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AGRICULTURAL GROWTH ACT Bill to Amend—Second Reading of Bill C-18

Speech by:

The Honourable Claudette Tardif

Tuesday, December 9, 2014

THE SENATE

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AGRICULTURAL GROWTH ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Frum, for the second reading of Bill C-18, An Act to amend certain Acts relating to agriculture and agri-food.

Hon. Claudette Tardif: Honourable senators, I rise to speak to Bill C-18, An Act to amend certain Acts relating to agriculture and agri-food, or better known as the Agricultural Growth Act, which was introduced in the Senate on November 25.

I thank my honourable colleague Senator Plett for his remarks on this bill.

I would begin by pointing out that the sheer scope of Bill C-18 is an issue. This is a large and fairly technical piece of legislation. In fact, we could call this an omnibus bill because it will amend nine different acts. Let me name them: the Plant Breeders' Rights Act, the Feeds Act, the Fertilizers Act, the Seeds Act, the Health of Animals Act, the Plant Protection Act, the Agriculture and Agri-Food Administrative Monetary Penalties Act, the Agricultural Marketing Programs Act and the Farm Debt Mediation Act.

That is a whole lot of legislation being affected by one bill.

We have witnessed, unfortunately, time and again, the government's tendency to push through legislation while limiting debate in the process by grouping together many different amendments to various pieces of existing legislation.

• (1440)

By doing so, the bills cannot be debated in full and do not have the chance to be thoroughly examined, as they should be. In addition, it puts parliamentarians in a difficult situation as they often agree with parts of the bill but oppose others and are forced to vote for all of the changes at once.

[*Translation*]

Bill C-18 includes numerous necessary elements that I agree with. Some of the legislative measures targeted in the bill have not been updated for more than 50 years. I do recognize the need to keep legislation up to date with modern business practices and to modernize the language. In fact, many amendments in this bill are language-related. Changes to the French version of the legislation are needed to modernize the terminology and to ensure better concordance between the French and the English versions of the legislation.

Bill C-18 adds regulatory powers to the Feeds Act with regard to record keeping. Last year, when feed destined for the pork industry was recalled because it was linked to a deadly virus, it became clear that there was a real information problem at the Canadian Food Inspection Agency. This incident made us realize

that the Canadian Food Inspection Agency needs to be better equipped when it comes to record keeping. These additional regulatory powers will give the CFIA the tools it needs to ensure that information is tracked electronically, which will be very useful should there be a similar crisis.

I agree with the amendments proposed for the Agriculture Marketing Programs Act, which includes the Advance Payments Program. These amendments will reduce red tape and increase access to the programs. For example, the amendments authorize multi-year agreements, under which program participants will become repeat clients instead of new applicants.

Currently, participants in the Advance Payments Program have to apply every year as new applicants because the program makes no distinction between new and repeat participants.

As a result of these amendments, part-time farmers will be eligible for the Advance Payments Program, since they will no longer be required to list farming as their primary occupation.

[*English*]

I am also in favour of the addition of a stipulation to an existing provision in the Feeds Act, the Fertilizers Act, the Seeds Act, the Health of Animals Act and the Plant Protection Act to allow an inspector to have the power to verify compliance and prevent non-compliance to the acts. This will enable the Canadian Food Inspection Agency to order out of Canada, at the owner's expense, imported shipments or their destruction, if they are found to be non-compliant with Canadian standards and regulations.

Although there are many positive aspects to this bill, as with all omnibus bills, there are aspects which are cause for concern.

Bill C-18 will move Canada from the standards set by the International Union for the Protection of New Varieties of Plants known as the UPOV 1978 convention to those set by the UPOV 1991. Harmonizing the Plant Breeders' Rights Act with the UPOV 1991 will help protect intellectual property and encourage innovation in the development of new crop varieties.

Last June, the Standing Senate Committee on Agriculture and Forestry tabled a report titled *Innovation in Agriculture: The Key to Feeding a Growing Population*. Section 3 of the report spoke on the issues concerning intellectual property. The committee heard from witnesses that Canada's lack of compliance with the International Convention for the Protection of New Varieties of Plants UPOV 1991 created difficulties within the industry. Recommendation 8 of the report goes as follows:

The Committee recommends that Agriculture and Agri-Food Canada and the Canadian Food Inspection Agency bring the *Plant Breeders Right's Act (1990)* up to the standards of the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

The government has indicated that Bill C-18 will bring Canadian legislation up to par with the UPOV 1991, which will help facilitate trade, promote private investment and protect the intellectual property of plant breeders.

While I understand the need to help Canadian plant breeders protect their intellectual property — and I do understand the need to modernize Canadian legislation — I do have some concerns with some of the amendments proposed to the Plant Breeders' Rights Act.

Bill C-18 extends the scope of plant breeders' rights by amending the existing protection with additional new exclusive rights of the breeder. These include: to produce and reproduce propagating material; to condition propagating material for the purposes of propagating the variety; to export or import propagating material of the variety; and to stock propagating material for the purposes of any activities in which are the exclusive right of the breeders.

Bill C-18 also adds a new section to the Plant Breeders' Rights Act which grants farmers privileges to store, condition, stock and use harvested material, such as seeds from the plant varieties they grow on their own holdings. However, in my opinion, a privilege is not the same as a right. Privileges can be revoked while rights cannot. The choice to use the word "privilege" instead of "right" is of concern and was clearly the most contentious issue in the debates in the other place. By purposely choosing the word "privilege" instead of "right," the government gives itself leeway in the future, through the power of regulations, to modify or refuse to grant that said privilege.

[Translation]

Furthermore, when the Agriculture and Agri-Food Committee in the other place was studying this bill, the government voted against amendments that would prevent the minister from making regulations to revoke farmers' privilege. A right outweighs a privilege, and I wouldn't want plant breeders' rights to outweigh a farmer's privilege to harvest and store seeds. This would have a negative impact on Canada's agricultural sector.

It's important to have a balanced approach where we protect plant breeders' rights and at the same time strengthen a farmer's privilege or right to harvest, condition and store seeds for their propagation needs. I wouldn't want the scale to tip in favour of big corporations at the expense of small farms.

[English]

Another area of concern is the question of royalties. Bill C-18 adds new provisions to plant breeders' rights in sections 5 to 5.2 of the Plant Breeders' Rights Act that will enable holders of plant breeders' rights to exercise their rights for any harvested material, as well as any other plant variety that is derived from the initial plant variety. The government assures us that these added rights do not mean that corporations will be allowed to ask for royalties at every step of growth from seed to harvested material, but I am not as optimistic as my colleagues on the other side. Plant breeders could potentially generate revenue on a farmer's entire production, not just on the initial seeds that have been sold to the farmer, but through the whole production cycle.

This bill would also allow for incorporation by reference. This bill amends the Feeds Act, the Fertilizers Act, the Seeds Act, the Health of Animals Act and the Plant Protection Act, giving the

Governor-in-Council the ability to move significant changes without Parliament's consent. Although I can understand some of the practical elements to this amendment, in a democratic country like Canada, it is always worrisome when a government decides to amend existing laws so that it is able to change them without public input or debates in Parliament.

• (1450)

The government assures us that these amendments are simply for better time efficiency in regard to the approval process of different materials, such as fertilizers, seed, feed and so on. However, documents that are incorporated by reference are not required to be transmitted for registration or publication in the *Canada Gazette*. In fact, the proposed subsection 5.1(4) of the Feeds Act states:

For greater certainty, a document that is incorporated by reference in a regulation made under subsection 5(1) is not required to be transmitted for registration or published in the *Canada Gazette*.

In my view, this bill gives too much discretionary power to the minister. From now on, the minister may, subject to the regulations, suspend, cancel or review a legislation or licence and exempt someone or something from one or more regulations.

The bill also explicitly allows the minister to consider foreign data and evaluations in submissions. I understand how this may improve efficiency and streamline the submission process. However, I think the government's track record in supporting Canadian scientists speaks for itself. We have all witnessed this government cut funding to public Canadian research and muzzle our scientists. I have personally spoken several times on this matter.

The National Farmers Union, while appearing before the Standing Committee on Agriculture and Agri-Food in the other place, expressed:

Canada's public science capacity has been severely reduced as a result of federal funding cutbacks. Canadian science should be used to make decisions about products used and sold in Canada and their potential impact on our farms, agricultural ecosystems, economy, environment, animal and human health.

Let me remind honourable senators that 700 research positions at Agriculture and Agri-Food Canada have been eliminated since 2013. I think we should cautiously examine the repercussions this part of Bill C-18 may have on Canadian public research.

Honourable senators, as I said earlier, this is a large and fairly complex bill. I do understand the need to modernize our Canadian legislation and to enhance trade opportunities internationally, but as I explained earlier, I remain apprehensive about some parts of this bill. I believe that Bill C-18 needs to be examined thoroughly in committee. I am looking forward to a thorough examination of this large omnibus bill and hearing from witnesses in the field.

Hon. Joan Fraser (Deputy Leader of the Opposition): Would Senator Tardif take a question?

Senator Tardif: Of course.

Senator Fraser: Some colleagues may recall in the past that I have spoken with grave suspicion, not to mention opposition, about incorporation by reference, which strikes me as a profoundly dangerous tool to give to any government or, more interestingly, the bureaucrats behind any government.

It's bad enough when what is incorporated by reference and what may in the future be incorporated by reference are Canadian documents, Canadian standards set by some non-governmental body, for example. You could, I suppose, argue that Canadians who are concerned with whatever it is that's being incorporated by reference would most likely be aware or would at least find it not that difficult to ascertain if something is being changed, if we were talking about Canadian material being incorporated by reference.

Can you tell us whether in this bill the possibility also exists for incorporation by reference of foreign material? Because that would be much harder for Canadians who were concerned to know about, unless it were published in the *Canada Gazette*, which it won't be.

Senator Tardif: Thank you, Senator Fraser, for your question. The concern you have raised is a very legitimate one. The fact that the minister now will have explicit authority to look at foreign data and evaluations on certain products means, I would think — and I will have to check when the minister appears before the Agriculture and Forestry Committee — that he will have the authority to include that, and these documents could be incorporated by reference.

As I read, documents that are incorporated by reference will not be published in the *Canada Gazette*, and any amendments brought forward will not be publicly debated either in Parliament or by the public at large.

Senator Martin: Question.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)
