

22nd April, 1937.

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I was not satisfied that the action taken by the Board is legal and have discussed the matter with Mr. Currie of the Hon. Minister of Agriculture.

The Hon. Minister of Agriculture. I have inquired for export for 1936, and may determine from time to time the extent to which it is necessary for the effective operation of the Act, and the fulfilment of its purposes that it should exercise control over the part of any honey which is intended for export. I have read the report of the Board and am satisfied that the Board is intended that the Board should be an agent for the producers of New Zealand honey only.

Operations of the N.Z. Honey Control Board.

The New Zealand Honey Control Board was set up under the Honey Export Control Act, 1924. It consists of three members, two being elected by producers and one being appointed by the Government. The Government member is Mr. J. Butland of Butland Proprietary, Ltd., Auckland, and he is Chairman of the Board. The Board has appointed a sole agent in the United Kingdom, namely, Messrs. Morton, Ltd., London. New Zealand honey is sold through the London agent in three main channels, namely, "Imperial Bee", which is a high grade product, "Empire Pack", which is a secondary product and is not branded as New Zealand honey, and in bulk to blenders or to manufacturers.

In the past the Board has experienced a considerable amount of difficulty in handling low grade honey, and has restricted its export considerably. Its agent has, however, established a trade for such honeys, particularly with the manufacturers of sweets and certain medicines. It is stated that the Board's requirement of such honeys to fill orders which have been placed with their London agent is in the vicinity of 150 to 175 tons for this season. The honey crop in New Zealand this season is a very light one, and the Board recognised at an early date that they would have difficulty in delivering sufficient honey to meet these bulk orders. It is not known whether the Board has definitely signed an agreement to deliver a certain quantity of honey, but it is thought that this is not the case. It is reasonable to assume that their London agent might have signed contracts for delivery of a certain quantity, and if such quantities were not available through the New Zealand Board, it would probably have been essential for Morton's Ltd. to buy on the open market to meet their contracts. The contract price for low grade honey to such people as Cadbury's, Ltd. is £49 per ton. I now learn that for some time past the Board has been making enquiries in Australia, and I was informed yesterday by the Comptroller of Customs that a shipment of 30 tons of honey, ex Sydney, had arrived in bond in Auckland, consigned to the N.Z. Honey Control Board. I immediately communicated with Mr. Butland, and was informed by him that the Board intended shipping this honey direct to Messrs. Morton's Ltd. as part of a total shipment of 150 tons of Australian honey to meet Morton's order for the low grade product. I understand that it was requested that the marks of country of origin be allowed to be deleted from the packages, but this has been refused by the Comptroller of Customs, as it is essential for the country of origin to be declared on any honey imported into the United Kingdom.

The transactions were arranged on the basis of a Letter of Credit from Morton & Co., London, in favour of the N.Z. Honey Control Board, and this Letter of Credit has been drawn upon to

pay the vendors of the honey in Australia. The price paid for this honey in Australia was £25 per ton, f.o.b., and it will therefore be seen that the transaction will net a handsome profit to the Board if it is completed on the basis of the contracts held by their agent in London. The Chairman, Mr. Butland, estimates that this profit will be in the vicinity of £4,000 to £5,000.

I was not satisfied that the action taken by the Board was legal, and have discussed the matter with Mr. Currie of the Crown Law Office. He points out that the powers of the Board enable it to assume control of all honey intended for export for London, and may determine from time to time the extent to which it is necessary for the effective operation of the Act, and the fulfillment of its purposes that it should exercise control over the export of any honey. He further states that this clause, read in conjunction with the remainder of the Act, clearly indicates that it is intended that the Board control as an agent for the producers, New Zealand honey only. He therefore rules that on the information at his disposal the action of the Board is ultra vires. The question now arises as to the wishes of the Government so far as the functions of the Board are concerned, and the immediate question of the shipment of the 30 tons of honey now in Auckland, and intended to be shipped on the 25th or 26th instant.

The pertinent points are as follows:-

- (1) The action of the Board in functioning as a trader in honey is ultra vires.
- (2) Insofar that no immediate harm might result to New Zealand producers, and that the action taken by the Board would enable them, through their agent, to fulfil certain contracts, their action might be condoned, even though they have acted outside of the powers conferred on them in the Act.
- (3) It is assumed that the contract of Morton's Ltd. with certain manufacturers is on the basis of delivery of New Zealand honey. If honey of Australian origin is delivered to fill such contracts, it is possible that the purchasers may decline to accept or may accept only at prices lower than the original contract.
- (4) The delivery of Australian honey to fill contracts for the New Zealand product may have a detrimental effect on the future prospects of New Zealand's trade in this product.
- (5) If the transaction is completed and profit accrues to the Board therefrom, the money must be used either in the expenses of the Board or for distribution to New Zealand producers who export through the Board or to a reserve fund which might be used for the general purposes of the Board. As a very small percentage of New Zealand producers are exporting honey this season it would appear reasonable that any profit made from this trading transaction should be distributed pro-rata on the New Zealand honey exported, but it would appear rather that it should be used in the general interests of the industry. The industry owes certain moneys to the Government on account of loans, and any profit could reasonably be used to partly liquidate such loans.

(6) If this transaction is allowed to be completed even to the extent of the 30 tons now in Auckland, a precedent would be established which might later embarrass the Government in respect of this or any other produce board. It might therefore be necessary to amend the Produce Acts to enable a Board to function in this way under conditions of emergency. If this were done it would be placing the Control Boards in a position somewhat similar to the Primary Products Marketing Department.

(7) The only method which could be adopted to prevent the Board exporting this honey (if decided that such action is necessary) would be to take out an injunction against the Board.

(8) If the 30 tons or any additional amounts are allowed to be exported, it may be necessary to stipulate the conditions under which such honey is sold, and the channels through which profit, if any, is distributed.

shipment of 30 tons of honey from Auckland, consigned in the name of the N.Z. Honey Control Board.

I have made enquiries from Mr. Rutland, Chairman of the Board, and am informed that the Board has entered into arrangements for the purchase of 150 tons, approximately, of Australian honey for shipment to London. These shipments are to be made to the Board's London agents, Messrs. Barton & Co. The transaction was arranged on 14th August 1941. I am not sure whether it

Director-General.