



December 2, 2002

File: 44200-35/VMC GGFI

DELIVERED BY FAX

Chair and Members
BC Vegetable Marketing Commission
201 – 7560 Vantage Way
Delta BC V4G 1H1

DESIGNATION OF AGENCY

On November 21, 2002, you notified the British Columbia Marketing Board (BCMB) that the British Columbia Vegetable Marketing Commission (Vegetable Commission) has decided to recommend that the BCMB approve the appointment of Greenhouse Grown Foods Inc. (GGFI) as an agency of the Vegetable Commission. The BCMB struck a panel of three members to consider the application under s. 12(4) of the *Natural Products Marketing (BC) Act*.

On November 27, 2002, the BCMB Panel wrote to interested persons advising that it would entertain written submissions regarding the Vegetable Commission's recommendation. The BCMB also requested that the Vegetable Commission provide a copy of the transcript of the agency hearing and the documentation considered by the Commission in arriving at its decision.

The BCMB Panel has now reviewed the above materials. It has also reviewed the November 22, 2002 letter from counsel for GGFI and the November 29, 2002 letter from Vegetable Commission counsel.

The BCMB Panel has assessed the Vegetable Commission's recommendation both in its process and in its substance. The BCMB Panel is satisfied that, as a matter of process, the Vegetable Commission has complied with its own guidelines for designation of agencies, and with the BCMB's *Procedural Policy for the Appointment of Designation of Agencies*. The BCMB Panel is satisfied that the Vegetable Commission undertook a fair and balanced hearing. The BCMB Panel is also satisfied that the Vegetable Commission's decision and the conditions attached to that decision are sound and appropriate as a matter of marketing policy.

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Marketing Board**

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The Panel carefully considered counsel's November 22, 2002 letter on behalf of GGFI in arriving at its conclusion above. The points raised in that letter are addressed below.

Paragraph 48(b)

The first point raised in Mr. Roberts' letter relates to the proposed condition in paragraph 48(b) of the Vegetable Commission's recommendation document:

GGFI must enter into service agreements with its marketing agents in a form satisfactory to the Commission. These agreements must include a commitment by such agents to abide by the conditions attached to GGFI's agency designation, including the restrictions on marketing outlined above. It will be incumbent on GGFI to ensure that these conditions are met as a condition of their agency licence.

Counsel for GGFI submits that this proposed condition is unnecessary and unwarranted, as "GGFI's agreements with its marketing agents may well contain private and confidential information". He says there is no necessity that these agreements be in a form satisfactory to the Vegetable Commission, and says that there are other means by which the Vegetable Commission can obtain satisfactory assurances that GGFI's marketing agents will abide by the conditions attached to GGFI's agency designation.

In our view, the Vegetable Commission has properly and responsibly concluded that, as a matter of sound marketing policy, the privilege of agency designation carries with it a corresponding responsibility to the regulator to ensure that its conditions are complied with. A central condition of GGFI's agency privilege is the requirement to market, until the end of 2003, outside the seven-state geographic area identified at paragraph 48(a) of the Commission's letter. As Mr. Roberts stated before the Vegetable Commission: "It's inherent on this application that Windset will abide by the recommendation in their supervisory review by the superboard" and would "absolutely" continue to comply irrespective of the outcome of the Supreme Court proceeding in the Global matter.

The transcript also makes clear that, for its 2003 planning, GGFI has retained its eastern marketing agent "to market our products in the eastern US, eastern Canada and in the midwest." Mr. John Newell gave evidence that GGFI's eastern agent understands British Columbia's regulated system and the Commission's role; that the eastern agent will be looking after "the east"; and that if there is to be any marketing in the west, it will be by GGFI.

No regulatory system can operate responsibly or effectively unless the plans, promises and undertakings of those being regulated are subject to proper collateral checks and enforcement. It is entirely reasonable and proper for the Vegetable Commission to ensure that the agreement between GGFI and its agents reflects this essential condition and is not otherwise contrary to sound marketing policy. In this context, GGFI's concern about confidentiality seems to us to be misplaced. While the Commission will undoubtedly protect confidential information it receives, the Vegetable Commission has the regulatory responsibility to be diligent and ensure that GGFI does not, by agreement or otherwise, conduct itself in a fashion contrary to sound marketing policy.

Counsel for GGFI has stated that “other means” are available to satisfy the Commission’s regulatory requirements, but has not stated what these are. Even so, the Commission’s November 29, 2002 letter states that the Commission is open to consider any such alternatives provided they meet the essential condition that GGFI remains accountable to ensure that it and its’ agents respect the Commission’s marketing conditions.

In our view, the Commission has dealt with this issue properly and responsibly. The condition is confirmed. If GGFI proposes a concrete alternative that addresses the Commission’s legitimate concerns, it is free to raise it. In the event that this issue is not resolved to GGFI’s satisfaction at the Vegetable Commission level, the matter will be referred to the supervisory panel for resolution.

Paragraph 51

Paragraph 51 of the Commission’s letter reads as follows:

The Commission will prepare and circulate for comment a draft order regarding the future transfer of producers between agencies within 30 days. The Commission will not, in the future, designate new agencies unless all outstanding contractual issues between the producers involved in such application and their agencies have been resolved in accordance with the final version of that order, in accordance with the terms of an existing contract, or otherwise between the parties.

In evidence before the Commission, John Newell gave evidence that “if we are directed product by the Commission, we’ll handle it and we’ll make that producer a profit.” GGFI’s subsequent comment regarding this subject is that to avoid simply exporting problems from one agency to another, there should be no future transfer to GGFI without a hearing on the subject, and then only if there is a demonstrated market demand for the product of the producer.

We do not think it would be wise for us at this stage to dictate the terms of any future product transfers as part of this specific agency approval. On November 29, 2002 the Vegetable Commission circulated a draft order for consideration by industry. GGFI’s most recent concerns are best addressed as part of the consultation process associated with the distribution of the draft order.

Paragraphs 42-47

The Panel is of the view that the matters set out by the Vegetable Commission at paragraphs 42 to 47 were relevant to its consideration of this matter. The Panel is also of the view that as both the Vegetable Commission and GGFI have expressed the desire to put this matter behind them, no purpose would be served by the BCMB further commenting on these matters at this time.

Supervisory Approval

For the reasons we have given, it is the decision of the BCMB that, subject to the terms and conditions outlined in the Vegetable Commission's November 21, 2002 recommendation letter, the designation of Greenhouse Grown Foods Inc is approved subject to the following additional conditions:

1. In the event that GGFI proposes an alternative to paragraph 48(b) regarding its agreements concerning the activities of its marketing agents, and the matter is not resolved at the Vegetable Commission level, the matter will be referred to the BCMB supervisory panel for final resolution.
2. The conferring of an agency designation is a privilege under the *Natural Products Marketing (BC) Act*. It is non-transferable and is not approved in perpetuity. The designation of agency may be reviewed by the Vegetable Commission from time to time and upon any material changes in the conditions giving rise to the initial approval. In the event of a proposed sale of the business of the agency, by way of sale of assets or shares, the party seeking to continue the business must receive the Vegetable Commission's prior approval. Without prior approval, the agency designation will terminate.

Finally, the Vegetable Commission is directed to notify producers of the following disclaimer:

BCMB approval is not a warranty to producers concerning any aspect of the agency's business, including the ability of the agency to pay for products delivered to them. Producers should independently and consistently assure themselves of the financial viability of the entity to which they sell product.

Yours truly,

(Original signed by):

Ross Husdon, PAg
Chair

cc: Steven Newell
Greenhouse Grown Foods Inc Ltd
Stephen Fane
BC Hot House Foods Inc
Robert Toews
Global Greenhouse Products Inc
Marcus Janzen
Greenhouse Growers' Association