

IN THE MATTER OF THE NATURAL PRODUCTS MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL CONCERNING THE METHOD FOR UTILIZING
BUTTERFAT TESTS IN CALCULATING QUOTA

BETWEEN:

MR. R.G. COLLINS
GREEN GLEN FARM LTD.
MOUNTAINVIEW FARM LTD.

APPELLANTS

AND:

BRITISH COLUMBIA MILK MARKETING BOARD

RESPONDENT

AND:

BRITISH COLUMBIA MILK PRODUCERS ASSOCIATION

MR. KEVIN DAVISON

INTERVENORS

REASONS FOR DECISION

APPEARANCES:

For the
British Columbia Marketing Board

Mr. Doug Kitson, Panel Chair
Ms Christine Moffat, Panel Member
Mr. Ross Husdon, Panel Member
Ms Karen Webster, Panel Member
Mr. Harley Jensen, Panel Member
Ms Maggie Barrett, Panel Secretary

For the Appellants
Green Glen Farm Ltd.
Mountainview Farm Ltd.

Mr. R.G. Collins
Mr. W. Van Duin
Mr. J.R. Oosterom

For the Respondent

Mr. John Durham, Chair
Mr. Tom Demma, General Manager
Mr. Jerry Reghelin, Program Manager

For the Intervenors

British Columbia Milk Producers
Association

Mr. Ben Brandsema, Executive
Member
Mr. Andy Dolberg, Secretary

Mr. Kevin Davison

DATE AND PLACE OF HEARING:

June 17, 1997
July 4, 1997
Nanaimo, British Columbia

INTRODUCTION

1. The matter before the British Columbia Marketing Board (BCMB) is an appeal by Mr. R.G. Collins, Green Glen Farm Ltd. and Mountainview Farm Ltd. from a decision by the British Columbia Milk Marketing Board (Milk Board). The decision concerns the utilization of producer three-year average butterfat tests in calculating producer quota allocations pursuant to entry into the Western Milk Pool (WMP) and to the establishment of Total Production Quota (TPQ).
2. The B.C. Milk Producers Association (Association) was granted intervenor status on May 28, 1997.
3. The June 17, 1997, hearing of the Appeal was adjourned because the Appellants objected that there had not been adequate notification to enable all interested parties to:
 - a. apply for intervenor status; or
 - b. otherwise attend or appear at the June 17, 1997, hearing.
4. At the outset of the July 4, 1997, hearing, the BCMB was advised that timely notification of the Appeal and hearing had been served.
5. Also at the outset of the July 4, 1997, hearing, Mr. K. Davison, a Jersey breed milk producer from Maple Ridge, was granted intervenor status.
6. For completeness, it should be noted that a witness for the Appellants, Mr. David Findlay, was determined by the BCMB to be an expert witness. Mr. Findlay is an agricultural consultant, running an accounting and bookkeeping business and includes amongst his clientele, 1 S dairy farms. Mr. Findlay does not hold any professional accounting qualifications. The Respondent, after reviewing various alternatives, did not consider that Mr. Findlay's testimony would be prejudicial to its case.
7. Due to time constraints, the parties were requested to submit final arguments in writing. The Appellants' written submission was received by the BCMB on July 7, 1997. The submission included a 'Milk Statement', for Mr. Collins's farm operation, for the month ending April 30, 1997. This document was inadvertently circulated to the BCMB panel prior to receiving comments on the submission from the other parties. After the Respondent objected that this document was new evidence, the Appellants withdrew the Milk Statement. The BCMB has given no weight to this document.
8. On July 15, 1997, the BCMB denied the appeal and these are the written reasons.

ISSUE

9. Should the butterfat calculation be based on each producer's individual three-year average or on a province-wide three-year average?

BACKGROUND

10. The Milk Board, as a result of its imminent entry into the WMP, has been obliged to establish a method of calculation of payment consistent with the objective of the overall WMP scheme.
11. In preparation for this event, the Milk Board, commencing on October 25, 1996, set in motion a series of meetings and events.

October 26, 1996	First meeting of the Milk Industry Advisory Committee (MIAC). The WMP Memorandum of Understanding (MOU) is approved and the MIAC recommends the establishment of working groups.
November 22, 1996	The Milk Board decides to implement a single milk quota, the TPQ, system by August 1, 1997.
December, 1996	The Milk Board issues a newsletter (Vol. 2, No. 5) to all milk producers throughout the province. The newsletter advises of the movement towards the implementation of a single milk quota. The newsletter also advises that changes to the quota system and Multiple Component Pricing (MCP) would be the focus of the Milk Board's spring (1997) producer meetings.
January 17, 1997	A TPQ Working Group establishes that individual three-year butterfat should be used in calculating TPQ.
February 7, 1997	The Milk Board refers the WMP adjustment issue to the MIAC for recommendation.
February 7, 1997	The MIAC meets and recommends that a quota adjustment be undertaken to facilitate the implementation of the WMP.
February 10, 1997	The Milk Board adopts the MIAC recommendations regarding the WMP quota adjustment and the TPQ conversion.

- April 9, 1997 Mr. Collins makes a presentation to the TPQ Working Group regarding the use of provincial average butterfat tests in the WMP adjustment and TPQ conversion. The TPQ Working Group recommends using individual producer's three-year average butterfat tests. The Working Group's recommendation is communicated to Mr. Collins on April 18, 1997.
- April 22, 1997 Mr. Collins, Green Glen Farm Ltd. and Mountainview Farm Ltd. file an appeal from the Milk Board with the BCMB.
- April 25, 1997 The Milk Board deliberates on the TPQ Working Group recommendation without decision.
- May 1, 1997 The MIAC meets and recommends using individual producer's three-year average butterfat tests in TPQ conversion.
- May 1, 1997 The Milk Board meets to review the MIAC recommendation. The Milk Board reserves its decision until after producer meetings scheduled between May 1 and 16, 1997.
- May 21, 1997 The Milk Board decides that each individual producer's three-year average butterfat tests will be used in the TPQ conversion.

12. The Milk Board's authority specifically relevant to this Appeal is derived from:

- a. the *Natural Products Marketing (BC) Act*; and
- b. the British Columbia Milk Marketing Regulation, including Section 8(4) which states, in reference to the Milk Board and the MIAC that:

"The board must consult with the committee and consider the committee's advice before the board makes any decision relating to pricing or production."

13. The Vancouver Island Dairymen's Association, at its March 27, 1997, Director's meeting, unanimously passed a resolution supporting the position of the Appellants in this matter.

ARGUMENTS OF THE APPELLANTS

14. The Appellants argue that the result of the Respondent's decision to implement a three-year individual producer butterfat average, as opposed to a three-year provincial butterfat average, in calculations for fluid milk, will result in a lower return to producers with lower butterfat production, than would otherwise be the case.
15. This would place them at a financial disadvantage in comparison to their higher butterfat producing peers.
16. Over a period of several years, the Respondent has actively requested that butterfat levels be reduced to accommodate the needs of the marketplace. As a consequence, those producers who have been market responsive are now unfairly penalized.
17. The Appellants further argue that the application of the three-year butterfat average to TPQ allocations will be discriminatory to low fat milk producers. The Respondent should not be allowed to make an order that is discriminatory to any producer or group of producers.
18. The Appellants provided various statistics to indicate the potential impact difference on profit figures in calculations for low and high butterfat producers.

ARGUMENTS OF THE RESPONDENT

19. The Respondent argued that it has gone through a long consultative process with the aim of producing a fair and equitable system for the maximum number of producers. The intent is to provide a revenue neutral conversion, within the parameters of existing butterfat production, on an individual producer basis.
20. The Respondent provided various statistics to substantiate its position. These statistics were designed to show a before and after scenario for a low butterfat producer and a high butterfat producer.
21. The Respondent further argued that using a three-year provincial butterfat average as suggested by the Appellant, would have a negative impact on a much larger number of producers.

ARGUMENTS OF THE INTERVENORS - THE ASSOCIATION

22. The Association argued that "using individual producers' three-year average butterfat tests in calculating producer quota allocations pursuant to entry into the WMP and pursuant to the establishment of TPQ, as opposed to using the provincial three-year average, will have the least amount of disruption and minimal impact to individual producers. It is on this basis, and the fact that the Milk Board consulted extensively on this issue, that the BCMPA supports the Milk Board in this appeal."

ARGUMENTS OF THE INTERVENORS - MR. DAVISON

23. Mr. Davison argued that he strongly supports the Respondent's position.

FINDINGS

24. The argument by the Appellants concerning the comparison between a low butterfat producer and a high butterfat producer is probably accurate. However, the BCMB does not accept this as a compelling argument. The decision to produce milk of a high or low butterfat content is a matter of an individual producer's choice, as it has been in previous years. The Respondent was attempting to maintain revenue neutrality in the before and after scenarios for all producers.
25. The Respondent's requests, over the years, that lower fat content milk be produced were presumably made in good faith and were likely appropriate at the time. The Respondent has to deal with today's situation as it finds it.
26. The Respondent was well aware of the Appellant's position on using a three year provincial butterfat average. This position was considered by the Respondent as a possible scenario. However, after a lengthy consultative process, the Respondent chose an alternate method.
27. This panel cannot fault the Respondent for fulfilling its statutory responsibilities in a considered and responsible fashion, by consulting extensively with its constituency.
28. In conclusion, the BCMB finds it is in agreement with the Respondent's resolution of this difficult matter which necessarily involves the balancing of competing issues and interests.

DECISION

29. The Appeal is denied.

30. As no party requested costs be awarded, no such order will be made.

Dated at Victoria, British Columbia, this 5th day of August, 1997.

(Original signed by):

Doug Kitson, Panel Chair
Christine Moffat, Panel Member
Ross Husdon, Panel Member
Karen Webster, Panel Member
Harley Jensen, Panel Member