DAIRY BOARD AMENDMENT BILL

AS REPORTED FROM THE PRIMARY PRODUCTIVE COMMITTEE

COMMENTARY

Recommendation

The Primary Production Committee has examined the Dairy Board Amendment Bill and recommends by majority that it be passed with the amendments shown in the bill.

Conduct of the examination

The Dairy Board Amendment Bill was referred to the Primary Production Committee on 31 March 1998. The closing date for submissions was 4 May 1998. The committee received and considered eight submissions from the Dairy Board (the Board), dairy companies and other interested groups and individuals. Five submissions were heard orally. Two hours and 11 minutes were spent on the hearing of evidence and consideration took two hours and 12 minutes.

Advice was received from the Ministry of Agriculture and Forestry.

This commentary sets out the details of the committee's consideration of the bill and the major issue addressed by the committee.

Background

The bill removes from the Dairy Board Act 1961 the power for the operation of a domestic market price equalisation scheme (section 27 of the Act). The fundamental purpose of section 27 was to establish a neutral position between dairy companies which sell dairy products to the Board for export and those which market products on the local market. Under section 27, the Board fixes a notional price for each approved dairy product. The Board then compares each notional price with the corresponding export acquisition price. Depending on whether the final acquisition price is higher or lower than the notional price, the difference is then either paid by the manufacturing dairy company to the Board or *vice versa*, for domestic market product. In the absence of such a scheme, dairy manufacturers will be able to price their products on the domestic market as they can now, but without these decisions being influenced indirectly by the Board.

Price Code: J

In an export dominated industry, the original rationale for the provision was to ensure adequate domestic market supplies of dairy products in times of high export prices. Viewed in the context of current international trade liberalisation efforts, the continuing reduction in Government intervention in primary industries and the push for increased price transparency, in the view of the Government, this power has become an anomaly. In particular, it is at odds with New Zealand's position challenging Canada's dairy export pricing system. It may also result in a financial transfer from domestic consumers to the industry and affects competition in the domestic market.

The repeal of section 27 will have a slight negative impact on the Board's equity to assets ratio (0.5 percent) and will change the basis for holding shares in the Board. Currently, the Board requires qualifying companies to hold shares in the Board in proportion to their supply of both export produce and produce subject to section 27. With the repeal of section 27, the Board has decided to resume the relevant shares for $1 per kilogramme of milk solids. Approximately $30 million will be paid out to the industry. The Board's intention is to address this financial impact through cash retentions in the future.

Industry's views

The resumption of shares will have different effects on different dairy companies. However, the majority of the industry (and shareholders) accept the repeal of section 27 and the early resumption of the shares. The Board believes the repeal of section 27 should be recognised as a special event (i.e., not foreseen when the Board's constitution was drafted) requiring one-off legislative and constitutional adjustments.

Two submitters, Marlborough Cheese Co-operative Limited (Marlborough) and Westland Co-operative Dairy Company Limited, will be significantly affected as approximately 25 percent of their production is subject to section 27. Although these companies will lose their shareholding entitlement in the Board for domestic market product, they will be compensated financially for the redemption of those shares.

The Board is not opposed to the repeal of section 27. Four of the remaining seven submitters support the bill, though one of them opposes clause 6. Three submitters oppose the bill.

Resuming Board shares

The major issue concerned clause 6 of the bill. As introduced, clause 6 enables the Board to issue a notice to dairy companies requiring them to surrender all shares held in respect of section 27 at the end of the 1997/98 dairy season. Without clause 6, these shares would be resumed at the end of the 1998/99 dairy season.

Tatua Co-operative Dairy Company Limited (Tatua) considered clause 6 was unnecessary and would result in Tatua's net equity in the Board being reduced. While clause 6 brings forward the date for resuming the shares, the Board's constitution would need to be changed before it could utilise the provisions of clause 6. Tatua opposed such a change as it believed it would be disadvantaged. It considered that any chance of success in court in challenging any change would be reduced if clause 6 was passed.

We agree that clause 6 is not necessary for the repeal of section 27. However, it cannot be utilised by the industry until a change is made to the Board's constitution. We consider that clause 6 should be amended to remove any possible ambiguity. If the clause specifies that early resumption of shares is conditional on constitutional change, then it could not be implied that Parliament has prejudged any outcome. We recommend amending clause 6 accordingly.

Zero rating

Marlborough suggested that section 27 should be "zero rated" rather than repealed. A zero rating of all existing dairy produce would dispense with referencing domestic prices with export prices. Marlborough considered this would remove the link between the two prices, satisfy any trade concerns, negate the need for the Board to resume shares and avoid any irrational market behaviour that may occur.

We agree that zero rating would separate export and domestic prices. However, it would not remove trade concerns completely as the Board would still have the power to re-introduce notional prices again in the future. We were advised that from a trade perspective, New Zealand's strongest position is to be able to say that the legislative power for the Board to operate section 27 has been removed.

Zero rating would also create an anomaly in shareholding. Companies would still hold shares in the Board in respect of local market production even though section 27 was effectively non-operational.

Shares undervalued

Tatua stated that companies would have been able to purchase additional shares in the Board at a value less than $1 per share. In 1996, the industry agreed to a five year transition period for the introduction of its share structure. The cost of the shares is staggered per year in 20 cent increments. At present the $1 shares cost 40 cents.

Marlborough said that section 27 shares, to be redeemed for $1 each, were undervalued. It contended that its shares could be worth $4–5 million instead of the $940,000 it will receive. Marlborough considered the compensation inadequate given the significant contribution the company had made to the equalisation scheme on cheese sold on the local market. This contribution was over $500,000 in the last year alone.

We understand that, while the Board has resolved to pay dairy companies $1 per section 27 share, this still has to be approved by the dairy industry through the Board's constitution. The majority of the industry, on a milksolids basis, supports the redemption of shares at $1 in value. We consider that this is a matter for the industry to resolve and not one for us to decide.

KEY TO SYMBOLS USED IN REPRINTED BILL

As Reported from a Select Committee

⟨*Subject to this Act,*⟩	Words struck out by a majority
⟨Subject to this Act,⟩	Words inserted by a majority

Dr the Hon Lockwood Smith

DAIRY BOARD AMENDMENT

ANALYSIS

A BILL INTITULED

An Act to amend the Dairy Board Act 1961

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Dairy Board Amendment Act **1998**, and is part of the Dairy Board Act 1961* ("the principal Act").

(2) This Act comes into force on ⟨***1 June 1998***⟩ ⟨the date on which this Act receives the Royal assent⟩.

2. Major transactions—Section 3ACA (3) of the principal Act is amended by omitting the word "floating".

3. Section 27 (adjustment where local price for dairy produce not equivalent to export price) repealed—(1) Section 27 of the principal Act is repealed.

(2) The principal Act is consequentially amended in the manner set out in the Schedule.

*R.S. Vol. 26, p. 63
Amendments: 1992, No. 101; 1996, Nos. 26, 85

4. Savings provision in relation to adjustment where local price for dairy produce not equivalent to export price—If, but for the repeal of section 27 of the principal Act, the Board would, in accordance with subsection (9) or subsection (10) of that section, have been required to pay amounts of money to a New Zealand manufacturer or entitled to recover amounts of money from a New Zealand manufacturer for the season ending on 31 May 1998, the Board must, on or before 30 November 1998, pay or recover that money as if section 27 of the principal Act were still in force.

5. Savings provision in relation to issue of additional shares—Despite this Act, the Board may issue a notice under section 15B (2) of the principal Act in respect of the season ending on 31 May 1998 as if this Act had not been passed, and the principal Act, as in force immediately before the commencement of this Act, continues to apply in relation to any such notice.

6. Transitional power in relation to issue of additional shares—After—

(a) 30 November 1998; or

(b) The issue of a notice under section 15B (2) of the principal Act and **section 5** of this Act to every qualifying company,—

whichever is the earlier, the Board may, 〈in accordance with its constitution,〉 on or before 31 May 1999, issue a further notice to all or any qualifying companies under section 15B of the principal Act, as amended by this Act, in respect of the season ending on 31 May 1998.

SCHEDULE

Section 3 (2)

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON REPEAL OF SECTION 27

Provision of Principal Act	Amendment
Section 2 (1)	By repealing the definition of the term "qualifying dairy produce". By omitting from the definition of the term "qualifying milksolids" the words "and contained in any qualifying dairy produce".
Section 2 (2)	By omitting the words ", 'qualifying dairy produce',".
Section 15A (2) (a)	By omitting the words "and the number of kilograms of milksolids contained in any qualifying dairy produce".
Section 15B (2)	By omitting the words "and contained in any qualifying dairy produce supplied or disposed of".
Section 15C (2)	By omitting the words "and qualifying dairy produce disposed of by the company".
Section 15N (1) (c) (ii)	By omitting the words "and contained in any qualifying dairy produce".
Section 15V (3)	By omitting from paragraph (d), and also from paragraph (e), the words ", qualifying dairy produce,".
Section 15ZE (4)	By omitting from paragraph (a), and also from paragraph (b), the words ", qualifying dairy produce" in both places where they appear.

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