



February 29, 2008

File: 44200-50/CMB #07-19

DELIVERED BY E-MAIL

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Ken Falk
President
Fraser Valley Duck and Goose Ltd.
4540 Simmons Rd
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Dear Sirs/Mesdames:

AN APPEAL BY FRASER VALLEY DUCK AND GOOSE LTD. FROM A DECISION OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD CONCERNING THE ALLOCATION OF CHICKEN UNDER ASSURANCE OF SUPPLY

In July 2004, the British Columbia Chicken Marketing Board (Chicken Board) enacted an assurance of supply policy in Parts 7 and 8 of its General Orders (Assurance of Supply Order). One effect of the Assurance of Supply Order was to remove the ability of chicken processors to contract freely with chicken growers.

The Assurance of Supply Order was appealed and on February 21, 2005, the British Columbia Farm Industry Review Board (BCFIRB) released its decision in *Lilydale Co-operative Ltd and "7 Growers"* upholding the Assurance of Supply Order.

Fraser Valley Duck and Goose Ltd. (FVDG) is a small processor of both duck and chicken. FVDG has brought an appeal with respect to the Assurance of Supply Order as a result of the alleged detrimental impact this order has had on its business.

At a prehearing conference held on January 10, 2008, FVDG identified the following issues in relation to the appeal:

ISSUE 1:

Did the Chicken Board err in failing to consider the consequences of its Assurance of Supply Order on processors in the non-regulated sector, specifically FVDG?

ISSUE 2:

Did the Chicken Board err in not providing FVDG with chicken allocation permit under its Assurance of Supply Order?

British Columbia
Farm Industry Review Board

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As a preliminary matter, the Chicken Board questioned the jurisdiction of BCFIRB with respect to Issue 1 as framed and the parties agreed to a submissions process. The following written submissions were received and considered by the panel:

- January 23, 2008 – FVDG’s submission on issues on appeal;
- January 31, 2008 – Chicken Board’s submission on the proper scope of the appeal; and
- February 8, 2008 – FVDG’s response.

Decision

FVDG raises two primary issues on appeal. It is the first issue, as stated above, that is the subject of this preliminary application.

The Chicken Board’s initial argument is directed to the statutory regime under which the Chicken Board and BCFIRB derive their authority.

The panel finds that while BCFIRB has jurisdiction to consider both primary issues in its appeal capacity under section 8(1) of the *Natural Products Marketing (BC) Act (Act)*, FVDG’s first issue must be summarily dismissed.

The Chicken Board plainly has no jurisdiction to consider the impact of its regulated marketing orders on unregulated duck processors. By virtue of the *British Columbia Chicken Marketing Scheme, 1961 (Scheme)*, the Chicken Board has the power to promote, regulate and control in any and all respects the production, transportation, packing, storage and marketing of chicken. If the Chicken Board were to take into account the interests of an unregulated industry in creating its regulated marketing orders, the orders could be successfully challenged on the basis of reliance on an invalid consideration.

FVDG argues that the Chicken Board must consider the public interest including the impact of its orders on all persons. This is too broad a statement.

The Chicken Board’s decisions must be grounded within the scope and purpose of the *Act*. The purpose of the *Act*, in section 2(1) is “to provide for the promotion, control and regulation of the production, transportation, packing, storage and marketing of natural products in British Columbia, including prohibition of all or part of that production, transportation, packing, storage and marketing.” The *Act* is designed to ensure the equitable and orderly marketing of certain natural products (regulated products), a fair return to producers and a dependable supply to consumers, thus avoiding the destructive and extreme swings in production and price that can occur absent regulation.

In carrying out its regulatory functions, the Chicken Board must do so in accordance with the public policy objectives of the *Act*, *Scheme* and the *Regulations* to the *Act*. While the Chicken Board does have to consider the potential impact of its orders on other regulated commodities and commodity boards (section 4(f) of the *Regulations*), there is no similar requirement or duty to consider the impact of its orders on non-regulated industries. As stated above, to do so would be improper.

For these reasons, the first issue must be summarily dismissed in accordance with section 31 of the *Administrative Tribunals Act*.

Given this conclusion, it is unnecessary to consider the Chicken Board's second argument relying on BCFIRB's previous February 21, 2005 decision in the *Lilydale Co-operative Ltd and "7 Growers"* Assurance of Supply appeals.

The appeal will therefore proceed on the second issue - whether the Chicken Board erred in not providing FVDG with a chicken allocation permit under the Assurance of Supply Order. The panel notes that FVDG's submissions with respect to this preliminary matter raised many points that related to the second issue. In preparing for the appeal, the panel recommends that FVDG make every effort to focus its arguments on the regulated marketing reasons why (in light of its particular circumstances) it should be entitled to a larger allocation of chicken for processing.

The appeal will proceed on that basis.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
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A handwritten signature in dark ink, appearing to read 'SK Wiltshire', is written over a light blue rectangular background.

SK Wiltshire
Presiding Member