



November 21, 2012

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DELIVERED BY E-MAIL

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**APPEALS FROM AN APRIL 27, 2012 DECISION OF THE BC VEGETABLE
MARKETING COMMISSION CONCERNING AGENCY STATUS**

V.I.P. Produce Ltd. (VIP) and Vancouver Island Farm Products Inc. (VIFP) each separately appealed the subject decision concerning the respective agency status of each of them.

On November 16, 2012, I wrote to the parties in my capacity as the presiding and sole member of the panel appointed to hear the appeals to advise that I was giving consideration to referring the subject matter of these appeals to the British Columbia Farm Industry Review Board (BCFIRB) in its supervisory capacity and deferring further consideration of the appeals in accordance with s. 8(8) of the *Natural Products Marketing (BC) Act* (NPMA). I gave the parties the opportunity to provide their positions on this question and subsequently extended the time for them to respond to 2 p.m. November 21, 2012.

Section 8(8) of the NPMA states:

If, after an appeal is filed, an appeal panel considers that all or part of the subject matter under appeal is more appropriately dealt with in a supervisory process under its supervisory power, the appeal panel, after giving the appellant and the commodity board or commission an opportunity to be heard, may defer further consideration of the appeal until after the supervisory process is completed.

The BC Vegetable Marketing Commission (VMC) considers all of the subject matter of the appeals is more appropriately dealt with in a supervisory process under BCFIRB's supervisory power and requests that further consideration of the appeals be deferred until after the

**British Columbia
Farm Industry Review Board**

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supervisory process is completed. The VMC has provided the following reasons in support of its position:

- Vancouver Island greenhouse vegetable growers are at a stage in their annual business and production cycles where they need certainty on a number of considerations; including crop planning, input purchasing and assurance of marketing. Consequently, time is of the essence for reaching a FIRB decision and one is expected to be available sooner with FIRB proceeding by way of its supervisory power as opposed to proceeding by way of appeal hearing;
- for reaching a decision on the appeal matters before it, proceeding by way of its supervisory powers is expected to allow FIRB to receive and consider a broader spectrum of BC vegetable sector information that goes beyond what might otherwise form an appeal hearing record; and
- in the normal course if agency designation is recommended to FIRB by a marketing board or commission, it proceeds by way of its supervisory powers for reaching such a decision, and given the appeal matters now before it, proceeding in the same manner appears to be more economic on a number of fronts because all can be addressed simultaneously.

VIP also supports BCFIRB proceeding with a supervisory process.

VIFP takes the position that the appeals should proceed. VIFP provided no reasons in support of its position.

I have considered the position of all of the parties.

The respective appeals all relate to a single decision of the VMC concerning the designation of agencies. The appeals raise issues with respect to designation of agencies and conditions attached to such designations. As I noted in my letter of November 16, 2012:

The designation of agencies and the consequent delegation of authority by a commodity board or commission to those agencies is a significant decision that under s. 8 of the NPMA Regulations requires the prior approval of BCFIRB.

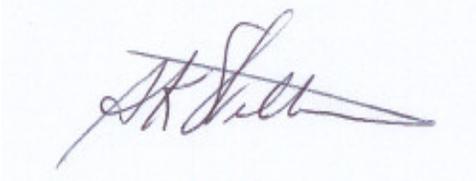
The regulatory and agency structure of the British Columbia vegetable industry has been the subject of several reviews over the past number of years. The VMC also commissioned a January 30, 2012 'Opportunities Assessment of British Columbia's Vegetable Sector' that reports on marketing, regulatory, governance and other challenges and opportunities for going forward. I am not convinced that the status of these two agencies should be decided without taking this broader context into account as part of the decision-making process.

With respect to all of the appeals of the April 27, 2012 decision of the VMC, I am of the view that the subject matter under appeal is more appropriately dealt with in a supervisory process under BCFIRB's supervisory power for the reasons stated by the VMC and as set forth in my November 16, 2012 letter.

Since the supervisory process will deal with all of the subject matter under appeal, it is likely that most, if not all, issues raised by the appeals will be determined by that process. Accordingly, it would be a duplication of effort to continue at the same time with any of the appeals.

I therefore order that further consideration of all of the appeals be deferred until after the supervisory process has been completed.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per

A handwritten signature in dark ink, appearing to read 'S. Wiltshire', is written over a light blue rectangular background.

Suzanne K. Wiltshire
Presiding Member