



BRITISH COLUMBIA

April 23, 2004

File: 44200-50/MMB 03-26

DELIVERED BY FAX

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Dear Sirs/Mesdames:

AN APPEAL BY ISLAND FARMS DAIRIES CO-OP ASSOCIATION FROM A NOVEMBER 26, 2003 DECISION OF THE BRITISH COLUMBIA MILK MARKETING BOARD CONCERNING AN INCREASE IN THE VENDOR MARKETING COSTS AND LOSSES LEVY

On February 12, 2004, a Panel of the British Columbia Farm Industry Review Board (the “Provincial board”) issued its reasons in the above captioned appeal and directed that the implementation of the \$1.96/HL increase to the Marketing Costs and Losses Levy (“MCL Levy”) be suspended for a period of 60 days, to allow the British Columbia Milk Marketing Board (the “Milk Board”) to undertake consultations and then take whatever action it considered necessary in the public interest.

British Columbia
Farm Industry Review Board

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With the consent of the parties, the suspension order was extended by two weeks and is now set to expire on April 26, 2004.

On April 20, 2004, the Panel received a letter from the Milk Board requesting that the suspension of the \$1.96/HL increase to the MCL Levy be lifted and a date for hearing set in accordance with our February 13, 2004 clarification letter:

If, as the end of the 60 day period is approaching, it appears that the matter will remain as the present status quo, the parties are to advise the Provincial board so that a decision can be taken whether to continue the suspension pending the hearing and final disposition of this appeal.

The Milk Board maintains that as the 60-day suspension (and the two-week extension) provided a reasonable period of time to hold discussions with dairy industry stakeholders and as all vendors except the Appellant are remitting levies, the suspension should be lifted and all vendors should comply with the \$1.96/HL levy increase. The Milk Board also observes that there have been no developments in the Western Canadian or British Columbian dairy industry which materially change the circumstances giving rise to the appeal. This presumably is reference to the fact that no other provinces have implemented a similar levy increase to offset the costs associated with bovine spongiform encephalopathy (“BSE”). The British Columbia Milk Producers Association supports the request to lift the suspension.

Island Farms, in its April 22, 2004 letter, opposes the lifting of the suspension and requests a resumption of the appeal. It points to the existence now of not only the provincial and federal matching fund discussed in the February appeal but also a further federal program offering financial compensation to producers to offset the effects of BSE on cull cow prices. In addition, the Appellant observes that cull cow prices have moved up considerably.

Decision

The Panel has reviewed the submissions of the parties and determined that in light of present circumstances, the suspension of the \$1.96/HL increase to the MCL Levy should continue until such time as this matter is dispensed with on appeal, which appeal should be set for hearing as soon as reasonably possible.

Given that part of the Milk Board’s justification for the \$1.96 increase was its belief that other provinces will act “in the very near future”, and given that no other provinces have implemented a similar levy, questions exist as to the appropriateness of the levy increase which can only be answered following a full hearing on the merits.

The parties should come to the hearing prepared to address the issues we raised in our February 12, 2004 decision (paras. 37-40), including the broad policy issue of the appropriateness in these circumstances of one province imposing a levy in circumstances where other provinces choose not to act collectively, in response to a national problem such as BSE.

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You can expect the Provincial board's office to be in touch with you shortly for the purpose of convening a pre-hearing conference.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per

(Original signed by):

Christine J. Elsaesser, Vice Chair