

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND AN APPEAL FROM A DECISION CONCERNING WHOLE BIRD TURKEY
ALLOCATION

BETWEEN

SUNRISE POULTRY PROCESSORS LTD.

APPELLANT

AND

BRITISH COLUMBIA TURKEY MARKETING BOARD

RESPONDENT

AND

ROSSDOWN NATURAL FOODS LTD.

INTERVENER

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Sandra Ulmi, Panel Chair
Wayne Wickens, Member
Dave Merz, Member

For the Appellant:

Scott Cummings, Chief Financial
Officer
Doug Mitchell, Director of
Operations

For the Respondent:

Shawn Heppell, Member
Michel Benoit, General Manager

Intervener:

Dan Wiebe, President
Dion Wiebe, General Manager

Date of Hearing:

August 21, 2007

Place of Hearing:

Abbotsford, British Columbia

INTRODUCTION

1. The production of turkey in Canada is governed by a national supply management system. A national quota for turkey is established each year by the Canadian Turkey Marketing Agency (CTMA) based on what is needed by the whole bird and further processing markets. This amount is allocated to provincial boards such as the British Columbia Turkey Marketing Board (Turkey Board), which then allots production to registered producers in its jurisdiction.
2. This turkey is sent by producers to processors where it is either bagged whole or further processed.
3. In 2006, a survey was undertaken by the CTMA in conjunction with the Canadian Poultry and Egg Processors Council (CPEPC) to determine the quantity of turkey that was bagged whole by each processor across Canada. From these figures, a New Commercial Allocation Policy was developed whereby each province was allocated whole bird and further processing quota for the 2007/08 quota year.
4. The whole bird quota for BC was determined by averaging the amount of whole bird production that occurred in BC during the 2004/05 and 2005/06 quota years.
5. According to a May 4, 2007 letter from the Turkey Board to its stakeholders, under the new National Allocation Policy, British Columbia has been allocated a total of 19,970,000 kgs eviscerated weight of conditional quota for the 2007/08 year. This consists of 11,955,435 kgs of whole bird quota and 8,014,565 kgs of further processing quota.
6. From this amount, the Turkey Board has allocated 206,043 kgs of whole bird quota to Sunrise Poultry Processors Ltd. (Sunrise). This is one-half of its whole bird production numbers as submitted to the CTMA survey.
7. The Turkey Board has allocated the other half of Sunrise's whole bird production to Rosstown Natural Foods Ltd. (Rosstown). It is this allocation of whole bird quota to Rosstown which is being appealed by Sunrise.
8. The appeal was heard on August 21, 2007.

ISSUE

9. Did the Turkey Board act unfairly or inappropriately in allocating 206,043 kgs of whole bird quota to Sunrise Poultry under the new allocation system instead of its survey submission quantity of 412,086 kgs?

BACKGROUND

10. In May and October 2005, the British Columbia Farm Industry Review Board (BCFIRB) received two appeals concerning the allocation of turkey production to B.C. turkey processors and turkey brokers (processors). One appeal was from Lilydale Co-operative Ltd. (Lilydale) and the other from Rosstown. Lilydale was concerned about the reallocation of existing production to new turkey processors. Rosstown intended to become a new processor. Other B.C. processors also expressed concerns regarding the availability of turkey production for their operations. A third appeal, by J.D. Farms Ltd. was directly tied to this matter as its quota transfer was frozen by the Turkey Board pending the outcome of the Rosstown and Lilydale appeals.
11. In accordance with s. 8(8) of the *Natural Products Marketing (BC) Act (Act)* and with the agreement of Lilydale, Rosstown, and the Turkey Board, BCFIRB deferred considering the appeals and instead undertook a supervisory process which was deemed more appropriate in the circumstances. It was the intention of all parties to use this process to see if it might be possible to reach agreement on an allocation decision.
12. On January 26, 2006, BCFIRB issued its decision in a *Supervisory Review of the BC Turkey Marketing Board Turkey Allocation to BC Processors*. This supervisory review can be read in full on the BCFIRB website.
13. As part of this supervisory review, BCFIRB allocated a base share of the supply of live turkey to each BC processor, commencing with the 2006/07 quota year, based on 2005/06 production. These allocations were as follows:

JD Farms	624,019 kilos live weight
Lilydale	17,152,150 “ “ “
Sunrise	679,098 “ “ “
Rosstown	679,097 “ “ “
Superior	1,816,408 “ “ “
Farm Fed	50,000 “ “ “
Sundry others	249,228 “ “ “
Total	<u>21,250,000 “ “ “</u>
Converted at 82.547% to eviscerated	<u>17,541,237 kilos evis weight</u>

14. BCFIRB’s January 26, 2006 decision balanced the interests of those processors that supported assurance of supply (the Turkey Board directing where production must be processed) against those that favoured a system where processors competed for product. This balance involved setting a base allocation of turkey for existing and projected (Rosstown) processors. Future growth over and above these allocations would not be added to the base but through processors signing

up growers based on their market requirements subject to any further regulatory direction from the Turkey Board that might be necessary from time to time.

15. At the time of BCFIRB's 2006 decision, Rosstown's production was used by Sunrise through a business relationship; however, neither was a primary turkey processor. Additional direction from BCFIRB was required to ensure that the established needs of Sunrise, a major further processor and marketer of turkey, and the upcoming needs of Rosstown, a future processor and marketer, were met. Several paragraphs in the 2006 *Supervisory Review of the BC Turkey Marketing Board Turkey Allocation to BC Processors* clarify this:

25. There are two further issues to be determined by this supervisory review. The first is the existing Rosstown application to process its own turkey supply and the impact on the current purchaser of its product, Sunrise. It is our decision that the Sunrise and Rosstown base allocations in paragraph 18 will each increase by 676,100 kgs live weight subject to paragraph 28. The increase in their base allocations will commence in the 2007-08 quota year at which time each will be eligible for 25% of the kgs live weight growth in supply available (in accordance with the criteria established in paragraph 20) to B.C. turkey processors in a quota year until each has received their increase of 676,100 kgs.

28. This decision with respect to the Rosstown and Sunrise allocations referred to in paragraph 25 is subject to:

- (a) Rosstown having a processing plant completed prior to the 2007-08 quota year; and
- (b) Rosstown receiving a processor licence from the Turkey Board prior to the 2007-08 quota year.

16. Subsequent to the January 2006 release of the *Supervisory Review of the BC Turkey Marketing Board Turkey Allocation to BC Processors*, after BC received a large increase in its national quota, BCFIRB issued a supplementary decision on March 21, 2006. Paragraph #1 explains:

- 1. Since our decision of January 26, 2006, we have been advised that the Canadian Turkey Marketing Agency (CTMA) will allocate a minimum of 23,017,190 kgs live weight to BC for the 2006/07 quota year. This represents growth for BC of approximately 1.82 million kgs live weight. While some growth was expected, this degree of growth was not contemplated by BCFIRB to occur as early as the 2006/07 quota year based on discussions held with the British Columbia Turkey Marketing Board (Turkey Board) and the parties during our supervisory review.

17. Paragraph #12 in the supplementary decision clarified the increases in base production that Sunrise and Rosstown would receive:

- 12. We have given serious consideration to the competing views on this point and our final direction respecting this issue is that Sunrise and Rosstown will not receive effective in the 2007/08 quota year any adjustment in their base allocation to reflect the production increased granted to BC effective the 2006/07 year. Increases to the base share of Sunrise and Rosstown in order for each to achieve the extra 676,100 kgs live weight in base allocation as directed by paragraph 25 of the direction in our January 25, 2006 letter will come from new growth provided to BC in any given year

effective 2007/08 and thereafter. It will not come simply from any quota available above the base and specialty allocations.

18. The BCFIRB decision effectively meant that at the beginning of the 2007/08 quota year, Rosssdown would be allocated one-half of the base production Sunrise would otherwise have received to allow Rosssdown to process its own turkeys. After receiving an extension from the Turkey Board, Rosssdown has since met the conditions of that allocation. It now has a processor licence and a processing plant and expects to begin processing turkeys in early September 2007.
19. In 2005 when the BCFIRB supervisory review was undertaken, national allocation for turkey did not reflect how turkey was processed. In 2006, the CTMA and CPEPC recognized that there were two basic types of turkey processing - whole bagged birds and further processed such as boned turkey parts and canner pack turkeys - and established a national allocation of whole bagged birds based on previous production by processors. Sunrise submitted its production amount of whole birds which was 412,086 kgs. This amount included the turkeys produced by Rosssdown, but processed at the time by Sunrise. Because Rosssdown was not a registered processor or processing turkeys at the time, it did not submit a survey.
20. National allocation of whole turkey was made by CTMA to the provincial boards based on the surveys submitted. The Turkey Board allocated one half of Sunrise's survey amount, or 206,043 kgs whole bird production to Sunrise, and the same amount to Rosssdown.

ARGUMENT OF THE APPELLANT

21. The Appellant, Sunrise, argues it should receive the entire allocation for its whole bagged bird production of 412,086 kgs as submitted to the CTMA and CPEPC survey. Sunrise states it worked hard to establish this market and should not have to give it up to Rosssdown.
22. Sunrise further contends that Rosssdown has no history of whole bird allocation and was not part of the CTMA and CPEPC survey. Sunrise asks that the Turkey Board decision therefore follow the board minutes of April 27, 2007 where it was stated: "...following careful consideration the board felt that the only defensible [sic] approach was to give to each processor/turkey broker what was reported in the survey years".
23. Sunrise states it would be willing to give up further processed allocation to Rosssdown in return for getting back whole bird allocation and no one would lose.
24. Sunrise notes that CTMA released a draft *Whole Bird Quota New Entrant Provision* on May 9, 2007. Under this program Rosssdown would qualify as a new entrant processor and could receive whole bird allocation of up to 325,000 kgs

- and then no allocation would need to be taken from another processor. Sunrise argues that Rosstown's share should not come from Sunrise, but from this new entrant allocation.
25. This draft CTMA program also states: "The new entrant provision should not be used to take current business away from existing participants." Sunrise asks that the Turkey Board follow this recommendation and not take allocation from them.
 26. Sunrise argues a fairer way to make up whole bird allocation for Rosstown would be a pro rata sharing among all the BC processors so no one processor would lose 50 per cent of its share of whole bagged birds.
 27. Sunrise contends the 2006 BCFIRB supervisory review is inconsistent with the allocation policy from CTMA (in the new draft *Whole Bird Quota New Entrant Provision* released on May 9, 2007). Sunrise further maintains it would have been difficult for BCFIRB to make the same decision if it had the CTMA survey results, as the BCFIRB decision would have overridden national draft policies.

ARGUMENT OF THE RESPONDENT

28. The Turkey Board explains that it split the whole bird allocation between Sunrise and Rosstown because the BCFIRB supervisory decision ordered the total production allocation to be split between Sunrise and Rosstown. It follows therefore that the whole bagged allocation should be split in half as well. The Board maintains that since the BCFIRB supervisory decision was made before the CTMA data was available, there was no way that BCFIRB could have specifically addressed the whole bird situation and the Turkey Board tried to follow the spirit of the decision.
29. The Turkey Board states it considered several alternatives to reallocating half of what would have been Sunrise's whole bird allocation to Rosstown, but decided this option made the most sense and followed the direction and the spirit of the BCFIRB supervisory decision.
30. The Turkey Board contends it is important for a processor to have whole bird allocation, as all processors need to sell whole birds to be successful. It states it is unaware of any processor that does not bag whole birds and only does further processing.
31. The Turkey Board agrees that under the current draft CTMA *Whole Bird Quota New Entrant Provision*, Rosstown would qualify as a new entrant processor. The Turkey Board states any allocation received by Rosstown from CTMA if this new entrant program comes into effect will be allocated to Sunrise to make up for what has been taken away from it until it is back to its original allotment of 412,086 kgs whole birds.

32. The Turkey Board further states that any future growth in the whole bird allocation from CTMA will go 25 per cent to Rosstown and 25 per cent to Sunrise until a doubling in both of their allocations is achieved.
33. The Turkey Board maintains it cannot make decisions now based on the CTMA *Whole Bird Quota New Entrant Provision* as it is only a draft. It has no way of knowing if, or when, the draft will be finalized and the program implemented and has no assurances it will go ahead as stated in the draft.
34. The Turkey Board contends it did consider a pro rata sharing of the whole bird allocation for Rosstown but felt a pro rata sharing was not in line with the CTMA intent of allocation and principles.
35. The Turkey Board agrees its decision may not be consistent with the draft CTMA directions because of the creation of Rosstown and the BCFIRB supervisory review. However, the Board must consider the interests of the whole industry. Before making the decision under appeal, it met with industry, consulted the parties involved and considered options. This decision allows Sunrise to increase its whole bird allocation over time.
36. The Turkey Board maintains it is trying to follow #17 of the BCFIRB's supplementary supervisory decision of March 17, 2006 which states:

To the extent that this decision and our decision of January 26, 2006 specifically addresses a matter, it is the expectation of BCFIRB that the Turkey Board will accept and implement that decision. If and to the extent there are any issues flowing from this decision which are not expressly addressed, or if there is any ambiguity in our decisions, it is the further expectation of BCFIRB that the Turkey Board will address those issues in a manner consistent with the spirit and intent of our decisions.

ARGUMENT OF THE INTERVENER

37. The Intervener agrees with the decision of the Turkey Board to allocate Rosstown one-half of Sunrise's whole bird production so that it can process its own turkey.

DECISION

38. The Panel recognizes why Sunrise objects to the Turkey Board's allocation decision. It is important to remember, however, that allocations are not proprietary; allocations are public policy decisions which sometimes require difficult choices. It has been determined it was in the best interests of the industry to allow Rosstown to enter the industry as a processor to process its own turkey

- supply. The Panel accepts the argument of the Turkey Board that in order to become a viable processor, Rosstown must have access to some whole birds.
39. For the same reason, we do not accept the alternative advanced by Sunrise that it would give up further processed allocation in return for whole bird allocation. The Panel recognizes that the latter is the most profitable part of the processing and to deny Rosstown whole bird allocation would be unfair.
 40. The Panel does not agree that no allocation should be taken from Sunrise on the expectation that Rosstown will obtain allocation from the *Whole Bird Quota New Entrant Provision* which has been proposed by CTMA. We agree with the Turkey Board that it cannot make decisions for this quota year based on a draft program which may or may not be implemented. Until the CTMA's *Whole Bird Quota New Entrant Provision* is finalized, the Turkey Board must make its decisions within the rules as they presently exist.
 41. This having been said, the Panel also recognizes the commitment made by the Turkey Board to return any allocation received by Rosstown from CTMA under the new entrant program to Sunrise to mitigate the effects of this allocation decision. It will be for the Turkey Board to determine whether that can be accomplished by allocating the new entrant quota to Sunrise or, if that is not possible, reallocating the quota under discussion in an amount equal to any new entrant quota Rosstown receives. In our opinion, the Turkey Board has endeavoured to supply Rosstown with whole birds in the situation as it stands today, while still considering how to alleviate the effects of this decision on Sunrise in the future.
 42. The Panel does not accept the alternative proposal of Sunrise that the whole bird allocation for Rosstown should be shared on a pro rata basis between all BC processors. A pro rata sharing among all processors does not follow the directions of the BCFIRB supervisory review. Nor do we accept that the BCFIRB supervisory review is inconsistent with the allocation policy from CTMA as stated in the draft *Whole Bird Quota New Entrant Provision*, or that it over-rides national policies. Since the CTMA document is only a draft and has not yet been adopted, the BCFIRB supervisory review must take precedence. Even if the national policy comes into effect, it can and should be read and applied in a fashion that recognizes the Turkey Board's powers to make judgments in the interests of the BC turkey industry and the public.
 43. In our opinion, the Turkey Board's decision to split the whole bird allocation between Sunrise and Rosstown, while difficult, represents a careful and balanced solution which took into consideration the BCFIRB supervisory review and the fact that the CTMA "Whole Bird Quota New Entrant Provision" is only a draft at this time.

44. The Panel acknowledges that the Turkey Board considered various options in this matter, consulted with industry, and communicated well with the concerned parties. We are satisfied that the allocation of whole birds to Sunrise and Rosstown has been thoroughly considered and that, in time, Sunrise will have its allocation for whole birds returned.

ORDER

45. The appeal is dismissed. The 2007/08 allocation by the Turkey Board of 206,043 kgs whole bird quota to Sunrise Poultry will stand.
46. There will be no order as to costs.

Dated at Victoria, British Columbia this 21th day of September 2007.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

(original signed by)

Sandra Ulmi, Panel Chair
Wayne Wickens, Member
Dave Merz, Member