

84-
1/12/85

BRITISH COLUMBIA MARKETING BOARD

IN THE MATTER OF AN APPEAL PURSUANT TO THE
NATURAL PRODUCTS MARKETING (BC) ACT,
R.S.B.C. 1979, C. 296, S. 11

BETWEEN:

RIO MESA HOLDINGS LTD. and
CATCHAL HOLDINGS LTD.
(carrying on business as COVERT FARMS)

APPELLANTS

AND:

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

RESPONDENT

REASONS FOR JUDGMENT

APPEARANCES:

J. T. HATTORI on behalf of the Appellant

J. HARRIS and R.G. TOWSLEY on behalf of the
Respondent

1. Rio Mesa Holdings Ltd. and Catchal Holdings Ltd., Appellants, operate a farm near Oliver, B.C., known as "Covert Farms", which produces, among other crops, fall plant onions.
2. During the years 1981 through 1984, Covert Farms marketed the majority of its fall plant onions through the Interior Vegetable Marketing Agency (the "Agency") which operates under the B.C. Vegetable Marketing Scheme (the "Scheme") administered by the B.C. Vegetable Marketing Commission (the "Commission").
3. By letter dated April 4, 1984, Covert Farms applied to the Commission for exemption from marketing its crop of fall plant onions through the Agency on the grounds that it could market the crop more effectively than the Agency and cited dissatisfaction with the Agency's marketing efforts in the year 1983.

4. By letter dated April 23, 1984, the Commission stated that, so long as there was no objection from the Agency, Covert Farms could make direct market contact to sell its early onion crop but manifesting and invoicing would continue to be done through the Agency so that continuity in the market place would be maintained and sales developed for the Agency.

5. Covert Farms renewed its request for exemption by letter dated June 20, 1984, addressed to the Commission on the grounds that:

- (a) The growers desire exemption as demonstrated by a petition signed by producers of fall plant onions.
- (b) The volume of fall plant onions produced in B.C. is small compared to that imported and, hence, market prices are determined by the imported product.
- (c) The marketing season for fall plant onions, July 10 to August 15, is short and does not overlap with the marketing of the spring plant onion; there is no competition in the market place between the two products.

6. At its meeting on July 4, 1984, the Commission denied the request for exemption from regulation of marketing submitted by growers of fall plant onions and directed that their product be marketed in the usual manner through the Agency as had been the case in the past.

7. By Notice of Appeal dated July 26, 1984, Covert Farms has appealed to the British Columbia Marketing Board (the "Board") from the Commission's decision to deny an exemption from regulation for fall plant onions.

8. The Board heard the appeal in Richmond on September 11, 1984, and both parties were given full opportunity to call witnesses, cross-examine and make submissions.

9. R.G. Towsley (Secretary-Manager) and J. Harris (Chairman) appeared and testified for the Commission, A. Lypchuk testified for the Agency and Michael Covert, a shareholder in Rio Mesa Holdings Ltd. and Catchall Holdings Ltd., and a principal of Covert Farms, testified on behalf of Covert Farms. In addition, J. Alcock, an employee of the B.C. Ministry of Agriculture and Food, Market Research and Analysis Branch, was called by Covert Farms to give evidence to marketing of fall plant onions.

10. From this testimony, the Board finds the following facts:
- (a) Covert Farms has been established for some time and produces many different crops, in addition to fall plant onions, such as grapes, asparagus, field tomatoes, cantaloupes, watermelon, green peas, green beans, cucumbers, garlic and alfalfa.
 - (b) Fall plant onions, sometimes called Spanish Onions, are a separate and distinct crop from spring plant onions, called cooking onions.
 - (c) Fall plant onions, because of short storage life, have a short marketing period of 4 to 6 weeks in July and August.
 - (d) Spring plant onions, on the other hand, have an extended marketing period because of their long storage life and there is little overlap or competition between the two crops so as to affect prices; in fact, B.C. onion prices are generally set by prices of imports.

- (e) At the peak of the fall plant onion marketing period in July and August, the principal sources of these onions are Washington, California and producers in District 3 such as Covert Farms; there are no commercial acreages of fall plant onions in the Lower Mainland because of unsuitable climate.
- (f) Agency records from 1981 to 1984 show that Covert Farms has consistently been the major supplier of fall plant onions for marketing through the Agency, supplying between 75% and 95% of its total sales which, except for 1984 because of poor growing conditions, was in the range of 500,000 to 600,000 pounds. Even in 1984, the total crop marketed by the Agency was about 400,000 pounds and Covert Farms supplied 79% of that crop.
- (g) Over the years, as with other products, the Agency assigned a quota to producers; in the case of fall plant onions, the quota was based on a five-year rolling average starting in 1981 and the Agency did not restrict production but the market would be shared between all growers if supply exceeded demand.
- (h) Covert Farm's quota increased from 84,380 pounds (with sales of 431,150 pounds through the Agency) in 1981 to 330,950 pounds (with sales of 313,000 pounds through the Agency) in 1984, and the Agency attempted to market all of the production of fall plant onions each year.
- (i) In 1983, the Agency appointed a new sales manager and Covert Farms was dissatisfied with his marketing efforts claiming that approximately 3,000 sacks of its fall plant onions in that year had to be dumped for a significant financial loss as a direct result of the Agency's inability to market its product.

- (j) As a result of Covert Farm's request for an exemption in 1984, the Commission decided that Covert Farms, subject to the approval of the Agency, would be allowed to make direct market contact to sell the early onion crop with manifesting and invoicing to be done by the Agency.

11. This appeal raises the issue of whether orderly marketing requires the full range of regulatory control including imposition of quotas and exclusive marketing by the Agency when the supply of regulated product produced in the Province is small compared to the amount of that product that is marketed in Western Canada so that the Provincial production has little effect on setting market conditions such as price and availability and when the majority of production is produced by a very limited number of farmers.

12. Covert Farms provided the following basic reasons as to why fall plant onions should be exempted from regulation:

- (a) It should not be the intent of the Government and the Commission to regulate the marketing of a product if there is no identifiable need for regulation. In the case of fall plant onions, there is no identifiable need for regulation based on the following factors:
- (i) the market requirements far exceed provincial production
 - (ii) coordination of marketing could be accomplished without regulation; only a small number of farmers are producing fall plant onions with the appellant being the major producer (both on volume and acreage) over the past 20 years

- (iii) prices are set by the forces of the market and therefore the Commission's pricing powers are not required to effectively market the crop. The appellant has cooperated with the Agency and has assisted it in determining an appropriate price for fall plant onions.
- (b) Fall plant onions are harvested and marketed over a short period of time and do not represent any major conflict in the market for spring plant onions. Additionally, they are a more mild onion than the spring plant onion and are not completely substitutable.
- (c) The Commission has a policy of providing exemption from regulation for some vegetables produced in the interior. As a result, exempting fall plant onions would not represent a major change in Commission policy.
- (d) Lack of marketing effort by the Agency in 1983 caused serious financial loss to Covert Farms; this should not be allowed to happen again.

13. The Commission's reasons for not approving the exemption were as follows:

- (a) The scheme provides for regulation and the Commission must carry out its mandate in the best interests of all producers.
- (b) The major reason for disallowing exemption is concern over the marketing overlap with spring planted onions and that there would be no proper control of the marketing of these products (this is recorded in the Agency Minutes of June 15, 1984).

(c) Covert Farms has benefited from orderly marketing as evidenced by his growth in marketing quota.

14. The Board accepts that the Commission and the Agency are sincerely committed to the concept of orderly marketing for the benefit of producers, packers, wholesalers and consumers, but it does not believe the overlap in marketing season between fall plant onions and spring plant onions represents a serious problem for the vegetable industry as a whole.

15. The Board accepts the argument that, under the current market situation, the reasons for regulation of the industry are not clearly identifiable.

16. The Board agrees with Covert Farms and the Agency that the future for onion production in the interior is good with excellent opportunity for growth. The Board believes that fall plant onion growers will be able to satisfactorily take advantage of this opportunity without regulation.

17. Covert Farms stated its intention to work cooperatively with the Agency if fall plant onions are exempted from regulation. The Commission indicated some currently deregulated vegetables are being sold by the Agency and that this would continue. The Board encourages Covert Farms to make product available to the Agency and similarly encourages the Agency to take an active role in developing market opportunities for fall plant onions.

18. The Board supports the development of a marketing system for the Interior (District 3) vegetables that is flexible and coordinated so as to offer customers a choice of service and marketing approach while maximizing benefits to producers, packers and wholesalers of produce.


19. The Board recognizes the achievements of the Commission and the Agency over the last four years in marketing fall plant onions but it feels it must encourage them to continue to place emphasis on market development and to encourage farmers to take full advantage of market opportunities. The Board is concerned that the Commission may have overly stressed marketing quota considerations during a time when market opportunity exceeds B.C. production.

20. Covert Farms stated that in the future, market conditions and volume of supply may change significantly making it necessary to re-evaluate the need for regulation. The Board accepts this position, and encourages the Commission and the fall plant onion growers to maintain an open dialogue on the issue of regulation.

21. The Board orders that the appeal be allowed and that the decision of the Commission be varied so as to grant Covert Farms an exemption for fall plant onions from regulation under the B.C. Vegetable Marketing Scheme; this exemption is granted on the term and condition that it may cease when significant change in market conditions requires reappraisal which, in turn, results in a determination of a benefit to the industry for regulation pursuant to the Scheme and when the overwhelming majority of farmers producing the majority of fall plant onions support regulation.

22. In accordance with this Board's Rules of Appeal, the whole of Covert Farms' deposit shall be returned.

Dated the *12th* day of *January*, 1985, in
Penticton, British Columbia.


C.E. Emery, Chairman on
behalf of the Board