

February 23, 2007

Mr. Robert Allard
Executive Director
Association of Quebec Apple Packers
115 Route 235
Ange-Gardien, Québec
J0E 1E0

Re: Dispute resolution procedures under the *Agreement on Internal Trade*

Dear Mr. Allard:

Further to your request for my review of your complaint, I hereby send my decision under the powers vested in me (Order 625-2004) as Screener for the purposes of the *Agreement on Internal Trade*.

Whereas, the existence of the dispute was demonstrated, notably as far as the ministerial exemptions under the *Fresh Fruit and Vegetable Regulations*, and considering the clear use of an objection thereto on the grounds of the availability of apples (See letter of July 20 to The Honourable Chuck Strahl, page 4, 2nd paragraph... March 4, 2006...).

Whereas ministerial exemptions are provided under section 2.2(2) of the said Regulations: “The Minister or a delegate of the Minister may exempt from any of the requirements of the Act... any fresh fruit or vegetable...” The exemption derives from section 2.11 PROHIBITION “Except as otherwise provided in these Regulations, no person shall market produce in import, export or interprovincial trade unless it meets the requirements of one of the grades established for it in these Regulations.”

Whereas the Agreement on Internal Trade: Notably;

Article 100: Objective – “It is the objective of the Parties to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. All Parties recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal.”

Whereas Article 403: No Obstacles -

“Subject to Article 404, each Party shall ensure that any measure it adopts or maintains does not operate to create an obstacle to internal trade.”

Whereas Article 404: Legitimate Objectives -

“Where it is established that a measure is inconsistent with Article 401, 402 or 403, that measure is still permissible under this Agreement where it can be demonstrated that:

- a. the purpose of the measure is to achieve a legitimate objective;

- b. the measure does not operate to impair unduly the access of persons, goods, services or investments of a Party that meet that legitimate objective;
- c. the measure is not more trade restrictive than necessary to achieve that legitimate objective; and
- d. the measure does not create a disguised restriction on trade.”

Article 404 may allow for the Parties’ interpretation of the legitimate objectives. One must in particular question the existence of article 2.11 of the *Fresh Fruit and Vegetable Regulations* by taking into account the Agreement on Internal Trade and the merits of such a provision.

Article 902(4) stipulates that the Ministers of Agriculture agree to broaden the scope of Chapter Nine (Agricultural and Food Goods).

The Ministers of Agriculture of the Parties “shall, no later than September 1, 1997, complete a review of the scope and coverage of, and any recommendations for changes to, this Chapter with the objective of achieving the broadest possible coverage and further liberalizing internal trade in agricultural and food goods” in Canada.

The initial issues to be settled are specified in Article 902(5) “Measures relating to internal trade”. The first paragraph refers the reader to two Annexes.

- A- “Reports on Measures That May Affect Internal Trade” defines how the governments will settle their disputes with respect to regulations and standards and deals with certain specific issues to be resolved in the next three years. These issues are not addressed in the chapter but in a record of decisions by the Ministers of Agriculture referred to in the schedule. They specifically deal with the subject that concerns us: Resolution of issues related to bulk shipment of fresh fruits and vegetables;

Whereas, your request to the Party of Québec (letter dated September 14, 2006, to Yvon Vallières, Minister of Agriculture, Fisheries and Foods) to initiate dispute proceedings on your behalf, having been refused (letter dated October 12 to Robert Allard, Executive Director, Québec Association of Apple Packers,); thereafter your request to the Party complained against, the Government of Canada (letter to The Hon. Chuck Strahl, Agriculture and Agri-Food Canada, on July 20, 2006) to amend the *Fresh Fruit and Vegetable Regulations* by (suggestion) adding to article 2.1, paragraph (2), point a.2): “apples intended for packaging or processing unless a grade is used.”

And whereas the reply from The Hon. Chuck Strahl, Agriculture and Agri-Food Canada (letter to Roland Lafont and Robert Allard, dated November 22, 2006) refers responsibility to the Canadian Food Inspection Agency (CFIA) to work with the parties concerned and the apple trade sector in order to find a solution.

Whereas, the agreement signed on March 4, 2006, between the members of the Canadian Horticultural Council (CHC) is not respected by one of the signatories, and whereas the CFIA does not have the authority to enforce the said agreement.

Whereas, your formal request (dated October 23, 2006) to Anna Maria Magnifico, Executive Director, Internal Trade Secretariat, to establish a panel (copy to The Hon. Chuck Strahl, AAC, and Yvon Vallières, MAPAQ).

Whereas, your formal request (dated January 26, 2007) addressed to me to review your complaint

I authorize you to commence the required procedures.

Sincerely,

[signature]

Serge Rémillard
Screener
2721 Hill Park Circle
Montreal, Québec
H3H 1S8

c.c. Ms. Anna Maria Magnifico, ACI
Hon. Chuck Strahl, AAC
Mr. Yvon Vallières, MAPAQ