

GOVERNMENT PROGRAMS IN AGRIBUSINESS: A COMPARISON OF THE UNITED STATES AND CANADA

Julia C. Loney[†]

I. Introduction.....	57
II. Agribusiness Programs.....	58
III. Farm Programs.....	62
IV. Politics in Canada and the U.S.	63
V. Lobbying	64
VI. Conclusion.....	65

I. INTRODUCTION

The United States and Canada have a long history with respect to production of commodity crops, livestock, dairy, and seafood. There are a significant number of government policies and protections available to farms and the agricultural industry in both countries. These include tariffs and quotas for commodities, import protections and export subsidies, direct support programs, trade organizations, conservation efforts, loan programs, research funding, marketing, regulatory insurance, and reserve programs.¹ The popularity and implementation of such policies has been a result of a number of world events including wars, the Great Depression, globalization, and farming trends.²

In recent years, agribusiness is garnering attention as a result of modern corporate food production; what is not well understood, however, is government programs in support of agribusiness. This Essay offers a brief overview of the agribusiness programs available to businesses in the U.S. and Canada, an explanation of the differences in programs between the two countries, and the basis for these

[†] Julia Loney is a partner in the Calgary, Alberta office of McMillan LLP. She has a solicitor's practice focusing on corporate and commercial matters, cross-border mergers and acquisitions, and regulatory and environmental issues related to doing business in Alberta.

1. See generally Bruce L. Gardner, *United States and Canada*, in *DISTORTIONS TO AGRICULTURAL INCENTIVES: A GLOBAL PERSPECTIVE, 1955-2007*, at 177-220 (Kym Anderson ed., 2009), https://siteresources.worldbank.org/INTTRADERESESEARCH/Resources/544824-1272467194981/DAI_Global_Perspective.pdf; Steven Slivinski, *The Corporate Welfare State: How the Federal Government Subsidizes U.S. Businesses*, POL'Y ANALYSIS, May 14, 2007, at 12.

2. See Kathleen Masterson, *The Farm Bill: From Charitable Start to Prime Budget Target*, NPR: THE SALT (Sept. 25, 2011, 12:41 PM), <https://perma.cc/PYW4-ZQAX>.

variations.

II. AGRIBUSINESS PROGRAMS

The U.S. and Canada have a highly integrated relationship with sourcing, producing, finishing, processing, marketing, and selling of products that occurs on both sides of the border.³ Although some products receive certain protections from foreign competition or are subject to support programs, both countries have similar export-focused regulatory regimes.⁴ Interestingly, however, the choice of policy instruments between them are quite different.

In the U.S., most formalized federal programs are tied to loans and grants, although there are various tax programs that corporations can benefit from, such as tax subsidies.⁵ Common examples include Farm Service Agency loan programs,⁶ United States Department of Agriculture (USDA) housing assistance and rural development loans,⁷ loans for beginning farmers and ranchers,⁸ the Federal State Marketing Improvement Program (grants to assist in exploring new market opportunities),⁹ Export-Import Bank (EXIM) financing and guarantee programs,¹⁰

3. See IAN F. FERGUSON, CONG. RESEARCH. SERV., RL33087, UNITED STATES-CANADA TRADE AND ECONOMIC RELATIONSHIP: PROSPECTS AND CHALLENGES 1 (2011).

4. See generally Gardner, *supra* note 1, at 177-220; Slivinski, *supra* note 1.

5. See Gabrielle Kissinger et al., *UN Collaborative Programme on Reducing Emissions from Deforestation & Forest Degradation in Developing Countries*, UN-REDD POLICY BRIEF, Sept. 1, 2015, at 4; Nathan R.R. Watson, *Federal Farm Subsidies: A History of Governmental Control, Recent Attempts at a Fee Market Approach, The Current Backlash, and Suggestions for Future Action*, 9 DRAKE J. AGRIC. L. 279, 281 (2004); Lindsay F. Wiley, *The U.S. Department of Agriculture as a Public Health Agency? A "Health in All Policies" Case Study*, 9 J. FOOD L. & POL'Y 61, 77, 81 (2013); Jodi Soyars Windham, *Putting Your Money Where Your Mouth Is: Perverse Food Subsidies, Social Responsibility & America's 2007 Farm Bill*, 31 ENVTL. L. & POL'Y J. 1, 3 (2007). See generally Lyle Muller, *Agribusiness Companies Capitalize on Tax Breaks, Grants, Subsidies and Loans*, IOWA CTR. PUB. AFF. JOURNALISM, May 13, 2015.

6. U.S. Dep't of Agric., *Farm Loan Programs*, PROGRAMS & SERVS., <https://perma.cc/ZXW4-YFK7> (archived Apr. 18, 2018).

7. U.S. Dep't of Agric., *Rural Housing Service*, AGENCIES, <https://perma.cc/D9FD-J2E3> (archived Apr. 18, 2018).

8. U.S. Dep't of Agric., *Beginning Farms and Ranchers Loans*, PROGRAMS & SERVS., <https://perma.cc/HX7E-C4C9> (archived Apr. 18, 2018).

9. U.S. Dep't of Agric., *Federal State Marketing Improvement Program*, SERVS., <https://perma.cc/T2HN-7ZLG> (archived Apr. 18, 2018).

10. Exp. Imp. Bank of the U.S., *What We Do*, EXIM, <https://perma.cc/S64L-FDT6> (archived Apr. 18, 2018).

Manufacturing Extension Partnership services (programs and funding opportunities for business development, as well as new markets and products),¹¹ U.S. Trade and Development Agency events,¹² and various intellectual property services and programs for small businesses.¹³

State and local (i.e., county or municipality) programs vary widely, but generally fall into the following categories: tax credits,¹⁴ tax exemptions,¹⁵ tax deductions,¹⁶ loan programs and grants,¹⁷ research and commercialization,¹⁸ and economic development.¹⁹ The value of tax incentives are typically calculated based on the projected economic impact of a development to the community, including direct and indirect effects to employee hiring and wages, indirect effects to infrastructure and construction costs, and indirect effects on correlated industries.²⁰

In Canada, there are formalized programs available to agribusinesses and corporations more generally, but there remains no comprehensive farm policy.²¹ Listing all of these would be outside the scope of this Essay, nonetheless, a brief overview of some relevant programs follows. Generally, Canadian programs are

11. *Manufacturing Extension Partnership (MEP)*, NIST, <https://perma.cc/6CCJ-TXTF> (archived Apr. 18, 2018).

12. *Events*, U.S. TRADE & DEV. AGENCY, <https://perma.cc/35QJ-UPX3> (archived Apr. 18, 2018).

13. See, e.g., *Patent Pro Bono Program for Independent Inventors and Small Businesses*, U.S. PAT. & TRADEMARK OFF., <https://perma.cc/555K-PBD9> (archived Apr. 18, 2018).

14. See, e.g., Iowa Fin. Auth., *Beginning Farm Tax Credit*, PROGRAMS, <https://perma.cc/A2AY-XYE3> (archived Apr. 18, 2018); WIS. DEP'T OF REVENUE, WISCONSIN MANUFACTURING AND AGRICULTURE CREDIT FACT SHEET 1107 (2018), <https://www.revenue.wi.gov/DOR%20Publications/1107manufandagr.pdf>.

15. See, e.g., CAL. STATE BD. OF EQUALIZATION, AGRICULTURAL INDUSTRY 27 (June 2017), <http://www.boe.ca.gov/pdf/pub66.pdf>.

16. See, e.g., Kristine A. Tidgren, *Deducting Farm Expenses: An Overview*, IOWA ST. U. CTR. FOR AGRIC. L. & TAX'N (July 30, 2017), <https://perma.cc/J2DX-WLBC>.

17. See e.g., Iowa Fin. Auth., *Beginning Farmer Loan Program*, PROGRAMS, <https://perma.cc/RVJ9-W9WX> (archived Apr. 18, 2018); *Aggie Bond Beginning Farmer Loan Program*, MINN. DEP'T AGRIC., <https://perma.cc/AUV6-4RJW> (archived Apr. 18, 2018).

18. See, e.g., *Agriculture-Applied Research Management (Agri-ARM)*, GOV'T SASKATCHEWAN, <https://perma.cc/ZV4B-MU4D> (archived Apr. 18, 2018).

19. See generally VT. AGENCY OF AGRIC., FOOD, & MKTS., AGRICULTURAL ECONOMIC DEVELOPMENT: LOCAL LAND USE PLANNING AND ITS EFFECT ON DIVERSIFIED ON-FARM ENTERPRISES (2015), http://agriculture.vermont.gov/sites/ag/files/pdf/land_use/Agricultural_Econ_Dev_AAFM_02172015.pdf; *Economic Development*, LA. DEP'T AGRIC. & FORESTRY, <https://perma.cc/G4WF-B2EA> (archived Apr. 18, 2018).

20. Jonathan Morgan, *Analyzing the Benefits and Costs of Economic Development Projects*, COMMUNITY & ECON. DEV. BULL., Apr. 2010, at 1, 2; see ALEX EASSON & ERIC M. VOLT, WORLD BANK INST., TAX INCENTIVES 1, 10 (2002).

21. See Gardner, *supra* note 1, at 196.

focused on the following trends: increasing opportunities for aboriginal people,²² increasing opportunities and immigration to regional parts of Canada,²³ community futures programs (i.e., rural development),²⁴ advisory services to help grow businesses,²⁵ energy rebate and retrofit programs,²⁶ innovation advancement programs,²⁷ and start-up and student programs.²⁸

Specific federal agriculture programs include AgriCompetitiveness (providing support for value chain roundtables and adapting to change),²⁹ Agri-Food Trade Service (centralized access to information, counseling, and export support),³⁰ Agri-Innovate Program (funding and resources for industry research and development, and commercialization),³¹ AgriMarketing Program (project-based funding for small and medium enterprises),³² and Canadian Animal Genetic Resources (genetic preservation and conservation).³³ In addition, Canada's Scientific Research and Experimental Development (SR&ED) program is Canada's largest single source of federal government support for industrial research and development and is well-utilized in agribusiness.³⁴ It is a tax credit for eligible companies for qualified expenditures such as salaries, materials, lease and capital expenditures, and overhead,

22. See, e.g., *Aboriginal Peoples' Program*, GOV'T CAN. (Sept. 14, 2017), <https://perma.cc/89ZY-7KC5>.

23. See, e.g., *id.*

24. See, e.g., *Community Futures Program*, GOV'T CAN. (Dec. 21, 2017), <https://perma.cc/NZ5G-FUWQ>; *Community Futures Program*, FEDDEV ONT. (Dec. 2, 2016), <https://perma.cc/JNN5-B9WP>.

25. See, e.g., *Canada Small Business Financing Program*, GOV'T OF CAN. (June 1, 2017), <https://perma.cc/8PWP-CXMM>.

26. See, e.g., *Funding and Incentive Programs for Greening Your Business*, CAN. BUS. NETWORK, <https://perma.cc/L7UG-T2W5> (archived Apr. 18, 2018).

27. See, e.g., *Innovation, Science, and Economic Development Canada*, GOV'T CAN. (Apr. 11, 2018), <https://perma.cc/8J25-ZAQD>.

28. See, e.g., *Student Grants*, GOV'T CAN. (Mar. 29, 2018), <https://perma.cc/A5HR-4YS7>.

29. *AgriCompetitiveness Program—Step 1. What This Program Offers*, AGRIC. & AGRI-FOOD CAN. (Feb. 13, 2018), <https://perma.cc/V6VV-DR5Y>.

30. *Agri-Food Trade Services for Exporters*, AGRIC. & AGRI-FOOD CAN. (Mar. 26, 2018), <https://perma.cc/XAZ3-FC2X>.

31. *AgriInnovate Program—Step 1. What This Program Offers*, AGRIC. & AGRI-FOOD CAN. (Feb. 13, 2018), <https://perma.cc/YB22-EAD9>.

32. *AgriMarketing Program: National Industry Association Component: Step 1. What This Program Offers*, AGRIC. & AGRI-FOOD CAN. (Feb. 13, 2018), <https://perma.cc/3997-2RD2>.

33. *Canadian Animal Genetic Resources*, AGRIC. & AGRI-FOOD CAN. (Nov. 15, 2017), <https://perma.cc/M9R4-95N9>.

34. See *Scientific Research and Experimental Development Tax Incentive Program*, GOV'T CAN. (Apr. 25, 2017), <https://perma.cc/FD4Q-UEQA>.

provided that such expenditures are carried out in the fields of science or technology.³⁵

Similar to the U.S., provincial programs vary widely but generally provide grant assistance, development funding, investment matching programs, reimbursement, and services to companies located or residing in a particular province. Most provinces also offer programs similar to SR&ED in regional-specific businesses.³⁶ For example, Alberta offers the Strategic Research and Development Grant Program for research initiatives complimentary to the government of Alberta's agricultural business plan and priorities.³⁷

In particular, the distinction lies in how frequently states in the U.S. rely on tax exemptions, abatements, and deductions in comparison to Canadian provinces. While there are Canadian programs for tax credits, the use of tax deductions is infrequent; exemptions and abatements are extremely uncommon.

Also of note, tax credits tend to be applicable if certain criteria and thresholds are met, whereas exemptions, abatements, and deductions are inconsistently awarded because they are granted to corporations in specific circumstances or for particular projects. The justification for tax breaks and credits is essentially the same as those provided for other forms of corporate support—corporations will be encouraged to boost local economies by providing jobs and supporting research. It is generally true that this trend has succeeded in developing regional centers and enterprise zones for innovation and business expansion by developing rural or distressed urban areas.³⁸ Often, this has fostered relationships between local businesses, colleges and universities, regional economic programs, and investors by bringing increased capital and an increase in skilled workers.³⁹

Nevertheless, it is my contention there is very little oversight into the direct and indirect benefits of such tax breaks and whether the value of investment matches the value of lost tax revenues. Moreover, the benefits are usually short-lived, most jobs are not high-skilled or high-paying, and counter effects are felt by other areas of the economy or community.⁴⁰

35. *Claiming SR & ED Tax Incentives*, GOV'T CAN. (Nov. 30, 2017), <https://perma.cc/3XTG-GEZZ>.

36. *See, e.g., Strategic Research and Development Grant Program*, ALTA. AGRIC. & FORESTRY (Dec. 20, 2016), <https://perma.cc/5R87-MUET>.

37. *Id.*

38. U.S. Dep't of Agric., *Overview*, FED. TAX. ISSUES (Jan. 27, 2017), <https://perma.cc/2LU8-HEX9>.

39. *See* EASSON & VOLT, *supra* note 20, at 1, 9.

40. *See generally* David Ryan Quintanilla, Comment, *A Bitter Policy Shoved Down Our Throats: How a Once Admirable and Necessary Agricultural Program Has Resulted in Major*

The differences between Canada and the United States' agribusiness sectors can be attributed to a number of factors, but this Essay focuses on three: historic farm programs, politics, and lobbying.

III. FARM PROGRAMS

Farming has historically been one of the most subsidized industries in North America, yet falls far behind the automotive, technology and defense industries.⁴¹ There are some differences between the U.S. and Canada with respect to traditional farm programs that have shaped agribusiness programs of today.

Versions of the U.S. Farm Bill are regularly overhauled. The purpose, most recently, remains to provide direct subsidies to farmers when the prices of commodities drop below a set level.⁴² As a result of corporate farming, the bulk of farm commodity subsidies today are paid to corporations and large agribusiness rather than family farms, which were the original target of the programs under the New Deal.⁴³ Also of significance, the 2008 Farm Bill included provisions for ethanol and biofuels, while the 2014 Farm Bill expanded programs for specialty crops, rural development, and bioenergy.⁴⁴

"Canada has no comprehensive farm policy comparable to the omnibus U.S. farm bills."⁴⁵ This stems from Canada's provincially-structured system and is especially apparent in marketing legislation and supply management for agricultural products (for example, beef, eggs, poultry, and milk).⁴⁶ Producers of such products

Profits for Big Business and Major Frustration for Others, 15 SCHOLAR: ST. MARY'S L. REV. ON RACE & SOC. JUST. 341 (2013); Slivinski, *supra* note 1.

41. See Erica Alini, *Bombardier got Subsidies? Boeing Received \$64 Billion from the U.S. Government*, GLOBAL NEWS (Sept. 28, 2017, 1:07 PM), <https://perma.cc/GR8U-PUTN>; Niraj Choksi, *The United States of Subsidies: The Biggest Corporate Winners in Each State*, WASH. POST (Mar. 18, 2015), <https://perma.cc/HW9C-SAC4>; Peter J. Thompson, *Canadians Pay Hefty \$684 Billion Bill in Business Subsidies over 30 Years, Study Shows*, FIN. POST (May 13, 2014, 5:01 AM), <https://perma.cc/8A6A-MHY9>; *Top 50 Companies that Received Canadian Government Funding*, GLOBE & MAIL (July 19, 2017), <https://perma.cc/AL4M-TKQF>. See Generally MARK MILKE, FRASER INST., GOVERNMENT SUBSIDIES IN CANADA: A \$684 BILLION PRICE TAG (June 2014).

42. Gardner, *supra* note 1, at 189-191; Watson, *supra* note 5, at 280.

43. Watson, *supra* note 5, at 284; Windham, *supra* note 5, at 13, 29. See generally Melanie Wender, Comment, *Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy is Destroying the Family Farm and the Environment*, 22 VILL. ENVTL. L.J. 141 (2011).

44. Food Conservation and Energy Act of 2008, Pub. L. No. 110-246; Agricultural Act of 2014, Pub. L. No. 113-79.

45. Gardner, *supra* note 1, at 196.

46. *Id.*

have organized into market boards and commissions, which has led to well-established supports by way of supply and import controls.⁴⁷ In addition, the boards are focused on improving production, expanding market awareness and demand, advising and lobbying government, and research and development.⁴⁸ While serving an important purpose, the boards and commissions do not provide financial or tax programs comparable to those that are offered by the U.S. government.

IV. POLITICS IN CANADA AND THE U.S.

In the U.S., some agricultural businesses have streamlined the supply chain to present a unified position to the government; there are often symmetries between different agricultural businesses and commodities—such as corn and biofuel businesses. The USDA provides a good example of this, as it is involved in cross-sector advocacy through its administration of dietary guidelines, school meal programs, and nutritional assistance.⁴⁹ Thus, dietary guidelines are often softened so as not to offend certain industries that have an interest, such as dairy (cholesterol) and beef (fat).⁵⁰

Also central to the U.S. are agricultural political action committees. Some are commodity-focused (such as the American Sugar Alliance, National Cattlemen's Beef Association, and EGGPAC), while others are jurisdiction-focused (such as Indiana Farm Bureau, Missouri Farm Bureau, and Ohio Farm Bureau). Like those involved with other industries or ideologies, these committees focus on electing candidates who are friendly to their focus commodity or jurisdiction.

In contrast, Agriculture and Agri-Food Canada (Canada's equivalent to the USDA) is solely focused on helping farmers and businesses produce quality agricultural products through its programming, as the country does not have a formal nutrition assistance program at the federal or provincial level.⁵¹ In addition, political spending and action committees are not as prevalent in Canada, because Canada's electoral rules have established spending limits on how much interest groups (as well as candidates and parties) can spend.⁵²

47. *Id.* at 199; see, e.g., *Controlled Products*, GLOBAL AFF. CAN. AGRIC. (Nov. 22, 2017), <https://perma.cc/RCM6-97W6>.

48. Robert D. Tamilia & Sylvain Charlebois, *The Importance of Marketing Boards in Canada: A Twenty-First Century Perspective*, 109 BRIT. FOOD J. 119, 121-23.

49. See U.S. Dep't of Agric., *Programs and Services*, FOOD & NUTRITION SERV. (Mar. 26, 2018), <https://perma.cc/PLH9-T8EX>. See generally Wiley, *supra* note 5, at 63, 69.

50. *Id.* at 71-72.

51. Talia Ralph, *Hey Canada, Why Don't You Have Food Stamps?*, MUNCHIES (June 13, 2014, 2:30 PM), <https://perma.cc/NPM5-WX56>.

52. See *Candidates' Election Expenses Limits Calculated as If an Election Were to Be Held on November 15, 2017*, ELECTIONS CAN., <https://perma.cc/D3PQ-JPPD> (archived Apr.

V. LOBBYING

Lobbying has been and continues to be an essential tool for agribusiness in the U.S. Well-known examples include lobbying for ag-gag legislation⁵³ and against measures to restrict Supplemental Nutrition Assistance Program (SNAP food-stamps) usage to healthy food options.⁵⁴ Lobbying laws vary extensively throughout the states, including the requirement to register if compensation thresholds are met.⁵⁵ Historically, American farmers were thought to have advantageous representation in Congress due to the lower populations of the Midwestern farming states and thus higher per capita representation. More recently, the significant consolidation of agricultural corporations active in agrochemicals, seeds, and genetic modifications has led to increased lobbying power resulting from greater control of the supply chain and thus greater influence on business.⁵⁶

On the other hand, Canada's farm lobby is less coordinated and less vocal. Lobbying in Canada is designed to ensure that Canadians have confidence in the integrity of the government decision-making process, and the process is considerate of principles of public interest and free and open access to government. Lobbying is heavily legislated at both the federal and provincial levels.⁵⁷ For example, lobbyists are required to disclose their identity and interest and the reasons for their approach, must avoid conflicts of interest, and must not participate in activities that could be viewed as preferential access or of creating a sense of obligation.⁵⁸ That being said, lobbying efforts are increasing and are seen as an effective tool for Canadian agribusiness in obtaining favourable government policy.⁵⁹

19, 2018); *Registered Parties' Election Expenses Limits Calculated as If an Election Were to Be Held on November 15, 2017*, ELECTIONS CAN., <https://perma.cc/BFT2-S7QB> (archived Apr. 19, 2018).

53. See Nancy Fink Huehnergath, *Big Agriculture Bullies and Lobbies to Keep Americans in the Dark*, FORBES (May 5, 2016, 11:05 AM), <https://perma.cc/VLQ5-BQ8T>.

54. Brad Tuttle, *Food Stamps: More Benefit to Big Food Than to the Poor?*, TIME (July 9, 2012), <https://perma.cc/749G-GD7A>.

55. See *How States Define Lobbying and Lobbyist*, NAT'L CONF. ST. LEGISLATORS (Oct. 6, 2017), <https://perma.cc/T55S-DMCC>.

56. See Jennifer Clapp, *Monsanto, Dow, Syngenta: Rush for Mega-Mergers Puts Food Security at Risk*, GUARDIAN (May 5, 2016, 10:30 AM), <https://perma.cc/FV6V-Q833>; Matt Porzio, *Agriculture: The Next M&A Growth Sector?*, FORBES (Mar. 31, 2016, 10:31 AM), <https://perma.cc/RH3B-8PEZ>; Eric Reguly, *The Ongoing Wave of Big Agriculture Mergers Needs to Be Closely Watched*, GLOBE & MAIL, (Oct. 13, 2017), <https://perma.cc/TU6T-8QHP>.

57. See, e.g., Lobbying Act, R.S.C. 1985, c 44 (Can.); *Lobbyists' Code of Conduct*, OFF. COMMISSIONER LOBBYING CAN. (Dec. 1, 2015), <https://perma.cc/KC7W-ZJGJ>.

58. See Lobbying Act, R.S.C. 1985, c 44 (Can.); *Lobbyists' Code of Conduct*, *supra* note 57.

59. See Jason Fekete, *Number of Federal Lobbyists Up Sharply*, OTTAWA CITIZEN (June 12, 2014, 6:07 PM), <https://perma.cc/TAV2-PBBM>.

VI. CONCLUSION

Agribusiness, like farming, relies heavily on government programs in order to remain successful. While American and Canadian agribusiness corporations are relatively similar—or even part of the same corporate family—there are significant differences in the government programs available on each side of the border. The U.S. has a robust program which utilizes tax exemptions, abatements, and deductions. On the other hand, Canada relies heavily on grant and tax credit programs, which are based on stipulated criteria and thresholds. The difference can be attributed to historic farm programs, political culture, and lobbying activity. It remains to be seen whether Canada's programs will become more aligned with the U.S. as a result of agribusiness mergers, the globalization of agribusiness corporations, and increased lobbying efforts.