are valued enough to warrant state intervention? Is the pastoral sector more valued than the horticultural sector? Is red meat more important than white meat? Chicken more than pork? Peaches more than pears?

2.7.3 Milk Industry, Destructive Competition and Regulation

This section argues that when one disaggregates "agriculture" into its myriad individual products, milk is held to be the most important single agricultural product. Thus, regulation in agriculture in relation to the destructive competition hypothesis is only applicable to the milk industry. Consider the following.

Most Canadian regulation of the dairy industry began in the early 1930s. However, the premise for such regulation differed from that governing the introduction of the Produce Marketing Act and the Natural Products Marketing Act.

The Report of the Ontario Milk Industry Inquiry Committee⁵⁴ pinpoints the importance of the early 1930s to the dairy industry from a number of perspectives. This was the period of technological advancement with respect to the mechanization of farm operations, of increased interest and participation in new testing programs, of "the motor truck [which] revolutionized milk transport" and of changes in milk processing techniques. These technologically related changes coincided with the depression. G. B. Parlbby summarized the impact of the depression:

1. The initial breakdown of the stable market came from the general economic depression which struck North America in 1929.
2. Because of depression and drought, opportunity cost of (i.e. given an investment in land, labour and capital, a farmer might produce any of milk, eggs,

beef, etc.) the production and distribution of fluid milk was varied widely relative to other agricultural and industrial fields. This led to sharp fluctuations in fluid milk production.

3. Per capita consumption for fluid milk remained relatively stable, unresponsive to price and income changes.
4. Price cutting by distributors became common to gain or retain their shares of the market.
5. Fixed costs of established producers and distributors were higher than those who entered the market during the depression. The distributors, to maintain a margin to recover costs, passed on price reductions to producers. Established producers were forced to reduce costs, operate below cost or go out of the market.
6. The quality of milk was in danger of becoming or became inferior.

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Parlby argued that the last point was vital to the introduction of milk regulation on the Prairies in the early 1930s. It is necessary to consider in more detail then the value of milk.

Manitoba.--The value of milk to society was held to be such that "temporary bargain counter milk prices would ultimately prove costly to the consumer."⁵⁶ In a lengthy Annual Report reviewing its origins, The Milk Control Board of Manitoba stated that "milk is regarded as the most satisfactory single article of food consumed by man. Thus it is that the production and sale of milk is a matter of great public import."⁵⁷ "Milk is a necessity of life. For a large section of the consuming public, a regular and safe supply is indispensable. Regularity and safety can only be served by public regulation . . . Daily regulating of supply

can be achieved only by gearing farm production to the season of the lowest output (winter) which inevitably means seasonal over-production for fluid milk in the summer. Such surpluses can be handled adequately and fairly only by definite and controlled methods of price payments."⁵⁸ The result of such reasoning was An Act to amend "The Municipal and Public Utility Board Act" in 1932. Regulation of all aspects of the Manitoba milk industry was vested with the Municipal and Public Utility Board.⁵⁹

Saskatchewan.--The 1933 Saskatchewan Royal Milk Inquiry Commission (sic) found that, inter alia, "incomplete enforcement of public health regulations in many localities is causing trouble and is bound to cause more trouble in the future if it continues."⁶⁰ The Commission recommended that the Local Government Board Act be amended "to include the regulation and control of the production, distribution and marketing supplies of the cities of the province."⁶¹ In 1934, the Act was amended in line with the Commission's recommendation. The next year, the Milk Control Act established the Milk Control Board in Saskatchewan with total control of the regulation of the industry.

Alberta.--Amendments, in 1933, to the Public Utilities Act empowered the Public Utilities Board to regulate the milk industry. In administering milk price control, "the

underlying principle . . . has always been to protect the public interest in the continuation of the supply of a low cost and essential food item."⁶²

Two other provinces enacted similar legislation. Ontario's 1934 Milk Control Act provided for a Milk Control Board to regulate the province's fluid milk industry, including the supervision of fluid-milk pricing. Quebec's Dairy Commission was empowered, in 1933, "To supervise, control and regulate in the Province the manner of purchasing, the purchase, transportation, handling, conversion, preparation, storing, delivery, method of sale, sale, distribution or manner of distribution of milk and cream . . ." (Dairy Products Act, Section 13(3)).

In the five provinces, a public interest notion relating to the value of milk led to the state's regulating the milk industry. This is not to deny that milk producers benefitted from the reforms. Nor does it deny that milk producers were silent in the process which led to these regulations. Drummond gives a brief outline of dairy industry's need for regulation from the producers' perspective.⁶³ However, it is argued that the public was a major influence in the incidence of both state intervention and the method of intervention.

Consider the British Columbia example. Section 5.3 details how British Columbia dairy farmers sought to be incorporated in a form of state imposed regulation at the

same time and in the same manner as was being proposed by the province's fruit growers. This was the process of regulation as advanced by George Stigler--regulation is not thrust upon an unwilling industry but actively sought by that industry.⁶⁴ However, Section 5.3 clearly shows that while the citizenry of Vancouver was prepared to let fruit growers organize themselves, it was loath to let the dairy farmers do the same thing. Milk was seen as a necessity,⁶⁵ vital to the existence of children.⁶⁶ Its control was not to be the subject of the producers. In sum, if milk must be regulated, it must be done so by public bodies, not private ones. Drummond, in another work,⁶⁷ has provided a theoretical foundation for the argument of the Vancouver citizenry.

CONCLUSION

Section 2.7 has argued that, a priori, only the destructive competition hypothesis appears to be relevant as an explanatory basis for regulation in agriculture. Section 2.7.3 argued that, upon closer examination, the hypothesis holds true for only the milk industry.

In short, the public interest school of regulatory theory offers little reason as to why the state should regulate agriculture. It follows then that an explanation for state intervention must lie elsewhere. This shall be explored in Chapter 3.

NOTES TO CHAPTER 2

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27. Wilcox, Public Policies, p. 276.
28. Wernette, Government and Business, p. 317.
29. Trebilcock, et al., "Markets," p. 17.
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31. Wilcox, Public Policies, p. 277.
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33. Kahn cites as the apparent source of the term "cream-skimming" the Report of the Federal Coordinator of Transportation, 1934, a Report prepared for the House Committee on Interstate and Foreign Commerce of the 74th Congress and published in 1935. Kahn, Economics of Regulation, Vol. II, p. 9.
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40. Paul Sabatier pinpoints pollution as one of the two reasons as to why regulation was introduced into the American market place. Poor quality consumer items was his other reason. P. Sabatier, "Social Movement and Regulatory Agencies: Towards a More Adequate--and Less Pessimistic Theory of Clientele Capture," Policy Science, 6 (September 1975).
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43. Trebilcock, et al., "Markets," p. 23. In another work, Trebilcock cryptically advises governments to be more astute about the self-serving statements of statutory cartels when they refer to the "dangers to the public of destructive competition." He cites as such cartels susceptible to destructive competition to the detriment of the public banks, professions, agribusiness, telephone systems, airlines, real estate and university professors. See his "The Consumer Interest and Regulatory Reform," in Doern, ed., The Regulatory Process in Canada, p. 123.
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46. The typical illustrations relate to orchards and vineyards. Once on-stream, production will continue virtually automatically. However, unless adequate attention is given to disease control and the basics of husbandry such as trimming, pruning and estate management, production will decline and the means of harvesting the crop impeded. The classic example of the cost of ignoring maintenance despite self-perpetuation is seen in the abandonment of the rubber, cocoa, copra, coffee and tea estates of South East Asia and Oceania after five years of negligence caused by the War. Cows produce milk virtually every day but unless minimum husbandry is practised mastitis may develop and, if left unattended, may eliminate the cow as a producing unit.
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CHAPTER 3

SELF-INTEREST THEORIES OF REGULATION

3.1 INTRODUCTION

The self-interest school of regulatory theory differs from the public-interest school. The latter has as its motivation for government intervention in the economy the notion that the public interest is somehow being adversely affected. Paternalistically, the government intervenes to correct the adverse effect. The school has a simplistic view of the mechanics leading to intervention. That is, because there is reason for the government to intervene, i.e., natural monopolies, cream-skimming, buyer ignorance and destructive competition, therefore the government does intervene.

In contrast, the self-interest school of regulatory theory accentuates the mechanics of intervention. It details the process by which citizen-consumers, in perceiving that there is a market failure which adversely affects them, articulate their concern to the government. The school does not assume that any apolitical intellectually competent reason for government intervention automatically results in a governmental response. The government, like its citizen-

consumers, has its own imperatives. The result is that the logic governing the response by the government may well differ from the logic governing the request for government action. The self-interest school of regulatory theory examines the demand for and supply of government policies. It argues that the motivational basis of both the demand and supply of government policies is self-interest.

To examine the self-interest school of regulatory theory one needs to explore the issue as to why government policies are demanded. Let us begin by establishing why there is government.

In a necessarily brief answer, one must state several self-evident truths. To begin with, citizens place different values on material and symbolic goods. The choosing of either type of good results in the use of resources.¹ However, individual choices and their associated resources are constrained by the preferences and behaviour of other individuals. The finite limit of resources is the most obvious and odious constraint. In the need to allocate the finite resources amongst competing citizens lies the origin of government.

This leads to an examination as to why citizens seek government intervention.

The beginnings of an answer may be found in Richard Musgrave's major work, The Theory of Public Finance. Here, Musgrave developed his concept of a government having

Allocation, Distribution and Stabilization Branches in its Fiscal Department. The tasks of the three Branches were to:

- (a) secure adjustments in the allocation of resources (Allocation Branch); (b) secure adjustment in the distribution of income and wealth (Distribution Branch); and,
- (c) secure economic stabilization (Stabilization Branch).

Musgrave's Allocation Branch Manager's responsibilities are, in essence, a summary of the public interest theory of regulation. That is, correct the failures of the market mechanism to allocate resources in an optimum manner. With clear-cut examples of market failure, the Allocation Branch Manager's task was comparatively easy. The same argument can be made about the Stabilization Branch Manager's task. On the other hand, the Distribution Branch Manager has a far more difficult task. This is because all citizen-consumers have their own notion as to what constitutes an optimum distribution of income and wealth.

Individuals have two basic means of achieving what they consider to be the optimal distribution.

One way is to rely upon the private sector. Three techniques are available. Firstly, an individual may rely solely upon his own endeavours. In using either entrepreneurship, initiative, energy, guile, deception or brute force, each man is an island, accountable only to himself. The second technique is for an individual to cooperate with others. He may cooperate informally, by mutual consent,

or formally, with the use of contracts. The third technique combines aspects of the first two techniques. That is, the citizen uses the private property protection provisions of the common law to ensure that he is left alone in his private endeavours. At the same time, those same provisions ensure that he does not trespass upon the endeavours of others. In relying upon the private sector to achieve his version of society's optimum distribution of income and wealth, an individual views the state² as a neutral referee, providing only, as Thomas Hobbes and Milton Friedman would prefer, law and order for the protection of property.

The second method is for the individual to use the state to provide what the individual perceives to be the optimum distribution. The state is viewed as a participant in the distribution, not merely a referee: the state as a participant can redistribute resources whereas the state as referee can merely adjudicate on the existing distribution. The reason why individuals seek to use the state as a participant is because the state has the right to use legitimate coercion to achieve its ends. While other groups in society may use coercion to achieve their goals, only the state can use it legitimately. Regulation by the state then becomes a statement of behaviour backed by the coercive powers of the state. The state can regulate to achieve any desired distribution of income and wealth through such mechanisms as the taxation system, the tariff system, competition policy, and direct and indirect cash grants and subsidies.

A problem in the use of the term "regulation" is its wide number of meanings. Bruce Doern summarizes three interpretations: (a) it is part of the transaction mechanism in the total political process; (b) it is a rule of conduct backed by the legitimate coercive powers of the state; and, (c) it is the pattern of behaviour of regulatory agencies.³

This chapter shall use Doern's second interpretation. The chapter shall examine why citizen-consumers would demand such regulations and why the state would grant to such citizen-consumers the use of its legitimate coercive powers. Nevertheless, there always comes a time when, in deciding to use its legitimate coercive powers, the state must decide which of its many mechanisms it shall use. Regulation then takes on the third meaning in Doern's three interpretations. The chapter will examine in Section 3.4 the demand for regulation as a pattern of behaviour of regulatory agencies. Section 3.5 will examine one approach as to why agriculture would seek from the state the use of its legitimate coercive powers.

Throughout the chapter, the term "citizen-consumer" is used. In their non-hybrid form, the two terms have the connotation of individual people. However, the chapter also wishes to include the collective terms "firms", "business" and "corporations". After all, they too demand and consume public policies and therefore seek to influence the supply of public policies. Thus, the term "citizen-consumer" is

used to describe any part of the private sector which seeks to influence the supply of public policies it receives from the public sector.

3.2 THE DEMAND FOR REGULATION

The self-interest school argues that citizen-consumers both can and will influence the supply of policies from the public market. They can influence the supply because of the susceptibility of the distributors of regulations to voter pressure. They will influence the supply because they are motivated by self-interest.

The capacity of an individual to transform these potentials into reality depends upon two factors: (a) ascertaining of facts; (b) acting upon these facts.

Firstly, the individual must find out what are the proposed policies of a government and how will they affect him. Moreover, the individual should be able to assess the net impact upon him of a given public policy. This requires him to comprehend not only how much he will benefit from a policy but also how much he must pay for that policy. These facts are not costless. They require research and calculation and these necessitate the expenditure of time and/or money and/or effort.

Gordon Tullock has developed a model of the benefits one may achieve by being an informed voter.⁴ His analysis is premised on what is the "payoff" to the individual from

voting. Tullock says that the payoff P is equal to $BDA - C_v$, where B is the benefit expected to be derived from the success of one's political party or candidate, D is the likelihood that one's vote will make a difference, A is one's estimate of the accuracy of one's judgement and C_v is the cost of voting.⁵ The latter variable, the cost of voting, requires elaboration because it is too simplistic to assume that the cost of voting is only associated with the mechanics of voting on voting day. One of the costs of voting is determining what are the issues, over and above the elementary information provided by the mass media. Tullock then expresses the payoff from informed voting as P equals $BDA - C_v - C_i$, where C_i is the cost of obtaining information. Since A , one's estimate of accuracy of one's judgement, is a function of information, increased information is associated with both an increased cost of seeking that information as well as an increased benefit.

The second factor relates to the translating of these facts into action. If the net impact of a policy on an individual is negative, it is rational to assume, consistent with the maximization of self-interest motivation, that an individual will seek to get the government to change its policy. The corollary of this is where an individual thinks that the government's benefit to him is not as great as he thinks it should be. In both cases, to correct the situation an individual may campaign directly against the policy or he

may create coalitions of same or similar interests to oppose the issue. Albert Breton calls the costs associated with these efforts as transaction costs.⁶ Tullock has expressed this latter course of action, with respect to payoff P , as P equals $BDpA-Ci-Cp$, where Cp is the cost of effort invested in persuasion and Dp being the likely effort on the outcome of the persuasion.⁷

From the citizen-consumer's perspective, the most effective time for attempting to establish information is at election time. This is also the most effective time to influence the supply of public policies. In terms of Tullock's equations, on election days, the cost of voting, i.e., Cv , Ci and Cp , is the lowest and thus the payoff the highest.

Unfortunately, governments face electors only periodically. Between elections, governments can afford to pay less attention to the citizenry's demands compared to what they do in the period prior to elections. This increases the cost to the citizen-consumer of both establishing data related to public policies and influencing the direction of those policies. Breton claims that in the non-election period, the cost of influencing politicians by voting is high.⁸ Citizen-consumers join coalitions in an effort to overcome the personal costs of trying to influence governments in the non-election period.

Coalitions have another function. There are physical limits to how much data a citizen-consumer can seek out, absorb and then use to implement as a vote. Mitchell and Mitchell refer to this as "the constraints upon rationality."⁹ They list as constraints the problems of learning, formal prohibitions, such as residential qualifications, and the informal constraints as evidenced in hostile bureaucrats to low income groups. Their latter point has been well developed by Gideon Sjoberg et al. with their examination of the orientation of the bureaucracy towards the lower class.¹⁰ The point is valid because, as Bretón says, the costs of voting are "to a large extent determined by the characteristics of the institutional framework of the public sector."¹¹ Coalitions ease these problems by applying economies of scale to the search for data and using group effort to utilize the resulting data.

In joining a coalition, a citizen-consumer is exercising what Michael Trebilcock et al. called "bounded rationality."¹² That is, it is physically impossible for a citizen-consumer to maximize, in Tullock's terminology, the values B , D , D_p , A , C_v , C_i and C_p . Instead, he will seek to optimize these values. In Herbert Simon's terms, he will become a satisficer, not a maximizer.¹³ Thus, in order to optimize the consumption of a public policy about which he feels strongly, a citizen-consumer will accept a public policy about which he feels less strongly. Coalitions

consist of satisficers, bargaining away their weaker preferences for their stronger ones. However, if a citizen-consumer considers his marginal rate of substitution of the less preferred public policy in one coalition he will seek another coalition. Such movements are seen in the continual fluctuations in bargaining strength exhibited by all coalitions.

Bargaining goes on among citizen-consumers, coalitions, political parties and governments. Buchanan and Tullock, in their The Calculus of Consent, popularized the term "log-rolling"¹⁴ to describe the bargaining process. Log-rolling may be implicit or explicit. According to Breton, implicit log-rolling relates to the trading of policies, one against the other. It is premised on voting patterns being set and thus one seeks to rearrange policies into the best "fit".¹⁵ Explicit log-rolling is where one trades votes instead of policies: as Tullock says in his short The Vote Motive, explicit log-rolling is where "I agree to vote for something you want in return for your agreeing to vote for something I want."¹⁶

Log-rolling suggests that citizen-consumer coalitions are able to attain their optimum distribution of society's income and wealth within the private sector. As such there would be no need to seek the state's intervention. Such a state of affairs is likely when the coalitions are complementary. When the coalitions are competitive, mutually satisfactory trade-offs are unlikely, there being areas below which some

coalitions are not prepared to go. In these cases, usually the majority, coalitions seek the state's coercive powers to enforce a redistribution. There are also the instances where the private sector solution of using the provisions of the common law would not go far enough in distributing income and wealth. These coalitions also turn to the state as a redistributor, not as a neutral referee. The log-rolling process then changes from a purely intra-coalition market to one of coalitions seeking to influence the supply of the state's legitimately coercive regulations. This then returns us to the beginning of the Section wherein it was analysed as to how citizen-consumers influence the supply of policies from the public market.

Society consists at any one time of a plethora of unstable coalitions made up of individuals and coalitions seeking to maximize, by log-rolling, their self-interests. Coalitions may be complementary. Complementary coalitions of minorities can elect governments when an opposition party can appeal to enough minority groups by including policies which, for whatever reasons, the governing party can't implement. Breton calls this inverse log-rolling.¹⁷ Usually, however, coalitions are in conflict with each other: consumer coalitions versus business coalitions; one industry coalition versus another industry coalition; urban coalitions versus rural coalitions; black coalitions versus white coalitions, etc.

Each coalition has the same objective: to use the state's legitimate coercive powers to advance that coalition's self-interest.

The inability of Canada's agricultural sector to arrive at a private-sector-based solution and thus its attempts to obtain a state-imposed coercive solution is analysed by reference to the free-rider problem in Section 3.5.

3.3 THE SUPPLY OF REGULATION

The preceding section examined why citizen-consumers and their coalitions seek public policies. In order to be able to proceed with the analysis, a simplistic view of "government" was used. That is, government was viewed as a unitary concept, with a simplistic view of decision-making mechanisms.

This section develops the decision-making mechanisms of government which result in the decision to supply to appealing coalitions statements of behaviour backed by the legitimate coercive power of the state. In doing so, government is now viewed as being comprised of two component parts.

One component consists of politicians, those whom citizen-consumers and their coalitions elect to office in order that those citizen-consumers may consume their desired public policies with the aid of the state's coercive power. The other component is the bureaucrats

who advise upon and then administer the specific public policies.

The self-interest school of regulatory theory holds that the motivational force driving the two components is self-interest.

This section shall examine, firstly, the self-interest motivation of politicians and then the self-interest motivation of bureaucrats.

3.3.1 Politicians

Breton examines the self-interest motivation of politicians in terms of the "maximization of utility function." Thus, politicians seek the maximization of a utility function defined as re-election to office and other variables.¹⁸ He considers amongst these "other variables" personal pecuniary gains, personal power, a politician's own image in history and a politician's own personal view of the common weal. Breton expresses this as $U^p = U^p(q, m)$, where p is any politician, q is the probability of re-election variable and m is the vector of other variables. Politicians seek to maximize these variables, subject to the constraint that q cannot go below some prescribed level, say q^* . At q^* , the politician has a high probability of being electorally defeated.

Politicians, like individual citizens, have different preference scales. Similarly, because it is a world of

finite resources, politicians, like individual citizens, must engage in log-rolling in order to maximize their preference schedules. Thus, in order for a politician to maximize the variable m , he must log-roll with other politicians who are also attempting to maximize their utility functions.

Politicians engage in both explicit and implicit log-rolling. Pursuant to the definition of these terms posited in Section 3.2, explicit log-rolling between politicians is necessitated by the institutional framework within which politicians operate, viz., causes, parliament and cabinet. Implicit log-rolling, the trading of policies one against the other, is employed in appealing to the coalitions of citizen-consumers. According to Trebilcock et al., the aim of both types of log-rolling is to establish "some acceptable state of social equilibrium among competing interests out of which an effective coalition of political support can be found."¹⁹

It is the effective coalition of political support which allows a politician to maximize his utility function. He can establish and maintain effective coalitions of political support by supplying coalitions with government policies which are backed by the legitimate coercion of the state.

3.3.2 Bureaucrats

Just as politicians are posited as being motivated by self-interest, so too are bureaucrats.

Firstly, what is a bureaucrat? In his A Theory of Bureaucracy, Anthony Downs considers an organization to be a bureau if it possesses four primary characteristics:

- (a) a size large enough to result in both relatively impersonal internal relations and administrative problems;
- (b) its members depend upon the organization for full-time employment;
- (c) personnel policies are based upon the performance of the personnels' organizational role; and,
- (d) the major portion of the organization's output is not directly or indirectly evaluated by the objective monetary measure of profitability.²⁰ Officials who work in such organizations are bureaucrats.

Just as a politician has a multi-variable utility function, so too has the bureaucrat. Downs considers that bureaucrats have goals which relate to power, income, prestige, security, convenience, loyalty and pride in excellence of work.²¹ Breton states the bureaucrats seek to maximize a utility function defined as the relative size of the bureau.²² William Niskanen states that bureaucrats seek to maximize the size of their budgets:²³ bureaucrats "are motivated in this fashion because professional advancement and rewards are directly related to the budget variable."²⁴

Acheson and Chant emphasize, after Philip Selznick,²⁵ the bureaucratic goals of prestige and self-preservation.²⁶ They also advance another hypothesis: bureaucrats are motivated to ensure the survival of the bureau because if the bureau is abolished some of the functions performed by the bureau and valued by the bureaucrat may not get performed at all. Finally, let me assume momentarily that by bureaucrat I mean an official who works as a regulator in the third of Doern's interpretations, i.e., one who administers the regulations of a regulatory agency. Russell and Shelton hypothesize that such regulator's utility function includes as a variable the regulator's post-regulatory agency future.²⁷

Many of the hypothesized variables in a bureaucrat's utility function are closely interwoven. Prestige and power are usually associated with size of bureaus. Similarly, larger bureaus are harder to eliminate than smaller ones, thus ensuring survival.

Bureaucrats have a number of techniques by which they can advance their cause of maximization of size and thus maximization of the probability of ensuring prestige, power and survival. The more common ones are: accentuate the benefits and downplay the costs in cost-benefit analysis; choose discount rates which emphasize present values backed up by sensitivity analysis with pre-emptive "hypothetical but feasible" scenarios; continually redefine the objectives and purposes of a program to ensure that the need for the

bureau does not become obsolete; correct the deficiencies of existing policies by a proliferation of new regulations rather than by adopting a "zero-based" philosophy; insist on elaborate, extensive and inclusive rules to ensure predictability and stability; and, choose the option of more subordinates rather than more power over existing subordinates.

The creation of more, not less, regulation is in the bureaucrats' and their bureaus' interest. The public interest will always be interpreted in this light. Thus, if bureaucrats see a demand for action by citizen-consumers which could be met by a government regulation which would not at the same time create coalitions ultimately destructive to the bureau, the bureaucrats will recommend that the demand be met using the legitimate coercive powers of the state.

The hypotheses of Breton, Downs, Niskanen, Acheson and Chant, and Russell and Shelton have the danger of oversimplifying the relationship between the politician and the bureaucrat. It cannot be assumed that bureaucrats can maximize their utility functions however defined without constraints. Unlike private-sector businesses, all bureaus must go to their capital markets on a regular basis. Capital in this sense refers to operating budget, staffing members, directorships and legislative authority. Whatever the techniques a bureau uses to ensure its survival pursuant to the self-interest hypothesis, failure to be politically

in-tune with the relative politics of (a) its policy areas and its citizen-consumers coalitions, and (b) the log-rolling of politicians as an entirety, will result in attacks upon the bureau at capital renewal time.

3.4 REGULATION AS A SPECIFIC INSTRUMENT

In Section 3.1 three interpretations of the term "regulation" were introduced. It was stated that, after Doern, the interpretation of regulation as being a rule of conduct backed by the legitimate coercive powers of the state would be used. It is now proposed to move to the third use of the term, i.e., regulation as the pattern of behaviour of regulatory agencies.

One of the weaknesses of the public finance theorists, such as Wicksell,²⁸ Johansen²⁹ and Musgrave, was that their work was devoid of any decision-making mechanism. By establishing a government comprised of politicians and bureaucrats whose basic motivational drive was the advancement of their self-interest, Breton, Buchanan and Tullock and Downs insert such a mechanism. In turn, their work can be criticized for failing to delineate between the various modes of governing.

Doern and Wilson³⁰ utilize a concept of a continuum of governing instruments. In his The Regulatory Process in Canada, Doern expands on this and the concept of a market for governing instruments.³¹ Ebbs and flows in the coalitions of citizen-consumer support for a government mean that a

government must seek to apply the appropriate governing instrument to the appropriate coalition at the appropriate time. As Doern says, subtlety in the use of coercion does become important.³² One can make the same comment about the appropriateness of a specific governing instrument as what Breton makes about the transaction costs of citizen-consumers--about all that one knows about them is that they are important!

Let us assume that the governing instrument with which the government chooses to establish a rule of conduct is a regulatory agency, that is, an agency which is neither a pure government department nor a pure private-sector organization. The market for government policies was analysed in terms of demand (citizen-consumers and their coalitions) and supply (politicians and bureaucrats). The same three perspectives will be used to analyse the desirability of using a regulatory agency as the governing instrument to administer government policy.

3.4.1 Citizen-Consumers Demand for Regulation

It is because citizen-consumer coalitions tend to be competitive rather than complementary that governments introduce regulatory agencies ("government" used in its simplistic unitary form). Kurt Wicksell³³ offers a principle by which to understand this.

Wicksell's theory of public finance stressed the requirement that, as a basic rule of budgetary practice,

the will of the individual must be respected. Equally, he was concerned about the dangers of abuse of minority rights. Thus, he claimed that budgetary decisions should approximate unanimity and approximate voluntary action. According to Lief Johansen, Wicksell was but one who referred to approximate unanimity.³⁴

In developing the theories of early public finance theorists, including Wicksell, Musgrave analysed the bargaining process needed to achieve equilibrium among satisficing individuals in terms of voluntary action.³⁵ His analysis increased in complexity with the increases in participants in the bargaining process. Musgrave analysed various voting procedures such as the Wicksellian qualified majority, the plurality rule and point voting.³⁶ All the suggested schemes encounter the problems of the voter strategy of not revealing their preferences, the problem of delegation to elected representatives and, following the second point, the problems of parliamentary procedure.

Regulatory agencies appear to counter a number of the problems faced by Musgrave while at the same time maintaining the Wicksellian principles of approximate unanimity and approximate voluntary action.

To begin with, the number of participants in the log-rolling process are reduced. Bargaining with respect to equilibrating contributions and benefits is restricted to those citizen-consumers of public policies which come

under the jurisdiction of a specific regulatory agency. Since the log-rolling relates to a specific public policy area, the voter strategy of concealing preferences has limited applicability.

Regulatory agencies are held by some to be independent of the government, neutral towards the bargainers and professional in their arbitration. Granted these characteristics, voluntary action and relative unanimity are more likely. Baldwin says that this would be so because he sees log-rolling as a means of internalizing the externalities imposed upon some minority groups.³⁷ However, in some cases, log-rolling can't be used. This is where one coalition will just not accept the results of voluntary bargaining, no matter what it is. Concomitantly, the government is reluctant to alienate one group by specifically imposing a legislative solution. Under those circumstances, Baldwin sees regulation as becoming an "agency-specific variant of the logrolling process."³⁸ Regulation becomes a means of both arbitrating a compromise and as a means of arranging compensation to those who suffer negative effects. Because the public policy area is specific and the net impact recipients clearly identified, a regulatory agency can establish compensation and reward to the winners and losers without having to consider other disinterested coalitions. If the government as a whole were to be involved in the arbitration process, it would have to be cognizant of the

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impact upon all coalitions because the aggregative equilibrium of coalitions would be affected. The fact that it is only their specific interests which are being considered by a regulatory agency is an incentive for citizen-consumers to voluntarily partake in the decision-making process.

Moreover, governments may be involved in sensitive matters such as the confiscation of property or the abrogation of rights. In these instances, according to Buchanan and Tullock,³⁹ society requires unanimity from the decision-making group. A regulatory agency with fewer members is more likely to reach such unanimity than a whole government.

When coercive action is required, precision and clarity are necessary. Doern et al. claim that the more coercive a policy output is, the greater is the need for precision and clarity.⁴⁰ Again, a regulatory agency having to deal with a single policy area is more likely to achieve such precision and clarity than a government having to deal on a more macroscopic level.

It is for these reasons, i.e., precision, clarity and unanimity amongst decision-makers, that citizen-consumers in seeking the coercive powers of the state seek and accept regulatory agencies as the specific governing instrument.

It is now necessary to move from the simplistic view of government to one which considers its component parts.

3.4.2 Politicians' Demand for Regulation

Trebilcock et al. offer a very earthy reason as to why politicians prefer regulation from the state to the settlement of the optimum distribution of income and wealth in the private sector. Politicians have been elected to govern and a plethora of regulations is proof of this. A politician's chances of re-election are greater if he can enumerate to his constituency a great list of his achievements. Concomitant with this is the philosophy that the political system seems "to bias politicians towards collective regulation of resource allocation rather than unregulated market allocation."⁴²

Doern et al. suggest another reason. They claim that "the tendency of politicians to want to avoid making or appearing to make decisions involving more coercive instruments may help explain why certain regulatory functions are farmed out to independent authorities."⁴³

3.4.3 Bureaucrats' Demand for Regulation

In Section 3.3.2 above, a number of hypotheses were outlined which suggested variables which bureaucrats sought to maximize in their utility functions. For any one bureaucrat, nearly all of the suggested variables are more likely to be maximized in a sub-agency of the government than in a government department. Hence, they respond to

the demand for government policies by recommending specific agencies to handle that specific coalition's demands.

Moreover, just as the output of politicians is government policies, so too the output of a regulator is regulation. Regulators will be seen to be doing their job if they produce regulations. Energetic output becomes associated with the need for the regulatory agency, hence ensuring if not a maximization of its size, at least not a diminution. Besides, the withdrawal of any regulation may be seen as a sign of weakness, encouraging attacks upon what Allison⁴⁴ and Thompson⁴⁵ call an organization's "essence". This point is concomitant with Lilley and Miller's observation that regulators are risk averters and security conscious.⁴⁶ Criticism is avoided by promulgating even more regulations which emphasize rigidity and inflexibility. These minimize the discretion of the regulators and thus minimize the potential for attacks premised upon inconsistency. On the other hand, Acheson and Chant⁴⁷ argue that if a regulatory agency can achieve a superabundance of discretionary mechanism it can increase the choice of mechanisms available to the regulators, decrease the chances of critical investigation, increase its autonomy and ensure its prestige.

To this point, the analysis of why government intervention in the regulatory form has been conducted in the ex-ante context. It is possible to identify two more forces demanding regulation as a governing instrument if

one moves to an ex-post perspective. That is, it is now assumed that the demand for government policies has been articulated. Thus, the two forces about to be examined are essentially requesting more of the same.

The first group is what Lilley and Miller call the "sizeable corp of public and private regulatory professionals."⁴⁸ Trebilcock et al. include within that group lawyers,⁴⁹ accountants, consultants, the media and academics.⁵⁰ Their livelihood depends upon the existence of more, not less, regulation. One may pose the rhetorical question as to what would be the response of the contributors to The Public Interest if universal deregulation occurred? The five groups of regulatory professionals enunciated above are usually typified by well-formed, stable citizen-consumer coalitions. They represent a potent political force to any government contemplating deregulation.

The second group is the regulatees themselves. Reich cites numerous examples of where a regulatory agency helps transfer privileges into rights.⁵¹ Where the existence of a regulatory agency results in the pecuniary gain to those being regulated, it is in the regulatees' interest to support that agency in order to maintain the environment which ensures their pecuniary gain. In the Canadian context, the classic example refers to farmers who have made substantial capital gains on quotas and who are thus loath to see the abolition of the marketing board system.⁵²

3.5 FREE-RIDERS, AGRICULTURE AND MARKETING BOARDS

Regulatory theory literature is permeated with the concept of externalities.

An externality exists when the rate of consumption by one party to a transaction directly affects the welfare of another person who is not a party in the transaction.⁵³

The existence of externalities results in two basic but opposite outcomes. On the one hand, those who are not parties to the transaction have their welfare increased, vide the traditional example of the apiarist and the orchardist. Opposed to this is the outcome where the third party has its welfare decreased, vide citizens in a polluted environment caused by industrial dumping. Both cases involve individual costs and benefits and social costs and benefits. To illustrate--society pays a heavy cost with, say, air pollution when an industrialist minimizes his private costs, and thus maximizes his private benefit, by not installing, say, stack-scrubbers. If, on the other hand, the industrialist were to install the stack-scrubbers, his private cost would result in the social benefit of a clearer atmosphere. Thus, externalities are associated with the divergence between social and private costs, and social and private benefits.

Daniel Orr⁵⁴ uses the term "rationalization" to describe the process whereby those who receive benefits

from externalities pay for the benefits and those who suffer disadvantages are subsidized by those who benefit. His simplistic treatment ignores another possibility. That is when those who suffer, or consider that they will suffer, from the transaction convince those benefitting not to accept the benefits. The normal mechanism for such convincing is violence, or at least the perceived threat of violence.

Orr suggests four methods by which to achieve the rationalization of externalities: (a) the use of private contracts; (b) the reliance on the property-protecting provisions of the common law; (c) direct government control; and, (d) government enforced extensions of the price system.

The transition from using private-sector mechanisms for rationalization, i.e., private contracts and common law, to public-sector mechanisms is done by reference to the phenomena of public goods.

A public good has two aspects. Once supplied, a public good becomes non-exclusive, i.e., all may consume it, and consumption of it by an individual is non-exhausting. If a public good is provided, its benefits flow equally to those who are prepared to pay for the benefit, those who wish to consume the good but aren't prepared to pay for it and those who are indifferent to it. At the same time, one citizen's consumption of it does not diminish another citizen's consumption. Thus, if A provides a public good, B also receives the benefits of that good: B does not have

to pay for his consumption of the good nor can A recover compensation from B for B's consumption; nor can A consume the good to the extent that he can deprive B from also consuming the good. With a private good, on the other hand, benefits are associated with possession, to the exclusion of other parties and at the cost of subsequent consumption.

The obvious examples of public goods are national defense, police forces, national health programs and high levels of literacy and education. It was perhaps the preoccupation with the specific examples of public goods which caused Musgrave, in 1959, to define public goods as "goods the inherent quality of which requires public production."⁵⁵

Because they are non-exclusive and non-exhaustable, public goods are subject to the free-rider problem. That is, a citizen who, while receiving the benefits of consuming a public good, can escape paying for that good. A free-rider knows that while he is not prepared to pay for a public good, if someone else is, he'll benefit equally in consuming the public good. "Pay" in this context can refer to either cash payment or costs associated with organizing to receive the public good.

Governments can internalize the externalities associated with public goods. To illustrate--since all citizens benefit from the provision of national defense, police forces, health programs and higher education, the government eliminates the free-rider problem by requiring

all citizens to finance these projects through the tax system. It can similarly internalize the externalities to those who create maleffects, e.g., all industrial users. are required to spend \$X on installing stack-scrubbers.

The above outline of externalities, free-riders and government-sanctioned rationalization typifies two features usually glossed over by the literature. Firstly, the above-cited list of public goods have, or are easily able to have, their production origins in the public sector. Secondly, the same public goods are national in their implications. Effects which are national in their implication have traditionally been the concern of governments. It follows that the public-sector-oriented rationalization mechanism, i.e., government control and government-sanctioned extensions of the price mechanism, are equated with either public-sector production-oriented public goods or public goods whose implications are of national concern. To illustrate--Michael Trebilcock et al. are wont to illustrate the free-rider problem by reference to public-sector production-oriented public goods which are national in implication--parks, public defense, a monopoly in the economy (my emphasis), tax, tariffs and competition policy.⁵⁶

Nevertheless, not all public goods are public-sector production-oriented or national in their implication. How does one internalize the externalities of a private-sector production-oriented public good whose implication is mainly

local, if private contract and the common law provisions fail in the rationalization process? Take an Alsatian fancier. His dogs provide the neighbourhood with a degree of security as desperadoes are wont to give such animals a wide berth. While not impossible, it is difficult for him to get his neighbours who are receiving a free ride to their security from his dogs' presence to pay for the upkeep of his animals.

It is argued that by reference to the self-interest hypotheses of regulation, as outlined in this chapter, one can explain how those who provide private-sector production-oriented public goods of non-national implication internalize the positive externalities they provide. This shall be illustrated by reference to agriculture.

Externalities inundate agriculture. Agriculture has in fact been the traditional, i.e., prepollution, source of examples to illustrate where private-sector-oriented public goods can bestow both positive and negative externalities vide the apiarist-orchard connection,⁵⁷ soil erosion prevention, disease control. While agriculture has externalities in the production ambit, it is also host to externalities in the marketing sphere.

Agriculture is typified by there being many producers none of whom are able to influence the market supply. Traditionally, when supplies are heavy, prices drop to clear the market. Even today, most agricultural prices drop in

the immediate post-harvest period when both supplies are abundant and the farmer's need for cash high. Similarly, when supplies are scarce, prices climb to what the market will bear. In short, agriculture has the portents of a purely competitive market structure. However, this is not the case. Ever since farmers ceased selling directly to consumers, in perhaps the mid-1800s, there has been a contraction in the number of buyers. With fewer buyers than sellers, and in contradiction to the pure competition paradigm, the buyers are able to influence the price. Mitchell and the Agricultural Economics Research Council have evidenced the many sellers and few buyers imbalance in agricultural Canada.⁵⁸ Moreover, the purely competitive paradigm is mute about elasticity. It implies that consumer demand and producer supply is fully responsive to the price mechanism. For agriculture, innumerable studies have shown that demand for agricultural products is basically unresponsive to price variations. Responsiveness by demand to price variations is only relevant between clearly delineated upper and lower limits.⁵⁹ Similarly, agricultural supply exhibits a high propensity towards inelasticity. Once planted, price variations can do little to alter the potential supply situation. Ceteris paribus, the crop will produce what its traditional physical yield indicates. The only supply question which a primary producer faces once the crop is on-streams relates to whether he should harvest or not.

The free-rider problem in agricultural marketing originates with these problems. But, first, some background.

In North America, the perception that the mal-effects of pure competition were falling unfairly upon the agricultural sector began to emerge among farmers in the late 1800s. The emergence of capitalism saw the subservience and subjugation of the rural sector to the urban sector. Rural life, despite its usefulness, was held to be baseless: even the Communist Manifesto spoke of "the idiocy of rural life."⁶⁰ The earliest significant rural responses to these attitudes were the Masonic-like National Grange of the Patrons of Husbandry and the Grand Association of the Patrons of Industry. By 1890, both organizations were entrenched in Canada. It was a natural step for such organizations to move from the upgrading of the quality of rural life to the promoting of the economic well-being of farmers. The farmer organizations, and here one must include the radical and short-lived ones like the Greenbackers and Populists' free-silver movement, moved on two fronts. Firstly, they sought legislative reform of those institutions which appeared to adversely impact upon them. Thus, in the United States, farmer organizations headed the drive to regulate the railways, improve banking systems, reform the currency and improve mortgage burdens through credit facilities, vide Bennedict, Knapp, Anderson and Sharp.⁶¹ The Canadian counterparts were the attacks upon the elevator-railroad monopolies

and the drive through the Manitoba Grain Act for the Car;
Order Book.⁶²

The second front was that of direct marketing action. Its premise was to coopt the methods of big business. Marketing cooperatives were formed to gain economies of scale in processing, packaging, storing, distributing and marketing. Erdman traces the origins of such United States rural cooperative marketing back to the dairy industry in the early 1850s.⁶³ He says that the origins of California's successful cooperative movement, begun in the 1890s, drew upon the New York dairymen's example. In The Fifty Year Battle for a Living Price for Milk⁶⁴ the origins of large-scale organizing for a better price for milk are detailed, beginning in 1882. In Canada, Veronica McCormick says the first Canadian cheese board for cooperative marketing began at Ingersoll in 1873,⁶⁵ and Chapter 5 will argue that the Californian cooperative movement provided a model for the earliest British Columbia experiments.

Agriculture began to change by the turn of the century. It was with this change that the free-rider problem in marketing began to emerge.

Gradually, agriculture came to be a specialized occupation. Booth says that this was part and parcel of the advent of mechanization,⁶⁶ something which Broadfoot provides graphic illustration of.⁶⁷ One could also say that it was part of a more fundamental change which saw farmers considering

themselves as producing commodities to sell, not consume. It must be borne in mind that it was Alfred Sloan's determination that General Motors was in business to make money, not cars, which allowed his company to overtake the giant Ford Motor Company and, in the process, alter fundamentally the course of U.S. business practice.⁶⁸ Specialization in production rapidly resulted in oversupplying the local market. Storage became a factor to be considered in the eventual sale of a produce which appeared, for a short period of each year, to be oversupplied. Through storage, it was hoped to eliminate both the immediate postharvest glut and its associated low prices, and the market starvation at the end of the year with its associated comparatively high prices. The ultimate aim was that all farmers should receive higher average returns without consumers necessarily having to pay higher average prices. Through economies of scale in storage the mountain of oversupply would be used to fill the valley of undersupply.

Interwoven with the storage aspects was the spectre of perishability. Whilst the bulk of primary production is storable, storability is related to cost. There is a precise trade-off between the cost of storage and the eventual price received for the product. The trade-off point is influenced by limited market prospects. When that point is reached, it is usually cheaper to dump the stored produce than to continue to store it, vide the 1972 Canadian

egg situation. It is no coincidence then that the first agricultural marketing cooperatives in North America were associated with industries which have high perishability problems--dairying and fruit.

Thus, by banding together to finance an agricultural marketing cooperative in order to achieve a number of economies of scale, producers are able to establish minimum prices which could not have been achieved by the aggregated but uncoordinated efforts of the same number of individuals.

Cooperative marketing can be seen as a private-sector production-oriented localized public good. The actual public good would be the improved marketing of the product. Once supplied, all producers of that product within that locality consume the public good. Barring specific cooperative-purchaser contracts, the non-exclusivity concept applies. Consumption of the public good by one person does not detract from the total supply of the good. Provided every one sells pursuant to the cooperatively determined method of selling, i.e., price, quantity and timing, the non-exhaustability concept applies.

Given these features, the benefits of cooperation flow equally to cooperators and non-cooperators. Without contributing to the financial structure and philosophy of the cooperative, the non-cooperator gains the free-ride to the cooperatively determined price (provided that the cooperative can garner enough support to influence price in

the first place). Moreover, the non-cooperator now has a minimum price below which he can sell all his product. This leaves the cooperators with having to compete with the free-rider's lower price. If it is a limited market, the non-cooperator may have gone a long way to supply the market's needs, forcing the cooperator to store the non-saleable product until next year.

McKenzie and Tullock state in their analysis of "chisellers in cartels"⁶⁹ that the logic which compels a person to join a cartel is as compelling as the logic which urges him to chisel. The imperatives of agriculture make the logic of the non-cooperating free-rider even more compelling. Nature has neither logic nor linearity. Flood, fire, drought, pestilence and someone else's fortunes give the future a high discount rate. George Allen is right--the future is now. To be a free-rider and chisel now on the cooperative makes sense because next year one may not have a crop with which to chisel. McKenzie and Tullock schematically present how a chiseller can maximize his income. Based upon nearly a decade of research in British Columbia agriculture, Dean Clements provided empirical backing for McKenzie and Tullock: in the mid-1920s, non-cooperators benefitted even more greatly from cooperative marketing in fruit than did the cooperators.⁷⁰

Cooperators sought to eliminate the free-rider problem in two ways. The first was the method suggested by

Orr, that is, the use of contracts. While contracts could not compel free-riders to contribute to the cooperative's financial structure, it could prevent them from chiselling and undermining its marketing efforts. This was the original step tried in the United States and Canada. For various reasons this failed. The second step was then to use the state's coercive powers to compel the free-riders to contribute to the public good. In the United States, this resulted in California's Agricultural Prorate Act of 1933 and the Federal Government's 1933 Agricultural Adjustment Act.

In Canada, the attempts by cooperators to internalize their externalities by compulsion led to the introduction of marketing boards.

The first attempt was the Produce Marketing Act enacted by the British Columbia Legislative Assembly in 1927. This shall be discussed in Chapter 5. This attempt failed for want of constitutionality.

The second attempt was the Dominion's Natural Products Marketing Act of 1934. This shall be discussed in Chapter 6.

NOTES TO CHAPTER 3

1. That the acquisition of material goods results in the use of resources is obvious. It is not so obvious for symbolic goods. Take, however, two widely dispersed examples. Generosity is a highly valued symbol among (Canadian) West Coast Indians and Papua New Guinea Highlanders. The Indians demonstrate generosity in the potlatch, the Highlanders in the pig ceremony. Both ceremonies are copious consumers of resources, blankets with the potlatch and pigs with the pig ceremony. See, J. A. Cameron, "Interaction of Existing Socio-Political and Socio-Cultural Systems and Agricultural Development in Subsistence Economies, With Particular Reference to Papua New Guinea" (unpublished Economic Honours Thesis, University of Queensland, 1976).

The other example refers to the symbolic role of status, as with, say, the (American) Plains Indian counting of coups in battle. The increased consumption of coups meant a decreased number of opponents upon which to count coups. See, S. Vestal, Sitting Bull, Champion of the Sioux (Norman, Oklahoma: University of Oklahoma Press, 1932) and more generally, M. G. Blase, ed., Institutions in Agricultural Development (Ames, Iowa: Iowa State University Press, 1971).

2. This paper recognizes, following Ralph Miliband, that "the government" used not be the same as "the state". However, this chapter shall assume the two terms to be synonymous.
See, R. Miliband, The State in Capitalist Society (London: Quartet Books Ltd., 1973).
3. G. B. Doern, "Introduction: The Canadian Regulatory Process," in G. B. Doern, ed., The Regulatory Process in Canada (Toronto: Macmillan of Canada, 1977), pp. 1-2.
4. G. Tullock, Towards a Mathematics of Politics (Ann Arbor: The University of Michigan Press, 1967), Chapter 6, "The Production of Information."
5. Ibid., p. 109.
6. A. Breton, The Economic Theory of Representative Government (Chicago: Aldine Publishing Company, 1974), pp. 5-9.

7. Tullock, Towards a Mathematics of Politics, p. 124.
8. Breton, Economic Theory of Representation, p. 49.
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21. Ibid., p. 4.
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23. W. A. Niskanen, Bureaucracy and Representative Government (Chicago: Aldine-Atherton, 1971).
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29. L. Johansen, Public Economics (Chicago: Rand McNally and Company, 1965).
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31. Doern, Regulatory Process, p. 21.
32. Ibid., p. 17.
33. Wicksell, "A New Principle."
34. Johansen, Public Economics, p. 186.
35. R. A. Musgrave, The Theory of Public Finance (New York: McGraw-Hill Book Company, Inc., 1959), Chapter 6, "Budget Determination through Voting."
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38. Ibid., p. 6.
39. Buchanan and Tullock, Calculus, p. 82.
40. G. B. Doern, I. A. Hunter, D. Swartz, and V. S. Wilson, Approaches to the Study of Federal Administrative and Regulatory Agencies, Boards, Commissions and Tribunals, A Report Prepared for the Law Reform Commission, Ottawa, April 1974, p. 10.

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43. Doern, et al., Approaches, p. 10.
44. G. T. Allison, Essence of Decision (Boston: Little, Brown and Company, 1971), Chapter 3.
45. J. Thompson, Organizations in Action (New York: McGraw-Hill Book Company, 1967).
46. W. Lilley and J. C. Miller, "The New 'Social' Regulation," The Public Interest, Spring, 1977.
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53. See D. Orr, Property, Markets and Government Intervention (Pacific Palisades, California: Goodyear Publishing Company, Inc., 1976), p. 288.
54. Orr, Property.

55. Musgrave, Public Finance, p. 44.
56. Trebilcock, et al., "Markets," pp. 13, 14 and 40.
57. See S. Cheung, "The Fable of the Bees: An Economic Investigation," Journal of Law and Economics, April 1973.
58. See Chapter 1, footnotes 29 and 30.
59. For a good comparison of this phenomena in just one industry, see Proceedings of the Canadian White Bean Industry Conference, Alliston, Ontario, August 1974, and Toronto, Ontario, August 1976. See also G. S. Vinning, North American Navy Bean Industry (Brisbane, Queensland: Department of Primary Industry, 1975).
60. See R. Hann, Farmers Confront Industrialism: Some Historical Perspectives on Ontario Agrarian Development (Toronto: New Hogtown Press, 1975).
61. See Chapter 2, footnotes 8, 14, 15, and 16.
62. See W. P. Davisson, Pooling Wheat in Canada (Ottawa: Graphic Publisher, 1927); P. F. Sharp, The Agrarian Revolt in Western Canada (New York: Octagon Book, 1971).
63. H. E. Erdman, "The 'Associated Dairies' of New York as Precursors of Agrarian Agricultural Cooperatives," Agricultural History, April 1962.
64. The Fifty Year Battle for a Living Price for Milk, a History of the Dairymen's League, compiled and edited by D. J. Carter. From the Dairymen's League News, 10, 17, 21, 24 and 31 January, 1939, and 7, 14 and 21 February, 1939. Copy in my files.
65. V. McCormick, A Hundred Years in the Dairy Industry (Ottawa: Dairy Farmers of Ottawa, 1968).
66. J. F. Booth, "The Background to Present Legislation to Regulate Marketing," Proceedings of the Sixth Annual Meeting of the Canadian Society of Agricultural Economics, 1934.
67. B. Broadfoot, Pioneer Years, 1895-1914, Memories of Settlers who Opened the West (Toronto: Doubleday, 1976).
68. A. P. Sloan, My Years with General Motors (New York: McFadden-Bartel Corporation, 1965), see Chapter 4.

69. R. B. McKenzie and G. Tullock, Modern Political Economy (New York: McGraw-Hill Book Company, 1978), pp. 178-179.
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CHAPTER 4

SELF-REGULATION

4.1 INTRODUCTION

Self-regulation is a particular mode of the regulatory mechanism. Its distinguishing feature is that the regulator is also the regulatee. In contrast, "usual" regulation is where the regulators are remote from the regulated industry. This shall be called "third party" regulation. It is possible, after Stigler, Kolko, Bernstein and Leo Panitch passim,¹ that the regulators may be drawn from the regulated industry. Indeed, a revolving door may exist between those regulated and those regulating, but, crucially, in third party regulation the regulators are not at one and the same time the regulatees.

This chapter will outline two explanations as to why a government would grant an industry self-regulatory powers. The two explanations are: the professions' "necessity" argument; and, Salisbury and Heinz's demand and decisional theory.

The underlying premise of the chapter is that the self-regulatory mode is a positive original policy choice. It does not occur because of some Bernstein-like process

of devitalization. This is not to deny that Bernstein's hypothesis is not without some empirical evidence.² It is just that the chapter's focus is on self-regulation as a policy option, not self-regulation by default.

4.2 THE PROFESSIONS

The professions are the most readily cited examples of self-regulation.

This section shall not attempt a definition of "profession". In his discussion of the problem of defining a profession, Cogan concludes that definitions in general may be either persuasive, operative or logistic.³ Following Cogan, this chapter eschews the task of definition and instead will cite a number of characteristics which typify a profession. It is the cumulative effect of these characteristics which give the professions the imperative of self-regulation.

While a definition will not be provided, it is important to give some dimension as to what is a profession. A profession is both a legal entity as well as a social and political entity. As a legal entity, it is an organized occupational group which has been granted a monopoly over the performance of certain functions and a certain degree of autonomy in carrying out those functions. Judith May says that the monopolization in a particular area results in a profession defining what is the proper conduct of

others towards matters concerned with the professions' work.⁴ Autonomy exists when the leaders of a profession regulate the nature of the service offered by controlling recruitment and certification of members and set the standard of adequate practice.⁵

One of the characteristics of a profession is the lack of standardized labour. T. H. Marshall, in his panegyric, has said that being a professional is unique and personal. It means "the giving of skill and himself."⁶ This giving is held to be over and above what can be compelled or contractually bound to give. This, in turn, stems from the special trust relationship that exists between a client and the professional. There are two aspects to this special relationship. The first is the ignorance of the client about the subject matter, making clients dependent upon the professional. Client ignorance, secondly, is sharply contrasted with the professional's knowledge. A professional requires lengthy specialized training. Eliot Friedson has gone further and said that it is usual, but not always, to claim for professionals some special esoteric competence.⁷ Thomas Moore says that the knowledge is so technical that only a member of the profession can fully understand the questions involved. The above characteristics combine to make professionals, as Friedson says elsewhere,⁸ self-directing in their work.

True self-direction, however, is not possible if one cannot control the production and application of knowledge to the work place. Unrestricted access to the work place by less-trained persons will yield criticisms and competition to the detriment of the special client-professional relationship. Professions prevent this danger from arising by ensuring that only competently trained persons have access to the work place. Three institutions exist which ensure this. At the same time, the institutions assure the public and the state that there shall not be abuse of the grant of monopoly power which the professions use to limit access to the work place. The institutions are: ethical codes; control over recruitment and certification; and, professional review boards. Ethical codes are supposedly based on idealism and practicality, i.e., the Hippocratic Oath. More realistically, ethical codes can be seen as defensive strategies employed by the professions to show that the professions are policing themselves. The powerful professions ensure the competence of members by establishing educational standards, setting examinations and certifying, by licensing, successful candidates. Finally, professional review boards are empowered to issue, revoke or suspend the license to practise in their profession.

In sum, the unique nature of the work, the technical knowledge involved, the special client-professional

relationship and the three policing institutions combine to urge that professions be self-regulating.

While the purpose of this chapter is merely to outline the various groups of explanations of self-regulation, there are a number of weaknesses in the profession's necessity explanation which require detailing.

To begin with, the paradigm of a profession outlined above is too narrowly premised after the particular instances of lawyers and doctors. Philip Elliott says "the medical profession is often held to represent the professional ideal in modern society."⁹ As such, the exposition is a rationalization of the special case of doctors¹⁰ and lawyers and is not a model for all professions. Even as a rationalization, the linkage between autonomy and performance of high levels of professional service is rarely expanded upon. If autonomy is to be granted because of the characteristics of professions, the above exposition does not outline why it cannot be governed by third party regulation instead of self-regulation.

Secondly, many groups claiming to be professions have been granted self-regulatory autonomy without possessing the so-called special characteristics of a profession upon which self-regulation is premised. One wonders, for example, what is the special relationship between Moore's tree-doctor and mortician and the client.¹¹ Indeed, who is the client? If professions do not appear to have the

special characteristics, it suggests some other reason exists as to why they are granted self-regulation.

Thirdly, following Roth,¹² Daniels¹³ and Lieberman,¹⁴ one must harbour severe doubts as to the effectiveness of the three institutions which supposedly assure the public and the state that the professions shall not abuse their legally sanctioned monopoly position. Ethical codes and professional recruitment and certification do not ensure competent practitioners nor conscientiousness. Professional review boards are so rooted in the ideology of professional ascendancy that the public's main hope must lie with a just and omnipotent God. The suggestion is that since the professions did not sacrifice anything in the trade-off which gave them monopoly powers, the granting of self-regulating powers must have some other basis.

4.3 DEMAND-DECISIONAL THEORY

The second explanation of self-regulation has two parts. One is the demand system which seeks government policies. The other is the decisional system which allocates government policies.

The explanation's theoretical underpinnings stem from Theodore Lowi. In his 1964 World Politics essay,¹⁵ Lowi introduced a typology by which to classify public policies. His approach was premised upon his assumption that policies determine politics. He recognized that

political policy making involves the selection of a number of differing approaches and combinations in the exercising of the legitimate coercive power of the state.¹⁶ Political policy making involves both the choosing of goals and the choosing of methods to achieve those goals.

From this elemental premise, Lowi identified three types of policies: distributive, redistributive and regulatory. The key to the typology was the degree of disaggregation by which the policy affected citizen-consumers and their coalitions. Equally important was how this disaggregation was perceived by the individual citizen-consumers. With distributive policies, there was a high degree of disaggregation, with the policy being perceived as benefitting more than the one group. In other words, a large pie was being shared by a large number, resulting in little conflict in the dividing up of the pie. Everyone gets something. Similarly, redistributive policies also benefitted more than the one group. However, here the pie to be shared is not so large, necessitating a redistribution of resources. This results in clear winners and clear losers. Regulatory policies are the most specific type of policy. Because they are specific and individual in impact, they impose constraints upon the behaviour of citizen-consumers and their coalitions. They indirectly affect the future distribution of benefits and disadvantages. Lowi argued that in technologically

sophisticated societies, there is a developmental sequence from distributive policies to regulatory policies.

Robert Salisbury,¹⁷ and later Salisbury and John Heinz,¹⁸ introduced a fourth policy classification--self-regulatory policies. Both works drew heavily upon Lowi's concepts, particularly the one which stresses the importance of how an individual perceived the impact of the state's use of its legitimate coercion. Self-regulatory policies, like regulatory ones, are seen as imposing constraints upon a coalition but, unlike regulatory policies, self-regulatory policies are perceived only to increase, not decrease, the future distribution of benefits.

Salisbury, and Salisbury and Heinz develop two concepts: that of the patterns of demand for public policies, and that of the decisional system which supplies public policies. Both concepts accentuate the source of the issue, i.e., the source of the demand for public policies and the source of the decision to distribute public policies. In analysing the two concepts, Salisbury introduced a continuum of fragmentation and integration. Both the demand pattern and the decisional system can be placed along the continuum.

Fragmented demands are associated with distributive policies. This is because since the demand pattern originates from the aggregation of fragmented groups, the policies sought benefit a number of coalitions. Salisbury cites as examples the policies of pensions and income subsidies. On the other

hand, integrated demand patterns are associated with redistributive policies. That is, integrated demand patterns reflect the integratedness of the demanding group and hence the policies sought are aimed at benefitting only the one or few coalitions. Moreover, with integrated demand patterns, the policy demand is clearly identified and is not heterogeneous and uncertain.

There are problems associated with placing a decisional system along the full-length of the fragmentation-integration continuum. After all, any decisional system must achieve some degree of integration in order to make any decision, to wit, simple majority or Wickßsellian qualified majority. Salisbury's original use of the fragmentation-integration continuum ignores this principle. In his later collaboration with Heinz, the principle was not only recognized but an accommodating schema also offered. Their schema had parallels, albeit independently derived, with the works of Breton and Tullock. That is, integration in the decisional system is related to how difficult and costly it is to achieve the coalition needed for decision. Decision-makers have cost-benefit ratios related to decision-making. Their "costs" are what Breton and Tullock call transaction and information costs, with the "benefits" being, inter alia, the benefits of continued electoral success. Thus, policy outputs must be seen in terms of the type of demand upon the system and the type of decisional cost-benefit ratios. Salisbury and Heinz's

analysis is summarized diagrammatically.¹⁹

Thus, where the demand pattern is integrated and the decision system fragmented, the resulting policy outputs will be self-regulatory.

Salisbury argues that this is because the coalitions seeking a policy output tend to be small relative to the total polity. As such, they accept that they could not win a redistributive policy. Doern argues that it is because "redistributive policies effect a transfer of resources within a society,"²⁰ the passage of such legislation would result in clear winners and losers. Debate over such legislation invites the disaffected groups to enter the decisional arena in an attempt to frustrate the demands of the originating group. Salisbury says that although the original petitioning interest group "cannot indefinitely control the decisional system against competing groups . . . it can

C secure a delegation of authority to itself"²¹ primarily because the decisional system itself is fragmented. Thus, "the group seeks self-regulation."²²

Salisbury claims that the classic example of integrated demand relates to professional and quasi-professional groups: "when a professional or quasi-professional group presents a policy claim to a legislature, the total relevant demand is typically highly integrated in the sense that the members of the group are cohesive and no-one else pays attention to the issue."²³ Whether the resultant policy output will be self-regulating ~~or~~ redistributive depends upon the cost-benefit ratios of the decision-makers.

The value of the Salisbury, and Salisbury and Heinz analysis is that it requires one to analyse both the demand pattern and the decisional system.

4.4 SELF-REGULATION AND AGRICULTURE

It is difficult to consider the agriculturalist in terms of the characteristics outlined above to describe the professions, i.e., technical knowledge and the special client relationship. A linkage can be made with regard to the special knowledge that a farmer requires for anticipating the weather and the fact that farmers produce food, the vital life link, but the linkage is tenuous. Nevertheless, it is interesting to note that when British Columbia was introducing its 1927 Produce Marketing Act, the Minister of

Agriculture, E. D. Barrow, and the Attorney-General's Department compared the Act to the class legislation of the professions and, further, equal in its coercive powers to the Acts which governed the medical, legal and engineering professions.²⁴ However, at the same period, it was common to refer to certain specific legislation as being "class legislation". Barrow spoke of agriculturalists, barbers and hairdressers, as having class legislation comparable to the Legal Professions Act, the Medicine Act and the dentistry profession. One gains the impression that Barrow and other contemporary British Columbia legislators treated "class" as being synonymous with "group" and "profession" as referring to a distinctive working group.

A priori, Salisbury and Heinz's schema is a good explanation as to why the policy outcome should be either self-regulation or regulatory.

Consider the demand pattern. As Chapter 5 will show, the demand for the public policy in British Columbia, as illustrated by the Produce Marketing Act, originated from the one specific group, i.e., fruit growers in the province's Interior. These fruit growers demanded a specific measure, i.e., an act comparable to one in operation in Queensland, Australia. Based on their analysis of United States farm policies, Salisbury and Heinz²⁵ would consider this an excellent example of an integrated demand pattern. Chapter 6 outlines the introduction of the Dominion's 1934

Natural Products Marketing Act. Here, the sector demanding public policy was less integrated. The demand still originated from the agricultural sector but this time the sector was more fragmented. There were the demands from the British Columbia fruit growers as well as demands from the nation's fluid milk industry, its butter industry, its cheese industry and its diversified horticultural industry. Again, the public policy demanded was less uniform. While generally the demand was for an act comparable to the British Agricultural Marketing Act, this request was by no means uniform. Chapter 6 will show that there was a significant demand from the dairy industry for a public policy comparable to Australia's Patterson Plan (see Chapter 6). With reference to Salisbury and Heinz's schema, the demand in 1934 for public policies by the agricultural sector could be seen as being on the "integrated" side of their integrated-fragmented demand continuum.

The decisional pattern with regard to the introduction of the two Acts was the opposite for the demand pattern. Whereas in 1927 the Okanagan Valley fruit growers were a united group seeking a specific public policy, the government of John Oliver was what Salisbury and Heinz would term "fragmented". On the other hand, the 1934 government of Prime Minister Bennett was more solidly in command than that of Oliver. A priori, one could expect that Oliver would respond with a self-regulating public policy and

Bennett with a regulatory one. The Committee of Direction, provided for by the 1927 Produce Marketing Act, was self-regulatory and the 1934 Act's Dominion Marketing Board was regulatory. The two organizations are detailed in Chapter 7.

Chapters 5 and 6 represent a judgmental bias in the weighting given to the elucidation of the 1927 Produce Marketing Act and the 1934 Natural Products Marketing Act.

Following the works of, say, Margaret Ormsby²⁶ and Martin Robin,²⁷ the decisional pattern of British Columbia governments has been discussed in detail. Similarly, following, say, Wilbur,²⁸ Watkins,²⁹ the 1934 decisional system of Bennett's administration has also been discussed in detail. Consequently, the two chapters shall concentrate on presenting the chronology of the Acts largely from the perspective of the demand sector.

NOTES TO CHAPTER 4

1. L. Panitch, ed., The Canadian State: Political Economy and Political Power (Toronto: University of Toronto Press, 1977).
2. At the same time, the chapter does not wish to imply that Bernstein's hypothesis is soundly based. It notes that: it had no specified time span, making the hypothesis inherently non-falsifiable; it was based on inadequate empirical evidence; it lacked a typology by which to measure changes in an agency's policies; it denied that some agencies have vague mandates because of the legislatures' uncertainty in dealing with a problem and hence they have a hidden request to be captured; it assumed an abject refusal by an agency's officers and members to prevent the decay; and, it assumed that the decline in the supportive clientele is inevitable.
3. M. Cogan, "The Problem of Defining a Profession," Annals of the American Academy of Political and Social Science (January 1955).
4. J.V. May, Professionals and Clients: A Constitutional Struggle (Beverly Hills, California: SAGE Publications, 1976).
5. See A. K. Daniels, "How Free Should Professions Be?" in E. Friedson, ed., The Professions and their Prospects (Beverly Hills, California: SAGE Publications, 1971), p. 39.
6. T. H. Marshall, "The Recent History of Professionalism in Relation to Social Structure and Social Policy," The Canadian Journal of Economics and Political Science (August 1939):328.
7. E. Friedson, "Professions and the Occupational Principle," in Friedson, ed., The Professions.
8. E. Friedson, "Dominant Professions, Bureaucracy and Client Service," in W. R. Rosengren and M. Lefton, eds., Organizations and Clients (Columbus, Ohio: Charles E. Merrill Publishing Co., 1970), p. 75.

9. P. Elliott, The Sociology of the Professions (London: The Macmillan Press Ltd., 1972), p. 33.
10. One uses the term "doctor" and not "medical" because many modern aspects of the medical world, such as speech, occupational and physio-therapists and chiropractists do not have the same degree of autonomy as do doctors. Amitai Etzioni talks of full-fledged, semi-professional and non-professional occupations. See his Preface in A. Etzioni, ed., The Semi-Professions and their Organization (New York: The Free Press, 1969).
11. T. Moore, "The Purpose of Licensing," Journal of Law and Economics (October 1961).
12. J. Roth, letters, The American Sociologist (May 1969):159.
13. Daniels, "How Free Should Professions Be?"
14. J. K. Lieberman, Lawyers' Unethical Ethics and What to do About It (New York: W. W. Norton and Co., 1978).
15. T. Lowi, "American Business, Public Policy, Case-Studies and Political Theory," World Politics (July 1964).
16. Gordon makes two points about "legitimate coercion". Firstly, it is wrong to assume that because governments possess sovereignty, they utterly monopolize the use of coercive power. Secondly, there is a difference between coercion and legitimate coercion and thus it is wrong to view state action as not being coercive merely because it is legitimate.
See H. S. Gordon, "The Demand and Supply of Government: What we Want and What we Get," Discussion Paper No. 79, Economic Council of Canada, Ottawa, February 1977.
17. R. H. Salisbury, "The Analysis of Public Policy: A Search for Theories and Roles," in A. Ranney, ed., Political Science and Public Policy (Chicago: Markham Publishing Company, 1968)..
18. R. Salisbury and J. Heinz, "A Theory of Policy Analysis and Some Preliminary Application," in I. Sharkansky, ed., Policy Analysis in Political Science (Chicago: Markham Publishing Company, 1970).
19. Salisbury's original diagrammatical attempt has little explanatory value. See p. 169.

20. G. B. Doern, "The Concept of Regulation and Regulatory Reform," in G. B. Doern and V. S. Wilson, eds., Issues in Canadian Public Policy (Toronto: Macmillan of Canada, 1974), p. 13.
21. Salisbury, "Analysis of Public Policy," p. 167.
22. Ibid., p. 168.
23. Ibid., p. 167.
24. See, Daily Colonist (Victoria, British Columbia), 26 February 1927; Victoria Times Daily (Victoria, British Columbia), 26 February 1927; British Columbia, Attorney-General, Correspondence Inwards, 1918-1937, Produce Marketing Act, Microfilm P302-1 (Provincial Archives of British Columbia, Victoria, British Columbia), 29 September 1928.
25. Salisbury and Heinz, "A Theory of Policy Analysis."
26. M. A. Ormsby, British Columbia: A History (Toronto: The Macmillan Company of Canada Limited, 1958).
27. M. Robin, "British Columbia: The Politics of Conflict," in M. Robin, ed., Canadian Provincial Politics. The Party System of the Ten Provinces (Scarborough, Ontario: Prentice-Hall of Canada Ltd., 1972); and, M. Robin, The Rush for Spoils (Toronto: McClelland and Stewart Ltd., 1972).
28. See, J. R. H. Wilbur, The Bennett New Deal: Fraud or Portent? (Toronto: The Copp Clark Publishing Company).
29. E. Watkins, R. B. Bennett (London: Secker and Warburg, 1963).

CHAPTER 5

PRODUCE MARKETING ACT, 1927

5.1 INTRODUCTION

This chapter will outline the chronology which led to the introduction of the 1927 Produce Marketing Act. Chapter 6 will deal with the 1934 Natural Products Marketing Act. The next chapter, Chapter 7, will have two parts. Part I will examine the Interior Tree-Fruit and Vegetable Committee of Direction, Canada's first agricultural marketing board. Part II will examine the Dominion Marketing Board, the first federal marketing board. Chapter 8 will discuss the two Acts and their two marketing boards in light of the theoretical framework outlined in Chapters 2, 3 and 4.

5.2 PRIOR TO 1927

The introduction of the Produce Marketing Act was revolutionary in that it had no Canadian precedent. On the other hand, the forces which led to the Act's introduction were evolutionary. Those forces were concentrated in the actions of, virtually solely, fruit growers in the Okanagan Valley. Further, those actions can be seen as moving quite discernably along a path from voluntary cooperation in marketing to compulsory cooperation.

It is difficult to state what comes first--the production problem or the marketing problem. Good production years in agriculture, circa early 1900s, were generally associated with poor marketing years. That is, the larger crops could only be cleared at lower per unit prices. Poor production years meant good prices, provided of course that everyone else had a crop failure. To the Okanagan Valley fruit producer, "everyone else" meant the fruit producers in the States of Washington, Oregon and Idaho and the Provinces of Nova Scotia and Ontario. Usually, however, the Okanagan producer had to worry more about his closer fellow producers than those from out of the province. Fruit is a perishable product and although it may be stored, competent storage facilities up until, say, 1927, were primitive and expensive. The most preferable storage, and the most expensive, was controlled atmosphere facilities. Cool stores and normal bulk storage were less expensive and less preferred. As a rule, an individual grower could not afford to erect competent storage facilities. His strategy was to market the crop as soon as possible after harvest. This may have reduced the storage problem but it was at the cost of receiving virtually dumped prices. It was the attempts to overcome this strategy which eventually led to the Produce Marketing Act.

5.2.1. British Columbia Fruit Exchange Society

The first attempt of growers controlling their marketing was the 1896 British Columbia Fruit Exchange Society. This was a localized attempt by a number of small packing houses to use a single seller to market their crops. The aim was to coordinate sales so as to not have neighbour competing against neighbour into the same small market to the detriment of both.

It is necessary to note that the Society was not the first such institution in Canada. A year earlier, the Ontario Fruit Exchange had been established which, like the British Columbia one, demonstrated packing cost reductions which could be associated with economies of scale.¹ Again, both the Ontario and British Columbia exchanges could draw upon the experience of the Southern California Fruit Growers Exchange, established in 1893. Finally, the Ontario dairy industry had established twenty years earlier the concept of centralizing local sales.²

The British Columbia Exchange failed because, essentially, growers were unaccustomed to cooperative marketing.³

5.2.3 Okanagan Fruit Union

In 1908, the Okanagan Fruit Union was formed. The Union was a central selling and distributing agency, with

packing and selling operations. It encompassed more producers and packing houses than had the Exchange. Moreover, it practised some period-pooling. That is, all product sold between a specified period received the same price.

Notwithstanding the Exchange, Dean MacPhee, in his Royal Commission on the Tree-Fruit Industry of British Columbia, called the Union "the first Okanagan marketing venture."⁴ Again, inexperience with the principles of cooperative marketing appeared to be the undoing of the Union.

5.2.3 Okanagan United Growers

The first serious effort to control the marketing of the fruit crop really began with the next institution, the Okanagan United Growers. The impetus for the organization came from the large 1912 Okanagan fruit crop which coincided with large crops in Washington and Oregon. As a result, North America was flooded in fruit, making it a disastrous year for marketing.⁵ Within a year, the Okanagan United Growers were formed.

The two earlier organizations had failed because growers found it to their immediate advantage to break from the communally sought marketing goal. That is, the group, through a centralized selling and distributing agency, undertook to sell at a certain price. It had effected some economies of scale in storage and was thus able to hold its product off the market for limited periods until its price

was achieved. Non-cooperators could clear all their product at prices marginally below the agreed price without having the cost of storage.

The United Growers sought to overcome this problem by requiring three-way contracts between producer, packer and the Okanagan United Growers. The three-way contract was important because in the two earlier experiments, shippers would take only fruit for which they had orders. Since shippers always received commission, and invariably income associated with packing and shipping services, the ultimate burden of low prices always fell back onto the producer. The tripartite contract bound the shipper's fortune to that of the producer.

Okanagan United Growers was a non-stock, non-profit single selling organization, with which 1,100 growers, 80 percent of the Valley's producers, had signed three-way contracts. It involved nine affiliated local associations, a greater number of packing and assembly houses than the Okanagan Fruit Union had coordinated with. In addition to period-pooling, it experimented with pro-rate payments, i.e., advances were made up to a percentage of the estimated value of the delivered commodity.

Finally, the government advanced up to 80 percent of the required prescribed capital, payable within twenty years, with interest at the rate of 4 percent. It is necessary to note that a Royal Commission, begun in 1912,

was to recommend, inter alia, cooperation among agricultural producers and buyers.⁶ An advance of the nature described above was one means of securing cooperation. However, the government's interest in United Growers can be traced to the large 1912 crop when there were low prices and growers were pressed for cash. R. R. Robertson, a Vancouver broker, was approached by an Okanagan grower for help. Robertson appeared to be impressed by the growers' plight in general. He went to Victoria in an attempt to obtain assistance. The Premier, Sir Richard McBride, authorized Robertson to survey the Okanagan fruit marketing problem. The results of Robertson's advocating the virtues of cooperation were both the Okanagan United Growers and the government advance.

United Growers eventually failed for the same essential reason as its predecessors had. That is, the non-cooperating minority undercut the cooperating majority. British Columbia fruit producers had a clearly established preference as to where to sell their product. The local provincial market was the most preferred. Transport costs were the lowest, and, because the actual market was so close, it could be easily serviced with respect to quality complaints, a major issue in those days.⁷ The Prairie market was the next preferred. The existing tariff structure afforded some protection to British Columbia fruit producers from Washington and Oregon imports and transportation costs were comparable with those faced by Nova Scotia and Ontario

producers. The export market was the least preferred. Transportation costs and the alleged dumping practices of other exporters, notably South Africa and Australia, resulted in low producer returns. The 1921 crop year was a bumper production year in the Okanagan Valley. However, for the marketing year, United Growers shipped to the Prairies only 18 percent of its total crop. The rest of its crop went to the less remunerative export market. On the other hand, the smaller independent shippers, who handled a much smaller percentage of the crop and had lower overheads, undercut the United Growers' price on the Prairie market.

Thus, for the majority of Okanagan fruit producers, the bumper production year of 1921 turned out to be a poor marketing year, despite the Okanagan United Growers. In fact, growers often received a bill for marketing services instead of a cash return.

The litany of failure culminates with the Associated Growers of British Columbia Limited, established in 1923. To this point, i.e. 1922, British Columbia's attempts to deal with its marketing problem were largely indigenous, or at least did not directly depend upon imported ideas. Margaret Ormsby said that the 1921 crop year was a watershed in the history of fruit growing in the Okanagan Valley: prior to 1921 the basic problem was one of production, but after 1921 it was one of marketing the surplus production.⁸

It is possible that by 1922 producers felt compelled to go beyond the province for marketing ideas. It is equally possible that they had already looked elsewhere. Their attempts to increasingly centralize the packing, selling and distributing of their crop had obvious parallels in the organizational efforts of the Southern Californian fruit growers.⁹ However, some say that the direct influence of the California cooperative movement "is open to question."¹⁰ There is no doubt, however, that in 1923 the Okanagan Valley embraced the Californian, Aaron Sapiro. Like all controversial figures, myth, legend and fact surround Sapiro in equal parts.

5.2.4 Aaron Sapiro¹¹

Aaron Leland Sapiro was a Californian lawyer whose first experience with cooperatives began with Col. Henry Weinstock, California's first State Market Director. His work with Weinstock between 1915 and 1920 involved preparing by-laws and contracts for cooperatives. Sapiro's association with cooperatives continued until the mid-1940s. Larcen and Erdman credit Sapiro with the introduction of the so-called standard cooperative marketing act¹² but Sapiro himself suggests otherwise.¹³

Sapiro advocated what became called "commodity cooperative marketing". That is, cooperatives should be organized for the marketing of specific commodities, with

one cooperative per commodity. He envisaged national associations of commodity cooperatives. Opposed to Sapiro were the advocates of the original Rochdale system of cooperation. Here, cooperation was organized on a regional basis with the one regional cooperative handling anything within that region. Thus, if a farmer produced, say, three different commodities, Sapiro would advocate he join three different commodity marketing cooperatives, whereas Sapiro's opponents would advocate he join the one local cooperative which would handle all three commodities. Sapiro's opponents considered his "top-down" autocratic concept of control, i.e., the centralized selling body was linked directly to the producer,¹⁴ was contrary to "true" cooperative philosophy of "ground-up" control.¹⁵

Sapiro was also challenged on the basis of results. He was a great orator, able to convince audiences that cooperation and cooperatives were a way of life and not merely a means of selling produce: Frank Underhill talks of "the evangelistic fervour of the great mass meetings"¹⁶ Sapiro held in Saskatoon at the launching of the Wheat Pool movement. It was contended that his oratorical skill and simplistic spelling-out of both the problems and the solutions struck responsive chords in growers seeking relief from oppressive marketing conditions. These "highly emotive campaigns"¹⁷ with their concomitant high-pressure salesmanship,

gave rise to unattainable expectations. Organized too fast, many of the cooperatives initiated by Sapiro failed.

Perhaps Sapiro's real gift to U.S. agriculture was that he "brought forth an intellectual response of great future importance which eventually gave to the cooperatives the advantage of hybrid vigor."¹⁸

Sapiro arrived in the Okanagan Valley at a most opportune time. The industry had experimented with a number of marketing experiments which had failed. The disastrous 1921-22 marketing years had launched the "Save the Industry" movement. The movement did not, however, bring Sapiro to British Columbia. He had originally been invited to address city businessmen and bankers on the theme of how the prosperity of the country districts was reflected in the volume of business done in the cities. At the Vancouver Board of Trade, in early January 1923, Sapiro urged cooperation in the country districts and the need for the city businessmen and bankers to help the country producers. Subsequently, he was encouraged to visit the Okanagan Valley to spread his message of cooperation by a group of lower-mainland businessmen.¹⁹

Sapiro's visit coincided with the annual Convention of the British Columbia Fruit Growers Association. The result of his addressing growers' meetings was a fresh wave of enthusiasm for cooperative marketing. This enthusiasm resulted in the Convention delegating a Committee of Seven

"To explore and organize a new central marketing agency along the lines Sapiro had outlined."²⁰

It must be pointed out that Sapiro was no idle dreamer. His formula for success depended upon a specified minimum percentage of all growers signing contracts with the central selling organization. Sapiro was not firm on the exact minimum. He felt that the exact minimum had to vary with the type of commodity and the local conditions.²¹ For the Okanagan fruit industry it was considered that the minimum percentage had to be 80 percent.²² Furthermore, these contracts had to be at least for five years: "The one year contract means that you are signing up for perpetual war. A five year contract gives you a chance to get in line."²³

A final comment on Sapiro comes from Dean MacPhee. In his Report of the Royal Commission on the Tree-Fruit Industry of British Columbia, MacPhee accentuates the desperation of the growers and downplays the role of Sapiro: "It was probably inevitable that Mr. Aaron Sapiro, or someone with a similar message, would persuade growers that they could control price in defiance of the normal relationship of supply and demand."²⁴

5.2.5 The Associated Growers of British Columbia

In March 1923, The Associated Growers of British Columbia Limited was established. Using the tripartite

marketing agreement, Associated Growers signed with thirty-two local associations, essentially packing houses and cooperatives.²⁵ Judge Harper's Commission estimates that 2,700 growers, 83 percent of the region's producers, signed.²⁶ Associated Growers had substantial cold storage facilities. It made greater use of advertising. It pooled returns and established an entirely new brokerage system. With the establishment of the Associated Growers, Okanagan United Growers went into voluntary liquidation.

The newly created organization was not handicapped by having to market large crops in its formative years. The Department of Agriculture's Markets Commissioner, Calgary, reports that the low crop in 1924 saw good prices because of "the harmonious understanding that was maintained between opposing shipping interests in B.C. and the cooperation of the two brokerage concerns on the Prairies."²⁷ Further cooperation was evidenced in 1925. A Board of Control was established, made up of a jobbers' representative, an Associated Growers' representative and an Independent shippers' representative. The Board adjusted deliveries of supplies and arranged for the shipment of any surplus to other than the provincial or Prairie markets. It even established a compromise between jobbers and shippers on the price of apples.²⁸

By the end of the 1925 marketing year it was apparent that the industry's façade of unity was again in danger.

Associated Growers were not returning to growers as high a price as the Independent shippers. Furthermore, what it was returning was not being returned as quickly as that of the Independents. The Independents had no storage facilities. Thus, they were forcing their produce onto the market earlier than the Associated Growers. The Independents dominated the Prairie markets, forcing the Associated Growers to sell on the export market. Growers started leaving the cooperative movement. The number of those leaving increased in 1926. This was a record apple crop, resulting in returns lower than those received in 1925. Reports vary, but it appears that by 1926, Associated Growers had the support of between 50 and 70 percent of the growers.²⁹ While apparently high, the figure refers to the number of growers, not acres in production. Whatever the figure, the non-cooperating minority dictated the fortunes of the majority. Associated Growers also had to contend with a 1926 court decision which held that a grower may break his five-year contract with Associated Growers by turning his business into a joint stock company. There was some loss of tonnage due to this decision but not much.

The Markets Commissioner summarized the year:

Although not new, but extremely hazardous in a year of a record crop, was the unstabilizing of the market by price-cutting by unorganized independents and uncontrolled assignment to the trade, both wholesale and retail. . . . The evolution of orderly marketing has at last reached a

definite stage. The unfair relations existing since 1920 between what the farmers have to buy and what they can sell their produce at has reached a point that the farmer hesitates to carry on. The greater the crop he produces, the smaller his profits are. A general demand is made by producers for systematized growing and marketing reform.³⁰

5.3 KELOWNA CONVENTION

The Department of Agriculture's Annual Report, 1926, states that during the year there was agitation for compulsory marketing.³¹ It was patently obvious that marketing would dominate the 1927 Annual Convention of the British Columbia Fruit Growers Association (BCFGA), the policy-making body of B.C. fruit growers.

Originally, the Convention was planned for Nelson but due to the interest in the marketing question, it was changed to Kelowna, the heart of the fruit growing industry. The Convention was held from 11-13 January 1927. It was from this convention that the growers resolved to approach the government for legislative backing to marketing reform.

The Convention was unusual in at least two ways. Firstly, it appears that a number of local members of the Legislative Assembly were present.³² Secondly, the Department of Agriculture was highly/visible. The Minister of Agriculture, E. Dodsley Barrow, was present. One of the "key speakers"³³ was the Department's Markets Commissioner, Calgary, Mr. J. A. Grant. The Department's Deputy Minister,

Dr. D. Warnock, chaired the special committee of the Convention which produced the Kelowna Resolution (see below).³⁴

The Government's interest in the Convention must be placed in context. In early January 1927, the Government made it clear that it was awaiting the outcome of the Kelowna Conference before framing any marketing legislation. It said it wished "to have proposals direct from the growers in a definite form to be used as a basis of legislation."³⁵ Despite this, it is obvious that the government was determined to introduce compulsory marketing legislation before the Kelowna Convention. A month earlier, in mid-December, the Hon. R. Randolph Bruce, opened the Third Session of the Sixteenth Parliament of British Columbia. His short Speech from the Throne mentioned two specific pieces of legislation to be introduced, one of which was "legislation designed for the assistance and protection of the agriculture industry."³⁶ The day before the opening of Parliament, Barrow had addressed the Provincial Liberal Association Executive Banquet. There, "he laid before his colleagues a compulsory cooperation law to be passed at the present session to save the interior fruit industry."³⁷ At the same time, it is obvious that Premier John Oliver was aware of the political implications. His Personal Diary and Notebook shows that in late November 1926, he had returned from a trip through the Okanagan Valley.³⁸ Two weeks later, he received a deputation supposedly dealing with irrigation problems but

Oliver notes that the "marketing problem is far more important to growers than is the water problem."³⁹ A little later, Oliver notes that at his Executive Meeting "a long discussion took place re the political situation in North Okanagan."⁴⁰ In short, the government of Premier John Oliver was prepared to let the Kelowna Conference tell the government what the government intended doing anyway.

In his President's Address to the Convention, E. W. Match highlighted the question of considering some method of controlling the internal competition which had reduced the returns to farmers. He considered that the continuation of such competition would make it impossible for many to continue in business. Later, the Markets Commissioner summarized the last few years of attempted cooperative marketing, highlighting the destabilizing effect the unorganized independents had on the agreed prices and volumes. He concluded: "unless some system of enforced control is established, conditions will go from bad to worse, as there is no confidence left in a 'gentleman's agreement'. What is required is machinery to enforce agreements made by penalizing offenders."⁴¹ Grant had a highly market-oriented view of orderly marketing. In his Annual Report for 1927 he said "the power of orderly control has in giving confidence to buyers with the assurance that the market will not be swamped with supplies at one date and starved soon after, also . . . stability of quotations."⁴²

Dr. Warnock's special resolutions' committee considered two themes of compulsory cooperation:

- (i) the government should appoint a Committee of Direction with 100 percent control over the crop;
- (ii) a provincial Board of Control be established with power to fix minimum prices, to direct distribution to avoid overlapping of varieties and to license shippers.

The organized shippers presented a plan to the Convention, but it was rejected because it did not protect grower's rights sufficiently.⁴³ In the same vein, the Convention rejected as too drastic the proposal that all fruit of the Interior be marketed through the one organization.⁴⁴ The final resolution moved by the Convention read:

That we, the members of the British Columbia Fruit Growers Association ask the government to introduce legislation at the present session of the legislature to provide for the setting up of a Committee of Direction which will be brought into being in time to have control of the movement of 100 percent of the 1927 tree fruit and vegetable crop. Further, that we ask the government to make a full inquiry into all the circumstances surrounding the marketing of British Columbia fruit and vegetables with a view to recommending, at the end of the year, any method under which the suggested plan may be improved upon.⁴⁵

An explanation must be made about the Kelowna Resolution's phrase "Committee of Direction".

It appears that this is the first time the phrase has been used in Canada. If that is so, it appears that the marketing solution adopted by the British Columbia fruit

growers is an adaptation of the Queensland, Australia, orderly marketing system. Specifically, in 1923, Queensland enacted The Fruit Marketing Organization Act, pursuant to which was constituted the Committee of Direction of Fruit Marketing.⁴⁶ The principle of the Queensland Committee of Direction was that if in a defined area the bulk of the producers of a prescribed product, or class or grade thereof, desired a certain marketing course of action, then that action was binding on all the prescribed producers. The Conference delegates were aware of the Queensland system. In December 1926, the Vancouver Province published a lengthy article on the Queensland system: the article was introduced as "Queensland's Unique Scheme of Orderly Marketing . . . Of Interest to Apple Pool Supporters and Opponents."⁴⁷ Early the next year, the government reproduced the article in an eight-page pamphlet.⁴⁸ It was this principle which was adopted by the Kelowna Conference. In February 1927, the Minister of Agriculture recognized that the Kelowna Conference followed "along the lines of the Queensland marketing act."⁴⁹

Mr. J. W. Jones, M.L.A. South Okanagan, summarized for the Legislative Assembly the Convention's views.⁵⁰ He expanded on the Kelowna Resolution by detailing that the Convention sought a ~~three~~-member Committee, two of whom were to be named by the British Columbia Growers' and Shippers' Federation, with the third member being a

"government man". The Federation was to appoint a member from The Associated Growers of British Columbia Limited and one from the Independent Shippers. The Committee was to fix prices at which shippers of tree fruits and vegetables of the Interior were to dispose of their crops. If a shipper chose to deviate from the declared price he would have to consult the Committee. It was intended that perishable fruit, such as plums, be exempted from the agreement.

A number of fundamental principles were clear from all of the resolutions passed by the Convention. Firstly, there was no intention to do away with existing shippers. Secondly, the aim was not to control prices in the ordinary way, i.e. by fiat, but by attempting to control the volume of British Columbia fruit entering the Prairie market. Connected with this principle was the grower realization that, despite the granting of legal powers which may indicate monopoly conditions, "conditions were past the possible monopoly stage. If other than a reasonable margin of profit were obtained it would mean such a rapid increase in production as to create saturation and chaos. There was also the fact that higher prices meant diminished return."⁵¹ Finally, the need to include the recalcitrant minority was well appreciated. The President of the BCFGA urged that "there must be no opportunity for the independent shipper to stay out and refuse to name a member of the Committee."⁵² An independent shipper warned that if the final legislative

arrangement "was not satisfactory to the shippers, the working could not be a success."⁵³

5.4 BILL 43

As has been shown above, the government had envisaged a compulsory cooperative marketing scheme prior to the Kelowna Conference. The Minister of Agriculture decided that the issue of compulsory cooperation should be examined by the Legislature's fourteen-member Select Standing Committee on Agriculture before any move was made to legislate.⁵⁴ Of the fourteen Committee members, there were three doctors, including the chairman Dr. E. J. Rothwell, three fiscal agents, two department store proprietors, a lawyer, a car dealer, a logger, a fruit grower and a general farmer. In partisan terms, the Committee was comprised of seven Liberals, an Independent Liberal and five Conservatives. The seven Liberals on the Committee were in direct proportion to their strength in the Assembly. The five Conservatives were represented disproportionately higher than their total of sixteen members in the forty-eight-member Assembly would suggest, whereas the Independent Liberal member indicated the lack of representation of the seven members which came from the Labour, Provincial Party and Independent faction. The Committee took twenty-four sittings to deal with the proposed legislation.⁵⁵

It was proposed that details relating to transposing the Kelowna Resolution into legislation would "be worked out by a committee of fruit men in conference with the Agricultural Committee."⁵⁶ Nevertheless, "fruit men" were not the only ones to appear before the Committee.⁵⁷ In fact, the only group which did not seem to appear before the Select Standing Committee was the Orientals. Perhaps this is understandable in view of Barrow's later assertion that "The Marketing Act is designed, amongst other things, to restore the industry to the white man."⁵⁸ It may also explain the Orientals consistent opposition to the Act.

In presenting the case for Bill 43, An Act respecting the Marketing of Fruit and other Produce, Barrow made it clear that the marketing legislation would cover not only the Okanagan Valley and not only fruit growing, but all produce from all areas.⁵⁹ That is, while Barrow saw Bill 43 as providing special relief for the Okanagan Valley fruit industry, he also considered that provision should be made to allow other lines of produce to come within the Bill in order that they might gain relief and not have to wait for their own special act.⁶⁰

The Minister was clear as to why there should be compulsory cooperation. He said "it had been found impossible to secure 100 percent organization by voluntary methods. There were always some who stayed out and thus 'rode on the band wagon without paying the fee'."⁶¹ Given that that was

the problem, i.e., ineffective voluntary marketing, "financial assistance will not work a cure."⁶² The latter solution was the editorial favourite of the Victoria Times Daily⁶³ and the Daily Colonist.⁶⁴ Barrow, the Select Standing Committee and the Legislature also rejected solutions related to better tariffs, better rail freights, improved cold storage facilities, seasonal tariffs and the relief of irrigation charges.⁶⁵ Throughout the Bill's passage, Barrow stressed that the minority did not have the right to control the majority to its detriment and "if they have no moral right, they should have no legal rights."⁶⁶ The fear of power of a minority to offset the wish of the majority caused Barrow, and the House, to vote against an amendment proposed by the Minister of Finance, Dr. J. D. MacLean. He sought to have fruit growers of his constituency exempted from Bill 43. MacLean argued that the producers of the Lytton and Ashcroft districts would not come into "sharp competition" with the general crop. His amendment was defeated with the argument that 10 percent, MacLean's estimate of his constituency's production, could ruin the whole scheme.⁶⁷

Opposition to the Bill encompassed three arguments. Firstly, it was held the Bill attacked the private rights of citizens and placed in the hands of a small committee unlimited power without any corresponding responsibilities.⁶⁸ The most extreme proponent of this argument was one of the Vancouver members, Capt. I. MacKenzie. He claimed that

"the bill 'is in essence communistic' providing for nothing less than soviet dictatorship of marketing under the direction of the Minister of Agriculture."⁶⁹ He also saw the Bill as being "repugnant, repulsive and subversive of the principles of economics." Apart from these two members, the philosophy of compulsion inherent in the Bill did not seem to arouse much opposition in the House. It must be remembered that the Bill was introduced in the same area as measures relating to minimum wages, hours of work, compulsory insurance on cars and compulsory spraying for insects.⁷⁰ However, in an editorial comment, the Daily Colonist saw the compulsion aspects as being "vicious and reactionary, an interference with the liberties of producers and also with the normal processes of trade."⁷¹ Another argument against the Bill was its alleged unconstitutionality. It was argued that the Bill purported to regulate interprovincial trade. This was strictly a Federal matter. Finally, it was argued that the proposed price-fixing and monopoly powers were contrary to the Anti-Combines Investigation Act.

In her major work, British Columbia: A History, Margaret Ormsby said "The premier himself undertook to sponsor the Produce Marketing Act which he considered the most important one to be introduced during the session."⁷² The facts state otherwise. The Daily Colonist of 26 February 1927 and the Victoria Times Daily of 18 and 22 February 1927 and 4 March 1927 detail Oliver's opposition to the Bill:

he considered it unconstitutional; it would create confusion with respect to what committee would control what commodity and with what constitutional standing; and, the Bill did not show how it would really help the producer. Finally, the Journals of the Legislative Assembly records Oliver as one of the eight "nays" against the Bill at its Second Reading.

The response of the polity towards the Bill can be illustrated with respect to the milk issue. In late January it became apparent that the milk industry sought to be included with the provisions of the Bill. To the City of Vancouver this meant that the Fraser Valley Milk Producers Association, the largest organization supplying the City with milk, would hold it to ransom. The City of Vancouver appeared in strength before the Select Standing Committee--the Mayor, the City Solicitor, the Board of Trade and individual businessmen. At one stage, prior to the receiving of the Vancouver deputations, it appeared that the Committee would sacrifice the dairy interests in order to keep the price-fixing powers for the fruit industry.⁷³ The dairy producers, for the while at least, prevailed. However, subsequent to the Vancouver delegations, the Select Committee offered a compromise--milk producers could have their price-fixing boards of control but they would only be allowed to raise prices with the consent of the municipalities affected.⁷⁴ In view of the objections of the Vancouver City Council,⁷⁵

even the members of the Agricultural Committee which framed the compromise were prepared to vote against the Bill.⁷⁶

Milk was dropped from the Bill. There is no question that the polity considered milk to be different from fruit.

When the issue was first raised "the cry was that milk was a necessity and any legislation that would give control to this essential commodity to a committee or organization would be detrimental to public interest."⁷⁷ The Vancouver Daily Province editorialized that the public was prepared to acquiesce in the solving of the Okanagan fruit growers' problem but there was "great public agitation against such an experiment with the milk supply of our urban communities."⁷⁸ It reconfirmed this in a later editorial, adding that "milk, unlike fruit, was vital to the existence of the children of our own population."⁷⁹

On 11 February 1927, Dr. Wrinch introduced Bill 43 for the First Reading. It must be noted that it was not the Minister who introduced the Bill, Margaret Ormsby's scholarship notwithstanding,⁸⁰ nor even the Chairman of the Select Standing Committee of Agriculture. The House referred the Bill back to Committee. On 23 February 1927, Dr. Wrinch again had the Bill ordered to be placed on Orders of the Day. By 5 March the Bill was adopted and on 7 March the Produce Marketing Act received Royal Assent.

Pursuant to the Act, the Interior Tree-Fruit and Vegetable Committee of Direction was introduced. The

Committee shall be discussed in Chapter 7.

5.5 PRODUCE MARKETING ACT

During the debate on Bill 43, much was made of its doubtful constitutionality.⁸¹ Once enacted, these doubts were acted upon, resulting in a large number of prosecutions and appeals. Orientals led the attack against the Act. Twelve of at least fifteen cases involving breaches of the Act that warranted the attention of the Attorney-General involved Orientals.⁸² The Attorney-General wrote to Judge Ruggles at the end of 1929 that "there is an attempt amongst the Orientals to defeat the intention of the Act and to do all they can to oppose the legislation."⁸³

The Attorney-General's Department stayed well away from defending the Act, i.e., prosecuting and defending or helping to assist defenses against appeals. The Departmental Solicitor's common defense for this action was that this was "a special piece of legislation, containing drastic and coercive provisions in the interests of a particular class. It is a corporate statute, simpliciter, similar to the Legal Professions Act, the Medical Act, Dentistry, Engineer, Architecture and other charters, the governing bodies of which pursue, at their own expense and on their own responsibilities, offenders against such charters."⁸⁴

The Act was eventually declared ultra vires in 1931 in Lawson v. Interior Tree-Fruit and Vegetable Committee of

Direction.⁸⁵ The Supreme Court of Canada held that the Committee of Direction was effectively directing the marketing of produce coming into the province. The regulation of such interprovincial trade was held not to be a mere incidence of a scheme for controlling local trade. The interference with interprovincial trade was held to be flagrant: "such matters are of direct, substantial and immediate concern to the receiving provinces as well as the shipping provinces." The Supreme Court further held that the levies imposed by the Committee to finance its operations constituted indirect taxation and thus beyond the powers of the legislature to impose.

On 16 March 1931 the Minister without Portfolio moved that the committee be wound up. Two weeks later the Act was amended to allow the appointment of a liquidator. The main amendments to the original Act had related to: extension of the meaning of marketing; extension of the area of control of the Committee; extension of the Committee's powers with respect to the securing of reports and estimates of produce for marketing; the setting of maximum and minimum prices; the imposing of levies on product marketed; and, providing for appeal procedures for aggrieved shippers with respect to the cancellation or suspension of their licenses.

5.6 1931 TO 1934

Despite the constitutional set-back, growers continued to explore the marketing of their produce through a

central selling agency which would utilize existing wholesale channels.

In 1931 Mr. Stanford Evans released Part II of his Royal Commission which investigated a number of aspects of fruit marketing in the province's Interior.⁸⁶ Highly critical of the Produce Marketing Act and the Committee of Direction, Evans recommended, inter alia, the return to conditions of unrestrained competition. While the growers rejected the Report at the BCFG 1931 Convention, two of Evans' recommendations were adopted. One concerned the establishment of a Shippers' Council to direct the movement of fruit to the domestic and export markets. Comprised of Independent shippers and the Associated Growers, the Council represented about 80 to 90 percent of all shippers in the Interior. Connected with Council was a Bureau of Information, the other acceptable Evans' recommendation. This was a government establishment which published daily reports on all sales. However, the Council lacked legal authority to control non-cooperating shippers.

The 1932 crop was the largest Okanagan apple crop to that date. Faced with the prospect of uncontrolled marketing, 90 percent of the shippers agreed to form the Apple Cartel to proportion the domestic and export market. That is, each shipper was permitted to sell a percentage (40%) of his pack on the domestic market on dates set by the Cartel and at minimum prices fixed by the Cartel.

Again, being a voluntary organization, the Cartel had no powers to fix penalties for violation of shipping dates, market destination and other marketing regulation. In summarizing the workings of the Apple Cartel, the President of the Associated Growers concluded that "it is apparently impossible for 100 percent to join in any proposition by voluntary effort and it is abundantly apparent that as long as there is a minority outside any arrangement, the efforts of the majority will to a great extent be nullified."⁸⁷ Lacking legislative support, the Apple Cartel was terminated.

The 1933 crop was even larger than the 1932 one. Without even the semblance of a voluntary marketing agreement, apples were selling at ruinous prices. Equally important, the major policy organization, the BCFGA, was bankrupt, a legacy of Premier Tolmie's curtailment of provincial spending. The BCFGA had been nearly totally dependent upon an annual grant from the government but, pursuant to the recommendations of the Kidd Commission, this grant was eliminated. A militant growers' movement arose. This was the "Cent-a-Pound-or-on-the-Ground" movement. Intimidation of shippers and the picketing of roads and bridges to prevent the movement of fruit to the packing houses were the main tools employed by the growers so as to ensure that growers received a cent a pound. That amount represented the bare cost of producing a box of apples, i.e., 40 cents a box, exclusive of packing and shipping charges.

The latter charges usually ran 40 to 65 cents a box. From the 'cent a pound' movement came the Growers' Stabilization Committee which, in turn, developed the Okanagan Stabilization Board. Gilchrist has called the movement "a last-ditch effort to force all growers to cooperate for the common good."⁸⁸

The Stabilization Board consisted of three growers and a shipper. It established the United Apple Sales, a one-desk selling organization. Expenses were defrayed by levying a charge on each box of fruit sold. An initial price list was issued and more favourable freight rates were assured. The result was satisfactory returns to growers. Eventually, in March 1934, the scheme was held by the Supreme Court of British Columbia to be acting in restraint of trade and contravening the Criminal Code.

This brings us to 1934, the year that the Federal Natural Products Marketing Act was introduced.

The final scheme envisaged by the Okanagan Valley growers prior to the introduction of the Dominion's Natural Products Marketing Act came from a nine-man Plans Committee which, in turn, based its proposals on submissions made by local committees. Three principles were involved: (a) sales to shippers at firm prices; (b) one-desk selling; and, (c) stabilization board. The Committee considered that any radical change to existing circumstances would be treated with suspicion by growers, shippers, bankers, etc.

Hence, it accentuated existing channels of trade. It recommended The Growers' Stabilization Board Limited. The Board was to have power to control the sale and distribution of domestic fruit. It could: fix the terms and prices at which fruit could be sold; arrange for the disposal of surpluses; and, have the power to pool with respect to grade, size, variety and period. The actual function of sale was to remain with the shippers, subject to the powers of the Board. Shippers who were able to gain premiums were to be allowed to distribute those premiums to their grower-suppliers. A grower-shipper-Board contract detailed seventeen clauses with respect to services.

From 1923 to 1934 one theme has dominated--the attempts of the fruit producers to control the marketing of their crops. Since their major problem has been the non-cooperating minority, their attempts were, at first, to induce it to voluntarily join by means of the tripartite contracts. When this failed, their efforts concentrated on legal enforcement--the 1927 Produce Marketing Act. This failed for want of constitutionality. When subsequent other voluntary efforts failed, again because of the recalcitrant minority, it was logical that the fruit producers should again try legal enforcement. Since the basis of the ultra vires declaration was that the province was endeavouring to enact that which was primarily a Dominion responsibility, the fruit producers focused their efforts on Ottawa. In this

they were joined by the province's milk producers. This necessitates a brief history of the milk producers' attempts at orderly marketing.

5.7 MILK INDUSTRY

Like the fruit industry, the milk industry had its preferred remunerative markets and less remunerative markets. The former was the fluid milk market, principally the urban communities, and the latter was the manufactured milk market, that is, butter, cheese, evaporated milk, etc. Naturally, producers aimed at supplying all they could to the former market. This led to intensive price competition.

In British Columbia, Vancouver dealers were able to play off competing district cooperatives. The producers eventually responded by forming their own organization to strengthen their bargaining position with the city dealers and prevent mutual price-cutting. Thus, in 1913 the Fraser Valley Milk Producers Association (FVMPA) was established. Competition for the preferred fluid milk market nevertheless continued. Again, the incident of a large cooperating majority and an independent minority was evidenced. Mr. Justice Clyne's Royal Commission on Milk quotes a former president of FVMPA as saying that since the inception of the Association "the war was on between its members on the one hand and the distributors and independent farmers on the other."⁸⁹ The Clyne Report discusses conflicts between producers and distributors and the activities of independent dealers.

The deterioration in the milk producers' economic situation in 1927 led to the consideration by the Select Standing Committee on Agriculture of a Bill entitled An Act for the Relief of Dairy Farmers. The Bill was not presented to the Legislative Assembly--witness the furore caused by attempts to include milk within the provisions of Bill 43. Nevertheless, the Committee proceeded on two fronts. It recommended, and the Assembly adopted, Bill 87, An Act respecting the Production and Sale of Milk for Human Consumption. It also recommended that a complete investigation be made of the industry. In 1928, Dean F. M. Clement was appointed a Chairman of a three-member Commission of Inquiry to investigate the whole question of milk production, quality and distribution in the Lower Mainland area, i.e., Vancouver and neighbouring municipalities. Clement's Commission was the second Commission inquiring into aspects of the province's milk supply.⁹⁰

The Clement Commission presented its Report to the Legislative Assembly in January 1929.⁹¹ It made recommendations with respect to the supervision of dairies, the prices of fluid milk and changes in the Act with respect to the regulating of the marketing and sale of milk. In order that each farmer should receive a proportionate share of the proceeds of milk sold on the high-priced fluid market and the low-priced manufactured market, the Clement Commission recommended a scheme of equalized returns.

Within two months, the Clement Commission's recommendations had been enacted in the Dairy Products Sales Adjustment Act. Pursuant to the Act, the Lower Mainland Dairy Products Adjustment Committee was constituted. The Committee, like the Interior Tree-Fruits and Vegetable Committee of Direction, consisted of three members. The Chairman was appointed by the Lieutenant-Governor in Council and the other two were appointed by dairy farmers in the prescribed district, i.e., Lower Mainland. The Act empowered the Committee to take from a producer who had sold all his milk on the fluid market a portion of his returns and give it to the producer who had disposed of more than his proportionate share of milk on the manufactured market. The Committee achieved this object by fixing a monthly standard price for fluid milk and manufactured products respectively and the weight and quantity of each sold by farmers. The latter figures were obtained from compulsory returns. The difference was apportioned between the total value of the sales of each, calculated at the respective standard prices, over the whole body of farmers, in proportion to the weight of fluid milk sold by each farmer. Each farmer's share of the apportionment was called the "adjustment levy." In effect, the Act gave to every producer in the area an equal price f.o.b. Vancouver for all milk of equal grade and quality produced in the area. The Committee was expressly prohibited from fixing prices at which milk or manufactured products

may be sold and from directing in what quantity, to whom, or when milk or manufactured products may be sold or disposed of by the dairy farmers.

A degree of amalgamation occurred with the passage of the Act. The aim was to achieve economies in the marketing of milk. At the same time those dairies which did not participate in the amalgamation sought to secure their own position by price-cutting in the fluid market.

With the Produce Marketing Act being declared ultra vires, an immediate challenge was made to the Dairy Products Sales Adjustment Act. The challenge, which resulted in Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Ltd., was successful.⁹² The Privy Council held that "the adjustment levies are taxes."⁹³ "Their Lordships are of the opinion that . . . the levies here are indirect taxes"⁹⁴ and hence, the Act was not within the legislative competence of the Province.

That was in November 1932.

Dairy producers, like the fruit producers, had found that their attempts at legally sanctioned compulsory co-operative marketing failed for want of constitutionality. It was natural then that they, like the fruit producers, should turn to the Dominion government.

The fruit growers and dairy producers had reason to be confident that the Dominion government was the key to their seeking orderly marketing. This was despite the

courts' declaring ultra vires the two provincial Acts. The producers were aware that both schemes had involved what the courts held to be systems of indirect taxation, albeit more so in Crystal than in Lawson. However, the courts' findings held that it was the means employed that was unconstitutional, not the principle. The Hon. J. V. Clyne dwelt upon this point at some length in his Report of the British Columbia Royal Commission on Milk, 1954-55.⁹⁵

NOTES TO CHAPTER 5

1. See, J. W. Lloyd, Cooperative and Other Organized Methods of Marketing California Horticultural Products (University of Illinois Studies in the Social Sciences, March 1919).
2. See, V. McCormick, A Hundred Years in The Dairy Industry (Ottawa: Dairy Farmers of Canada, 1968). She states, at p. 160, that the first cheese board began at Ingersoll, Ontario, in 1873.
3. See, The Report of the Royal Commission on the Tree-Fruit Industry of British Columbia, Dean E. D. MacPhee, Commissioner (Victoria, British Columbia: Printer to the Queen's Most Excellent Majesty, 1958) (cited as the MacPhee Report), p. 26.
4. MacPhee, MacPhee Report, p. 27.
5. M. A. Ormsby, "Fruit Marketing in the Okanagan Valley of British Columbia," Agricultural History, (April 1935).
6. See, Full Report of the Royal Commission on the 4th day of December, 1912, under the "Public Inquiries Act", (Victoria, British Columbia: Printer to the King's Most Excellent Majesty, 1914). The Report dealt largely with the reorganization of the Department of Agriculture.
7. See, Reports of Market Commissioner, Annual Reports of the Department of Agriculture, 1924 to 1927, passim.
8. Ormsby, "Fruit Marketing."
9. This statement derives from a reading of the British Columbia development and that of California. Several comparable factors stand out, namely, both were regions producing highly perishable speciality crops for distant eastern markets which were also the principal markets.
For general treatment of the California experience, see Lloyd, Methods of Marketing; H. E. Erdman, "The Development and Significance of California Cooperatives, 1910-1915," Agricultural History, (1958-59); S. Hoos, "Economic Implications of California Agricultural

Marketing Programs," Journal of Farm Economics 38 (1956); F. W. Powell, "Cooperative Marketing of California Fresh Fruit," The Quarterly Journal of Economics 14 (1910-11); G. Larcen, "A Progressive in Agriculture: Henry Weinstock," Agricultural History, (July 1958); M. R. Benedict, Farm Policies of the United States, 1790-1950, A Study of their Origins and Development (New York: The Twentieth Century Fund, 1953); J. G. Knapp, The Advance of American Cooperative Enterprise: 1920-1945 (Daneville, Illinois: The Interstate Printers and Publishers Inc., 1973); and E. G. Nourse, et al., Three Years of the Agricultural Adjustment Administration (Washington: The Brookings Institution, 1937).

For specific discussion of California's experience, see, H. R. Wellman, Controlled Marketing with Special Reference to California Fruit and Vegetables, (University of California Agricultural Experiment Station, 16.11.38); and E. Kraemer and H. E. Erdman, History of Cooperation in the Marketing of California Fresh Deciduous Fruits, (California Experiment Station, Bulletin 557, September 1933).

10. M. M. Gilchrist, "Grading and Marketing of Agricultural Products," Eighth British Columbia Natural Resources Conference, (The British Columbia Natural Resource Conference, 1955), p. 119. Mr. Gilchrist is a former Markets Commissioner, British Columbia Department of Agriculture, former Chairman, B.C. Marketing Board and currently Secretary, B.C. Marketing Board. Interviews were conducted with Mr. Gilchrist in June 1977 and May 1978.
11. See, G. H. Larcen and H. E. Erdman, "Aaron Sapiro: Genius of Farm Cooperative Promotion," The Mississippi Valley Historical Review 49 (1962-63).
12. Larcen and Erdman, "Sapiro," p. 258.
13. A. Sapiro, "Analysis of Marketing," Fifth Annual Convention of the American Farm Bureau Federation, Chicago, Illinois, December 1923 (copy of speech in my files). Sapiro talks of a 1921 Texas Farm Bureau Federation cooperative marketing Act which has been copied by twenty-nine other states, p. 118. The speech gives no indication that Sapiro helped frame this Act, and, as Erdman and Larcen point out, it was not like Sapiro to hide his light under a bushel.
14. See Knapp, Advance, p. 49.
15. For an explanation of cooperative philosophy in this context, see E. G. Nourse, "The Economic Philosophy of Cooperation," The American Economic Review (December 1922).

16. F. H. Underhill, "What, then is the Manitoban, this new man? or this almost chosen people," The Canadian Historical Association, Historical Papers, 1969, p. 41.
17. Erdman and Larcen, "Sapiro," p. 251.
18. M. R. Benedict, Farm Policies, p. 235.
19. See, The British Columbia Fruit Growers Association Supplement, "75 Years of Progress," Country Life in British Columbia, January 1964. The Supplement was a detailed history prepared for the diamond jubilee of the British Columbia Fruit Growers Association. It is perhaps the best single article on the Association. As such, it discusses a number of issues associated with the Association which are also excellent.
The Supplement was reprinted "The Story of Men Who Had to Fight," in The Twenty-Eighth Report of the Okanagan Historical Society (1964).
20. Supplement.
21. Sapiro, "Analysis of Marketing," pp. 133-134.
22. Supplement.
23. From W. P. Davisson, Pooling Wheat in Canada (Ottawa: Graphic Publisher, 1927), p. 116. Davisson, in quoting Sapiro, gives no source for Sapiro's quotation.
24. MacPhee, MacPhee Report, p. 30.
25. Supplement.
26. Commission Appointed to Specifically Investigate and Report Upon the Various Schemes Established Under the Authority of the "Natural Products Marketing Act," Judge A. M. Harper, Commissioner (Victoria, British Columbia, 1941).
27. British Columbia, Department of Agriculture, Annual Report, 1924, K40.
28. See, British Columbia, Department of Agriculture, Annual Report, 1925.
29. See, D. M. Black, "F.M. Black and the Committee of Direction," The Thirty-First Report of the Okanagan Historical Society, 1967. Black and the Supplement both use the 50 percent figure. The Harper Report, an official investigation, cites 70 percent.

30. British Columbia, Department of Agriculture, Annual Report, 1926, H47.
31. British Columbia, Department of Agriculture, Annual Report, 1926, Report of the Provincial Horticulturist, Q19.
The Canadian Annual Review 1926-27 says the same, viz., the chaotic marketing year prompted suggestions that a system of compulsory cooperation be introduced.
32. See, Victoria Times Daily, 13 January 1927 and Daily Colonist, 16 January 1927.
33. Supplement.
34. Daily Colonist, 13 February 1927.
35. Victoria Times Daily, 13 February 1927.
36. Daily Colonist, 17 December 1926. Parliament was opened on the previous day.
37. Vancouver Daily Province, 16 December 1926.
38. Personal Diary and Notebook, John Oliver, 17 January, 1925, to 7 May, 1927. (Provincial Archives of British Columbia, Victoria, British Columbia), entry 27 November 1926.
39. Oliver, Personal Diary, 6 December 1926.
40. Oliver, Personal Diary, 17 December 1926.
41. Supplement.
42. British Columbia, Department of Agriculture, Annual Report, 1927, Q44.
43. Ibid., Q43.
44. Ibid., Report of Provincial Horticulturalist and Inspector of Fruit Pests, Q19.
45. Daily Colonist, 16 January 1927.
46. The C.O.D. was also constituted pursuant to the State's enabling orderly marketing legislation, The Primary Producers' Organization Act, 1922-23. It was under this Act that ten marketing boards were constituted at the time of the Kelowna Resolution. See G. S. Vinning, An Institutional Study of State Statutory Agricultural Marketing Authorities, (Brisbane, Queensland: Department of Primary Industries, forthcoming).

47. . Vancouver Province, 19 December 1926.
48. Printed by the Printer to the King's Most Excellent Majesty, Victoria, B.C., 1927. Document 1M-1226-6612.
49. Daily Colonist, 16 January 1927.
50. Daily Colonist, 26 February 1927.
51. E. D. Barrow, Cowichan Leader, October 1927. No specific date was ascertainable. The clipping was in the B.C. Premier's Office Scrapbook: Politics and Public Affairs, March 15, 1927 to April 15, 1928, (Provincial Archives of British Columbia, Victoria, British Columbia). See also, J. W. Jones, Victoria Times Daily, 9 February 1927, and E. D. Barrow, Daily Colonist, 4 March 1927.
52. Daily Colonist, 18 February 1927.
53. Daily Colonist, 18 February 1927.
54. The Canadian Annual Review, 1926-27.
55. Nelson News, 12 March 1927.
56. Victoria Times Daily, 25 January 1927.
57. See, Victoria Times Daily, 11, 14, 15, 16 February 1927.
58. Victoria Times Daily, 4 February 1927.
59. Victoria Times Daily, 17 January 1927.
60. Daily Colonist, 26 February 1927.
61. Cowichan Leader, October 1927, see f.n. 51.
62. Daily Colonist, 26 February 1927.
63. Victoria Times Daily, 18 February 1927.
64. Daily Colonist, 23 February 1927.
65. See, Victoria Times Daily, 14, 20, 26 January 1927, 26 February 1927 and 3 March 1927.
66. Victoria Times Daily, 26 February 1927.
67. Daily Colonist, 4 March 1927.

68. Daily Colonist, 10 February 1927.
69. Victoria Times Daily, 25 February 1927.
70. See, Agriculture Act Part II, (R.S.B.C., 1924); provided for penalties for non-compliance with spraying regulations imposed by the Board upon receipt of a petition signed by 60 percent of producers in a district.
71. Daily Colonist, 23 February 1927.
72. M. A. Ormsby, British Columbia: A History (Toronto: The MacMillan Company of Canada Limited, 1958), pp. 428-429.
73. Victoria Times Daily, 9 February 1927.
74. Victoria Times Daily, 22 February 1927.
75. See, Victoria Times Daily, 14 February 1927.
76. Vancouver Daily Province, 23 February 1927.
77. Daily Colonist, 26 February 1927.
78. Vancouver Daily Province, 20 February 1927.
79. Vancouver Daily Province, 4 March 1927.
80. "The sponsorship of the Produce Marketing Act had been undertaken by E. D. Barrow, the Minister of Agriculture," Ormsby, British Columbia, p. 428.
81. See, T. G. Norris, "Legal Problems in Relation to Marketing Legislation," Scientific Agriculture (September 1939). Norris, later Mr. Justice Norris, was a lawyer for BCFGA and the Committee of Direction. M. Gilchrist claims he helped draft the Produce Marketing Act. Later he was directly involved in the establishment of six Schemes pursuant to the 1934 Natural Products Marketing Act.
82. From Attorney-General, Correspondence Inwards, 1918-1937, Produce Marketing Act, Microfilm P302-1, -2, -3, -4. passim. (Provincial Archives of British Columbia, Victoria, British Columbia.)
83. Ibid. Microfilm P302-1, 25 October 1929.
84. Attorney-General's Department, Microfilm P302-1, Departmental Solicitor, 29 September 1928.

85. Lawson v. Interior Tree-Fruit and Vegetable Committee of Direction, (1931) S.C.R. 357.
86. Report of the Royal Commission Investigating the Fruit Industry (and interrelated conditions) of the District Territorially known as the Okanagan, Kootenay and Kettle River of the Province of British Columbia, W. Stanford Evans, Commissioner (Victoria, British Columbia: Printer to the King's Most Excellent Majesty). Part I was released in 1930 and dealt with primarily production-oriented problems such as irrigation and water supply. Part II, released the following year, concentrated on marketing.
87. Supplement.
88. Gilchrist, "Grading and Marketing," p. 120.
89. Report of the British Columbia Royal Commission on Milk, 1954-55, Hon. J. V. Clyne, Commissioner (Victoria, British Columbia: Printer to the Queen's Most Excellent Majesty, 1955) (cited as the Clyne Report), p. 8.
90. Report of the Royal Commission on the Milk Supply in British Columbia: under "Public Inquiries Act", (Victoria, British Columbia: Printer to the King's Most Excellent Majesty, 1913). The Report concentrated mainly on the classification of milk and an education program on the subject of pure-milk supply.
91. Report of the Milk Inquiry Commission, 1928 (Victoria, British Columbia: Printer to the King's Most Excellent Majesty, 1928).
92. Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Ltd., (1933) D.R.L. 82.
93. Supra, at p. 85.
94. Supra, at p. 87.
95. Clyne Report, pp. 145-153.

CHAPTER 6

NATURAL PRODUCTS MARKETING ACT, 1934

6.1 INTRODUCTION

The introduction of the Dominion Government's 1934 Natural Products Marketing Act differed from the Produce Marketing Act in a number of ways.

To begin with, whereas the 1927 legislation was "an enactment passed by the legislature at the behest and for the benefit of a particular and therefore limited portion of the public,"¹ i.e., the province's interior fruit producers, the Dominion's legislation was at the behest of a vastly wider group of rural producers. Secondly, while this paper holds that the incident of the Depression has been overstressed in the origin of the 1934 Act, the Act, unlike the 1927 legislation, is nevertheless rooted in the overall depressed economic conditions. Thirdly, while British Columbia had only the one non-Canadian piece of legislation relating to orderly marketing to draw upon, the drafters of the Dominion Act had at least four examples. Finally, the British Columbia Act was thrashed out in a Select Standing Committee. Such a course of action was refused in the House of Commons. Debate on the provincial.

Bill encompassed only a few days, whereas debate on the Dominion Bill, Bill 51, dominated two of the five months that constituted the Session.

On the other hand, there was one interesting parallel. The British Columbia Act constituted the Committee of Direction. As Chapter 5 showed, the Committee was preceded by a series of organizational experiments. The Natural Products Marketing Act constituted the Dominion Marketing Board which, in turn, supervised the activities of twenty-two local boards. Sixteen of the local boards were preceded by some form of voluntary organization.

The direct antecedents for the Dominion legislation can be seen in a resolution passed by a major primary producers conference held in Toronto in November 1933. The resolution requested the Dominion government to prepare a farm products marketing measure. In turn, the Toronto Conference can be traced to a conference held in Regina in July of the same year. The prime movers of the Regina Conference were representatives from the British Columbia Fruit Growers' Association and the Fraser Valley Milk Producers' Association.

6.2 PARLIAMENTARY ORIGINS OF BILL 51

However, it is wrong to assume that the House of Commons, moved by the plight of the farmers, reacted to the 1933 Conferences, particularly the Toronto one, by introducing Bill 51 in March 1934. The subject of marketing

boards was not new to Parliament, despite the impression which may be gained by the debate that surrounded the Bill's passage through the Fifth Session of the Seventeenth Parliament. Marketing boards were first discussed in depth in the Third Session, that is, May 1932. This suggests that this is a more appropriate place to begin an explanation of the Federal legislation. The discussion that developed then was related to a statement made earlier by the newly elected Minister of Agriculture, Robert Weir.

Robert Weir's first policy statement regarding his portfolio was issued through Maclean's Magazine, 15 March 1931.² He outlined a twelve-point program which he saw as meeting the challenge of falling wheat prices, disorganized markets and rural distress. Eleven of the programs were production oriented, such as his bull clubs, use of experimental farms, and a government backed hog quality improvement scheme. His only reference to marketing was "Control of production has no place in the new agricultural policy. A marketing board of outstanding men will be created for the purpose of giving expert advice on this question. The central pillar in the new policy is the elimination of waste."³ No further comment was made.

The first comments in the House of Commons on Weir's twelve-point program came in April 1931. J. L. Brown, a Progressive from Manitoba, went through the twelve points. His treatment of marketing boards was as cursory as Weir's

policy statement: "what that means we do not know."⁴ A little later, Thomas Donnelly, a Liberal from Saskatchewan, made the sole comment on Weir's marketing board: "that is all right."⁵ Weir's only reference to any kind of marketing board during the Supply debate of that year came in reference to Canada's falling butter export prices. He said that "one of the reasons for this drop is the lack of a uniform board of control in Canada to supervise the industry."⁶ In May 1932, Donnelly once again repeated point by point Weir's program. This time he apportioned credit. He said that eleven of the twelve programs "had been clipped from the policies of the former government."⁷ Donnelly was specific about the marketing board policy--"There is only one new policy, namely, that referring to the national marketing board."⁸ Apart from stating that such a board would be fraught with danger, there were no other comments. This suggests that the concept of a national marketing board originated with the Conservative Government of Prime Minister Bennett. But while Bennett boasted of "blasting" his way into foreign agricultural markets in the 1930 Federal election campaign, there appears no mention of the marketing board concept.

Alfred Speakman, the United Farmers of Alberta member for Red Deer, clearly places the origin of the idea with Weir. He said that the notion of a marketing board

was "not altogether a new idea: it is, one which the minister had in mind before he was appointed to his present position."⁹

This suggests a closer examination of Robert Weir.

6.3 ROBERT WEIR

Robert Weir had no political background: one cannot even use the qualification "virtually no political experience." As he said, "up to last June [June 1930] I had never attempted a political speech . . . I had attended only one political meeting since the War until my own convention was held."¹⁰

Unlike his predecessors of Motherwell, Crerar and Tolmie, Weir had only a limited agricultural background. On the other hand, he did have first-class honours in maths, physics and actuarial sciences. His first work experience was with an insurance company. Following doctor's orders to change his method of life because of overwork, he moved to Regina where he became a maths teacher. Again, following doctor's orders to 'abandon white collar work because of overwork, he took up farming in 1921. He was forty. Grattan O'Leary is most laudatory of Weir's farming efforts.¹¹ He earned good money and a solid reputation with his purebred race-horses, Herefords, sheep, swine and oats. With the announcement of the 1930 General Elections, "farmers from the Melfort country-side . . . urged Weir to run for Parliament. The delegations were so numerous, the petitions so insistent that Weir capitulated."¹² Once elected, the

livestock associations petitioned Bennett that Weir should be made Minister of Agriculture. At first, Weir rejected the attempt to conscript him, but he eventually accepted the portfolio.¹³

Weir, although a Conservative Cabinet Minister, must be seen as part of the Prairie agrarianism of the time. This was the period of disenchantment by Prairie farmers with existing political parties. Weir said that "there was a growing feeling among farmers in my part of the country that they should be represented by a person who had been a farmer but had not been tied down by any political party."¹⁴ As a compromise to this philosophy and to Weir's comment of being a lifelong Conservative, he ran as an Independent Conservative.

While he may have been a political nonentity, Weir was very much in tune with the cooperative philosophy which dominated Prairie Canada at that time. He was a member of the Saskatchewan Wheat Pool, the Cooperative Live Stock Pool,¹⁵ and the Saskatchewan Registered Seed Grain Pool. Weir, his riding, and his province were part and parcel of the Prairie cooperative movement.

Prior to the Great War, the Prairie cooperative movement was motivated by resentment against monopolistic exploitation. The farmers responded by developing cooperatives, with country elevators, terminals and allied services being their hall-marks. The cooperatives were not really

cooperatives in the Rochdale sense of service at cost, all profits returned as patronage dividends and no "dry shareholders."¹⁶ H. Grant holds that the cooperatives were merely a useful available weapon that farmers could use "to remove the barriers that hindered their economic progress."¹⁷ Nevertheless, there was no groundswell by farmers seeking active state intervention in the marketing process. After the War, prices were deflated. This contrasted strongly with the wartime control measures by the government, i.e., the Board of Grain Supervisors, which was coincident with high prices. The Board was associated with the supervision of trading in wheat futures on the Winnipeg Grain Exchange, the latter institution being the bane of pre-War cooperatives. Farmers had witnessed the effectiveness and practicality of controlling supply. State assistance was sought to continue this operation, vide the 1919-20 Wheat Board. With the cessation of the Board, Prairie farmers sought a similar institution which would counter the one-sided open-market system. The result was the wheat pools: Alberta Co-operative Wheat Producers Limited of 1923, and the Saskatchewan and Manitoba Wheat Pools, both formed in 1924.¹⁸ Greater farmer-based selling power was achieved with the creation in 1924 of the Canadian Co-operative Wheat Producers Limited, the central selling agency of the three Pools. All three Pools used contracts with producers as a means of assuring a large and dependable source of supply. The Pools and the contracts are related to the great organizing

drive that followed Aaron Sapiro's 1923 visit.¹⁹ The concept of legally sanctioned cooperative marketing was well rooted in Weir's immediate riding of Melfort and, more generally, in his province and the entire Prairies. When Weir stood for office, the Pools were experiencing financial difficulties associated with falling prices. Attempts were being made to seek financial assistance from the provincial and federal governments.²⁰

6.4 PARLIAMENTARY PROGRESS ON MARKETING BOARDS

The earliest indication of Weir proceeding with his idea of a national marketing board was in May 1931. He moved that "the Committee on Agriculture and Colonization do proceed with an investigation into methods of handling and marketing agricultural products of all kinds."²¹ Little became of the investigation because in the following year the Committee concluded that "it is not advisable to make any recommendation."²²

The Bennett Papers mention Weir's having a second meeting, presumably with the Committee on Agriculture and Colonization, on 22 April 1932, wherein a national marketing board was discussed.²³ While it was decided that a straight out government bonus should be struck to cover losses on exports, it appears that the establishment of a national marketing board was recommended. The purpose of the board appeared to be as the administrator of levy fund (see below).

Weir's first major speech on agriculture was in the Supply debates of May 1932. Up until then, it appears that Prime Minister Bennett was trying to protect his neophyte Minister from the rigors of the House. Weir pinpointed marketing as the major problem of Canadian agriculture. He noted two reasons for this--the rise in world tariff barriers in the late 1920s and early 1930s and the fact that Canada had no contingency plans to deal with this situation. Weir based his solution upon the so-called Patterson Plan. Since the principle of the Plan was to attract great attention in Canada over the next four years, it is worth a brief examination.

Australia's Patterson Plan²⁴ began in January 1926. It aimed at stabilizing domestic butter prices and aiding the disposal of surplus butter production in overseas countries. It was a voluntary plan, administered by the Australian Stabilization Committee. When it was introduced, Australia was selling between 20 and 50 percent of its total production of butter on the export market. The result was depressed returns to Australian butter producers. Concomitant with that was the issue that while butter producers had to sell on the world market, they had to buy domestically at higher prices due to the tariff-protected domestic manufacturing industry. The Committee made a levy on all butter produced in Australia and paid an export bounty to those producers

who contributed to the levy scheme. The Plan resulted in increased prices for domestic butter.

Weir said that the government had contemplated a national farm products marketing act²⁵ which would lift surpluses off the market and "thus extend the effective range of the protection given by the tariff."²⁶ He was more specific later when referring to the options he had discussed with a Quebec delegation concerned about the export surplus: "the other way is to set up a marketing board and put machinery at the disposal of the farmers in order that any branch of agriculture desiring to place a levy upon its product may create a fund to be used by the marketing board to absorb any loss which would be necessary in removing the surplus stores. In this way more life could be given to the home market."²⁷ In addition to a Patterson Plan-type board, Weir also introduced another element. In commenting upon the failure of the Canadian dairying industry to achieve a Patterson Plan-type voluntary levy, Weir said that "if, however, [the levy] could have been made compulsory, . . . I have no doubt that the condition [of failure] that did arise would not have arisen."²⁸

It must be noted that Weir was less than objective about the Patterson Plan. He failed to point out two problems. Firstly, the Plan had resulted in increased butter production. Secondly, and relevant to Canada, the Australians had not resolved the problem of interstate trading, there

being an inherent clash between the aims of the Plan and the Australian Constitution.

The introduction of the concept of a national marketing board evoked a number of comments from the Parliamentarians. The comments illustrated the differing connotations attached to such an institution. The common view was similar to that of Weir, i.e., a Patterson Plan-type arrangement. Others saw it as a body related to the standardization of grading;²⁹ a body providing data on exports;³⁰ a means of arranging and determining the rate of exchange;³¹ and, as a means of assisting existing cooperatives.³²

Some of the Members' comments were detailed as to how such a marketing board would operate. George Nicholson, Conservative, Algoma East, mentioned the need to control class or grade of product and the different types of products for export.³³ Speakman spoke of the need to control transportation facilities, especially ocean space, and the power to inquire into the spread between what the consumer paid, and what the primary producer received.³⁴

Three comments must be noted about the support for Weir's concept. Firstly, Weir was strongly supported by his predecessor, William Motherwell. The Hon. W. R. Motherwell was sympathetic and friendly towards the steps that Weir was advocating. He undertook to work with the Tories,³⁵ a promise he kept when he was only one of two Liberals to vote for the Bill two years later. Secondly, it appeared that

the support was quite extensive, vide "it is an open secret that perhaps forty or more members representing agricultural constituencies have given intensive study to the question of a marketing board and they and all farm organizations from coast to coast, after 10, 15 and 20 years intensive study, are a unit in asking that a marketing board be established without delay."³⁶ Finally, some of the support seems to be of a last-ditch type: "we do not expect [the marketing board concept] will bring the millenium, we do not expect that it will make farming prosperous, nor do we think it will pay the national debt: but we do entertain hopes that it will give at least some slight assistance to that very oppressed section of the community."³⁷

The debate was not all a panegyric to Weir's idea. The Liberal member from Weyburn, Saskatchewan, E. J. Young, said that "some-one should warn the Minister against this crowning folly of establishing a marketing board . . . there appears no limit to the ingenuity that protectionists display in dressing up their pernicious doctrines in such guise as to make them attractive to the people."³⁸

Those members who addressed themselves to the idea of a national marketing board clearly saw it as an export-oriented body. It was basically because of this concept that the idea failed to proceed. This was the period that the Prime Minister was deeply involved with the forthcoming Imperial Economic Conference. Trade and tariffs were to be

major items of business at the Conference. Bennett was loath to pre-empt negotiations by establishing before the Conference an export-controlling marketing board. Further action on the marketing board idea was to wait until the government had had the benefit of discussions at the Conference.³⁹ In addition, postponement was needed in order to have time to investigate whether the proposal was sound.

6.5 DEPARTMENTAL PROCEEDINGS

On 8 June 1932, Bennett received a confidential outline of a "National Farm Products Marketing Act."⁴⁰ The Act proposed setting up a National Farm Products Marketing Board made up of three members, appointed at pleasure. The Board would determine losses paid on the export of surplus farm products over and above the requirements of the domestic market. Exports had to be supervised by the Board in order to receive compensation. The Act empowered the Board to refuse to approve of the export of a commodity. A levy imposed on the sale of any farm product to which the Act was applicable would finance the losses. An agency could be authorized by the Board for any specific purpose. Breaches of the Act were to be punished by fine or imprisonment.

Bennett, preoccupied with the forthcoming Imperial Economic Conference, did not appear to have responded to the draft.

The 1932 Conference met when virtually every country in the world had instituted some measure of protectionism.

R. Dawson went further and said the countries of the world "had embarked upon a policy of reckless economic nationalism."⁴¹ Canada was highly susceptible to these policies. For 1932, T. Grindly estimates that 40 percent of Canadian agricultural production entered world trade⁴² and C. B. Davidson said that about 50 percent of Canada's total export trade consisted of farm products and their derivatives.⁴³ As Lattimer shows, there was a one-sided application of laissez faire to Canadian agriculture in the new economic nationalism.⁴⁴ The Conference was supposed to demonstrate to the world what could be achieved through cooperation. Bennett must have been disappointed in the outcome of the Conference. While a few concessions to free trade were made, there would be no "blasting" into new markets. Nevertheless, he was obliged to wait a while before he adopted any contrary measure. Thus, in early January 1933, he was replying to letters seeking a federal marketing board by mentioning the government's efforts to secure the sale of natural products abroad. Bennett saw the government's role in helping Canadian agriculture compete in the world market as being one of providing data and maintaining trade offices.

Bennett and Weir appear to have discussed the national marketing board concept in early February 1933. On 20 February 1933, Weir forwarded to Bennett another draft marketing act. In this draft, the Board would deal specifically with livestock, meats, manufactured dairy products,

dressed poultry and eggs. These products would be administered by the Board only after a survey had been made and after the Governor in Council had approved. Staff and members of the Board would be paid directly by Parliament. The Board was to take whatever steps it needed to coordinate activities of agencies engaged in the marketing of farm products. It was to acquire data from those engaged in processing, manufacturing and dealing in farm products to establish the spread between what the farmer received and what the consumer paid. It was the duty of the Board to develop trade. Finally, fines and imprisonment for breaches were specified.

The concept of investigating the spread between what the producer received and the consumer paid can be accredited to Weir as early as November 1930.⁴⁵

Bennett would have nothing to do with the draft. He saw it as a duplication of the work of the Department of Trade and Commerce. He saw the idea of a prices spread investigation section as leading the government into the position of having to fix prices. Bennett rejected the draft on the further grounds of its leading the government into a buying and selling board; that it would supersede cooperative societies and pools; and, it did not really deal with the problem of responsibility for losses. In short, the Prime Minister thought his Minister of Agriculture should concentrate on the coordinating of reliable information for export purposes.⁴⁶ The last comment originates in

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a Spring 1933, Cabinet decision that the Department of Agriculture should handle questions relating to domestic marketing matters and the Department of Trade and Commerce be responsible for external marketing matters. The Minister of Trade and Commerce, H. H. Stevens, was similarly critical of Weir's draft.⁴⁷

One of the reasons given for postponing action on the marketing board concept in May 1932, was the lack of detail about a "sound plan". The Department of Agriculture sought data on marketing arrangements throughout the world. The result was A Report on The Agricultural Situation and Measures to Control the Production and Marketing of Farm Products. The 228-page Report appears to have been issued in 1933.⁴⁸ A six-man committee examined developments in agricultural production and marketing policies "in the more important countries of the world." It was assisted by other (unnamed) interdepartmental committees studying recovery plans. Three of the six committee members are worth noting: the Chairman was Dr. J. F. Booth, Commissioner, Department of Agriculture, who, like another Committeeman, C. B. Davidson, later became a member of the Dominion Marketing Board; and from the Department of External Affairs was L. B. Pearson, later Prime Minister.

The Report studied the schemes of twelve countries, plus six specific one-country schemes. Nearly half the Report was devoted to the United Kingdom and the United

States. Highlighting the findings of the Committee was the conclusion relating to compulsion. It found that abroad there was a "demand for legislation to compel small minorities to join with the majority in marketing specific products in a prescribed manner. This demand was based upon the idea that success was not possible unless complete control of the output was in the hands of the organization. This was said to be particularly true of commodities sold both in the domestic market and for export."⁴⁹

Thus, at this stage, circa mid-1933, Weir and his Department were exploring a Patterson Plan-type national marketing board. Weir did not appear to have much Cabinet support. Bennett, and Stevens, saw the solution to the depressed agricultural situation as being related to, essentially, improved data coordination.

6.6 REGINA AND TORONTO CONFERENCES

In July 1933, the World Wheat Conference was held in Regina, Saskatchewan. That Conference had participants from a number of countries which had enacted various production and marketing control measures, vide Booth's Report. The occasion of the Wheat Conference gave Canadian producers a chance to exchange views. Out of this grew the Producers' Marketing Conference.

The Regina Conference resulted from agitation started by the fruit growers of the Okanagan Valley and the milk

producers of the Fraser Valley. These two groups had already had a meeting in British Columbia and determined to continue to promote their views on orderly marketing.

Fifteen organizations attended the Conference:

Associated Growers of British Columbia
Canadian Horticultural Council
Canadian Poultry Pool
Cooperative Marketing Board (Winnipeg)
Fraser Valley Milk Producers Association
Manitoba Cooperative Conference
Manitoba Vegetable Growers Cooperative
Manitoba Wheat Pool
National Dairy Council
Regina Live Stock Pool
Saskatchewan Dairy Association
Saskatchewan Dairy Pool
Saskatchewan Poultry Pool
Saskatchewan Wheat Pool
Southern Alberta Dairy Pool.

In addition, there was the Premier of British Columbia, Sir Simon Fraser Tolmie, the Deputy Minister of the Department of Agriculture, British Columbia, the Markets Commissioner of the Department of Agriculture, British Columbia, and unspecified public servants from Ottawa and Nova Scotia. One known public servant was A. E. Fortington from the Department of Trade and Commerce. He was there as

an Observer on the instructions of his Minister. His report on the Conference⁵⁰ is at some variance with the Summary of Proceedings of Producers' Marketing Conference, by the Conference Chairman, R. H. MacDonald, President of Canadian Horticultural Council.

One of the major addresses to the Conference came from A. H. Mercer, General Manager of the Fraser Valley Milk Producers Association. He discussed the marketing legislation in the United States and United Kingdom and outlined the British Columbia experiment.

The crux of the Conference was to set machinery in motion for the securing of 100 percent control of farm products by the producers. The Conference recognized the disruptive forces of the small minority and was quite prepared to compel them to cooperate in order to improve marketing. In view of the failure of voluntary measures to achieve orderly marketing, and in recognizing in view of the British Columbia experiments the need to have as a prior condition federal legislation, it was resolved that the Conference

request the Hon. the Federal Minister of Agriculture to forthwith proceed with the preparation of a farm products marketing measure which will be available to and adequate for the needs of producers of all agricultural products in any part of Canada.

It was further resolved

that the Minister submit the proposed measure back to a Committee of the Conference and if the Committee approved

it was to be submitted to a further conference of producers which shall be national in scope preferably at the Toronto Winter Fair in order to coincide with the next sitting of Parliament.⁵¹

The Committee included A. H. Mercer, and O. W. Hembling, Associated Growers of British Columbia Limited and a former member of the Interior Tree-Fruit and Vegetable Committee of Direction.

Stevens' reaction to the Regina Conference is interesting. In writing to Sir George Perley, the Acting Prime Minister, he saw the Conference as having "some political or some socialistic motive."⁵² Nevertheless, he saw the Conference's Resolution as being similar to one he made as Chairman of a Cabinet Sub-Committee. He thought that in order to counter the possibility of being faced with "very widespread agitation for a much more radical and socialistic effort,"⁵³ the government should proceed along the lines of the Sub-Committee's recommendations.

Stevens' next step was to draft an Order in Council for a National Farm Products Board,⁵⁴ Stevens' Board was to promote the marketing of farm products but operate under the administration of the Department of Agriculture pursuant to the terms of The Relief Act, 1933. The Board was to ensure closer cooperation between the Department of Agriculture and Stevens' Department of Trade and Commerce in the marketing of Canadian farm products. The products were specified as livestock, meats, manufactured dairy products, dressed poultry, eggs, fresh fruit and vegetables, maple products, honey

and "any other farm product designated for the purpose by the Minister of Agriculture." This list was more extensive than Weir's draft of February 1933. The Board was to secure uniformity of quality and continuity of supply. Like Weir's drafts, the Board was to investigate spreads using data obtained from processors, manufacturers and dealers. The draft proposed that produce exported contrary to the advice or ruling of the Board would not be eligible for assistance under the Agricultural Stabilization Fund. Furthermore, if producers were not receiving benefits under the Fund, the Board could withhold payments from the Fund to any exporter.

In September 1933, the Prime Minister's executive assistant suggested to him that a small interdepartmental committee from the Departments of Agriculture and Trade and Commerce prepare a memoranda for Cabinet on the question of the marketing of farm products "in view of the place that this subject has in public discussion."⁵⁵

From the producers' point of view, the major "public discussion" occurred in Toronto in late November 1933. The Toronto Conference was held pursuant to the Regina Producers' Marketing Conference's resolution to hold another national conference coinciding with the Toronto Winter Fair.

In addition to the Regina Conference's participants, there were also representatives from:

Cooperative Federee de Quebec

Montreal Milk Producers' Association

New Brunswick Fruit Growers
Ontario Cheese Patrons Association
Ontario Fruit and Vegetable Growers
Ontario Growers' Market Council
Ontario Milk Producers' Association
Prince Edward Island Potato Growers
United Dairymen's Association
United Farmers Cooperative Company.

The Dominion Minister of Agriculture was in attendance for the three days of proceedings, as were representatives from his Department. There were also three senior provincial agricultural officers: the Directors of Agriculture from Prince Edward Island and New Brunswick and the Director of Marketing in Nova Scotia.

It is difficult to assess the true representativeness of the Toronto Conference. While there appears to be a large representation of dairy producers, the Canadian Horticultural Council represented 216 horticultural and allied industries with a membership of over 85,000.

Four persons well experienced in orderly marketing legislation addressed the Conference. Two of them, A. H. Mercer, Fraser Valley Milk Producers Association, and O. H. Hembly of Associated Growers and the Committee of Direction, had already addressed the Regina Conference. Another speaker was F. M. Clements, Dean of the Department of Agriculture at the University of British Columbia. It

was Clement's 1929 Royal Commission which led to British Columbia enacting the Act for the Relief of Dairy Farmers, outlined in Section 5.1. The fourth speaker was Lewis Richard MacGregor, Trade Commissioner for Australia in Canada. MacGregor's experience in cooperative and orderly marketing was extensive. A Scot, he had come to Australia via India where he worked for a large British pastoral house. In Western Australia he was closely involved with the creation of that State's wheat pool and the largest farmer cooperative. He had toured overseas and made market reports for both the State and Federal governments. In the early 1920s, he came to Queensland and was instrumental in combining that State's various orderly marketing legislation into the 1926 Primary Producers' Organization and Marketing Act.⁵⁶ He was the author of the article which outlined an institutional framework for the British Columbia fruit growers' Committee of Direction. He had also provided the British Columbia Minister of Agriculture, E. D. Barrow, with necessary details during the passage of Bill 43.⁵⁷ MacGregor outlined to the Conference the Australian experience with agricultural marketing legislation. The Conference also heard an address on farm support measures in the United States.

The Toronto Conference resolved:

that the Minister of Agriculture forthwith cause to be prepared a farm products marketing measure which, insofar as federal legislative authority extends, will

enable the producers of agricultural products in any part of Canada to take advantage of legislation that may be federal or provincial, embodying the principles of the British Agricultural Marketing Act and that such federal legislation, before enactment, shall be submitted to the Committee appointed by the Conference to promote the enactment of such legislation.⁵⁸

A National Marketing Committee appointed by the Conference had ten members. It took its charter seriously. In writing to the Minister of Agriculture, it was critical of his proposed Bill 51. It made a number of suggestions to make the Bill more to growers' liking. The Committee made clear that the Conference delegates supported its stand.⁵⁹

6.7 THE BRITISH ACT

The Toronto Conference sought legislation embodying the principles of the British Agricultural Marketing Act. At that time, circa November 1933, Australia had constituted eighteen statutory marketing authorities pursuant to eight pieces of legislation in four states.⁶⁰ The United States had sixteen Marketing Agreements pursuant to the Agricultural Adjustment Act, 1933.⁶¹ Yet the U.K. had only six schemes constituted pursuant to its 1933 Agricultural Marketing Act.⁶² Furthermore, the British Act covered only three products.

There is an explanation for Canada's preoccupation with the British Act.

The bulk of Canadian non-grain exports went to the United Kingdom. This was particularly true for fruit and dairy products. It behooved Canadian exporters to be aware of market developments in the United Kingdom.

Two fairly concurrent events occurred.

Firstly, Britain passed in 1931 the Agricultural Marketing Act,⁶³ later amended by the 1933 Act.⁶⁴ The latter Act was passed to overcome the problem that unless imports were controlled, the internal reorganization pursuant to the 1931 Act would become largely ineffective.⁶⁵ Briefly, the Act empowered producer marketing boards to: negotiate prices with distributors; specify terms of resale; regulate the volume of production through quotas or other devices; and, control all sale of the prescribed product by either purchase or regulation. At the heart of the Act was the principle that the wish of the majority of producers should prevail. In July 1930, the British Prime Minister had stated that "there can be no lasting prosperity until farmers . . . control the marketing process in a manner which is now impossible."⁶⁶ The Act provided the manner of control. According to the British Minister of Agriculture, it now required "the minority to play the game."⁶⁷ The Act provided for primary producers to petition the Minister of Agriculture for power to regulate the sale of a particular commodity. Once the Minister was satisfied that such an action was the wish of the majority of producers of that commodity, a marketing scheme for that commodity was approved. The Minister could use plebiscites, Parliamentary hearings and public hearings in order to satisfy himself of the proposal's merits. The principle was the same as that used in Australia

and the United States, albeit with different techniques of application.

The second event related to the fruit industry.

The United Kingdom was the major non-Canadian market for British Columbia, Nova Scotia and Ontario fruit producers.

As a result, the British fruit producer, notably the apple producer, was competing with a flood of Canadian imports.

At the same time he was having to compete with imports from Australia, New Zealand and South Africa. In November 1933, the Ontario Fruit Growers' Association's representative in London warned that "the English growers are beginning to cry out for something further to be done to protect their interest. Flexible quotas allotting definite marketing periods to the various Dominions was one such suggestion."⁶⁸

The point was that, pursuant to the Agricultural Marketing Act, U.K. farmers could organize themselves into a marketing scheme and, having demonstrated reorganization, petition their government to restrict the flood of imports.

Recognizing the danger, the Nova Scotia Fruit Growers Association and the Nova Scotia Shippers Association resolved in January 1934, that something should be done about the situation. As a result, their Minister of Agriculture visited the United Kingdom. He recommended that, in order not to antagonize the British grower and also in order to improve grades, a Canadian Board of Control be enacted.

This could be done by federal and provincial legislation. The Board would be made up of growers and shippers.

These were the two coinciding events which brought the British Act to the fore.

One must recognize that it is obvious that the Canadian primary producers who advocated an Act embodying the principles of the British Act had not thought through the British Act. Two features of the Act limited its being transplanted to Canada.

Firstly, the English were not required to be aware of any jurisdictional problems which bedevil a federal system. While the British Act had a lengthy section outlining modifications necessary for the Act's application to Scotland, this was more of an administrative detail than part of a dual jurisdictional problem. Canada had already experienced the constitutional problem with Lawson v.

Interior Tree-Fruits and Vegetable Committee of Direction and Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Ltd. Australia, with essentially a similar constitution to that of Canada,⁶⁹ had also struggled with the problem of agriculture and trade in a federal system, vide, The Peanut Marketing Board v. Rockhampton Harbour Board, (1933) 48 C.L.R., 266 and James v. South Australia, (1927) 40 C.L.R., 1.

Secondly, the Agricultural Marketing Act had a thrust which was fundamentally different to what Canada

was seeking. As the Hon. Major Walter Elliott, Minister of Agriculture, said: "what the Marketing Bill says in a nutshell is this--we must organize the home market and the supplies to that market."⁷⁰ Great Britain was an importing country. It was trying to encourage the expansion of its domestic primary products. Canada, on the other hand, was an exporting country, considering the regulation of the unruly and uncoordinated growth of the export of its primary products.

It is apparent that the Canadian Minister of Agriculture was aware of these differences.

6.8 THE INTRODUCTION OF BILL 51

In January 1934, the Speech from the Throne invited Parliament "to consider legislation designed to facilitate the efficient and profitable marketing of livestock and agricultural products."⁷¹

Two months later Robert Weir moved that the House consider the resolution

that it is expedient to bring in a measure to improve the methods and practices of marketing of natural products in Canada and in export trade, and to provide for a dominion marketing board, the remuneration of the members thereof and of assistants and employees and to authorize payment to the board of such sums of money as may be necessary for the purpose of the proposed legislation.⁷²

The resolution became Bill 51: Marketing Act--Organization to Improve Methods and Practices in Marketing Natural Products.

It is useful to pause to recapitulate why the Bill was introduced.

From the Government's point of view, the Minister of Agriculture had been a proponent of such a concept since, at least, 1931. On the other hand, the Prime Minister and the Minister of Trade and Commerce originally opposed Weir. Yet by March 1934, when debate on the Bill began they had changed. Bennett, in fact, appears to have become an ardent defender of the concept of a compulsory board regulating the marketing of agricultural products. It is possible that, politically, they recognized support for a board. Support for the measure was abundant. The debate surrounding the 1932 Supply estimates for Agriculture was one indication of Parliamentary support. In May 1933, the Select Standing Committee on Agriculture and Colonization tabled the results of its investigation into the production, manufacturing and marketing of milk and milk products. It considered that producers were not receiving an equitable share of the money paid for milk by consumers. It advocated that tribunals should be set up vested with the authority to: settle differences between producers and distributor organizations; fix returns to the producers; and, fix the prices charged the consumer. The Regina and Toronto Conferences showed that a wide cross-section of producers wanted such a measure. The Ottawa Conference of the Canadian Chamber of Commerce considered that the rewards to agriculture

should be increased at least to equal the rewards of other industries.⁷³ The British Columbia fruit growers had conducted a telegram campaign in early 1933 requesting a measure similar to the British Act.⁷⁴ The Vernon News of British Columbia editorialized that "it had been demonstrated beyond dispute that correction of the marketing evils without legislation is so difficult of achievement that there is a general turning towards legal measures."⁷⁵ The Nova Scotia Fruit Growers Association, in December 1933, had resolved in favour of some form of federal marketing legislation embodying the principles of the British Act. A Nova Scotian newspaper, Kentville's Advertiser, claimed that the Bill had been sought by "horticultural, dairy, vegetable, meat, live-stock and agriculturalists of Canada for some time."⁷⁶ Ontario's Premier Henry had written to the Acting Prime Minister stating he was in favour of Stevens'-type marketing board for farm products.⁷⁷ Premier Brownlee of Alberta stated that "we advocated the establishment of a marketing board for farm products, other than for wheat, for the purpose of regulating the exportable surplus of such commodities as beef, pork, poultry, eggs and dairy products."⁷⁸ Academically, the Canadian Society of Agricultural Economics had held its Annual General Meeting to coincide with Regina's World Grain Conference. Many senior government agricultural economists were present. The Fifth Annual Meeting of the Canadian Political Science Association was held in Ottawa

also in May. The Association heard six papers on the control of marketing and the economic and social significance of the "back to the land" movement. In short, there was wide support for some sort of agricultural marketing board.

There were two basic and sequential reasons for the seeking of a marketing act.

On the one hand, the marketing practices of a minority of producers were taking unfair advantage of the majority. The majority was being robbed of the opportunity to market a fair proportion of its product on the more remunerative domestic market. They had to sell on the less remunerative and more unpredictable export market. On the other hand, the upsurge in economic nationalism from the late 1920s onwards contracted markets even more than what an unencumbered market structure would have. A central marketing authority was required to coordinate marketing activities and exert the necessary discipline required to optimize the limited opportunities. Federal legislation was required because the responsibility for interprovincial and export matters lay with the federal government, vide Lawson and Crystal Dairy.

6.9 BILL 51

The Bill was presented in two clearly delineated sections.

The first section concerned the Dominion Marketing Board which was to regulate and control the marketing of

natural products. The Board was to be able to delegate all or some of its powers to local boards. A local board was to be established only after a representative group of producers and other persons engaged in an activity petitioned the Lieutenant Governor in Council with a scheme to control the marketing of the product. The establishment of the Dominion Board and local boards was to preserve and make operational the separate powers of the federal and provincial legislatures. Local boards had the provincial authority to control the intraprovincial marketing of their product but, with delegated authority from the Dominion Board, they would also be able to control interprovincial and export movements. In order to exercise the powers pursuant to the Bill, a scheme had to have a good proportion of its product marketed either interprovincially or in export trade. In areas where organization was difficult or where speed was a critical factor to the successful operation of a proposed scheme, the Dominion Board could regulate the product directly, without a local board being established.

The Dominion Marketing Board was empowered to regulate or restrict imports which competed with a regulated product. Such power could be delegated to local boards. At both levels of jurisdiction, boards were empowered to control the time and place of marketing and the quality and quantity marketed. This included the prohibiting of the marketing of prescribed grades, quality and/or class of the

regulated product. The raising of funds and the compensation for certain, prescribed losses was provided for. All producers in an area under a local board's jurisdiction were required to register and obtain a license to market their products. Licenses were recoupable for infraction of board-imposed regulations.

The Dominion Board could not delegate to a local board power to fix prices, engage in the actual marketing of the regulated product or the control or regulation of production.

Part II related to the investigation of price spreads and other matters relating to the production and marketing of natural products. The Minister (the Bill did not specify which Minister) was empowered to appoint a committee to investigate all operations relating to marketing. The Committee had the final sanction of prosecuting any person found to have acted detrimental to the public.

Minister Weir saw three principles involved in the Bill. He considered it necessary to give producers, "to the extent indicated by their organizing powers,"⁷⁹ the control, regulation and marketing of their product. His premise was simple: "no-one understands the problem better than it is understood by the primary producers."⁸⁰ Secondly, it was considered that by placing the producer closer to the consumer, the producer would appreciate the need for producing high quality production in a planned manner.

Weir saw Bill 51 as a means of getting producers to realize the value of quality at first hand, without being forced to it by government inspectors. Thirdly, Weir considered his Bill enabled the primary producer to devote himself wholeheartedly to production, confident that the marketing operations were being conducted within certain limits.

The Bill was not referred to the Committee on Agriculture and Colonization. Weir argued that all members wished to discuss the Bill. To that end, he invited the House to comment. Eighty-five members responded to his invitation.

Debate centered on four main areas: the lack of precision in the Bill; the elements of compulsion; implied restriction on production and trade; and the devolution of parliamentary power. Subsequently, the Government made over ninety amendments to the Bill, albeit many of them being minor technical adjustments to a significant amendment. Weir accepted thirty-three such "significant" amendments.

It is inappropriate to consider all these amendments as Opposition inspired.

The Bennett Papers show that Bennett himself made a number of changes.⁸¹ In addition, both the Minister of Agriculture and the Prime Minister received a great number of critical comments from interested parties. For example, the Toronto Conference's National Marketing Committee stressed that it wanted the scheme to be grower financed,

not government financed.⁸² The Associated Growers said the Bill must have pooling and levy equalization provisions "otherwise legislation no value to fruit industry here."⁸³ Both representations were incorporated in the amended Bill.

The amendments clarified: the definition of natural product; the role of pooling; the sections relating to import and export restrictions; and, the section dealing with the use of consolidated revenue funds.

Weir pointed out that the problem with being specific was that such specificity may have tended to limit the type of product and type of marketing scheme which may be constituted pursuant to the Act. Weir wanted a degree of non-specificity so that every possibility for the fullest cooperation between the provinces and the Dominion could be brought about.⁸⁴

On the matter of compulsion, Weir would not be moved. One member, R. Gray, Liberal, Lambton West (Ontario), claimed that the Bill contained twenty-three specific directions of compulsion.⁸⁵ Weir responded by asking how does one get "orderly or controlled marketing without control or compulsion?"⁸⁶

The Bill was subject to two Divisions, both the result of amendments moved by the Leader of the Opposition, Mr. W. L. M. King. In both cases, the so-called C.C.F. group, i.e., United Farmers of Alberta, Manitoba Independent Labour Party and the Progressives, voted with the Government. They

also supported the Government on the Third Reading. Two Liberal members crossed the floor--William Motherwell, pursuant to his promise of 1932, and James Ilsley, who represented the Annapolis Valley in Nova Scotia. The Third Reading passed on 7 June 1934. On the motion of Mr. Weir, the House refused to accept a Senate Amendment to the Bill which would have prohibited wheat from being declared a regulated product. The motion was carried unanimously.

Nearly four months after it was introduced, Robert Weir's Bill became law. The Natural Products Marketing Act, 1934, constituted the Dominion Marketing Board. The operation of the Dominion Marketing Board shall be discussed in Chapter 7.

6.10 CONSTITUTIONAL ASPECTS

Debate on the Natural Products Marketing Act was not as concerned with the constitutional question as was debate on the 1927 Produce Marketing Act. There are two explanations for this. One concerns the current constitutional standards with regard to the duality of jurisdiction. The other relates to the provincial response. The existing state of constitutionality shall be discussed first.

When the Bill had been amended in mid-May, the division of authority between the Dominion and provincial bodies had been clarified. So carefully had this group of amendments been phrased that Prime Minister Bennett was able to assure the House that "the law officers of the Crown have gone over

every phrase of this with great particularity. As it now stands, in their opinion, the clauses are within the legislative competence of Parliament."⁸⁷ There were good reasons for Bennett's optimism.

Prior to the early 1930s, the marketing of natural products was seen as a provincial matter. However, subsequent to Lawson, Crystal and In re Grain Marketing Act 1931,⁸⁸ this view could be held to have changed. It was possible to argue that the marketing of natural products had grown to be a Dominion concern. This follows from the Privy Council's upholding of two of Bennett's attempts at "social reform". In In re Regulation and Control of Aeronautics in Canada⁸⁹ and In re Regulation and Control of Radio Communication in Canada⁹⁰ it was held that "the Dominion should pass legislation which should apply to all the dwellers in Canada."⁹¹ In the case of regulating for the marketing of natural products it may be that particular trades will be incidentally affected but the regulation proposed in the Natural Products Marketing Act is a true regulation of trade and commerce and as such comes within the powers of the Dominion Parliament.⁹²

Turning now to the second explanation, the provincial response.

On 24 March 1934, the Prime Minister telegraphed the nine premiers:

We are introducing a Bill creating a federal marketing board which will enable such board to cooperate with

and act as agent for any similar organization exercising provincial power (stop). Suggest that if you have no such legislation you should pass statute enabling provincial marketing board or similar organization to act as agent for and cooperate with federal marketing board or organization and particularly to act as agent for such board in transaction of interprovincial and export business.⁹³

It is apparent from the replies he received that, while generally favourably received, the proposed legislation was a surprise to the Premiers. Nevertheless, the speed at which the provinces complied with Bennett's request makes it apparent that all nine premiers were favourably disposed towards such an act. The Acts introduced by the provinces are listed below:

Alberta: "An Act to Supplement Legislation in Canada Relating to the Marketing of Natural Products and Providing for the Appointment of a Marketing Board," cited as The Alberta Natural Products Marketing Act, (S.A. 1934, c. 34), assented April 1934.

British Columbia: "An Act to Provide for the Marketing of Natural Products," cited as Natural Products Marketing (British Columbia) Act, (S.B.C. 1934, c. 38), assented March 1934.

Manitoba: "An Act Respecting the Marketing of Natural Products," cited as The Manitoba

Natural Products Marketing Act,

(S.M. 1934, c. 90), assented June 1934.

- New Brunswick: "An Act to Promote the Production, Marketing and Distribution of Natural Products," cited as The New Brunswick Marketing Act, (S.N.B. 1934, c. XIX), assented March 1934.
- Nova Scotia: "An Act to Amend Chapter 9, Acts of 1933 'The Nova Scotia Marketing Act, 1933'," (S.N.S. 1934, c. 58).
- Ontario: "An Act to Amend the Ontario Marketing Act, 1931," cited as The Ontario Marketing Act, 1934, (S.O. 1934, c. 38), assented April 1934.
- Prince Edward Island: "An Act Respecting the Marketing of Natural Products," cited as The Prince Edward Island Natural Marketing Act, (S.P.E.I. 1934, c. 17), assented April 1934.
- Quebec: "An Act to Aid the Putting into Effect, in this Province, of any Federal Act, - Having as Objects the Marketing of Natural Products of Canada, and of any Federal Act Respecting Bankruptcy as Regards Compromise Between Creditors and Debtors," (S.Q. 1934, c. 24), assented April 1934.

Saskatchewan: "An Act Respecting the Marketing of Natural Products," cited as The Natural Products Marketing Act, 1934, (S.S. 1934, c. 62), assented April 1934.

It will be noted that Nova Scotia and Ontario passed amending legislation, whereas the other provinces had to introduce legislation. Nova Scotia and Ontario had already provided for a provincial Marketing Board. Ontario's was the earliest. Constituted pursuant to "An Act to Provide Better Marketing Facilities for Agricultural Products," the Ontario Marketing Board's duties related only to the surveying of conditions, the collection and dissemination of data and the recommending of packaging, marketing and transporting techniques. The Nova Scotia Marketing Board had similar functions. The amending Acts made the two marketing boards regulatory boards as envisaged by the Natural Products Marketing Act.

It will also be noted that all the provincial Acts were assented to before the Dominion Act was finalized with the rejection of the Senate's proposed amendment, i.e., 28 June. More importantly, seven of the Acts were assented to prior to the Dominion Government's amended Bill 51 was tabled in mid-May. Thus, the provincial Acts were introduced without knowledge of the final Dominion Act. Consequently, the provincial Acts had both more general and more widespread powers than the Dominion Act. The Vancouver Daily

Province's comments on the Natural Products Marketing (British Columbia) Act was representative: "The Bill permits the provincial government to implement and put into effect the new federal marketing Act. Not knowing what this Act will contain, /the Minister of Agriculture/ said the government is taking wide powers to make sure that there will be no difficulty about enforcing controlled marketing in the province in the coming year . . . and /the provincial Act/ allows the provincial government to permit the Dominion Marketing Board to operate within provincial jurisdiction."⁹⁴

Thus, by 18 May 1934, when he made his confident remark of constitutional soundness, Prime Minister Bennett had on hand seven provincial Acts ensuring provincial cooperation. He was aware that the other two provinces had action in train. The fact that the provinces did respond to his telegrams of 24 March accounts for Bennett's confidence. The fact that they responded so quickly should account for the lack of debate on constitutionality.

6.11 COURT BATTLES

The federal General Elections in early October 1935 returned King's Liberals to office. The opposition of the Liberals towards the Act during its 1934 introduction continued once they were in office.

By the end of October, the Committee of the Privy Council had before it a report from the Minister of Justice which questioned the jurisdiction of Parliament in passing

the Natural Products Marketing Act and its 1935 Amendment Act. The Minister recommended that the following reference be made to the Supreme Court of Canada: Is the Natural Products Marketing Act 1934 as amended by the Natural Products Marketing Act Amendment Act 1935, or any particular provision thereof, and in what particular or particulars or to what extent, ultra vires, of the Parliament of Canada.

Counsel on behalf of the Dominion argued the case on two grounds: the legislation was competent under the general authority of making laws "for the peace, order and good government of Canada"; and, it was competent legislation pursuant to Section 91 of the British North America Act, i.e., the regulation of trade and commerce section. Argument was advanced with respect to the Aeronautics Reference wherein it was held that the Dominion possessed power to legislate in relation to matters "of national concern" which "affect the body politic of the Dominion."

The Supreme Court was not impressed. It was the unanimous opinion, delivered in June 1936, that the Act was ultra vires:⁹⁵

In effect, this statute attempts and indeed professes, to regulate in the provinces of Canada, by the instrumentality of a commission or commissions appointed under the authority of the statute, trade in individual commodities and classes of commodities. The powers of regulation vested in the commissions extend to external trade and matters connected therewith and to trade in matters of interprovincial concern, but also to trade which is entirely local and of purely local concern. Regulation of individual trades, or trades in individual commodities in this sweeping fashion, is not competent to the Parliament of Canada ...

Appeal, by special leave, from the Supreme Court's judgment was made to the Judicial Committee of the Privy Council in January 1938.

British Columbia, which sought the appeal, opposed Ontario, Quebec and New Brunswick as respondents. British Columbia advanced two arguments. Firstly, it considered that "there are really practical reasons why this legislation should be supported."⁹⁶ Secondly, the provincial Attorney-General argued that "if [the Privy Council] finds it necessary to construe the Act as invading the provincial fields, it should be declared invalid only so far as it trenches on provincial matters."⁹⁷ The thrust of the opposing argument was based on the Act's reading down section, that is, if one section of the Act is ultra vires then the whole Act is ultra vires.

The Privy Council recognized, in part at least, British Columbia's argument of good practical intent--"their Lordships appreciate the importance of the desired aim [of the Act]."⁹⁸ Nevertheless they continued:

Unless and until a change is made in the respective legislative functions of Dominion and Province, it may well be that satisfactory results for both can only be obtained by cooperation. But the legislation will have to be carefully framed, and will not be achieved by either party leaving its own sphere and encroaching upon that of the other. In the present case their Lordships are unable to support the Dominion legislation as it stands. They will, therefore, humbly advise His Majesty that this appeal should be dismissed.

Primary producers seeking orderly marketing legislation were in a dilemma. Scott puts it well: "Thus we

now [circa May 1937] have in Canada two examples of marketing legislation; the first a provincial Act in British Columbia which the Supreme Court threw out because it interfered with interprovincial trade and [the 1934 Act] which was thrown out because it interfered with local trade. The courts have in other words created a no-man's land in the constitution"99

A degree of constitutional clarity was achieved by 1938.

In 1936, in the last two days of the 1936 Legislative Assembly's Second Session, British Columbia introduced the Natural Products Marketing (British Columbia) Act Amendment Act 1936. Section 4(1) of the Act clearly spelt out the Act's intent: The purpose and intent of this Act shall . . . , be to provide for the effective regulation and control in any respect or in all respects of the marketing of natural products within the province. A year later the Act was further amended to even more specifically define its jurisdiction. Section 15 of the Natural Products Marketing (British Columbia) Act Amendment Act 1937 stated, inter alia: The purpose and intent of the legislation is to confine the provisions of the Act within the competence of the Legislature.

The preciseness of the drafting of the 1936 and 1937 British Columbia Acts was tested in 1938. As in the 1933 constitutional case of Crystal Dairy, the respondent was the Lower Mainland Dairy Products Board. This time, the Privy

Council held that the Act was intra vires in terms of "the pith and substance" test which was applied to the 1936 Reference.¹⁰⁰

Immediately following the Privy Council's ruling, the (then) Canadian Chamber of Agriculture recommended that all the provinces pass natural products marketing acts comparable to that of British Columbia. Unlike in 1934, the speed of the response was markedly varied:

Alberta	<u>The Marketing of Agricultural Products Act</u>	1955
British Columbia	<u>Natural Products Marketing (British Columbia) Act</u>	1936
Manitoba	<u>Natural Products Marketing Act</u>	1939
New Brunswick	<u>The Natural Products Act</u>	1937
Nova Scotia	<u>Natural Products Marketing Act</u>	1946
Ontario	<u>Farm Products Control Act</u>	1937
Prince Edward Island	<u>Agricultural Products Marketing Act</u>	1940
Quebec	<u>Agricultural Marketing Act</u>	1956
Saskatchewan	<u>Natural Products Marketing Act</u>	1945

Three years after it joined Confederation, Newfoundland, in 1952, enacted the Agricultural Marketing Act.

NOTES TO CHAPTER 6

1. Attorney-General to T. G. Norris, 27 July 1929, British Columbia Archives. Attorney-General Correspondence Letters Inward 1918-1937. Produce Marketing Act, Microfilm P302-1.
2. Shortly afterwards, the Department of Agriculture issued a formal statement. A copy of this was unable to be found.
3. Maclean's Magazine, 15 March 1921, p. 21.
4. J. L. Brown, Canada, House of Commons, Debates, 1931, p. 1069.
5. T. Donnelly, Canada, House of Commons, Debates, 1931, p. 1353.
6. R. Weir, Canada, House of Commons, Debates, 1931, p. 1360.
7. T. Donnelly, Canada, House of Commons, Debates, 1932, p. 3404.
8. T. Donnelly, ibid.
9. A. Speakman, Canada, House of Commons, Debates, 1932, pp. 3406-7.
10. R. Weir, Canada, House of Commons, Debates, 1931, p. 1356.
11. Maclean's Magazine, 15 November 1930.
12. Ibid., p. 19.
13. Ibid.
14. R. Weir, Canada, House of Commons, Debates, 1931, p. 1356.
15. Also called the Cooperative Live Stock Marketing Association. In 1931, the United Kingdom went off the gold standard. The Bennett Government withdrew the organizational grant which the Cooperative had been receiving. The grant had been instituted by Weir's immediate predecessor, William Motherwell. Without the grant, the Cooperative failed.

16. Strictly speaking, a dry shareholder is one who, while holding shares in a cooperative, does not actively participate in its activity, due to, say, cessation of farming. The term generally means one who only occasionally uses the cooperative in order to take temporary advantage of something.
17. H. C. Grant, "Developments in the Concept of Co-operation in Western Canada," The Canadian Journal of Economics and Political Science (August 1937). The article should be read with the companion article by H. Mitchell, "The Future of Co-operation in Canada," The Canadian Journal of Economics and Political Science (August 1937).
18. 50: Saskatchewan Wheat Pool 1924-1974 (Regina, Saskatchewan: Modern Press, May 1974).
19. See, W. P. Davisson, Pooling Wheat in Canada (Ottawa: Graphic Publishers, 1927), the chapter entitled "Aaron Sapiro," pp. 115-122.
20. The results of these attempts at the Federal level are detailed in Federal Agricultural Marketing and Price Legislation Canada 1930 to 1950 (Ottawa: Department of Agriculture, November 1950).
21. R. Weir, Canada, House of Commons, Debates, 1931, p. 2038.
22. Quoted by Vallance, Canada, House of Commons, Debates, 1932, p. 2807.
23. Bennett Papers, M951, 51649-51664.
24. From, A. G. Whitlam, "Marketing Organizations," Annals of the Academy of Political Science (November 1931). P. F. Brookes; "The Patterson Plan and Australian Butter Prices," Journal of Farm Economics (October 1928).
25. R. Weir, Canada, House of Commons, Debates, 1932, p. 2795. This term is the common name for the marketing legislation introduced by the Federal Government in 1972.
26. Weir, ibid.
27. Weir, ibid., p. 3400.
28. Weir, ibid., p. 2797.
29. R. Spotton, Canada, House of Commons, Debates, 1932, p. 2896.

30. Spotton, ibid; E. E. Perley, Canada, House of Commons, Debates, 1932, p. 2924.
31. Garland, Canada, House of Commons, Debates, 1932, p. 2897.
32. Lucas, Canada, House of Commons, Debates, 1932, p. 2920.
33. G. Nicholson, Canada, House of Commons, Debates, 1932, pp. 2925-2926.
34. Speakman, Canada, House of Commons, Debates, 1932, pp. 3406-3409.
35. W. Motherwell, Canada, House of Commons, Debates, 1932, pp. 2908-2909.
36. R. Spotton, Canada, House of Commons, Debates, 1932, p. 2895.
37. W. Irvine, Canada, House of Commons, Debates, 1932, p. 2933.
38. E. Young, Canada, House of Commons, Debates, 1932, p. 3053.
39. The Bennett Papers contain a number of replies by Bennett to various enquiries related to the marketing board concept which encompass the phrasing used in the text.
40. The document itself had no date or source on it. The date, of 8 June 1932, was pencilled in. Bennett Papers, M952, 52537-52539.
41. R. MacG. Dawson, "The Imperial Conference," The Canadian Journal of Economics and Political Science (February 1937):35.
42. T. W. Grindly, "Canada's Foreign Trade in Agricultural Products," Papers and Proceedings of the Canadian Political Science Association, 1932, p. 122.
43. C. B. Davidson, "Recent Legislation Affecting International Trade in Farm Products," Papers and Proceedings of the Canadian Political Science Association, 1932.
44. J. E. Lattimer, "The New Economic Nationalism and Canadian Agriculture," Papers and Proceedings of the Sixth Annual Meeting of the Canadian Political Science Association (May 1934).

45. Bennett Papers, M954, 54809.
46. Bennett to Weir, 20 February 1933.
47. Stevens to Bennett, 20 February 1933.
48. The Department of Agriculture, Ottawa, was not able to produce the Report. There is a copy of it in the Bennett Papers. From the chronological ordering of M952 the date of publication appears to be mid-1933.
49. A Report on The Agricultural Situation and Measures to Control the Production and Marketing of Farm Products. (Publication unknown), p. 8.
50. A. E. Fortington to Deputy Minister of Department of Trade and Commerce, 28 July 1933.
51. Summary of the Proceedings of Producers' Marketing Conference, Regina, 27-28 July 1933, R. H. MacDonald, President.
52. Stevens to Perley, 2 August 1933.
53. Stevens, ibid.
54. Bennett Papers, M952, 9 August 1933.
55. Findlayson to Bennett, 18 September 1933.
56. Golden Anniversary Address by the Minister of Primary Industries, Queensland, to the State's Council of Agriculture, February 1976. The Council was formed by MacGregor.
57. Daily Colonist (Victoria, British Columbia), 4 March 1927.
58. London Free Press (London, Ontario), 30 November 1933.
59. R. H. Milliken (Secretary of Committee) to Weir, 31 March 1934 and 13 April 1934.
60. G. S. Vinning, An Institutional Study of State Statutory Agricultural Marketing Authorities (Brisbane, Queensland: Department of Primary Industries, forthcoming).
61. J. G. Knapp, The Advance of American Cooperative Enterprises: 1920-1945 (Daneville, Illinois: The Interstate Printers and Publishers Inc., 1973).

62. Hops Marketing Scheme (1932); Scottish Milk Marketing Scheme (1933); Milk Marketing Scheme (1933); Aberdeen and District Milk Marketing Scheme (1933); Bacon Marketing Board (1933); Pigs Marketing Board (1933).
63. The Act's full title was: An Act to enable schemes to be made for regulating the marketing of agricultural products; to confer powers upon boards and other bodies to be constituted in connection with, or acting for purposes connected with such schemes; to establish agricultural marketing funds for the purpose of making loans thereout to the boards aforesaid; to encourage agricultural cooperation, research and education; and to provide for purposes connected with the matters aforesaid.
64. The full title was: An Act to provide for the better organization and development of the agricultural industry and of industries connected therewith by regulating the importation and sale of agricultural products and the production of secondary agricultural products; to amend the law with respect to the marketing of agricultural products; and to make further provisions in connection with the matters aforesaid.
65. See W. H. Jones, "The Agricultural Marketing Boards," in W. A. Robson, ed., Public Enterprise - Developments in Social Organization and Control in Great Britain (London: George Allen & Unwin Ltd., 1937). In his The Independent Regulatory Commissions, Robert Cushman relies almost verbatim upon Jones's account for Cushman's comments on British marketing boards.
66. Quoted by E. J. Garland, Canada, House of Commons, Debates, 1932, p. 2902.
67. Minister of Agriculture, quoted in P. Self and H. Storing, The State and the Farmer (London: George Allen and Unwin Ltd., 1962), p. 89.
68. Globe and Mail (Toronto, Ontario), 1 November 1933.
69. Australian Constitution: Section 51: The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to ... (1) trade and commerce with other countries, and among the states
British North America Act: Section 91: ... the exclusive Legislative Authority of the Parliament of Canada extends to ... (2) the Regulation of Trade and Commerce.

70. W. Elliott, "Agricultural Policy," Journal of the Ministry of Agriculture and Fisheries (April 1933):18.
71. Canada, House of Commons; Debates, 1934, p. 2.
72. R. Weir, Canada, House of Commons, Debates, 1934, p. 1498.
73. Bennett Papers, M1432, October 1933.
74. Ibid., M952, June 1933.
75. Undated, probably August 1933. Clipping in Natural Products Marketing Act Papers, National Archives, RG 17, Vol. 3341, file 1271.
76. Advertiser (Kentville, Nova Scotia), 5 April 1934.
77. Bennett Papers, M952, July 1933.
78. Recipient unknown, dated 3 February 1934. Letter held in British Columbia Clerk of the House Papers, 1936, Second Session.
79. R. Weir, Canada, House of Commons, Debates, 1934, p. 2205..
80. Weir, ibid.
81. Bennett Papers, undated, M1432, 476066-68.
82. Secretary of Committee to Bennett, 10 April 1934.
83. Hembling to Weir, 26 April 1934.
84. R. Weir, Canada, House of Commons, Debates, 1934, p. 3664.
85. R. Gray, Canada, House of Commons, Debates, 1934, p. 2906.
86. R. Weir, Canada, House of Commons, Debates, 1934, p. 2906.
87. R. Bennett, Canada, House of Commons, Debates, 1934, p. 3196.
88. In re Grain Marketing Act 1931 (1931) 2 W.W.R 146. The Act in question was Saskatchewan's The Grain Marketing Act 1931 (c. 87 S.S.). The Preamble of the Act read "whereas grain is the chief product of the province and given the unprecedentedly low prices and the obvious excess supply and whereas it is expedient to secure the marketing of grain cooperatively in an endeavour to

obtain wider markets for its sale and to assist in eliminating frequently recurring fluctuations in price" It was to be enacted that "all grain grown in Saskatchewan shall be delivered to (the Saskatchewan Grain Cooperative)".

89. In re Regulation and Control of Aeronautics in Canada (1932) A.C. 54.
90. In re Regulation and Control of Radio Communication in Canada (1932) A.C. 304.
91. From, J. R. H. Wilbur, "R. B. Bennett as a Reformer," The Canadian Historical Association, Historical Papers, 1969.
92. See, F. R. Scott, "The Privy Council and Mr. Bennett's New Deal Legislation," The Canadian Journal of Economics and Political Science (May 1937); T. G. Norris, "The Natural Products Marketing Act, Constitutional Validity," The Canadian Journal of Economics and Political Science (August 1935); B. Claxton, "Social Reform and the Constitution," The Canadian Journal of Economics and Political Science (August 1935); and J. R. H. Wilbur, "Bennett Administration," Canadian Historical Association Booklet No. 24.
93. Bennett Papers, M1402, 475860:
94. Vancouver Daily Province, 31 March 1934.
95. Reference to the Natural Products Marketing Act 1934 and its Amending Act 1935, (1936) S.C.R. 398.
96. Attorney-General for British Columbia vs. Attorney-General for Canada and Others, (1937) A.C. 377, at 378.
97. Supra, 379.
98. Supra, 389.
99. Scott, "Privy Council," p. 240.
100. Shannon v. Lower Mainland Dairy Products Board, (1938) A.C. 708.

CHAPTER 7

THE INTERIOR TREE-FRUIT AND VEGETABLE COMMITTEE OF DIRECTION AND THE DOMINION MARKETING BOARD

7.1 THE INTERIOR TREE-FRUIT AND VEGETABLE COMMITTEE OF DIRECTION

7.1.1 Period of Operation of Committee

The Interior Tree-Fruit and Vegetable Committee of Direction was constituted with the assenting of the Produce Marketing Act on 7 March 1927. The Government announced its appointment of the Chairman on 4 April 1927, and the Committee first met "a bare month before the first of the crop would move."¹

The Act stated that the Committee was constituted for only a year.

This early application of the sunset law concept derived from two sources. Firstly, the Kelowna Resolution (see Chapter 5) had requested the government to make a full inquiry into all the circumstances surrounding the marketing of British Columbia fruit with the view to recommending, at the end of the year, methods upon which the suggested plan may be improved. Secondly, concomitant with the growers' request, the Minister of Agriculture, E. D. Barrow, made it

clear throughout the Bill's passage that it was to be an experiment: "Although this Legislature has seen fit to limit the application of this Act to the marketing of the interior tree fruit and vegetables, it provides the opportunity of demonstrating to the public generally the economic advantages of market control, not only to the producer, but to the consumer as well. During the next Session of the Legislature, the general application of the principle can be considered in the light of a year's experience."² While there is no record of the government considering the experiment, some review must have occurred because the Act was significantly amended in 1928.

Immediately prior to the Committee's term effluxing, the British Columbia Fruit Growers Association (BCFGA) held its thirty-ninth Annual Convention. The Association fully endorsed the Committee:

Whereas the operations of the Interior Tree-Fruit and Vegetable Committee of Direction, by presenting fruit and vegetables under its control from being rolled unsold to Canadian markets and by generally assisting in stabilizing those markets and thereby increasing demand, has been the largest factor in the satisfactory distribution of the 1927 crop; And Whereas controlling the marketing of fruit and vegetables by means of licenses granted to shippers by a central licensing board provides a remedy for marketing difficulties which in the past seasons have prevented growers from receiving proper returns for products: Be It Resolved that this meeting express fullest confidence in the Committee of Direction and most urgently recommend that in the interests of the industry its existence be continued; And Further, that any amending legislation that may be necessary to secure the satisfactory marketing of our products be in keeping with the basic principles of the Produce Marketing Act.³

The Act and the Committee were to continue until the Supreme Court declared the Produce Marketing Act ultra vires in 1931. In April 1931 the affairs of the Committee were wound up.

7.1.2 British Columbia Growers' and Shippers' Federation

The Act provided for the Committee to consist of three members. Two were to be appointed by the British Columbia Growers' and Shippers' Association, with the third member, the Chairman, being appointed by the Lieutenant Governor in Council.

The Federation was a society incorporated pursuant to the province's Societies Act. It had been incorporated immediately after the Kelowna Conference. Although the organization was a growers' and shippers' one, within a year of its formation its Directors declared that the Federation "should be primarily concerned with the interests of the producers."⁴ Thus, while licensed shippers were eligible for membership, the Federation came to be dominated by the Associated Growers of British Columbia Limited. In 1928, it had about sixty-five members who controlled about 90 percent of the fruit tonnage and 50 percent of the vegetable in the area for which the Committee was constituted.

Besides appointing two of the three members of the Committee, the Federation played a dominant role in the Committee's life. It designated where the Committee's head

office was to be. It was to the Federation, not the Minister, that the Committee was obliged to make its annual report.. The Federation fixed the rate at which the Committee could strike a levy to defray the Committee's administrative expenses. The Committee was even responsible to the Federation for what it spent on promotion from the residues of the collected levies.

Despite these obligations of the Committee to the Federation, the Federation declared that "the Federation exists purely and simply as the body which makes nominations for two of the members of the Committee and through which the advice of shippers and growers may be given to the Committee."⁵ Nor was it a neutral body. Prior to the 1928 Convention of the British Columbia Fruit Growers Association, it circulated a report amongst the Federation's members urging support for the Committee.

In their 1930 Report of Directors of the British Columbia Growers' and Shippers' Federation, the Directors note their recommending to the Committee: that shippers should grant to members of the Western Canada Wholesale Jobbers Association special discounts; the minimum prices at which the Okanagan's largest onion crop should be sold; that, in order to stimulate onion buying, jobbers should be guaranteed against declines in prices and that special discounts be given to carlot purchases; and, that a cherry pool be formed.

Thus, from both a formal and an informal basis, the Federation was far from a membership nominating body.

7.1.3 Membership of Committee

The Federation made O. W. Hembling and A. J. Finch its appointees. Hembling's background in the marketing of fruit was extensive, he being Vice-President of Associated Growers at the time of his appointment. Little is known of Finch other than he was an Independent shipper. He and Hembling clashed on the Committee, giving rise to charges against the Committee of internal friction. Such clashes were only to be expected. The two appointees represented opposing philosophies. Hembling was from that part of the industry which advocated cooperation. Finch was an Independent. That the Committee was able to function at all appears to be the result of the modifying influence of its Chairman, F. M. Black, and his "energy, tact and patience."⁶

Francis Morrison Black was an unusual choice. He had served on the Alberta Utilities Commission, was a member of the Ottawa-based War Time Food Control Committee and had been treasurer of the United Grain Growers. The latter was the giant Prairie cooperative which dealt in grains and livestock. In 1922, he was appointed Treasurer in the newly formed government of the United Farmers of Manitoba. His political career was relatively short, as he resigned in 1924. He accepted the appointment as Chairman after he responded to an invitation to visit the west coast to

examine the situation. His appointment appeared to follow a considerable search by the provincial government.

Black's political background may have been a disadvantage. In 1931, Mr. W. Stanford Evans released the second Part of his Royal Commission Investigating the Fruit Industry. As noted in Chapter 5, the Evans Report was most critical of the Produce Marketing Act and its Committee of Direction. Evans is usually innocuously described as "economist of Winnipeg."⁷ It must be noted that Evans was leader of the Manitoba Conservative Opposition when Black was the Provincial Treasurer. This suggests that Evans' Report may not have been as neutral as it could have been.

On the other hand, Black's political background may have been of use. In December 1927, the Chairman of the Advisory Board on Tariff and Taxation, W. H. Moore, maintained that Black's Committee was "plainly attempting to refrain competition . . . to dictate to the growers . . . to dictate what the distribution should have and to regulate what is good for the consumer . . . [and] it is our duty so to report."⁸ The Board's report was to be made to the Registrar under the Combines Act. Black interviewed the Chairman. The result was the Chairman, F. A. McGregor, saw nothing in the Committee's operation to which he could take exception.

7.1.4 Powers of Committee

The following is a précis of the Committee's powers. The Committee could:

- (a) determine whether or not and at what time the product could be marketed;
- (b) fix the quantity and place to or from which the products could be marketed or delivered;
- (c) apportion the commodity to be marketed amongst shippers;
- (d) determine terms for sale and delivery;
- (e) set minimum and maximum prices;
- (f) require shippers to provide information regarding shipments;
- (g) inspect premises and books;
- (h) require all shippers to be licensed;
- (i) fix a levy in order to finance the operations of the Committee.

The reality of the use of power was far different from what the Act provided. As Chapter 5 detailed, the Okanagan Valley has a history of non-cooperating minorities. While an attempt was made to accommodate the minority by giving them membership on the Committee, i.e., A. J. Finch, this membership was really for the "organized" Independent growers. Beyond this minority was an even smaller group, the "unorganized" independents. The three groups indicated the likely response pattern towards any Committee directive. That is, any one directive would be: adhered to by the bulk of the shippers, i.e., Associated Growers Limited; probably adhered to by most of the Independents; and most

probably not adhered to by most of the unorganized independent shippers. The Committee simply lacked the physical resources to police its regulations within its prescribed area of operation. The Provincial Attorney-General's Department clearly eschewed any responsibility for policing the Act.⁹ Even the Evans Report held that the Committee only ever had partial control of the industry.

The Committee's inability to effectively use all its powers within the Okanagan Valley was nothing compared to its inability to apply its powers in the wider sphere. The Committee's preferred market was on the Prairies, where it competed with, basically, fruit and vegetables from Ontario, New Brunswick, Washington and Oregon. It also had no control over these competitors, the uncertain and less remunerative U.K. market, or the exports of Associated Growers to the United Kingdom. The Committee could not even control the imports into British Columbia from the United States.

It is likely, following MacPhee,¹⁰ that all the Committee could really do with its powers was distribute orders to shippers on a prorata basis.

Unfortunately for the Committee, Mr. Justice Duff failed to draw the distinction between what the Committee could do in reality and what it was legislatively entitled to do. Mr. Justice Duff was most critical, in Lawson v.

Interior Tree-Fruit and Vegetable Committee of Direction, of what the Committee could appear to do. It was on these grounds that he and his brother judges found the Act ultra vires.

The Supreme Court's findings on the legality of the powers of the Act merely confirmed what was suspected from the Act's beginning. As Chapter 5 showed, the Act was attacked virtually from the day of its proclamation. The Committee maintained that these attacks weakened its capacity to use its powers effectively.¹¹ However, the Committee's powers were given an overwhelming endorsement by Mr. Justice Murphy in 1928. In R. v. Chung Chuck, Mr. Justice Murphy held that the powers exercised by the Committee pursuant to the Produce Marketing Act served the "public interest" on four counts: with maximum prices being set, consumers were protected; with the market being prorated, shippers were protected; an arbitration mechanism was established for shippers' grievances; and, if prices and supply were not regulated, producers would be driven out of business, wages would be lowered, resulting in unemployment and labour unrest. In Murphy's view, "it must always be a question of circumstances whether a combination of . . . producers . . . in a particular trade is an evil from the public point of view."¹²

7.1.5 Operations of Committee

The Committee met most frequently. Its 1928 Interim Report of the Interior Committee of Direction noted that from the commencement of the 1928 season /May/ until the end of December it held 148 meetings. Nine of these meetings were joint meetings with the Directors of the British Columbia Growers' and Shippers' Federation. In 1929, eighteen such joint meetings were held. The Committee also held a number of meetings with the Department of Agriculture.

The Committee had six regional representatives. These representatives filed daily reports which served three functions: they kept track of non-Committee-directed fruit arriving onto the markets; they formed part of the total overall supply picture upon which the Committee operated; and, they helped settle disputes with regard to claims for quality compensation. As part of the second function, the representatives also supplied the Committee with data regarding competing prices, quantities and qualities. In this regard the Committee maintained close liaison with the Department's Markets Commissioner at Calgary.

The Committee required all shippers to be licensed, with the Committee having the power to suspend or cancel licenses for violations of the Act. Prairie jobbers and brokers sought to circumvent the efforts of the Committee

by establishing dummy licensees. The Committee responded by requiring licensees either to be the registered owners of the land upon which they conducted their business or be Provincial residents of at least six months standing.

The Committee issued licenses for nine varieties of fruit and ten vegetables. To help it in its deliberations the Committee, acting upon the advice of the Kamloops Vegetable Commodity Association, appointed an Advisory Committee.

The Committee's major attempt at marketing reform was in 1930. It was then that it insisted on compulsory price pooling. This meant that the returns were equalized for cooperative and independent fruit grower alike. The move effectively removed the power of making quotations and controlling distribution from the hands of the shippers.

The background to this move appears to have originated in the 1929 BCFGA Convention. Here, the president of Associated Growers stated that the Produce Marketing Act failed to provide for the equalization of the export burden. He argued that Associated Growers, with 50 to 60 percent of total production had exported between 70 and 75 percent of all exports. He sought to have the burden of exporting the surplus distributed amongst all growers.

While the Committee was empowered to set minimum prices it was not dogmatic about the prices it fixed. In one instance, it set the minimum price below the actual

cost of production, it being argued that this was the only way by which Okanagan fruit growers could compete with the United States' imports. On another occasion, within five weeks of it setting an opening price for peaches, it allowed them to be sold at "open prices", i.e., free from any Committee regulation. Pricing was a sensitive matter. The Committee was required to set prices "which would be fair to the producer, retailer and consumer." Despite the obvious contradictions in this obligation, the consumer was really the rule. During the Bill's passage, it was clear that agricultural producers were aware of their lack of monopoly power and the importance of the consumer.¹³ Coupled with this imprecise but nevertheless realistic ceiling, the threat of outside competition acted to keep prices down.

Mention should be made of two other techniques employed by the Committee. Firstly, for the very heavy potato crop of 1927, the Committee not only set minimum prices but also barred low-grade potatoes from the market. In 1929, it also barred six types of cherries from the market. Secondly, for declared varieties, all sales were made with six weeks' protection guaranteed. This was designed to eliminate claims to the breakdown of quality which tended to depress the market. While this undoubtedly gave confidence to the market, it also ensured that the growers' interests were protected.

7.1.6 Assessment of Committee

The practice of establishing success of marketing operations by reference to returns received by growers, while helpful, is not realistic. It will not be employed here. It is noted, however, that the British Columbia Department of Agriculture's Annual Report for 1927 implies that the Committee was responsible for increasing the prices received by growers, vide, 1924, \$1.34; 1925, \$1.40; 1926, \$1.30; and 1927, \$1.52, (prices per box). On the other hand, while the Report said that the Province's apple crop for 1927 was smaller than the previous crop, it failed to mention the short crop in the United States.

Undoubtedly, the Committee enjoyed its major success in its earliest years. For example, in 1927 the incident of "rollers", or unconsigned shipments, was practically eliminated. The elimination of this practice was held to benefit the grower, give confidence to shippers and buyers and stabilize the markets, all without any increase of price to the consumer.¹⁴

The Committee did poorly in its final year, i.e., the 1930 crop year. This, though, can be attributed to the poor selling year it experienced in the Depression affected Prairies, its most preferred market.

Stanford Evans criticized the Committee for adapting its control system around the form of marketing it found in

existence. He argued that this acted against the Committee from seeking new merchandising approaches.¹⁵ It must be pointed out, however, that the Act and its Committee evolved from the Kelowna Convention when it was understood that any radical attempts of change would not be acceptable to the various parties involved. The final Resolution was a compromise premised on the status quo.

Finally, the Committee sought to impose homogeneous marketing conditions upon an industry and region which had a propensity for heterogeneity. Climate and geography played havoc with the Committee's directives with respect to uniformity of price, variety, size, quantity and time of shipment. If the Committee made too many exemptions to its directives, it undermined its attempts at uniform marketing. On the other hand, if it failed to recognize local conditions, it unavoidably distributed benefits and disadvantages to differing groups.

7.1.8 Other Committees

Two other Committees of Direction were established pursuant to the Act. These were the Lower Mainland Potato Committee of Direction and the Berry Growers' Committee of Direction.

Lower Mainland Potato Growers Committee of Direction

Potatoes were the only crop in 1947 whose production (18,000 tons) exceeded that of the previous year (14,000 tons).

The Committee had ordered 'C' Grade potatoes off the market and fixed minimum prices for the other grades.

After much discussion by the Select Standing Committee on Agriculture, the Act was amended in 1928 empowering the Interior Committee of Direction to establish local committees. The Committee was obliged to give heed to local recommendations with respect to personnel of the Committee and its rules and regulations.

Upon the recommendation of the Fraser Valley Cooperative Growers Association, the Lower Mainland Potato Committee was established by August 1928.

The Lower Mainland Potato Committee appeared to have clashed with the Orientals¹⁶ and the Interior Committee.¹⁷ The former clashes are somewhat understandable in view of the professed anti-Oriental aim of the Produce Marketing Act, vide the Minister of Agriculture's statement that "The Marketing Act is designed, amongst other things, to restore the industry to the white man."¹⁸ It was the attempt by Chung Chuck to unlawfully market potatoes without the written permission of the Lower Mainland Potato Committee which eventually led to Mr. Justice Murphy's wholehearted support of the Act. It is more difficult to explain the clashes between the Interior Committee and the Potato Committee.

The Potato Committee issued Specific Regulation No. 1 in an attempt to control the movement of all potatoes. The

Regulation reads:

No potatoes of any class, variety, grade or size of the crop of the year 1928 received within that part of the mainland of the Province of British Columbia (as specified) are to be marketed without the written permission of the Mainland Potato Committee of Direction. Such permission, when given, will provide that all potatoes for marketing are to be delivered to or despatched from one of the following places, unless special permission in writing to do otherwise is granted by the Committee.

The Regulation specified New Westminster, two places in Vancouver and one in Victoria.

Berry Growers' Committee
of Direction

The British Columbia berry growers had been the recipients of government aid for a number of years. In 1924, the Berry Growers' Cooperative Union received a loan to finance fruit packing at its canning and jam plants in order to keep the fresh-fruit market returns to growers up.¹⁹

On 7 May 1928, an Order in Council established the Berry Growers' Committee of Direction "to control and regulate the marketing of strawberries, raspberries, loganberries and blackberries." The Order clearly defined the area from which berries were to be regulated. Like the Interior Committee, the Berry Committee had three members, two of whom were appointed by the growers.

The Berry Committee marketed through existing companies. It appeared successful in eliminating the consignment of rollers unsold. While the British Columbia Department of Agriculture's Annual Report for 1928 appeared

optimistic that the Committee would operate in 1929, there appears to be no record of it having done so.

7.2 DOMINION MARKETING BOARD

The Dominion Marketing Board differed from the Interior Tree-Fruit and Vegetable Committee of Direction in two basic ways.

To begin with, the Board was very much a departmental body. Unlike the Committee, all its members were appointed by the Governor in Council. As such, neither the Board nor its members were obliged to seek an annual vote of confidence from those directly affected by its determinations.

Secondly, the Dominion Marketing Board was very much a regulatory body whereas the Committee of Direction was more of a marketing authority. This difference influenced the method by which the Board operated.

7.2.1 Period of Operation

The Board was appointed in August 1934, a month after the Natural Products Marketing Act was given Royal Assent.

The Board had a hectic fifteen months of operation before the Act was referred to the Supreme Court in October 1935. Once the reference proceedings began, the Board's activities slowed considerably. It continued to supervise the activities of the fifteen existing schemes but suspended

the hearing of proposals for new schemes. The Privy Council's decision of ultra vires was released in January 1937.

The Dominion Marketing Board was dissolved by an Order in Council dated December 22, 1937.

7.2.2 Membership

During the debate on Bill 51, the Minister of Agriculture, R. Weir, had indicated that the members of the Dominion Marketing Board would be senior public servants. Despite a plethora of applications to Weir, the Minister of Trade and Commerce and the Prime Minister, the Government stuck to its aim.

The inaugural Chairman was Dr. G. H. S. Barton, Deputy Minister of the Dominion Department of Agriculture. Barton was a former Dean of Agriculture at MacDonald College, Montreal. He carried the twin responsibilities of Chairman of the Board and Deputy Minister of the Department from August 1934 to February 1935. Because of his workload, Weir replaced him as Board Chairman.

Barton's replacement as Chairman was Professor Archibald Leitch. Leitch's appointment was interesting in a number of ways. To begin with, he was not a public servant at the time of his appointment. Nevertheless, he had been a Superintendent of Live Stock and Dairy Farms, Ontario, as well as a professor at agricultural colleges in both Canada and the United States. When appointed, Professor

Leitch was President of Windham Plantations Limited, one of Ontario's largest tobacco plantations. Leitch was to retain his connections with Windham Plantations during his chairmanship. He had also been the Chairman of the Ontario Flue-Cured Tobacco Marketing Board. Leitch resigned as Chairman of the Dominion Marketing Board at the end of 1935.

There were four other members of the Board. Two were from the Department of Agriculture. They were Dr. J. F. Booth, a Commissioner and later Director of Economic Research, and Mr. A. Gosselin of the Agricultural Economics Branch. When Leitch resigned, Booth was appointed Acting Chairman.

The other two members were Dr. A. K. Eaton from the Department of Finance, and Mr. C. B. Davidson, the Assistant Chief, Agricultural Statistical Division of the Dominion Bureau of Statistics. When Davidson resigned to become the secretary of the newly created Canadian Wheat Board, he, like Leitch, was not replaced. Davidson and Booth had been members of the Interdepartmental Committee which produced A Report on the Agricultural Situation and Measures to Control the Production and Marketing of Farm Products.

The only inaugural appointment which was not that of a Canadian public servant, was the Secretary, Dr. W. C. Hopper. Hopper had resigned his recently appointed position of a Senior Agricultural Economist of the Bureau of Agricultural Economics, United States Department of Agriculture in order

to become Secretary of the Board. Prior to that, he had been a Marketing Specialist at Cornell University's Department of Agricultural Economics and Farm Management. At the time of his appointment to the Secretaryship, Hopper was involved in investigating schemes, both potential and actual, pursuant to the United States Agricultural Adjustment Act, 1933.²⁰ Hopper appeared to maintain his connections with the United States' schemes because he commented upon comparisons with the Canada Act and its Dominion Marketing Board, and the United States Act and its Agricultural Adjustment Administration.²¹ Hopper's appointment as Secretary of the Board was concomitant with his being appointed Chief of the Division of Marketing of the Department of Agriculture's Economics Branch.

7.2.3 Ethos of Board

Before examining the operations of the Board, it is necessary to consider aspects of the ethos pursuant to which the Board operated.

The purpose of the Act was to improve "the efficiency of marketing and for the purpose of assuring fair play between all those concerned."²² In "assuring fair play", "the Government did not propose to interfere in the business of agriculture or to provide Government agencies to supplant existing marketing agencies or to disrupt established methods of trade."²⁴ Instead of conducting business, the Government wanted to regulate it. Its actions with respect to the

business of agriculture were "not for the purpose of conducting it but to so regulate its conduct that those engaged in it will not find themselves insolvent, owing to operations over which it (sic) has no control."²⁵ Bennett was so committed to the concept of regulating existing businesses and not introducing new or supplanting old ones that he had rejected a Department of Justice draft agricultural marketing act which called for the setting up of an agency with sweeping powers which involved taking over "the business of agriculture."²⁶ In short, the Board was to represent the Government's intention of regulating existing businesses with the aim of ensuring fair play to all.

In order to operationalize this aim, the Board worked through local boards. That is, the local board administered the local marketing scheme, while the Dominion Marketing Board supervised the operations of the local boards. The local marketing schemes were expected to utilize existing trading establishments. In all, the Dominion Marketing Board supervised the operations of twenty-two local boards.

Secondly, the Act and the Board were not viewed as being a temporary emergency measure. In this regard, the Natural Products Marketing Act contrasts radically with the Agricultural Adjustment Act in the United States. At the time of the Canadian Act's introduction, there was a notion abroad that there were fundamental weaknesses in Canadian agricultural marketing. Dr. Booth, of the Department of

Agriculture and the Board, was one who subscribed to the notion.²⁷ It was considered that a lot of the international trade problems experienced in the 1930s could be traced back to just after the Great War. Deferred payments, reconstruction, the expansion of new areas, war induced tariff barriers and the ebbs and flows of international credit were all contributing factors to the current trade problems. The title of a 1934 paper by J. E. Lattimer epitomized the notion: "The New Economic Nationalism and Canadian Agriculture."²⁸ Drummond considered the problem was "prior to, and quite irrespective of the depression conditions."²⁹ Greater centralized coordination of exports was seen as one of the remedying actions. Thus, the Board was to attack the long-run issues of trade. This is not to deny that the Depression was of no influence in the forces which led to the Act. It is necessary, however, to emphasize that the Depression was not the sole force in the Board's creation. If it had been, it is likely that Stevens' 1933 draft of a National Farm Products Board administered pursuant to The Relief Act, 1933 would have been the Board's guiding principle.³⁰

Finally, a third aspect of the Board's ethos was that it was a regulator, not an initiator of schemes. It was left solely to the growers to initiate schemes. Weir stated that "the initiative in any scheme to regulate the

disposition and marketing of any product must be taken by the producers concerned."

It was the latter aspect which governed the early procedural aspects of the Board. Within a month of commencing activities, the Board issued its Guide to the Preparation of Marketing Schemes which it expected petitioning groups to abide by. There are instances of where the Board refused to consider proposed marketing schemes because they were held not to be presented pursuant to the Guide's outline.

In proposing a scheme, the petitioners had to enclose the petition, an outline of the proposed scheme in action, statistical information and the scheme itself.

The Board examined applications from three criteria.

Firstly, a petition was examined to ascertain its support amongst producers and with respect to the effect the proposal would have on consumers. The Board, in establishing these facts, used a number of techniques: public hearings; the questioning of petitioners, often repeatedly; the Board's personnel conducted local investigations; and polls were held. It is noted that the British Agricultural Marketing Act and the United States Agricultural Adjustment Act both formally provided for the representation of the consumer interest, i.e., Consumer Committees in Britain and Consumer Councils in the United States. In these countries, it was these two

bodies which analysed the possible impact of any proposed scheme upon consumers.

Secondly, proposals were examined with respect to ascertaining their impact upon a proposed importing country. Two features comprised this criteria: would the proposed scheme run counter to an existing trade agreement; and, would the proposed scheme result in reaction by the importing country against either the petitioned commodity or another Canadian export.

Finally, proposals were examined with respect to legality and relationship with other existing acts and regulations.

To help it establish the facts, the Board utilized the staff of the Dominion Department of Agriculture's Economic Branch. The 1935 Annual Report of the Dominion Department of Agriculture records that the Branch conducted specific research on nine applications, as well as conducted research and general services when required. One of the general services was to keep the Board informed, on an ongoing basis, of developments relating to policies of overseas countries which impinged upon Canadian exports.

In general, schemes were submitted by provisional local marketing boards rather than by producers themselves. Prior to this stage, the preliminary drafts of schemes were usually written by cooperatives. In fact, a number of the twenty-two schemes constituted pursuant to the Natural

Products Marketing Act had been preceded by some form of cooperative action. In Ontario, the Annual Reports of the Minister of Agriculture reveal the assistance given to those contemplating a scheme by the Ontario Marketing Board. Where there had been no prior organization, the preliminary drafting and organization was conducted by individuals. Given the part these individuals played in establishing the schemes, invariably they became members of the provisional local board and/or members of the eventual local board. This gave rise to the claim by those opposing the schemes that the leading individuals were more interested in self-aggrandizement than the advance of the industry's best interests. This claim was particularly evident with the proposed three Prairie poultry schemes.

7.2.4 Unsuccessful Applications

While accepting that the list below may not be complete, it records 35 enquiries for marketing schemes other than those finally approved by the Governor in Council.³¹

Alberta Livestock

Alberta Poultry

British Columbia Beef Cattle

British Columbia Egg and Poultry

British Columbia Deer

Canadian Furniture

Eastern Canada Potato Export

Manitoba Livestock

Manitoba Poultry

Manitoba Vegetables

Montreal Lumber

Ontario Fruit and Vegetables

Ontario Grapes

Ontario Honey

Ontario Cattle Export

Oyster Shell and Quartz Grit

New Brunswick Potato Starch

Prince Edward Island Livestock

Red Cedar Shingles (domestic)

Saskatchewan Livestock

Saskatchewan Poultry

South Essex Fruit and Vegetables

* * * * *

Ontario Swine Producers Association

Lethbridge Potato Growers

Canadian Florists and Gardners Association

Stouffville (Ontario) Turnip Growers

Newsprint

Lethbridge North Irrigation District Sugar Beet

Porcupine Plains (Saskatchewan) Cooperative Cord Wood
Marketing Association

Coal

British Columbia Celery

New Brunswick Pulpwood

Quebec Tobacco Growers

Wabaman Lake (Alberta) Fishermen

Marketing Scheme for beef, pork, mutton, poultry,
butter and eggs from the area served by the
Grand Trunk Pacific from Alberta Boundary to
Pacific Coast.

The proposed marketing schemes listed above the asterisks were serious enough to warrant some consideration from the Board. The proposed schemes below the asterisks did not proceed with any action once their original enquiry to either the Prime Minister, the Minister of Agriculture or the Dominion Marketing Board was answered.

The procedure was for the Board to examine the application with respect to the three basic criteria outlined above. If in the Board's opinion the proposed marketing scheme satisfied these criteria, it recommended the scheme to the Minister. The final step was then for the Minister to recommend the scheme to the Governor in Council.

The twenty-two schemes listed above the asterisks were rejected by the Board on four counts:

(1) Lack of sufficient support, even though a favourable vote may have recorded. The Act required the Minister to consider that the persons engaged in the production or marketing of the natural product "are sufficiently represented by the petitioners." He may require that a poll be held. If so, he had to state the required majority. The establishment of the degree of popular support for the Prairie

Livestock and the Prairie Poultry Schemes was the subject of much industry debate. The Poultry Schemes were approved in Saskatchewan and Alberta but not by what was considered sufficient support in Manitoba. As the three Prairie Poultry Schemes were interrelated, the Minister had decided by June 1935 not to proceed with any of the Schemes.³²

(ii) The proposed regulated product's principal market was in the province of production. The Act required "that the principal market for the natural product is outside the province of production." The British Columbia Egg and Poultry Scheme, the four Fruit and Vegetable Schemes and the Montreal Island Lumber Scheme were premised on predominantly intraprovincial trade.

(iii) The proposed regulated product was not a natural product as defined by the Act. Thus, the British Columbia Door Scheme and the Oyster Shell and Quartz Grit Schemes were rejected.

(iv) The proposed schemes were not considered expedient. The Board rejected on this criteria the New Brunswick Potato Starch Scheme, the British Columbia Beef Cattle Scheme, the South Essex Fruit and Vegetable Scheme and the Canadian Furniture Scheme. The Annual Report of the Board does not spell out what is meant by "expedient" nor is there any indication in the more detailed Dominion Marketing Board Papers. No indication is given as to why the Canadian

Furniture Scheme was rejected on the grounds of not being a prescribed natural product rather than on the grounds of lack of expediency.

7.2.5 Successful Applications

Following the recommendation of the Minister, the Governor in Council constituted twenty-two marketing schemes pursuant to the Natural Products Marketing Act. The schemes and their dates of approval are listed below.

British Columbia Tree Fruits Marketing Scheme	Aug. 25, 1934
Fruit Export Marketing Scheme	Sept. 8, 1934
British Columbia Red Cedar Shingle Export Scheme	Oct. 16, 1934
British Columbia Dry Salt Herring and Dry Salt Salmon Marketing Scheme	Oct. 22, 1934
Ontario Flue-Cured Tobacco Marketing Scheme	Oct. 26, 1934
Milk Marketing Scheme of the Lower Mainland of British Columbia	Jan. 1, 1935
Eastern Canada Potato Marketing Scheme	Jan. 18, 1935
Western Ontario Bean Marketing Scheme	Jan. 31, 1935
British Columbia Coast Vegetable Marketing Scheme	Mar. 4, 1935
British Columbia (Interior) Vegetable Marketing Scheme	Mar. 4, 1935
Canada Jam Marketing Scheme	Mar. 10, 1935
British Columbia Halibut Marketing Scheme	June 10, 1935
British Columbia Small Fruits and Rhubarb Marketing Scheme	June 10, 1935
British Columbia Hothouse Tomato and Cucumber Scheme	June 12, 1935

Ontario Cheese Patrons Marketing Scheme	June 25, 1935
Processed Berry Marketing Scheme	June 29, 1935
Dairy Products Marketing Equalization Scheme	July 20, 1935
British Columbia Sheep Breeders Marketing Scheme	Aug. 10, 1935
Nova Scotia Apple Marketing Scheme	Aug. 20, 1935
Grand Manon Smoked Herring Products Scheme	Aug. 20, 1935
Burley Tobacco Marketing Scheme	Aug. 31, 1935
Butter Export Stabilization Scheme	Sept. 18, 1935

Details of the schemes are given in the Appendix.

Four schemes were constituted pursuant to Section 9 of the Act. The Section provided that if the Minister considered that the lack of a local board was injuriously affecting trade and commerce of the particular product, he may recommend a scheme to the Governor in Council without first establishing grower support. The four schemes were:

British Columbia Red Cedar Shingle Export Scheme
 Processed Berry Marketing Scheme
 Dairy Products Marketing Equalization Scheme
 Butter Export Stabilization Scheme.

As the Appendix details, the background to each of the four schemes was typically a sudden awareness of a problem which, to some extent, could not have been anticipated. This was particularly true of the Red Cedar Shingle Export Scheme with its concomitant radically protective action proposed by President Roosevelt to protect U.S. domestic

producers. In a memorandum to the Deputy Minister of Agriculture, the Dominion Marketing Board claims that the Minister introduced the Processed Berry, Dairy Products, and Butter Export Schemes because they involved the expenditure of public funds.³³ However, the Board's Annual Reports indicate that expenditure of public funds was only involved in the latter two Schemes. The public money allocated for the Processed Berry Scheme appears not to have been used.

The other eighteen schemes were constituted following petitions by associations and cooperatives. Generally, these bodies were provincial in scope. Only six schemes can be seen as emanating from groups originating in two or more provinces, viz. Fruit Export, Eastern Canada Potato, Canada Jam, Processed Berry, Dairy Products Equalization and Butter Export Stabilization. However, in the case of Fruit Export, Canada Jam and Processed Berry, the constituency was nearly always the same, i.e., British Columbia, Ontario and the Maritimes. It is noted that the other two schemes with a Dominion-wide constituency involved the same general industry of dairying.

British Columbia made the most use of the Act. Thirteen schemes dealing with British Columbia products were constituted. Moreover, it was only in British Columbia that schemes were enacted originally pursuant solely to provincial legislation, i.e., Natural Products Marketing

(British Columbia) Act, 1934. It was only afterwards that the schemes were amended so as to be constituted pursuant to both the provincial and Dominion legislation. The constituting of a provincial local board pursuant to the Dominion Act merely empowered the local boards to impose tolls on the regulated product, pace Crystal, and to regulate the marketing of the products in interprovincial and export trade, pace Lawson. The province's willing acceptance to use the Dominion Act may be related to its previous orderly marketing experiments. Eight of the schemes involved products which had been regulated pursuant to the 1927 Produce Marketing Act. The Milk Marketing Scheme of the Lower Mainland appears to be a continuation of the Adjustment Committee which was constituted pursuant to the Dairy Products Sales Adjustment Act.

Ontario was the other province to make the greatest use of the Natural Products Marketing Act. Ten schemes involving provincial bodies were constituted but only four schemes were indigenous to Ontario, i.e., the two Tobacco Schemes, Western Ontario Beans and Ontario Cheese Patrons. Ontario's response to the Act is interesting. As late as August 1934, the provincial Minister of Agriculture was reported as being hesitant to proclaim the Ontario Marketing Act because he felt that the province "had a good voluntary plan in operation."³⁴ Yet, the province's Flue-Cured Tobacco Scheme was constituted two months later. It is

possible, however, that the change of heart may be related to the apparent success of the first two schemes constituted pursuant to the Dominion Act. These involved fruit, a significant Ontario industry. The success of the schemes would have been monitored by the Ontario Marketing Board. Moreover, the reconstituted provincial marketing board, appears to have been closely involved with the establishment of the Ontario schemes: "Leadership and advice, not only in writing the schemes involved (excepting the two Tobacco Boards) but also in the organization work necessary to obtain producer approval to what was being proposed, had been given to all of the schemes."³⁵

While the specific method of operation differed between local boards, all of them utilized the powers issued to Section 4 of the Natural Products Marketing Act:

to regulate the time and place at which and to designate the agency through which the regulated product shall be marketed, to determine the manner of distribution, the quantity and quality, grade or class of the regulated product that shall be marketed by any person at any time, and to prohibit the marketing of any of the regulated product of any grade, quality or class; and to require any or all persons engaged in the production or marketing of the regulated product to register their names, addresses and occupations with the Board, or to obtain a license from the Board, and such license shall be subject to cancellation by the Board for violation of any provision of this Act or regulation made thereunder.

The Dominion Marketing Board supervised the activities of the twenty-two schemes in two ways.

Firstly, it required a precise explanation of any scheme before it would recommend approval to the Minister.

Any areas of uncertainty which may have led to problems were clarified well before a scheme became operative. In this regard, it is noted that in the first nine months of operation, the Board received formal submissions relating to thirty-eight schemes, received sixty delegations and met on 141 occasions. For the twelve months ended March 31, 1936, the Board had 115 meetings and received thirty-five delegations. The meetings and delegations were independent of the work carried out on the Board's behalf by the Economics Branch of the Department of Agriculture.

Secondly, once a local board was activated, the Board received copies of all its minutes, orders and determinations. Marketing agencies associated with local boards were similarly required to forward to the Board all circulars and reports. In addition, the local boards were required to submit a monthly report supplying specific information.

The Board administered two schemes directly, to wit, the Dairy Products Marketing Equalization Scheme and the Butter Export Stabilization Scheme. The Board made payments of \$1,083,780 and \$73,781 respectively to the two Schemes. The Board was empowered to make grants to organizations involved in organizing local boards. For the period August 1934 to March 1936, it authorized payments to twenty-three organizations, totalling \$114,395. Of this, \$50,000 was for the three unsuccessful Prairie Provinces' Poultry Schemes. For the twenty months ending March 1936, the Dominion

Marketing Board claims its running costs totalled \$53,288, excluding the \$4,663 it estimates as the cost of administering the Dairy Equalization and Butter Export Stabilization Schemes.³⁶ In all, the direct cost to Canadian taxpayers for the operations of the Dominion Marketing Board was just over \$1.3 million.

7.2.6 Evaluation of Dominion Marketing Board

From a number of criteria, the Dominion Marketing Board achieved success.

For one thing, it achieved a more equitable distribution of income for primary producers whose production was regulated pursuant to the supervision of the Board. This it did by eliminating the free-rider problem, thus enabling the cooperators to internalize the externalities of the non-cooperators. The majority of the twenty-two schemes for which the Board recommended approval had been preceded by some form of voluntary cooperative measure which failed because of the free-rider problem. In recommending that the non-cooperators be compelled to abide by the wish of the majority, a more equitable distribution of income was achieved.

Secondly, most of the schemes supervised by the Board were able to eliminate unfair trading practices which adversely impinged upon the farmers. The most offensive practice was that of consignment selling.

Thirdly, the Board provided for improved export organizations by empowering the one organization to be responsible for exports. While the mechanics of the various schemes differed, at the base of each scheme was the local board. It provided the coordinating mechanisms which ensured that the export market was developed in an orderly manner. Some of the Board's successes in this regard are notable: the United Kingdom did not carry out to the fullest extent its threat of restricting Canadian imports because of the coordinating role played by the British Columbia Tree Fruit Marketing Scheme and the Fruit Export Marketing Scheme; the British Columbia Red Cedar Shingle Export Scheme provided the mechanism by which to overcome the very real threat of the United States authorities to effectively cut-off red cedar shingle exports; and, the Butter Export Stabilization Scheme was able to regulate exports so as to optimize a potential in the United Kingdom butter market. Domestically, the Board did improve local market efficiency by the same technique of approving that the one organization be responsible for marketing. The result was it prevented some centers from being oversupplied and others starved of supplies.

On the other hand, the Board was associated with one significant failure, the Canada Jam Marketing Scheme. As the Appendix details, the Scheme sought to stabilize and raise the prices of jams, jellies and marmalades in order to improve the returns to the producers of small fruits. The

Scheme failed because the Canada Jam Marketing Board raised prices to the extent that jam consumers switched to alternatives. The Dominion Marketing Board was supposed to prevent the undue enhancement of price. Since it was supposed to thoroughly evaluate any proposed scheme from the perspective of impact upon the consumer and it received monthly reports from the local board and reports from the local board's marketing agent, it is advanced that the Dominion Marketing Board failed in this case.

Another criterion for evaluating the Dominion Marketing Board is its success in curtailing exports as a means of helping to stabilize the local market. The Board used its powers, pursuant to Section 12 of the Act, to restrict the export on a product just the once. On August 23, 1934, the Board had the export of hay, straw and fodder restricted. It adopted this action because there was a shortage of these products within Canada and export speculation was rife. The requirement that exporters be licensed was rescinded when the domestic markets' needs were held to be satisfied at the end of January 1935. A case history of one makes it difficult to judge performance.

However, any assessment of the Dominion Marketing Board must bear four things in mind.

Firstly, the Board was not as path-breaking in its innovation as was the Committee of Direction. Weir claimed that the Act was "an entirely new type of legislation" and

the Board "had no precedents to go by."³⁷ This is incorrect. In Chapter 6, it was shown that when the Dominion Marketing Board commenced, there was a total of forty agricultural marketing boards that existed in Australia, the United Kingdom and the United States. It is noted that in August 1934, the Agricultural Adjustment Administration wrote to the Dominion Marketing Board: "Naturally, we of the Adjustment Office are interested in what the brethren of Canada are doing along similar lines." Barton responded that "we are much interested in your activities in the U.S. and would be glad to exchange information."³⁸ Weir's statement ignores the four organizations constituted pursuant to the British Columbia Legislation of 1927 and 1929. Weir might have contended that all these organizations were grower marketing bodies, not government-based regulatory bodies. Even then, the Dominion Government could draw upon the example of the Prairie Public Utility Boards which regulated milk. These bodies were outlined in Chapter 3.

Secondly, the Board did not have to directly consider those whose fortunes it influenced. As public servants, the Board members were assured security. Moreover, given the mechanics of the Westminster parliamentary system, it was the Minister of Agriculture who bore the brunt of public criticism. Finally, the administration of the Act was not subjected to the daily barrage of attacks as was the 1927 Produce Marketing Act. The Royal Canadian Mounted Police

did report that some West Coast Chinese were prepared to "retaliate with violence" to what they saw as discrimination designed to prevent their selling their produce in Vancouver. However, the Board could dismiss this as a local problem for the local board, i.e., British Columbia Coast Vegetable Marketing Board. In short, the Dominion Marketing Board could be viewed as being under little immediate pressure, certainly less than the Interior Tree-Fruit and Vegetable Committee of Direction, and the Dairy Sales Adjustment Committee. As such, the Dominion Marketing Board should be evaluated from somewhat strict criteria.

Thirdly, any evaluation of the Board, in view of the performance of the local boards, must recognize that while it was the Board which approved and supervised the various schemes, it only did so pursuant to what the Natural Products Marketing Act permitted. Thus, while the Board was associated with schemes which achieved a more equitable distribution of income for farmers and improved export and domestic marketing efficiency, it was the Act which really enabled local boards to achieve these successes. The permissible nature of the Act tends to rob the Board of being associated with successes but accentuates its being associated with failure. Nevertheless, the Board was required to recommend approval for proposed schemes. It did reject twenty-two schemes and of the twenty-two schemes

whose approval it did recommend, only one of these could really be held to be a failure.

Finally, from October 1935 until its abolition, the Board was inactive. It approved no new schemes and merely continued to supervise the activities of the fifteen operative Schemes. It appeared to make little effort to provide equivalent relief for farmers pursuant to other acts administered by the Dominion Department of Agriculture. However, it must be borne in mind that while the Natural Products Marketing Act Reference was being heard, there was little it could do. Secondly, the Board was cognizant of the fact that one of the first measures introduced by Prime Minister King in October 1935 was to question the validity of the Act. King was against the Act and, by implication, any similar measure. Any attempts by the Board to continue the spirit of the Act would have been opposed by King.

NOTES TO CHAPTER 7

1. British Columbia Growers' and Shippers' Federation, Circular to all Members, 9 January 1928.
2. E. D. Barrow, quoted in The Canadian Annual Review of Public Affairs, 1926-27 (Toronto: The Canadian Review Company Limited, 1927), p. 478.
3. British Columbia, Attorney-General, Correspondence, Letters Inwards, 1918-37, Produce Marketing Act (British Columbia Provincial Archives, Victoria, British Columbia, microfilm P-302).
4. British Columbia Growers' and Shippers' Federation, Circular, Kelowna, British Columbia, 9 January 1928.
5. Ibid.
6. Ibid.
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8. Globe (Toronto, Ontario), 10 December 1927.
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11. See, British Columbia, Attorney-General, Correspondence Letters, Letters Inwards, 27 July 1929.
12. R.V. Chung Chuck, (1928) 3 W.W.R. 129 at p. 135.

13. See Chapter 5, footnote 52.
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16. See, British Columbia, Attorney-General, Correspondence, Letters Inward, 11 July 1929.
17. See, Interim Report.
18. Barrow, Victoria Times Daily (Victoria, British Columbia), 4 February 1927.
19. British Columbia, Department of Agriculture, Annual Report, 1924.
20. See his Personal Correspondence, in the Natural Products Marketing Act File, R.G. 17, Volume 3341, File 1271, National Archives, Ottawa.
21. W. C. Hopper, "The Regulation of the Marketing of Fruits and Other Natural Products in Canada," Journal of Political Economy (May 1935). (The same issue contained five articles on the Agricultural Adjustment Act, three specifically on marketing agreements.) W. C. Hopper, "An Appraisal of the Programme Initiated under the Agricultural Adjustment Act in the United States," Proceedings of the Sixth Annual Meeting of the Canadian Society of Agricultural Economics, 1934.
22. Barton, July 30, 1934, in reply to a letter from a teacher seeking information about the Act and the Board for a secondary school economics textbook he was writing.
23. Memorandum "Secret and Confidential", March 13, 1934, no author. Bennett Papers, M1432.
24. Barton, July 30, 1934, see f.n. 3 above.
25. Bennett to Rowlings Ltd., Halifax, April 15, 1934.
26. Memorandum, March 13, 1934, see f.n. 4. Bennett saw a sequential link with the Justice draft--it would require

the control of marketing, then the control of prices, then control of the cost of production to finally control all aspects of agriculture. The draft was rejected both because of the principle and because of the potential cost involved.

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28. J. E. Lattimer, "The New Economic Nationalism and Canadian Agriculture," Proceedings of the Sixth Annual Meeting of the Canadian Political Science Association, 1934.
29. W. M. Drummond, "Discussion on Marketing Legislation," C.S.T.A. Review 2 (September 1934):78.
30. See notes to Chapter 6, f.n. 54.
31. An enquiry relating to a marketing scheme was considered as any letter, preferably on letter head stationary, backed by a motion from an association, cooperative or group of any kind to either the Prime Minister, the Minister of Agriculture or the Dominion Marketing Board. Sources: Bennett Papers and Natural Products Marketing Act File, Volumes 3338-3341.
32. "The Dominion Marketing Board and the Important Work it has Done," three-page statement released by the Minister of Agriculture, R. Weir, June 12, 1935, Ottawa.
33. Memorandum, Dominion Marketing Board to Deputy Minister, December 16, 1935.
34. Toronto Star (Toronto, Ontario), August 9, 1934.
35. Report of the Minister of Agriculture (Ontario) 1936, p. 107.
36. Dominion Marketing Board, Annual Reports.
37. Weir, "The Dominion Marketing Board," see f.n. 13.
38. See, Dominion Marketing Board Papers, U.S.D.A. Agriculture Adjustment Administration to Board, August 3, 1934 and Board to A.A.A., August 9, 1934.

CHAPTER 8

SUMMARY AND CONCLUSION

To begin a denouement of the preceding six chapters, one needs to start with the genesis of this paper, marketing boards.

From Hiscocks,¹ the University of Guelph's A Comparative Study of Agricultural Marketing Legislation in Canada, Australia, United Kingdom and the United States,² Rizvi,³ and Veeman,⁴ one may define a marketing board as a producer body set up under government legislation to which are assigned various legal powers of compulsion over production, powers which may extend to include those who handle and manufacture primary and processed agricultural commodities.

Three groups of reasons are generally given to account for the introduction of marketing boards.

One group concerns the countervailing balance notion.

Agriculture as a whole is typified by the pure competition criteria of a large number of producers, none of whom can influence the price. On the other hand these price takers sell to only a few large buyers. It is held that agricultural producers should be given equal bargaining strength. The marketing board institution provides such an

equalizing force. Moreover, since all producers of a product are held to benefit from the actions of a marketing board acting as a single desk seller then all producers should cooperate. This is the raison d'être of the compulsion aspects typically associated with a marketing board.

A second group of reasons refer to the peculiarities of agriculture.

Agriculture has experienced a gradual evolution of satiated demand and thus faces the problem of inelastic response of demand to price changes. Moreover, much of agricultural production is of a lagged nature, making all but long run supply responses virtually unobtainable. On the other hand, agriculture can experience radical variations in production due to the exogenous factors of weather and pestilence. Thus, agriculturalists face the twin problems of inelastic responses of demand and supply to price changes. They face uncertain, albeit widely fluctuating, income prospects. By placing the marketing of a particular commodity in the hands of a marketing board, greater control over the supply situation is anticipated: in periods of excess supply, a marketing board may remove produce from the market; in periods of short fall, the stored produce is used to meet demand.

Finally, there is the consideration that individual agricultural producers should join together in order to acquire certain attributes of big business. Under this

rubric come the advantages of reducing the cost of marketing, improving both the demand and distribution of the product by more systematic development of the market, standardizing the product and achieving economies of large-scale purchases of farm supplies. It is held that equally the consumer benefits with the introduction of a marketing board. A "big business" marketing board ensures a more overall even supply to the market, improved and uniform quality and an educational program aimed at the retailer to ensure better produce handling.

Many of the above reasons appear to aptly describe why marketing boards were introduced in Canada. To illustrate: the imbalance between many sellers and few buyers is evidenced by Mitchell⁵ and the Agricultural Economics Research Council;⁶ Canada's geographic positioning significantly north of the Tropic of Cancer accentuates the problem of susceptibility to weather; and, the generally long distances its agricultural production areas are from meaningful market centers induced its agriculturalists to seek the efficiencies of big business.

It must be noted from the above that the imperatives for the introduction of agriculture derive from the physical characteristics of agriculture. This has been the thrust of, for example, Turner,⁷ Perkin,⁸ Farrell⁹ and Kidd.¹⁰ An excellent and typical example of the genre is Hiscocks' "Theory and Evolution of Agricultural Market Regulation in

Canada."¹¹ Hiscocks lists twelve, basically economic, "characteristics of agriculture that justify this [marketing board] type of government action."¹²

This dissertation dismisses as invalid any attempt to explain the introduction of the regulation of agricultural marketing in terms of economic characteristics. The dismissal is on two grounds.

Firstly, as Chapter 2 has analysed, agriculture does not possess the characteristics which normally accompany the reasoning behind the introduction of regulation pursuant to the notion of market failure. Moreover, the chapter illustrated the case of milk, the one exception to the above statement. However, the chapter also showed that when the state first successfully provided for the regulation of the marketing of milk in Canada, it did through what Chapter 4 termed as the "third-party" regulatory mode, not self-regulating marketing boards. Chapter 5 detailed the unsuccessful attempts of British Columbia milk producers to secure self-regulation.

Secondly, Chapter 2 showed that at the root of state intervention was the notion that the state perceived that market failure was adversely affecting the public interest.

The details of the introduction of the 1927 Produce Marketing Act and the 1934 Natural Products Marketing Act, provided by Chapters 5 and 6, clearly show that the two governments had

no such perception. Regulation was actively sought by agricultural producers. To gloss over the details provided in Chapters 5 and 6 is to misinterpret the introduction of the regulation of agriculture.

This paper accepts that writers such as Clement,¹³ Ormsby,¹⁴ Perkin, Farrell and Hiscocks have noted the request for marketing regulation in their analysis of the 1927 and 1934 Acts, to wit: "the demand for regulation of competition grew and resulted in the passing of the 1927 Act" (Clement); "with falling prices and increased distress in the fruit growing districts, the Provincial Government attempted to remedy conditions by passing the 1927 Act" (Ormsby); "Canadian agriculture supported the passage of the 1934 Act" (Perkin, Farrell);¹⁵ "the British Columbia and Dominion governments must have decided that there was strength and validity in the claims of producers" (Hiscocks). However, a reading of the above authors' full accounts leaves one with the understanding that the only linkage between the perceived needs of agriculture so mutely articulated and the introduction of the remedying regulation is an omnipotent and paternalistic government.

The attempts to link market failure in agriculture with the need for countervailing power as articulated by marketing boards is also dismissed. Little in the public interest theories of market failure, as outlined by Chapter 2, indicate a need for countervailing power. It is contended

that the analysis of Chapter 3 shows that countervailing power should be viewed from the perspective of attempts to internalize the externalities consumed by free-riders with the creation of the public good "cooperative marketing." It is further contended that Chapter 3's explanation answers two questions which the market failure school of countervailing power fail to come to grips with. That is, if agriculture requires government sanctioned countervailing power, why do some sectors of agriculture have it and not others? And, if the state intervenes to provide agriculture with countervailing power to offset monopsonies and oligopsonies, why are equivalent powers granted not granted to, say, those seeking employment in one employer "company towns"? Pursuant to the analysis of Chapter 3 and the details provided by Chapters 5 and 6, this paper argues that particular producers were granted their 1927 Act and their 1934 Act because, firstly, they sought the powers and, secondly, they were able to influence the state in the granting of those powers.

In short, this paper dismisses any attempt to explain the introduction of the 1927 Produce Marketing Act and the 1934 Dominion Marketing Act in terms of market failure. It contends that the introduction of the two Acts detailed in Chapters 5 and 6 must be seen in terms of the self-interest motivation of the producers. (The self-interest of the government shall be discussed below.)

What remains to be discussed is why did the governments respond in the ways that they did. Chapter 7 detailed the responses. For British Columbia's 1927 Act, the chapter outlines the Interior Tree-Fruit and Vegetable Committee of Direction. This body must be considered as being self-regulatory, notwithstanding the presence of the government-appointed chairman. This is claimed in view of the role of the British Columbia Growers' and Shippers' Association. The Dominion's response was to provide for a Dominion Marketing Board. Chapter 7 shows that this body must be viewed as being of the third-party regulatory mode.

Chapter 4 detailed the schema of Salisbury and Heinz which outlines why self-regulatory policies may be introduced. This paper argues that their schema provides a good explanation as to the differing regulatory modes introduced by the two governments. British Columbia shall be discussed first.

Salisbury and Heinz's analysis examined the demand for public policies and the decisional system which supplies them. Chapter 5 shows that the demand for public policy was, in Salisbury and Heinz's terminology, "highly integrated." The group making the demand was the precise constituency of fruit growers from the Okanagan Valley. The public policy demanded was equally precise: the Kelowna Resolution called for legislation similar to that which provided for the Queensland, Australia, Committee of Direction. On the other

hand, in no sense can the Liberal government of Premier John Oliver be seen as being as equally integrated.

The 1924 provincial elections had seen the Liberals emerge victorious but "worn and tattered."¹⁶ As their term progressed, the Liberals "did little, either in the first or subsequent sessions, to dispel the prevailing impression that the government lacked direction and reacted rather than acted. The premier, whose personal health was not good, led a regime which suffered from acute political anemia."¹⁷ Attacks upon the government were legion: there were allegations of illegal campaign contributions by the brewers; the Liquor Board was accused of corruption; the Timber Royalties Act was linked to corruption within the Timber Industries Council; the Sumas Reclamation Scheme was accused of corruption; and, the Pacific Great Eastern Railway headache just never went away. There were Royal Commissions, Judicial Inquiries and Select Committee Inquiries. While Oliver's Liberals may have been officially exonerated, the mere airing of the issues dimmed the Liberals' prestige. The party's image was further damaged when, despite its active involvement, the 1926 Federal elections resulted in nearly a complete rout of the Liberals in favour of the Conservatives. Moreover, Oliver's party had lost one by-election and barely won another in the Okanagan Valley. Little wonder then that Oliver noted in his Personal Diary and Notebook on 17 December 1926 that "a long discussion

took place re the political situation in North Okanagan." Oliver was aware that the British Columbia Fruit Growers Association had flirted with the United Farmers of British Columbia. The proposed amalgamation of 1919 never came about. Moreover, the 1923 organizing drive of Aaron Sapiro, outlined in Chapter 5, had contrasted sharply with the poor leadership of the United Farmers. While the United Farmers may have no longer provided a threat, Oliver was aware of the voting strength farmers gave to the Provincial Party in the 1924 elections. The Party may have won only three seats but its total vote must have been viewed as being impressive. Given the bias in the distribution of seats in the Legislative Assembly, Oliver was aware of the voting power of the farmers. Ormsby claims that Oliver had enacted in the interest of the farmer legislation with respect to a railway policy, a land settlement scheme and a reclamation project.¹⁸

In acceding to the wishes of the Okanagan growers, Oliver could accomplish two things. He could forestall the emergence of a third political party and in general strengthen the sagging fortunes of his own Liberals. Secondly, he could then free himself and his government for other issues such as the Oriental question, the P.G.E. Railway, the Railways Land Commission, the forthcoming 1927 Convention.

Embattled, Oliver gave the farmers what they wanted. Their demand of a Queensland-like Committee of Direction had two appeals to Oliver. Firstly, it did not require the

expenditure of any government monies and secondly, it did not require the addition of any new public servants. The result was the self-regulating Committee of Direction.

The demand pattern for the 1934 Dominion agricultural marketing legislation was not so integrated. The Toronto and Regina Conferences had requested an act similar to that of Great Britain's 1933 Agricultural Marketing Act. Nevertheless, Chapter 6 also showed that the legislature, the Prime Minister and the Minister of Trade and Commerce advocated regulation comparable to Australia's Patterson Plan. While the policy outcomes of both demands involved a marketing board arrangement, there were enough divergences in the demands so as to not consider them as being as integrated as the policy demanded by the Okanagan Valley fruit growers. Again, the actual demanding sector was not as integrated. The Bennett administration received precise demands from two groups--the country's fruit growers and its dairy industry. As Chapter 6 shows, other segments of Canadian agriculture were not so uniform in their demands. Little, for example, was heard from any livestock producer groups. The Bennett administration could have viewed demand for legislation to regulate agricultural marketing as coming merely from the two groups--fruit growers and dairy producers.

On the decisional pattern side, the Conservative government of Prime Minister Bennett could be held to be more firmly in control than that of John Oliver. Salisbury

and Heinz make the point that a fragmented decisional system can occur when the courts continually strike down the legislation of a government. In Bennett's case, Chapter 6 details how the courts in Re Radio and Re Aeronautics had upheld the first two "New Deal" acts proposed by Bennett. The impression of an integrated decisional system is confirmed when one considers the provincial response to Bennett's suggestion of complementary legislation for the Dominion's proposed marketing act. Finally, unlike John Oliver, Bennett's Conservatives had clearly won the 1930 general election, gaining forty odd seats and, unlike the previous government of Mackenzie King, governed with a clear majority.

However, this paper does not wish to give the impression that Bennett bestrode Canada. At the time of the Natural Products Marketing Act's drafting, Canada was in its third year of the Depression. Bennett's 1930 election campaign slogan of "blasting into world markets" had returned to haunt him. His labour camps were turning into a failure and the unemployed were growing in numbers and desperation. Bennett must have realized the attraction to the unemployed of the socialist doctrines of the newly formed Cooperative Commonwealth Federation. Wilbur claims that Mackenzie King upstaged Bennett at every turn.¹⁹ Bennett needed a measure to maintain the support of a good segment of the rural producers.

In terms of the analysis of Salisbury and Heinz the Natural Products Marketing Act can be seen as the outcome of a fairly integrated demand system and a fairly integrated decisional system. The policy output reflects this combination: at the local level, the specific marketing schemes were administered by self-regulating boards but, at the Dominion level, these boards were tightly controlled by a third-party regulatory mode.

Three other factors bear upon the policy outcome.

To begin with, in general terms, the Bennett administration was familiar with the third-party regulatory mode. In 1933, the time of the drafting of the Act, there were, for example, the Radio Broadcasting Commission, Soldier Settlement Board, Tariff Board, the public harbour boards and the Board of Transport Commissioners. More specifically, for the regulation of the marketing of agricultural products, the Bennett administration could draw upon the experience of the Prairie public utilities which regulated milk (Chapter 2), and the United States Agricultural Adjustment Administration (Chapter 6). Bennett's capacity to draw upon the experience of a number of third-party regulatory modes contrasted with that of the Oliver administration which had little experience other than with the self-regulatory mode.

Another influence would be that of costs. By using existing public servants, the Act could be administered at

no extra cost. By requiring the local boards to be self-financing, there would be no burden upon the Dominion purse, but, at the same time, the somewhat integrated grower demand for British-style local marketing boards could be met. As Chapter 7 details, although Bennett was not to know it then, the entire scheme would cost only \$2 million in its sixteen months of operations. This is in radical contrast to the hundreds of millions spent by Roosevelt on the adjustment part of the Agricultural Adjustment Administration.

Finally, Bennett could not fail to be impressed by the speed in the build-up of support for a marketing act. As Chapter 7 shows, the Regina and Toronto Conferences were only part of the pressure for a marketing act. The chapter shows that by mid-1933 there was considerable non-farmer support for an act, for example, the Canadian Political Science Association, the Canadian Agricultural Economic Society and the milk industry investigation by the Select Standing Committee on Agriculture and Colonization. The "public discussion" memorandum of Bennett's executive secretary in September 1933 clearly indicates a reaction to the build-up in public support. Bennett must have been aware of this build-up. The available public record gives no indication as to why Bennett changed from being an opponent of a marketing act, as proposed by his Minister of Agriculture, Robert Weir, in early 1933, to perhaps its most ardent supporter a year later. Bennett was a politician. It is

difficult to conceive of him as having as cathartic conversion as what he did have with the Natural Products Marketing Act without there being reference to the political imperatives.

CONCLUSIONS

This thesis explored the origins of marketing boards by reference to the earliest agricultural marketing legislation introduced in Canada. It adopted the analytical framework provided by the literature which analyses the regulatory process. As a result, the thesis rejects the market failure explanation of the introduction of marketing boards. Instead, it accentuates the role of the farmer. Moreover, it notes that the motivating drive by farmers for government sanctioned regulation was the desire to internalize the externalities consumed by free-riders. As Chapters 5, 6, 7, and the Appendix show, it is not coincidental that the vast majority of the twenty-five schemes introduced by the Produce Marketing Act and the Natural Products Marketing Act were preceded by some form of cooperative venture.

The thesis also explored the reasons for the particular regulatory mode demonstrated by marketing boards. It concluded that, in the case of the first Canadian marketing board, self-regulation was introduced because a precise constituency was able to impress its precise demand upon an embattled government. The Dominion Marketing Board was an

admixture: a third-party regulatory mode regulating the activities of a number of self-regulatory local marketing boards. It was argued that this admixture resulted from the impact of a less uniform demand from a more fragmented rural sector.

These conclusions have importance for today.

The expansion of Canadian marketing boards in the recent past suggest that the rate of expansion will continue. At the same time, there has been a significant increase in interest in marketing boards. If there continues to be the simplistic interpretation for the introduction of agricultural marketing legislation based upon market failure, then there shall be a continuation of the predetermination of the effectiveness of marketing boards and their policy tools. If, on the other hand, one accepts that marketing boards were introduced in order to internalize the free-rider problem, then one may judge the effectiveness of marketing boards from another perspective.

A final point relates to the relevance today of marketing boards. This thesis has shown that marketing boards were introduced to combat the free-rider problem. Certain tools pursuant to a specific ethos were designed to achieve that end. Those tools and the ethos of compulsory cooperation are, for the most part, in operation today. Moreover, they are the tools and ethos which appear to be guiding marketing boards currently being introduced. But

one must wonder if marketing boards are being introduced today largely because of the success of earlier free-rider-based marketing boards.

If that is the case, then today's marketing boards are being clothed in the wrong powers. Again, if that is the case, one is reminded of Mehren's 1948 warning:

It is not society which should be protected from the use of monopoly in agriculture. It is agriculture which should be protected from its abuses.²⁰

NOTES TO CHAPTER 8

1. G. A. Hiscocks, "Market Regulation in Canada," Canadian Farm Economics (June 1972).
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3. S. M. H. Rizvi, "Marketing Boards in Canada: An Evaluation of their Quota Policies with Special Reference to the Broiler Chicken Industry" (Ph.D. thesis, Department of Agricultural Economics and Rural Sociology, University of Alberta, Edmonton, Alberta, 1971).
4. M. M. Veeman, "New Zealand Marketing Boards: An Economic Analysis and Evaluation" (Ph.D. thesis, Department of Agricultural Economics, University of California, Berkeley, California, 1971).
5. D. Mitchell, The Politics of Food (Toronto: Lorimer and Co., 1975). See Chapter III in particular.
6. See, L. K. Macartney, "Institutional Structure of the Canadian Agricultural and Food System," (Ottawa: Agricultural Economic Research Council, 1973); P. L. Appleton, "Canadian Agriculture and Food System," (Ottawa: Agricultural Economic Research Council, 1972); and, G. R. Winter, "Conduct in Canadian Food Marketing," (Ottawa: Agricultural Economic Research Council, 1969).
7. A. H. Turner, "Federal Marketing and Price Support Legislation in Canada."
8. G. F. Perkin, "The Ontario Marketing Boards," Journal of Farm Economics XXXIII (November 1951).
9. M. W. Farrell, "Experience with Provincial Marketing Schemes in Canada," Journal of Farm Economics XXXI (November 1949).

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10. J. D. F. Kidd, "Economics and Legal Developments in National Farm Marketing Legislation," Canadian Farm Economics (August 1971).
11. G. A. Hiscocks, "Theory and Evolution of Agricultural Market Regulation in Canada," Canadian Farm Economics Vol. 7, No. 2.
12. Ibid., p. 21.
13. F. M. Clement, "Marketing Legislation in British Columbia," C.S.T.A. Review No. 19 (December 1938).
14. M. A. Ormsby, "History of Agriculture in British Columbia," Scientific Agriculture XX (September 1939).
15. The parallel between these two authors' works is uncanny. This sentence is the same in both works as is the entire paragraph containing the sentence.
16. M. Robin, Rush for Spoils (Toronto: McClelland and Stewart Limited, 1972), p. 214.
17. Ibid., p. 215.
18. M. A. Ormsby, "The United Farmers of British Columbia," British Columbia Historical Quarterly (January-February 1953):58.
19. J. R. H. Wilbur, "The Bennett Administration, 1930-1935," The Canadian Historical Association Booklets, No. 24 (Ottawa: 1969), p. 111.
20. G. L. Mehren, "Some Economic Aspects of Agricultural Control," Journal of Farm Economics (February 1948):42.

APPENDIX

THE TWENTY-TWO MARKETING SCHEMES CONSTITUTED
PURSUANT TO THE NATURAL PRODUCTS MARKETING ACT
AND SUPERVISED BY THE DOMINION MARKETING BOARD.

I BRITISH COLUMBIA TREE-FRUIT SCHEME: AUGUST 25, 1934.

BACKGROUND

The British Columbia Tree-Fruit Board was the first local board constituted pursuant to the Natural Products Marketing Act. The Board's general background was the agitation of the Okanagan Valley fruit growers for orderly marketing. The immediate background was the 1931 ultra vires finding with respect to the Interior Tree-Fruit and Vegetable Committee of Direction and the scheme proposed by the Plans' Committee to cover the marketing of the 1934 crop. Fruit-growers in the Okanagan Valley had voted on the plan in June, 1934. As soon as the Dominion Act was proclaimed, the growers sought to establish a marketing board. The Dominion Marketing Board received two petitions, one from the growers and one from the grower-shippers and independents. While the Board Minutes of August 14, 1934 indicate that the growers resented suggestions that shippers be given a seat on the local board, they do not indicate why the Board chose to go with an all grower board.

INTENT OF REGULATION

The Scheme sought to regulate the marketing of tree-fruits grown in the interior of the province.

REGULATED PRODUCT

In its first year of operation, the local board was concerned largely with apples. Later, it regulated pears, prunes, cherries, crabapples, peaches, plums and apricots.

LOCAL BOARD

The B. C. Tree-Fruit Board comprised three elected growers. Originally, the members were elected by delegates but the Scheme was later amended to provide for the election of members by the growers at large. A four member Shippers' Advisory Council advised the local board and provided a ready means of contact between the local board and shippers. Head office was in Kelowna, British Columbia.

METHOD OF OPERATION

All shippers were designated as marketing agencies by the B. C. Tree-Fruit Board. Producers were required to sell their fruit through designated agencies. All sales to Western Canada had to be through brokers listed by the Board. Shippers were licensed by the local Board.

Originally, the Board adopted a pooling arrangement. A pool price was declared into which a shipper had to pay. If a shipper were to sell above the pool price, he could rebate that amount to his suppliers. On the other hand, if he sold below the declared price, he had to pay the pool price. However, given that the system could be manipulated to a shipper's advantage, the Board introduced the cartel concept

experimented with in 1933. Since the key to regulating prices was to regulate the flow of produce to the market, each shipper was permitted to ship only a certain percentage of his total pack or variety in a given period. When all shipments were made, another percentage for release was set. The Board could not discriminate against any established marketing agency which complied fully with its orders, rules and regulation.

The Board could not set the price of fruits.

Control of exports was achieved by cooperating with the Fruit Export Marketing Scheme. The technique was to delay the shipment of apples to the United Kingdom market until other supplies were no longer available.

The operations of the local board were financed by a levy.

The Scheme provided for growers to vote on the continuation of the Scheme. A poll in March 1935 showed ninety-four percent of 2,164 producers were in favour.

SUBSEQUENT HISTORY

In anticipation of the Privy Council's decision of ultra vires, the Scheme was reconstituted pursuant to the Natural Products Marketing (British Columbia) Act Amendment Act, 1936. With the subsequent findings of intra vires of the provincial Act, the B. C. Tree-Fruit Board became the first legally competent marketing board in Canada. The Board continues to operate from Kelowna.

II FRUIT EXPORT MARKETING SCHEME: SEPTEMBER 8, 1934.

BACKGROUND

The Scheme was introduced pursuant to the agitation of British fruit growers. In the years 1932 to 1934, the Canadian exporter was disposing large surpluses of fruit on the British market without regard to the capacity of that market to absorb them. At the request of the Farmers' Union of Great Britain, a delegation from the Canadian Horticultural Council went to Great Britain to examine the question of Canadian export control. The English made it clear that unless the Canadian exporters instituted voluntary regulation, the British Government would be requested to restrict the imports of Canadian fruit. Upon its return, the Canadian delegation argued that regulation of the flow of exports was required to ensure the long-run survival of the English market. The Scheme itself appeared to have its genesis in the deliberations of a committee appointed by the Council at its Annual General Meeting in May 1934. The Scheme was introduced to give effect to measures agreed to by the Canadian representative at the 1934 Empire Fruit Conference with respect to restrictive measures for each of the Dominions.

INTENT OF REGULATION

The Scheme sought to regulate the export of fresh apples and pears from British Columbia, Nova Scotia and Ontario to the United Kingdom. It also sought to raise the general standard of Canadian export apples.

REGULATED PRODUCT

The regulated product was fresh apples and fresh pears.

LOCAL BOARD

The Fruit Export Marketing Scheme was administered by the five member Fruit Board of Canada. The Board was comprised of three grower members, a grower-shipper member and the Secretary of the Canadian Horticultural Council. Franchise in the election was based on producing for export 750 boxes or 200 barrels of fruit in any one of the three preceding years. The salaries of the local board were fixed by representatives of the fruit industry. Head office was in Ottawa. The Scheme involved 5,000 producers.

METHOD OF OPERATION

The powers of the Fruit Board of Canada included: the regulation of the movement of export apples and pears; the prohibiting, during any period of exports of any quantity, size or quality; the registering of producers; and the licensing of exporters and shippers.

In 1934, the local board prohibited the export of low grade apples to prevent the flooding of the United Kingdom market until the English apple crop was marketed. This was done by ordering shippers to restrain from shipping domestic grade apples to the United Kingdom until a specified time. The low grade fruit was subsequently used on the

Canadian market both as a fresh fruit and as a by-product. This action was taken after discussions with advisory committees of growers and exporters.

III BRITISH COLUMBIA RED CEDAR SHINGLE EXPORT SCHEME:

OCTOBER 16, 1934.

BACKGROUND

The method of operation of the British Columbia Red Cedar Shingle Export Scheme was related to the unusual circumstances which preceded its introduction.

Pursuant to a gentleman's agreement of September 1933, British Columbia manufacturers of red cedar shingles endeavoured to limit the export of shingles to the United States. Initiation for the agreement came from Washington and Oregon manufacturers. However, a number of British Columbia operators did not cooperate. As a result, Washington and Oregon manufacturers petitioned the President, pursuant to the National Recovery Act "to investigate the importation of red cedar shingles from Canada to U. S. on the grounds that such importations were being made under such conditions and under such terms as to render ineffective and seriously damage the maintenance of the lumber code". Indeed, a United States Tariff Commission Hearing held that such trade was endangering the domestic United States industry. The Commission recommended that imports be limited to twenty-five percent of domestic

consumption. In addition, imports should not be sold below the minimum prices established by the Lumber Code Authority.

The Minister of Trade and Commerce advised the B. C. Lumbermen's Association that if it could voluntarily reduce its exports to the twenty-five percent level, the formal application of the tariff would be withheld. He stressed that this had to be done in the strictest confidence. The British Columbians accepted the conditions.

The key to the restrictions was the Natural Products Marketing Act. The first step then was to form the B. C. Red Shingle Export Association. About eighty percent of the eligible machine producers in the province agreed to sign an agreement with the Association. A recalcitrant minority refused to cooperate, endangering the unofficial Canadian-United States understanding. The threat of prohibition on Canadian exports became acute. The Association argued that "it was manifestly unfair that the majority of the shingle industry in British Columbia should have their investments in timber mills jeopardized by a few who will not cooperate. It is therefore respectfully urged that power be given to the B. C. Red Cedar Shingle Export Association Limited to control exports before the end of the current week".

The above application was forwarded to the Dominion Marketing Board on September 26, 1934. An approving draft Order in Council was forwarded to the Minister of Agriculture on October 3, with the Scheme being approved by the Governor in Council on October 16, 1934. The

Minister forwarded the Scheme to the Governor in Council as a Section 9, that is, "trade and commerce in red cedar shingles was injuriously affected by marketing conditions".

INTENT OF REGULATION

The aim of the Scheme was to regulate the export of red cedar shingles to the United States so as to enable each British Columbia producer to obtain a fair and proportionate share of that trade.

REGULATED PRODUCT

Red cedar shingles produced in British Columbia was the regulated product.

LOCAL BOARD

The Scheme was administered by the B. C. Red Cedar Shingle Export Association Limited as an agency of the Dominion Marketing Board.

METHOD OF OPERATION

The Association regulated trade in red cedar shingles by fixing quarterly marketing quotas for each shingle producer. The impetus for this method of operation stemmed from the quarterly quotas issued by the Lumber Code of the National Industry Recovery Act.

All persons engaged in the production and marketing of red cedar shingles for export to the United States were required to be licensed.

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The Governor in Council approved an Order that no railroad, steamship or other means of transport may accept for movement to the United States any western red cedar shingles without a certificate issued by the Association.

SUBSEQUENT HISTORY

When the United States' National Recovery Act was declared unconstitutional in May 1935, the quota agreement lapsed. However, the agency continued to regulate exports, on a voluntary basis, in a manner based on the quota scheme.

With the declaration by the Privy Council that the Natural Products Marketing Act was ultra vires, the Scheme discontinued its activities almost immediately.

IV BRITISH COLUMBIA DRY SALT HERRING AND DRY SALT SALMON

MARKETING SCHEME: OCTOBER 22, 1934

BACKGROUND

In the early 1930's, Japanese packers handled over 90 percent of the salt herring and salt salmon industry of British Columbia. The Japanese operators were financed from Japan. Their backers forced them to market their product in any way which would ensure that the money loaned was returned along with a substantial rate of interest. The result was the uncontrolled exports of salt fish to the Orient,

particularly China. Confidence in the Canadian trade declined. The Bennett Papers clearly state that the industry's white operators were being forced out of business and it was they who, through the Meal, Oil and Salt Fish Section of the Canadian Manufacturers' Association in British Columbia, sought the introduction of the Scheme.

INTENT OF REGULATION

The immediate intent of the Scheme was to end consignment selling. The overall aim was to raise the prices and enlarge the Chinese (salt herring) and Japanese (salt salmon) markets.

The Scheme was solely an export scheme.

REGULATED PRODUCT

Salt herring and salt salmon were the regulated products. While the Scheme embraced all of British Columbia, the regulated product was only produced on the coast.

LOCAL BOARD

The Scheme was administered by the five member British Columbia Salt Fish Board. Two members were appointed by the Meal, Oil and Salt Fish Section of the British Columbia Branch of the Canadian Manufacturers' Association, two were appointed by the Canadian Salt Fish Exporters Limited and a Chairman was appointed by the Dominion Minister of Fisheries.

The Chairman was to have no direct financial interest in the production and sale of the regulated product. It is noted that the board members were packers, not fishermen.

The original Scheme, proposed by the Association, provided for a local board comprised of two members appointed by packers of Japanese origin and five members appointed by white packers. Head office was in Vancouver, British Columbia.

METHOD OF OPERATION

To prevent consignment selling, the local board permitted sales on only firm order, cash basis, f.o.b., port of shipment. The Salt Fish Board established the total volume of salt salmon and salt herring that might be marketed in an entire season. Each packer was then allocated a quota. The packer could time the sale of his quota at his discretion. Two marketing agencies were appointed: Producers' Salt Fish Sales Limited and Canadian Salt Herring Exporters Limited. The latter embraced all the Japanese dry salt salmon and dry salt herring producers. The marketing agencies made contact with buyers and arranged steamship space. A representative was employed in the Orient as the sole marketer in order to prevent Oriental buyers from playing off British Columbia sellers.

The Scheme covered fifteen packing plants.

V ONTARIO FLUE-CURED TOBACCO MARKETING SCHEME: OCTOBER 26, 1934BACKGROUND

In response to a policy of high prices, tobacco production expanded significantly in Southern Ontario up to 1930. In 1930, the manufacturers ceased their policy of encouraging expansion. As a result, the average price at the annual auctions dropped twenty percent between 1930 and 1932. During 1933, the Southern Ontario Tobacco Growers' Association secured a provincial government guarantee to finance the packing, processing and marketing of the unsold portions of the 1933 crop. A voluntary scheme aimed at securing adequate returns for producers was negotiated between the manufacturers and the growers. The voluntary scheme's Acreage Control Committee reduced the planted acreage for the 1934 crop to twenty-five percent below the 1933 acreage. In 1934, a three-year agreement was made with respect to marketing. When a Canadian company refused to cooperate with an agreement for a joint crop appraisal system for just the 1934 crop year, the growers sought to regulate the industry pursuant to the Natural Products Marketing Act. Moreover, grower impetus for a marketing board was heightened by the 1934 Sutherland Report which found that the Imperial Tobacco Company was manipulating prices to the growers' disadvantage.

The original Scheme sought control of both production and marketing. It was amended following representations of tobacco manufacturers and packers who had received copies of the original Scheme from the Dominion

Marketing Board. The amended and approved Scheme was endorsed by seventy-one percent of the growers and supported by the majority of what the Dominion Marketing Board termed "responsible manufacturers and packers of flue-cured tobacco".

INTENT OF REGULATION

The Scheme sought to ensure adequate returns to the producers and to place manufacturers and packers on a fairer basis of competition.

REGULATED PRODUCT

The Scheme regulated flue-cured tobacco grown largely in the counties of Essex and Norfolk.

LOCAL BOARD

The local board was the Ontario Flue-Cured Tobacco Marketing Board. The fourteen member board was comprised of nine producer members and five buyer representatives. Head office was in Simcoe, Ontario.

METHOD OF OPERATION

The local board set the date of opening the market; established kiln grading standards, registered growers, licensed producers; and, collected tolls to ensure that the Scheme was self-financing.

Provision was made for the compensation of producers whose marketable leaf was withheld from sale because of the exigencies of the

situation. Each crop of flue-cured tobacco was to be inspected and appraised each season. An appraisal committee, comprised equally of growers and buyers, determined the seasonal average price per pound of flue-cured tobacco. The appraised price became the grower's minimum average price.

The local board took no cognizance of the acreage reductions achieved by the Acreage Control Committee. This was to be a source of agitation. The main market was in Quebec.

In late December 1927, a Dominion Department of Agriculture Investigation into the Claims of Certain Growers of Flue-Cured Tobacco, by Dr. J. H. Grisdale, found that the Ontario Flue-Cured Tobacco Marketing Board was violating the spirit of the Natural Products Marketing Act by controlling production.

SUBSEQUENT HISTORY

When the Dominion Act was declared ultra vires, the Ontario Flue-Cured Tobacco Marketing Board applied for incorporation under the Ontario Companies Act. The Ontario Department of Agriculture recommended that the charter be granted, thus creating the Ontario Flue-Cured Tobacco Marketing Association. It is unknown why the local board adopted this course instead of being constituted pursuant to the Ontario Farm Products Control Act. After a turbulent period in the 1950's, in 1957 the Association became the Ontario Flue-Cured Tobacco Growers' Marketing Board, constituted pursuant to the Ontario Farm Products Marketing Act.

VI MILK MARKETING SCHEME OF THE LOWER MAINLAND OF

BRITISH COLUMBIA: JANUARY 1, 1935

BACKGROUND

The Scheme was originally constituted on November 21, 1934 pursuant to the Natural Products Marketing (British Columbia) Act. The provincial Scheme gave the local board the power to set prices and determine spreads on that portion of the regulated product marketed within British Columbia. The background of the Scheme was seen in the activities of the Fraser Valley Milk Producers' Association. The Scheme's immediate predecessor was the Dairy Sales Adjustment Committee.

INTENT OF REGULATION

Strictly speaking, the intent of the provincial Scheme being constituted pursuant to the Dominion legislation was to enable the local board to collect tolls, regulate milk and milk product entering the export trade and pool returns. Generally, the intent of the Scheme was to regulate the marketing of milk and milk products produced in the area known as the T.B. Free Restricted Area of the Lower Mainland of British Columbia. The Scheme involved 3,150 registered milk producers.

REGULATED PRODUCTS

The regulated products were milk and milk products other than ice cream and confectionary, produced in the prescribed area, i.e. the T.B. Free Restricted Area.

LOCAL BOARD

The local board was the Lower Mainland Dairy Products Board.

METHOD OF OPERATION

The Lower Mainland Dairy Products Board named the Fraser Valley Cooperative Milk Marketing Agency, the Independent Milk Producers' Agency and the Milk Shippers' Agency as its marketing agencies. The Board was able to negotiate an equalization agreement with respect to the fluid milk market but due to acrimony between the three marketing agencies, the agreement was never made operational.

The Dominion Marketing Board estimates that the local board's activities enhanced producer fluid milk prices by about 30 percent.

SUBSEQUENT HISTORY

When the Dominion Act was declared ultra vires, the local board was reconstituted pursuant to the Natural Products Marketing (British Columbia) Act Amendment Act 1937. It continued until the outbreak of World War II when, with its history of prosecutions for infractions of orders, it ran out of money and quietly folded.

VII EASTERN CANADA POTATO MARKETING SCHEME: JANUARY 18, 1935

BACKGROUND

The 1933 potato crop marketing year was a disaster for the Maritimes where potato production verged upon being a monoculture.

Production in Quebec and Ontario was largely adequate for local consumption. On the other hand, the growth of production in the two provinces had cut off the export market for Maritime production. Production by, and protection for, Maine potato producers limited the United States, the other significant market. Consignment selling of the large 1933 crop created considerable price demoralization. The 1934 crop was substantially greater than the 1933 crop. The Scheme, A Scheme to Regulate the Marketing of Potatoes Grown in the Provinces of Prince Edward Island, New Brunswick, Nova Scotia and Ontario, originated with a meeting in Ottawa of representatives of potato growers and dealers from the four provinces.

Three months after the Scheme was approved for the four provinces, Quebec sought, and was granted, inclusion in the Scheme.

INTENT OF REGULATION

The immediate intent of the Scheme was to prevent consignment selling. The Scheme sought to control the grades of potatoes entering commercial trade.

REGULATED PRODUCT

Potatoes grown in the five provinces were the regulated product.

LOCAL BOARD

The local board was the Eastern Canada Potato Marketing Board. The Board had ten members, being two from each of the five provinces,

and a Chairman who was the Secretary of the Canadian Horticultural Council. The head office was in Ottawa.

METHOD OF OPERATION

The Eastern Canada Potato Marketing Board sought to control the grades of potatoes entering the market. The aim was to prevent inferior grades glutting the market. Consignment selling was discontinued by requiring sales to be made under firm contract.

The Board was able to enhance prices considerably during 1935, despite having considerable problems controlling truckers. The Minister of Agriculture, Honourable Robert Weir, referred to the Eastern Canada Potato Marketing Board's work as being "purely humanitarian".

The Scheme involved about 150,000 producers.

SUBSEQUENT HISTORY

An Eastern Canada Potato Export Scheme was proposed in November 1935 to regulate potato exports from Nova Scotia, New Brunswick, Prince Edward Island and Quebec to the British West Indies. The proposed Scheme was to take over from the Eastern Canada Potato Marketing Board when it was due to efflux in November 1935. With the Board's life being extended until June 1936 and the Supreme Court's hearing on the Act's validity being in train, the proposed Scheme lapsed.

VIII WESTERN ONTARIO BEAN MARKETING SCHEME: JANUARY 31, 1935

BACKGROUND

The dry bean industry in Western Ontario attempted a voluntary marketing scheme in 1933. The impetus for the voluntary scheme was primarily that the producers were receiving less than their costs of production. The latter phenomenon was, in turn, due to lack of organization amongst growers. The Report of the (Ontario) Minister of Agriculture for 1936 states that "the price of beans was raised out of its panicked position but the movement was disrupted through repudiation of the agreement by a number of parties". As a result, the growers sought a plan "with power to compel adherence to the wish of the majority". The original Scheme was sponsored by producers and dealers and called for the setting of prices and the establishment of price spreads which could be taken by the dealers. The Dominion Marketing Board rejected these proposals.

INTENT OF REGULATION

Apart from the pro forma intentions of "providing for orderly marketing", the Scheme appeared to seek fairer competition between dealers by eliminating destructive underselling.

REGULATED PRODUCTS

The regulated products were white beans and yellow eyes grown in the counties of Kent, Elgin, Huron, Middlesex, Lambton, Norfolk and Essex.

LOCAL BOARD

The Scheme was administered by a seven member Western Ontario Bean Marketing Board. Head office was at Chatham, Ontario.

METHOD OF OPERATION

The local board appointed as its marketing agency the Western Ontario Bean Marketing Agency. The Agency comprised of three growers appointed by the local board and three dealers appointed by the Ontario Bean Dealers Association. The Agency determined, on an equitable basis, the amount of beans to be marketed by each licensed dealer.

The Western Ontario Bean Marketing Board had an equalization toll designed to fund the removal of product surplus to local requirements. The Board experienced a rapid price change when its large 1935 crop coincided with large United States, Japanese and Chilean crops. These countries had prices appreciably lower than those of Canada. The Board suspended its activities. Due to the large Canadian surplus and the uncertainty surrounding the Board's orders with respect to the Supreme Court hearing on the Act, the Board found it was unable to continue operations. The Board then used the Equalization Fund to remove a quantity of beans from the market as a deterrent to the serious price situation. This was done by recompensing dealers for losses incurred in filling export orders. The Board ceased operation in 1936.

SUBSEQUENT HISTORY

The Ontario Bean Growers' Marketing Board was constituted in 1946 pursuant to Ontario's Farm Products Marketing Act. The impetus for the Board derived from the attempts to deal with the various federal wartime food production and maximum price control agencies. It was considered that the 1935-36 local board provided the necessary organizational model.

IX BRITISH COLUMBIA COAST VEGETABLE MARKETING SCHEME: APRIL 4, 1935

BACKGROUND

In the early 1930's, potato growers in the coastal area of British Columbia suffered when potato dealers developed a system of forward buying. Producers found themselves competing with fellow producers who were making forced sales pursuant to the forward buying system. The producers sought to protect themselves by removing the source of the problem, the forward buying system. The Scheme was originally constituted pursuant to the Natural Products Marketing (British Columbia) Act.

INTENT OF REGULATION

The Scheme was to supplement the British Columbia provincial Scheme. The provincial Scheme sought to eliminate "undesirable buying and selling practices", i.e. forward selling, which was held to be detrimental to the bulk of both growers and shippers. Constitution

pursuant to the Dominion legislation enabled the local board to regulate for export trade and collect tolls.

REGULATED PRODUCT

The Scheme regulated prescribed vegetables in the prescribed coastal area of the Lower Mainland and adjoining islands. Prescribed vegetables excluded rhubarb, hothouse tomatoes and cucumbers, beans, corn and peas grown or sold for canning. The principal crop was potatoes.

LOCAL BOARD

The British Columbia Coast Vegetable Board was designated as the local board. The three member Board was elected from delegates from the nine administrative districts. By defining the franchise as "a producer who owns an acre or more of land ...", nearly 750 Chinese, Japanese and East Indian producers were effectively disenfranchised.

METHOD OF REGULATION

To overcome speculation and forward buying by dealers, the Board established a tag system. The tags were issued by the Board to growers when it felt that it was an opportune time to market. Growers were prohibited from shipping untagged vegetables. To police the tag system, the Board instituted an inspection service at all the bridges leading to Vancouver. This resulted in substantial ill-will towards the Board.

The Select Standing Committee on Agriculture of the Legislative Assembly commenced an investigation on November 16, 1936 into the Board and its agency. The Committee investigated allegations of lack of impartiality and uneconomic administration in the handling of the produce grown in the Board's prescribed area. In its report to the Legislature, the Committee absolved the Board of both charges. It recommended that a commission with wider power should investigate the spread between consumer prices and producer histories.

SUBSEQUENT HISTORY

The Board was reconstituted pursuant to the Natural Products Marketing (British Columbia) Act Amendment Act 1936. The Amendment Act provided for greater control over the transportation of goods subject to marketing board jurisdiction. Lack of such control had created problems for the 1935 Board.

The Board was operating as of 1978.

X BRITISH COLUMBIA (INTERIOR) VEGETABLE MARKETING SCHEME

MARCH 4, 1935

BACKGROUND

The Interior vegetable growers had experienced orderly marketing with the Interior Free Fruit and Vegetable Committee of Direction. However, they lacked the strong grower organization evident in the

fruit industry to take early advantage of the Natural Products Marketing Act. This was largely due to the fact that the vegetable industry had fewer producers dispersed over a much wider area.

INTENT OF REGULATION

The scheme sought to eliminate undesirable buying and selling practices which are detrimental to both shipper and grower.

REGULATED PRODUCTS

The regulated products were the vegetables grown in the prescribed area with the exception of potatoes. In July, 1935, four months after its establishment, the local board was empowered to regulate the marketing of potatoes.

LOCAL BOARD

The local board was the three member British Columbia (Interior) Vegetable Marketing Board. Two members were registered producers elected by growers' delegates. The third member was a person appointed by the two elected producer representatives upon the recommendation of a representative body of persons engaged in the marketing of the regulated producer. The third member was invariably a shipper. The head office was in Kelowna, British Columbia.

METHOD OF OPERATION

The Board appointed the B. C. Interior Vegetable Agency Ltd. as its marketing agency. It was the agency which actually directed operations. The agency appointed the area's sixty-seven licensed shippers as sub-agents of the Agency. It was the Agency which collected the tolls which financed the Board's operations. The Board cooperated with the Coast Vegetable Marketing Board.

The Board made extensive use of its pooling provisions, conducting eleven pools in 1936. It employed a Freight Equalization Fund to equalize freight charges within the prescribed area for several vegetables.

The size of the Board's area of control and the isolated nature of many of the production areas necessitated the Board's adopting a pragmatic attitude towards the effectiveness of its authority. It set the prices for vegetables after consultation with the shippers but left shippers free to ship to their own markets at those prices.

SUBSEQUENT HISTORY

The British Columbia (Interior) Vegetable Marketing Board was reconstituted pursuant to the Natural Products Marketing (British Columbia) Act Amendment Act.

The Board was operating as of 1978.

XI CANADA JAM-MARKETING SCHEME: APRIL 10, 1935

BACKGROUND

The Canadian jam manufacturing industry was in a demoralized condition in 1934-35. The manufacturers of jams, jellies and marmalade, the growers of the various fruits and the consumers of good quality jams were all held to be adversely affected. Jam manufacturers had tried to co-operate earlier in a voluntary scheme but the failure of two manufacturers to cooperate mitigated against the effectiveness of the scheme. The manufacturing industry held a number of meetings prior to February 1935 when it met with the Dominion Marketing Board.

INTENT OF REGULATION

The primary intent of the scheme was to stabilize the prices and improve the quality of the regulated product. As a condition of obtaining the powers granted them, jam manufacturers undertook to guarantee fair powers to the growers for the small fruits they required in processing. In short, improved manufacturer's returns were to be reflected in improved grower returns.

REGULATED PRODUCTS

The regulated products were jams, jellies and marmalade manufactured in Quebec, Ontario and British Columbia from the prescribed small fruits of strawberries, raspberries, cherries and plums.

The Scheme encompassed fifty-one jam plants. The Scheme was supported by 90 percent of Canadian jam manufacturers.

LOCAL BOARD

The Canada Jam Marketing Board administered the Scheme. The Board had fourteen members: nine manufacturers' representatives, being three from each of the three participating provinces; three growers, being one each from the three participating provinces; one consumer representative; and a Chairman, who was to have no financial interest in the jam business. The consumer representative was appointed by a representative organization nominated by the Dominion Marketing Board. The Trades and Labour Congress of Canada appointed one consumer representative. The Board's head office was in Toronto.

METHOD OF OPERATION

The Board was authorized to set minimum prices and the terms of trading of the finished products to the wholesale and retail trade. The "fair prices" the manufacturers were required to pay the grower of prescribed small fruits used in processing, were established following negotiations between Board members. Manufacturers assessed themselves a percentage of their total sales to pay for the Board's administration costs.

The Board appointed a Marketing Agent. For the bulk of the Board's life, the Chairman, J. T. Chowder, was also the Marketing Agent. This

was the subject of much comment. The Agent could cancel the certificate of authority of any manufacturer to market jams in Canada.

The Board was a victim of its own success. During 1935, it appeared to achieve higher stabilized prices for jams, jellies and marmalades. This resulted in improved returns for the growers. However, the higher prices resulted in consumers switching to peanut butter, molasses and poorer quality jams. Sales dropped to the extent that the Board reverted back to open prices in January 1936. This move was also prompted by the activities of the two largest non-cooperators. The Canadian Horticultural Council established a committee, chaired by Ontario's Commissioner of Marketing, to determine a new basis of operation for a board which was to regulate all Canadian jam manufacturers. The Committee's report was critical of the Canada Jam Marketing Board. A committee of Ontario jam manufacturers also developed a plan. The Board itself recommended that, with the likely finding of ultra vires with respect to the Dominion Act, it be reconstituted as an Ontario only board. The suggestion failed to win support. Jam manufacturers sought to wind up the affairs of the Board as of the end of June 1936. When the Act was declared ultra vires, the Board ceased to function.

In view of the result of the Board's attempts to raise prices so as to benefit both grower and manufacturer, it is interesting to quote from a letter sent on 22 April 1936 to the Dominion Minister of Agriculture by the British Columbia Minister of Agriculture, with respect to the proposed amended jam Schemes: "I am interested only in

the primary producer. If a satisfactory Scheme can be worked out which will permit of the producer being paid more for his fruit than he is getting at the present time, I would feel justified in endorsing it."

XII BRITISH COLUMBIA HALIBUT MARKETING SCHEME: JUNE 10, 1935

BACKGROUND

Halibut fishing on the West Coast was governed by the Pacific Halibut Fishing Convention of the United States and Canada. To prevent glutting the market, the United States had a Production Control Plan which regulated the number of trips per boat and the amount of catch per trip. U. S. fishermen held their plan to be equitable. In 1934, the Canadians tried a comparable voluntary Scheme but it failed. The suggestion for a local board constituted pursuant to the Act came from both fishermen and boat owners.

Strictly speaking, the Scheme should not have really been constituted because the principal market of halibut was not outside the province. Halibut fishermen sold their catches to "first buyers" who then sold the fish to markets outside the province. Nevertheless, acting upon the advice of the Department of Agriculture's Legal Counsel, the Scheme was approved.

INTENT OF REGULATION

The Scheme sought to create orderly marketing of halibut by spreading the catch over a longer fishing season. The Scheme

contemplated changing the regulations should there be any change in the United States Production Control Plan.

REGULATED PRODUCT

Halibut caught in Pacific coastal waters by Canadian boats.

"Marketing" was defined to mean "primary buying".

LOCAL BOARD

The local board was the Halibut Marketing Board of British Columbia. It consisted of seven members representing fishermen and the operators of the fishing vessel.

Head office was at Prince Rupert, British Columbia.

METHOD OF OPERATION

The Board relied upon its powers pertaining to the regulation of the time of marketing to effect its objectives.

The Scheme involved 445 producers.

XIII BRITISH COLUMBIA SMALL FRUITS AND RHUBARB MARKETING SCHEME

JUNE 10, 1935

BACKGROUND

The industry had regularly experienced the glutting of the fresh fruit market with the subsequent demoralization of prices. The final Scheme proposed to deal with this problem was an amalgamation of twelve

different proposals. The Dominion Marketing Board heard the first application in February 1935. The final Scheme's petition was signed by twelve Associations representing 70 percent of all producers and 80 percent of the volume of the product to be regulated.

Approval for the Scheme was granted on June 10, 1935. Final power was not to be delegated to the local board until a poll of growers was held. The Scheme was subsequently defeated in a poll in August 1935. Thus, while the Scheme was approved, it never came into operation.

INTENT OF REGULATION

The Scheme envisaged preventing the gluts on the fresh fruit market by diverting the produce to other markets. When such diversions were required, returns from both markets were to be pooled.

REGULATED PRODUCTS

The regulated products were to be strawberries, raspberries, loganberries, blackberries, gooseberries, youngberries, red and black currants, grapes and rhubarb.

LOCAL BOARD

The petition of March 1935 envisaged ensuring that the membership of the local board would not be dominated by Japanese. The petition suggested that, instead of an earlier Dominion Marketing Board suggestion that the Board's three man membership be elected at large, there be five members elected, one each from five districts.

The approved Scheme provided for a three member board of registered growers, one of whom had to be a Canadian National of Japanese origin.

XIV BRITISH COLUMBIA HOTHOUSE TOMATO AND CUCUMBER SCHEME

INTENT OF REGULATION

The Scheme was designed to achieve the orderly marketing of hothouse tomatoes and cucumbers produced in British Columbia. The Dominion Scheme was to supplement the provincial scheme introduced on March 3, 1935.

LOCAL BOARD

The three members of British Columbia Tomato and Cucumber Marketing Board were the same under both provincial and Dominion Schemes.

Head office was in Victoria, British Columbia.

REGULATED PRODUCTS

Tomatoes and cucumbers grown in hothouses in the prescribed area of British Columbia were the regulated products.

METHOD OF OPERATION

The hothouse tomato and cucumber industry was a rare example of demand exceeding supply. Thus, the Board was not faced with the bootlegging problem which plagued most other local Boards.

The Scheme embraced 270 producers.

XV ONTARIO CHEESE PATRONS' MARKETING SCHEME: JUNE 25, 1935BACKGROUND

The (Ontario) Cheese Patrons' Association began operations immediately prior to the enactment of the Natural Products Marketing Act.

A voluntary plan was organized in twenty counties. The plan failed "through the usual trouble of a certain proportion of cheese factory groups failing to agree to assess themselves and others being unwilling to carry the whole load" (Ontario Commissioner of Marketing). This failure and the resulting need to distribute financial support for a marketing plan over the whole industry was one impetus for the constituting of a Scheme pursuant to the Dominion Act. The other impetus derived from dissatisfaction over the price of milk delivered to cheese factories.

The Scheme was approved by over 8,000 producers at over 480 meetings.

INTENT OF REGULATIONS

The Scheme had three thrusts through which it sought to improve returns to producers; restore competition in the purchasing of cheese; separate domestic marketing from export marketing; and, re-organize the cheese boards.

LOCAL BOARD

The local board was the Ontario Cheese Patrons' Marketing Board. Its five members were the Executive of the Ontario Cheese Patrons' Association.

METHOD OF OPERATION

The local board required all cheese factories in prescribed counties to market their cheese through established cheese boards or cheese exchanges, which were named as marketing agencies. While all cheese in Eastern Ontario had to be sold through reorganized cheese boards, factories could choose the board through which it could market. Factories were not obliged to stay with the same board or exchange.

The local board maintained a representative in England to study and develop the British market. The representative appeared to achieve considerable success.

The Ontario government issued a guarantee in order to assist the purchasing of cheese for experimental purposes on the United Kingdom market. Originally, purchases had to be supervised by the Ontario Commissioner of Marketing and the Ontario Director of Dairying but this requirement was later dropped.

Generally, the government and the industry exhibited a one sided view. They concentrated upon the improvement of quality and paid little attention to improved marketing.

SUBSEQUENT HISTORY

With the Natural Products Marketing Act being declared ultra vires, The Ontario Cheese Patrons' Marketing Scheme was the first scheme to be approved pursuant to Ontario's Farm Products Control Act. It then became the Ontario Cheese Producers' Marketing Board. When the Ontario milk

industry was reorganized, following the Report of the Ontario Milk Industry Committee of Inquiry 1965, the Ontario Cheese Producers' Marketing Board was absorbed into the Ontario Milk Marketing Board.

XVI PROCESSED BERRY MARKETING SCHEME: JUNE 29, 1935

BACKGROUND

Canada was traditionally an importer of processed berries. The 1935 crop of 24 million quarts was substantially greater than the 17 million quarts produced domestically the previous year. The industry considered it could dispose of the crop on the domestic and export market if it could direct the fresh market glut to the processed markets.

The Scheme was a Section 9, recommended by the Minister of Agriculture without a full industry poll because it was considered that conditions were injurious to the industry's trade and commerce. Nevertheless, the industry had approached the Dominion Marketing Board in March 1935 for a Scheme.

INTENT OF REGULATION

The Scheme sought to direct berries to the processed markets. It wanted to be able to compensate persons for losses sustained by withholding product from the market on the local board's order.

REGULATED PRODUCT

The Regulated product was defined as berries processed in a solution of sulphur dioxide.

The Scheme dealt solely with strawberries.

LOCAL BOARD

The Processed Berry Marketing Board consisted of the Fruit Commissioner, the Dominion Horticulturalist and the Trade Commissioner. The first two members were from the Dominion Department of Agriculture and the third member represented the Department of Trade and Commerce.

METHOD OF OPERATION

The local Board exempted manufacturers of processed berries in Manitoba and the Western provinces from its Orders. Manufacturers were not allowed to sell, consign or use strawberries processed in sulphur dioxide without the authority of the Board. It set minimum prices in Ontario which manufacturers could pay the grower. The constituting Order in Council provided for \$20,000 to compensate for loss sustained by withholding product from the market on the local board's order.

The local board sought to ensure that "no manufacturer shall enjoy at once the benefit of (the Board's) compensatory provisions and any advantage of the grower price to be paid for strawberries for processing for the manufacture of jam" (Order No. 1 of the Board).

The Board's second order, on May 8, 1936, rendered the Board inactive. However the Scheme did not appear to have operated. Certainly the Dominion Marketing Board does not record the allocated \$20,000 being spent.

XVII DAIRY PRODUCTS MARKETING EQUALIZATION SCHEME: JULY 20, 1935BACKGROUND

The base issue surrounding the Scheme's introduction was the perceived need to equalize prices between whole milk, butter and cheese. The differentiated prices between the three markets for milk, was accentuated by the need to export surplus butter. The Annual Report of the National Dairy Council of Canada for 1972 notes that "An effort was made in October and November, 1931, to bring about a co-operative export of the assumed surplus of butter. This effort failed as it was not found possible to induce certain large holders to adhere to it and the rest would not sacrifice in order to make profits for those who would not take the share of the loss." The Minister of Agriculture made reference to this scheme's failure for want of compulsory powers in his first major speech on marketing boards in the House of Commons in April 1932.

Fifty-two members of the Conservative Party petitioned the Prime Minister in March 1935 seeking an equalization scheme which amounted to a two per pound bonus paid on cheese produced in Canada. It was argued that this amount was necessary to entice Quebec into a national scheme. The government's response was to suggest using the provisions of the Natural Products Marketing Act. The specific Dairy Product Board proposal came from a meeting of the Ontario Whole Milk Producers Association, the Ontario Cheese Patrons Association, the Ontario

Manufactured Milk Processors Association and the Creamery Patrons Association. The Minister of Agriculture recommended the Scheme as a Section 9 because he considered that it would be difficult to complete the organization necessary under the Act because of the way some of the creameries in Quebec and Ontario operated.

INTENT OF REGULATION

The Scheme was intended to encourage and assist the milk industry by affecting a bonus on cheese production. The Scheme was concerned solely with equalization.

REGULATED PRODUCTS

The regulated products include milk, cream, condensed milk, evaporated milk, milk powder, butter, cheese, ice cream or any other article manufactured from milk.

LOCAL BOARD

The Dairy Branch of the Department of Agriculture was the agency designated to administer the Scheme.

METHOD OF OPERATION

The local board determined the grades of products eligible to share in the fund. It could issue orders pertaining to the delivery of milk or cream to any factory or the manufacturing of the regulated product from any such factory.

The Scheme cost \$1,083,780, excluding the \$4,307 the Dominion Marketing Board considered as administrative costs.

XVIII BRITISH COLUMBIA SHEEP BREEDERS MARKETING SCHEME

AUGUST 10, 1935

BACKGROUND

A provincial scheme was approved, pursuant to the Natural Products Marketing (British Columbia) Act, on December 13, 1934. An application for incorporation under the Dominion Act was rejected on the grounds that the marketing of the regulated product was not largely outside the province. The amended Scheme was finally approved because while 95 percent of sheep products were marketed in British Columbia, 95 percent of wool and pelts were marketed outside the province.

INTENT OF REGULATION

By incorporation pursuant to the Dominion Act, the local board was able to regulate the marketing of sheep and lamb and prescribed sheep products which enter interprovincial trade and to authorize the collection of tolls.

REGULATED PRODUCT

The regulated products included sheep and lambs, sheep and lamb carcasses and wool and hides.

LOCAL BOARD

The local board, the British Columbia Sheep Breeders' Marketing Board, was the same under both the provincial and Dominion schemes. Head Office was in Kamloops, British Columbia.

METHOD OF OPERATION

The Board did not appear to have actually become operative pursuant to the Dominion Act.

XIX NOVA SCOTIA APPLE MARKETING SCHEME: AUGUST 20, 1935

BACKGROUND

The success of the Fruit Export Marketing Scheme resulted in an increase in the movement of Nova Scotia apples onto domestic Canadian markets. However, it was held that the increased flow necessitated the regulation of grade and stabilization of prices. Shippers supported the petitioned scheme.

INTENT OF REGULATION

The Scheme sought to regulate the movement of apples from Nova Scotia into Canadian markets commensurate with the ability of the market to absorb the apples. This meant preventing sales on consignment.

REGULATED PRODUCT

The regulated product was apples grown in the counties of Hants, Kings, Annapolis, Lunenburg and Queens for shipment into Canadian markets.

LOCAL BOARD

The Nova Scotia Apple Marketing Board was the local board. It consisted of five members - three elected by registered growers, and two elected by the Shippers Organization. The Chairman had to be a grower. Head Office was in Kentville, Nova Scotia.

The Board had difficulty in collecting tolls after the Act was referred to the Supreme Court. As a result, the Board ceased operations.

XX GRAND MANAN SMOKED HERRING PRODUCTS SCHEME: AUGUST 20, 1935

BACKGROUND

Generally, producers of smoked herring in New Brunswick had for a number of years received prices which were below their cost of production. Co-operative action had been attempted but the failure of these ventures had been related to the inability to secure adequate credit facilities to enable producers to hold their products off the market until more favourable conditions returned. On the island of Grand Manan, nearly all the inhabitants were dependent on the fishing industry. The Scheme was petitioned for by island's smoke-house operators.

INTENT OF REGULATION

The Scheme sought to prevent the glutting of the marketing by regulating the time and place at which smoked herring products may be sold. The West Indies were virtually the sole market. The Scheme also

sought to improve the quality, grading and packing of the product in order to develop the small herring trade in Canada.

REGULATED PRODUCT

Smoked herring products produced on the island of Grand Manan were the regulated products. Smoke-house operators were defined as "producers".

LOCAL BOARD

The local board was the five member Grand Manan Smoked Herring Board. Head office was Grand Harbour, Grand Manan, New Brunswick.

METHOD OF OPERATION

The Board used the periodic percentage release system, based on quotas, in order to prevent market glutting.

XXI BURLEY TOBACCO MARKETING SCHEME: AUGUST 31, 1935

BACKGROUND

The Ontario burley tobacco industry had been organized for a number of years under the Essex Burley Growers Association and the Kent Burley Growers' Association. The industry's chief markets were in Quebec and Great Britain.

However, the industry lacked co-ordinated marketing action which impinged upon producer returns. The Scheme was sponsored by

producers and dealers, with no opposition being registered against the Scheme. The Scheme itself was the outcome of conferences between officials of the two grower associations, the growers themselves and the tobacco buyers.

INTENT OF REGULATION

The Scheme sought to provide the mechanism by which price stabilization could be achieved through a system of crop appraisal.

REGULATED PRODUCT

Burley tobacco produced in the Ontario counties of Essex, Kent, Elgin and Middlesex was the regulated product.

LOCAL BOARD

The local Board was the Ontario Burley Tobacco Marketing Board. The Board consisted of packers, manufacturers and growers, with the latter having a majority. Head office was at Chatham, Ontario.

METHOD OF OPERATION

The crop appraisal system enabled a negotiated average appraised value to be fixed for the entire production in the prescribed area. Provision was made for the compensation of producers whose marketable leaf was withheld from sale.

SUBSEQUENT HISTORY

The Board was incorporated pursuant to the Ontario Companies Act when the Natural Products Marketing Act was declared ultra vires.

XXII BUTTER EXPORT STABILIZATION SCHEME: SEPTEMBER 18, 1935

BACKGROUND

In September 1935, it was held that domestic butter stocks were excessive to the requirements of the country. The prospect was for increased, not decreased butter production. Depressed butter prices impacted upon the domestic milk and milk products industry. As such, the situation was seen as being injurious to the industry's trade and commerce. Consequently, the Minister of Agriculture recommended approval of the Scheme pursuant to Section 9 of the Natural Products Marketing Act.

INTENT OF REGULATION

The Scheme sought to stabilize domestic dairy marketing by compensating for losses experienced on the export market. The Scheme sought to exploit the limited potential of exports to Great Britain.

REGULATED PRODUCT

The regulated product was butter sold on the export market for a loss. "Loss" was originally defined as the difference between the cost of the regulated product delivered at the port of export (or the

domestic price determined by the Board) and the c.i.f. selling price plus half a cent per pound handling charge. The latter half of the definition, i.e. "c.i.f. selling price", was later changed to "net sale value ex warehouse port of export". Moreover, the maximum compensation payable was set at 1½¢ per pound, including handling costs.

LOCAL BOARD

There was a three man local board designed by the Dominion Marketing Board. The Chairman was the Dairy and Cold Storage Commissioner of the Department of Agriculture. The other two members were representatives from the Department of Trade and Commerce and the National Dairy Council.

METHOD OF OPERATION

The local board designated nine marketing agencies, eight of whom were in Montreal. The Agencies met daily in Montreal and established a uniform daily basis of quoting on butter offered to United Kingdom importers. The agencies reported daily to each other on the quantities of butter sold. The local board was able to get the Produce Section of the Canadian Commodity Exchange in Montreal to close for the duration of the Board's operation.

The Board suspended its operations the day that butter was not sold for a loss. That was on October 15, 1935, not quite a month after it began operations. The Scheme spent \$73,781 about 1.13 cents per pound compensation for all the butter exported during its operations. The Dominion Marketing Board estimates that it cost \$356.00 to administer the Scheme.

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