



File: 44200-50/CrMB 01-29  
44200-50/CrMB 01-31

April 19, 2002

**DELIVERED BY FAX**

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Mr. Jeff Hamilton, Chair  
British Columbia Cranberry  
Marketing Board  
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Mr. Don Middleton  
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Dear Sirs:

**RE: APPEALS FROM DECISIONS CONCERNING MARKETING ALLOCATIONS**

On March 1, 2002, the British Columbia Marketing Board (the "BCMB") issued its decision with respect to the appeals filed by the Appellants, Robert Hopcott and Don Middleton. The BCMB directed the British Columbia Cranberry Marketing Board (the "Cranberry Board") to increase the allocations of the Appellants in accordance with a formula set out at paragraph 42 of the decision. Paragraph 45 set out as follows:

45. The Panel is prepared to leave the mechanics of implementing this direction to the Cranberry Board in consultation with the Appellants and Ocean Spray. If difficulties arise in carrying out this direction, the parties have liberty to apply to the Panel for further directions.

On March 29, 2002, the Appellants wrote to the BCMB setting out that while it had been a month since they received their increased allocations, the Cranberry Board, having expressed dissatisfaction with the BCMB's decision, had not yet adjusted their allocations to reflect the BCMB's decision.

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On April 9, 2002, the Cranberry Board delivered submissions to the BCMB in response to paragraph 45 set out above. In their letter dated April 10, 2002, the Appellants take issue with these submissions and argue that “[p]aragraph 45 is a directive to implement the decision already given and not an opportunity to reopen the case. This 7-page document is just a rehash of the information given at the hearing”. The Panel agrees with the Appellants. A careful review of the Cranberry Board’s submission finds it to be only a restatement of its position on appeal. It is a thinly disguised attempt to reargue those issues before the BCMB in the appeals.

It is apparent from the submissions of the Cranberry Board that it is unhappy with the BCMB’s decision. However, the Cranberry Board could have exercised its own discretion to deal with the Appellants’ issues with the 2001 allocations. The Cranberry Board has the power under the *Natural Products Marketing (BC) Act* and the *British Columbia Cranberry Marketing Scheme, 1968* to regulate its industry. Just as it has the authority to set yearly allocations, it has the discretion to revise these allocations where it determines it is appropriate to do so. Sometimes the exercise of its authority requires a commodity board to make decisions that may be unpopular with its producers.

In this situation, the Cranberry Board when faced with the situation that its crop estimates had significantly underestimated the Appellants’ production, chose not to exercise any discretion and instead allowed the matter to proceed to an appeal before the BCMB. In effect, the Cranberry Board asked the BCMB to make the decision on how to fairly adjust the Appellants’ allocations.

Upon proceeding to appeal, the Cranberry Board had a further opportunity to give the BCMB the benefit of its experience and expertise and propose a method of allocation that it could support. However, it chose not to make such a proposal. While the Cranberry Board did not strongly oppose the relief sought by the Appellants, it did not offer assistance to the BCMB as to how it felt the allocation should properly be made. Perhaps the Cranberry Board did not want to be seen by its producers as succumbing to the pressure of the Appellants, especially in circumstances where they had not taken advantage of “unofficial” transfers between producers to minimise the effects of the set off, as others had apparently done. The Cranberry Board’s approach is problematic. It denies the BCMB the benefit of the Cranberry Board’s expertise and runs the risk of exactly what has transpired here, a decision which the Cranberry Board thinks is too generous and unfair to other producers.

However, dissatisfaction with the BCMB’s decision does not justify the BCMB reopening its decision to hear arguments that the Cranberry Board could have addressed at the time of the appeal. The decision allows the parties, where issues arise as to the mechanics of implementing the decision, to seek further direction from the BCMB. There is nothing in the Cranberry Board’s submission that seeks assistance with the implementation of the decision. Rather it seeks a different decision from the BCMB. In such a case, the only avenue open to the Cranberry Board was an appeal of the BCMB’s decision to the Supreme Court of British Columbia on a question of law commenced within 30 days of receipt of the BCMB’s decision.

Mr. Robert Hopcott  
Mr. Don Middleton  
Mr. Jeff Hamilton  
April 19, 2002  
Page 3

Accordingly, the Cranberry Board is directed to adjust the Appellants' allocations in accordance with the BCMB's decision dated March 1, 2002, forthwith. If there is any further delay, the Appellants have liberty to apply for their costs on the appeal.

BRITISH COLUMBIA MARKETING BOARD

Per

*(Original signed by):*

Christine J. Elsaesser, Vice Chair