



April 5, 2011

File: 44200-60 SPEC REV
ASSESSMENT

DELIVERED BY EMAIL

Jim Byrne
Chair
BC Milk Marketing Board
200 – 32160 South Fraser Way
Abbotsford BC V2T 1W5

Dear Mr. Byrne:

BC FARM INDUSTRY REVIEW BOARD INITIAL RESPONSE TO DECEMBER 20, 2010 FIRST IN, FIRST OUT PROPOSAL OF THE BC MILK MARKETING BOARD SUPPORTED BY SUBMISSIONS FROM CERTAIN PRODUCER ASSOCIATIONS

Thank you for your First In, First Out (FIFO)¹ proposal dated December 20, 2010, and for the supplementary material provided by BC Milk Marketing Board staff on February 9, 2011. BCFIRB has deliberated on this matter at length in order to ensure that the information this board needs in support of its decision-making is clearly communicated in this letter.

There has been much communication between the Milk Board and BCFIRB with respect to quota issues since 2008. The purpose of today's response to the Milk Board's recent proposal is to confirm the key policy considerations underlying BCFIRB's 2005 directions on quota management, provide some background on communications to date and lay out our expectations in terms of further review and for a fulsome response by the Milk Board. It is BCFIRB's desire to have this issue addressed and resolved in a way that supports the business of the industry going forward while still respecting Government's overarching policy objectives for the regulated marketing sector.

¹ FIFO refers to a quota transfer approach where the first quota obtained is the first quota transferred. Last in, First Out (LIFO) is the current transfer rule where the last quota obtained is the first quota transferred. In conjunction with LIFO, the current 10/10/10 rules requires that 100% of the last obtained quota is retracted by the issuing board if that quota is transferred within the first year of a producer obtaining it. In the second year, 90% is retracted; in the third year, 80%; and so on, until it reaches 10% in the tenth year, where it remains indefinitely. The intent of LIFO and 10/10/10 is to encourage the active farming of new allocation by the recipient producer rather than them simply selling it.

BCFIRB is requesting a further, more comprehensive response from the Milk Board for three reasons.

1. When a marketing board requests BCFIRB as the supervisory board to consider a major policy issue – which here arises from an extensive Government review process and which impacts on the regulated marketing system more generally – it is expected that the request will be supported by detailed policy analysis.
2. The Milk Board's latest proposal makes no reference to earlier options that the Milk Board suggested could resolve reported producer quota management and on-farm production concerns while maintaining LIFO. On October 28, 2010, the BCFIRB and the Milk Board met with 10/10/10 and LIFO as an agenda item. At that meeting the Milk Board identified several on-farm quota and production management options it thought might alleviate concerns while maintaining LIFO in support of the principles established in the Specialty Review. However, in its December 20, 2010 FIFO letter, the Milk Board did not revisit any of these options. Rather, the Milk Board indicated that LIFO "is a detriment to a dairy producer's ability to manage quota and on-farm production" and recommended FIFO without any consideration or analysis of other options.
3. Finally, it is increasingly evident that the issue has much broader implications for the industry than individual producer quota and on-farm production management. These implications seem to include, but perhaps are not limited to: the availability of quota to producers (ranging from large farms to recent new entrants) wanting to expand their operations; the ability of some producers to re-structure their operations; and negative impacts on the viability of the dairy quota exchange. If this is the case and BCFIRB is to consider these and any other applicable implications, it is incumbent on the Milk Board to address those implications in a substantive way, including making any strategic policy proposals that balance industry and Government policy objectives going forward.

The following is provided to assist the Milk Board in preparing its submission(s) to BCFIRB in accordance with the above.

Government Policy Framework

BCFIRB's 2005 report: *Specialty Market and New Entrant Submissions Policy, Analysis, Principles and Directions*, flowed from direction received from Government in the Core Review. That direction was reflected in the Ministry of Agriculture's July 2004 Regulated Marketing Economic Policy in which, among other things, it was stated that:

- a) the regulated marketing sector must demonstrate that it is operating in the interests of all British Columbians;
- b) BCFIRB and Government will support boards in national and regional negotiations in order to secure agreements that provide ongoing opportunities for mainstream industry growth in production and processing but which also provide sufficient allocations for the development of markets for specialty and other products differentiated at farm level;
- c) board policies and practices are to provide producers and processors opportunity to pursue new, differentiated and value-added markets;

- d) the system is to facilitate the entry of new producers to sustain and renew the industries;
and
- e) the regulated marketing sector is to contribute to economic activity and stability in all regions of the Province.

Included in the 2005 Directions was a direction to boards to establish “principles and procedures for distributing the provincial allocation” that would support achieving Government’s objectives. This direction recognizes that allocation (quota) remains the property of the boards concerned and that each board must ensure its allocations are distributed and managed in accordance with criteria that ensured Government’s policy objectives were achieved in the overall public interest.

The 2005 Report was the culmination of a two-year consultation process conducted by the ministry and BCFIRB. It represented an intensive effort to achieve the goals set out by Government in its Economic Policy and certain directions were made to ensure those goals were realized. As you know, the intended full program follow up review of the 2005 Report – to examine outcomes and identify potential changes to the operational policy directions – has not taken place. This letter, in the absence of that more general review, is consistent with BCFIRB’s commitment to examine changes arising out of the Specialty Review, in this case LIFO and 10/10/10, to ensure there were no “unintended consequences” arising out of its directions.

Other Background

This issue came to our attention in 2008, at which time BCFIRB advised the Milk Board by way of a May 21, 2008 letter that:

While BCFIRB is not prepared to rescind the specific direction to have the 10/10/10 principle apply to new quota allocations, there are perhaps options available for improving the management of quota within this framework that would address the concerns raised. BCFIRB would be prepared to consider proposals in this regard from the Milk Board, developed through discussions with the producer associations, provided that the principles applying to all boards and commissions are upheld.

A March 23, 2010 BCFIRB letter followed a meeting of representatives of the two boards:

The September 1 and September 2, 2005 Specialty Review Directions of the BC Farm Industry Review Board (BCFIRB), which followed an extensive review, established certain principles to guide the regulated marketing sector in meeting the objectives of the July 2004 Regulated Marketing Economic Policy of the Ministry of Agriculture and Lands. Those principles remain in place today but, as you know from 2008 meetings and correspondence on the subject, BCFIRB is quite prepared to consider suggestions regarding ways that the implementation of these principles can be improved in the dairy industry.

Assessments are one of the methods that can be used to fund market responsive allocation initiatives, including through new entrant programs. However, the 10/10/10 declining transfer assessment and the LIFO rule reflect a different principle. As outlined in the 2005 Directions and as discussed on Friday and previously, it is a basic principle of the supply managed system that producers should be actively engaged and committed to being in the industry. The 10/10/10 and LIFO were established to address this principle, that is, to ensure that new allocations of quota to a producer are “actively” farmed by that producer and to prevent “windfall” gains through the flipping of this quota....

As well, on April 26, 2010, BCFIRB's Executive Director wrote to senior staff of the five supply managed boards commenting on the issue raised by the Milk Board:

I appreciate that "active" farming is subject to much interpretation. In fact, a producer could "sell" his quota not for windfall gains but in order to manage or refinance his operation (e.g., managing herds, building new facilities, reducing or eliminating debt load, etc.). On the other hand, there are some who do in fact make "windfall" gains by simply flipping their quota. Frankly, that latter scenario is becoming increasingly hard to defend when we have specialty market and new entrant interests competing for those same finite amounts of quota.

....

As part of the Specialty Review, boards were to "establish principles and procedures for distributing the provincial allocation received from the National Agencies to the different quota accounts based on differential market growth." A logical extension of that and other requirements in the Specialty Review is that boards are demonstrating that they are ensuring allocation priorities are identified and being met, that they are confirming that producers using that quota are "actively farming" and that they are ensuring that all producers – including new entrants – have legitimate opportunity to be viable and grow in the industry. As mentioned in my April 26, 2010 letter regarding new entrant program criteria, allocation decisions are coming under increased scrutiny and all boards have to be prepared to provide substantiated reasons in support of their allocation decisions.

I do not have any answers to the specific issues that the Milk Board brought forward on March 19. At the meeting we discussed a few ideas and the Milk Board is further reviewing potential options. As stated in our March 23 letter, the principles that were identified in the Specialty Review flow from the 2004 Regulated Marketing Economic Policy of the Ministry of Agriculture and Lands and were established following extensive consultation. How those principles might continue to be implemented is something we all should be prepared to discuss on an ongoing basis and any suggestions as to improvements will always be welcome.

Conclusion

To be clear, BCFIRB's position of record on "active farming" is that it is indefensible to issue "free" quota – quota being by definition a finite product – to any producer who is not going to use that quota on his or her farm to produce the regulated product. If the Milk Board is going to recommend to BCFIRB that this definition of active farming be reconsidered, the Milk Board must provide a substantive analysis in support of that recommendation. Again, that analysis must reconcile industry business and Government policy objectives in terms of allocation principles and criteria that serve the overall public interest.

In providing its response, the Milk Board is to be guided by the governance expectations laid out in BCFIRB's Strategic Plan and in the September 27, 2010 letters of expectation issued by the Minister of Agriculture to the chairs of BCFIRB and the eight commodity boards.

In keeping with its own commitment to consultation, as was done in the 2005 Review and as expected by the Minister, BCFIRB will be consulting with the other supply managed boards and industry stakeholders on this matter before issuing any final decision. The Milk Board may also wish to consult with other boards as part of its own submission process as we note that the BC Egg Marketing Board is starting to review LIFO and 10/10/10 as well. One consideration the Egg Board may look at is whether its quota management and transfer policies should be

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examined in terms of enabling producers in that industry to restructure their farm operations to meet new market requirements.

BCFIRB looks forward to the Milk Board's response. Should there be any questions, BCFIRB would be pleased to provide further guidance as required.

Yours truly,

A handwritten signature in black ink, appearing to read 'Ron Kilmury', with a long horizontal flourish extending to the right.

Ron Kilmury
Chair

cc: Dick Klein Geltink, BC Milk Producers Association
Tom Hoogendoorn, Mainland Milk Producers
Ken Kepke, Kootenay Milk Producers