



File: 44200-50/TMB 00-09

April 18, 2001

DELIVERED BY FAX

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Attention: Ms. Maria Morellato
Ms. Lisa Hynes

Dear Sirs/Mesdames:

**AN APPEAL BY SKYACRES TURKEY RANCHES LTD. FROM A DECISION OF THE
BRITISH COLUMBIA TURKEY MARKETING BOARD REGARDING A TRANSFER OF
QUOTA**

Introduction

This is a supplemental decision regarding the production of documents in the above appeal.

On March 26, 2001, the British Columbia Marketing Board (the "BCMB") released its decision regarding the production of documents in this appeal. However, the Panel was unable to come to a decision regarding the production of certain documents, as the submissions were insufficient to allow the Panel to make a determination. As a result, the Panel heard further oral submissions by telephone conference call on Wednesday, April 4, 2001.

Ms. Lisa Hynes and Mr. Colyn Welsh, Secretary-Manager, attended on behalf of the British Columbia Turkey Marketing Board (the "Turkey Board") and Mr. Christopher Harvey, QC, attended on behalf of the Appellant.

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Decision

Following our decision dated March 26, 2001, outstanding issues remained with respect to the production of Items 1, 9 and 11-13. Our decision is structured in accordance with the headings utilised by the Appellant to seek production of documents.

1. The Grower's List as of December 15, 1999

In our earlier decision, we ordered as follows: “as the Turkey Board seems to have circulated a Grower List in effect at December 15, 1999, the Panel is not prepared to order production of a further list. The Turkey Board is not required to prepare a new list with particulars of quota holdings, leases, current allocations and over/under production”.

The issue of whether the Turkey Board should produce all documents in its possession relating to quota holdings, leases, current allocations and over/under production was dealt with in the telephone conference. Mr. Harvey argues that while there may not be a Grower List which contains all the information he seeks, he is entitled to information contained in other documents relating to quota holdings, quota leases, current allocations and over/under production. These documents are necessary and relevant in order to provide the contextual basis against which the Turkey Board enacted the March 15, 2000 Order and Decision.

Ms. Hynes argues that it is not possible to provide a snapshot of the industry at a given date. The Grower List is maintained on computer and is constantly updated. A Grower List for April 30, 2000 year-end, which lists growers and quota holdings, is available and can be produced. Ms. Hynes argues that current allocations and over/under production are not relevant to this appeal. If however, the Panel feels this information is relevant, the Turkey Board seeks an order that the documents be produced on a confidential basis to Counsel. Information on leases of quota is not readily available and cannot be provided.

Based on Ms. Hynes' representations, Mr. Harvey seeks production of the April 30, 2000 year-end Grower List. In addition, he seeks production of all quota transfers which occurred between December 15, 1999 and April 30, 2000.

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The Panel agrees with Mr. Harvey that there is some need to lay the factual background in which these Turkey Board decisions were made. Accordingly, the Panel directs the Turkey Board to produce the April 30, 2000 Grower List. In addition, the Turkey Board is to produce documents, such as excerpts from the Minutes of the Turkey Board, setting out any quota transfers which occurred between December 15, 1999 and April 30, 2000.

As for documents relating to quota leases, over/under production and current allocations, this information may have some relevance to the appeal. Mr. Harvey appears to be arguing that it is inconsistent at best, discriminatory at worst, for the Turkey Board to allow growers who lease out most or all of their quota to vote and yet deny the right to vote to a small grower. Similar arguments may apply to growers who under produce their allocations. If Mr. Harvey is correct and “special rules” have been enacted to target the Appellant, this would be relevant to the issue under appeal.

With respect to documents relating to the leasing of quota, the Turkey Board states that this information is not available. The Panel finds this response somewhat surprising. Given that the Turkey Board must approve any leases of quota, one would expect some policy statement as to how this authority is to be exercised. In addition, one would expect that the Turkey Board having approved leases of quota, if not in possession of the actual lease, would have some record of the lease or at least some indication of the amount of quota leased and for what duration. It is difficult to imagine how the Turkey Board can regulate its growers if it does not know who is producing the regulated product.

Accordingly, the Panel finds that documents relating to quota leases, over/under production and current allocations as at December 15, 1999 are potentially relevant to this appeal. Given that the Turkey Board has raised the issue of confidentiality, these documents are to be produced to Counsel only.

Because turkey is a regulated commodity, the Turkey Board has an obligation to maintain records regarding turkey production in this province. The fact that certain Turkey Board records relevant to this appeal pertain to growers other than the Appellant is not in and of itself justification not to disclose that document.

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Once Mr. Harvey has had an opportunity to review the documents disclosed by the Turkey Board, he is to advise Counsel for the Turkey Board of the use he intends to make of the documents, or the information contained within them, at the hearing. If Counsel cannot agree as to what use can be made of the disclosed documents, an application should be made to the BCMB for directions either prior to or at the outset of the hearing. The Panel may determine that certain documents will be disclosed in the hearing publicly or alternatively, if the information is of a private or confidential nature, received *in camera*.

9. *How were export credits distributed among growers prior to the Turkey Board's arrangement to lease export credits to Jaedel for production of off-line toms as well as off-line hens?*

Mr. Harvey argues that this appeal raises the issue of discriminatory treatment of the Appellant by the Turkey Board. The Appellant maintains that the Turkey Board has allocated export credits preferentially between growers. Thus, the Decision and Order appealed from cannot be viewed in isolation but rather forms part of a discriminatory course of conduct by the Turkey Board against the Appellant.

Ms. Hynes argues that the issue of export credits is not at issue in this appeal and is not relevant. The question of how export credits are distributed was answered in earlier submissions by the Turkey Board; it is allocated pro rata based on actual slaughter figures. If the Panel feels this information is relevant to the appeal, Ms. Hynes again seeks to have it produced on a confidential basis between Counsel.

The Panel has not been persuaded that the issue of allocation of export credits amongst growers is relevant to this appeal. In the Panel's opinion, it is unfair to allow the Appellant, based on a vague assertion of discrimination to expand the grounds of its appeal well beyond the March 15, 2000 Order and Decision.

11. *Information on how much quota was leased out from Rullo on the Island and to whom was it leased in the 1999-2000 and 2000-2001 quota year?*

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Mr. Harvey argues that the Rullo lease is relevant to this appeal as it may demonstrate an instance of the Turkey Board allowing leases of quota under the new minimum farm size of 65,000 kg. As with *Request 9*, the Turkey Board argues that this information is not relevant to the appeal. The Turkey Board also maintains that what transpired with Rullo was as a result of extenuating circumstances. Subject to objections as to relevance, Ms. Hynes argues that it is open to the Appellant to cross-examine a representative of Turkey Board on this issue.

In response, Mr. Harvey seeks an order that any documents relating to this issue be produced confidentially to Counsel in order to avoid being placed in the position of having to cross-examine the Turkey Board witnesses “blind”.

The Panel’s comments with respect to *Request 1* apply here. If “Rullo” has been allowed to lease out most or all of his quota for a certain period while still maintaining the right to vote, we cannot say that it is irrelevant to the matters in issue on this appeal. Whether or how such documents might be explained would of course be a matter for the merits of the appeal.

Accordingly, the Panel finds that documents relating to “Rullo” are potentially relevant to this appeal. So as not to prejudice the Turkey Board’s ability to make submissions concerning confidentiality, the Turkey Board is at this stage directed to produce these documents to Counsel. If Counsel cannot agree as to how these documents or the information in these documents can be used at the hearing, application should be made to the Panel for directions, preferably in advance of the hearing.

12. Who has made leasing an issue?

13. What are the concerns over leasing?

Mr. Harvey argues that some of the conditions imposed on the Appellant in this appeal demonstrate a change in Turkey Board policy regarding leasing. To the extent that individual complaints and correspondence brought about these policy changes, these documents are relevant to this appeal.

Ms. Hynes argues that with respect to *12*, it is open to the Appellant to cross-examine representatives of the Turkey Board regarding who made leasing an issue. With respect to *13*, there are no documents relating to Turkey Board policy on leasing.

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The Panel is not prepared to order that the Turkey Board produce any documents on these issues as they can be dealt with adequately on cross-examination of Turkey Board witnesses.

BRITISH COLUMBIA MARKETING BOARD
Per

(Original signed by):

Christine J. Elsaesser, Vice Chair

cc: Mr. Colyn Welsh, Secretary-Manager
British Columbia Turkey Marketing Board