
Support for Farmers' Cooperatives

Experiences of non-EU OECD Countries

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Preface and acknowledgements

In order to foster the competitiveness of the food supply chain, the European Commission is committed to promote and facilitate the restructuring and consolidation of the agricultural sector by encouraging the creation of voluntary agricultural producer organisations. To support the policy making process DG Agriculture and Rural Development has launched a large study, "Support for Farmers' Cooperatives (SFC)", that will provide insights on successful cooperatives and producer organisations as well as on effective support measures for these organisations. These insights can be used by farmers themselves, in setting up and strengthening their collective organisation, and by the European Commission in its effort to encourage the creation of agricultural producer organisations in the EU.

Within the framework of the SFC-project this report on the experiences in a number of non-EU OECD countries has been written.

Data collection for this report has been done in the summer of 2011.

In addition to this report, the project has delivered 27 country reports, 8 sector reports, 6 EU synthesis and comparative analysis reports, 33 case studies, a report on cluster analysis, and a final report.

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1 Introduction

Theme 2 of the study focuses on the following topics/issues:

- Overview of agricultural co-operatives in non-EU OECD countries with an emphasis on countries that share similar cultural or other characteristics with Europe (Switzerland, Norway, Canada, USA, New Zealand, Australia).
- Initiatives, support measures, regulations, and policies intended to help farmers organise themselves in agricultural co-operatives.
- Thorough evaluation of the assumptions and findings presented in the literature.

Agricultural co-operatives represent a very important market institution in most OECD countries, not least because of their ability to play a competitive-yardstick role and thus correct perceived market failures (Valentinov, 2007). To help farmers' co-operatives perform such social goals, governments design and implement support policies, measures, and various initiatives. It is thus surprising how little is written about such policies and, particularly, on whether and to what extent these policies have achieved their goals. An initial search for evaluations of pro-co-operative policies in selected non-EU OECD countries was largely unsuccessful; primarily non-technical, minor reference was made to some policies in a few countries. While several studies of the economic impact of co-operatives on an economy have been published during recent years (e.g., Folsom, 2003), the impact of policies on agricultural co-operatives has escaped the attention of researchers. This is the first study to perform a comparative analysis of policies toward agricultural co-operatives in non-EU OECD countries. While this makes our task extremely interesting, it also poses significant challenges.

The report is structured in ten chapters. Chapter 2 describes the methodology adopted in identifying and assessing individual policies/measures targeting and/or affecting agricultural co-operatives. Chapter 3 proffers a brief overview of agricultural co-operatives in non-EU OECD countries; it focuses on countries not studied in detail in this report. Chapters 4-9 illustrate and assess policies toward co-operatives in six, selected non-EU, OECD countries: Australia, Canada, Norway, New Zealand, Switzerland, and the United States of America, respectively. Chapter 10 is based on the preceding chapters to draw conclusions and discuss future research.

1.1 Methods and definitions

This study is about policy measures toward co-operatives in the period 2000-2010 and their impact on the competitive position of agricultural co-operatives vis-à-vis other food supply chain stakeholders. The various aspects of policies are defined and analyzed next.

Policies may belong to one of the following generic categories:

POLICY MEASURE TYPE	DEFINITION
Mandates	Rules governing the actions of individuals and agencies
Inducements	Transfer money to individuals in return for certain actions
Capacity Building	Spending of time and money for the purpose of investment in material, intellectual, or human resources (this includes speeches, extension, etc.)
System Changing	Transfer official authority among individuals and agencies in order to alter the system by which public goods and services are delivered

Source: McDonnell and Elmore (1987).

Each of the abovementioned types of policies encompasses several policy measures (McDonnell and Elmore, 1987). More specifically, mandates may assume the form of a law, a permit law, a general agreement regulation, etc. Inducements refer to policies such as subsidies, vouchers, performance-based support, and provision of financial or other incentives. Capacity building measures include, among other measures, the provision of information by governmental agencies, expertise development, and the identification of best practices in a field. Finally, system changing policies refer to privatization initiatives, gentleman's agreements, establishment of independent regulatory agencies, etc.

Policies may have one or more regulatory goals such as correction of market or regulatory failures, and attainment of equity and social goods (OECD, 2008). Market failures refer to an inefficient allocation of resources under market conditions; equity and social goals refer to the improvement of the position of particular groups; and regulatory (or State) failures imply a regulatory capture or failure of the existing regulatory system.

A policy may target agricultural co-operatives in general or a particular type of agricultural co-operatives (e.g., agricultural supply co-operatives). Also, it may target other types of businesses but, as a side effect, has a significant impact on agricultural co-operatives. Furthermore, a policy measure may be initiated and implemented at the national/federal, regional, or local levels of government.

Given that research on the impact of particular policies, regulations, and measures on the competitive position of co-operatives is rare, measures of this impact are not readily available.

In order to study the impact of particular policies on the competitive position of agricultural co-operatives, first we need to identify such measures. Given the large number of non-EU OECD countries, such a task becomes enormous. Further, a preliminary search of the extant literature revealed that several countries shared a similar evolutionary path in terms of the pro-co-operative policies they have adopted. Thus we have selected six non-EU OECD countries that share similar cultural, economic, or geographic characteristics with EU Member-States: Australia, Canada, New Zealand, Norway, Switzerland, and the USA.

Several adaptations to the aforementioned theoretical concepts are deemed necessary before applying them to the agricultural co-operatives of the selected countries. The four policy types are further specified into policy measures. Such measures we identified by searching the literature and legal documents of each of the selected countries. Subsequently, the compiled list of policies, measures, and initiatives was sent to a group of selected co-operative experts in the countries under study in order to add any item that we might have missed.

While the McDonnell and Elmore typology of policies was used in the template sent to experts (Appendix 2.1), the turned in, final information was grouped into the following categories: (1) incorporation law, (2) co-operative legislation, (3) market regulation and competition policies, (4) financial and other incentives, (5) technical assistance, and (6) other. These categories correspond but also expand the grouping of policy measures of Sexton and Iskow (1987)¹.

¹ That is, (i) limited immunity from anti-trust laws, (ii) access to favorable credit, (iii) technical assistance, and (iv) beneficial tax treatment.

Co-operative legislation deserves special attention. Not all countries have co-operative legislation and those that have enacted such legislation differ significantly with respect to the issues regulated by law or left to be dealt with in co-operatives' bylaws. These differences are identified and their impact assessed by local co-operative experts.

The term 'competitive position' is complex and elusive. Despite the substantial body of academic and business literature on the topic little agreement has been achieved on what it is and how to measure it (Rumelt, 2003). Things become more complicated when we refer to agricultural co-operatives because of the multiplicity of goals such organisations pursue. This multiplicity is further complicated because co-operatives often represent the interests of heterogeneous member groups and thus it is difficult to develop metrics of their competitive position.

The impact a policy has on the competitive position of agricultural co-operatives may be multidimensional. Therefore its various dimensions have to be specified and measured appropriately. Among the measures commonly used are the market shares of co-operatives relative to those of their IOF competitors, the growth in market shares, and prices paid to members relative to the average farmer price in an industry. However, given that this study is based solely on existing literature, the scarcity of such studies poses a major constraint on what can be done. Therefore, we rely primarily on assessments of co-operatives' competitive position by local co-operative experts.

1.2 Data collection

Data collection was performed in two steps: (1) identification of policies that affect agricultural co-operatives in the studied countries, and (2) assessment of the impact each policy measure has on the competitive position of co-operatives vis-à-vis their competitors.

In step 1 the following sources of information on agricultural co-operatives and, particularly, public policies intended to support farmers organise in agricultural co-operatives or other forms of collective entrepreneurship will be used in collecting all information available:

- Journal articles (e.g., the SCOPUS data base)
- Business/co-operative magazines, leaflets, etc.
- Annual reports of co-operatives (where possible)
- Ministries of Agriculture and other relevant public agencies: papers, announcements, etc.
- Websites, reports, etc., of co-operative research centres
- FAO website, reports, papers, proceedings, etc.
- OECD website, reports, papers, proceedings, etc.
- ICA website, reports, papers, proceedings, etc.
- National umbrella organisations for agricultural co-operatives (e.g., NCF in the US)
- Interviews with experts

As mentioned above, only a limited number of empirical evaluations of public policies toward co-operatives have been published. Therefore we rest primarily on local national experts to provide policy evaluations. A list of national co-operative experts was

compiled with the help of professors Michael Cook and George Hendrikse and we contacted the experts to request such evaluations. We prepared a questionnaire in the form of a table (see Appendix 2.1), which was informed by the data and information collected in Step 1. Subsequently the table was sent to the identified co-operative experts in the six countries to be filled in with their assessment of the impact each policy had on the competitive position of agricultural co-operatives.

The co-operative experts who helped us in identifying additional policy measures and assessed the contribution of these measures to improving the competitive position of agricultural co-operatives are listed below. Their contribution is highly appreciated.

Expert's Name	Affiliation	Country
Brad Plunkett	Trade and Market Development, Department of Agriculture and Food, Western Australia	Australia
Tony Gill	Director, Co-operative Development Services, Ltd, Victoria	Australia
Melina Morrison	Social Business Australia	Australia
Peter Wells	The Co-operative Federation of Western Australia	Australia
Raymond White	Office of Fair-trading, Queensland Government	Australia
James Watt	Vice President of Corporate and Member Affairs & Chief Governance Officer, United Farmers of Alberta	Canada
George Hendrikse	Erasmus University of Rotterdam	The Netherlands
Agnar Hegrenes	Norwegian Agricultural Economics Research Institute (NILF)	Norway
May Woldsnes	Adviser, The Norwegian Cooperative Centre	Norway
James Morrison	Morrison Consulting	New Zealand
Alan Robb	Independent Consultant	New Zealand
Blue Read	Past Chair, Fonterra Shareholders Council	New Zealand
Merlina Bajic	Sachbearbeiterin, Eidgenössisches Departement des Innern EDI, Bundesamt für Statistik BFS, Sektion Unternehmensstruktur (UNS)	Switzerland
Hans Rüssli	Schweizerischer Bauernverband, Kommunikation	Switzerland
Ingrid Dinca	University of Lucerne	Switzerland
Arnaud de Loriol	Eidgenössisches Volkswirtschaftsdepartement EVD Bundesamt für Landwirtschaft BLW Fachbereich Pflanzliche Produkte	Switzerland
Michael L. Cook	University of Missouri	USA
Marlis Carson	Senior Vice President and General Counsel, National Council of Farmer Cooperatives	USA
Kristi Livingston	Executive Director, Graduate Institute of Cooperative Leadership, University of Missouri-Columbia	USA

The reviewed literature has already been delivered in the form of an Endnote database (Deliverable 1, March 2011) and is also attached to this report. The assessed public policy measures, initiatives and regulations were inserted in a user-friendly Excel database that enables easy access to the desired type and form of information (Deliverable 2, July 2011). It includes all the information gathered in step 1 and the expert assessments of step 2. More specifically, the database provides easy access to information on the following:

- Country
- Year
- Policy type
- Policy measure
- Objective of the policy measure
- Targeted population
- Expert assessment of each policy's impact on the competitive position of co-operatives
- Additional expert comments (e.g., a brief evaluation of the factors that led to the success or failure of the policy measure)

The information gathered and analysis performed provided the basis for preparing the following comprehensive summary of the support measures, initiatives in the selected OECD countries and their effectiveness and efficiency.

1.3 Brief Overview of Agricultural Co-operatives in non-EU, OECD Countries

Agricultural co-operatives represent a very important institutional arrangement in the agriculture and food supply chains of the 13 non-EU, OECD countries². In this chapter we overview agricultural co-operatives in seven of these countries, while each of the following six chapters focuses and analyses agricultural co-operatives and relevant policy measures in the remaining countries. In the majority of these countries, an agricultural co-operative is defined according to the *Statement of the Co-operative Identity* adopted by the Geneva-based International Co-operative Alliance (ICA). More specifically, a co-operative is:

“... an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise” (ICA³).

Detailed information and statistics are not available for all OECD countries. What follows is a brief description of agricultural co-operatives in Israel, Japan, Mexico, South Korea, and Turkey. An assessment of the role policies toward agricultural co-operatives have played over the years is provided for some of the above countries⁴.

In *Japan*, 832 primary agricultural co-operatives (called JAs) are organised in second-tier unions and federations⁵ (JA Zenchu, 2007). They provide their farmer-members, but also non-farmer, associated members with multiple services, such as the collection and shipment of their produce, grain elevator and marketing services, food processing facilities, supermarkets, gas stations, farm machinery maintenance, insurance and credit provision, etc. In 2005, JAs had a turnover of ¥ 1,960 billion. The strong ties between agricultural co-operatives and politicians have been accused as a source of significant

² These are: Australia, Canada, Chile, Iceland, Israel, Japan, Mexico, New Zealand, Norway, South Korea, Switzerland, Turkey, and the USA.

³ Statement on the Co-operative Identity, available at: <http://www.ica.coop/coop/principles.html>

⁴ Chile and Iceland are not discussed here as no information was available in English.

⁵ 2007 data.

inefficiencies in agricultural production, international trade, and farmland use (Godo, 2009). Albeit at a slow rate, since the mid-1990's these ties have become increasingly weaker (ibid).

In 2004, more than 2.4 million *South Korean* farmers were organised in 1,239 regional agricultural and 88 commodity co-operatives (Choi, 2006). These co-operatives are active in every part of the country and provide their members with diverse services and products. At the national and international levels agricultural co-operatives are represented by the National Association of Agricultural Co-operatives (NACF) and monitored by the South Korean Ministry for Agriculture. Korean agricultural co-operatives command significant shares in many commodity markets. Several public policies have provided support for the development of agricultural co-operatives. For example, all business transactions between the co-operative and its members are tax exempt while favourable interest rates for farmer-members of co-operatives are secured. The close ties between the government and co-operatives is demonstrated by the many farm and rural development programmes delivered to farmers through co-operatives (Choi, ibid).

Not many English-language sources of information on *Mexican* agricultural co-operatives are available. According to the Social Development Fund of the Mexico City Federal District Government, 15,000 co-operatives of all types are currently active in Mexico. Most of these organisations are consumer or producer co-operatives. Further, articles posted on various websites posit that after years of decline, co-operatives are reviving as a means of defence against the international financial crisis (e.g., Inter Press Service, 2011). The positive impact of agricultural co-operatives on job creation, the smooth functioning of agricultural and food markets is reported in a book by Dominguez (2007). Examples of successful Mexican agricultural co-operatives include the dairy groups LALA and ALPURA, and the farm supply co-operative El Granero Nacional. According to co-operative leaders, co-operatives in Mexico lack the support of the government and mechanisms for gaining access to start-up capital. Complaints have also been made about inefficiencies caused by loopholes in the current co-operative law of 1994.

In 2003, 11,449 agricultural co-operatives representing over 4.5 million farmers were active in *Turkey*. The three most important types of Turkish agricultural co-operatives are credit, sales, and development co-operatives. Despite their numbers, agricultural co-operatives have had a minor impact on the economic development of the country's agricultural sector (Özdemir, 2005). Lack of access to finance, low levels of vertical integration, inefficient governance, and problems arising from the legislative environment have been accused for this (ibid). While agricultural development co-operatives (engaged in food processing) adhere to the international co-operative principles, government intervention into the other two types of agricultural co-operatives is very common. For example, agricultural credit co-operatives are not permitted to operate banks that receive savings accounts and so they are dependent on the state-owned Agricultural Bank. Further, the Ministry of Industry and Trade appoints senior management and controls every operational and managerial aspect of supply co-operatives during the intervention purchases of major crops. However, farmer-members of these co-operatives seem to invite state interference (ibid).

Four major types of agricultural co-operatives are observed in *Israel*: kibbutzim, moshavim, communal moshavim, and secondary service co-operatives (Kislev, 2000). In 2010, there were 270 kibbutzim in Israel. Their factories and farms account for 9% of

Israel's industrial output, worth US\$ 8 billion, and 40% of its agricultural output, worth over \$ 1.7 billion⁶. At the same time, 106 moshavim and 45 communal moshavim are operating in the various parts of Israel. Most secondary co-operatives are organised regionally by either kibbutzim or moshavim (by both in a few cases). Tnuva, a secondary co-operative is the largest dairy company in the country but in recent years was demutualized (Galor, 2009). In the mid-1980's, agricultural co-operatives faced an enormous financial crisis that almost led to their collapse. The Israeli government reached separate agreements with kibbutzim and moshavim as well as with creditors and contributed significant amounts of money in order to save those co-operatives that could be saved while the remaining were liquidated and their assets were sold to private parties. In most recent years, kibbutzim have turned to private ownership and deals with businessmen. As a result, membership has steadily increased, including both new members and former members who return to the villages.

The impact of policies toward agricultural co-operatives in the above countries varies from negative to neutral to positive. The positive influence of a flexible institutional/legal environment is demonstrated in the case of South Korea. On the other hand, the lack of governmental support seems to be more critical in countries where low educational level of farmers and a lack of a civil society tradition are present.

Next, we turn to more in-depth analyses of agricultural co-operatives and policy measures toward these organisations in the selected six non-EU OECD countries.

⁶ "Kibbutz reinvents itself after 100 years of history," *Taipei Times*, November 16, 2010, Available at: <http://www.taipeitimes.com/News/editorials/archives/2010/11/16/2003488628>

2 Support for Farmers' Co-operatives in Australia

2.1. Background on agricultural co-operatives and the food and agribusiness industries in Australia

Australia is one of the least densely populated countries in the world extending in an area of 7.69 million km² with a population of, approximately, 23 million, that is, less than three people per km². Among the OECD countries that have a relatively similar institutional and cultural background, probably Canada, with its almost 10 million km² and 34 million inhabitants, that is, 3.4 people per km², shares many similarities with Australia. Australia has a well-developed open market economy, the 13th largest economy in the world, with its GDP reaching \$1.25 billion⁷ (IMF, 2010). Australia's agricultural sector is strong, export-oriented and, relatively to other developed economies, represents a high percentage of its Gross Domestic Product (GDP), comparable only to south European countries with a large agricultural sector, such as Spain and Greece (Table 1).

Table 1: Agriculture as a percentage of GDP

Australia	US	Japan	EU	Canada	Spain	Greece
3,9	1,1	1,4	1,8	2,2	3,3	4,0

Source: OECD

The above 3.9% corresponds to \$42 billion, which is the gross value of Australian farm production (farm-gate value). Sixty percent in volume and 76% in value (\$32 billion) of total agricultural production is exported (Australian Commodity Statistics, 2009). Australian farmers are among the most productive in the world. As of November 2009, 382,000 people were directly employed in farming. This corresponds to, on average, \$110,000 productivity per farmer. There are 135,996 farms in Australia (including those for whom farming is not their primary business), covering 61% of the country's landmass, an impressive percentage given that desert covers 20% of the land, most of the non-desert areas still receive low precipitation and most of the inland is sparsely inhabited. There are 120,942 farms solely dedicated to agricultural production (Table 2).

Table 2: Population, area, farmers, farms and co-operatives per state⁸ in Australia (2009)

	Population (%)	Area, km ² (%)	Farmers (%)	Farms (%)	Co-ops (%)
NSW	7,238,819 (32.4)	800,642 (10.4)	105,300 (27.6)	38,051(31.5)	691 (40.0)
VIC	5,547,527 (24.8)	227,416 (2.9)	78,900 (20.7)	29,666 (24.5)	710 (41.1)
QLD	4,516,361 (20.2)	1,730,648 (22.5)	92,700 (24.3)	25,136 (20.8)	177 (10.3)
WA	2,296,411 (10.3)	2,529,875 (32.9)	38,600 (10.1)	11,124 (9.2)	61 (3.5)
SA	1,644,642 (7.4)	983,482 (12.8)	37,800 (9.9)	12,868 (10.6)	52 (3.0)
TAS	507,626 (2.3)	68,401 (0.9)	12,500 (3.3)	3,547 (2.9)	29 (1.7)
NT	229,675 (1.0)	1,349,129 (17.5)	15,800 (4.1)	474 (0.4)	1 (0.0)
ACT	358,894 (1.6)	2,358 (0.0)	300 (0.1)	76 (0.1)	5 (0.3)
Total	22,342,400 (100)	7,691,951 (100)	381,900 (100)	120,942 (100)	1,726 (100)

Source: Australian Bureau of Statistics May 2010

⁷ AU\$1 almost equals US\$1.

⁸ New South Wales (NSW), Victoria (VIC), Queensland (QLD), Western Australia (WA), South Australia (SA), Northern Territory (NT), Tasmania (TAS), Australian Capital Territory (ACT).

However, agricultural production does not stop at the farm gate. It offers significant input for the agribusiness industry which in Australia is highly developed. Agribusiness takes the aforementioned \$42 billion farm-gate value and makes it \$155 billion, or 12.1% share of GDP. Agriculture and agribusiness supports the jobs of 1.6 million Australians accounting for 17.2% of the national workforce (Australian Commodity Statistics, 2009). After the liberalization of Australian agriculture in the 1990's, government support for farming dropped dramatically and represents just 4% of farming income. If we compare this to figures such as 61% in Norway, 52% in Korea, 23% in EU, 17% in Canada and 9% in the US we understand that Australian farmers are among the most self-sufficient in the world (OECD, 2010).

Although there are successful and large co-operatives in Australia, they are not as developed as in other western economies. If we take the top one hundred businesses operating as co-operatives, mutuals and credit Unions in Australia, their combined annual turnover is in the order of \$14.5 billion (Co-operatives Australia, 2011). An important ratio of them is farmers' co-operatives but not all. This means that a much smaller number than \$14.5 billion corresponds to agricultural co-operatives turnover. Comparing this number with \$155 billion, which is the total value of the Australian agribusiness sector we realize that agricultural co-operatives (and co-operatives in general) are not as developed as in other OECD developed countries where a much more significant amount of agribusiness is being carried through co-operatives. This, of course does not mean there are not successful co-operatives in Australia. Actually the two largest co-operatives in Australia are agricultural co-operatives.

Co-operative Bulk Handling (CBH) in Western Australia (WA) is the largest co-operative with \$2.63 billion turnover in 2010. It is Australia's leading grain organisation. From the total grain production of around 34 million tonnes (12 million tonnes in WA) CBH processes more than 10 million tonnes, that is, a bit less than 30%.

Murray Goulburn in Victoria (VIC) is the largest dairy co-operative, a world class supplier of dairy ingredients and retail products. It processes approximately 34.5% (3.1 billion litres) of the total production of 9 billion litres. It is a co-operative with a \$2.24 billion in turnover.

The next largest agricultural co-operative is Dairy Farmers Milk Co-operative in New South Wales (NSW) with a turnover close to \$500 million. Norco (NSW), another dairy co-operative follows with \$345 million. This means that the three largest dairy co-operatives in Australia process close to 50% of the total milk production. Namoi Cotton (NSW) has a turnover of \$322 million and processes 25-30% of the total cotton production of around 2-3 million bales (this number varies significantly from year to year due to droughts).

It is interesting that in the list of 300 largest co-operatives in the world (Global 300) published by the International Co-operative Alliance (ICA), Murray Goulburn ranked 157th in 2006. Dairy Farmers ranked 253rd and HBF (an insurance co-op) 288th, always with 2006 data⁹. This is indicative of the relatively low level of co-operative development in Australia the fact that it has only three co-operatives (two agricultural co-operatives) in Global 300 and none in Global 100. In comparison, New Zealand has one in Global 100 (Fonterra ranked 31st) and six in Global 300 (three agricultural and three retail co-operatives). Canada, a comparable country to Australia, is home to nine co-operatives in Global 300 (two agricultural, three retail which are related to farm

⁹ Available on-line at: http://www.coopseurope.coop/IMG/pdf/G300_08.pdf

products and food and four financial-insurance) of which three in Global 100 (one financial, one agricultural, and one retail).

The countries that dominate Global 300 are the United States, with 62 (or nearly 20 percent of the total list), followed by France, with 45, Germany with 33 and Italy, with 28 co-ops on the list. Co-operatives in these four countries represent more than 50% of the Global 300). The generated revenue by the Global 300 totalled \$965 billion (2006 data). Sixty percent of this total revenue (in US dollars) was generated by co-operatives in only four countries: France (\$174 billion), Japan (\$143.6 billion), United States (\$133.1 billion) and Germany (\$125.6 billion). Australia with its three co-ops in the list is close to \$3 billion. Most co-operatives in Australia are small organisations in terms of turnover and assets. Approximately 98% of co-operatives have annual revenue of less than \$25 million and 99% have assets of less than \$12.5 million. There are a very small number of co-operatives which have assets in excess of \$100 million, with most mainland States having at least one large manufacturing or agricultural co-operative (Ministerial Council for Consumer Affairs, 2010).

2.2. Evolution of support for farmers' co-operatives

Historical background

It is interesting, that although the co-operative movement does not seem very developed in Australia, 37% of the population are members of a co-operative¹⁰ (Social Business Australia, 2011). The number of co-operatives in Australia has declined the last decade; from 2,350 general co-operatives registered in June 2000 there were 1,726 in September 2009. This is a decline of 26% in this 9-year period. The great majority of co-operatives (more than 80%) are located in Victoria (VIC) and the New South Wales (NSW)¹¹. This is not unexpected given that these two states are home to more than 55% of the Australian population and farms and 47% of farmers (see table 2 above).

Support for farmer's co-operatives has not been clear for the most of the 150 years of co-operatives' history in Australia. Co-operatives first appeared in Australia in the 1830's and 1840's under the form of Friendly Societies (Lewis 2006¹²). In 1859 we have the first co-operative based on the Rochdale model in Brisbane, QLD. In 1896 representatives of the British Rochdale consumer co-operative, the English Co-operative Wholesale Society (English CWS) visited and toured the colonies to boost co-operative trade with their "old country". The NSW government fearing that the small local co-operative will not be able to capitalize on these new trade opportunities, appealed to the farmers to co-operate (Lewis, 2006). According to Lewis this is the first instance of an Australian government support to co-operatives.

Co-operatives have contributed to the development of Australian agriculture, especially agricultural marketing co-operatives. Producer-owned co-operatives rank among some of the biggest agribusinesses in this country. The reason why co-operatives have succeeded in these businesses is that they have directly met the economic needs of individual producers (Lewis, 2006).

¹⁰ All types of co-operatives were included in the calculation of this statistic.

¹¹ NSW enacted first Co-operative legislation in 1923 and Victoria in 1953.

¹² For a thorough view on the history of agricultural co-operatives in Australia see the extensive work of Gary Lewis "The Democracy Principle: Farmer Co-operatives in 20th century Australia", 2006.

Lyons (2001) argues that at different stages of Australian history, “co-operative-like organisations such as friendly societies, building societies, credit unions and trade unions have flourished, often for long periods, but organisations that identify themselves as co-operatives have been less successful and the idea of cooperation has never animated more than a small percentage of Australians” (p. 3).

Lyons (2001) provides a brief history of co-operatives in Australia. Farmer co-operatives begun in the late 19th century and in the mid 20th century they became the dominant form of organisation as they enabled farmers to “market their produce without fear of exploitation by ‘middle men’.” Farmer co-operatives moved also into purchasing farm inputs and grew significantly between the 1920’s and 1960’s. However, the co-operative movement was divided as consumer co-ops were hostile towards producer co-ops and farmer co-ops had to cope with other producers who undercut their prices. Farmer co-operatives’ appeal to the government backfired; the creation of compulsory government-appointed marketing boards which purchased and marketed the whole of a particular product removed the very need for co-operatives, thus leading to their collapse (ibid).

The debate over free-trade versus protectionism was always a point of severe friction among all co-operative stakeholders. Since the end of the 19th century, the dairy industry in the colonies of Victoria and NSW has been suffering from this intense debate. As Lewis put it “The NSW and VIC dairy co-operative movements were splitting along the ‘free-trade – protectionist’ lines, a division which would prove to be disastrous for the Australian co-operative unity” (p. 16). It is indicative that dissidents with the Victorian Co-operatives Bill (1999) during the Bill’s preparation were arguing that “if the government is serious about advancing the cause and benefits of co-operatives it must recognise that co-operatives need to be given full corporate powers with minimum interference of government” (ibid, p. 141).

In the 1980’s Commonwealth government legislation encouraged competition and became suspicious of co-operatives (ibid). The Australian government never had a bureau responsible for co-operatives and national (state and territory) governments clearly state that no special favour should be given to any organisation simply because they adopt a specific organisational form (ibid). Special tax treatment provided in the taxation law is the only measure that can be recognised as a support measure for co-operatives. Specifically in order for co-operative to be eligible for this special treatment the co-operative has to conduct at least 90% of its trade among its members. Government policy implicitly supports the idea that investor-owned companies are the most efficient and therefore the favoured form of organisation (ibid).

Evolution of support

Except for short periods of time in the past, co-operatives in Australia did not have any national umbrella organisation (Lyons, 2001). The national Co-operative Federation of Australia played a role in co-operative advocacy between the 1950’s and 1980’s. Funding came from the vigorous Western Australian co-operative sector which lost its strength when most of WA co-operatives converted to investor-owned corporations. The federation kept its strong voice between 1986 and 1993 and provided a range of services, including financial services, to its member co-operatives but a series of ‘bad loans’ led to its collapse. However, during the 1990’s in NSW more new co-operatives were created (in all industries) than those that failed. As Lyons (2001) notices, it is interesting that despite the discontent of many of co-operative advocates toward “liberalization of the markets, downsizing of government and other features of globalization, there was a growing enthusiasm for ventures that combine social and

economic objectives. Social enterprises are treading the same path that co-operatives pioneered over a century ago” (ibid, p. 12). Lyons goes on arguing that a revival of co-operatives calls for “government’s enabling policy” but he does not specify what this enabling policy should include.

Many academic authors (e.g., Lyons, Lewis) as well as co-operative practitioners and advocates agree that government support for co-operatives over the years has been unclear and ambiguous. Actually, their regulation by government varied from “lax to onerous but with no particular encouragement” (Lyons, 2001). The first Co-operative Act was initiated in NSW in 1923 and before that, co-operatives were registered under friendly societies or industrial and provident society acts. The creation of the Registrar of Co-operatives in NSW encouraged mostly the formation of building societies and credit unions and at a lesser degree farmers’ co-operatives, thus credit unions and building societies became a feature of Australian society from the 1950s (Ministerial Council for Consumer Affairs, 2011). Farmer co-operatives had already become a common form of organisation in the late 19th and early 20th century mainly in dairy and wheat production.

NSW, a pioneer state (along with Victoria) in co-operative legislation updated the Co-operatives Act in 1992 with the incorporation of the six co-operative principles of the ICA. A co-operatives development fund that was created conducted feasibility studies on the formation of co-operatives in various industries, not specifically in agriculture. Victoria and Queensland (QLD) followed NSW in employing proactive policies for co-operatives from time to time and in the late 1990’s the states and territories governments decided to develop a, so far lacking, nationally consistent legislation based on the recently amended NSW Co-ops Act.

Five states (NSW, VIC, South Australia (SA), WA and QLD) have their own co-operative federations, which are more or less active. Victoria, state with tradition in co-operatives, is home of the Co-operatives Development Services, Ltd, an organisation specializing in the formation of co-operatives. Its director, Tony Gill, one of Australia’s leading experts on co-operatives with 30 years of practical experience working with co-operatives, was one of the experts we surveyed in order to get deeper insights on supportive policies and measures for farmer’s co-operatives, given the lack of available information in the existing literature. However, all co-operative federations are not publicly supported and are funded by their member-co-operatives. Their mission is to help new co-operatives to get started, enhance co-operative education and information, raise public awareness, provide resources and networking opportunities and maintain links with other organisations, both interstate and internationally.

In 1999 the University of Technology Sydney (UTS) and Charles Sturt University, Bathurst (CSU) jointly created the Australian Centre for Co-operative Research and Development (ACCoRD) which produced a series of research papers on co-operatives and created a database of Australian co-operatives. In 2005 due to lack of funding the centre closed and its database has not been updated since.

Currently, there is discussion on the newly proposed National Co-operatives Law. According to Tony Gill, “this will not be a federal law, but template legislation in each of the six states and two territories. The administration of the proposed law will remain with state and territory jurisdictions” (Table 3).

As shown in Table 3, the main regulatory bodies for co-operatives are the state registries. They are also the most important source of support for co-operatives. In the

case of NSW the Registry of Co-operatives has implemented the Co-operative and Regional Development Strategy (CARDS)¹³ which focuses on promotion of co-operatives in regional areas and lay the ground for a wide-ranging promotional programme mostly focusing on promotion of co-operative concepts and advisory services (Wickremarachchi, 2003).

Table 3: State and Territory Co-operatives Legislation

Jurisdiction	Legislation	Regulator
Australian Capital Territory	Co-operatives Act 2002 Co-operatives Regulation 2003	Registrar of Co-operatives, Department of Justice and Community Safety
New South Wales	Co-operatives Act 1992 Co-operatives Regulation 2005	Registrar of Co-operatives, NSW Fair Trading, Department of Services, Technology and Administration
Northern Territory	Co-operatives Act Co-operatives Regulations	Registrar of Co-operatives, Department of Justice
Queensland	Co-operatives Act 1997 Co-operatives Regulation 1997 Co-operatives Exemption notice 1999	Registrar, Department of Justice and the Attorney- General
South Australia	Co-operatives Act 1997 Co-operatives Regulations 1997	Corporate Affairs Commission
Tasmania	Co-operatives Act 1999 Co-operatives Regulations 2000	Commissioner for Corporate Affairs
Western Australia	Co-operatives Act 2009	Registrar of Co-operatives, Department of Commerce
Victoria	Co-operatives Act 1996 Co-operatives Regulation 1997	Registrar of Co-operatives

Source: Adopted from Ministerial Council for Consumer Affairs

Although legislation is very similar across jurisdictions, differences do exist between states creating the following problems according to the Ministerial Council for Consumer Affairs (p. 10-12):

“1) Inconsistent State and Territory legislation:

a) Nationally agreed changes are not always implemented consistently in all jurisdictions. Over time, there has been an increasing tendency towards divergence between States and Territories.

b) It is very difficult to coordinate the commencement of legislative changes across all eight States and Territories due to varying Parliamentary processes and timetables. As a consequence, agreed changes to legislation usually commence at different times in different States and Territories.

c) Different drafting practices in various States and Territories have resulted in minor variations in legislation, which result in additional compliance costs for co-

¹³ The Co-operative and Regional Development Strategy (CARDS), is an initiative of the Registry of Co-operatives, a unit of the NSW Government's Department of Fair Trading. CARDS seeks to identify opportunities in regional areas where a co-operative arrangement may enable local communities to achieve economic or social objectives <http://www.cacom.uts.edu.au/articles/infobriefs/cooprds.html>.

operatives operating in more than one jurisdiction – with no apparent offsetting benefits.

d) The Core Consistent Provisions do not comprehensively address administrative matters and the supervision of co-operatives. As a consequence legislative provisions and administrative practices vary between jurisdictions.

e) Maintaining the same legislation in eight separate States and Territories is an inefficient use of Parliamentary and Government resources.

2) *Competitive disadvantage for co-operatives.* A review of co-operatives legislation conducted in 2005 identified other problems with current co-operatives legislation. This review found that:

a) Changes to corporate governance requirements in the *Corporations Act 2001* have not flowed through to co-operatives. As a consequence different standards now apply for co-operatives and companies, including duties for directors and officers.

b) Co-operatives legislation modifies some provisions in the *Corporations Act 2001* and then applies them to co-operatives, but this is done in an inconsistent manner across jurisdictions - leading to different requirements in different States and Territories.

c) Small proprietary companies are exempted from some requirements for financial reporting and auditing under the *Corporations Act 2001*, but there are no equivalent exemptions for small co-operatives.

d) Co-operatives in New South Wales are specifically authorised to raise funds by issuing a new type of security known as a Co-operative Capital Unit. This form of security is not recognised in co-operatives legislation in other jurisdictions providing co-operatives in NSW with a potential competitive advantage. (Victoria has subsequently implemented provisions for Co-operative Capital Units and Western Australia is in the process of doing so).

e) The Core Consistent Provisions specifically prohibit co-operatives from carrying on business across borders without approval from the local Registrar of Co-operatives. Compliance with these approval requirements imposes costs on co-operatives which place them at a competitive disadvantage to companies.

3) *Declining number of co-operatives:*

In current day Australia, the number of co-operatives has declined. It has not been possible to identify all the reasons for this decline, or the extent to which the legislative framework may have contributed to this decline. Changes in the general economy and in Australian culture are likely to have contributed as much or more to the decline. There is, however, a clear imperative to ensure that the legislation framework provides a level playing ground for co-operatives and that legislation does not create barriers for incorporated bodies that choose to implement co-operative principles. The decline reflects changes such as the restructuring of rural industries and markets, the concentration of retail markets around national enterprises such as supermarkets as well as changes in medical insurance and the financing of health care.

The proposed Co-operatives National Law was developed to address the problems identified with the current legislative framework. It will be enacted in New South Wales

and then applied in other jurisdictions with individual States and Territories having the option of establishing and maintaining legislation which is consistent with the agreed national law.”

2.3. Support policies, measures, and initiatives (2000-2010)

In order to investigate support measures, policies and initiatives as well as to assess these measures we asked the opinion of experts on Australian co-operatives, as described in the methodology section of this report. Once we compiled all measures we sent them to experts to assess their impact. The assessment took the form of a Likert-scale -4 (extremely negative) to 4 (extremely positive), 0 being neutral (Appendix 4.1).

2.3.1. Incorporation

Tony Gill, Director of Co-operative Development Services, Ltd with 30 years of experience in co-operatives explains that “in Australia there is no legal framework for incorporating a co-operative at the federal level. All co-operatives are incorporated under state or territory co-operatives legislation. A co-operative wishing to *carry on business* (as defined in co-operatives law) in another state or territory is recognised as a ‘foreign co-operative’, and operates in the same manner as in its home jurisdiction. Registering as a ‘foreign co-operative’ in another jurisdiction is a simple and low cost procedure. Co-operatives are however subject to the laws of the states and/or territories in which it carries on business.”

However, “while co-operatives are not incorporated under the federal *Corporations Act 2001*, they are subject to the Act in relation to directors’ duties and responsibilities, fund raising, accounts and audit, arrangements and reconstructions, and winding up.

It is worth noting that “all corporate legislation in Australia was originally state based. It was not until 1990 that company law became a federal act. Co-operatives legislation is following a similar evolutionary path to that of company law; separate and distinct State acts, followed by consistent legislation except for some minor variations between the states and territories (current status), and then template legislation (proposed national co-operatives law) (Gill, 2011, personal correspondence). As Peter Wells, secretary of WA Co-operative Federation and co-op expert notes, “National Co-operatives Legislation will result in participating Australian states and territories having “harmonized state law i.e. broadly consistent law enacted in each jurisdiction”.

The next step would be a federal co-operatives act, if state, territory and federal governments all agree to hand over responsibility for co-operatives to the commonwealth. However, according to Tony Gill and Peter Wells, “states prefer not to give up control to the federal government in an area over which they want some discretionary control and influence”.

Description

Under the *Corporations Act 2001*, a federal Act, co-operatives are protected against misuse of the term/name “co-operative”. State level Business Names Act (in some states) also protects against inappropriate use of term “co-operative.”

Assessment

Assessment of this policy was 1, that is, somehow positive. No further comments were provided, probably because the specific clause does not affect, nor significantly protects

co-operatives given that each state and territory has its own Co-operatives Act which clearly defines a co-operative and once organisations are registered under a Co-operatives Act, this clause of the Corporations Act may be redundant.

2.3.2. Co-operative legislation

As mentioned above, co-operative legislation exists at a state-territory level, not at the federal level. The role of National co-operative law that is under way is to harmonize state laws and eliminate differences, difficulties, and inefficiencies stemming from this diversification (see section 2.2). According to Tony Gill, “each state and territory co-operatives legislation is based on the Victorian *Co-operatives Act 1996* and is currently about 95% consistent across all jurisdictions.” As it is shown on table 3 in section 2.2 all states and territories have their own Co-operatives Act. Moreover, some co-operatives (mostly irrigation co-operatives have benefited from Common Law Mutual.

Description

1) State level Co-operatives Acts basically defines co-operatives and adheres to the ICA principles. Accordingly, the objects of the Co-operatives Acts are:

- to enable the formation, registration and operation of co-operatives,
- to promote co-operative philosophy, principles, practices and objectives,
- to protect the interests of co-operatives, their members and the public in the operations and activities of co-operatives,
- to ensure that the directors of co-operatives are accountable for their actions and decisions to the members of co-operatives,
- to encourage and facilitate self-management by co-operatives at all levels, and,
- to encourage the development, integration and strengthening of co-operatives at local, regional, national and international levels by supporting and fostering State and National peak organisations and co-operative instrumentalities.

Moreover, all state level Co-operatives Acts have adopted ‘core consistent’ provisions based on the Victorian Act. This created an ease of trade across state boundaries and harmonization of key provisions and recognition of differences (e.g. provision of Co-operative Capital Units (CCU) in NSW and WA Acts.

2) Common Law Mutual: federal tax law implications of mutuality principle tested in Federal Court. It applied mostly in irrigation co-operatives and structured under state Co-operatives Acts (particularly, NSW and WA).

Assessment

Experts did not offer specific assessment on the specific Co-operatives Acts. Apparently this is the case because Co-operatives Acts do not state anything more than the ICA principles, which are applicable to almost all countries around the world. However, experts assessed the adoption of ‘core consistent’ provisions in state Co-operatives Acts. The assessment is positive (2) and with regards to CCU the experts commented that “co-operatives need to create means of creating permanent equity given accounting

standards developments and active membership provisions (e.g. share premiums and CCU's structured as permanent capital)."

Assessment of Common Law Mutual is also positive (2). Experts posit that "it has been used selectively in irrigation co-operatives to protect irrigation assets (solve for free-rider, portfolio and horizon problems) and for tax effectiveness. They also comment that this measure "could have a much wider applicability in other sectors of economy with common ownership of capital intensive assets with long replacement times, requiring sinking funds."

2.3.3. Market regulation and competition policies

The Australian Competition and Consumer Commission (ACCC) is the main regulator on market competition issues. In Australia co-operatives are not generally treated differently than any other organisation form. There is no reference specifically to co-operatives in any competition or consumer law. According to Tony Gill, Australian policy makers and regulators are not generally hostile to co-operatives. Professor Allan Fels¹⁴, departing Chairman of the ACCC stated that co-operatives are normally formed to enhance their members' bargaining position so that they could deal on better terms with their customers and suppliers, and to enable members to add value to their produce. Professor Fels saw no problem with these objectives and believed that, in many cases, the creation of co-operatives provides a competitive impetus to the market by giving its members collectively a greater degree of bargaining power in their dealings with suppliers and others.

Allen Asher, deputy chairman of the ACCC, said at the Co-operative Federation of Queensland's Annual Conference in 1996 that, "a co-operative, by its very nature, represents an agreement between competitors. As such, it may have anti-competitive consequences in that the agreement to form a co-operative may lessen competition. In such instances, the agreement would be illegal unless authorised on public benefit grounds" (quoted by Tony Gill). Using the Australian dairy industry as an example, Mr Asher said that the number of co-operatives and other businesses in the industry meant that the formation of another dairy co-operative would unlikely breach the *Trade Practices Act*. He advised that the ACCC would be concerned if all, or most of the producers in a particular market formed a co-operative, or a co-operative becomes a dominate business in its market and therefore in a position to manipulate the market.

There are no specific exemptions for co-operatives under competition or related laws. The ACCC determines exemptions on a case-by-case basis. Co-operatives can seek an exemption from anti-competitive conduct under the "authorisation" provision of competition law, which gives the ACCC a role in judging whether the public benefit from a proposed arrangement or conduct outweighs the anti-competitive effect from that conduct. If the ACCC determines that this is the case, it provides authorisation to the conduct - in effect a legal indemnity from any action under competition law.

The ACCC has identified several areas where co-operatives require special care to ensure their conduct does not convene competition law, including:

¹⁴ All information provided in this section (3.3 and up to 3.3.1) comes from personal correspondence with Tony Gill and it is entirely his wording. We gratefully acknowledge his contribution.

a) The agreement to form the co-operative, i.e. will the co-op be the only supplier/seller in its market?

b) The rules the co-operative imposes on its members, e.g. any restrictions on the ability of members to supply customers other than via the co-operative.

c) Mergers between co-operatives, i.e. will the merged co-operative dominate its market?

There are two things a co-operative can do to deal with a potential incompatibility or conflict with competition law:

a) Seek professional advice to ensure the rules of a co-operative do not lead to a potential contravention of competition law, or that any contracts with members do not contain an exclusive dealings clause, and

b) Seek an informal opinion from the ACCC on whether or not their proposed conduct may require notification or authorisation under section 51 of the *Competition and Consumer Act 2010*.

Concluding we need to stress that there is no provision in Australian co-operatives legislation offering protection from competition law, except for small business and farmers (they can collectively bargain on the condition of a 'public benefit'). Competition law is federal legislation and under Australia's constitution, it will override conflicting provisions in State legislation. In 1978, an Australian Court rendered the *restraint of trade* provision in earlier State co-operatives law invalid under the *Trade Practices Act 1974* (Trade Practices Commission vs. Legion Cabs (Trading) Co-op) (all the above is quote from Tony Gill, June 2011).

Finally, state Consumer Law harmonized with Australian (federal) Consumer Law thus facilitated integration of national economy.

Description

The Federal *Competition and Consumers Act 2010*, authorizes (exempts from competition law) collective bargaining on condition of a 'public benefit' test. It concerns small businesses in general and farmers in particular. Moreover, gradual abolition of agricultural marketing Boards at national (exports) and state (domestic) levels (at market -competition) took place.

Assessment

Assessment of the *Competition and Consumers Act 2010* was (2), that is, positive but it is characterized as "problematic as arguably less effective than a commercially focused co-operative able to legitimately short markets; useful price discovery mechanism."

Regarding the abolition of agricultural marketing Boards assessment is mixed: negative (-2) because it removed transfers from domestic consumers to producers and positive (2) because it induced efficiency gains at producer level, although with mixed success of co-operatives in adapting. Experts argue that this measure usurped the role of many agricultural marketing co-operatives (retarded their development) by isolating producers from understanding market dynamics.

2.3.4. Financial and other incentives

Income tax is levied at the federal, not the state level. The main financial incentive to co-operatives in Australia is a tax exemption. Basically co-operatives are recognised by the federal *Income Tax Assessment Act 1936* and *1997*. *State Duties Acts* as well as *State Treasury Loans* essentially offer co-operatives the validation of the aforementioned federal Act.

Description

1) Division 9 of the *Income Tax Assessment Act 1936*¹⁵ (the Act) can be used by a *trading* co-operative that is not a mutual to claim a tax deduction under section 120(1) (a)&(b) on rebates, bonuses, interest or dividends distributed to members, provided that the co-operative trades with at least 90% of its members and meets the definition of a co-operative company in section 117 of the Act. Moreover, section 120(1)(c) of the Act allows a co-operative having as its primary object the acquisition of commodities or animals from its shareholders for disposal or distribution an allowable deduction for the repayment of government loans used to acquire assets for that business, provided that at least 90% or more of the paid-up share capital of the co-operative is held by persons who supply the co-operative with the commodities or animals in question. It should be noted that Division 9 can also be used by companies that meet the requirements of the Division. *Income Tax Assessment Act 1936* division 9 allows qualified early transfer of income tax liability from co-operative to individual member. It also allows qualifying output co-operatives capital raising incentive. (Division 9 “co-operative and mutual companies” sections 117-121).

Specifically, Division 9 of the *Income Tax Assessment Act 1936* has 2 parts:

a) Allows qualified early transfers of income tax liability from co-operative to individual members. This stems from the principal of mutuality of not taxing dealings with oneself. Experts noticed that, “some of this advantage has eroded as a consequence of Australia’s dividend imputation system in which shareholders receive tax credits for tax paid at company level (‘franking’)”.

b) Allows qualifying agricultural marketing co-operatives capital raising incentive. This targets agricultural marketing co-operatives with highly active memberships, that is, 90% of trade must be with shareholders holding 90% of the value of the co-operative’s shares.

2) *Income Tax Assessment 1997* subdivision 50-40¹⁶ allows selected organisations to be exempted from income tax under the provision that they promote the development of Australian (agricultural) resources. Recently “Co-operative Bulk Handling Ltd (CBH) in Western Australia has won a Full Court of the Federal Court case between itself and the Commissioner of Taxation. The case concerned whether the co-operative was established for the purpose of promoting the development of Australian agricultural resource and meets the special condition under item 8.2 of section 50-40 of the *Income Tax Assessment Act 1997*.”¹⁷

¹⁵ The Act can be found at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/

¹⁶ http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s50.40.html

¹⁷ http://news.victoria.coop/artman2/publish/Co-ops_amp_Government_73/CBH_Taxation_Win.php

3) State level *Duties Act* (Depending on the State it is called *Duties Act*, *Stamp Duty Act*: exemption from stamp duty for share transfers.

4) *State Loans (Co-operative Companies) Act* supports *Income Tax Assessment Act 1936* (Cwth) Division 9.

5) Co-operative Capital Units (CCU) in NSW, VIC and WA: In *the Co-operatives Act 1992* NSW integrates the provision for CCU. Victoria followed in its *Co-operatives Act 1996* and WA also included it in its new *Co-operatives Act 2009*. The purpose is to boost investment but with provisions not to lose its co-operative character. According to the NSW Department of Commerce (2007) a CCU is a class of property which is not share, debenture, nor debt. It sits somewhere along the continuum from a redeemable preference share to an ordinary debenture.

Assessment

General assessment of *Income Tax Assessment Act* (ITAA) is somehow positive (1). Income Tax is levied at federal not state level. Therefore co-operatives can be formed using company (federal) or co-operative (state) law. The Act permits flexibility of organisational forms; many Victorian co-operatives (e.g. Murray Goulburn) are formed under company law, but structured in reference to the tax code, which is narrower in scope than state based co-operative acts (e.g. no active membership provisions). It is notable that an unknown amount of collective farmer business activity is conducted as private businesses which, under the United States tax code (e.g. 50-90% of business is conducted with members), would qualify as a co-operative. Experts say that the impact of the Act is “of lessening importance due to recent harmonization of state co-operative laws, but may grow in importance if innovative means are not devised to secure permanent capital as a result of interaction between international accounting standards and state co-operative law active membership provisions.” Note that under the ITAA a co-operative must conduct 90% of its trade with its members, which is high relative to many other countries and may partly explain why the co-operative sector appears to be smaller in Australia.

Assessment of first part of Division 9 is more positive (2) because it gives advantage to agricultural co-operatives as marginal tax rates of member’s tends to be lower than company tax rate (30%), thus limiting appeal of franked dividends and shares, relative to trading rebates.

Assessment of the second part of Division 9 is extremely positive (4) as: a) it induces farmer investment, b) it is allocated via capital markets, c) rewards only surplus generating investment in year of deduction, d) rewards higher levels of active membership and, e) builds (unallocated) reserves of equity on balance sheet. Experts estimate that the measure “theoretically could be expanded but political economy would be problematic, as well as the 90% rule limits applicability but maintain integrity of concession.”

Assessment of subdivision 50-40 of *ITAA 1997* is positive (2) and the recent Federal Court case of CBH (see description part above) is mentioned.

Duties Acts as well as *State Treasury Loans Acts* are not assessed but commented. These two categories of state acts essentially permit qualifying agricultural marketing co-operatives to access federal *ITAA* Division 9 concession co-operative capital raising incentive. These acts also target agricultural marketing co-operatives with highly active memberships (90% of trade must be among members).

Finally, experts did not directly assess CCU's but they did indirectly when assessing the adoption of 'core consistent' provisions (see previous section, 3.2.2). Their evaluation was generally positive. The NSW Dept of Commerce (2007) conducted a research to evaluate the use and benefits from CCU's. It concluded that this device was not broadly used. Actually only 7 co-operatives in 15 years did use of this measure. Based on the very small use of it the NSW Department of Commerce characterizes it as "something of a non-event." It is worth noting that members did not consider that co-operative principles were under any real threat as feared when the CCU was introduced. However the NSW Department of Commerce did not explain the reasons behind this low utilization.

2.3.5. Technical assistance

No particular measures refer to technical assistance to agricultural co-operatives. Technical assistance is mostly privately-collectively provided through co-operative federations and the only public institutions are the state Registries which mainly provide advice.

2.4. Conclusions

Australian government support to co-operatives is generally limited. This is in line with traditionally limited government support to farmers and agriculture in general. Historically, co-operative spirit was developed through the English influence. It is not a coincidence that the co-operative movement appeared in regions, which were in direct contact with England, the 'old country'. NSW, VIC and QND were the first colonies where agriculture developed and trade with England was established very early. These states are the most populated states with the best climatic conditions (sufficient precipitation) relatively to other Australian states. According to New Institutional theory we should expect co-operatives to be more developed in these states where the British influence was the highest among all Australian states. Of course, it is not a coincidence also that the aforementioned states (followed by WA) with the highest number and most successful co-operatives are the ones with the highest population, farmer population and farms.

Literature and experience has shown that agricultural co-operatives is an institution which develops naturally where farmers strive to increase their efficiency (by benefiting from economies of scale) and countervail the power of the 'middle men' due to the specific biological characteristics of their products, such as perishability and seasonality. This of course does not mean that co-operatives exist and develop successfully everywhere. Government policy is crucial for co-operatives to thrive as well as a series of other factors such as general mentality, that is, society's stance toward co-operatives, farmer's willingness to act collectively, geographical and technological factors that, either facilitate or not, farmers to co-operate, type of crop, etc. For example, Australia has exceptional characteristics not easily found in other developed OECD countries: few farmers with very large farms. This may make communication (at least in the old days) difficult among them. This may explain to some extent why co-operatives developed first in the dairy industry in VIC and NSW where concentration of dairy farmers were above a critical point, and of course under the guidance of their English compatriots.

The spirit of individualism was quickly developed in Australia. It is not clear if this was in favour or to the detriment of co-operative development. It may be both. Probably the

lack of explicit government support to co-operatives may have hindered co-op development on one hand. On the other hand, it may be exactly this lack of government support that pushed individualistic farmers to co-operate in order to better succeed in their business. Our experts' opinions expressed in our survey seem to hint to the direction of the last premise. As mentioned earlier (section 2.1), sometimes a government policy may be proven disadvantageous for co-ops even though it was initially planned to support farmers and co-operatives. Sometimes the lack of any action is better than an action planned to support but finally harming co-operatives.

As Tony Gill explained "co-operatives are self-help organisations, consequently all Australian governments expect co-operatives to be self-reliant, and generally no special treatment is given to co-operatives except for the benefits under Australian tax law. Australian co-operatives are generally comfortable with this situation. As with any form of government assistance, there are always conditions attached to such support including the tendency of governments to pursue their own policy agenda that may be incompatible with the self-help nature of co-operatives."

3 Support for farmers' co-operatives in Canada

3.1. Background on agricultural co-operatives and the food and agribusiness industries in Canada

Role of agriculture in Canada

The share of the agricultural sector in the nominal GDP is 2.2%, compared to 1.1% for the United States and 1.8% for the European Union. The five largest agricultural sectors are grains and oilseeds (34%), livestock (27%), dairy (12%), horticulture (9%) and poultry and eggs (8%). The dominant crop is wheat. Fishing is on the decline due to depletion of fisheries. The organic food industry is growing at a 20% clip. Ontario, Alberta and Saskatchewan have the most farms. Commercial farming is limited to the most southern provinces, the ones bordering the United States.

With sharp declines in the contribution to the GDP, the role of agriculture in Canada has diminished during the 20th century; most of the workforce is no longer employed in this industry. In 2011, as the government attempts to control its spending, the budget for the agricultural sector has decreased by \$400 million to \$2.6 billion. Much of this decrease is a reflection of the recession during 2009-2010, but perhaps also of a softer focus on agriculture in general. Still, considering its impact on so many communities, both rural and urban, it remains of vital importance to the country.

Importance of co-operatives in Canada

Forty percent of the population is a co-operative member, compared to 25% in the United States. One hundred and fifty thousand Canadians are employed by co-operatives, 32,000 in agriculture. Co-operatives have \$330 billion in assets, owned by members and communities alike. In comparison to Investor Owned Firms (IOFs), the long-run survival rate of new co-operatives is higher (62% versus 35% after five years, 44% versus 20% after ten years). The number of agricultural co-operatives is steady at approximately 1,300, but some of the major co-operatives have ceased to function as co-operatives in the past decade. Farm co-operatives are especially strong in poultry and eggs (49% market share), grains and oilseeds (45%), dairy (42%) and fertilizers and chemicals (41%).

As in most countries, co-operatives in Canada play a vital role in their social and corporate societies by combining aspects of democracy and economics. Co-operatives in general are active in virtually every sector of the economy, from housing to publishing. The role of agriculture is not as significant as before, thus putting a tight constraint on the growth ceiling for farm co-operatives; with fewer market failures to shock the economy, the place of co-operatives is arguably less relevant. Yet there is much reason for optimism as co-operatives are seemingly a permanent force in Canada. Also, the government is an active participant in the development of the co-operative sector by designing and implementing a comprehensive range of federal programmes.

3.2. Evolution of support for farmers' co-operatives

Individual states already had co-operative incorporation laws since the early 20th century; the government first implemented the Canada Corporations Act in 1970, arguably the most important piece of legislation for the general development of co-operatives (see Appendix 5.1 for summary of policies, policy targets, and impacts). In 1996, the co-operative sector submitted a draft act to the government. This

improvement on the original act provided the sector as a whole with greater flexibility to respond to the demands of more intense competition on the domestic and international market, both in the present and the future. The current bill is a result of that initiative.

The Income Tax Act provides a great incentive to choose a co-operative over a corporation, even if the market conditions do not necessitate this. Through declarations of patronage dividends, the business is eligible for lower tax rates for the first \$200,000 of income. This obviously has a positive effect on the bottom line for both the co-operative and its members.

In more general terms, the competition act offers a framework for the governing of business. This is merely the statutory basis for competition policy, not as quasi-constitutional as in the United States. It contains both criminal and civil provisions to prevent anti-competitive actions of corporations in the marketplace, thus attempting to maintain and encourage fair competition, both domestic and international. There are frequent amendments to keep the Competition Act current. On the downside, there are no specific laws for co-operatives in particular. Thus, it offers no additional effect, positive or otherwise, on the development of co-operatives over corporations.

On a more positive note, the 21st century is a good period for co-operatives in terms of federal assistance. 2003 marked the launch of the Co-operative Development Initiative, arguably the first governmental programme to specifically target the development of all co-operatives. This involved a wide range of institutions on many levels, placing the emphasis on advice, funding and research in the co-operative sector. This allowed the government to study successful uses of the co-operative model.

In 2006, the government also started a separate programme for farm co-operatives in particular. Over a span of three years, it offered approximately \$2 million to a total of 63 farm co-operatives, many of which involved in the production of bio-energy. The objective to enhance rural Canada is visible in the renewed CDI, which merges the agricultural part of the mission. Again, no other initiative has this amount of influence on the co-operative sector, especially in terms of funding.

However, according to the Canadian Co-operative Association, the CDI is only supposed to be a beginning. The institution makes a compelling case for the implementation of the Co-operative Investment Plan, a permanent yet self-sustaining fund of approximately \$20 million a year to encourage the formation of new co-operatives, not just older co-operatives. Member-owned organisations often lack the resources to make a successful start, hence the need for such a fund.

From the perspective of measures and policies, Growing Forward is further evidence that agriculture and, by extension, farm co-operatives are important to the future of the country. Also, the Policy Forum on Co-operatives in 2010 is a clear indication of the willingness to improve co-operative policy frameworks in Canada; not in an autocratic way, but rather by engaging in discussions with key stakeholders in the entire co-operative sector.

Overall, it appears the government is aware of the long-term importance of co-operatives in the industry, especially in rural regions. The co-operative sector as a whole, from federal to state institutions, are gearing up for the International Year of the Co-operative.

3.3. Support policies, measures, and initiatives (2000-2010)

The following measures are summarized in Appendix 5.1. In the parenthesis following the year each measure was first implemented two assessment numbers are identified. The first is provided by the author of this chapter after consulting numerous co-operative practitioners in Canada. The second assessment is provided by James Watt, Vice President of Corporate and Member Affairs, and Chief Governance Officer, United Farmers of Alberta, Canada.

3.3.1. Incorporation

Canada Corporations Act, 1970 (+1, +1)

Type: General Corporate Legislation

The Corporations Act provides the legal framework for the formation and governance of corporations in general. Structures are defined to distinguish the different types of organisations. This act is one of the first attempts to encourage the incorporation of companies in terms of law. The co-operative as a business form is not mentioned in detail; because of its general character, the impact of this act on co-operatives is marginal.

Co-operative Credit Associations Act, 1991 (+1, +1)

Type: Co-operative Credit Legislation

Similar to the Canada Corporations Act, this act focuses on the incorporation and governance of co-operative credit associations in general and agricultural credit associations in particular. With its many regulations on topics like interest, insurance and investment, the act enables credit associations to provide services to its members, many of whom are members of farm co-operatives. There are currently six such credit associations.

Overview of State Co-operative Acts (+1, +1)

Type: State Incorporation Law

- Co-operative Associations Act (Alberta, 2001)
- Co-operative Associations Act (British Columbia, 1999)
- The Co-operatives Act (Manitoba, 1998)
- Co-operative Associations Act (New Brunswick, 1978)
- Co-operatives Act (Newfoundland, 1998)
- Co-operative Associations Act (Northwest Territories, 1988)
- Co-operative Associations Act (Nova Scotia, 1989)
- Co-operative Associations Act (Nunavut, 1988)
- Co-operative Corporations Act (Ontario, 1990)

- Co-operative Associations Act (Prince Edward Island, 1976)
- Co-operatives Act (Quebec, 1982)
- Co-operatives Act (Saskatchewan, 1996)
- New Generation Co-operatives Act (Saskatchewan, 1999)
- Co-operative Associations Act (Yukon Territory, 1997)

3.3.2. Co-operative legislation

Farm Improvement Loans Act, 1985; The Farm Improvement and Marketing Co-operatives Loans Act, 1987 (+1, +2)

Type: Agricultural Co-operative Legislation

The Farm Improvement Loans Act authorizes the federal government to offer guarantees against loss incurred on loans to agricultural actors. In general, the act is designed to increase the availability of credit to farmers and co-operatives for the improvement and development of their operations and living conditions.

Farm Credit Canada Act, 1993 (+1, +1)

Type: Agricultural Credit Legislation

Farm Credit Canada (FCC), established in 1959, is the largest agricultural term lender in Canada. It first acted exclusively as a farm lender, but since the passing of the Farm Credit Corporation Act, the FCC also extends its services to businesses with relations to farming. Its average loan disbursement is \$109,000, a good indication of its focus on small and medium businesses. Its main purpose is to enhance rural Canada by providing a wide range of personalized services to farm operations.

Canada Co-operatives Act, 1998 (+1, +1)

Type: General Co-operative Legislation

Modeled on the Canada Corporations Act, the Canada Co-operatives Act modernizes the governance rules for non-financial co-operatives. Businesses are allowed to incorporate under this federal act if they operate in two or more provinces. In addition to advancing the uniformity of co-operative law in Canada, the objective of this act is to outline the laws applicable to the activities of persons who self-organised in a democratic manner to pursue a common interest. There is a rigorous focus on the interrelationship between business and the classic co-operative principles.

3.3.3. Market regulation and competition policies

The Competition Act, 1985 (0, 0)

Type: General Antitrust Legislation

The Competition Act describes the competition law of Canada. There is a particular focus on limiting the effects of price fixing, bid rigging and similar unfair practices. With a few exceptions, the act applies to all corporations in Canada. Most importantly, provisions are included to give the Competition Tribunal the authority to review business decisions, such as mergers and partnerships. Of interest here is the focus on cartels, which may resemble co-operatives in terms of co-operative spirit. Aside from antitrust issues, the overall goal of the Competition Act is to foster competition on the domestic market, and subsequently the international market. However, it has no significant effect on co-operatives in particular.

Agricultural Marketing Programmes Act, 1997 (+2, +1)

Type: Agricultural Marketing Legislation

The AMPA is comprised of two programmes: the Advance Payments Programme and the Price Pooling Programme. Both are designed to help producers with the marketing of commodities. In 1997, the AMPA amalgamated the Prairie Grain Advance Payments Act (PGAPA), Advance Payments for Crops Act (APCA) and the Agricultural Products Co-operative Marketing Act (APCMA).

3.3.4. Financial and other incentives

Income Tax Act, 1985 (+2, +3)

Type: General Tax Legislation

As a corporation, a co-operative is subject to both federal and provincial income tax on its income. But under the Income Tax Act, most co-operatives are eligible for a special tax rate on its first \$200,000 of income. This is possible by deducting any declarations as patronage dividends from its calculations, thus lowering its liability for income tax. The obvious goal is to provide tax incentives to co-operatives.

Renewable Energy Initiative (+1, +1)

Type: General Co-operative Development

Within the past few years, the government of Nova Scotia has implemented a number of policies to encourage the production and consumption of renewable energy, with a primary focus on biofuel. Funds and tax exemptions are two incentives for businesses in the co-operative sector. Also, in 2007, it proclaimed the Environmental Goals and Sustainable Prosperity Act. In Nova Scotia (and PEI) there is a programme called the Community Economic Development Investment Fund (CEDIF). This is a pool of capital raised through the sale of shares that is invested in new or existing local businesses.

Canadian Agricultural Adaptation Programme, 2009 – 2014 (+3, +2)

Type: Rural Development

The Canadian Agricultural Adaptation Programme (CAAP) is a five-year (2009-2014) programme. CAAP funding is \$163 million over five years and is available for eligible projects identified and carried out by the agriculture, agri-food and agri-based products

sector. The overall goal is to provide the agricultural sector in general with an opportunity to respond to new and emerging issues to remain competitive.

3.3.5. Technical assistance

Co-operative Development Initiative, 2003 – 2007 (+2, +2)

Type: General Co-operative Development

The government of Canada implemented this nationwide programme from 2003 to 2008 in order to support the creation, development and management of co-operatives in general. Also, it wanted to research new applications of the co-operative model. It divided the programme into two parts: (1) advisory service (administered by the Canadian Co-operative Association and the Conseil Canadien de la Coopération) and (2) innovation and research (administered by the Co-operatives Secretariat). This is arguably the most comprehensive programme for co-operatives in general.

Agricultural Co-operative Development Initiative, 2006 – 2009 (+4, +2)

Type: Agricultural Co-operative Development

Separate from the aforementioned CDI, this programme only focused on farm co-operatives. Supported by Agriculture and Agri-Food Canada, and co-managed by the Canadian Co-operative Association and le Conseil Canadien de la Coopération et de la Mutualité, it operated in two phases between 2006 and 2009.

Rural Co-operative Outreach and Development Project, 2009 (+2, +2)

Type: General Co-operative Development

In 2009, the Alberta Community and Co-operative Association (ACCA) initiated a project to advance the development of co-operatives in rural communities of the province. This project, with a great amount of funding from the Rural Alberta Development Fund, has undergone three phases: (1) community outreach, (2) community plan assessment, and (3) co-operative development. Research and funding are the two primary tools to achieve the objectives.

Co-operative Development Initiative, 2009 – 2013 (+2, +1)

Type: General Co-operative Development

Similar to the first CDI from 2003 to 2007, this is a government programme (one of many projects under Growing Forward) in partnership with the Canadian Co-operative Association, the Conseil Canadien de la Coopération et de la Mutualité, and the Rural and Co-operatives Secretariat of the Government of Canada. There are three components: (1) Advisory Services, (2) Innovative Co-operative Projects and (3) Research and Knowledge Development. Agriculture is a main priority in this project. Examples of funded activities are the development of co-operative bylaws and policies or co-operative models and structures.

Co-op Zone: Newfoundland (+1, +1)

Type: General Co-operative Development

The Newfoundland and Labrador Federation of Co-operatives has partnered with the Department of Innovation, Trade & Rural Development to implement a programme that provides access to a comprehensive toolkit of co-op information and development support services at the community level. The objective is to provide support for the growth and development of businesses in the co-operative sector of Newfoundland and Labrador.

Growing Forward, 2008-2012 (+3, +3)

Type: Policy Development

The Department of Agriculture is investing \$1.3 billion over five years into a great number of programmes. The funding represents \$330 million more than the Agricultural Policy Framework (APF) and is cost-shared on a 60:40 basis between the Government of Canada and the provincial and territorial states. The target group is comprised of farmers in general, but as evidenced by the implementation of a second round of CDI, the co-operative is recognised as a vital type of business in the agricultural sector. Thus, there is a renewed focus on the development of co-operative policy frameworks to reflect the continuous changes in our global industry.

3.3.6. Other

Agricultural Policy Framework, 2003-2007 (+3, +3)

Type: Policy Development

The Government of Canada and its provincial states cooperated with agents in the agriculture and agri-food industry to develop a framework with five elements: (1) food safety and food quality, (2) environment, (3) science and innovation, (4) renewal, and (5) business risk management. The government aimed to develop a new framework that reflects the demands of the 21st century; to become the world leader in food safety and sustainable farm production.

Rural Development Network (+2, +2)

Type: Rural Development

The Rural Development Network (RDN) is an initiative to bring together a number of federal and state departments, as well as other institutions, to stimulate a discussion about life in rural Canada. This is a governmental attempt to improve the collaboration and coordination on rural issues, with the overarching goal to improve the federal policy framework for rural communities.

Measuring the Impact of Co-operatives, 2010 (+1, +1)

This is a research programme with a federal investment of approximately \$1 million. Universities will investigate the environmental, economic and social benefits that co-operatives have on rural communities. The overarching goal is to fill a gap in the knowledge of the precise role of co-operatives in Canadian life.

Policy Forum on Co-operatives, 2010 (+1, +2)

This forum, organised by the Department of Agriculture and the Rural and Co-operatives Secretariat, served as the first in a series of dialogues to provide an opportunity for input and suggestions towards shaping the policy contributions in Canada. By putting a wide range of stakeholders at the same table, the government is trying to encourage a discussion about the development of a new policy framework with emphasis on innovation in the co-operative sector.

Price Pooling Programme (+1, 0)

Programme participants use the price guarantee as security in obtaining credit from lending institutions. This credit allows the marketing agency to improve cash flow of producers through an initial payment for products delivered. It also provides equal returns to producers for products of like grades, varieties and types. This offers protection against unanticipated declines in the market price of agricultural products.

4. Support for farmers' co-operatives in New Zealand

4.1. Background on agricultural co-operatives and the food and agribusiness industries in New Zealand

New Zealand (NZ) probably ranks first, among the developed OECD economies, with respect to agriculture; 4.8% of its Gross Domestic Product (GDP) is produced by agriculture which also employs 7% of the workforce (CIA Factbook, 2011). Its size is 268,000 km² (between Italy and United Kingdom) with a population of 4,393,500 which translates to a relatively low density (16.4 people/km²) if we compare with the approximately 60,000,000 of Italy and the UK (192 people/km² and 244 people/km² respectively).

It can be said that NZ is an agriculture-based economy once its agriculture is the largest sector of the tradable economy (Table 4). Agriculture related exports (NZ\$27 billion) reach almost 70% of total merchandize exports (\$40 billion), 52% of total exports (\$52 billion) and compose more than 14% of the country's GDP. Table 5 breaks down the agribusiness exports in the main products and shows the share on total merchandize exports (\$40 billion) for the year 2010. For example, dairy composed 27% of the total merchandize exports of the country. Pastoral farming is the major land use followed by land area devoted to horticulture.

Table 4: New Zealand in numbers (2010)

GDP nominal	Agriculture	Total Exports	Total Goods Exports	Agribusiness Exports
188 billion	9 billion	52 billion	40 billion	27 billion

In NZ\$ (1NZ\$ = 0.70US\$). Source: NZ national accounts

Table 5: Value and share on exports of main agribusiness products (2010)

Product	Dairy	Meat	Forestry	Horticulture	Seafood	Wool	TOTAL
Export Value	10.6	5.3	3.9	3.3	1.4	0.7	27
Share on Merchandize exports	27%	13%	10%	8%	3.5%	2%	70%

Values in billion NZ\$. Source: NZ national accounts

Moreover, NZ's has 33% share of world dairy trade and 50% share of sheep trade with the fifth largest sheep flock. It is the second largest wool producer (behind Australia) and has 25% of global kiwifruit production. The strong export orientation of NZ's agricultural production becomes clear when we consider that, 93% of dairy production, 92% of lamb, 87% of mutton, 83% of beef, 90% of wool, 90% of fishing and aquaculture, 95% of horticulture and 72% of forestry products are exported. It should be noted that NZ's agricultural sector is unique in being the only developed country to be totally exposed to the international markets since subsidies, tax concessions and price supports were removed in the 1980s.

Co-operatives are well developed in NZ; 40% of the adult population are members of co-operatives and mutuals; 22% of GDP (\$40 billion) is generated by co-operative enterprise and, almost, half of it is attributed to one dairy co-operative, namely, Fonterra with a turnover of \$16.7 billion. To give a better idea of the magnitude of Fonterra it suffices to say that it creates almost 10% of NZ's GDP, while the largest Australian co-

operative (Co-operative Bulk Handling (CBH) with its NZ\$3.4 billion is just 0.25% of Australian economy. Fonterra alone generates 20% of NZ's export receipts, exporting to over 140 countries (www.fonterra.com, Nilsson & Ohlsson, 2007).

Co-operatives in NZ are responsible for 99% of the dairy market and 95% of the dairy market's exports. They hold 60% of the meat market (54% of lamb, 41% of beef and 69% of venison), 50% of the farm supply market, 80% of the fertiliser market, 75% of the wholesale pharmaceuticals, and 62% of the grocery market (Caldwell, 2007; Evans & Meade, 2006). Note that these percentages are gross estimations because under the flexible NZ legislation (discussed in the next sections) a co-operative is not always obliged to call itself 'co-operative' (Evans & Meade, 2006) and not all co-operatives publish their financial data. Thus it is hard to accurately calculate the exact share of co-operatives in a specific market and it is possible to observe significant differences between sources. Table 6 comparatively presents co-operative market share in some industries and several developed OECD economies.

Table 6: Co-operative market share in some industries, %

Country	Dairy	Meat	Apple	Kiwifruit	Fertilizer	Wool
NZ	99	60	8	30+	90	7
AU	70+	n.a.	n.a.	n.a.	n.a.	n.a.
CA	42	15	6	6	23	n.a.
US	83	n.a.	19	19	29	n.a.
UK	65	15	74	n.a.	28	100
EU (mean)	71	38	n.a.	35	41	n.a.
Norway	99	75	n.a.	n.a.	n.a.	n.a.
Denmark	95	66	n.a.	n.a.	57	n.a.

n.a.: data not available. Source: Adopted from Evans & Meade 2006

NZ has six co-operatives in the Global 300 list (three agricultural and three retail co-operatives). Fonterra is by far the largest co-operative in the country, ranked 31st (2006 data, \$10.7 billion turnover). Foodstuffs (Auckland), ranked 135th (\$2.4 billion in 2006) and is one of the three co-ops comprising the country's biggest grocery distributor with 56% of supermarket sales and third largest business in NZ. The other 2 are Foodstuffs (Wellington) ranking 178th (\$1.7 billion) and Foodstuffs (South Island) ranked 191st (\$1.6 billion). PPCS, which ranked 182nd (\$1.7 billion) is a leading producer and exporter of meat, processing 37% of sheep, 35% of beef and 54% of venison exports. The last Global 300 co-operative, Alliance Group, which ranked 280th (\$0.9 billion), is a farmer-owned co-operative that processes and markets lamb, sheep, etc. from 7 processing sites in the south of NZ and 95% of its production is exported.

4.2. Evolution of support for farmers' co-operatives

Historical background

Dairy Industry

Most of the literature on NZ co-operatives focuses on dairy co-operatives. This can easily be explained by the fact that NZ "leads the world when it comes to dairy, accounting for over a third of the world's international dairy trade¹⁸." NZ's dairy products feed more

¹⁸ <http://www.godairy.co.nz>

than 100 million people worldwide. In 2010 there were 4.4 million cows milked (out of 6 million total cattle population) in 11,700 dairy farms, that is, 376 cows average herd size. This means that in NZ the cattle population is larger than the human one (4.4 million, as many as the milk cows).

Co-operatives have long been the dominant organisational structure in the NZ dairy industry. The first dairy co-operative was established in Otago in 1871. By 1920, there were 600 dairy processing factories of which about 85% were owned by co-operatives. In the 1930s there were around 500 co-operatives but after World War II, improved transportation, processing technologies and energy systems led to a trend of consolidation where the co-operatives merged and became larger and fewer in number. By the late 1990s, there were four co-operatives: the Waikato-based New Zealand Dairy Group, the Taranaki-based Kiwi Co-operative Dairies, Westland Milk Products, and Tatura Co-operative Dairy Company (Wikipedia¹⁹; Evand and Meade, 2006).

'Go-dairy' is part of the 'DairyNZ'²⁰ and provides a concise history of NZ dairy co-operatives and dairy farming in general. DairyNZ "is the industry good organisation representing New Zealand's dairy farmers." They are funded by a levy on milk solids and their purpose "is to secure and enhance the profitability, sustainability and competitiveness of New Zealand dairy farming." The value to farmers is delivered through "leadership, influencing, investing, partnering with other organisations and through our own strategic capability." Their work also includes "research and development to create practical on-farm tools, leading on-farm adoption of best practice farming, promoting careers in dairying and advocating for farmers with central and regional government."

¹⁹ http://en.wikipedia.org/wiki/Dairy_farming_in_New_Zealand.

²⁰ <http://www.dairynz.co.nz>.

Table 7: Timetable of NZ's dairy industry

Year	Major Event
1871	First dairy co-operative formed in Otago
Early 1900's	First milking machines in usage
1915	The government begins a programme under its Discharged Soldiers Settlement Act to provide potential farming land for 9,500 soldiers returning from WW1
1918	By the end of WW1, 7600 milking machines had been installed around NZ
1923	New Zealand Dairy Control Board created to market dairy products overseas
1927	Dairy Research Institute established; the first of New Zealand's specialised research institutions.
1930	The number of co-operative dairy companies grows to more than 400
1939	Ruakura and Wallaceville research stations set up to help increase animal productivity.
1945	Over the next 10 years, some 10,000 ex-servicemen are placed on the land under a Government rehabilitation programme.
1948	The British-made Ferguson tractor arrives in NZ and revolutionizes many aspects of farming
1952	Waikato farmer, Ron Sharp develops the herringbone dairy, cutting milking times in half.
1955	New milking machine developed at Ruakura featuring stainless steel and automatic cleaning
1957	Britain agrees to allow the free entry of NZ dairy products until 1967
1961	NZ Dairy Board (NZDB) established to market dairy products
1969	Taranaki farmer, Merv Hicks, develops the first turn style dairy, the forerunner to the rotary (14 cow capacity)
1970	The Government introduces a range of subsidies and incentives to encourage diversification of markets. Cow population steady at just over 2 million
1973	Dairy exports face troubling times as the United Kingdom joins the European Economic Community
1978	Supplementary Minimum Price scheme (SMPs) introduced to guarantee minimum income for farmers
1984	Labour government begins phasing out agricultural support and subsidies (SMPs)
1995	The NZ Dairy Board is the world's largest marketing network
1996	Amalgamations of existing operations means only 12 co-operative dairy companies remain.
1998	The NZ Dairy Board is dissolved with its assets transferred to the ownership of the co-operative dairy companies
2000	More than 95% of the industry is represented by the two largest dairy companies, the Waikato-based NZ Dairy Group and Taranaki-based Kiwi Co-operative Dairies.
2001	Dairy Industry deregulated. The two largest dairy companies merge to form Fonterra, the world's largest dairy exporter
2001	First cow milked with Automatic Milking System in NZ. Dexcel (now DairyNZ) researchers develop new farming method incorporating automatic milking into NZ pasture-based farming system

Source: Adopted from <http://www.godairy.co.nz/the-big-picture/dairynz-timeline>

Kiwifruit Industry

Although the dairy industry and dairy co-ops are by far the most important in NZ agribusiness sector, it is legitimate to briefly take a look on the second most famous product of NZ, namely kiwifruit. The first exports of kiwifruit from NZ were in 1952, to England. Though its original name was 'Yang Tao' or the 'Chinese Gooseberry,' "proud

Kiwis (New Zealanders) wanted to name the fruit in recognition of New Zealand's national symbol – the special brown-feathered Kiwi; thus the origin of the name 'Kiwifruit'²¹."

In the years following 1952, the industry expanded rapidly with entrepreneurial kiwifruit growers establishing orchards across the Bay of Plenty and in other growing regions of NZ. Growers grouped together to pack and export their fruit overseas and competed against each other for markets. In the 1970's, the Kiwifruit Marketing Licensing Authority was formed to provide growers with control over their industry structure and regulate the activities of exporters. This structure enabled grade standards to be established and a coordinated approach to marketing undertaken²².

The crisis hit NZ kiwifruit industry in the mid to late 1980's. The rapid expansion of orchards led to large crop volumes, which overly exceeded global demand. At the same time the NZ dollar was on the rise and interest rates were high. In the global market, the price of kiwifruit fell dramatically to an all-time low. Growers faced financial hardship and the problem was exacerbated by the multiple exporters who were competing against each other, driving prices, and grower returns further down. This led in 1988 to the establishment of the NZ Kiwifruit Marketing Board by the NZ Government, a single desk exporter under grower control. While this action gave the industry unity and strength, in 1992 the industry faced its biggest challenge. Californian growers took legal action by bringing an anti-dumping case against NZ Kiwifruit and, as a result, millions of dollars had to be paid to US Customs. A price crash in the oversupplied European markets followed. The industry faced financial disaster. An estimated 18-20% of growers quit their land²³.

Consequently, the policy followed so far had to be completely revised. Indeed this happened in 1993. The adopted strategy was market-driven and built upon the reputation of delivering the world's best kiwifruit. According to information provided by ZESPRI International Limited: "with visionary leadership and strategic partnerships, the NZ kiwifruit industry slowly recovered and started to rebuild. The continuity of a single export entity was endorsed by growers across New Zealand²⁴."

Evolution of support

This chapter mostly focuses on dairy co-operatives due to the fact that the dairy products supply chain is the most important NZ agribusiness industry. We basically follow the literature and the experts' opinion on co-operative policies and measures which almost exclusively delve into dairy co-op evolution. Fonterra seems to be like a gem attracting most of the discussion and interest of researchers overshadowing almost all other agribusiness industries and co-operatives.

As shown in table 4 above, state support measures for farmers were taken in the first half of the 20th century. These measures were in the form of producer board control of agricultural marketing and they were reinforced by legislation. According Moran *et al.* (1996) "the state support measures for farmers reflected their initially privileged political position early in New Zealand's colonisation, which survived despite the loss of this position with the inception of the welfare state in 1935" (quoted in Evans & Meade

²¹ <http://www.zespri.com/zespri-kiwifruit.html>.

²² <http://www.zespri.com/zespri-kiwifruit.html>.

²³ <http://www.zespri.com/zespri-kiwifruit.html>.

²⁴ <http://www.zespri.com/zespri-kiwifruit.html>.

2006, p. 103). After World War II, state intervention was accepted and support measures to farmers were the result of a combination of farmer political strength and political perception that these measures remain in the national interest. This continued into the 1990s, despite the change in ethos characterising NZ's economic reforms of the 1980s, and the realignment of global agriculture under GATT. The legislation that enabled farmer support through powerful producer marketing boards, according to Moran *et al.* (1996), is the following four pieces: 1) Board of Trade (Wool Industry) Regulations in 1921, 2) Meat Export Control Act in 1922, 3) Dairy Produce Control Act in 1923 and, 4) Fruit Export Control Act in 1924 (Evans & Meade, 2006).

Moran *et al.* (1996) explain the origins of this supportive policy: "British and American companies had established meat processing plants in New Zealand around the turn of the century, and also organised the shipping and marketing of produce to overseas markets. During World War I the British government commandeered all New Zealand meat, wool and dairy exports. The end of this arrangement coincided with a slump in prices, causing producers to lobby through their industry associations for the reinstatement of control measures to compete with overseas processors, transport companies, and importers. Control boards to regulate collection of farm output and its transportation to, and distribution in, Britain were set up in the early 1920's as a result of farmers' political power" (quoted from Evans & Meade, 2006, p. 103).

NZ's policy from the 1940's to the onset of the reforms in 1984 was protection of the manufacturing sector with import quotas and tariffs (Evans, 2004). This resulted in a high cost structure for agriculture drawing substantial transfers to maintain production of export commodities. By 1984 the level of government support to the agricultural sector had reached 30% of total agricultural sales. The result of such policy was higher but inefficient production. Due to misdirected incentives to farmers there was overuse of subsidised products services and land leading to inefficiencies. Thus, farmers were focusing on production of goods that received the highest government support, reducing the competitiveness of NZ farmers in international markets and the risk of poor farming decisions was solely on the government. Evans (2004) explains that this kind of policy was possible because "NZ governments had, since the 1930's, held direct control of many aspects of the economy, including rights to import, and wage, price, and foreign exchange rates." The result was that "the system did not react flexibly to the oil price shocks of the 1970's, during which decade the government materially extended the terms of the welfare state" (p. 3).

By 1984 when domestic inflation was high, costs were increasing and terms of trade were declining, the NZ farmers faced a severe crisis. Private and public debt combined reached 95% of GDP in June 1984, resulting in a downgrading of the country's sovereign debt rating and contributing to a foreign exchange crisis. This was the spark for dramatic reforms in agriculture. The sector was to become entirely exposed to international competition with the removal of government support and much reduced direct government involvement in business (Evans, 2004).

However, the structural reform of agriculture was still not complete. All types of subsidies were removed but the producer boards remained and they had various centralised functions such as: a) marketing and managing farm products and, b) instituting research and limiting the rights of companies to export on their own account. Among all producer boards the NZ Dairy Board was the most important. Evans (2004) notes: "Its main function was to market internationally NZ manufactured dairy products that were produced by co-operative dairy companies. It was owned by these companies. It held the statutory right to be the 'single-desk' seller of dairy products manufactured in NZ. Its other functions included research and the administration of advisory and genetic

development services to dairy farmers. It also represented the political interest group of dairy farmers.” (p. 7).

It has been argued that the boards were a source of unfair advantage to NZ farmers, and during the 90’s a variety of institutional alternatives have been implemented such as: a) marketing functions of the former NZDB were included in the major dairy co-operative merger creating Fonterra in 2001, or devolved to an industry body in the case of kiwifruit. This shift away from centralised coordination to market coordination creates the structural space for new governance solutions. The new opportunities in networking via alliances or co-operatives are part of the search for new institutional solutions to secure competitiveness in the face of global restructuring (Heron *et al.* 1998 in Evans, 2004).

The support measures discussed thus far targeted farmers in general rather than co-operatives specifically, although they affected co-operatives too. As Evans (2004), Evans and Meade (2006), and Nilsson and Ohlsson (2007) argue, the rise of farmer co-operatives was not so much the result of direct support measures from the government; rather it was the result of other factors such as many small and competing producers, high degree of perishability of the product, product homogeneity (as it is in the case of milk), cultural homogeneity and stability (as it is often in rural communities) and strong export orientation. Evans and Meade (2006) explain the dominance of co-operatives in NZ milk processing exactly on the aforementioned factors. They state: “given the NZ sector’s primary export focus (more so than other countries’ dairy industries, which tend to concentrate on domestic sales) this could well account for NZ’s dairy processing market share being at the upper limits observed worldwide.” (p. 106).

Finally, along with the four pieces of legislation (Acts) mentioned before, which facilitated the creation of marketing boards, we also have the *Primary Products Marketing Acts of 1936 and 1953*, the *1961 Dairy Board Act*, and the *1971 New Zealand Apple and Pear Marketing Act*. Government sanctioned producer-marketing boards and co-operative processors enabled producers to control the processing and marketing of their produce (Evans and Meade, 2006).

Concluding this section we note that the NZ dairy industry faced significant structural change, which took place in two steps. First, in the early 1980’s with deregulation of the economy and agriculture in general substantially affected the dairy industry. Second, in 2001 a major deregulatory step took place. The industry’s (single-desk) exclusive right to export was removed. This type of structural change also happened to other agricultural and horticultural industries, but for dairy it posed particular issues and affected a much larger industry. (Evans, 2004)

4.3. Support policies, measures, and initiatives (2000-2011)

Given the lack of evaluation of support measures in the literature we surveyed experts in order to compile specific support measures as well as their evaluation (Appendix 6.1). We profoundly thank all experts who contributed and offered us invaluable help for the completion of this report. A list of all experts is provided in the end. The evaluations are in a Likert-scale form varying from -4 (extremely negative) to 4 (extremely positive).

4.3.1. Incorporation

Description

Alan Robb, co-operative consultant and educator, explains: “most co-operatives in NZ are formed under the *Companies Act 1993* and then registered under the *Co-operative Companies Act 1996*. A small number still exist which were formed under the *Industrial & Provident Societies Act 1908*.”²⁵

The NZ legal framework is very flexible for co-operatives. Evans and Meade (2006) point that: “a company registered under the *Companies Act 1993* can only use the term “co-operative” in its name if it is also registered under the *Co-operative Companies Act 1996*, but a co-operative company registered under the latter act is not obliged to use that term. Such a registration allows the co-operative company to have shares with a nominal value, and to issue (including from reserves), or accept surrender of, shares at that nominal value – features not provided for under the *Companies Act 1993*.

Evans and Meade (2006) report that the New Zealand Co-operatives Association (NZCA) as at May 2005 had 49 members, with legal forms as follows:

- 1) 34 co-operatives registered under the *Co-operative Companies Act 1996* including NZ's largest company, dairy processor and marketer, Fonterra Co-operative Group Limited;
- 2) 11 co-operatives registered under the *Industrial and Provident Societies Act 1908*, most of which are involved in trades and retail services;
- 3) 2 co-operatives registered under the *Companies Act 1993*, including grocery retailer, Foodstuffs (Auckland) Ltd;
- 4) 1 co-operative registered under the *Incorporated Societies Act 1908* (Pipfruit New Zealand Inc., the pip fruit growers' association) and 1 co-operative under the *Mutual Insurance Act 1955* (Farmers' Mutual Group, a rural financial services provider).

Assessment

The *Industrial & Provident Societies Act 1908* (IPSA) was assessed highly positively by the experts (3) on the grounds that the Act facilitated provident and co-operative organisations. “The Act enables the formation of an organisation for the mutual benefit of its members, where they carry on an industry, business or trade (other than banking). In contrast to the Co-operative Companies Act, which is silent on co-operative purposes, the primary purpose of an [Industrial and Provident Society] IPS must not be for the profit of its members, although an IPS can still make distributions to its members (generally related to their participation in the society). Also, under a 1939 amendment to the act, an IPS must be either ‘a bona fide co-operative society’, a society where its activity ‘will improve the conditions of living or the social well being of members of the working classes’, or be for ‘community benefit’. Voting rights in IPSs are generally one member one vote, which is a restriction not apparently shared with co-operative companies. Thus an IPS has many of the characteristics of a co-operative company but faces additional requirements and constraints” (Evans and Meade, 2006, p.14).

The *Companies Act 1993* got strongly negative assessment (-3) by our expert. The reason being that “the Companies Act and changes to company law took no account of the ‘special’ nature of co-ops, i.e. broadly speaking co-ops distribute earnings and don't aim

²⁵ Personal electronic correspondence with Alan Robb, April 2011.

for a 'profit' in the traditional sense of the word. Taxation occurs in the hands of the co-op member, not generally at the co-op level."

Dr. James Morrison, a consultant to NZ co-operatives, comments: "The *Companies Act 1993* is effectively a comprehensive commercial code which replaced both the statutory (the previous Companies Act had followed the English mode) and much of the common law. The process of forming a company in NZ is relatively simple, requiring the consent of shareholders and directors, and because the Act constitutes a Code, any new company is able to simply rely upon that Code for all of its structural and administrative purposes (the Act appends schedules for both Shareholders Meeting procedures and Directors Meeting procedures) or adopt a Constitution. The Constitution comprehensively replaces the traditional method of utilising a Memorandum of Association (concerned with the Objectives and Powers) and Articles of Association (concerned with Governance and Administration)²⁶."

4.3.2. Co-operative legislation

The NZ co-operative legislation is included in the *Co-operative Companies Act, 1996*.

Description

The purpose of the Co-operative Companies Act²⁷ is to allow co-operative owners to conduct business on a mutual basis, where they engage in 'co-operative activity'. It defines a 'co-operative company' as being:

"(a) A company, the principal activity of which is, and is stated in its constitution as being, a *co-operative activity* and in which not less than 60 percent of the voting rights are held by *transacting shareholders* (or a company that is a subsidiary of a co-operative company with a principal co-operative activity):"

Section 3 of the act defines 'co-operative activity' as being one or more of the following activities, conducted either directly or indirectly:

(a) Supplying or providing the shareholders of the company with goods or services, or both;

(b) Supplying or providing the shareholders of the company's holding company with goods or services, or both;

(c) Processing or marketing goods or services, or both, supplied or provided by its shareholders;

(d) Processing or marketing goods or services, or both, supplied or provided by the shareholders of its holding company;

(e) Entering into any other commercial transaction with the shareholders of the company;

(f) Entering into any other commercial transaction with the shareholders of its holding company;

²⁶ Personal electronic correspondence with James Morrison, April 2011.

²⁷ The Act can be found at: http://www.nzlii.org/nz/legis/consol_act/cca1996225/.

(g) Supplying or providing goods or services, or both, that are ancillary to, or that otherwise facilitate, the carrying on by the company or its holding company of a co-operative activity referred to in any of paragraphs (a) to (f) of this subsection.”

Furthermore, the definition of ‘transacting shareholder’ is provided in Section 4 of the Act as a shareholder that, having regard to the nature of the co-operative activity carried on by the company, does one or more of the following:

“(a) Supplies or provides goods or services to the company or, having ceased to provide goods or services to the company, is, in the reasonable opinion of the directors of the company, likely to resume doing so;

(b) Purchases or acquires goods or services from the company or, having ceased to purchase or acquire goods or services from the company, is, in the reasonable opinion of the directors of the company, likely to resume doing so;

(c) Enters into other commercial transactions with the company or, having ceased to enter into other commercial transactions with the company, is, in the reasonable opinion of the directors of the company, likely to resume doing so;

(d) Has incurred an obligation to do an act referred to in any of paragraphs (a), (b), and (c) of this subsection.”

Assessment

The *Co-operative Companies Act, 1996* was very positively evaluated (4). Dr. James Morrison explains: “the registration of a company as a co-operative company is prescribed by the Co-operative Companies Act 1996, and that in turn also facilitates contemporaneous registration of a company under the Companies Act and as a co-operative company. The Co-operative Companies Act contains various provisions to accommodate the surrender of shares, contains some modification of the Companies Act and Securities Act 1978, facilitates rebates to shareholders, and facilitates the issue of shares in lieu of rebates. It is important that Part 3 of the Act contains special provisions applying to Co-operative Dairy Companies, including section 39 which constitutes the supply of dairy produce by a person to the company as an irrevocable application by that person to become a shareholder in the company; includes provision for the compulsory issues of shares (where the shareholder increases supply); accommodates special provisions for a supplying shareholder to surrender shares; and allows the transfer of shares to sharemilkers.”

4.3.3. Market regulation and competition policies

In 1998 the NZ government decided that all the producer boards should be dissolved, and the boards themselves should provide the government with plans for deregulation. The deregulation of the NZ Dairy Board (NZDB) was driven by external and internal pressure (Nilsson & Ohlsson, 2007). The external force was the WTO negotiations as NZDB was classified as a State Trading Enterprise under WTO rules, and other export boards were under pressure from politicians and trade officials. The internal force came through critics from inside and outside the dairy industry, including the finance minister, the commerce minister, and business people interested in exporting dairy products, who considered that reforms of the NZDB were needed to create incentives for additional foreign investment in NZ’s dairy industry as well as acquire the equity capital needed to permit the Board to become a more dominant player in international dairy and food markets (Nilsson & Ohlsson, 2007).

The dairy industry's response was to propose the so-called mega-merger between at least the two largest dairy co-operatives. Moreover, the NZDB would be integrated into the new firm (Nilsson & Ohlsson, 2007). Thus, in 1999 the dairy industry proposed a merger of all the dairy co-operatives in New Zealand and the integration of the NZDB into a single vertically integrated entity that would be responsible for collecting, processing and marketing the entire milk production in NZ (Ministry of Agriculture and Forestry (MAF), 2009).

The proposal was met with a non-supportive draft determination from the Commerce Commission, as the Commission argued that the formation of such a company with an overwhelmingly dominant position would have had serious competition policy implications, which were:

"a) A dairy processing company that did not face any competitive pressure was seen as having both incentives and ability to put up significant *barriers for farmer-suppliers seeking to switch* to potential competitors, thus impeding potential entry into the farm gate milk market in the first instance;

b) While only around 7% of NZ milk production is consumed in NZ, the proposed merger would have meant that the merged entity would have had *monopoly power in setting wholesale prices in the domestic dairy product markets*;

c) Such a dominant firm would also have had fewer incentives to drive cost efficiencies and invest in innovation, as it could have used its market position to retain farmer suppliers even if they were dissatisfied with the company's performance, thus creating a risk of *waste, inefficiency and suboptimal investment decisions.*" (MAF, 2009 p.5)

Consequently, in 2000, dairy industry leaders sought government support for a revised proposal and an exemption from the mergers and acquisitions provisions of the *Commerce Act 1986*. The Government chose to facilitate this proposal by allowing the merger to go ahead – thus allowing the formation of Fonterra – while at the same time introducing a comprehensive suite of pro-competition measures, which were set out in the Dairy Industry Restructuring Act (DIRA).

Description

The *Commerce Act 1986* has three key provisions which are intended to *maintain* the conditions for a competitive market:

"a) Section 27, which prohibits contracts, arrangements or understandings that have the purpose or have, or are likely to have, the effect of substantially lessening competition in a market;

b) Section 36, which prohibits a person taking advantage of a substantial degree of market power for the purpose of restricting entry to, preventing or deterring competitive conduct in, or eliminating any person from that or another market;

c) Section 47, which prohibits the acquisition of assets or shares of a business if this would have or be likely to have the effect of substantially lessening competition in a market. (The Commission may give a clearance for an acquisition which it considers will not result in a substantial lessening of competition, or it may grant an authorisation for an acquisition *where it considers there will be net benefits to the public*)" (MAF, 2009).

The *Dairy Industry Restructuring Act, 2001* (DIRA) works in parallel with, and is supplementary to, the general competition provisions of the *Commerce Act 1986*. Moreover, given the temporarily nature of DIRA, when the DIRA pro-competition

regulatory regime expires, the effectiveness of market discipline in both farm gate and factory gate milk markets would continue to be safeguarded by the provisions of the general competition law, contained in the *Commerce Act 1986*.

The DIRA pro-competition regulatory regime is to:

“a) Ensure that Fonterra, despite being in a dominant market position, continues to face credible threat of competitive entry in the farm gate milk market, thus promoting the efficient operation of the farm gate milk market in NZ;

b) Allow independent processors to access raw milk from Fonterra necessary for them to compete in the dairy markets” (MAF, 2009).

Moreover, the DIRA pro-competition regulatory regime creates strong incentives for Fonterra to offer an efficient price for farmers’ milk by imposing certain legislative requirements on Fonterra. These requirements are aimed at minimising Fonterra’s incentives and ability to prevent farmers from switching their supply to other processors, should it be efficient for farmers to do so. The DIRA pro-competition measures oblige Fonterra to:

“a) Remain an open co-operative by accepting all equity based milk supply offered by farmers (open entry and re-entry);

b) Issue and redeem co-operative shares at the same price and allow transacting shareholders to leave the co-operative with minimal transactions costs and at ‘fair value’ (open exit);

c) Ensure that the proceeds of co-operative shares are paid in a timely manner, in accordance with changes in milk supply, at the same price at any point in time;

d) Treat new entrants and existing shareholders the same in the same circumstances;

e) Allow at least one third of all milk supply contracts within a 160km range to expire each year;

f) Allow dairy farmers to divert up to 20% of their weekly milk supply to an independent processor without having to redeem their Fonterra co-operative shares;

g) Sell the milk vat of an exiting dairy farmer at a market price to the dairy farmer or to an independent processor” (MAF, 2009).

In addition to the requirements outlined above, the DIRA pro-competition regulatory regime, via the Dairy Industry Restructuring (Raw Milk) Regulations (the Raw Milk Regulations), compels Fonterra to sell up to five percent of the raw milk it collects from farmers to independent processors at an agreed or default regulated price.

It should be noted that the DIRA regulatory regime was always intended to be transitional. It was designed to expire at a point where the dairy markets had become workably competitive and special regulatory provisions, beyond the general competition law, were no longer required. To this end, the DIRA’s ‘sunset clauses’ (ss 147–150) are based on market share thresholds, which to be met, require independent processors to collect in a season:

a) At least 65M kilograms of milk solids (approximately 780 million litres) from dairy farmers in the South Island with one independent processor collecting at least 25M

kilograms of milk solids (approximately 300 million litres) outside the boundaries of the Westland Regional Council. The MAF expected this trigger to be reached by 31 May 2011.

b) At least 12.5% of milk in the North Island. The MAF expects this trigger could be reached as soon as 31 May 2012.

While most of the DIRA pro-competition regulatory regime is legislated to expire on an island-by-island basis, the expiry of the Raw Milk Regulations requires both the North and South island thresholds to be met. There are currently no legislative notification obligations or phase-out periods once the thresholds are met. Rather, there is a requirement on the Minister of Agriculture to make a recommendation to the Governor-General to revoke the DIRA pro-competition regulatory regime in the relevant island as soon as practicable, by an Order in Council. The Order in Council must specify a date on which the declaration takes effect.

Assessment

While the *Dairy Industry Restructuring Act 2001* was evaluated as extremely positive (4), the *Commerce Act 1986* got neutral evaluation (0) without further explanation. However, based on the aforementioned analysis we can positively assess the *Commerce Act 1986* and we justify this judgement later in this section.

The extremely positive assessment of DIRA is based upon the fact that “without this act Fonterra would / could not have been formed.” There are also a number of clauses ensuring that farmers and local consumers have some protection from monopolistic behaviour by Fonterra. Our expert says that “it is conjecture as to whether they [the clauses] work or not...” However, taking into consideration the extended analysis by the MAF, 2009, we tend to believe these clauses worked at least to some extent.

According to a market analysis of the MAF, (2009), the supply side of the farm gate market has the following characteristics: a) large number of suppliers, more than 11,000 dairy farmers, b) large volumes of trade, over 15.5 billion litres of milk per annum and, c) over the last eight years (2001-2008) average growth in milk supply has been approximately 3.15% per annum on the national basis, with 1.33% per annum growth in the North Island and 8.12% in the South Island. Also, according to MAF (2009), since the DIRA and the consolidation in the dairy industry, a number of new dairy processors have emerged and a number of other firms have announced intentions to enter the farm gate milk market within the next few seasons. Those who have entered include:

a) Open Country Dairy, which commenced production in 2004 and currently has four processing plants in both the North and South Islands. Open Country Dairy has publicly signalled an intention to build two additional plants in the North Island;

b) New Zealand Dairies which commenced production in 2007 and has a single drier based at Studholme in South Canterbury; and

c) Synlait which commenced production in 2008 and has a single drier based at Dunsandel, Canterbury.

All of these new entrants have a total processing capability of approximately 1.4B litres, with a further 800M litres planned. To date, none of the firms seem to have had difficulties securing milk supply from farmers. All of these new entrants are also

investor-owned firms, most are export focussed milk powder or cheese producers and each has a cornerstone investor with supply chain linkages in offshore markets.

On a volume weighted basis, 60 percent of the new entry to date has been in the South Island with each of the three new entrants developing at least 200M litres of capacity. This could be due to significant milk growth in the South Island, driven largely by dairy conversions rather than supply growth from existing farms. This may suggest new processors have chosen to locate in areas of strong milk growth and have been able to secure milk from new or existing farmers. The remaining 40 percent of new entry has occurred in the North Island, mainly in the Waikato region. Milk growth in the North Island has primarily been driven by genetic improvement and productivity gains rather than land conversions. This indicates that farmers have been switching away from Fonterra and to other processors. Despite a growing milk supply nationally, new entry in the farm gate milk market has led to a decline in Fonterra's market share. MAF estimates that:

- a) Nationally: Fonterra's market share fell from 96 percent in 2001 to 92 percent by the 2008/09 season;
- b) South Island: Fonterra's market share has fallen from 90 percent in 2001 to approximately 85 percent by the 2008/09 season;
- c) North Island: Fonterra's market share has only fallen from 98 percent in 2001 to approximately 95 percent in 2008/09 season.

Overall, the level of new entry combined with the anticipated expansion of dairy processors and prospective entry of additional new processors could be an indication of efficient operation of the farm gate milk market. However, an examination of potential barriers to entry is also required to be able to draw some conclusions on the performance of this market.

Concluding, based on the experts evaluation and comments as well as the extensive analysis of the Ministry of Agriculture, we argue that *Commerce Act 1986* could be positively assessed, rather than neutral, because it was the basis upon which DIRA was implemented. Given the positive evaluation of DIRA, *Commerce Act 1986* deserves some credit.

4.3.4. Financial and other incentives

Co-operatives in NZ have some exemptions with regard to the *Income Tax Act 2007* and the *Securities Act 1978*. As Alan Robb mentions, "other than this there is virtually no special support for co-operatives; they compete with other business entities." Evans and Meade (2006) also argue that, "in terms of taxation, co-operative companies and IPSs [Industrial and Provident Societies] enjoy no preferential treatment vis-à-vis ordinary companies" (p.14). They add that, "income from members and non-members is treated as the co-operative's gross income, with certain rebates treated as deductible expenses to the co-operative and assessable income in the hands of their recipients. Like IOFs, co-operative companies can attach imputation credits and dividend withholding payments to non-deductible rebates and non-cash rebates, eliminating the double taxation of co-operative income streams at the member level. IPSs suffer an apparent disadvantage in this regard, but given their not-for-profit constraint this should not prove a disadvantage in practice" (p. 14).

Description

Regarding the *Income Tax Act 2007* “distributions to transacting members are not dividends and profits arising from transactions with members are not taxable (although profits from transactions with non-members are taxable).”

As far as the *Securities Act 1978* is concerned, “the requirements on prospectuses for the issue of shares are less onerous for co-operatives than those required for (occasional) issues by listed companies.”

Assessment

Income Tax Act 2007 has strong positive evaluation (4) although, as the expert comments, “in general it is not well understood/appreciated by members”.

Evaluation for the *Securities Act 1978* is somehow positive (1) because “it is a positive but equally could be negative in the sense that it removes some of the onus of openness and clarity. It is a valid policy in that transacting members generally hold shares in proportion to patronage and so a strong and well understood link and responsibility exists.”

4.3.5. Technical assistance

There is no public institution or organisation providing technical support and assistance. This role is assumed by private – co-operative organisations such as the NZ Co-operatives Association.

4.3.6. Other

Experts evaluated the creation of the NZ Dairy Board back in 1923 as very important for the evolution of NZ co-operative movement especially in the dairy industry.

Description

In 1923, the NZ Dairy Control Board was created in order to market dairy products overseas (Table 4). As the expert comments, the “creation of the single seller marketing desk did away with private traders competing for sales on what was basically one market, the Tolley Street traders in London. In those days we had a multitude of private buyers in NZ competing with each other to sell in the UK.”

Assessment

The establishment of the NZ Dairy Control Board was of such an importance²⁸ that one of the experts commented that “on the suggested scale of -4 to +4 this piece of policy would be a +6.” Given the export orientation of many agricultural products of NZ, the fact that a centralized board eliminated fierce competition at the farmer’s level boosted co-operation as well as farmer’s well being in the country.

4.4. Conclusions

The New Zealand experience of subsidy-free agriculture has demonstrated that farming in a deregulated environment is feasible, and yields a portfolio of activities associated

²⁸ Equally important was the establishment of other Boards in the same period, i.e., in the 1920’s and 1930s.

with better resource allocation within the sector and among sectors. It also demonstrates that the deregulation of other sectors, including the agricultural service sectors, played an important role in the performance of agriculture (Evans, 2004). NZ's generic co-operative legislation and relatively neutral policy environment regarding organisational form creates a natural environment for co-operatives to evolve and adapt in ways not possible in jurisdictions with more prescriptive co-operative models, a characteristic that Evans and Meade, (2006) call *adaptive efficiency*.

NZ's ideological-political climate is much less supportive of co-operative development as, for example, other countries such as France or Spain (Dyer, 2009). However, despite this lack of support, co-operatives are a very familiar feature of NZ's agricultural sector, with almost all 70,000 farmers belonging to at least one co-operative. This may reflect the fact that NZ farmers are primarily oriented towards exporting to distant markets, and their added reliance on shipping, marketing and distribution services relative to their overseas counterparts (Evans & Meade, 2006). Indeed, the domestic market is of minor importance for the NZ especially for dairy co-operatives; recall that 95% of the volume is exported. As a result, all significant market changes i.e. (the deregulation of the domestic market in the 1990's) have not considerably affected the dairy processors. On the other hand, the abolition of NZ Dairy Board in 2001, which was responsible for all exports of dairy products, had fundamental repercussions. Suddenly, the dairy co-operatives had direct access to the international markets. They had virtually innumerable potential customers instead of only one, the NZDB. Consequently, they became responsible for marketing their products themselves and thus gained direct communication channels to all markets. The dissolution of NZDB was a landmark for the dairy co-operatives' market conditions (Evans & Meade, 2006).

Evans & Meade (2006) compare co-operative legislation in NZ and overseas. They find that although NZ's main co-operative specific legislation, that is, the *Co-operative Companies Act 1996*, is similar to that in other jurisdictions, it refers less to co-operative principles than in many other countries. "Co-operatives –like IPSs– are permitted and facilitated, but face no particular preferences relative to other organisational forms, either in policy or taxation terms. NZ co-operatives do not enjoy access to subsidies and other assistance that their counterparts enjoy in countries such as Canada and the US, but face comparable treatment to those in the UK. NZ's legislation is more flexible than that in some jurisdictions, favouring no particular form of co-operative over another, and enabling innovations in co-operative design while preserving co-operative status" (p.18).

NZ's co-operative legislation is relatively free of philosophical or political biases. It offers a flexible and fairly generic framework for co-operative development. The advantage of such legislation is that it allows for new forms of co-operative to arise as solutions to changing business challenges, and for existing co-operatives to similarly vary their organisational form while maintaining patronage based ownership and farmer control. NZ dairy farmers and processors have not received any price or income support since before the 1990's. Moreover, since 2002 there has been no restriction on dairy processing firms exporting from NZ. In consequence, the only restriction on dairy processing firm entry is competition from Fonterra which is dominant in the NZ market but which is subject to behavioural restrictions, and the internal tensions of supplier open entry and exit, according to the provisions of *Commerce Act 1986* and *Dairy Industry Restructuring Act 2001* (Evans and Meade, 2006).

5. Support for farmers' co-operatives in Norway

5.1. Background on agricultural co-operatives and the food and agribusiness industries in Norway

The production of food in Norway is limited due to the country's adverse climate and limited arable land resources. Norwegian food production is therefore expensive compared to other countries. It is aimed at the domestic market. Imports are highest for cereals, fruits, vegetables, berries, vegetables, and sugar. Table 8 provides the gross output at basic prices by commodities in 2006.

Table 8: Gross output at basic prices by commodities (2006)

Farm commodity	%
Meat	36
Fur-bearing animals, honey, etc.	1.8
Cereals, oil seeds	10.3
Potatoes	2.6
Horticultural products	12.8
Wool	.7
Milk	29.5
Eggs	2.7
Other income	3.6

Source: Knutsen, 2007, figure 3.12

Despite the adverse conditions for agriculture in Norway, there is an active and elaborate agricultural policy. It aims to establish a wide range of goals (Knutsen, 2007), like

- farmers have to be secured the potential for income and living standards corresponding to the remainder of the population;
- sufficient profitability throughout the food value chain in order to have a viable food industry;
- food security;
- securing settlement in rural areas;
- cultural landscapes, maintaining farming activities throughout the entire country;
- promotion of organic production and consumption;
- animal welfare.

There are basically three marketing channels for primary sales in Norway, where primary sales are defined as the sales from the producer (farmer) to the next step of the food supply chain:

- Sales via the farmers' co-operative enterprises;
- Sales to other non-co-operative enterprises, such as wholesalers, retailers, slaughterhouses and food processing industries;

- Direct sales to consumers, e.g., U-pick, farm shops and door-to-door-sales.

Table 9 shows that co-operatives have a prominent position in primary sales²⁹. For example, NORTURA is the dominant player in the meat, egg and poultry market. This is the Norwegian co-operative for meat, egg and poultry farmers in Norway. It is now the umbrella organisation for the meat co-operatives. In 2006, about 31,200 meat and egg farmers were supplying members and owners of NORTURA BA. Of these, approximately 1,200 belonged to the co-operative egg sector.

Table 9: Co-operatives' percentage of total turnover of primary sales (1989, 2005)

PRODUCT	1989	2005
Milk	100	96
Meat	80	73
Eggs	69	64
Poultry	85	81
Honey	57	66
Grain		54
Potatoes	29	36
Fruit and vegetables	24	32

Source: Knutsen (2007)

Most agricultural commodities are extensively handled or processed before being sold in grocery stores. The market share of co-operatives regarding processed foods is lower compared to primary sales. For example, TINE Norwegian Dairies, a dairy co-operative, dominates primary sales, but also milk-processing, although to a somewhat lesser degree. In order to enable some competition in the dairy sector, the co-operative dairies are obliged to deliver milk to other producers of non-liquid dairy products.

Most processed foods are marketed via the wholesale and retail trade channels. There has been substantial consolidation. In 1990, four groups of companies controlled 46 per cent of the food retail market. By 1999, this figure had increased to 99 percent. The four groups are Coop Norge, ICA Norge, REMA 1000 Norge AS and Norgesgruppen. Coop Norge had a market share of 24% in 2009.

5.2. Evolution of support for farmers' co-operatives

During the past 20 years, agricultural policy has aimed at reducing price subsidies, and increasing the level of non-product-specific support, not depending on production volume, but rather on acreage and herd sizes. These measures were meant to reduce overproduction (mainly of milk and meat) and stimulate a transition towards more environmentally-sound agriculture. This type of support can furthermore be regarded as a form of reimbursement by society for public goods produced by agriculture, such as cultural landscapes (promoting the use of mountain dairy farming and active use of grazing resources). The economic policy measures do not only include subsidy programmes, but also numerous fees and excise taxes as well. They are supplemented with compulsory fertilizer planning, and environmental planning for all farms.

²⁹ No corresponding figure regarding grain in 1989 is available because sale by the state was mandatory until 2001.

5.3. Support policies, measures, and initiatives (2000-2011)

The policy measures identified are summarized in the following table.

Table 10: Assessment of Public Policy and Measures towards Agricultural Co-operatives in Norway

Policy/Measure	Objective of policy/measure	Policy target	Impact of measure	Additional comments / working notes
Marketing Act, 1936.	Its aims are the supply of agricultural products all over the country.	To balance supply and demand.	+2	The government and the two Norwegian farmers unions negotiate every year on producer prices and other support to farmers. The agricultural sales co-operatives have the mandate to conduct market regulation in order to obtain the prices agreed upon.
Market price support	To secure for farmers the potential for income and living standards comparable to the remainder of the population.	Import protection.	+1	The GATT/WTO discourages this measure.
Direct support: product-specific support (e.g. price subsidies on agricultural products) and non-product-specific support (e.g. based on number of animal heads or acreage-based production subsidies and various social support systems)	To secure for farmers the potential for income and living standards comparable to the remainder of the population. Contribute to the production of public goods like food security, securing settlement in rural areas, and cultural landscapes.	Farmers Public goods	+1	
Investment support	To secure for farmers the potential for income and living standards comparable to the remainder of the population.	Farmers	+1	
Indirect support via research, education, and extension services.	Contribute to the production of public goods like food security, securing settlement in rural areas, and cultural landscapes.	Farmers	+1	
Co-operative Societies Act, 2007	Incorporation	Co-operatives in general (excluding housing co-operatives)	+2	

5.3.1. Incorporation

Description

There was no law regarding co-operatives active until 2007. Co-operatives were regulated by exceptions in other laws, like the Limited Liability Company Act and the Tax Act. The bylaws/statutes played an important role due to the lack of a co-operative law. However, bylaws were expensive to design for each new co-operative because they had to be in accordance with other relevant legal measures.

The Co-operative Societies' Act of 2007 regulates all co-operatives, except housing co-operatives and mutual insurance companies. It seems to institutionalise co-operative practice, to protect co-operatives, and facilitate the setting up of new co-operatives. The Co-operative Societies' Act is in accordance with the International Co-operative Alliance principles and reflects the characteristics and distinctiveness of the co-operative model.

Assessment

Incorporation generates costs as well as benefits. In the Proposition to Parliament (Ot.prp. nr 21 (2006-2007)) from the Ministry of Justice, there is a specific chapter dealing with "economic and administrative consequences" (chapter 17). The anticipated negative effects for the co-operatives are mostly related to the administrative consequences for the public and for the private sector coming from the new legislation. Possible additional public costs are the Public Register of Business Enterprises and the legal system as such. Additional costs for the private sector will occur since the Co-operative Societies Act requires registration in the Public Register of Business Enterprises, whereas before 2008 co-operatives could just be registered in the Central Coordinating Register for Legal Entities. Additional costs may also occur since education and training will be necessary, both for new and established co-operatives.

However, the advantages of a specific co-operative law are considered to be much larger than these additional costs. The introductory section 17.1 states that 'The Ministry of Justice is convinced that the draft for a co-operative law in total will lead to such improvements, both formally and for all practical purposes, in comparison with the present legal status (of co-operatives), that the advantages will clearly outweigh the costs that are always attached to such a comprehensive legislation' (unofficial translation). The Co-operative Societies Act 2008 makes it easier to establish co-operatives, defend and protect the distinctiveness of co-operatives, gives the co-operative business model a higher status, creates new interest in the co-operative model as a way of setting up new enterprises, and puts co-operatives and the social economy on the agenda. Chapter 17 of the Proposition indicates as probable advantages:

- A consistent legal framework for co-operatives will reduce the need for legal assistance, since the necessary information can now be found in the law. For example, without a co-operative law, bylaws were expensive to design for each new co-operative because they had to be in accordance with other relevant legal measures;
- A specific co-operative legislation may reduce the number of legal conflicts, since the law gives information about rights, duties and requirements that were previously not regulated by law;
- A co-operative law makes it easier to establish a co-operative, since there are specific requirements for bylaws, memorandum of association, registration, etc.

- A law will make it easier and smoother to carry out mergers, demergers and dissolution.

5.3.2. Co-operative legislation

Description

Please see 7.1 and 7.4

Assessment

Please see 7.1 and 7.4

5.3.3. Market regulation and competition policies

Description

A Marketing Act is governing agricultural markets since 1936. A marketing board is a mandatory legal institution determining prices. Its aims are the supply of agricultural products all over the country and to balance supply and demand. The government and the two Norwegian farmers unions negotiate every year on producer prices and other support to farmers. The agreement has to be approved by the Parliament. The agricultural sales co-operatives have the mandate to conduct market regulation in order to obtain the prices agreed upon.

Agricultural co-operatives are by Norwegian law assigned to implement government policy within their respective sectors, like determining the pooling price arrangement by a marketing board (Tennbakk, 2004). For example, Nortura has the responsibility for the market regulation of meat. The Nortura SA group is a co-operative which is owned by 18,000 active members who produce meat and eggs. Similarly, dairy co-operative TINE SA implements the milk marketing board. It is a co-operative owned by 15,000 Norwegian dairy farmers. Some of the subsidies are paid directly to the farmers, whereas the price subsidies, such as the base- and regional deficiency payments for meat and milk, are relayed by the marketing co-operatives and organisations.

For milk and dairy products there is a price equalisation system administrated by the Agricultural Authority. The system was designed to equalise the value for varying uses and from different geographic regions. Fees and subsidies are used to adjust the different commodity values to an average price for milk as a commodity. All dairy companies pay the same fee or receive the same subsidy for the same product group. The Norwegian Agricultural Authority manages the system. Norway has a maximum price for mutton, pork, eggs, grains, apples, pears, potatoes and certain vegetables. Beef and poultry have reference prices.

There are two reasons to assign co-operatives the role of government agent. First, it enables coordination of production and thereby restriction of supply. Overproduction and subsequent price cuts must be avoided. It entails the responsibility for the general economic development in agriculture, thus reducing public responsibility. Organisations other than agricultural co-operatives are increasingly participating in the formulation of regulations. Second, co-operatives distribute the entire surplus from all their activities to the members via the price of the primary product. The farmers still have freedom to choose their outlet, but the mandatory open membership policy of co-operatives guarantees that farmers receive at least the price paid by the co-operative.

Assessment

Norwegian agricultural markets are regulated extensively. The economic costs of regulation seem to be high for the Norwegian society. For example, Brunstad et al. (2005) estimate regarding the dairy sector that the economic welfare costs of regulation, measured by the loss of consumer and producer surplus, is as much as 26.3% of the milk production value. These costs are higher compared to other countries due to the substantial export and the high costs of agricultural production in Norway.

In a recently published White Paper, agricultural co-operatives are praised for their importance in securing active farming throughout the entire country and their vital role in the market regulation of major agricultural commodities (Knutsen, 2007, p24). It is not considered desirable to establish public market-regulating agencies, such as intervention systems of the type used within the EU.

5.3.4. Financial and other incentives

Description

A wide range of agricultural policy instruments have been adopted and implemented in order to advance the abovementioned goals. Various market regulation measures have been implemented in order to secure a steady supply of agricultural products at stable prices. Table 11 shows agriculture's total income divided between sales income and major subsidy categories in 2006.

Table 11: Agriculture's total income composition in 2006

	billion NOK
Market income, changes in stocks, etc	18.74
Price subsidies	1.88
Investment and input subsidies	0.31
Production support	6.5
Other support	0.39
Welfare and social support	1.55

Source: Knutsen (2007), figure 3.15

In addition to import protection (market price support), Norwegian farmers receive considerable support directly via the national budget in the form of numerous subsidy programmes. The various support measures can be divided into:

- Direct support: product-specific support (e.g., price subsidies for agricultural products) and non-product-specific support (e.g., based on number of heads or acreage-based production subsidies and various social support systems)
- Investment support
- Indirect support via research, education, and extension services.

Small farms have to a large degree received relatively more support than large farms.

Strong import restrictions have been used in the past. The rapid increase of productivity in agriculture, coupled with a relatively high level of subsidies, has resulted in higher prices for farmers than world market prices, and a larger domestic production than without these restrictions. This has led to overproduction. Consumer prices are higher than in neighbouring countries. There is some market regulating export and a rather substantial export of cheese. Due to the commitments of the WTO agreement regarding the reductions of export subsidies, the potential for export has been reduced since 2000.

Agricultural co-operatives are not taxed differently from other firms before the Co-operative Societies' Act.

Assessment

The Norwegian Agricultural Economics Research Institute (NILF) prepares monthly price series of selected farm commodities at the farm gate, wholesale and retail level. However, the effects of public measures are not known, such as the introduction or removal of a subsidy, reduction of the value added tax on food, etc.

5.3.5. Technical assistance

No technical assistance is provided by the government specifically to agricultural co-operatives.

5.4. Conclusions

Norwegian agricultural markets are regulated extensively, and co-operatives play an important role in the implementation of agricultural policy. This is not without costs, but there are various reasons for this policy. The role of co-operatives is viewed favourable. Forming co-operatives is facilitated by the Co-operative Societies' Act 2007. It institutionalises the widespread use of co-operatives in many sectors of the Norwegian economy and acknowledges the large percentage of the population having a membership of at least one co-operative. The overall conclusion seems to support the view that the competitiveness of markets (Porter, 1980), and the success of co-operatives in these markets, relies heavily upon, and is therefore embedded in the national competitive and institutional framework (Williamson, 2000).

6. Support for farmers' co-operatives in Switzerland

This chapter addresses support for farmers' co-operatives in Switzerland. It is organised as follows. Section 8.1 presents observations regarding Swiss agriculture, and the goals of agricultural policy. It also addresses Swiss agricultural policy measures. Section 8.2 highlights co-operatives in Switzerland and policy measures toward co-operatives while Section 8.3 concludes.

6.1. Background on agricultural co-operatives and the food and agribusiness industries in Switzerland

Swiss agricultural production

Switzerland is dominated by mountainous regions. The natural conditions make it grassland dominated agriculture: arable land 25%, Meadows and pastures 59%, sown meadows, forage crops 15%, fruit and vegetables 2%, vineyards 1% (Botsch, 2011). Table 12 presents the composition of agricultural output in 2010.

Table 12: Composition of agricultural output in 2010

Output	%
Vegetable and horticultural products	14
Forage plants	12
Fruits and grapes	5
Wine	4
Cereals	4
Other vegetable products	4
Milk	20
Cattle	12
Pigs	9
Other animals and animal products	5
Agricultural services	6
Non-agricultural secondary activities (not separable)	4

Source: Federal Statistical Office, 2011

The value of exports is similar to the value of imports, with the former usually slightly higher than the latter.

Swiss agricultural policy

Swiss agricultural policy has gone through a series of reforms. Botsch (2011) distinguishes four periods. The focus was on decoupling and the environment during 1993-1998. Examples are decoupling of support (direct payments), price reductions, incentives for specific ecological services (e.g. biodiversity), and tariffication of market access instruments (WTO). The focus changed to market orientation during 1999-2003. Domestic markets were liberalized by the abolition of market intervention systems in order to increase competitiveness. In addition, cross-compliance for all direct payments. The next four years (2004-2007) focused on competitiveness / social sustainability. The dairy quota system was abolished, further steps were taken toward more competitiveness, and rural areas were strengthened with accompanying measures. The

focus shifted to competitiveness of the food chain and enhanced support for the provision of public goods during the period 2008-2011. It entails abolition of export subsidies, further reduction in market support / modulation, tariff cuts for grains and animal feed, added value strategy, strengthening green box and cross-compliance strategy, and further reduction in market support. The four focal points of agricultural policy up to 2025 are (Botsch, 2011):

1. To ensure the reliable and competitive production and supply of food;
2. To use resources efficiently and promote responsible consumption;
3. To improve the vitality and attraction of rural areas;
4. To promote innovation and entrepreneurship in agriculture and food production.

The overall conclusion is that public goods become more important and the markets more open, and there will be a further change towards more specific direct payments. For example, there are direct payments for the promotion of public assets, like biodiversity, public access to farmland, decentralized settlement, sustainable use of natural resources, production methods that are near-natural and environmentally and animal friendly, diverse agricultural landscape, reliable food supplies.

Co-operatives in Switzerland

This section addresses various aspects of co-operatives in Swiss agriculture, like their market position, incorporation, role in Swiss agricultural policy, and taxation (3.4).

Market position

Table 13 presents the number of co-operatives in various agricultural sectors. The market share of co-operatives is small in general.³⁰ For example, ZMP (Zentralschweizer Milchproduzenten) owns 60 per cent of the shares of the dairy co-operative Emmi AG. Emmi AG employed 3700 persons, 3200 in Switzerland and 500 abroad, in 2010. It has acquired various enterprises with cheese specialties in the course of time. Its market share in the processing of milk is about 15%. PROVINS is the main co-operative for wine purchasing, processing and marketing with a 10% market share in Switzerland.

³⁰There are a number of large co-operatives, but they are not producer co-operatives. Examples are the Raiffeisen bank co-operative, the consumer co-operative retailer / supermarket Migros, and the consumer co-operative Coop Gruppe owning supermarkets, providing food, non-food, and services. Farmer needs are supplied by co-operative Landi.

Table 13: Co-operatives in Switzerland

Sector	Number
Vegetables, melons, carrot and tuberous plants	3
Wine and table grapes	6
Fruit	1
Milk cows	1
Other animals	3
Horses	2
Sheep and goats	2
Pigs	2
Mixed farming	1
Services for the development of plants	9
Services for the development of animals	6
Forest	7

Source: Bundesamt für Statistik, Landwirtschaftliche Betriebszählung 2008

FENACO is the main and biggest farmers' co-operative in Switzerland. It encompasses 80% of Swiss farmers (around 50,000 farmers), 8,500 collaborators and a turnover of around 5.5 billion Swiss francs. It takes care of farmer supplies, adds value to farmer products, and trades farmer products. The Fenaco-LANDI Gruppe consists of 300 agricultural co-operatives (LANDI) and more than 80 enterprises. Its activities are food (25.3%), agricultural trade (29.0%), retail (28.4%), fuel (16.8%), and other (0.5%).

6.2. Support policies, measures, and initiatives (2000-2011)

6.2.1. Co-operatives in Swiss Law

Co-operatives are legally defined in the Code of Obligations (Obligationenrecht in German). However, the definition is not specific to agricultural co-operatives.

6.2.2. Swiss agricultural policy and co-operatives

The Law on Agriculture³¹ contains many policy measures meant to support farmers' associations or containing a "collective" dimension without necessarily requesting the legal form of a co-operative. There do not seem to be any agricultural policy measure for which the legal form of a co-operative according to the Code of Obligation is required.

6.2.3. Taxation and co-operatives

Agricultural co-operatives are not taxed differently from other firms.

6.3. Conclusions

Agricultural co-operatives play a minor role in the Swiss agriculture. They are not defined separately, nor have a distinct status, in the Swiss law, and there seem to be no

³¹ <http://www.admin.ch/ch/d/sr/9/910.1.de.pdf>

policy instruments geared to them. The overall conclusion seems to support the view that the competitiveness of markets (Porter, 1980), and the success of co-operatives in these markets, relies heavily upon, and is therefore embedded in, the national competitive and institutional framework (Williamson, 2000).

7. Support for farmers' co-operatives in the United States

7.1. Background on agricultural co-operatives in the United States

Agricultural co-operatives appeared in America as early as 1804, when farmers in Connecticut organised a co-operative to market milk and milk products. Throughout the early 1900s many more agricultural co-operatives formed in the United States in response to adverse economic conditions for farmers, including market failures. Agricultural co-operatives in the U.S. are especially prevalent in sectors where producer output is exposed to high degrees of temporal asset specificity.

7.2. Evolution of support for farmers' co-operatives

This report surveys how co-operative policies have evolved in the United States and the impact of the policies on the competitive strength of agricultural co-operatives. Figure 1 in Appendix 9.1 defines and describes the range of the observed impacts which are discussed in the report and detailed in Appendix 9.2.

The Sherman Antitrust Act of 1890 was the first act of its kind aimed at protecting the competitive market system in the United States. The federal act restrained trade and monopolist behaviour of organisations affecting commerce (Frederick, 2002). Later, the Federal Trade Commission Act created an independent regulatory commission to eliminate unfair methods of competition through the establishment of an administrative body to develop and enforce antitrust policies. Through the act, The Federal Trade Commission (FTC) and the Department of Justice were given the authority to propose investigation of co-operatives violating antitrust policies (Jesse, et al., 1982). These acts had a weak negative impact (-1) on the strength of agricultural co-operatives in the United States.

It was feared that antitrust acts would cripple the efforts of farmers engaged in co-operative organisations. Senator Sherman even proposed an amendment to his antitrust act exempting the agricultural sector, however it was not adopted. Consequently, agricultural leaders pursued further legislation that would protect them from overzealous enforcement of the Sherman Antitrust Act for their products. Agricultural co-operatives found moderate relief (+2) when the Clayton Act was passed in 1914. Section 6 of the Clayton Act extended limited antitrust protection to agricultural and horticultural organisations to form non-profit co-operatives without capital stock (Frederick, 2002). The act stated that "nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labour, agricultural or horticultural organisations" (Barnes and Ondeck). However, farmers were not exempt from a review if not engaging in anticompetitive practices.

Realizing that this was not adequate protection to foster success for agricultural producers, debate began in Congress on another piece of legislation. In 1922, the Capper-Volstead act provided robust support (+4) for agricultural co-operatives. The Capper-Volstead Act allows farmers to organise and act together in associations with or without capital stock (Capper-Volstead Act 1922). Senator Capper stated that the purpose of the act "is to give the farmer the same right to bargain collectively that is already enjoyed by corporations" (Barnes and Ondeck). The act provides agricultural co-operatives an exemption from federal anti-trust laws, thereby permitting the collective action that makes co-operatives a desirable business structure. This policy has had the highest positive impact on the competitive strength of agricultural co-operatives and the financial success of farmers in the United States.

The overall competitive strength of co-operatives was furthered a fair amount (+1) through the Co-operative Marketing Act of 1926 and the Agricultural Marketing Act of 1929 (Frederick, 2002;

Hoffman and Libecap, 1991). These federal acts supported the development of agricultural co-operatives and marketing efforts.

7.3. Support policies, measures, and initiatives (2000-2011)

7.3.1. Description and assessment

To help farmers' co-operatives counter market failures governments attempt to design and implement support policies, measures, and various initiatives. When discussing co-operative success in the United States, access to equity capital is very important. Over time, the tinkering of laws impacting co-operatives and their structures has enabled co-operatives to achieve success; however, the most significant formal and informal institutional changes have come in the form of policies allowing access to outside capital. A brief description follows.

7.3.2. New Generation Co-operatives

New Generation Co-operatives have emerged primarily since the 1990s and are most prevalent in marketing co-operatives engaged in value-added processing. They differ from the traditional co-operative model in that they have a limited or closed membership and require substantial upfront investment which members pay based on the proportion of products they agree to deliver. This asset is called a delivery right. Each member has a right, and is obligated to deliver a fixed quantity of product each year. New Generation co-operatives allow patron members to transfer their equity in the co-operative by private sale to another person eligible to become a patron member. Under this structure, co-operative farmer-members have the option of cashing out when they want to end their dealings with the co-operative and have the opportunity to make a capital gain/loss on their equity investment in their co-operative (Dunn, 2002).

7.3.3. Financial and other incentives (capital)

In 2001, the state of Wyoming pioneered the development of a co-operative model alleviating constraints faced by co-operatives by permitting access to capital from outside investors. Lamb producers in Wyoming wanted to become more profitable in the processing of lamb meat, wool, pelts, and the overall marketing of lamb products. Realizing the advantages of economies of scale and knowing they could be more powerful collectively than they were individually, they desired to form a co-operative. The producers did not have enough capital to build the infrastructure necessary to form their co-operative on their own. However, with the investment from non-patron members, the lamb producers were able to build a processing plant and start their co-operative.

This Wyoming Processing Co-operative Law allows for increased flexibility in co-operative capitalization as non-patron investor-members can now own co-operative equity (Holland and Bruch, 2004; Wyoming Processing Co-operative Law, 2001). Under the law the non-patron members receive up to 85% of co-operative dividends but patron-directors retain a minimum of 50% of the board voting power. Since the enactment of this legislation, similar policies have been implemented in Minnesota (2003), Iowa (2005), Tennessee (2005), Wisconsin (2006), and Nebraska (2007). These policies have had a fair positive impact (+1) on the competitive strength of US agricultural co-operatives.

The most commonly cited reason for a co-operative to consider converting into an LLC or a corporation is the need for additional equity (Cook and Chaddad, 2004). This issue is partially ameliorated when investment is allowed by non-member investors.

7.3.4. Uniformity

In the United States a majority of co-operative legislation is enacted and enforced at the state level. Co-operatives are considered “a type of” corporation in the U.S. The variation in co-operative laws from state to state invariably leads to new co-operatives searching for the best state within which it’s incorporated. Under federal law organisations would have to take the legal environment as a given, however state laws allow new co-operatives to choose the legal environment in which they begin. Realizing that this gives rise to potential conflicts, several states have adopted the Uniform Limited Co-operative Association Act (ULCAA). The act is intended to supplement existing State co-operative laws by allowing for the addition of a more flexible entity (Uniform Law Commission 2010). The act creates a new form of business entity and is an alternative to other co-operative and unincorporated structures.

In the act, a “co-operative” is defined as an unincorporated association (a “limited co-operative association”) of individuals or businesses that unite to meet their mutual interests by creating and using a jointly owned enterprise. Few states have the same co-operative statute, and this policy potentially has a fair impact (+1) on the strength of co-operatives by attempting to establish common formal institutional environment. The ULCAA pairs a flexible organisational structure with co-operative principles and ideals to allow for increased investment opportunities for capital intensive co-operatives. It grants, however does not require, co-operative organisations to extend voting rights to investor members. Giving capital investors even limited voting rights is the aspect of this act that sets it apart from other co-operative acts.

7.3.5. Anti-trust

While the Capper-Volstead Act provides limited protection to agricultural co-operatives from federal antitrust laws, it does not offer them full exemption. As it is written, the text of the act (Appendix 9.3) leaves a few issues open to interpretation. Some of these limitations to the Capper-Volstead Act are currently being discussed in pending private lawsuits. Buyers of agricultural products have sued co-operatives making claims that they have violated federal and state antitrust laws and are conspiring to restrict the production of agricultural commodities. These consumers are proposing tougher Capper-Volstead legislation due to the varying interpretation of the Act. Business arrangements that pose special antitrust risk for co-operatives include agreements on prices and terms of sale, undue price enhancements, reaching for substantial market share, merger and acquisition activity, customer selection, member selection, transportation, limitations on quantity of product handled, and predatory conduct (Frederick, 2002). A precedent was set by the Supreme Court in the 1977 *National Broiler Marketing Association* case when they ruled that having even one non-farmer member in a coop disqualifies the coop from claiming the Capper-Volstead exemption. Cases such as these serve as a reiteration of the limits of the Capper-Volstead antitrust exemption. They particularly emphasize the need for co-operatives to comply with membership and contract restrictions in order to enjoy the benefits of their antitrust immunity.

7.3.6. Technical assistance

Beginning with the Morrill Acts of 1862 and 1890 there have been policies put in place to target the development of the agricultural industry in the United States. The federal Morrill Acts established Land-Grant Universities that differed from classical universities in that their purpose was to teach agriculture, science, and engineering (Morrill Act of 1862; Morrill Act of 1890). These universities continue to support co-operative development and education efforts. Capacity building programmes such as the United States Department of Agriculture’s Rural Development, Business, and Co-operative Programme help co-operatives better serve their members. The federal programme run by the USDA provides co-operative development assistance, technical assistance, research, education, information, and statistics for co-operatives (U. S. Department of Agriculture 20011c). The main focus of the programmes is to promote the understanding and use

of the co-operative form of business as a viable organisational option for marketing and distributing agricultural products. Programmes of this nature including the RDB are general co-operative capacity building programmes that have a moderate impact (+2) on the ability of co-operatives in the US to assist their members.

In addition to services offered by the USDA, there are also many of co-operative development resources available at the state and regional levels. Many states have co-operative councils and land grant universities offer extension and education services to aid in the formation of co-operatives.

7.3.7. Farm Credit

The Farm Credit Act of 1933 established the Farm Credit System to provide short, intermediate, and long-term credit to farmers, farmer co-operatives, and lending institutions servicing agricultural producers. The Act had a strong positive impact (+3) on the competitiveness of agricultural co-operatives and U.S. agricultural producers. The system is a co-operatively-owned network of financial institutions established by Congress. When it was set up it included 12 Federal Land Banks for long-term real estate loans, 12 Federal Intermediate Credit Banks for short- and intermediate-term credit to local Production Credit Associations, 12 Banks for Co-operatives, and a Central Bank for Co-operatives to provide credit to farmers' co-operatives to participate with Banks for Co-operatives in loans exceeding their lending capacities (Farm Credit Administration, 2011).

The competitive position of agricultural co-operatives was enhanced further with the Agricultural Marketing Agreement Act of 1937. This act helped establish orderly marketing conditions for the benefit of producers and consumers. This aided co-operatives by specifying the circumstances under which co-operatives can act on behalf of their members (Zeuli and Cropp, 2004). This act had a moderate positive impact (+2) on agricultural co-operative competitiveness. Access to credit services for farmer co-operatives is imperative to their success and ability to function.

7.4. Conclusions

As more research has been done in economics, theories about the ideal conditions for economic development have shifted from a market approach of "getting the prices right" to an approach that realizes the importance of institutions (both formal and informal) and focuses on "getting the institutions right". A new institutional economics approach to economic development has its roots in the work of Douglass North. The new institutional economic approach differs from that of neoclassical economics primarily on the belief that institutions play a defining role in economic growth. North suggests that the institutional environment shapes economic development and that policy and laws will evolve over time to facilitate economic growth. He raises the following main points regarding economic development:

A mixture of formal and informal rules shape economic performance

Political bodies should define and enforce economic rules

Adaptive practices to raise capital will ensure long term growth

This report looks at how co-operative policies in the United States have evolved throughout history. It has been observed in the United States that formal and informal rules have played an important role in the formation and continuance of agricultural co-operatives. Formal institutions including acts such as the Sherman Antitrust Act, the Capper-Volstead Act, and the more recent state legislation and policies allowing co-operatives access to outside capital have laid out rules governing the structure of agricultural co-operatives. Additionally, judicial and regulatory bodies have been given the task of enforcing state and federal legislation. Informal

institutions embedded in social and regional differences have influenced producer participation in co-operative development.

After analyzing the policies governing agricultural co-operatives in the United States and their implications it can be said that economic development has been informed and enhanced by the changing structure of co-operatives in the United States. Overall, co-operative policies in the United States have transformed to improve the competitive position of agricultural co-operatives.

8. Conclusions

Theme 2 of the “Support for farmers’ co-operatives” study focuses on policy measures toward agricultural co-operatives in six non-EU, OECD countries; Australia, Canada, New Zealand, Norway, Switzerland, and the USA. Based on an extensive review of academic publications, electronic sources of information, and popular press articles, we have identified policy measures that have a high chance of, either directly or indirectly, affecting the performance of agricultural co-operatives. Given the very limited number of studies that assess the effectiveness of these measures, we have contacted co-operative experts in the aforementioned countries to provide us with a reasoned assessment of the policies. Relying solely on individual experts represents a limitation of this study that should be addressed in future research.

Chapters 4-9 proffer an overview of the role and importance of agricultural co-operatives in each country as well as an evaluation of the pro-co-operative policy measures. Based on these assessments, several interesting conclusions can be drawn.

The performance of agricultural co-operatives is affected by several parameters that interact but are not equally important in all countries. The most influential parameters seem to be:

- The formal institutional environment has a very significant impact on co-operatives’ performance, either directly or indirectly (laws, regulations, measures, initiatives, etc).
- Informal institutions also play an important role in shaping the environment in which co-operative operate and thus their performance. Both formal and informal institutions are shaped by the prevailing culture and socio-economic conditions, as well as historical path dependencies.
- The dominant paradigm regarding the role and expectations from agriculture and farmers has a crucial impact on the overall agricultural policy and regulatory frameworks adopted by each country. Farmer co-operatives and support towards them is crucially affected by this paradigm.
- The structural characteristics of agriculture and farms are yet another significant parameter. For example, in countries with larger, capital-intensive farms, support policies may be less necessary to spark efficient collective entrepreneurship.

Among the six selected non-EU OECD countries, the intensity of governmental support for co-operatives, in descending order is:

- Canada
- USA
- Norway
- Australia
- New Zealand
- Switzerland

By using as the sole criterion in assessing the prominence of agricultural co-operatives inclusion in the list of the 300 largest (in terms of turnover) co-operatives compiled by the International Co-operative Alliance, the six countries are listed in descending order as follows:

- USA (36 co-operatives)
- Canada and New Zealand (3 co-operatives)

- Australia, Norway, and Switzerland (2 co-operatives)

Whether a causal association between the two above exists is not clear. Nevertheless, a comparison of the strength support and the number of co-operatives included in the global 300 list reveals that a strong governmental support is a necessary but not sufficient condition for enhancing co-operative's performance.

The lack of strong governmental support has both positive and negative effects. In the case of Australia, the contacted experts seem to agree that the overall impact is positive. New Zealand is an example of a subsidy-free agriculture in which co-operatives play a prominent role. On the other hand, the lack of support may result in a minor role played by co-operatives, as in the case of Switzerland.

If the only two available alternatives are 1) no support, and 2) support whose consequences are not fully explored in advance, then option 1 is the best choice as in many cases good intentions have generated unintended consequences.

If a country's goal is to develop its agricultural sector through co-operatives, then the adoption of a flexible incorporation law for co-operatives seem to be the single most important policy. Even in countries with no support for co-operatives, the adoption of a flexible incorporation law has been assessed to have a very positive impact on co-operatives' performance. The more general and flexible the incorporation law is, the more co-operative bylaws become an indispensable tool for designing efficient co-operative organisations.

The preferential tax treatment of co-operatives has proved to boost co-operative development in some countries (e.g., Canada, the US). It is worth mentioning that, according to co-operative scholars and the ICA, co-operatives do not demand a preferential tax treatment. Instead, they point to the need to distinguish between profits and surpluses. The first are the result of conducting business transactions with non-members and should be taxed in the same way as IOF profits. The latter, however, are generated through member patronage and should be taxed at either the co-operative or the individual member level. Understanding this difference is crucial in designing taxation policies for co-operatives.

Anti-trust and, more generally, market regulations do not constrain the development of co-operatives if they take into account the unique aspects of co-operatives. For example, the dramatic development of new generation co-operatives in the US might have not been possible if State and federal legislation recognising the unique definition of property rights in co-operatives was not passed during the last 20 years.

Governments need to be ready to adjust their policies so that they address current and emerging problems facing co-operatives. For example, State laws that permit non-member-patron capital injections have been instrumental in strengthening US agricultural co-operatives.

Government-sponsored technical assistance provided to agricultural co-operatives is not viewed by all experts as a significant form of support. However, the preceding analysis of policy measures indicates that the lack of technical assistance may be associated with a trend toward abandoning the co-operative form of collective action in agriculture. Particularly for start-up co-operative ventures, technical assistance grants and extension services may play an important role in developing viable market channels to farmers in disadvantageous and/or mountainous areas.

By setting rules and selection criteria, agricultural policies determine which farmers have access to various types of subsidies and rural development funds. Subsequently, such policies influence the types and economic size of co-operatives eligible for support.

Overall, designing efficient policy measures for agricultural co-operatives rests on the ability of governments to overcome traditional rent-seeking behaviours and set their agricultural policy priorities accordingly. This is more so if governments realise that countries with successful agricultural sectors and unsuccessful agricultural co-operatives represent a rare phenomenon.

This study has identified a significant knowledge gap; very little research has been conducted on the evaluation of policy measures for farmer co-operatives. Without such information, however, policy makers run the risk of designing inefficient measures with unintended negative consequences. Future research should focus on estimating more formally the economic impact of the policy measures identified in this report.

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³² This reference list was compiled by Dr Constantine Iliopoulos, Agricultural Economics and Policy Research Institute, Athens, Greece; Professor M. L. Cook, University of Missouri-Columbia, USA; and Professor G. Hendrikse, Erasmus University, Rotterdam, the Netherlands, in March 2011.

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APPENDIX 2.1

Pro-co-operatives policies, measures and initiatives: Identification and assessment template

Table 1. Assessment of Public Policies and Measures Towards Agricultural Co-operatives in Selected OECD Countries (Theme 2) COUNTRY:					
POLICY TYPE	POLICY/ MEASURE <small>This is a list of policies we found in the literature. Please add policies/measures that you think are missing from this list (brief description including level of implementation: Federal, State, Regional or Local)</small>	OBJECTIVE OF POLICY/ MEASURE	POLICY TARGET <small>Please indicate whether the policy was targeting agricultural co-operatives, other types of organisations, or was of a more general nature</small>	IMPACT OF POLICY/ MEASURE <small>Please assess the impact of each policy/measure on the competitive position of agricultural co-operatives and farmers in the food system -4 -3 -2 -1 0 1 2 3 4 Where -4 is extra negative, 0 neutral, and 4 extra positive</small>	ADDITIONAL EXPERT COMMENTS <small>(e.g., please explain briefly how and why was that impact achieved; under what factors, circumstances and institutional framework could the impact be more positive?)</small>
MANDATE ³³ (e.g., limited or extended immunity from antitrust laws, other regulations)					
INDUCEMENT ³⁴ (e.g., subsidies, financial incentives, beneficial tax treatment, access to favourable credit, etc.)					
CAPACITY BUILDING ³⁵ (e.g., provision of technical, advisory assistance, etc.)					
SYSTEM CHANGING ³⁶ (e.g., privatization, gentlemen' agreement, efforts to create					

³³ Mandates are rules governing the action of individuals and agencies, and are intended to produce compliance.

³⁴ Inducements transfer money to individuals or agencies in return for certain actions.

³⁵ Capacity-building is the transfer of money for the purpose of investment in material, intellectual, or human resources.

³⁶ System-changing transfers official authority among individuals and agencies in order to alter the system by which public goods and services are delivered.

a pro co-operative environment/mentality etc.)					
OTHER (Please specify)					
EXPERT'S NAME, AFFILIATION, and E-MAIL:					

APPENDIX 4.1

Assessment of Public Policies and Measures Towards Agricultural Cooperatives in AUSTRALIA				
POLICY/ MEASURE	OBJECTIVE OF POLICY/ MEASURE	POLICY TARGET	IMPACT OF POLICY/ MEASURE	EXPERT COMMENTS
<p>This is a list of policies we have identified. Please add policies/measures that you think are missing from this list (brief description including level of implementation: Federal, State, Regional or Local)</p>		<p>Please indicate whether the policy was targeting agricultural cooperatives, other types of producer organizations, or was of a more general nature</p>	<p>Please assess the impact of each policy/measure on the competitive position of agricultural cooperatives and farmers in the food system</p> <p>-4 -3 -2 -1 0 1 2 3 4</p> <p>Where -4 is extra negative, 0 neutral, and 4 is extra positive</p>	<p>(e.g., please explain briefly how and why was that impact achieved; under what factors, circumstances and institutional framework could the impact be more positive?)</p>
<u>Commonwealth</u>				
Income Tax Assessment Act 1936 (federal)	Federal Tax Act treats all companies the same – a co-operative is a company with an appropriate objective (S. 117), structure (e.g. limit on number of shares; no public trading of shares) and activity (90% of business with members). As income tax is levied at federal not state level; therefore co-operatives can be formed using Corporations Law (federal) or co-operative (state) law	General: consequence of interaction of tax and corporation / co-operative law.	1: permits flexibility of organizational forms; many Victorian co-operatives (e.g. Murray Goulburn) are formed under Corporations Law, but structured in reference to the tax code, which is narrower in scope than state based co-operative acts (e.g. no active membership provisions). Note, an unknown amount of collective farmer business activity is conducted as	1. Arguably of lessening importance due to recent harmonization of state co-operative laws, but may grow in importance if innovative means are not devised to secure permanent capital as a result of interaction between international accounting standards and state co-operative law active membership provisions. 2. NOTE, under the ITAA a

	and comply with the provisions of the ITAA.		Corporations Law companies which could qualify as a co-operative under US tax code e.g. between 50 - 90% of business is conducted with members?!?! ³⁷ Note, limited proportional voting is possible with a corporation law co-operative vs. one vote one member under state co-operative acts.	co-operative must conduct 90% of its trade with its members, which is high relative to many other countries and may partly explain why the co-operative sector appears to be smaller in Australia (past impact of Statutory Marketing Boards are another cogent argument as to retardation of co-operative development).
Income Tax Assessment Act 1936 (federal)	Division 9: a) allows qualified early transfer of income tax liability from co-op to individual member as trading rebates and dividends are deductible to the co-operative	General: stems from tax definition of a co-operative company. Note some of this advantage is eroded as a consequence of Australia's dividend imputation system in which shareholders receive tax credits for tax paid at company level ('franking').	3: Advantage to agricultural co-operatives as marginal tax rates of member's tends to be lower than company tax rate (30%), thus limiting appeal of franked dividends and shares, relative to deductible trading rebates and dividends.	
Income Tax Assessment Act 1936 (federal)	Division 9: b) allows qualifying agricultural marketing co-op capital raising incentive	Applicable ONLY to agricultural marketing co-operatives with highly active memberships (90/90 rule): 90% of trade must be with shareholders holding 90% of the value of the co-operative's shares)	3: Induces farmer capex; allocated via capital markets; rewards only surplus generating investment in year of deduction; rewards higher levels of active membership; builds (unallocated) reserves of equity on balance sheet	Theoretically could be expanded but political economy would be highly problematic. 90/90 rules limit applicability, but maintain integrity of concession.
Income Tax Assessment Act 1997 (federal)	S 50 -40 allows selected organizations to be exempted from income tax	General, but contains a provision of organizations promoting the	2 Recent Federal Court case upheld application to WA CBH (largest grain co-	-

³⁷ Former co-operatives are able to maintain grower ownership and control within a company structure, even it not 'co-operatives' (e.g. Golden Circle Ltd that restricted its share registrar to growers and suppliers of pineapples until control was taken by private equity in 2007 and later fully taken over by Heinz in 2008.

		development of Australian (agricultural) resources	operative)	
Corporations Act 2001 (federal)	Protection against misuse of term/name "co-operative"	General	1	-
Competition and Consumers Act 2010 (federal)	Anti competitive behaviour prohibited by Act. Authorisation (exemption from competition law) on condition of a 'public benefit' test (collective bargaining, indicative price scheme, R&D levy etc).	Small business in general (collective bargaining) and industry wide benefit functions particularly in agriculture	2. Collective bargaining may be problematic as arguably less effective than a commercially focused co-operative able to legitimately short markets; useful price discovery mechanism?!?	As all firms must not breach provisions of competition law, unless granted an authorization on the basis of 'public benefit'; these provisions are unlikely to impact on narrowly focused business entities such as co-operatives.
Common Law Mutual (note federal tax law implications of mutuality principle have3 been tested in Federal Court; irrigation co-operatives structured under State Co-operative Acts (WA and NSW))	Common Law	General	2 has been used selectively in irrigation co-operatives to a) protect irrigation assets (solve for free rider, portfolio and horizon problems) and for tax effectiveness	Could have a much wider applicability in other sectors of economy with common ownership of capital intensive assets with long replacement times, requiring sinking funds
Common Law Definition of a Co-operative:	Case law (1988, (14 ACLR 747, p 763) defined for purposes of attempted hostile takeovers	General, but was an outcome of an attempted hostile takeover of a fertiliser co-operative. Wider definition than the tax act	2. made tax over more difficult. Note, State base co-operative law makes takeover very difficult	
All Australian States				
Adoption of 'core consistent' provisions in state Co-operative Acts, (based on the Victorian Act).	Creates ease of trade across state boundaries / harmonization of key provisions and recognition of differences (e.g. provision for Co-operative Capital Units in NSW and WA Acts)	General	2	Co-operatives need to create means of creating permanent equity given accounting standards developments and active membership provisions (e.g. share premiums / CCUs structured as permanent capital / building reserves).
Harmonization of State Consumer Law with	Facilitates integration of national economy.	General		

Australian (federal) Consumer Law				
Gradual abolition of agricultural marketing Boards at national (export) and state (domestic) levels			-2 removed transfers from domestic consumers to producers and / 2 induced efficiency gains at producer level – mixed success of co-operatives in adapting	Arguably usurped role of many agricultural marketing co-operatives (retarded their development) by isolating producers from understanding market dynamics.
<u>QLD</u>				
Co-operatives Act 1997	See adoption of core provisions legislation above	General		
Duties Act 2001	Sections 285, 292 and 598	General		
State Treasury loans	Permits qualifying agricultural marketing co-operatives to access Income Tax Assessment Act 1936 (Cwth) Division 9 concession co-op capital raising incentive	Applicable only to agricultural marketing co-operatives with highly active memberships (90/90 of trade must be with shareholders holding 90% of the value of the co-operative's shares)	See above	
<u>NSW</u>				
Co-operatives Act 1992	See adoption of core provisions legislation above	General		
Duties Act 1997	Exemption from Stamp Duty re issue of registration of co-operative and share certificates	General		
State Treasury Loans	Permits qualifying agricultural marketing co-operatives to access Income Tax Assessment Act 1936 (Cwth) Division 9 concession co-op capital raising incentive	Applicable only to agricultural marketing co-operatives with highly active memberships (90/90 of trade must be with shareholders holding 90% of the value of the co-operative's shares)	See above	
<u>VIC</u>				
Co-operatives Act 1996	See adoption of core provisions legislation above	General		

Stamp Duty Act	Exemption from stamp duty for share transfers.	General		
State Treasury Loans	Permits qualifying agricultural marketing co-operatives to access Income Tax Assessment Act 1936 (Cwth) Division 9 concession co-op capital raising incentive	Applicable only to agricultural marketing co-operatives with highly active memberships (90/90 of trade must be with shareholders holding 90% of the value of the co-operative's shares)	See above	
<u>WA</u>				
Co-operative Act 2009	See adoption of core provisions legislation above	General		
Business Names Act 1962	Protects against inappropriate use of term "co-operative"	General		
Loans (Co-operative Companies) Act 2004	Permits qualifying agricultural marketing co-operatives to access Income Tax Assessment Act 1936 (Cwth) Division 9 concession co-op capital raising incentive	Applicable only to agricultural marketing co-operatives with highly active memberships (90/90 of trade must be with shareholders holding 90% of the value of the co-operative's shares)	See above	
Incorporated Association Act (NFP incorporation)	Appears to be a high level of activities which in other States would be conducted under co-operative structure	Unintentional consequence of relative ease of operating under associations vs. co-operatives Acts	0	May change as a consequence of recent improvements in co-operative law and tighter scrutiny of associations act?
Other				
South Australia				
Co-operatives Act 1997	General			
Tasmania				
Co-operative Act 1999	General			
Northern Territory				
Co-operatives Act 1997				

Australian Capital Territory				
Co-operatives Act 2002				
Any other state or federal laws related and affecting co-operatives (Fair trading Acts, Tax laws, Competition-antitrust and antimonopoly laws, etc)???				

APPENDIX 5.1

Assessment of Public Policies and Measures towards Agricultural Co-operatives in Canada

Policy Type	Policy/Measure	Objective of Policy/Measure	Policy Target	Impact of Measure ³⁸
Mandate	Canada Corporations Act, 1970. Federal (1) These statutes provide the legal framework for the creation and governance of federal corporate entities, so that they can engage in marketplace activities on a for-profit and not-for-profit basis.	To encourage the incorporation of a business in general. To outline the structure of different types of organisations.	General Corporate Legislation	+1, +1
	The Competition Act, 1985. Federal (2) The Act comprehensively sets out the competition law of Canada, from hardcore cartels to merger review. With few exceptions, it applies to all businesses in Canada. It also contains noncriminal provisions which allow the Competition Tribunal to review mergers and certain business practices (such as tied selling, exclusive dealing, refusal to deal and abuse of dominance) and to issue orders prohibiting or correcting the conduct so as to eliminate or reduce its anti-competitive impact.	(a) To encourage competition, to promote greater economic efficiency and to improve its competitiveness on the international market. (b) To prohibit certain criminal offenses (such as price fixing and bid rigging conspiracies, resale price maintenance, price discrimination and predatory pricing.	General Antitrust Legislation	0, 0
	Farm Improvement Loans Act, 1985. Federal (3) The Act authorizes the federal government to guarantee lenders against loss incurred on loans made in accordance with the Act and Regulations.	To make credit available to farmers for the improvement of their operations and living conditions.	Agricultural Co-operative Legislation	+1, +2
	Canadian Agricultural Loans Act, 1985. Federal (4) The Act authorizes the Minister of Agriculture and Agri-Food to guarantee against loss term loans made to farmers and co-operatives by chartered banks and other designated lenders.	To make credit available to marketing co-operatives for the processing, distributing and marketing of agricultural products.	Agricultural Co-operative Legislation	+1, 0
	Income Tax Act, 1985. Federal (5) The Income Tax Act (Canada) permits co-operatives to deduct any amounts declared as patronage dividends from its calculation of its taxable income. The payment of patronage dividends will both reduce the co-operative's taxable income and its liability for income tax. In most instances a co-operative will qualify for a special low tax rate on its first \$200,000 of income. If the co-operative has taxable income greater than \$200,000 it will pay a higher rate of tax on such excess.	To provide tax incentives to co-operatives.	General Tax Legislation	+1, +3
	Co-operative Credit Associations Act, 1991. Federal (6)	To facilitate the incorporation of co-operative credit associations in general and agricultural credit associations in particular.	Co-operative Credit Legislation	+1, +1
	Farm Credit Canada Act, 1993. Federal (7) FCC was established in 1959, under the Farm Credit Act, at that time solely to provide credit to farmers. It succeeded the Canadian Farm Board, which had been in operation since 1947. On April 2, 1993, Parliament passed the	To enhance rural Canada by providing specialized and personalized financial services to farming operations, including family farms, and to those businesses in rural Canada, including small and medium-sized businesses, that are related to farming.	Agricultural Credit Legislation	+1, +1

³⁸ The first of these assessments is provided by Professor M. L. Cook after he consulted numerous co-operative practitioners in Canada. The second assessment is provided by James Watt, Vice President of Corporate and Member Affairs, and Chief Governance Officer, United Farmers of Alberta, Canada.

	<p>Credit Corporation Act which then allowed organisationn to expand beyond rightforward farm loans – to finance on-farm sification projects and value-added cultural operations beyond the "farm gate".</p>			
	<p>Agricultural Marketing Programmes 1997. Federal (8) AMPA amalgamated the Prairie Grain nce Payments Act (PGAPA), Advance ents for Crops Act (APCA) and the cultural Products Co-operative Marketing APCMA).</p>	To assist producers and marketing cies to market their commodities products.	Agricultural eting Legislation	+2, +1
	<p>Canada Co-operatives Act, 1998. Federal (9) Businesses are allowed to incorporate r this federal act if they are active in two or e provinces.</p>	<p>(a) To set out the law applicable to business endeavors of persons who associated themselves in a pratic manner to carry on a common ose. (b) To advance the cause of rmony of co-operative business law nada.</p>	General Co-ative Legislation	+1, +1
	<p>Overview of State Co-operative Acts. State (10) Co-operative Associations Act Alberta, 2001. Co-operative Associations Act British Columbia, 1999. The Co-operatives Act Manitoba, 1998. Co-operative Associations Act New Brunswick, 1978. Co-operatives Act Newfoundland, 1998. Co-operative Associations Act Northwest Territories, 1988. Co-operative Associations Act Nova Scotia, 1989. Co-operative Associations Act Nunavut, 1988. Co-operative Corporations Act Ontario, 1990. Co-operative Associations Act Prince Edward Island, 1976. Co-operatives Act Quebec, 1982. Co-operatives Act Saskatchewan, 1996. New Generation Co-operatives Act atchewan, 1999. Co-operative Associations Act Yukon Territory, 1997.</p>		State Incorporation	+1, +1
Inducement	<p>Co-operative Development Initiative, 2003-2007. Federal and State (11) Created in 2003 for a period of five years. led into two parts: (1) advisory service nistered by the Canadian Co operative ciation and the Conseil Canadien de la ération) and (2) innovation and research nistered by the Co-operatives Secretariat).</p>	<p>(a) To support the creation, lopment and management of co-atives in general. (b) To research new applications of o-operative model.</p>	General Co-ative Development	+2, +2
	<p>Agricultural Co-operative Development Initiative, 2006 - 2009. Federal and State (12) The Agricultural Co-operative lopment Initiative (Ag-CDI) was a short-programme that operated in two phases een October 2006 and March 2009. The ramme was financially supported by ulture and Agri-Food Canada, and oaged by the Canadian Co-operative ciation and le Conseil Canadien de la</p>	To promote a sustainable hood for farmers by assisting in the lopment of biofuel and other ultural co-operatives.	Agricultural Co-ative Development	+4, +2

	<p>ération et de la Mutualité, in partnership with the Co-operatives Secretariat.</p> <p>Rural Co-operative Outreach and Development Project, 2009. State (13) – Alberta In 2009, ACCA initiated a project to enhance co-operative development in rural communities in Alberta. The Rural Co-operative Outreach and Development project, with various funding support from the Rural Alberta Development Fund (RADF), has undergone three phases: (1) community outreach, (2) community plan assessment and (3) co-operative development.</p>	To promote the growth of co-operatives in Alberta by means of research and funding.	General Co-operative Development	+2, +2
	<p>Co-operative Development Initiative, 2009 – 2013. Federal and State (14) The Co-operative Development Initiative is a Government of Canada programme entered in a partnership of the Canadian Co-operative Association (CCA), Conseil Canadien de Coopération et de la Mutualité (CCCM), and the National Co-operatives Secretariat of the Government of Canada. There are three programme components: (1) Advisory Services, (2) Innovative Co-operative Projects and (3) Research and Knowledge Development.</p>	<p>(a) To support co-operative development by providing technical assistance to individuals and groups with a view to create or strengthen a co-operative.</p> <p>(b) To support innovative projects in the co-operative sector, including the implementation of best practices.</p> <p>(c) To support the research of the co-operative sector to facilitate an environment for an innovative future.</p>	General Co-operative Development	+2, +1
Capacity Building	<p>Technical Assistance Funding, 2003. A co-op developer or other consultant is hired for the group to work on particular project to coach a group looking to form a co-operative.</p>	To offer expertise for the creation and growth of co-operatives in general.	General Co-operative Development	+2, +1
	<p>Co-op Zone: NL State (15) – Newfoundland and Labrador The Newfoundland and Labrador Corporation of Co-operatives has partnered with the Department of Innovation, Trade & Rural Development to implement a programme that provides access to a comprehensive toolkit of co-information and development support services at the community level.</p>	To provide support for the growth and development of businesses in the co-operative sector of Newfoundland and Labrador.	General Co-operative Development	+1, +1
	<p>Renewable Energy Initiative State (16) – Nova Scotia Within the past few years, the government of Nova Scotia has put in place a number of initiatives to encourage renewable energy, with a primary focus on electricity generation. In 2007, the Environmental Goals and Sustainable Prosperity Act was proclaimed. In Nova Scotia (PEI) there is a programme called the Community Economic Development Investment Fund (CEDIF). This is a pool of capital raised through the sale of shares that is invested in new and existing local businesses.</p>	To increase the production of renewable energy by offering a combination of funding and tax incentives to businesses in the co-operative sector.	General Co-operative Development	+1, +1
System Building	<p>Agricultural Policy Framework, 2003-2007. Federal and State and Public (17) (18) The Government of Canada and its provincial states cooperated with agents in the agriculture and agri-food industry to develop a framework with five elements: (1) food safety and food quality, (2) environment, (3) science and innovation, (4) renewal, and (5) business management.</p>	To develop a new framework that meets the demands of the 21st century; to become the world leader in food safety and sustainable production.	Policy Development	+3, +3
	<p>Growing Forward, 2008-2012. Federal (19) Governments are investing \$1.3 billion over five years into Growing Forward programmes. The funding represents \$330 million more than the Agricultural Policy Framework (APF) and is cost-shared on a 60:40</p>	To continue the development of a cooperative policy framework to reflect changes of the global industry. To provide financial and technical assistance to co-operatives in general.	Policy Development	+3, +3

	between the Government of Canada and provincial and territorial governments.			
	<p>Canadian Agricultural Adaptation Programme, 2009 - 2014. Federal (20)</p> <p>The Canadian Agricultural Adaptation Programme (CAAP) is a five-year (2009-2014) programme. CAAP funding is \$163 million over five years and is available for eligible projects identified and carried out by the agriculture, food and agri-based products sector.</p>	To provide the agricultural sector generally with an opportunity to respond to new and emerging issues to remain competitive.	Rural Development	+3, +2
	<p>Rural Development Network Federal and State and Public (21)</p> <p>The Rural Development Network (RDN) is an initiative to bring a number of federal and provincial departments, as well as other institutions, to stimulate a discussion about life in rural Canada.</p>	To improve the collaboration and coordination on rural issues, with the immediate goal to improve the federal policy framework for the rural communities.	Rural Development	+2, +2
Other	<p>Measuring the Impact of Co-operatives, 2009. University and Public (22)</p> <p>A research programme with an investment of approximately \$1 million over five years through the Social Sciences and Humanities Research Council of Canada's (SSHRC's) Community-University Research Alliances (CURA).</p>	To examine the social, economic and environmental benefits that co-operatives bring to communities.		+1, +1
	<p>Policy Forum on Co-operative, 2010. Federal and State and Public (23)</p> <p>This forum was organised by Agriculture and Agri-Food Canada's (AAFC) Rural and Co-operatives Secretariat (RCS) as the first in a series of dialogues to provide an opportunity for producers and suggestions towards shaping the Government of Canada's policy contributions.</p>	To encourage a discussion about the development of a new policy framework with emphasis on innovation in the co-operative sector.		+1, +2
	<p>Price Pooling Programme. Federal (24)</p> <p>Programme participants use the price guarantee as security in obtaining credit from lending institutions. This credit allows the marketing agency to improve cash flow of producers through an initial payment for products delivered. It also provides equal terms to producers for products of like grades, varieties and types.</p>	To provide a price guarantee that protects marketing producers against anticipated declines in the market price of agricultural products.		+1, 0

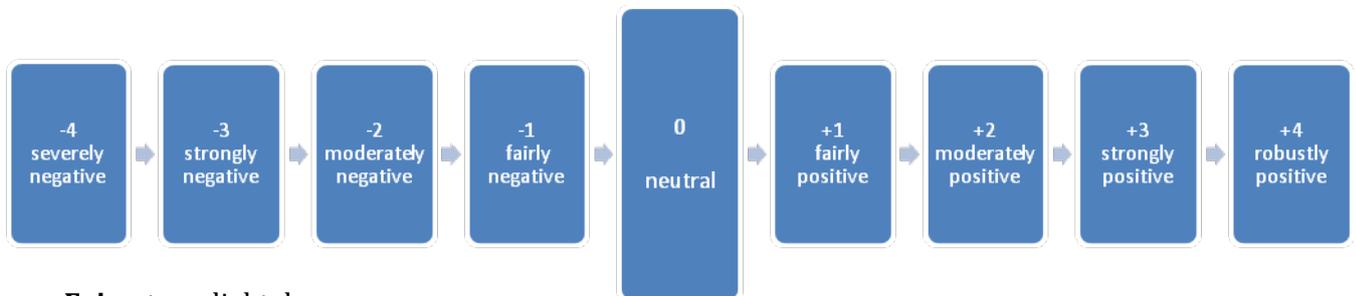
APPENDIX 6.1

Assessment of Public Policies and Measures Towards Agricultural Cooperatives in NEW ZEALAND				
POLICY/ MEASURE	OBJECTIVE OF POLICY/ MEASURE	POLICY TARGET	IMPACT OF POLICY/ MEASURE	EXPERT COMMENTS
<p>This is a list of policies we have identified. Please add policies/measures that you think are missing from this list (brief description including level of implementation: Federal, State, Regional or Local)</p>		<p>Please indicate whether the policy was targeting agricultural cooperatives, other types of producer organizations, or was of a more general nature</p>	<p>Please assess the impact of each policy/measure on the competitive position of agricultural cooperatives and farmers in the food system -4 -3 -2 -1 0 1 2 3 4 Where -4 is extra negative, 0 neutral, and 4 is extra positive</p>	<p>(e.g., please explain briefly how and why was that impact achieved; under what factors, circumstances and institutional framework could the impact be more positive?)</p>
Industrial & Provident Societies Act 1908			3	My knowledge here is not great but I imagine that this act facilitated provident and co-op organizations.
Companies Act 1993			-3	The companies act and changes to company law took no account of the "special" nature of co-ops i.e. broadly speaking Co-ops distribute earnings and don't aim for a "profit" in the traditional sense of the word. Taxation occurs in the hands of the Co-op member, not generally at the co-op level. The act simplifies issues around "double taxation".
Co-operative Companies Act 1996			4	This amendment / addition to the companies act recognized the points made above
Income Tax Act 2007	<p>Distributions to transacting members are not dividends and profits arising from transactions with members</p>		4	Very positive for co-ops although in general not well understood / appreciated by members.

	are not taxable			
Securities Act 1978	The requirements on prospectuses for the issue of shares are less onerous for Co-ops than those required for (occasional) issues by listed companies		1	It's a positive but equally could be negative in the sense that it removes some of the onus of openness and clarity. It is a valid policy in that transacting members generally hold shares in proportion to patronage and so a strong and well understood link and responsibility exists
Dairy Industry Restructuring Act 2001			4	Without this act Fonterra would / could not have been formed. There are a number of clauses that are controversial in ensuring (sic) that farmers and local consumers have some protection from monopolistic behaviour by Fonterra. It is conjecture as to whether they work or not
Commerce Act 1986			0	I'm neutral on this one

APPENDIX 9.1

FIGURE 1 – Impact of Policy on Strength of Agricultural Co-operatives



Fair – to a slight degree

Moderate – mild or being within reasonable or average limits; not extreme or excessive

Strong - intense in degree or quality, powerful, profound

Robust - having an extreme or drastic effect, highest impact

Severe- very bad in degree or extent, harsh, extreme, damaging

Positive – moving forward in a direction of increase or progress, supportive and encouraging

- A fairly positive impact increases the competitive strength of co-operatives to a slight degree. (+1)
- A moderately positive impact makes a co-operative better off to a mild degree, notable yet not excessive. (+2)
- A strongly positive impact causes a profound increase in the competitive strength of co-operatives (+3)
- A robustly positive impact causes co-operatives to be extremely better off. (+4)

Neutral – having no impact, 0

Negative – having the quality of something harmful, causing destruction, not offering support or assistance

- A fairly negative impact is harmful to the competitive strength of co-operatives to a slight degree. (-1)
- A moderately negative impact causes co-operatives to be hindered to extent that is measurable yet not extreme. (-2)
- A strongly negative impact is detrimental to the competitiveness of co-operatives to a great degree. (-3)
- A severely negative impact has a harsh, damaging, harmful effect on the competitive strength of co-operatives. (-4)

APPENDIX 9.2

Assessment of Public Policies and Measures towards Agricultural Co-operatives in the United States of America

Policy Type	Policy/Measure	Objective of Policy/Measure	Policy target	Impact of Measure
Mandate	Sherman Antitrust Act, 1890. Federal. The Sherman Antitrust Act passed without an amendment to preserve farmers' right to organise co-operatives. Co-operative proponents worried farmers may lose the right to form co-operative associations (Frederick 2002).	To control or prohibit anticompetitive conduct (Frederick 2002)	General Antitrust Legislation	-1
	Federal Trade Commission Act, 1914. Federal. The Federal Trade Commission Act established the Federal Trade Commission (FTC). The FTC and the Department of Justice have authority to propose investigation of co-operatives violating antitrust policies (Jesse, et al. 1982). A series of workshops to explore competition in the agricultural sector were held in 2010 (Varney 2010).	To establish an administrative body to develop and enforce antitrust policy (Frederick 2002)	General Antitrust Legislation	-1
	Clayton Act, 1914. Federal. The Clayton Act prohibits anticompetitive practices. Agricultural and horticultural associations are extended limited protection to form nonprofit co-operatives without capital stock under Section 6. However, farmer co-operatives are not exempt from review if engaging in anticompetitive practices (Frederick 2002).	To further specify prohibited anticompetitive conduct	General Antitrust Legislation	+2
	Capper-Volstead Act, 1922. Federal. The Capper-Volstead Act extends to those engaged in agricultural production the right to act together in associations, with or without capital stock, in processing, handling, and marketing their products subject to certain conditions which limit the scope of immunity and deter undue price enhancement: e.g. 1) no member is allowed more than one vote or dividends are capped at 8% per year, 2) the value of member product handled must exceed that of non-member product (Capper-Volstead Act 1922). The Secretary of Agriculture is authorized to ensure co-operatives do not engage in undue price enhancement (Jesse, et al. 1982).	To clarify and extend to agricultural co-operatives with capital stock the limited exemptions granted in Section 6 of the Clayton Act (Hufstedler 1969-1970; Lemon 1969-1970)	Agricultural Co-operative Legislation	+4
	Co-operative Marketing Act of 1926. Federal. The Co-operative Marketing Act of 1926 1) established a permanent unit within the Department of Agriculture to provide non-intrusive technical assistance to farmer co-operatives and 2) authorized farmer co-operatives to exchange information among producers, within federated co-operative systems, and within common marketing agencies (Frederick 2002).	To support the development of agricultural co-operatives (Frederick 2002)	Agricultural Co-operative Legislation	+1
	Agricultural Marketing Act of 1929. Federal. "The Agricultural Marketing Act created the Federal Farm Board and commodity committees to assist co-operatives in the enforcement of production and marketing rules and to promote coordinated marketing among co-operatives." In addition, \$500 million was budgeted for loans to co-operatives to temporarily withhold production from the market and develop distribution networks (Hoffman and Libecap 1991).	To stabilize prices and promote the sale of agricultural products by assisting in the formation and operation of agricultural co-operatives (Hoffman and Libecap 1991).	Agricultural Marketing Legislation	+1

	Securities Act of 1933. Federal. Due to the Securities Act of 1933, as well as a patchwork of State laws left in place when the Act was passed, the exchange of co-operative stock may be subject to registration unless qualifying as exempt. Certain States may extend limited exemption to qualified producer groups (Hanson 2004a; Missouri Secretary of State ; Taylor and Reinken 2000).	To regulate the offer and sale of securities.	General Securities Legislation	-1
	Securities Exchange Act of 1934. Federal. The Securities Exchange Act established the Securities Exchange Commission. Due to a possibly “narrow” legal definition of co-operative, certain co-operative entities may be subject to extensive reporting requirements (Hanson 2004a).	To insure the maintenance of fair and honest securities markets (Securities Exchange Act of 1934).	General Securities Legislation	-1
	Fisherman’s Collective Marketing Act, 1934. Federal. The Fisherman’s Collective Marketing Act (FCMA) extends limited antitrust immunity to commercial fisherman and aquaculturists (Fisherman’s Collective Marketing Act 1934). The FCMA was modelled after Capper-Volstead (Kitts and Edwards 2003). Therefore, decisions and rulings regarding the FCMA may be applicable to the interpretation of Capper-Volstead (Frederick 2002).	To extend to commercial fisherman and aquaculturists the limited exemptions granted to agricultural producers under the Capper-Volstead Act	Agricultural Marketing Legislation	+3
	Robinson-Patman Act, 1936. Federal. The Robinson-Patman Act makes price discrimination illegal. While, co-operative patronage refunds are specifically noted as non-discriminatory, other mechanisms co-operatives may use to discriminate among members (e.g. delivery policies) may not be viewed by Courts as non-discriminatory (Frederick 2002).	To prevent price discrimination	General Antitrust Legislation	0
	Agricultural Fair Practices Act of 1967. Federal. The Agricultural Fair Practices Act makes it illegal for handlers to intimidate or coerce producers in an attempt to influence a producer’s decision to belong to a co-operative association (Agricultural Fair Practices Act of 1967 ; Varney 2010).	To protect co-operative members from retaliation by handlers	Agricultural Trade Legislation	+1
	Webb-Pomerene Act. Federal. The Webb-Pomerene Act provides limited antitrust immunity to export organisations engaged in collective sale of goods so long as organisational conduct does not adversely affect domestic competition (Borst 2000). Co-operatives may jointly organise an export association, or cooperate with investor-owned firms. For example, Northwest Fruit Exporters, the California Dried Fruit Export Association and the American Cotton Exporters Association were organised as a Webb-Pomerene associations (Borst and Reynolds 1993; Federal Trade Commission 2005; Novy 2003).	“To promote export trade” (Webb-Pomerene Act 1918)	General Antitrust Legislation	+1
	Export Trading Company Act of 1982. Federal. The Export Trading Company Act allows exporters to request a Certificate of Review granting limited antitrust immunity on the condition exporter conduct will not adversely affect competition in the United States (Antitrust Modernization Commission 2007; Borst 1990; International Trade Administration 2011). The Act notes “although the United States is the world’s leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies” (Export Trading Company Act of 1982) Examples of	“To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally” (Export Trading Company Act of 1982)	General Antitrust Legislation	+1

	agricultural co-operative organisations that have operated as export trading companies include Northwest Fruit Exporters and World Wide Sires (Borst and Reynolds 1993).			
	Wyoming Processing Co-operative Law, 2001. State. Wyoming Processing Co-operative Law allows non-patron investor-members to own co-operative equity and receive up to 85% of co-operative dividends. Patron-directors retain a minimum of 50% of the board voting power (Holland and Bruch 2004; Wyoming Processing Co-operative Law 2001).	To allow for greater flexibility in co-operative capitalization (Dean and Geu 2008)	Agricultural Co-operative Legislation	+1
	Minnesota Co-operative Associations Act, 2003. State. Minnesota Chapter 308B allows non-patron investor-members to own up to 99.9% of co-operative equity and receive up to 85% of co-operative dividends. Patron-directors retain a minimum of 50% of the board voting power on general matters. Investor-members may hold up to 95% of member voting rights (Hensley and Swanson 2004; Minnesota Co-operative Associations Act 2003).	To allow for greater flexibility in co-operative equity structure (Hensley and Swanson 2004)	General Co-operative Legislation	+1
	Iowa Co-operatives Associations Act, 2005. State. The Iowa Co-operatives Association Act, Chapter 501, allows patron and non-patron equity investment in co-operatives. Patron members must retain a minimum of 15% of voting rights. Patrons may elect to reduce allocation of profits and distributions to patrons to 15% (Iowa Co-operative Associations Act 2005; Pitman 2008).	To allow co-operatives to access non-patron equity capital (Dean and Geu 2008)	General Co-operative Legislation	+1
	Tennessee Processing Co-operative Law, Title 43 Chapters 38-70, 2004. State. Tennessee Processing Co-operative Law allows for non-patron equity investment in co-operatives. A minimum of 51% of the voting power on general matters must be allocated to directors elected by patron members. Investor members may receive up to 85% of allocations and distributions (Holland and Bruch 2004; Pitman 2008; Tennessee Processing Co-operative Law 2004).	To facilitate outside equity investments in co-operatives (Holland and Bruch 2004)	Agricultural Co-operative Legislation	+1
	Wisconsin Co-operative Associations Act, 2006. State. The Wisconsin Co-operative Associations Act authorizes two classes of membership: patron and non-patron. Patron members may authorize patron profit allocations as low as 30%. Patrons maintain a minimum of 51% voting power (Paul 2007; Wisconsin Co-operative Associations Act 2006).	To facilitate the creation of co-operatives requiring large up-front capital commitments (Paul 2007).	General Co-operative Legislation	+1
	Uniform Limited Co-operative Association Act. State. The Uniform Limited Co-operative Association Act (ULCAA) has currently been adopted in the District of Columbia, Nebraska, Oklahoma, and Utah (introduced in the House and Senate in Vermont; Introduced in the Senate in Colorado) (Nebraska Limited Co-operative Associations Act 2007; Oklahoma Uniform Limited Co-operative Association Act 2009; Utah Uniform Limited Co-operative Association Act 2008). The ULCAA allows patrons and non-patrons to hold equity in co-operatives. Patrons must elect at least 50% of the directors. Articles or bylaws must allocate a minimum of 15% of co-operative profits or losses to patrons (Dean and Geu 2008).	To supplement existing State co-operative laws by allowing for the addition of a more flexible entity (Uniform Law Commission 2010)	General Co-operative Legislation	+1
	Nonstock Co-operative Laws. State. Nonstock co-operative legislation varies by State. Producers can	To grant producers the right to organise	State Incorporation Laws	+1

	<p>choose from a variety of statutes when deciding upon their legal structure. If electing to organise as a nonstock co-operative, members are not represented by shares of stock. Instead, members often pay a membership fee. Members invest redeemable funds into the co-operative in proportion to patronage. Thus, all invested capital is seen as loan funds. Governance is typically on the basis of one-member-one vote. Goods and services are generally priced at cost plus operating costs. The majority of nonstock co-operative laws in the United States were originally enacted from 1911 to 1920. Nonstock co-operatives are often associated with the co-operative philosophy of Edwin Nourse (Nourse 1922; Suhler and Cook 1993).</p>	<p>participatory co-operatives oorganisationally distinct from the alienating structures of profit-sharing corporations (Suhler and Cook 1993)</p>		
	<p>Stock Co-operative Laws. State. Stock Co-operative Legislation varies by State. Stock co-operatives are allowed to issue common or preferred stock. Stock co-operative laws were enacted as early as 1865. However, there was resurgence in the enactment of stock co-operative laws after the passage of the Capper-Volstead Act which extended limit antitrust immunity to stock and nonstock co-operatives. Aaron Sapiro drafted a model State co-operative law, the Bingham Co-operative Marketing Act, which allowed for both stock and nonstock co-operatives. By 1925, a majority of States adopted similar legislation (Hanson 2004b; Suhler and Cook 1993).</p>	<p>To grant producers the right to organise stock co-operatives</p>	<p>State Incorporation Laws</p>	<p>+1</p>
	<p>Limited Liability Company Laws. State. Increasingly, producer-owned and controlled organisations are choosing to register as Limited Liability Companies (LLCs) under State laws. The LLC form is also used by co-operatives seeking to form joint ventures or in “multiple model,” vertically integrated organisations that utilize both co-operative and LLC legal structures. State laws regarding LLCs generally allow for single taxation, as earnings and losses are passed through to shareholder members. Certain LLCs adhering to the restrictions put forth in the Capper-Volstead Act may also qualify for limited antitrust immunity (Frederick 1998).</p>	<p>To provide shareholder members with the advantages of corporate-type limited liability and pass-through partnership tax treatment</p>	<p>State Incorporation Laws</p>	<p>+1</p>
	<p>Low Profit Limited Liability Company. State. The Low Profit Limited Liability Company (L3C) is a statute designed for entities primarily pursuing charitable activities while distributing profits (Tyler 2010). L3Cs are designed to qualify for pass-through taxation by complying with Internal Revenue Service requirements regarding Programme Related Investments. First adopted in Vermont, L3C laws also have been adopted in Maine, Michigan, Wyoming, Utah, North Carolina, Illinois, Louisiana, the Crow Indian Nation and the Oglala Sioux Indian Nation (Americans for Community Development 2010). L3C laws are generally enacted as amendments to LLC statutes. The L3C could represent an alternative legal form for charitable co-operative entities. By incorporating in a State where L3C laws have been adopted, producer groups from across the nation can choose to utilize this organisational form.</p>	<p>To foster for-profit entities with primarily charitable purposes wishing to attract Programme Related Investments (Britt, Johnson and MacCormac 2011)</p>	<p>State Incorporation Laws</p>	<p>0</p>

	Benefit Corporation. State. Maryland, Vermont and New Jersey have adopted laws regarding Benefit Corporations. Benefit Corporations are designed to reduce exposure to liability when the corporation pursues social or environmental aims “at the expense of maximizing financial returns for shareholders” (Britt, Johnson and MacCormac 2011). The California Senate is reviewing related legislation for Flexible Purpose Corporations which allow corporations to pursue social objectives and require public transparency in special purpose impact reporting. The Flexible Purpose Corporation Law is designed for companies “seeking to access traditional capital markets” (Britt, Johnson and MacCormac 2011). These alternative legal forms may be attractive to co-operative organisations pursuing multiple objectives but seeking to remain primarily for-profit entities.	To facilitate the organisation of companies with greater flexibility for combining profitability with broader social or environmental purposes (Britt, Johnson and MacCormac 2011)	State Incorporation Laws	+1
Inducement	The War Revenue Bill, 1898. Federal. The War Revenue Bill of 1898 exempts “farmers’ purely local co-operative company... or association or local co-operative plan, organised and conducted solely by the members thereof for the exclusive benefit of its member and not for profit” from certain taxes (War Revenue Bill 1898). This appears to be the first tax exemption extended to agricultural co-operatives (Frederick 2005a; Zeuli and Cropp 2004).	“To provide ways and means to meet war expenditures, and for other purposes” (War Revenue Bill 1898)	Tax Legislation	+1
	Corporate Tax Statute, Act of August 5, 1909. Federal. Section 38 of the August 5, 1909 tax statutes exempt agricultural and horticultural organisations from income tax (Zeuli and Cropp 2004).	“To provide revenue, equalize duties and encourage the industries of the United States, and for other purposes” (Corporate Tax Statute 1909)	Tax Legislation	+1
	Tariff of 1913. Federal. The Tariff of 1913 grants income tax exemption to agricultural and horticultural associations (Zeuli and Cropp 2004).	“To reduce tariff duties and to provide revenue for the Government, and for other purposes” (Tariff of 1913)	Tax Legislation	+1
	Revenue Act of 1916, Revenue Act of 1918. Federal. The Revenue Acts of 1916 and 1918 exempt agricultural marketing co-operatives from federal income taxation. Specifically, the Acts exempt “farmers’, fruit growers’ or like association, organised and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them” (Revenue Act of 1916 ; Revenue Act of 1918 ; Zeuli and Cropp 2004).	“To increase the revenue, and for other purposes” (Revenue Act of 1916)	Tax Legislation	+1
	Revenue Act of 1921. Federal. The Revenue Act of 1921 extended federal income tax exemption to farm supply co-operatives: “farmers’, fruit growers’, or like associations ... organised and operated as purchasing agents for the purpose of purchasing supplies and equipment for the use of members and turning over such supplies and equipment to such members at actual cost, plus necessary expenses” (Revenue Act of 1921 ; Zeuli and Cropp 2004)	“To reduce and equalize taxation, to provide revenue, and for other purposes” (Revenue Act of 1921)	Tax Legislation	+1

	<p>Federal Farm Loan Act of 1916. Federal. The Federal Farm Loan Act established the first banks in the Farm Credit System to provide long-term credit to farmers: 12 Federal Land Banks and hundreds of Farm Loan Associations. Farmer's loans buy stock in the association, making individual farmers owners. This concept of land banks was adapted from Germany's Landschaft system (Farm Credit Administration 2011).</p>	To provide long-term credit to farmers	Agricultural Credit Legislation	+2
	<p>Agricultural Credits Act of 1923. Federal. The Agricultural Credits Act created 12 Federal Intermediate Credit Banks (FICBs) to provide short and intermediate-term credit to lending institutions serving agricultural producers (Farm Credit Administration 2011). FICBs sell debenture bonds to fund loans (Zeuli and Cropp 2004).</p>	To provide short and intermediate-term credit	Agricultural Credit Legislation	+2
	<p>Farm Credit Act of 1933. Federal. The Farm Credit Act established the Farm Credit System as a group of co-operative lending institutions providing short-, intermediate-, and long-term agricultural loans. The system included 12 Federal Land Banks for long-term agricultural real estate loans, 12 Federal Intermediate Credit Banks for short- and intermediate-term credit to local Production Credit Associations and lending institutions serving agricultural producers, 12 Banks for Co-operatives to provide credit to farmers' co-operatives, and a Central Bank for Co-operatives to participate with Banks for Co-operatives in loans exceeding their lending capacities (Farm Credit Administration 2011). The Farm Credit System repaid all Government capital in 1968, making farmer-borrowers owners of the entire system (Farm Credit Archive 2011).</p>	To provide short, intermediate-term and long-term credit to farmers, farmer co-operatives, and lending institutions serving agricultural producers	Agricultural Credit Legislation	+3
	<p>Agricultural Marketing Agreement Act of 1937. Federal. The Agricultural Marketing Act (AMA) establishes federal marketing orders for agricultural products. The AMA begins to provide guidance specifying circumstances under which co-operatives may act on behalf of their members (Agricultural Marketing Agreement Act 1937; Zeuli and Cropp 2004).</p>	To help establish orderly marketing conditions for the benefit of producers and consumers	Agricultural Marketing Legislation	+2
	<p>Revenue Act of 1962. Federal. Although several previous revenue laws provided limited exemptions from taxation, the Revenue Act of 1962 is the basis for the single-taxation of co-operatives currently in place. The 1962 Revenue Act added Subchapter T to the Internal Revenue Code. Subchapter T is a compilation of previous legislation allowing limited exemption from taxation to farmer co-operatives. Under Subchapter T, qualified patronage dividends of corporations operating on a co-operative basis are not treated as taxable income at the corporate level; qualified patronage dividends are passed through to patron recipients and taxed at their individual income tax rate (Frederick 2001; Subchapter T - Co-operatives and Their Patrons).</p>	To stimulate the economy and provide a greater measure of fairness in the tax system (Kennedy 1962)	Tax Legislation	+3
	<p>Foreign Investors Tax Act of 1966. Federal. The Foreign Investors Tax Act of 1966 amended subchapter T to clarify income tax treatment of per-unit retains. Under the Foreign Investors Tax Act, single taxation granted to patronage refunds under the Revenue Act of 1962 was extended to per-unit</p>	To stimulate investment in the United States by non-resident aliens and foreign corporations (Donaldson 1967)	Tax Legislation	+2

	retains (Frederick 2005b).			
	Farm Credit Act of 1971. Federal. The Farm Credit Act of 1971, as amended, currently authorizes the Farm Credit Administration. In addition, the 1971 Act defined eligibility requirements for co-operatives seeking financing from Banks for Co-operatives (Frederick 2005a).	“To further provide for the farmer-owned co-operative system of making credit available to farmers and ranchers and their co-operatives, for rural residences, and to associations and other entities upon which farming operations are dependent, to provide for an adequate and flexible flow of money into rural areas, and to modernize and consolidate existing farm credit law to meet current and future rural credit needs, and for other purposes” (Farm Credit Act of 1971)	Agricultural Credit Legislation	+1
	Internal Revenue Code, Section 521. Federal. Section 521 describes those co-operative entities which qualify for limited exemptions from taxation. For example, such entities 1) “must be farmer co-operatives operated for the purpose of marketing farm products and returning margins back to patrons, or for purchasing supplies and equipment for farmers at cost plus expenses,” 2) “may have capital stock, but substantially all voting stock must be in the hands of farmers who use the co-operative,” 3) must limit dividends to 8% or the legal rate of interest in the State of incorporation, whichever is greater 4) “may maintain certain reserves,” 5) “must conduct a majority of their business with members and make no more than 15% of their supply sales to persons who are neither members no producers” (Frederick 2005a; Section 521)	To describe those farmer co-operative organisations which maintain limited exemption from taxation	Tax Legislation	+3
	Value-Added Agricultural Product Market Development Grants (Value-Added Producer Grant Programme). Federal. The Value-Added Producer Grant Programme awards grants for planning activities and working capital for marketing value-added agricultural products or farm-based renewable energy projects. Independent producers, farmer and rancher co-operatives, agricultural producer groups, and majority-controlled producer-based business ventures are eligible (U.S. Department of Agriculture 2011e).	To encourage independent producers of agricultural commodities to further refine these products increasing their value to end users; and to establish an information resource centre to collect, disseminate, coordinate, and provide information on value-added processing to independent producers and processors	Rural Development	+2

	Business And Industry Guaranteed Loans. Federal. Business and Industry Guaranteed Loans guarantee a percentage of quality business and industry loans. Co-operatives are among those that may apply (U.S. Department of Agriculture 2011b).	To improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities	Rural Development	+1
	Small Socially-Disadvantaged Producer Grant (SSDPG). Federal. The Small, Socially-Disadvantaged Producer Grant Programme awards competitive grants to fund technical assistance to small, socially-disadvantaged agricultural producers in rural areas (U.S. Department of Agriculture 2011i).	To provide technical assistance to small, socially-disadvantaged agricultural producers through eligible co-operatives and associations of co-operatives	Agricultural Co-operative Development	+1
	Rural Business Opportunity Grants (RBOG). Federal. Rural Business Opportunity Grants provide training and technical assistance for business development, entrepreneurs, and economic development officials to assist with economic development planning (U.S. Department of Agriculture 2011h).	To promote sustainable economic development in rural communities with exceptional needs	Rural Development	+1
	1890 Land-Grant Institution Initiative. Federal. Under the Land-Grant Initiative, the Department of Agriculture, Business and Co-operative Programmes partners with 1890 Institutions to provide businesses with technical assistance including the development of business plans and loan packages (U.S. Department of Agriculture 2011e).	To create jobs in communities traditionally dependent on agriculture	Rural Development	+2
	State Financing or Tax Credit Incentives. State. States choose to support the development of agricultural co-operatives through a variety of mechanisms including low interest loans, grants, technical assistance and tax credits (Hanson 2004b; Missouri Department of Agriculture 2011; Oklahoma Statutes 1996).	To support agricultural co-operative development	State Policies and Programmes	+2
Capacity Building	Morrill Acts of 1862 and 1890. Federal. The Morrill Act of 1862 established Land-Grant Universities to teach agriculture, science and engineering, as opposed to the traditional classical education. The 1890 Morrill Act authorized direct appropriations to Land-Grant Universities. However, those States that chose to segregate their Universities were required to establish separate-but-equal institutions to receive Federal support (Morrill Act of 1862 ; Morrill Act of 1890). Land-Grant Universities continue to deliver technical assistance and disseminate information to the agricultural sector, including co-operatives. Several Land-Grant Universities offer co-operative education and development programmes.	“Without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life” (Morrill Act of 1862)	Agricultural and Industrial Development	+2
	Smith-Lever Act of 1914. Federal. The Smith-Lever Act established the Co-operative Extension Service (Smith-Lever Act of 1914). Co-operative Extension Services are non-formal educational programmes designed to disseminate the research-based knowledge gained at Land-Grant Universities. While	To disseminate research-based knowledge gained at Land-Grant Universities	Agricultural and Industrial Development	+1

	the co-operative organisational form is not the focus of extension services, many extension programmes work to promote co-operative organisations.			
	USDA, Rural Development, Business and Co-operative Programmes. Federal. The Department of Agriculture, Business and Co-operative Programmes provides co-operative development assistance, technical assistance, research, education, information, and statistics for co-operatives (U.S. Department of Agriculture 2011c).	To promote understanding and use of the co-operative form of business as a viable organisational option for marketing and distributing agricultural products	General Co-operative Capacity-Building	+2
	Research on Rural Co-operative Opportunities and Problems. Federal. Under the Research on Rural Co-operative Opportunities and Problems programme, the Department of Agriculture collaborates with institutions of higher education and nonprofit organisations interested in conducting research related to agricultural and non-agricultural co-operatives serving rural communities (U.S. Department of Agriculture 2011g).	To encourage research on critical issues vital to the development and sustainability of co-operatives as a means of improving the quality of life in America's rural communities	General Co-operative Capacity-Building	+1
	Rural Co-operative Magazine. Federal. Rural Co-operative Magazine, focusing on co-operatives and issues facing co-operatives, is published by the USDA Co-operative Programme.	To promote understanding and use of the co-operative form of business as a viable organisational option for marketing and distributing agricultural products	General Co-operative Capacity-Building	+1
	Co-operative Development Specialists. Federal. The Department of Agriculture maintains a network of co-operative development specialists assigned to States (U.S. Department of Agriculture 2011j).	To promote understanding and use of the co-operative form of business	General Co-operative Capacity-Building	+1
System Changing	Agriculture Innovation Center Programme. Federal. The Agriculture Innovation Center (AIC) Programme was authorized by the Farm Security and Rural Investment Act of 2002 (i.e. 2002 Farm Bill). Ten grants were awarded to centres to provide technical and business development assistance to agricultural producers (U.S. Department of Agriculture 2011a).	To support agricultural producers seeking to enter into ventures that add value to commodities or products they produce	Agricultural Product Marketing	+1
	Rural Co-operative Development Grant Programme (RCDG). Federal. Rural Co-operative Development Grants are awarded for establishing and operating Centres for Co-operative Development. Centres for Co-operative Development work to improve the economic condition of rural areas through the development of new co-operatives and improving operations of existing co-operatives (U.S. Department of Agriculture 2011e).	To encourage and stimulate the development of effective co-operative organisations in rural America	General Co-operative Development	+1
	Intermediary Relending Programme (IRP). Federal. The Intermediary Relending programme provides loans to local organisations (intermediaries) for the establishment of revolving loan funds. Co-operatives with at least 51% rural membership aimed at increasing income for producer members or purchasing power for consumer members are among the entities that may apply for intermediary lender status (U.S. Department of Agriculture 2011d).	To alleviate poverty and increase economic activity and employment in rural communities		+1
	USDA Partnerships. Federal. The Department of Agriculture, Co-operative Programmes, maintains partnerships with a variety of entities to promote co-	To disseminate information regarding value-added	Agricultural Product Marketing	+1

	operative and agribusiness development. One example is AgMRC, a virtual resource centre providing information on value-added agricultural enterprise development (U.S. Department of Agriculture 2011f).	agricultural enterprise development		
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APPENDIX 9.3

Capper-Volstead Act Language

Section 1. Extent of the exemption

Section 1 of the Capper-Volstead Act defines the "persons" and "associations" entitled to claim the limited antitrust exemption granted, and describes the elements and scope of the exemption.

Capper-Volstead protection is available only to associations that:

limit membership to true agricultural producers

--Membership must be limited to "persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers ..."

either limit members to not more than one vote because of the amount of stock owned, or limit dividends on membership capital to 8 percent per year

do a majority of their marketing for association members

operate for the mutual benefit of their members as producers (Frederick).

Agricultural producers may:

1. "act together in associations, corporate or otherwise, with or without capital stock"
2. "in collectively processing, preparing for market, handling, and marketing such products of persons so engaged. "

Such associations may:

"have marketing agencies in common,"
"make the necessary contracts and agreements to effect such purposes."

Provided:

1. "such associations are operated for the mutual benefit of the members..... as..... producers,"
2. "no member ... is allowed more than one vote because of the amount of stock or membership capital he may own, or the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum"
3. "the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members."

Section 2. Public Interest Protected

Section 2 of the Capper-Volstead Act confers on the Secretary of Agriculture the authority to prevent agricultural producers from abusing their collective marketing power. It provides, in part:

"If the Secretary of Agriculture... (following a hearing believes a co-operative) monopolises or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue ... an order ... directing such association to cease and desist from monopolization or restraint of trade."

"The Department of Justice shall enforce any such order."