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PRIMARY POULTRY PROCESSORS ASSOCIATION V. BC CHICKEN MARKETING BOARD: AN APPEAL FROM A DECISION OF THE BC CHICKEN MARKETING BOARD CONCERNING CHICKEN PRICING FOR THE PERIODS A-86 AND A-87.

SUPPLEMENTARY DECISION:

On October 10, 2008, the British Columbia Farm Industry Review Board (BCFIRB) issued its decision of the above captioned appeal. As the remedy was different than that contemplated by the parties at the outset, BCFIRB gave all parties the opportunity to comment on the remedy by October 16, 2008. The remedy proposed was as follows:

The course of action we propose is that the Appellant and the Growers' Association return to the table and attempt to reach consensus regarding price for the periods under appeal. If they cannot agree, they will proceed to final offer arbitration. The panel will then consider the recommendation of the arbitrator, including any written submissions regarding the exceptional circumstances that any party (including the Chicken Board) believes requires departing from the arbitrator's recommendation.

We appreciate that the final offer arbitration process may not be sustainable in the long run. However, it appears to offer several advantages here. It offers a process that squarely addresses the procedural concerns of the Appellant. It is a process familiar to the parties, and seems preferable to the unprecedented step of arguing price "at large" in a BCFIRB appeal hearing without the discipline, realism and critical analysis offered by final offer arbitration. By having BCFIRB rather than the Chicken Board make the final decision following issuance of the arbitrator's opinion, finality will be achieved. The appeal will be disposed of at this level rather than through a remittal which carries the possibility of a further appeal to BCFIRB from the Chicken Board.

In its response, the Appellant, the Primary Poultry Producers of British Columbia (PPPABC) does not take issue with the remedy. The Respondent, the British Columbia Chicken Marketing Board (Chicken Board) argues that sending the parties back to the Pricing Committee to negotiate the live price for periods A-86 and A-87 will most certainly end up in final offer arbitration for both periods. This was just what the Chicken Board had tried to avoid by setting the price for these periods while the Ference Weicker process was underway. The Chicken Board urges the panel to hold the second day of the

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hearing to allow the grower and processor members of the Pricing Committee to make their cases directly to the panel without the intermediate step of an independent arbitrator - a process the Chicken Board believes would achieve finality in a manner preferable to arbitration. The intervener, the British Columbia Chicken Growers' Association (Growers' Association) proposes that the pricing for the Periods A-86 and A-87 be returned to the Pricing Committee in an attempt to reach a consensus on price. If no consensus is reached, it argues that the Chicken Board should then meet with representatives from both the Growers' Association and the PPPABC to hear their respective positions and then set the live price. The Growers' Association argues that a return to final arbitration given the passage of time and the delivery this week of the Ference Weicker report would not be in the best interests of the industry.

The panel has considered whether either alternative process might offer a solution that is more practical, more timely and more logically connected to the Appellant's fundamental grievance on this appeal and our findings. However, we are not persuaded that the process of the Chicken Board or the process of the Growers' Association are a better alternative to the remedy we have proposed for Periods A-86 and A-87. This remedy offers the Chicken Board and the industry another opportunity to reach consensus on pricing - the most preferable solution by far. In the absence of an industry consensus established or ratified by the Pricing Committee, the Chicken Board's General Orders clearly set out the procedure to be followed and affords procedural fairness to both the processors and growers. In our opinion, in this case, final offer arbitration with BCFIRB affirming or rejecting the arbitrator's decision offers the most timely and final resolution to this matter.

ORDER

1. The panel directs that if consensus cannot be reached by the industry in a timely fashion, the Chicken Board follow its General Orders and send the pricing of chicken for Periods A-86 and A-87 to arbitration.
2. Following the issuance of the arbitrator's opinion and after considering any written submissions regarding the exceptional circumstances that any party (including the Chicken Board) believes require departing from the arbitrator's recommendation, BCFIRB will make the final decision on the pricing of chicken for Periods A-86 and A-87.

Dated at Victoria, British Columbia this 22nd day of October 2008.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

(Original signed by)

Sandi Ulmi, Vice Chair

Garth Green, Member

Dave Merz, Member