

“Quickie” NY Inspections Save Canadian Farms’ U.S. Markets

by John Bunting

“The agricultural industry is basic to the life of our state. It vitally concerns and affects the welfare, health, economic well-being and productive and industrial capabilities of all our people. It is the policy and duty of the state to promote, foster, and encourage the agricultural industry, with proper standards of living for those engaged therein; to design and establish long-range programs for its stabilization and profitable operation; to increase through education, research, regulation, and scientific means, the quantity, quality, and efficiency of its production; to improve its marketing system; to encourage adequate and skilled assistance for agricultural enterprises; to maintain at fair prices uncontrolled by speculation the instrumentalities and products of agriculture;”

New York Consolidated Law, Agriculture & Markets Article I, §3

Why did New York State’s Department of Agriculture & Markets hustle a dairy inspector off to Canada in late May to approve four Canadian dairy farmers’ for “Grade A” status?

On May 22, 2007, Ag & Markets received a desperate summons for help. By edict of the Canadian Supreme Court, the next day—May 23—those four Canadian dairy farmers were scheduled to lose their markets shipping “Grade B” (manufacturing) milk to a cheese plant in western New York.

But NYS Ag & Markets sent an inspector 120 miles into Ontario Province to help out the scared Canadian farms. And by May 29, 2007, those four Canadian dairy farmers had a newly-established, New York inspected “Grade A” bulk tank unit. That milk NEVER stopped crossing the border!

Helping out neighbors is a good ethic in dairy country ... but it’s hard to fathom how NYS Ag & Markets’ rescue of these renegade Canadian dairy producers would qualify with that agency’s legal mandate “... to design and establish long-range programs for ... stabilization and profitable operation” of New York dairy farmers.

Worse yet: NYS Ag & Markets’ actions stepped right into the middle of a huge cow pie—a \$73 million legal claim against Canadian dairy authorities filed under the North American Free Trade Agreement.

NYS Ag & Markets spokesperson Jessica Chittenden begs to explain this whole mess as “complex.” Yes, this mess IS complex ... made so by New York State’s cross-border adventure.

These farms are not ordinary Canadian dairy farms. No, these farms sold their Canadian quota for many thousands of dollars per cow. Their scheme was to sell Canadian quota and then ship milk into the U.S. These dairies were not alone. In fact, many Canadian farmers for a period produced far more milk than their quota allowed and that milk was shipped into the U.S.

Legal action was taken before the World Trade Organization (WTO) by the United States and New Zealand, claiming Canada was subsidizing farm milk exports of milk through the quota system. By the end of 2003, that entire system of raw milk exports to the U.S. was brought to a screeching halt when the WTO ruled against Canada.

However, Georgia Bay Milk Producers (as these farmers who had sold their quota are organized), claimed that since they owned no quota, they could continue to move milk into the U. S. The provincial dairy marketing authority, Dairy Farmers of Ontario, went to court to prevent Georgia Bay Milk Producers from shipping milk into the U.S. The lower Canadian court granted Georgia Bay Milk Producers the right to sell raw milk in the States, until all legal appeals were exhausted.

But on February 23, 2007, the Canadian



Supreme Court ruled against Georgia Bay Milk Producers and gave them 90 days to terminate shipments of milk into the U.S. That meant that as of May 23, 2007, Georgia Bay Milk Producers milk shipments had to stop.

The Canadian Supreme Court’s May 23 deadline should have ended the matter. But no, on May 22, 2007, New York State Department of Agriculture and Markets was requested to inspect several Ontario farms for the purpose of granting them “Grade A” status. On May 29, 2007 the Interstate Milk Shippers List, added a new entry, “BTU 36094 GROUP D/B/A 36-094”, location, Embro, Ontario. Web site:

<https://info1.cfsan.fda.gov/milk/mkex/ims/imssl-fr.cfm>

The 36-094 number prefix of “36” indicates New York State.

The speedy NYS inspections, conducted within days of the request, meant the milk shipments never stopped coming from Canada.

It is common knowledge that Georgia Bay Milk Producers had held U.S. Food and Drug Administration raw milk import permits for a number of years but, these permits were for lower-priced “Grade B” milk. New York State inspection in no way made the milk any safer. The action merely conveyed some form of regulatory, bureaucratic sanctity. And, the state action let the Georgia Bay farms try to get their milk pooled on the federal milk order system!

The original request to NYS Ag & Markets came from Great Lakes Farms, LTD, one of several names Georgia Bay Milk Producers has used. Subsequently, NYS officials explain that the group “requested the name to be changed to BTU Group ‘36-094’ in June 2007.”

Limp explanation from commissioner Hooker

Ag and Markets Commissioner Patrick Hooker wrote in an explanatory e-mail: “New York State law requires us to issue import permits for dairy products that meet our standards, regardless of their origin.” Since the early 1920’s New York State law has stated, “It is the policy and duty of the state to promote, foster, and encourage the agricultural industry, with proper standards of living for those engaged therein.” The term “regulatory discretion” is well understood in New York State’s capital. New York Department of Ag and Markets inspectors did not have to go running off to Canada within a few days of being requested to do so.

Commissioner Hooker could have requested from the State Legislature an expedited change in New York State’s Law he cited. Such a request would have no doubt fallen upon receptive ears in both houses of the Legislature. The Legislature obviously wanted to help struggling state dairy farmers last spring, providing a \$30 million relief package (due to low milk prices in 2006).

(This writer served on Governor Spitzer’s agricultural transition team. There was sincere hope that the courage and leadership Eliot Spitzer had demonstrated as Attorney General was some indication that agriculture would no longer be ignored in New York State.)

Under the prior Republican Pataki administration, Ag and Markets was known as “Fort Pataki”—where bureaucrats had the authority to answer the

phone and to keep a low profile while doing nothing for agriculture and rural New York State. With the exception of the political appointment of (Republican) NY Farm Bureau official Patrick Hooker and Deputy Commissioner Jerry Cosgrove, there has been no change in Department of Agriculture and Markets personnel since Spitzer became governor. The department remains a bureaucracy devoid of intelligent leadership.

Governor Spitzer claims no agricultural expertise and no doubt took advice of questionable political advice regarding top level appointments at NYS Ag & Markets.

NYS complicates NAFTA legal mess

With New York State granting “Grade A” status it was clear to Canadian officials that the Georgia Bay Milk Producers were attempting to end run the system. Dairy Farmers of Ontario requested an injunction in court that and prohibiting the shipment of milk from Ontario into the States. That case was to be heard in July, 2007; however, it was rescheduled for November 13, 2007.

According to several sources, persons connected with the St. Louis-based Jacoby milk brokerage firm have spoken to the market administrators of the Northeast and Mid-East federal milk orders—attempting to pool the rogue Canadian milk on the Federal Orders, so that the Canadian shippers could receive FMMO blend price. So far, Jacoby’s effort was repelled ... rightfully so.

In 2002, the giant French dairy firm Sorrento Lactalis, with U.S. headquarters in Buffalo, N.Y., closed its Arpin, Wisconsin-based dairy plant, blaming high milk prices in the central Wisconsin area. At the same time, Sorrento expanded its Buffalo facility, obviously counting on cheap “Grade B” milk from Canada. The Canadian Supreme Court ruling which ordered such milk shipments to cease on May 23, 2007 merely dented by one truckload a day Sorrento’s milk supply at Buffalo.

But there is much more to this case than the one truckload of milk a day and the price received for that truckload.

\$73 million NAFTA lawsuit filed

When Georgia Bay Milk Producers were told they could not ship milk into the United States by Dairy Farmers of Ontario, the Georgia Bay Milk Producers filed a North American Free Trade Authority (NAFTA) claim for a total of \$73 million.

The claim mentions investors GL Farms LLC and Carl Adams requesting on their behalf and on behalf of “investment enterprises: Georgian Bay Milk Company, Ltd. and Great Lakes Farms Ltd.” GL Farms LLC, office in the claim is listed as 600 N Westshore Blvd, Suite 202, Tampa, Florida 33609. Sources indicate the Tampa office is bogus.

The NAFTA claim states, “Carl Adams is a national of the United States of America. He owns a majority interest in, and serves as President of, GLF-USA.” In this whole ‘name game’ GLF-USA seems to have no home. However, the Tampa address, the fact that Carl Adams is a U.S. national, with a Canadian address, 92 Commerce Park Drive, Unit 3A, Barrie, Ontario L4N 8W8, are all important elements in the credentials for a NAFTA case.

Whatever happens in Ontario Court on November 13, 2007 will determine whether milk comes from Ontario into the United States. Regard-

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less of the outcome, New York State Department of Ag and Markets has aided and abetted a bunch of free riders in the NAFTA case while ignoring the well-being of New York state dairy farmers.

And it is a case of “free riders” (i.e., dairy producers marketing outside their system) that this all comes down to. The Georgia Bay dairy farms would not exist if it weren’t for the dairy infrastructure provided by other quota holding Canadian farmers and the system which supports them. The Group 36-094 should be comfortable and affluent from selling their quota. However, that was not enough. They wanted to “game” the federal milk order system in the United States with a free ride to receive our “blend price” while depressing that price for others.

Both the Canadian government and the Canadian people support a resilient and robust dairy farm system which serves the people of Canada well. Commissioner Hooker wrote in an e-mail, “We are also reiterating to (U.S. Trade Representative) Schwab that the Canadian quota system still does not conform with WTO requirements, a complaint that the U.S. initiated to the WTO in 1998 and remains unresolved today.” Why not leave the Canadians and their healthy dairy pricing system alone. Goodness knows no sane Canadian dairy

producer would want to be dragged down to New York’s “rust belt” dairy status.

Many parts of rural New York’s one-time dairy country look like a war zone: in despair, disrepair, or simply *kaput*. Dairy barns are unpainted. Most tractors qualify as antiques ... same for most of the farmers. On this side of the border, the people of New York State by and large, support dairy farmers. It is time for “Day One” to come to New York State agriculture and dairy farm community. If anyone has the intellectual integrity and skills to bring that about, it is Governor Spitzer. Nothing is as simple as it seems and I’ve been told repeatedly how complex the issue of these Canadian farms is. Nevertheless it could have been simple and straightforward compared to the complex thinking required to prevent New York dairy sector from going to hell in a hand basket.

Why did NYS Ag & Markets’ commissioner Patrick Hooker keep the renegade Canadian milk flowing into New York State without interruption last May? Under Hooker, New York dairy farmers continue suffering “business as usual” when it comes to questionable approvals of foreign dairy farms (and plants) as Grade “A.” In early 2006, NYS Ag & Markets traveled all the way to Greece to score in a yogurt plant, its producers and milk trucks.