



May 11, 2015

File: 44200-50/File:#14-05

DELIVERED BY E-MAIL

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Dear Sirs/Mesdames:

RE: Oranya Farms II Holdings Inc. and Thomas Reid Farms (the Appellants) v British Columbia Chicken Marketing Board (the Chicken Board); Appellants' Stay Application regarding a decision of the Chicken Board made April 8, 2014.

1. On the April 17, 2015 pre-hearing conference call, the appellants raised an issue with respect to the timing of the hearing which is scheduled for September 28-30, 2015 and the July 2016 deadline of the conversion from specialty to mainstream. As a result, I directed the parties file written submissions, which I have now reviewed.
2. In addition to the appellants confirming the issues, grounds and remedies sought in the appeal, the appellants also seek a preliminary order from BCFIRB extending the Chicken Board's deadline for existing organic chicken producers to make an election whether to convert their specialty quota to mainstream quota a further 6 months from the current July 2016 deadline.

**British Columbia
Farm Industry Review Board**

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BACKGROUND:

3. On April 8, 2014, the Chicken Board held a meeting during which it made its decision to amend its General Order with respect to specialty chicken production. This decision was issued by way of a Notice to B.C. chicken industry stakeholders on April 11, 2014.
4. On May 9, 2014, BCFIRB received a Notice of Appeal from the appellants of the Chicken Board's Decision. The matter was set down for hearing.
5. In July 2014, the appellants applied for a stay of the Chicken Board's decision and an adjournment of the hearing of the appeal which was scheduled for August 28 and 29, 2014. That application for an adjournment was granted in a decision dated August 5, 2014 and the hearing was rescheduled for October 6, 7 and 8, 2014.
6. The application for stay was dismissed in a decision dated August 21, 2014. The then presiding member Carrie Manarin found that there was a serious issue to be tried but that the appellants had not demonstrated irreparable harm and the balance of convenience favoured the Chicken Board. She held in part (at paragraph 68):

In my view, the Chicken Board's ability to regulate its industry in accordance with its best judgment regarding orderly marketing principles should not be lightly interfered with. As I said above whether or not the Chicken Board has struck the right balance as a matter of sound marketing policy is something that must be determined on the full hearing of this appeal. Accordingly, and in the absence of evidence to the contrary, I find the balance of convenience favours the Chicken Board and I would dismiss the application for a stay on this basis as well.

7. On September 22, 2014 and at the request of the appellants the hearing was adjourned generally to allow the Chicken Board time to update and reinstate a cost of production (CoP) formula for organic chicken, the cancellation of which was an original issue on appeal.
8. The reinstatement of CoP pricing was delayed, due to data acquisition problems and the December 2014 avian influence outbreak, but was officially reinstated in Period A-129, commencing February 22, 2015. On March 12, 2015 BCFIRB advised the parties that the appeal would be reinstated.
9. At the April 17, 2015 pre-hearing conference call, the hearing was scheduled for September 28-30, 2015

Appellants' Position:

10. The appellants argue that the September 2015 hearing and then later decision date create a tight timeline to plan for the July 16 conversion deadline as well as the reality of losing portions of existing organic production to processors who have in the interim set up their own organic production facilities.

11. The appellants say that the longer growing cycles of Silkie and Taiwanese chicken breeds require the planning of placements and coordination with specialty processors months in advance. As such, they must know by the end of November 2015 whether they will be growing organic production beyond July 2016.
12. Further, if the appellants implement their plans regarding the conversion of their specialty quota prior to BCFIRB's decision, it may leave certain aspects of the decision moot as it would be difficult to undo a quota conversion.
13. Accordingly, the appellants say that if the appeal is not going to be heard until September 28-30, 2015, "a six month delay of the July 1, 2016 conversion deadline would be appropriate".

Chicken Board's Position:

14. The Chicken Board relies on its position previously set out in its written submissions dated July 10, 11 and 28, 2014 which were submitted with respect to the previous stay application referenced above. The Chicken Board says it is not in the public interest to further delay the implementation of this decision.
15. The Chicken Board says this application is effectively a reprisal of their failed stay application without attempting to meet the aspects of a stay test. The appellants are not entitled to the relief they seek. The application is premature as by the appellants own admission they require a decision by November 2015. The appellants could make this same application at the hearing of the appeal and the BCFIRB could render its decision having the full evidentiary record and the submissions of the parties.

Decision

16. This is not a stay application. The appellants are not asking for the status quo to be preserved pending appeal. Rather they seek, without the benefit of any evidence or hearing, a remedy (an extension of the time to make an election on whether to convert to organic production). The justification offered for this unusual application is an accumulation of events (decision of the Chicken Board to reinstate minimum live price for organic chicken, BCFIRB's adjournment of the hearing generally, delay in arriving at a new Cost of Production for organic chicken, the Avian Influenza outbreak and scheduling challenges between the parties, interveners and BCFIRB) which have all significantly delayed the hearing of this appeal.
17. The appellants say that these significant delays require a pre-emptive remedy in the nature of an extension to the deadline for existing organic chicken producers to make an election whether to convert their specialty quota to mainstream quota.

18. I do not agree. The hearing has been scheduled for September 28-30, 2015. As part of that hearing, the appellants will be free to seek whatever relief they feel is appropriate. If an extension of the sort sought here is required to deal with what the appellants argue is a very compressed time frame, the panel will have the benefit of evidence and considered arguments and will be in a far better position to craft a remedy suitable to the circumstances.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Corey Van't Haaff". The signature is written in a cursive, flowing style.

Corey Van't Haaff, Presiding Member