

## CHAPTER VII

### THE ISSUES: STANDARDS OF LAWFULNESS AND FAIRNESS

#### (A) LAWFULLY

##### 1. *Canadian Dairy Commission Act, Section 8*

When the Minister of Agriculture, the Honourable J.J. Greene, was speaking to the Canadian Dairy Commission Bill on second reading in June 1966, he stated:

"...It is not possible at this time to indicate, other than in a broad way, the manner in which the Commission will operate. The dairy industry is a complex and ever changing entity, and with these changes, different approaches will doubtless be needed on the part of the Commission. The legislation has been drafted to provide for sufficient flexibility to permit the Commission to meet the objectives set for it, despite changing structures in the Canadian dairy industry."

Section 8 is so vaguely drafted, however, that it provides little guidance to those responsible for administering it. The Governor in Council has not given any directions under Section 11 or passed any relevant regulations under Section 12. As a result a premium is placed on the sophistication and independence of the members of the Commission, especially to the extent that effective mechanisms for accountability on matters of policy are absent, to give more precise substantive content to Section 8 and to develop consistent policies in implementing the objects prescribed by Parliament.

Anyone who compares the evidence of Dr. Skeoch with that of the officials of the Canadian Dairy Commission, cannot help but be concerned as to whether the public interest has been or is being well served by leaving the Canadian Dairy Commission without any guidance in terms of long-run policy objectives. And the public interest goes well beyond the approximately \$300 million of public funds expended annually by the Canadian Dairy Commission.

Dr. Skeoch's evidence was introduced at the very opening of the Inquiry for the announced reason of providing the fullest opportunity to the Canadian Dairy Commission to respond to or explain any questions or matters raised by his evidence regarding policy matters. Yet the evidence of the Canadian Dairy Commission witnesses subsequently, as

outlined in large part in Chapter IV, above, causes one to wonder whether they even understood Dr. Skeoch's evidence, let alone had answers to the questions and criticisms he raised.

I do not question the bona fides of the Canadian Dairy Commission policy efforts and programs. However, without a long-term overall policy perspective there is no defense against the expediency of adopting short-term solutions.

The Canadian Dairy Commission appears to have acted largely in a vacuum so far as a long-run policy perspective is concerned. It appears to regard concepts of efficiency, fair return and adequate supply as independent of each other and as having meaning only in terms of short-term tools such as target return formulae, production goals and statistics. The Canadian Dairy Commission does not appear, for example, to recognize any inconsistency between cost justification formulae or price support programs and efficiency, or between production quotas and efficiency or adequate supply. Nor does the Canadian Dairy Commission appear to take any account of general national economic policies such as those favouring open market economies.

I assume that the formal written submissions filed by counsel for the Canadian Dairy Commission at the conclusion of the Inquiry reflects at least in some degree the position of the Canadian Dairy Commission. The banality of those submissions regarding Section 8, some of which are as follows, is disturbing:

"Dr. Skeoch, not a trained lawyer, is not an expert with respect to statutory interpretation."

"... one knowledgeable about a particular type of farming enterprise has only to watch farmers of that kind for a while in order to determine 'which are more efficient and which are less so. Thus the ordinary language meaning of 'efficient producer' is not defined in market terms, and the ordinary meaning of the term is what the law looks to..."

"The word 'fair' in 'fair return' is clearly a moral term (in fact 'efficient' and 'adequate' may also be) and thus cannot be defined in empirical, factual terms. A fair return to the producer is simply the return a producer is entitled to, or the return that he ought to get."

In view of the findings of fact regarding the allegations made by Schafer Bros. Ltd. there is no need to deal with certain of the Issues defined in Exhibit 8, which read in part:

"2. If the allegations contained in Part I of the Statement of Allegations, or any of them, are true:

- (a) Were the policies, practices and controls that were employed by the Canadian Dairy Commission consistent with the objects of the Canadian Dairy Commission as prescribed by section 8 of the *Canadian Dairy Commission Act*, R.S.C. 1970, c.C-7, and were they within the powers of the Canadian Dairy Commission as conferred by section 9 of that Act?
- (b) Were such policies, practices and controls necessary to achieve the objects of the Canadian Dairy Commission as prescribed by section 8?
- (c) Were the powers of the Canadian Dairy Commission exercised within the framework of any general policy or criteria adopted to achieve the objects of the Canadian Dairy Commission as prescribed by section 8?"

Notwithstanding there being no need to deal with the above-stated issues with reference to the Order in Council which directed an Inquiry to be made as to whether anything unlawful or unfair had been done vis-à-vis Schafer Bros. Ltd., it is appropriate to note that speaking generally and having regard to the evidence adduced, the vagueness of Section 8 would perhaps lead one to conclude that virtually nothing done in a bona fide attempt to achieve the objects of Section 8, however inadequate or misguided those attempts might be, could be condemned as unlawful. But this is not to say or to conclude that the language of Section 8 does not permit the Canadian Dairy Commission to adopt policies and to act in a more adequate and competent way so as to achieve the objects of Section 8 as contemplated by Parliament in enacting the Section.

## 2. *Appropriation of Goodwill*

The allegations of Schafer Bros. Ltd. as articulated by David Schafer were to the overall effect that by the late 1960's, after many years of regular and expensive promotional work with CONASUPO and its predecessor organization in Mexico, Schafer Bros. Ltd. was on the threshold of a profitable business relationship with CONASUPO, and that the Canadian Dairy Commission destroyed those prospects by activities as set out in the Statement of Allegations.

As articulated in part by Michel Choquette in his letter to Gilles Choquette dated July 25, 1977 (Exhibit 6, Volume VI, pp. 8-9), these general allegations were as follows:

"That due to the exclusive arrangement which was subsequently reached between CONASUPO and the Dairy Commission,

the latter announced in 1971 that it was discontinuing milk powder export subsidies for sales to Mexico, thereby definitively expropriating the market which Schafer Bros. had been so instrumental in creating;

"That after more than 10 years of hard work and 21 trips to Mexico, they were left with absolutely nothing to show for their efforts;

"That in addition to the specific sales, the potential future business and the time which they lost, the Schafers also lost the total amount of their investment;

"That they would never have devoted all this time and money to the Mexican venture had they not been led to believe all along that they would have the Dairy Commission's full support if they succeeded in interesting the Mexican Government in purchasing in Canada;

"That the situation is, in fact, a good deal worse than that, since the money which the Schafers invested in this endeavour represented most of their capital;

"That the loss of this capital, combined with the resultant loss of credibility in financial, banking, trade and government circles here and abroad, has almost totally incapacitated their firm;

"That Schafer Bros., which had at one time been one of the most important privately-owned grain and seed firms in Hungary and leader in foreign trade, and which was well on its way to becoming a very successful Canadian exporting house even though it had had to begin again here from scratch, has, since experiencing its difficulties with the Canadian Dairy Commission, barely been able to survive;"

There are three key questions, and they will be considered in order:

- (a) Did CONASUPO become interested in buying Canadian skim milk powder in the late 1960's as a result of the efforts and expenditures of Schafer Bros. Ltd.?
- (b) If the Canadian Dairy Commission had stayed out of the business of selling direct to CONASUPO, would the business have gone to Schafer Bros. Ltd.?
- (c) Did the exclusion of Canadian private traders from the CONASUPO business as of 1971 result principally from a decision by the Canadian Dairy Commission?

These questions have all been considered one way or another in Chapter VI, but a brief summary of what the evidence disclosed is useful here.

As to the first question, David Schafer did not know until this Inquiry was held that other Canadian traders were also active in Mexico during the 1960's while he was there. Those other traders also met with Messrs. Rodriguez Licea and Rodriguez Ayala and, in fact, some sales were made by those other traders before the Schafer Bros. Ltd. first and only sale of Canadian skim milk powder to CONASUPO in January, 1969. Further, broad factors of supply and demand appear to have been one of the principal determinants of shifts in trading patterns, influenced by the increase in the Canadian export subsidy which was admitted by David Schafer to be a major factor. A final item to note is that the visit of Dr. Barry and Mr. Goodwillie in the fall of 1967 appears to have been important in paving the way for the general solicitation of Canadian offers by CONASUPO in January 1968.

The answer to the first question is, therefore, that the efforts of Schafer Bros. Ltd., while they may well have played a small part, were in no sense unique, major or determinative.

As to the second question, Schafer Bros. Ltd. laid great emphasis on its belief that it was the only private Canadian trader to have been invited to bid in January, 1968. This would have been relevant had it been true. The evidence shows, however, that at least three or four other Canadians, apart from Schafer Bros. Ltd. and the Canadian Dairy Commission, were invited to submit offers. The actual invitation to Granby Co-op is among the exhibits of the Inquiry. A further document in evidence (Exhibit 12, page 160), also unknown to Schafer Bros. Ltd. prior to the holding of the Inquiry, is a letter dated January 19, 1968, from Mr. Rodriguez Licea to the Canadian Embassy in Mexico stating in part as follows:

"To fulfill our annual requirements of milk powder, we usually enter into only one buying operation for about 25,000 metric tons, based on the requirements set down by this Institution in its booklet "GENERAL CONDITIONS FOR THE PURCHASE OF MILK POWDER", copy of which is attached.

"We have brought the foregoing to your attention requesting that you advise the officials of your government in charge of these matters or the producers and suppliers of milk powder, as we are now beginning our programme for the supply of our requirements for the year 1968.

"We would be grateful if you would inform the interested parties that from this moment

we are prepared to receive their offers, by telex if desired, indicating their best price and their acceptance of each and every condition required by CONASUPO as set out in the Instructions sent to you with this letter.

"We would like to clarify that the instructions mentioned in the Instruction sheet under reference are in no way limiting and your offers may extend or improve our conditions.

"After the price conditions and quality offered by all the providers we have invited to quote have been analyzed, this Institution will inform the interested parties of its final decision."

It was, further, established by the evidence that CONASUPO contacted directly all producers and suppliers who were registered with it.

As for the January, 1969 sale by Schafer Bros. Ltd. to CONASUPO, Mr. Rodriguez Ayala explained to the Commission of Inquiry in Mexico that there was a difference between small contracts and large contracts, which has been referred to above in this Report. Mr. Rodriguez Ayala said that Schafer Bros. Ltd. was given the contract on the small 770 ton order partly to test the ability of the company to perform satisfactorily pursuant to a contract of purchase and sale. Also, it being a small contract, the Purchasing Department at CONASUPO had authority to award it without the approval of the Director General and other senior officials at CONASUPO. This difference between large and small contracts is confirmed by the fact that although CONASUPO was satisfied with the performance of Schafer Bros. Ltd. on this January, 1969 contract, CONASUPO did not award the large contract three months later to Schafer Bros. Ltd., but instead bought Canadian skim milk powder from other private sources that offered a lower price.

Mr. Schafer believed that he had a unique personal relationship of mutual trust and confidence with certain senior personnel in the Purchasing Department of CONASUPO, and that this would have led to his getting future business. Three things should, however, be noted. It was not such a close relationship that he was advised of the October, 1967 meetings with the Canadian Dairy Commission, or of the invitations to other Canadian suppliers in January, 1968. Second, he did not get the 1969 contract. Also, and in any event, the people Mr. Schafer knew best in CONASUPO left CONASUPO in 1970 with the change of government in Mexico.

Further in connection with the second question, it should be noted that the personal philosophy of monopoly rights of David Schafer and George Schaffer, and their view of the limited role that was proper

for the Canadian Dairy Commission, referred to above in this Report, is quite foreign to Canadian public policy. Dr. Skeoch touched on this, too, in his evidence, and stated that he could see no objection to the Canadian Dairy Commission competing with the private sector in the supply of skim milk powder.

The answer to the second question is therefore "no".

With regard to the third question, it was made clear in the interviews the Commission of Inquiry conducted in Mexico City that the exclusion of the Canadian private sector in 1971 resulted from a change in Mexican Government policy. The new Mexican Government at that time implemented a policy of purchasing skim milk powder (and no doubt other products as well) only from other government agencies on a government-to-government basis, so to speak.

The answer to the third question therefore is also "no".

Notwithstanding the answers given to the above three questions, in view of the issues raised based on the allegations it is appropriate to review the law relating to this aspect of the claim for compensation.

The leading judicial authority on the subject of compensation for the taking or appropriation of goodwill by an act of government is *Manitoba Fisheries Limited v. Her Majesty The Queen*, [1979] 1 S.C.R. 101, the facts of which were essentially as follows. The plaintiff corporation had for forty years been in the business of purchasing fish from commercial fishermen in Manitoba, processing and packing them in its own facilities, and selling them to various customers in markets outside Manitoba. It was a highly competitive business and over the years the plaintiff had built up a very substantial clientele that preferred to buy from it. In 1969, however, Parliament passed the *Freshwater Fish Marketing Act*, which established a Crown agency known as the Freshwater Fish Marketing Corporation and provided, for all intents and purposes, that the said Crown agency had the exclusive right to market and trade in fish from participating provinces (which included Manitoba) in interprovincial and export markets. As of the date the legislation took effect, therefore, the plaintiff's customers perforce switched their business to the Crown agency, the plaintiff's business was extinguished and its plant rendered virtually useless. The plaintiff sued for a declaration that it was entitled to compensation.

It is important to stress two facts from the *Manitoba Fisheries* case. First, the plaintiff had goodwill in the sense of an established clientele of customers who, out of preference, kept returning to it for supply and who would in all probability have continued to do so had the legislation not been passed. Second, official action by or through the legislation was the cause of the loss of that goodwill.

Both the Federal Court trial division and the Federal Court of Appeal held that, although what had happened to the plaintiff was unfair, no action lay for harm resulting from the passage of the legislation.<sup>3</sup>

The Supreme Court of Canada allowed the plaintiff's appeal and made a declaration that it was entitled to compensation for the fair market value of its business as a going concern in such amount as could be agreed or, failing agreement, as would be calculated by the Federal Court. It held that the case fell within the rule that unless the words of a statute clearly so demand, the statute ought not be construed so as to take away the property of a subject without compensation. The Court further held that goodwill, which existed on the facts of the case, was a form of property that came within the rule. There was also particular evidence in the case that made it appropriate to treat goodwill equally with plant and equipment.

It is not necessary for the purposes of this Inquiry to decide whether actions taken by the Canadian Dairy Commission within the statutory scope of its powers (at least in a literal sense) should be treated in the same manner as the passage of the legislation in the *Manitoba Fisheries* case. The facts of that case were essentially different from the facts before this Inquiry. Here, there was no such loyalty, preference or habit so far as CONASUPO's purchases were concerned that could reasonably be found to result in goodwill for any Canadian vendor, let alone for Schafer Bros. Ltd. Second, the failure of Schafer Bros. Ltd. to conclude contracts with CONASUPO other than the small January 1969 sale, and the unavailability of CONASUPO business to any Canadian private trader after April 1971, cannot be said to have resulted from actions or policies of the Canadian Dairy Commission.

Accordingly, the conclusion is that there is no legal basis under this heading by which a finding could be made that the Canadian Dairy Commission acted unlawfully.

### 3. *Tortious Interference with Business or Trade Interests*

As stated by Lord Denning, M.R. in *Torquay Hotel Co. Ltd. v. Cousins*, [1969] 1 All E.R. 522 at 530:

"... if one person deliberately interferes with the trade or business of another, and does so by unlawful means, that is, by an act which he is not at liberty to commit, then he is acting unlawfully, even though he does not procure or induce any actual breach of contract."

An action lies to recover damages caused by a breach of this rule. To similar effect see *Volkswagen Canada*



*Ltd. v. Spicer et al* (1978), 91 D.L.R. (3d) 42 (N.S.C.A.), and also *Acrow (Automation) Ltd. v. Rex Chainbelt Inc.*, [1971] 3 All E.R. 1175 (C.A.) where the actionable interference consisted of an unlawful refusal to supply.

The Manitoba Court of Appeal recently, in *Gershman v. Manitoba Vegetable Producers' Marketing Board*, [1976] 4 W.W.R. 406, applied this principle to the exercise of powers by a marketing agency. The facts of that case involved a marketing board, established under statute, using its powers in a discriminatory and vindictive way so as to harass, effectively blacklist and ostracize the plaintiff, who was a principal in a produce company. The plaintiff had apparently at one time challenged the legal authority of the Board and for this and other reasons was evidently not popular with the Board officials. It was an extreme case on its facts, resulting in an award of punitive damages as well as general damages against the Board, but the legal guidelines are of general application. They apply, for example, to the Canadian Dairy Commission, and although they have not been contravened based on the evidence before this Inquiry, a review of the principles may nevertheless be of interest.

Gershman's action against the Board was for malicious interference with contractual relations, but the Court of Appeal found that the separate torts of intimidation and unlawful interference with economic interests had also been committed by means of an abuse of the discretionary powers possessed by the Board, powers the Court described as "very wide powers, amounting to monopolistic powers."

(The tort of intimidation, which is irrelevant for the purposes of this Inquiry, consists of a threat to another person to do an unlawful act, as a result of which threat the other person does or refrains from doing some act which he is entitled to do, thereby causing damage to himself or to a third person.)

The tort of unlawful interference with economic interests, as indicated above and as described by the Manitoba Court of Appeal, consists of acting unlawfully with the object and effect of causing damage to another's business and trade interests. It does not require that there be established goodwill or that there be an actual existing contract.

The Manitoba Court of Appeal held that the Board acted unlawfully whenever it did not act in good faith, and that acts done for the principal purpose of prejudicing, punishing or blacklisting the plaintiff were acts of bad faith. The Court further reiterated the general principle that public bodies must not use their powers for purposes incompatible with the purposes envisaged by the statutes under which they derive such powers, and endorsed the following statement by the trial judge in that regard (p. 415):

"There are many government-sanctioned boards in existence now having exclusive jurisdictions to administer many facets of the economic life of our country, and as our life becomes more interdependent we will have even more such boards. These governmental boards are established to administer exclusively the many different economic programs in our society. They are established with noble aims and for noble purposes. . . glaring abuse of power. . . should not be allowed to pass without some assessment of. . . damages against it."

The Court also quoted the following excerpt from the judgment of Rand, J. in *Roncarelli v. Duplessis*, [1959] S.C.R. 121 at p. 140:

"It is a matter of vital importance that a public administration that can refuse to allow a person to enter or continue a calling which, in the absence of regulation, would be free and legitimate, should be conducted with complete impartiality and integrity; and that the grounds for refusing or cancelling a permit should unquestionably be such and such only as are incompatible with the purposes envisaged by the statute...

"... no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute...'Discretion' necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption."

The Court further relied on law to the effect that discretionary powers must not be exercised in an arbitrary, vague or fanciful way.

None of these principles has been contravened by the Canadian Dairy Commission, its officers or employees vis-à-vis Schafer Bros. Ltd. according to the evidence before this Inquiry.

#### 4. *Discriminatory Treatment*

As is evident from a review of the Statement of Allegations, a principal theme of the assertions made by Schafer Bros. Ltd. is that it was discriminated against by the Canadian Dairy Commission, its officers and employees.

For the purposes of this Inquiry, personal discrimination can be described as the giving of different treatment to competing exporters at the same or similar times with respect to comparable interests or dealings.

A public body, let alone one with the powers and the influence of the Canadian Dairy Commission in its sphere of market activity, is under a legal duty to act impartially and in good faith. The duty derives from common law and is independent of statute.

The duty on any such public agency is more comprehensive and strict than that on a private person. No matter how irritating a public official finds a particular member of the public to be, he is not entitled to prejudice or punish that person by means of the way he exercises or refuses to exercise any of his powers and discretion. The duty extends to all activities of the public official or agency, whether they relate to pricing, supply, the providing of information or other forms of dealings or relationships.

The primary instances where Schafer Bros. Ltd. claimed that it was singled out by the Canadian Dairy Commission for less favourable treatment than that received by other Canadian exporters were in connection with the January 1968 tender, the January 1969 sale, the wheat/skim milk powder deal, the Philippines incident, and the efforts in 1977 to explore business prospects with Peru, Mexico, Algeria, and Chile.

The primary instances where Schafer Bros. Ltd. felt that specific competitors received particularly favourable treatment from the Canadian Dairy Commission were the consortium sale in August 1968, the March 1969 tender, the tender in 1970, and the appointment of Ault Foods (1975) Ltd. in 1977.

The review of facts above in this Report pertaining to each of these specific allegations shows that the claims of David Schafer and George Schafer were, in fact, unfounded. Accordingly, there is no factual basis for the "questions" raised by Michel Choquette as to whether "fraud" or "deceit" on the part of the Canadian Dairy Commission, its officers or employees had occurred. Similarly, there was no evidence of any favoured treatment given to Ronald A. Chisholm Ltd. or to other competitors of Schafer Bros. Ltd.

Specifically with respect to export subsidies offered to Canadian exporters, and to the financial arrangements provided in connection with sales of Canadian Dairy Commission inventory to private exporters, the evidence is uniform and emphatic that the Canadian Dairy Commission made every effort to treat all traders equally. Apart from the fact that general notices regarding supplies, subsidies and financial arrangements went out publicly and generally to the trade, on the rare occasions when adjustments to the terms might be made for specific deals in order to respond to competitive pressures from abroad, all Canadian traders known to be interested in that particular business prospect were notified. This is not to say that on occasion the Canadian Dairy Commis-

sion did not make special arrangements to assist traders in performing on particular contracts, but Schafer Bros. Ltd. was the beneficiary of such treatment as much as were other Canadian exporters.

It might also be recalled, although it would not be an answer had the Canadian Dairy Commission in fact discriminated against Schafer Bros. Ltd., that Schafer Bros. Ltd. was not concerned about any question of principle regarding discrimination. Since at least 1969 Schafer Bros. Ltd. has sought to have the Canadian authorities grant, to it, exclusivity and preferential rights vis-à-vis other Canadian exporters with regard to sales of Canadian skim milk powder to CONASUPO.

One of the principal sets of factors that appear to underlie the conviction of the Schafers that they have been subjected to discriminatory treatment at the hands of the Canadian Dairy Commission, is the failure of the Canadian Dairy Commission to have developed an organized, clearly specified system for making sales of skim milk powder in export markets, such as is the case for many standardized, graded agriculture products. Uncertainties as to the size of available and future supplies, the absence of an organized futures market, and the like, may provide some measure of justification for the failure to develop a formalized system for handling export sales. At the same time, the adoption of an ad hoc method of selling skim milk powder abroad made it easy, if not inevitable, for an exporter who might be disadvantaged by the uncertainties inherent in such an undefined procedure to believe that his reverses were deliberately intended rather than the result of mischance. The Canadian Dairy Commission displayed little awareness of its own vulnerability in failing to develop a more objective and defensible sales procedure.

The conclusion that there was no purposive, personal, persisting or systematic discrimination against the Schafers does not mean that there might not have been unsystematic, temporary or incidental discrimination of one form or another. Indeed, two instances or types of instances of such appear from the evidence. These instances, although referred to below, have no material significance so far as the claim of Schafer Bros. Ltd. is concerned.

The first instance involves the answering by the Canadian Dairy Commission of inquiries from prospective foreign purchasers for the purchase of products. As was set out in connection with the last portion of Allegation B.8, there were two or three instances in the evidence involving the potential sale of skim milk powder to foreigners when the Canadian Dairy Commission replied stating that it would not make such a sale itself, and referred the prospective purchaser to two or three named Canadian exporters. On none of the occasions did the names given to the

prospective purchaser include that of Schafer Bros. Ltd. Although one can understand the practical reasons for this type of response to a general inquiry, it is obviously undesirable, and a bad practice, for the Canadian Dairy Commission to respond in such a manner. As indicated above, however, these particular instances were not demonstrated to have had any adverse effect whatever on the private exporters who were not referred to, or recommended, in the responses, of the Canadian Dairy Commission.

The other instance concerns the selection by the Canadian Dairy Commission of an agent in 1977 for use in connection with its sales to CONASUPO. Although the documentation prepared by the Canadian Dairy Commission in connection with the selection of Ault Foods (1975) Ltd. suggests that an objective and disinterested selection process in fact took place, yet from the evidence of Mr. Gilles Choquette at this Inquiry it was established that he had initially wished to see that the Granby Co-op was appointed as the Canadian Dairy Commission's agent:

[English Translation, Transcript p. 5060]

Q: Did you meet people of the Coopérative Agricole de Granby?

A: In March, at the end of March, I contacted the Co-opérative de Granby to ask them if they would be prepared to represent the Canadian Dairy Commission at CONASUPO. The reason for that was that I said to myself: if there is a profit in this operation, that Co-opérative represents twenty-five percent (25%) of Canadian milk. If there is a profit, it will return to the producer which means that if we change policy that our change of policy would be less questionable, seeing that if there was to be a profit it would return to the producer."

These views may also be questioned but, as indicated above, neither of the two examples was shown to have any material significance so far as the claim of Schafer Bros. Ltd. is concerned.

### 5. Unjust Enrichment

The law implies a debt or obligation that prevents a person from retaining a benefit derived from another where it is unjust or against conscience that he should not pay for it. This obligation of restitution, to prevent unjust enrichment, arises entirely outside and independently of the obligations or law of contract or tort. It does not depend upon an implied promise to pay, nor on any showing of bad faith. (See *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.*, [1943] A.C. 32, and see *Deglman v. Guaranty Trust Co. of Canada et al*, [1954] S.C.R. 725, *County of Carleton v. City of Ottawa*, [1965] S.C.R. 663, and *Cie Immobilière Viger Ltée v. Lauréat Giguère Inc.*, [1977] 2 S.C.R. 67)

There is no closed list of categories or specific factual circumstances that the law requires be met before the enrichment, at the other person's expense, will be found to have been "unjust." The law imposes an obligation to pay wherever it is just and reasonable to do so, having regard to the relationship between the parties and the circumstances of the case. See *James More & Sons Ltd. v. University of Ottawa* (1974), 5 O.R. (2d) 162 (Morden, J.). Among the many types of circumstances that Canadian courts have considered in determining whether it is just and reasonable to impose an obligation to pay, are whether there was a windfall gain to the party who in fact obtained the benefit, whether the benefit was created at the claimant's expense, and whether that expense was reasonably incurred on the basis of some express or implied request, understanding, reliance, reasonable expectation or false sense of security that was induced by the party who in fact obtained the benefit.

In cases where an unjust enrichment is found to have occurred, the measure of damages is the fair value of the claimant's services and outlay, which in turn is measured by what the other person would have had to pay for them on a purely business basis (see *Deglman v. Guaranty Trust Co. of Canada et al*, op. cit. per Rand, J. at 729 and per Cartwright, J. at 735.)

In view of the findings of fact made in this Report, however, the legal principles of unjust enrichment do not support the granting of relief to Schafer Bros. Ltd. in this matter.

### 6. Criminal Code

Michel Choquette refers inferentially in his pre-Inquiry writings to certain criminal acts. For example, as quoted elsewhere, he writes at page 175 of his letter of July 25, 1977 to Gilles Choquette (Exhibit 6, Volume VI) in this way:

"In addition, if it were to be proven that certain officials of the Canadian Dairy Commission received illegal "kickbacks" for their preferential treatment of Messrs. Gonzalez and Chisholm, or even extended favoured treatment to these traders without receiving supplementary remuneration, then this secretive transfer of the Mexican market for Canadian skim milk powder to these favoured individuals would surely constitute legal grounds for prosecution.

"Furthermore, if, in spite of the Canadian Dairy Commission's "official" statements that by 1971 it had monopolized the Mexican market for skim milk powder and that consequently it was no longer giving export subsidies to private traders for sales of this commodity to Mexico, it could be shown

that the same favoured Canadian exporters or any other traders received subsidies for sales to CONASUPO which the Canadian Dairy Commission refused to extend to Schafer Bros., it is probable that a court of law would find the past senior officials of the Commission guilty of fraud."

As a consequence, certain criminal law is reviewed even though, because of the findings of fact, it has no relevance in this matter.

The *Criminal Code of Canada* in Part III prescribes, in part, in respect of offences against the administration of law and justice, at Sections 107, 109, 110, 111, 113 and 114 as follows:

**"107. In this Part**

"evidence" means an assertion of fact, opinion, belief or knowledge whether material or not and whether admissible or not;

"government" means

- (a) the Government of Canada,
- (b) the government of a province, or
- (c) Her Majesty in right of Canada or in right of a province;

"judicial proceeding" means a proceeding

- (a) in or under the authority of a court of justice or before a grand jury,
- (b) before the Senate or House of Commons of Canada or a committee of the Senate or House of Commons, or before a legislative council, legislative assembly or house of assembly or a committee thereof that is authorized by law to administer an oath,
- (c) before a court, judge, justice, magistrate or coroner,
- (d) before an arbitrator or umpire, or a person or body of persons authorized by law to make an inquiry and take evidence therein under oath, or
- (e) before a tribunal by which a legal right or legal liability may be established,

whether or not the proceeding is invalid for want of jurisdiction or for any other reason;

"office" includes

- (a) an office or appointment under the government,
- (b) a civil or military commission, and
- (c) a position or employment in a public department;

"official" means a person who

- (a) holds an office, or
- (b) is appointed to discharge a public duty;

"witness" means a person who gives evidence orally under oath or by affidavit in a judicial

proceeding, whether or not he is competent to be a witness, and includes a child of tender years who gives evidence but does not give it under oath, because, in the opinion of the person presiding, the child does not understand the nature of an oath. 1953-54, c.51, s.99.

**BRIBERY OF OFFICERS**

**109. Every one who**

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, corruptly

- (i) accepts or obtains,
- (ii) agrees to accept, or
- (iii) attempts to obtain,

for himself or any other person any money, valuable consideration, office, place or employment with intent

- (iv) to interfere with the administration of justice,
- (v) to procure or facilitate the commission of an offence, or
- (vi) to protect from detection or punishment a person who has committed or who intends to commit an offence, or

(b) gives or offers, corruptly, to a person mentioned in paragraph (a) any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a) (iv), (v) or (vi),

is guilty of an indictable offence and is liable to imprisonment for fourteen years. 1953-54, c.51, s.101.

**FRAUDS UPON THE GOVERNMENT —**  
Contractor subscribing to election fund —  
Punishment

**110. (1) Every one commits an offence who**

(a) directly or indirectly

- (i) gives, offers, or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or
- (ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage, or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

- (iii) the transaction of business with or any matter of business relating to the government, or
- (iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(b) having dealings of any kind with the government, pays a commission or reward to or confers an advantage or benefit of any kind upon an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies upon him;

(c) being an official or employee of the government, demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies upon him;

(d) having or pretending to have influence with the government or with a minister of the government or an official, demands, accepts or offers or agrees to accept for himself or another person a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

- (i) anything mentioned in subparagraph (a) (iii) or (iv), or
- (ii) the appointment of any person, including himself, to an office;

(e) offers, gives or agrees to offer or give to a minister of the government or an official a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

- (i) anything mentioned in subparagraph (a) (iii) or (iv), or
- (ii) the appointment of any person, including himself, to an office; or

(f) having made a tender to obtain a contract with the government

- (i) gives, offers or agrees to give to another person who has made a tender, or to a member of his family, or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or
- (ii) demands, accepts or agrees to accept from another person who has made a tender a reward, advantage or benefit of any kind as consideration for the withdrawal of his tender.

(2) **Every one commits an offence who**, in order to obtain or retain a contract with the government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration

(a) for the purpose of promoting the election of a candidate or a class or party of candidates to the Parliament of Canada or a legislature, or

(b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the Parliament of Canada or a legislature.

(3) **Every one who commits an offence** under this section is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c.51, s.102.

#### **BREACH OF TRUST BY A PUBLIC OFFICER**

111. **Every official who**, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person. 1953-54, c.51, s.103.

#### **SELLING OR PURCHASING OFFICE**

113. **Everyone who**

(a) purports to sell or agrees to sell an appointment to or resignation from an office, or a consent to any such appointment or resignation, or receives, or agrees to receive a reward or profit from the purported sale thereof, or

(b) purports to purchase or gives a reward or profit for the purported purchase of any such appointment, resignation or consent, or agrees or promises to do so

is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c.51, s.105.

### **INFLUENCING OR NEGOTIATING APPOINTMENTS OR DEALING IN OFFICES**

#### **114. Everyone who**

(a) receives, agrees to receive, gives or procures to be given,

directly or indirectly, a reward, advantage or benefit of any kind as consideration for cooperation, assistance or exercise of influence to secure the appointment of any person to an office,

(b) solicits, recommends or negotiates in any manner with respect to an appointment to or resignation from an office, in expectation of a direct or indirect reward, advantage or benefit, or

(c) keeps, without lawful authority, the proof of which lies upon him, a place for transacting or negotiating any business relating to

- (i) the filing of vacancies in offices,
- (ii) the sale or purchase of offices, or
- (iii) appointments to or resignations from offices, is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c.51, s.106."

These provisions have been in effect, in all material respects, since prior to 1966 (the first year to which this Inquiry related).

As already stated, nothing in the evidence adduced before this Inquiry proves or even constitutes any reasonable basis for suspecting that any of these provisions of the Criminal Code have been breached.

Further, quite aside from criminal law, none of the evidence suggested that any impropriety of any sort has occurred, as alleged by or for Schafer Bros. Ltd. It is most unfortunate, and unfair in the extreme, that the unfounded and biased suspicions of Schafer Bros. Ltd. received the publicity they did.

A few further words perhaps should be added.

Effective April 26, 1976, the Criminal Code of Canada also made it an offence in Canada to conspire to breach the laws of a foreign country. Section 423(2) and (3) of the Criminal Code provides as follows:

"423(2) Every one who conspires with any one

(a) to effect an unlawful purpose, or

(b) to effect a lawful purpose by unlawful means, is guilty of an indictable offence and is liable to imprisonment for two years.

(3) Every one who, while in Canada, conspires with any one to do anything referred to in subsection (1) or (2) in a place outside Canada that is an offence under the laws of that place shall be deemed to have conspired to do in Canada that thing."

This provision could only conceivably be relevant to this Inquiry with respect to Allegation B.5 and part of Allegation B.8, relating to the appointment of an agent by the Canadian Dairy Commission in 1977 for its sales to CONASUPO. As set out above, there was no evidence before this Inquiry that establishes that this section was breached.

### **(B) FAIRLY**

#### **1. Illegal Acts**

##### **(a) Procedural and Substantive Fairness**

The concept of "fairness" has legal significance both in a procedural sense and, as touched upon earlier in this Chapter, in a substantive sense.

With respect to the procedural significance of the concept, it is clearly established in Canada that there is a common law duty on public officials to act fairly in making administrative or executive decisions. See, for example, *Nicholson v. Haldimand-Norfolk Regional Police Commissioners*, [1979] 1 S.C.R. 311, and *Martineau v. Matsqui Institution Disciplinary Board (No. 2)* (1979), 30 N.R. 119 (S.C.C.). As put by Lord Parker, C.J. in *Re H.K. (An Infant)*, [1967] 2 Q.B. 617 at 630:

"Good administration and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly..."

As is the case with the concept of unjust enrichment, it is not constructive to limit the elasticity of the concept of fairness by seeking to identify any particular elements of it that must always be present. As stated by Lord Justice Lawton in *Maxwell v. Department of Trade and Industry*, [1974] Q.B. 523 at 539:

"Like defining an elephant, it is not easy to do, although fairness in practice has the elephantine quality of being easy to recognize."

To apply the concept requires a judgement call, taking all the facts into account.

The question of fairness is affected, for example, by the nature of the act that caused the alleged injury. General policy decisions and their implemen-

tation (such as the discontinuance of the export subsidy for sales to CONASUPO in 1971) are of a different character from conduct relating to one specific trader. A scholar recently put it this way:

"Why not deal with problems of fairness and natural justice simply on the basis that, the nearer one is to the type of function requiring straight law/fact determinations and resulting in serious consequences to individuals, the greater is the legitimacy of the demand for procedural protection but as one moves through the spectrum of decision-making functions to the broad, policy-oriented decisions exercised typically by a minister of the crown, the content of procedural fairness gradually disappears into nothingness, the emphasis being on a gradual disappearance not one punctuated by the unrealistic impression of clear cut divisions presented by the classification process?"

Mullan, "*Fairness: The New Natural Justice*?" (1975), 25 U.T.L.J. 280 at p. 300 (Cited with approval by Dickson, J. on behalf of the Supreme Court of Canada in *Minister of National Revenue v. Coopers and Lybrand* [1979] 1 S.C.R. 495 at 505.

However, the requirements of procedural justice, and recognition of the interests of persons affected to be heard in government decision-making processes, cannot be taken to the point of seriously impairing the efficiency of public administration.

The process utilized by the Canadian Dairy Commission in the spring of 1977 to select an agent for the CONASUPO business was fair in all the circumstances. Applications and submissions were invited and, according to the sworn testimony, were considered in an impartial and disinterested way.

The law of procedural fairness is applied to determine whether or not a particular decision should be upset and declared a nullity. It does not by itself result in the granting of other relief. The law relating to fairness in a substantive sense, on the other hand, can lead to equitable or other relief to injured parties.

Nothing can usefully be added here, with reference to fairness as a substantive concept, to what has been set out above in this Chapter and what will be referred to below regarding obligations arising from a high degree of market power such as that possessed by the Canadian Dairy Commission.

#### (b) Duties of a Monopolist-Monopsonist

In view of the substantial influence which the Canadian Dairy Commission has over both the buying and the selling of skim milk powder in Canada, and particularly with respect to export sales

during the years 1966 to 1977, it is relevant to a consideration of whether it acted lawfully and fairly to consider the general duties of a monopolist (seller) and a monopsonist (buyer).

Substantial degrees of market power that result from an Act of Parliament do not create legal problems under the monopoly provisions of the Combines Investigation Act, by virtue of a specific exception in that statute. It is nevertheless widely acknowledged that "most of the more enduring, and some of the more inflexible, monopolies are not found in the private sector, but under government protection and regulation" (L.A. Skeoch, *Dynamic Change and Accountability in a Canadian Market Economy* (1976), p. 145). The difficulty that concentrated market power poses for society is that it gives to a few people an unusual power to act so as to restrain or obstruct entry (by new producers, in the context of the dairy industry), or expansion (by existing producers), or the offering of alternatives in the medium or longer term. If the powers are used so as to interfere with change over the longer term and the achievement of longer run economies, it leads to what Dr. Skeoch has described as "the slow accumulation of economic maladjustments, difficult to detect and impossible to prove" (*ibid.*, p. 141).

The common law imposed duties upon public utilities, who typically occupy monopoly position, to serve everyone who requests service on a non-discriminatory basis as to access and price, and to provide reasonable service at a reasonable price. These duties reflect what I understand to be the fundamental duty of a monopolist, namely, that he must not act in such a way as to exclude others, without reasonable justification, from the subject matter under his control or power. In this regard, the views expressed by Stark, J. in *R. v. Electric Reduction Co. of Canada Ltd.* (1970), 61 C.P.R. 235 at 236-237 are apposite:

"... it must be clear to any businessman or business company which finds itself in a monopolistic situation that in that case especially strict standards of conduct are required and must be met by any such business, and they are not entitled to protect and preserve that monopolistic situation by unfair means..."

It is not surprising, in view of the virtual absence of clear and established practices of the Canadian Dairy Commission in the administration of its policies of supply and export subsidy, that a suspicious trader would be likely to ascribe unfair and exclusionary motives to any refusal to accommodate his business interests. This may have more to do with appearances and the avoidance of an unnecessary poisoning of relationships, but the strength of the policy justification for an act which is *prima facie* exclusionary bears directly upon the legal duty that attaches to the substantial degree of market power.

There is nothing in the evidence before this Inquiry which established that the Canadian Dairy Commission did any exclusionary acts that caused any damage to Schafer Bros. Ltd.

## **2. General Considerations not Importing Legal Liability**

The Order-in-Council requires a determination as to whether the Canadian Dairy Commission, its officers and employees acted "lawfully and fairly" in their dealings with Schafer Bros. Ltd. The question is thereby raised as to whether there is some reasonably objective basis upon which it can be said that someone suffered unfairly as a result of a lawful act.

Schafer Bros. Ltd. claims to have been damaged by the Canadian Dairy Commission bidding directly to CONASUPO in 1968, proposing to bid in 1969, and subsequently, as of 1971, becoming the exclusive Canadian supplier of skim milk powder to CONASUPO. These acts were all clearly within the statutory powers of the Canadian Dairy Commission.

It will be recalled that both the trial judge and the Federal Court of Appeal in the *Manitoba Fisheries* case referred to above, found that on the facts of that case a lawful act had led to an unfair result. (As stated, the Supreme Court of Canada subsequently concluded that the refusal to compensate the plaintiff was unlawful on the facts of that case).

There is very little guidance on this matter. Two possible theoretical bases for such a conclusion occur to me. First, a loss of investment might result from a deliberate act which was not reasonably within the business risk that had been contemplated when an investment was made. This appears to have been so in the *Manitoba Fisheries* case. Second, despite non-discriminatory treatment, a loss might nevertheless be unique in character or magnitude to one or a few persons in a category of persons.

The first possible basis would seem to have no application to the facts before this Commission of

Inquiry. The private sector clearly had no right to expect that the Canadian Dairy Commission would not compete with it (on a non-exclusionary basis). As for its becoming the exclusive Canadian supplier of skim milk powder to CONASUPO, this was a result of a development in Mexican Government policy rather than of a choice of the Canadian Dairy Commission, and such policy changes must be taken to be one of the risks of dealing with a foreign government — just as customers change in any market.

As for the second possible basis referred to above, Michel Choquette stated as follows in his letter to Gilles Choquette dated July 25, 1977:

"...What happened to the Schafers did not happen to other Canadian exporters of milk powder. The Canadian Dairy Commission's decision to take over the Mexican market for Canadian skim milk powder affected them alone in that there were no other Canadian traders who participated in the creation of this market." (Exhibit 6, Vol. 6, p. 174)

The above statement is not consistent with the evidence. Several Canadian traders, including Eastern Townships Produce Ltd., Granby Co-op, Dominion Dry Milk Ltd., and Ronald A. Chisholm Ltd. had all expended time and effort during the 1960's in an attempt to sell skim milk powder to Mexico. All the precise details of the investment of these other traders was not in evidence before this Commission, because they were irrelevant, but there is no reason to believe that these private traders had not made at least as significant a commitment of time and money as had Schafer Bros. Ltd. Indeed, with particular respect to the uniqueness of any loss, perhaps a considerably stronger case could be made for Ronald A. Chisholm Ltd. than can be made for Schafer Bros. Ltd. in that the substantial sales of Canadian skim milk powder to CONASUPO in 1969 and 1970 had been sales of powder supplied by Ronald A. Chisholm Ltd.

Accordingly, in the result there is no basis for concluding that what happened to Schafer Bros. Ltd. was unfair.



## CHAPTER VIII

### SUMMARY OF FINDINGS

#### (A) ALLEGATIONS AND ISSUES

The allegations made by Schafer Bros. Ltd. and enunciated by Michel Choquette are all set out in the Statement of Allegations (See Appendix 5 to this Report). Each allegation was fully and carefully assessed, and a determination made in respect to each allegation, in Chapter VI of this Report.

The evidence does not support any of the allegations. Accordingly it was not established that the Canadian Dairy Commission, or any of its officers or employees, acted unlawfully or unfairly in any of their dealings with Schafer Bros. Ltd. during the years 1966 to 1977.

Therefore, Schafer Bros. Ltd. did not suffer any losses as a result of any conduct of the Canadian Dairy Commission, its officers or employees, during the years 1966 to 1977, and the conclusion is that Schafer Bros. Ltd. is not entitled to any compensation.

The statement of the Issues Raised by the Allegations required that certain determinations be made in respect to the powers, policies, practices and controls exercised and employed by the Canadian Dairy Commission, in the event that any of the allegations were found to be true. Notwithstanding the above-stated determinations regarding the allegations, however, I have noted that the evidence reviewed in Chapter IV disclosed that the policies, practices and controls that were exercised and employed by the Canadian Dairy Commission, while not harming Schafer Bros. Ltd., did raise questions as to their consistency with the objects of the Canadian Dairy Commission as prescribed by Section 8 of the *Canadian Dairy Commission Act*, although they were within the powers of the Canadian Dairy Commission as conferred by Section 9 of the Act. Serious doubts were raised as to whether such policies, practices and controls were consistent with the objects of the Canadian Dairy Commission as prescribed by Section 8, as to whether they were necessary to achieve those objects, and also as to whether the powers of the Canadian Dairy Commission were exercised within the framework of any general policy or criteria adopted to achieve the objects of the Canadian Dairy Commission as prescribed by Section 8 of the Act.

#### (B) OTHER FINDINGS

Because certain persons were made particular targets for criticism in the allegations, in the evidence

and also in the submissions of and on behalf of Schafer Bros. Ltd. and Michel Choquette, and because by way of claims and innuendoes it was suggested that such persons had committed improper and perhaps even criminal acts, and in view of the total lack of any evidence to support such allegations, claims and innuendoes, special findings are now made in respect to the conduct and character of these persons.

1. **Dr. S.C. Barry** — Dr. Barry was the first Chairman of the Canadian Dairy Commission, holding office from December 2, 1966 until March 30, 1973, when he retired. Prior to assuming the chairmanship of the Canadian Dairy Commission, Dr. Barry had spent 41 years with the Federal Department of Agriculture, including the years 1960 to 1966 as Deputy Minister.

Dr. Barry was the principal target of the Schafers' accusations and suspicions and, judging from the submissions made in writing at the end of the Inquiry by counsel for Schafer Bros. Ltd., those suspicions remained throughout and at the end of the Inquiry. In David Schafer's view, Dr. Barry was personally responsible for the lack of cooperation with Schafer Bros. Ltd. on the part of the Canadian Dairy Commission. Dr. Barry was among those who were alleged to have engaged in "irregular behaviour". At the end of the Inquiry, counsel for Schafer Bros. Ltd. in his written submissions referred to Dr. Barry as "deceitful", "dishonest", as having a selective memory, as having been discriminatory and as having engaged in other exclusionary conduct.

Mr. G.R. McLaughlin stated of Dr. Barry in evidence that if one wanted to find a better Chairman for the Canadian Dairy Commission "I don't know where you would go to look" (Transcript p. 4608). This opinion was generally confirmed by Mr. Timothy Chisholm, who stated in evidence that Dr. Barry had always been very cooperative, and by Mr. P. Pariseault, who referred to Dr. Barry as a devoted man and surely one of the most honest men he had ever met (Transcript p. 3660).

My finding is that Dr. Barry was a competent, experienced and outstanding public servant, and there was not a tittle of support in the evidence for the attack upon his character or his integrity. While there is and was, of course, nothing wrong with questioning or criticizing any policies Dr. Barry formulated or judgements he made in the course of his public duties as Chairman of the Canadian Dairy Commission, it was highly improper,

without basis and most reprehensible for David Schafer, George Schafer, Michel Choquette and their counsel to make, without any evidence, the allegations and the comments that were made. Once the media publicize such irresponsible allegations, as was done in this case shortly prior to the commencement of the public hearings, it is difficult to erase any effect.

2. **Mr. D.B. Goodwillie** — Donald B. Goodwillie was the Director of Marketing for the Canadian Dairy Commission from 1967 until his death in October 1972. He had spent most of his career prior to 1967 in the Dairy Division of the Federal Department of Agriculture, and for some period of time had been Director of that Division as well as having marketing responsibilities for the Agricultural Stabilization Board.

Prior to this Inquiry being held, Michel Choquette had stated (Exhibit 6, Vol. 7, p. 27) that:

"In spite of their differences with the Canadian Dairy Commission, the Schafers always remained on good terms with Mr. Goodwillie. There was never any doubt in their minds that Mr. Barry, and not Mr. Goodwillie, was the real source of their problems with the Commission"

In evidence before this Inquiry, however, and without any supporting detail or documents, David Schafer stated that Mr. Goodwillie became uncooperative, and George Schafer asserted that Mr. Goodwillie was one of those who engaged in "irregular behaviour".

My finding is that Mr. Goodwillie was a dedicated and competent public servant. There was no basis whatsoever in the evidence for any complaint or criticism that was made of him.

3. **Mr. H.R. Tudor Price** — Mr. Tudor Price became the Director, Marketing Intelligence, for the Canadian Dairy Commission in September 1975. Prior to joining the Canadian Dairy Commission, and following university training in the United Kingdom in Natural Sciences and Economics, he had worked in the private sector in the dairy business for eight years in the United Kingdom and for four years in Canada.

David Schafer stated in evidence that he did not trust Mr. Tudor Price. George Schafer's attitude seemed to be similar, although he did admit that Mr. Tudor Price had performed very effectively on behalf of Schafer

Bros. Ltd. at the meeting in the Philippines in January 1976.

My finding is that Mr. Tudor Price is, and always has been, a dedicated and competent public servant. The criticisms made of him by the Schafers are completely without foundation in the evidence.

4. **Mr. L.J. Marcellus** — Mr. Marcellus joined the Canadian Dairy Commission on April 1, 1968, as Assistant to Mr. Goodwillie in the Marketing Department. Mr. Marcellus became the Director of Marketing Operations for the Canadian Dairy Commission in October 1974.

Although George Schafer stated in evidence that Mr. Marcellus gave excellent cooperation regarding the Philippines endeavour, and although he said that he had no evidence that Mr. Marcellus intentionally provided the wrong lot numbers in early 1969 in connection with the 770 ton sale to CONASUPO, he nevertheless accused Mr. Marcellus of having engaged in "irregular behaviour" on the sole specific basis of his having provided lot numbers in early 1969 that were, in fact, wrong.

David Schafer stated in evidence that he had no specific complaints about Mr. Marcellus.

My finding, like the findings with respect to the other officials of the Canadian Dairy Commission referred to above, is that there is absolutely no basis in the evidence for any conclusion other than that Mr. Marcellus was a devoted and competent public servant.

5. **Ronald A. Chisholm Ltd.** — Ronald A. Chisholm Ltd. is a commodity merchant, founded in 1938, that trades domestically and internationally in food and industrial commodities. It has traded domestically in Canada in skim milk powder since the early 1950's, and has been engaged in the export of skim milk powder since approximately 1960. It is a large and experienced trader.

Mr. Timothy A. Chisholm, the President of Ronald A. Chisholm Ltd. and Mr. W. Pelley, a senior officer of the corporation, filed evidence statements, testified and were subject to cross-examination.

My finding is that no evidence whatsoever was adduced that suggested in any way that there was any "irregular behaviour" between officials of the Canadian Dairy Commission and Ronald A. Chisholm Ltd. as was alleged by Schafer Bros. Ltd. and Michel Choquette. Nor was there any evidence that Ronald A.

Chisholm Ltd. received any favoured treatment from the Canadian Dairy Commission. It was most unfair to this corporation that such allegations were made by Schafer Bros.

Ltd. and Michel Choquette, and I repeat the criticisms in this regard that I have stated above with respect to the allegations made against Dr. Barry.

## CHAPTER IX RECOMMENDATIONS

### (A) COMPENSATION

Having examined all the facts and considered all the submissions, I have concluded that there is no basis upon which I can recommend that any compensation be paid to Schafer Bros. Ltd. I therefore recommend that compensation not be paid.

In making this recommendation, not only is there no basis in law for recommending that any compensation be paid, there also was no evidence of unfair conduct towards Schafer Bros. Ltd. by the Canadian Dairy Commission, its officers or employees during the years 1966 to 1977 that could reasonably found a recommendation that compensation be paid to Schafer Bros. Ltd. Nor did anything unfair, unjust, unreasonable or unique happen to Schafer Bros. Ltd. arising, consequentially or otherwise, out of any act or omission of the Canadian Dairy Commission, its officers or employees, that could support an award of compensation to Schafer Bros. Ltd. on any compassionate or "grace and favour" basis.

Further in making this recommendation, it merits reiteration that the principal claim by Schafer Bros. Ltd. for compensation was based upon two facts, both of which turned out to be unfounded, namely, that Schafer Bros. Ltd. played a unique role in developing the Mexican market for Canadian skim milk powder and that the Canadian Dairy Commission deliberately misappropriated that market. It also merits reiteration that the main element in the calculation of the quantum of the principal claim for compensation was founded upon a theory of exclusionary trading rights, subscribed to by David Schafer and George Schafer, that is anachronistic and antithetical to Canadian public policy.

### (B) ASPECTS OF ACCOUNTABILITY

#### 1. *Policies and Practices*

##### (a) **Production Policy**

The need for a dairy products marketing board in Canada such as the Canadian Dairy Commission is indisputable. This is not to suggest, however, that a comprehensive supply management program need be adopted. Certain of the present policies of the Canadian Dairy Commission should be changed. The consequences of a continuation of the present policies of the Commission, for the producer, are almost certainly a drastic increase in the absolute cost barrier

and capital requirements barrier both to entry by new producers and to opportunities for established producers to expand output, which would carry with it a concentration of ownership and a movement towards vertical integration in the production and processing sectors of the dairy industry. By parity of reasoning, the burden on the consumer and the taxpayer, both in terms of cost and scarcity of product, will show a parallel escalation.

The concepts of "fair return", efficient producers" and "adequate supply", all embodied in Section 8 of the Canadian Dairy Commission Act are, however, complex, particularly in their longer run dimensions. They are normally best brought into a mutual accommodation by an effective market economy. Therefore, because well-known climatic problems and economic characteristics of the dairy products market require that some element of support and direction for producers should be undertaken by Government, one would have thought that the forms of support and direction adopted by the Canadian Dairy Commission as authorized by Government should promote rather than inhibit broad adjustments to market changes and should assist in maintaining efficiency and flexibility in the milk production program.

Serious questions have been raised by the evidence given at this Inquiry about the policies adopted by the Canadian Dairy Commission, in view of the objects of the Commission as set out in Section 8 of the *Canadian Dairy Commission Act*. The evidence points to a seemingly superficial way in which the central concepts of Section 8 are understood or interpreted by the Canadian Dairy Commission, and to an apparent lack of sophisticated or consistent rationale for that understanding or interpretation. Its views of its statutory responsibilities are very short run and almost ad hoc in their orientation. The apparent absence of any underlying long run rationale appears to apply equally to the price support system, the market-sharing quota system and the cost-justification approach to pricing. The apparent complete faith of the Canadian Dairy Commission in comprehensive supply management schemes is reflected in its apparent lack of awareness of or concern for the hidden costs of such schemes. This is important, not only because of the hundreds of millions of dollars of public funds directly absorbed on an annual basis, but also because of the substantial hidden cost of these systems as referred to in the evidence. The costs are borne by consumers, by the taxpayers, and also, over the long run, by the producers themselves.

The overwhelming advantage of the market is that it provides signals in the form of increases or decreases in prices to consumers and producers which provide the basis for changes in investment and in consumption patterns which in turn will promote both consumer welfare and producer advantages over the long run.

In order to obtain the basic advantages of the market processes, however, there must be relative ease of entry by new producers and an opportunity for established producers to expand output in response to price increases. The policies adopted should facilitate change and promote efficiency over the long run, rather than obstruct change, limit supply and enhance costs.

The policies that have been pursued by the Canadian Dairy Commission have tended to enhance barriers to entry by new producers and to make difficult the expansion of output by existing producers. The barriers to entry and expansion have been substantially raised by the high price and scarcity of milk quotas. When the increased cost of quota is incorporated into the price of milk by becoming embedded in the artificial cost-justification formula adopted by the Canadian Dairy Commission, the price to consumers is raised significantly and unwarranted windfall profits are created in the hands of the first generation of quota holders.

Perhaps because of the sophisticated and long run nature of several of the policy questions, and partly because of the effectiveness and organization of the producer and processor groups, the interests of the consumer do not appear to have been a substantial concern of the Canadian Dairy Commission. This is reflected in part by the Canadian Dairy Commission's simplistic understanding of the concept of "adequate supply" contained in Section 8 of the *Canadian Dairy Commission Act*, and also in its apparent lack of understanding of, or concern for, the barriers to entry and expansion that result from the quota system and from the "cost" components of the Returns Adjustment Formula.

In fact, it appears probable that the pricing system used by the Canadian Dairy Commission does not even benefit producers, except in the short term, and except for those producers who possessed quota when the prices were raised.

The issues and evidence which were the concern of this Inquiry do not provide a sufficient basis for suggesting detailed policies for adoption by the Canadian Dairy Commission. One thing does appear very clearly, however, and that is that the Canadian Dairy Commission should be required from time to time to give a full accounting of its policies, their justification and their effects, to someone who is independent of both the Canadian Dairy Commission and the principal interest groups. It is difficult to believe that processes of accountability for policy have been very vigorous in the past, otherwise some of the evidence on the policy questions that was given before this Inquiry would surely have been different.

Even although it is not possible in this Report to suggest detailed policies for the Canadian Dairy Commission, some general policy directions based on

the evidence can nevertheless be suggested to better implement the objects set out in Section 8, if that section is to have any long run significance:

1. It is vital to distinguish two broad objectives of public policy in relation to agriculture. First, there is the management of agricultural resources. The only reliable basis for efficient allocation of resources is the market price mechanism, although it must be adapted to the particular needs of agriculture. Producers must have some reasonable assurance of price levels in advance so they can make rational output and investment decisions. If the quota system were to be gradually phased out, a possible alternative that would appear to involve less harm to the public than results from the quota system would be a system of forward target prices supplemented by subsidies. Second, there is the income objective which almost certainly would require subsidies, a condition applying to many sectors of the economy. Such subsidies must be divorced from the volume of output and be based upon either the farm unit or, alternatively, be limited to a maximum payment per producer.
2. Processors should rely upon the open market system for assurance of supply. This would be phased in as the quota system is phased out.
3. The elimination of the quota system would go a long way towards the reduction of a large barrier to entry and to expansion, and would be of direct benefit to consumers by permitting better responses to market signals. In terms of Section 8 of the Act, the objective of adequate supplies would be more fully achieved if the quota system were eliminated. In all likelihood the prices would also be more favourable than those currently paid by the consumer, particularly in his double capacity of consumer plus taxpayer.

As for the institutional mechanisms by means of which the Canadian Dairy Commission might be held accountable for the policies it adopts and administers, there is no reason to believe that the existing mechanisms within Parliament, within the Department of Agriculture and within other supervisory bodies in government cannot adequately perform the task. There are sophisticated economic questions involved, to be sure, but there are also important social and political questions that require a broad perspective and, in many cases, political judgement.

The existing institutions for control and supervision of the Canadian Dairy Commission are perfectly able to safeguard the public and consumer interests against the organized influences exerted on behalf of the producers and processors. The existing institutions can also obtain access to whatever expert advisors or analytic skills that may be thought advisable or necessary in order to secure a full and proper accounting for policies from the Canadian Dairy Commission. What is required is a more formal organization of the process of appraisal by those institutions, so that a penetrating and profound evaluation will be carried out. The public interest requires that this be done.

As to this, it should be noted that while the economic and social implications of the issues that arise in Canadian federal dairy policy are of substantial significance to the public, it is unfortunate that many of these policy questions are difficult to define to persons who are not familiar with the dairy industry and therefore the media have been unable to deal with them effectively. As a consequence, this fact alone places an even greater burden upon the other existing institutions for evaluation and control.

#### **(b) Export Marketing**

Although there may be something to be said for a highly flexible export marketing policy that permits all major decisions by the Canadian Dairy Commission to be made in accordance with competitive market pressures as they are perceived by the Chairman or by the Commission from time to time, the benefits appear to be more theoretical than real. Furthermore, and more importantly, too great a price must be paid for this flexibility. That price results from having a system that is wide open to abuse, with no effective way to detect or police against acts of personal discrimination or acts of personal favoritism. Members of the public, including private exporters, are entitled to reasonable assurance that there is no abuse or incompetence, or even the appearance of such, that may be injurious or appear to be injurious to particular private traders. Not surprisingly, some traders, as was the case here with Schafer Bros. Ltd., will readily suspect some form of abuse or incompetence whenever they suffer or believe they have suffered from a purely discretionary act done by the Commission or by one of its officers or employees.

There is also a real risk that at least in some degree "flexibility" will amount to little more than an unrelated, perhaps inconsistent, series of ill-considered, ad hoc decisions made without reference to, or sense for, longer term direction or policies.

This Inquiry probably would not have been necessary had the Canadian Dairy Commission acted in accordance with published practices and procedures and on the basis of information that was readily

known or available to the public. A system administered in such a way would leave little room for suspicion and distrust. It would, further, assist private exporters to function effectively. Guidelines and practices should be adopted by the Canadian Dairy Commission in the disposal of Canadian skim milk powder surpluses.

In view of the fact that the Canadian Dairy Commission has such a substantial degree of market power, there is almost no limit to the potential for marketing errors, through incompetence and otherwise, and for ill-advised governmental interference for which there is practically no mechanism for accountability by the Canadian Dairy Commission to producers and consumers, who are the persons whose interests Parliament required it to serve. As a consequence, it is essential that producers and consumers have some way by which to assess the marketing performance of the Canadian Dairy Commission.

As a start, and directed to that purpose, the following guidelines and practices should be adopted by the Canadian Dairy Commission:

1. The Canadian Dairy Commission ought not engage in any exclusionary acts with respect to pricing or supplies to any private Canadian trader. For example, it ought not take advantage of the public purse to bid at a price below that which the available export subsidy would permit a private trader to offer in competition. Likewise, it ought not refuse supplies to any trader who is prepared to meet the Canadian Dairy Commission's published terms of sale when there are stocks available. The mere fact that the Canadian Dairy Commission might also wish to bid on the same business prospect is not a good reason to refuse to make the supplies available to the private trader in the event that he should be the successful bidder.
2. Even in the case of countries or other foreign purchasers who insist on dealing directly with the Canadian Dairy Commission as a government agency for all or most of its purchases, there would seem to be no reason why the current general export subsidy could not be available with respect to any sales that might possibly be made to such purchasers notwithstanding such general policy of such governments. It may be that no private trader will succeed in making any sales to such purchasers, but at the very least it would avoid any suggestion that it is the Canadian Dairy Commission who is responsible for excluding the private

trade. Also, to the extent that, or whenever, such foreign government or other purchaser relaxes its preferences for being supplied by the Canadian Dairy Commission, the private sector will be in a position immediately to seek the business.

3. The generally applicable export subsidy level or levels should be fixed and communicated publicly in advance in order that any private trader may readily be advised of them. This will mean that general subsidy levels would have to be announced from time to time. If and when special changes might be considered desirable for a particular situation and are offered to a particular trader, such changes as are offered to such trader should be offered to any other trader who inquires regarding the subsidy for the same business prospect. Further, information regarding any offers of subsidy and all subsidies granted, which differ from the generally applicable level, should be made available to the public after the transaction to which they pertain has closed. The information should include the pertinent details of the transaction and the identity of the recipient. The same would apply equally to all other financial terms of export sales.
4. As a general rule, all Canadian Dairy Commission information that would assist private traders should be publicly available on a timely basis, except, of course, for information received in confidence. For example, inventory records showing amounts, specifications and location should be kept current and publicly available. Enquiries from possible purchasers should also be publicly available together with any reply that might have been made by the Canadian Dairy Commission to such enquiries.

#### **(c) Openness in Policy Formation**

According to the evidence, in 1975 the Federal Government established, with the assistance of the Canadian Dairy Commission, a long-term Dairy Policy. The Returns Adjustment Formula, for example, was adopted pursuant to that policy. Mr. Cloutier testified that in 1980 a general assessment of the Policy was being undertaken to measure its impact and to consider any need for modifications.

It is self-evident that overall policy-making for an industry as important as the dairy industry is to

Canada should be as open a process as possible. Many groups of persons, including producers, processors, consumers and taxpayers, have a direct interest in both the short term and long term implications of such policies. Openness is an important adjunct of accountability.

#### **2. Questions and Complaints**

It is now apparent that one of the reasons why this Commission of Inquiry was necessary was the appearance to Schafer Bros. Ltd. and Michel Choquette that no body that was demonstrably independent of the Canadian Dairy Commission conducted a thorough investigation of the complaints of Schafer Bros. Ltd. and listened fully to both sides.

For this and other reasons, some independent body should be available to receive bona fide complaints made against the Canadian Dairy Commission, its officers or employees, whether those complaints are made by producers, processors, consumers, private traders or any other member of the public. It may be that there is in existence an independent body that could perform this function. In any event, complaints should be assessed in some orderly and generally accepted manner, independently of the Canadian Dairy Commission and its Consultative Committee. If such is done, the probable result will be that there will be a meaningful resolution of all bona fide complaints.

In recommending this, it should be emphasized that it is not being suggested that an ombudsman be appointed or that the role of a Member of Parliament be abridged. Instead, what is recommended is only that there should be some method or a known and recognizable forum available to deal with bona fide complaints so that any damage to third parties can be expeditiously and in a satisfactory manner alleviated or prevented.

#### **(C) COSTS**

It is recommended that consideration be given to the payment of certain costs which are of two categories, namely:

1. On the basis that the documentation prepared by Michel Choquette was useful to the Commission of Inquiry, and that the Canadian Dairy Commission was in part responsible for this Inquiry having been necessary, and on the basis that the Inquiry may have served a purpose over and above that of determining the validity of the complaints and allegations of Schafer Bros. Ltd. — that a payment be made to Schafer Bros. Ltd. in respect to the disbursement cost of preparing and assembling the documentation, including certain related out-of-pocket expenses, in the total amount of \$20,000.

2. On the basis that it was reasonable that (a) Messrs. Tudor Price, Marcellus, Ronald A. Chisholm Ltd. and Ault Foods (1975) Ltd. be separately represented by counsel in view of the nature of the allegations, and contrary to the submission of counsel for the Canadian Dairy Commission that separate representation by counsel for Messrs. Tudor Price and Marcellus was not necessary in view of their presence as counsel for the Canadian Dairy Commission at the Inquiry, and also that (b) Schafer Bros. Ltd. be represented by counsel — that one counsel fee be paid to each of Schafer Bros. Ltd. (in respect to the counsel services of Mr. Lande), Mr. Tudor

Price (in respect to the counsel services of Mr. Newcombe), Mr. Marcellus (in respect to the counsel services of Mr. Grant), Ronald A. Chisholm Ltd. (in respect to the counsel services of either Mr. Chisholm or Mr. Cooper) and Ault Foods (1975) Ltd. (in respect to the counsel services of Mr. Chadwick), such counsel fee being only for each day of attendance by counsel as named above at the oral hearings of the Commission, on a per-diem basis not to exceed the counsel fee that probably would be awarded for such an item in a bill of costs in a Federal Court of Canada party and party bill of costs taxation, taxed on a solicitor-client basis.



## APPENDICES

1. Orders-in-Council P.C. 1979-1586; P.C. 1979-1649; P.C. 1979-1653
2. Notice of Establishment of the Inquiry, and Press Release
3. Canadian Dairy Commission Act
4. Rules of Practice and Procedure of the Inquiry
5. Statement of Allegations
6. The Issues Raised by the Allegations
7. Commission of Inquiry Mailing List
8. Appearances
9. List of Witnesses
10. List of Exhibits
11. Topical Consideration of the Evidence
12. "An Outline of Some of the Economic Aspects of the Inquiry", prepared for the Commission of Inquiry by Dr. L.A. Skeoch
13. "The Evolution of Organization and Regulation in the Ontario and Canadian Dairy Industries", prepared for the Commission of Inquiry by Mr. George R. McLaughlin, with selected schedules.
14. Memorandum, prepared by Mr. P. Pariseault
15. "Review of the Canadian Dairy Commission, Background, Creation, Policy and Operations", prepared for the Commission of Inquiry by Dr. G.A. Hiscocks and Mr. L. Stephens
16. Evidence Statement of Michel Choquette.

## APPENDIX 1

P.C. 1979-1586

Certified to be a true copy of a Minute of a  
Meeting of the Committee of the Privy Council,  
approved by His Excellency  
the Governor General on  
the 25 May, 1979.

### CANADA PRIVY COUNCIL

WHEREAS the Committee of the Privy Council has had before it a report by the Prime Minister concerning certain allegations made by Schafer Bros. Ltd. and Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd., Montreal, Quebec during the years 1966 to 1977 relating to the export from Canada of skim milk powder;

AND WHEREAS the Committee is of the opinion that it would be in the public interest for the said allegations to be investigated;

The Committee, therefore, on the recommendation of the Prime Minister, advise that the Honourable Mr. Justice Hugh F. Gibson of the City of Ottawa, Province of Ontario, be appointed a Commissioner under Part I of the Inquiries Act to inquire into certain allegations made by Schafer Bros. Ltd. and Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd., Montreal, Quebec during the years 1966 to 1977 in respect of the export from Canada of skim milk powder, and

- (a) to define the issues raised by the said allegations;
- (b) premised on the said issues, to determine all relevant facts concerning the actions of the Canadian Dairy Commission, its officers and employees in their dealings with Schafer Bros. Ltd. during the years 1966 to 1977 relative to the export from Canada of skim milk powder;
- (c) to ascertain whether the Canadian Dairy Commission, its officers and employees have acted lawfully and fairly in their dealings with Schafer Bros. Ltd.; and
- (d) to report to the Governor in Council with regard to the matters investigated under paragraphs (a), (b) and (c) and to include in the report
  - (i) a recommendation as to whether any compensation should be paid to Schafer Bros. Ltd. and, if so, the basis on which such compensation should be determined, and
  - (ii) such other recommendations as the Commissioner may deem appropriate.

The Committee further advise

1. that the Commissioner be authorized to adopt such procedures and methods as he may from time to time deem expedient for the proper conduct of his duties;

2. that the Commissioner be authorized to engage the services of such counsel, staff, clerks and technical advisers as he may require at rates of remuneration and reimbursement to be approved by the Treasury Board;
3. that the officers and employees of departments and agencies of the Government of Canada render such assistance to the Commissioner as may be required for his activities;
4. that the Commissioner be authorized to sit at such times and at such places as he may decide from time to time;
5. that the Commissioner be authorized to exercise all the powers conferred by section 11 of the Inquiries Act; and
6. that the Commissioner be directed to report to the Governor in Council with all reasonable dispatch and file with the Privy Council Office his papers and records as soon as reasonable may be after conclusion of the inquiry.

CERTIFIED TO BE A TRUE COPY  
COPIE CERTIFIÉE CONFORME

"P.M. PITFIELD"

CLERK OF THE PRIVY COUNCIL  
LE GREFFIER DU CONSEIL PRIVÉ

P.C. 1979-1649  
13 June 1979

### CANADA

#### PRIVY COUNCIL — CONSEIL PRIVÉ

HIS EXCELLENCY THE GOVERNOR GENERAL  
IN COUNCIL, on the recommendation of the Prime Minister, is pleased hereby,

- (a) pursuant to paragraph (b) of the definition "department" in section 2 of the Financial Administration Act, to designate the Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission as a department for the purposes of the Financial Administration Act; and
- (b) pursuant to paragraph (b) of the definition "appropriate Minister" in section 2 of the Financial Administration Act, to designate the Prime Minister as the appropriate Minister with respect to the Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission.

CERTIFIED TO BE A TRUE COPY  
COPIE CERTIFIÉE CONFORME

"MARCEL MASSÉ"

CLERK OF THE PRIVY COUNCIL  
LE GREFFIER DU CONSEIL PRIVÉ

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 13 June, 1979

The Committee of the Privy Council, on the recommendation of the Prime Minister, advise that the Honourable Hugh F. Gibson appointed Commissioner under Order in Council P.C. 1979-1586 of 25th May, 1979, to inquire into certain allegations in respect of dealings of the Canadian Dairy Commission be known as the Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission.

CERTIFIED TO BE A TRUE COPY  
COPIE CERTIFIÉE CONFORME

"MARCEL MASSÉ"

CLERK OF THE PRIVY COUNCIL  
LE GREFFIER DU CONSEIL PRIVÉ

## APPENDIX 2 CANADA

### COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS CONCERNING COMMERCIAL PRACTICES OF THE CANADIAN DAIRY COMMISSION

TAKE NOTICE that by Orders in Council P.C. 1979-1586 dated 25 May 1979, and P.C. 1979-1653 dated 13 June 1979, the Committee of the Privy Council appointed the Honourable Mr. Justice Hugh F. Gibson a Commissioner under Part I of the Inquiries Act to inquire into certain allegations in respect of dealings of the Canadian Dairy Commission with Schafer Bros. Ltd. during 1966 to 1977, such Commission to be known as the "Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission".

1. The office for the Commission has been opened at 171 Slater Street, Vanguard Building, Ottawa, Ontario.
2. The Inquiry will be conducted in the following manner:
  - a) Rules of Practice and Procedure of the orderly conduct of the Inquiry have been adopted. Copies are available at the office of the Commission free of charge on request.
  - b) The Rules of Practice and Procedure ensure to all interested persons the opportunity to know the nature of the evidence that will be adduced before the Commissioner at any Public Hearing of the Commission.
  - c) Documents pertaining to the allegations that have been made, and the issues, will be deposited at the Commission's office and will be available there for public inspection.

d) All persons who wish to give evidence are required to file at the Commission's office, in advance of giving such evidence, a full written statement of the evidence which they propose to adduce. Persons who wish general guidance in the preparation of such statements may request assistance from Commission staff.

e) All statements of evidence so filed will be available for public inspection at the Commission's office in advance of any Public Hearing at which such evidence will be introduced before the Commissioner.

3. A public Organizational Hearing to determine general matters affecting the conduct of the Inquiry will take place at the Conference room located at the 20th floor, l'Esplanade Laurier, West Tower, 300 Laurier Street West, Ottawa, Ontario commencing Friday, November 23rd, 1979 at 10:30 A.M.
4. Subsequent Public Hearings to receive evidence will take place from time to time and notice of the date and place of each such Hearing will be given to those persons who advise the Registrar that they wish to receive such notices.

All inquiries and communications with the Commission or Commissioner should be made to the Registrar, viz:

Marcel A.J. Dompierre, Esq.  
Registrar  
Commission of Inquiry into  
Certain Allegations Concerning  
Commercial Practices of the  
Canadian Dairy Commission

MAILING ADDRESS: P.O. Box 1268, Station "B",  
Ottawa, Ont.  
K1P 5R3  
tel.: (613) 995-9568

## PRESS RELEASE

### COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS CONCERNING COMMERCIAL PRACTICES OF THE CANADIAN DAIRY COMMISSION

#### COMMISSION OF INQUIRY TO BEGIN PUBLIC HEARINGS

OTTAWA, November 6, 1979 — The Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission has announced the commencement of public hearings.

The Commission was set up in late May under the Honourable Mr. Justice Hugh F. Gibson to inquire into allegations in respect of dealings of the Canadian Dairy Commission during 1966-1977 with Schafer Bros. Ltd., a Montreal firm.

Copies of the rules of practice and procedure of the inquiry are available from the Commission's office. All documents pertaining to the allegations that have been made, including statements of proposed evidence filed as the inquiry proceeds, will also be available for public inspection at the Commission's office at 171 Slater St., Ottawa.

Persons who wish to give evidence are required to file a written statement of their proposed evidence with the Commission's office in Ottawa. Persons preparing such statements can receive general guidance from the Commission staff.

A public organizational hearing to deal with general matters affecting the conduct of the inquiry will be held in the

conference room, 20th Floor, West Tower, L'Esplanade Laurier, 300 Laurier St. W., Ottawa, on November 23, 1979, commencing at 10:30 a.m.

Anyone wishing to receive notice of subsequent public hearings at which evidence will be received should contact the Registrar of the Commission. The Commission's mailing address is Box 1268, Station B, Ottawa, Ontario, K1P 5R3. Telephone 613-995-9568.

## APPENDIX 3

### REVISED STATUTES OF CANADA

#### CHAPTER C-7

An Act to provide for the establishment of a dairy commission for Canada

##### SHORT TITLE

Short title 1. This Act may be cited as the *Canadian Dairy Commission Act*. 1966-67, c. 34, s. 1.

##### INTERPRETATION

Definitions 2. In this Act

"Commission"  
«Commission» "Commission" means the Canadian Dairy Commission established by this Act;

"dairy product"  
«produit laitier» "dairy product" means milk, cream, butter, cheese, condensed milk, evaporated milk, milk powder, dry milk, ice-cream, malted milk, sherbet, or any other product manufactured wholly or mainly from milk;

"market"  
«commercialiser» "market" means to market in interprovincial or export trade;

"milk",  
"cream"  
«lait» "milk" means milk from cows and "cream" means cream derived from such milk;

"Minister"  
«Ministre» "Minister" means the Minister of Agriculture;

"place"  
«lieu» "place" includes any vehicle, vessel, railway car or aircraft;

"regulated product"  
«produit réglementé» "regulated product" means a dairy product the marketing of which is regulated or prohibited by regulations made under this Act. 1966-67, c. 34, s. 2.

##### CANADIAN DAIRY COMMISSION

Commission established 3. (1) There shall be a corporation to be known as the Canadian Dairy Commission consisting of three members appointed by the Governor in Council to hold office during pleasure.

#### CHAPITRE C-7

Loi prévoyant la création d'une Commission canadienne du lait

##### TITRE ABRÉGÉ

1. La présente loi peut être citée sous le titre: Titre abrégé  
*Loi sur la Commission canadienne du lait*. 1966-67, c. 34, art. 1.

##### INTERPRÉTATION

2. Dans la présente loi

«commercialiser» signifie commercialiser sur le marché interprovincial ou sur le marché d'exportation;

«Commission» désigne la Commission canadienne du lait établie par la présente loi;

«lait» désigne le lait de vache et «crème» désigne la crème obtenue de ce lait;

«lieu» comprend tout véhicule, navire, wagon ou aéronef;

«Ministre» désigne le ministre de l'Agriculture;

«produit laitier» désigne le lait, la crème, le beurre, le fromage, le lait condensé, le lait évaporé, la poudre de lait, le lait sec, la crème glacée, la farine lactée, le sorbet ou tout autre produit entièrement ou principalement à base de lait;

«produit réglementé» désigne un produit laitier dont la commercialisation est réglementée ou interdite par des règlements établis aux termes de la présente loi. 1966-67, c. 34, art. 2.

Définitions

«commercialiser» "market"

«Commission» "Commission"

«lait» «crème» "milk"

«lieu» "place"

«Ministre» "Minister"

«produit laitier» "dairy..."

«produit réglementé» "regulated..."

##### COMMISSION CANADIENNE DU LAIT

3. (1) Est établie une corporation appelée Commission canadienne du lait formée de trois membres nommés par le gouverneur en conseil, qui occuperont leur poste à titre amovible. Création de la Commission

Chairman and Vice-Chairman	(2) The Governor in Council shall designate one of the members to be Chairman of the Commission and one of the members to be Vice-Chairman of the Commission.	(2) Le gouverneur en conseil désigne l'un des membres pour occuper le poste de président et un autre pour occuper celui de vice-président de la Commission.	Président et vice-président
Chief executive officer	(3) The Chairman is the chief executive officer of the Commission.	(3) Le président est le fonctionnaire administratif en chef de la Commission.	Fonctionnaire administratif en chef
Remuneration and expenses	(4) Each member of the Commission may be paid such salary or other remuneration as is fixed by the Governor in Council, and may be paid such travelling and living expenses incurred by him in connection with the performance of his duties as are fixed by the Governor in Council.	(4) Chaque membre de la Commission peut recevoir le traitement ou autre rémunération que fixe le gouverneur en conseil ainsi que les frais de voyage et de subsistance encourus par lui dans l'exercice de ses fonctions, tels qu'ils sont fixés par le gouverneur en conseil.	Rémunération et frais
Retirement age	(5) A member ceases to hold office upon reaching the age of seventy years.	(5) Un membre cesse d'occuper son poste dès qu'il atteint soixante-dix ans.	Âge de retraite
Temporary substitute member	(6) If any member of the Commission is absent or unable to act, the Governor in Council may appoint a temporary substitute member for such term and upon such conditions as the Governor in Council prescribes.	(6) Si quelque membre de la Commission est absent ou s'il est dans l'impossibilité d'agir, le gouverneur en conseil peut nommer, pour la durée et aux conditions qu'il prescrit, un remplaçant provisoire.	Remplaçants provisoires
Head office	(7) The head office of the Commission shall be in the city of Ottawa, but meetings of the Commission may be held at such other places as the Commission may decide. 1966-67, c. 34, s. 3.	(7) Le siège social de la Commission est établi en la ville d'Ottawa, mais les réunions de la Commission peuvent se tenir en tels autres lieux que la Commission peut décider. 1966-67, c. 34, art. 3.	Siège social
Agent of Her Majesty	4. (1) The Commission is for all purposes of this Act an agent of Her Majesty, and its powers under this Act may be exercised by it only as such agent.	4. (1) A toutes les fins de la présente loi, la Commission est mandataire de Sa Majesté et n'exerce qu'à ce titre les pouvoirs que lui confère la présente loi.	Mandataire de Sa Majesté
Contracts	(2) The Commission may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Commission.	(2) La Commission peut, pour le compte de Sa Majesté, conclure des contrats au nom de Sa Majesté ou au nom de la Commission.	Contrats
Property	(3) Property acquired by the Commission is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Commission.	(3) Les biens acquis par la Commission sont dévolus à Sa Majesté et les titres à ces biens peuvent être établis au nom de Sa Majesté ou au nom de la Commission.	Biens
Actions	(4) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Commission on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the Commission in the name of the Commission in any court that would have jurisdiction if the Commission were not an agent of Her Majesty. 1966-67, c. 34, s. 4.	(4) Des actions, poursuites ou autres procédures judiciaires concernant un droit acquis ou une obligation contractée par la Commission pour le compte de Sa Majesté, soit en son propre nom, soit au nom de Sa Majesté, peuvent être intentées ou engagées par ou contre la Commission au nom de cette dernière, devant toute cour qui aurait juridiction si la Commission n'était pas mandataire de Sa Majesté. 1966-67, c. 34, art. 4.	Actions

## CONSULTATIVE COMMITTEE

Consultative  
Committee

5. (1) The Minister shall appoint a Consultative Committee consisting of a chairman and eight other members.

Tenure of  
members

(2) Each of the members of the Consultative Committee shall be appointed for a term not exceeding three years, except that of those members first appointed three shall be appointed for a term of two years, three shall be appointed for a term of three years and three shall be appointed for a term of four years. 1966-67, c. 34, s. 5.

Functions of  
Consultative  
Committee

6. (1) The Consultative Committee shall meet at such times as are fixed by the Commission and shall advise the Commission on such matters relating to the production and marketing of dairy products as are referred to it by the Commission.

Remuneration  
and expenses

(2) The members of the Consultative Committee may be paid for their services such remuneration and expenses as are fixed by the Governor in Council. 1966-67, c. 34, s. 6.

## COMITÉ CONSULTATIF

5. (1) Le Ministre doit nommer un comité consultatif comprenant un président et huit autres membres.

Comité  
consultatif

(2) Chaque membre du comité consultatif est nommé pour un mandat de trois ans au plus, avec cette réserve que, parmi les membres nommés la première fois, trois le sont pour un mandat de deux ans, trois le sont pour un mandat de trois ans, et trois pour un mandat de quatre ans. 1966-67, c. 34, art. 5.

Durée du  
mandat des  
membres

6. (1) Le comité consultatif doit se réunir aux époques que fixe la Commission et doit conseiller la Commission sur les questions relatives à la production et à la commercialisation des produits laitiers qui lui sont renvoyées par la Commission.

Fonctions du  
comité  
consultatif

(2) Les membres du comité consultatif peuvent recevoir pour leurs services la rémunération et les frais que fixe le gouverneur en conseil. 1966-67, c. 34, art. 6.

Rémunération  
et frais

## STAFF

Officers and  
employees

7. (1) The Commission may  
(a) appoint such officers and employees as are necessary for the proper conduct of the work of the Commission; and  
(b) prescribe the duties of such officers and employees and, subject to the approval of the Treasury Board, prescribe the conditions of their employment.

Salaries and  
expenses of  
staff

(2) The officers and employees of the Commission appointed as provided in subsection (1) shall be paid such salaries and expenses as are fixed by the Commission with the approval of the Treasury Board. 1966-67, c. 34, s. 7.

## PERSONNEL

7. (1) La Commission peut

a) nommer les fonctionnaires et employés dont elle a besoin pour faire convenablement son travail; et  
b) prescrire les fonctions de ces fonctionnaires et employés et, sous réserve de l'approbation du conseil du Trésor, prescrire les conditions de leur emploi.

Fonctionnaires  
et employés

(2) Les fonctionnaires et employés de la Commission nommés comme le prévoit le paragraphe (1) doivent recevoir les traitements et les frais que fixe la Commission avec l'approbation du conseil du Trésor. 1966-67, c. 34, art. 7.

Traitements et  
frais du  
personnel

## OBJECTS OF THE COMMISSION

Objects of  
Commission

8. The objects of the Commission are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality. 1966-67, c. 34, s. 8.

## OBJETS DE LA COMMISSION

8. Les objets de la Commission sont d'offrir aux producteurs efficaces de lait et de crème l'occasion d'obtenir une juste rétribution de leur travail et de leur investissement et d'assurer aux consommateurs de produits laitiers un approvisionnement continu et suffisant de produits laitiers de bonne qualité. 1966-67, c. 34, art. 8.

Objets de la  
Commission

## POWERS OF COMMISSION

## POUVOIRS DE LA COMMISSION

## Powers

9. (1) Subject to and in accordance with any regulations made under this Act, the Commission may

(a) purchase any dairy product and package, process, store, ship, insure, import, export, or sell or otherwise dispose of any dairy product purchased by it;

(b) make payments for the benefit of producers of milk and cream for the purpose of stabilizing the price of those products, which payments may be made on the basis of volume, quality or on such other basis as the Commission deems appropriate;

(c) make investigations into any matter relating to the production, processing or marketing of any dairy product, including the cost of producing, processing or marketing that product;

(d) undertake and assist in the promotion of the use of dairy products, the improvement of the quality and variety thereof and the publication of information in relation thereto; and

(e) do all such acts and things as are necessary or incidental to the exercise of any of its powers or the carrying out of any of its functions under this Act.

## Inquiries

(2) For the purpose of carrying out any investigation under paragraph (1)(c), the Commission has all the powers of a commissioner appointed under Part I of the *Inquiries Act*.

## Rules of procedure

(3) The Commission may make such rules as it deems necessary for the regulation of its proceedings, for the fixing of a quorum for any of its meetings and generally for the conduct of its activities under this Act. 1966-67, c. 34, s. 9.

## Pouvoirs

9. (1) Sous réserve et en conformité de tous règlements établis aux termes de la présente loi, la Commission peut

a) acheter tout produit laitier et emballer, traiter, emmagasiner, expédier, assurer, importer, exporter, vendre ou autrement aliéner tout produit laitier acheté par elle;

b) faire des paiements au profit des producteurs de lait et de crème aux fins de stabiliser le prix de ces produits, ces paiements pouvant être faits d'après le volume, la qualité ou tout autre barème que la Commission peut estimer approprié;

c) faire des recherches sur toute question relative à la production, au traitement ou à la commercialisation de tout produit laitier et notamment au prix de revient de la production, du traitement ou de la commercialisation de ce produit;

d) encourager et aider à encourager la consommation des produits laitiers, l'amélioration de leur qualité et l'augmentation de leur variété, et la publication de renseignements y relatifs; et

e) faire tous actes et toutes choses nécessaires ou accessoires à l'exercice de ses pouvoirs ou de ses fonctions aux termes de la présente loi.

## Enquêtes

(2) En vue de poursuivre des recherches quelconques prévues à l'alinéa (1)c), la Commission possède tous les pouvoirs d'un commissaire nommé selon la Partie I de la *Loi sur les enquêtes*.

## Règles de procédure

(3) La Commission peut établir les règles qu'elle estime nécessaires pour régir ses délibérations, pour fixer le quorum de ses réunions et, en général, pour la conduite de ses activités en vertu de la présente loi. 1966-67, c. 34, art. 9.

## DUTIES OF COMMISSION

## DEVOIRS DE LA COMMISSION

## Commission to submit program to Minister

10. (1) Each year, following determination by the Governor in Council pursuant to the *Agricultural Stabilization Act* of the total amount to be paid by the Agricultural Stabilization Board to the Commission for the purpose of stabilizing the price of milk and cream, the Commission shall submit to the Minister an outline of the program by which it proposes to carry out its functions under this Act for the following fiscal year.

## La Commission doit soumettre un programme au Ministre

10. (1) Chaque année, après la détermination, faite par le gouverneur en conseil en conformité de la *Loi sur la stabilisation des prix agricoles*, du montant total à payer par l'Office de stabilisation des prix agricoles à la Commission aux fins de stabiliser le prix du lait et de la crème, la Commission doit soumettre au Ministre les grandes lignes du programme grâce auquel elle se propose d'exercer ses fonctions aux termes de la présente loi pendant l'année financière suivante.

Manner of  
carrying out  
functions

(2) The Commission shall carry out its functions under this Act in a manner that will achieve its objects and meet its obligations from the moneys available to it under this Act. 1966-67, c. 34, s. 10.

(2) La Commission doit exercer les fonctions que lui assigne la présente loi de façon à réaliser ses objets et à s'acquitter de ses obligations à l'aide des deniers dont elle peut disposer aux termes de la présente loi. 1966-67, c. 34, art. 10.

Façon d'exercer  
ses fonctions

Directions from  
Governor in  
Council or  
Minister

11. In exercising its powers under this Act or the regulations in relation to the importation or exportation of any dairy product, the Commission shall comply with any directions from time to time given to it by the Governor in Council or the Minister. 1966-67, c. 34, s. 11.

11. Dans l'exercice de ses pouvoirs aux termes de la présente loi ou des règlements en ce qui concerne l'importation ou l'exportation de tout produit laitier, la Commission doit se conformer aux directives qui lui sont données à l'occasion par le gouverneur en conseil ou le Ministre. 1966-67, c. 34, art. 11.

Directives du  
gouverneur en  
conseil ou du  
Ministre

#### REGULATIONS

Regulations

12. (1) The Governor in Council may make regulations regulating the marketing of any dairy product, including regulations

- (a) providing for the marketing of any dairy product on a quota basis;
- (b) designating the agencies through which any regulated product shall be marketed;
- (c) providing for the issue of licences to persons engaged in the production or processing of a regulated product for market, prescribing the fees therefor and providing for cancellation or suspension of licences;
- (d) prohibiting persons from engaging in the marketing of any dairy product, or any class, variety or grade thereof, in whole or in part except under the authority of a licence;
- (e) prescribing the books and records to be kept by persons engaged in the production or processing of a regulated product for market and the information to be furnished by such persons;
- (f) authorizing the Commission to fix, impose and collect levies or charges from persons engaged in the marketing of any dairy product or the production or processing of a regulated product for market and for such purposes to classify such persons into groups, fix the levies or charges payable by the members of the different groups and to use such levies or charges for the purpose of carrying out its functions under this Act;
- (g) providing for the seizure and disposal of any regulated product marketed in contravention of any regulation made under this section; and
- (h) generally, for carrying out the purposes and provisions of this Act.

#### RÈGLEMENTS

Règlements

12. (1) Le gouverneur en conseil peut établir des règlements portant sur la commercialisation de tout produit laitier, notamment des règlements

- a) instituant pour la commercialisation de chaque produit laitier un système de contingentement;
- b) désignant les organismes par l'intermédiaire desquels tout produit réglementé doit être commercialisé;
- c) visant l'émission de permis aux personnes qui produisent ou traitent un produit réglementé en vue de sa commercialisation, prescrivant les droits à verser pour ces permis et prévoyant leur annulation ou leur suspension;
- d) interdisant à toutes personnes de se livrer à la commercialisation de tout produit laitier, de quelque catégorie, variété ou qualité que ce soit, en totalité ou en partie, à moins d'y être autorisées par permis;
- e) prescrivant les livres et les registres que doivent tenir les personnes qui produisent ou traitent un produit réglementé en vue de sa commercialisation, ainsi que les renseignements que doivent fournir ces personnes;
- f) autorisant la Commission à fixer, imposer et percevoir des droits ou taxes que doivent verser les personnes qui se livrent à la commercialisation de tout produit laitier ou qui produisent ou traitent un produit réglementé en vue de sa commercialisation et, à ces fins, ranger ces personnes dans des groupes, fixer les droits ou les taxes payables par les membres des différents groupes et utiliser ces droits ou taxes pour l'exercice des fonctions que lui assigne la présente loi;
- g) prévoyant la saisie de tout produit réglementé commercialisé en violation d'un règlement établi en vertu du présent article, ainsi que la façon d'en disposer; et
- h) visant, de façon générale, la réalisation des objets de la présente loi et l'application de ses dispositions.



Regulation may  
be general or  
specific

(2) A regulation made under subsection (1) may be general or restricted to a specific dairy product, area, or group or class of persons. 1966-67, c. 34, s. 12.

(2) Un règlement établi en vertu du paragraphe (1) peut être général ou particulier à un produit laitier, à une région ou à un groupe ou une catégorie de personnes. 1966-67, c. 34, art. 12.

Un règlement  
peut être  
général ou  
particulier

Idem

13. The Governor in Council may make regulations requiring the registration of producers of milk and cream as a condition of the making of any payment under paragraph 9(1)(b) for the benefit of such producers and prescribing the books and records to be kept and the information to be furnished to the Commission by or on behalf of such producers. 1966-67, c. 34, s. 13.

13. Le gouverneur en conseil peut établir des règlements exigeant l'enregistrement, pour les producteurs de lait ou de crème, comme condition préalable à l'obtention d'un paiement effectué aux termes de l'alinéa 9(1)b) à l'avantage de ces producteurs et prescrivant les livres et registres à tenir ainsi que les renseignements à fournir à la Commission par ces producteurs ou pour leur compte. 1966-67, c. 34, art. 13.

Idem

#### EXPENDITURES

Administration  
expenses paid  
out of  
appropriations

14. All expenditures for salaries, travelling expenses and expenses of administration, excluding those that in the opinion of the Minister are directly attributable to action taken by the Commission to stabilize the price of any dairy product, shall be paid out of moneys appropriated by Parliament for the purpose. 1966-67, c. 34, s. 14.

14. Toutes les dépenses pour traitements, frais de voyage et d'administration, à l'exclusion de celles qui, de l'avis du Ministre, sont directement imputables aux mesures prises par la Commission pour stabiliser le prix de quelque produit laitier, doivent être payées sur les crédits affectés par le Parlement à cette fin. 1966-67, c. 34, art. 14.

Frais d'admini-  
stration payés  
sur les crédits  
votés

Canadian Dairy  
Commission  
Account

15. (1) There shall be established in the Consolidated Revenue Fund a special account to be known as the Canadian Dairy Commission Account, in this section called the "Account".

15. (1) Est établi au Fonds du revenu consolidé un compte spécial appelé Compte de la Commission canadienne du lait, au présent article appelé le «Compte».

Compte de la  
Commission  
canadienne du  
lait

Credits to  
Account

(2) There shall be credited to the Account  
(a) all moneys received by the Commission from its operations;  
(b) all licence fees, levies and charges paid to the Commission;  
(c) all loans made to the Commission by the Minister of Finance pursuant to section 16; and  
(d) all amounts paid to the Commission by the Agricultural Stabilization Board under the *Agricultural Stabilization Act* for the purpose of stabilizing the price of any dairy product.

(2) Doivent être crédités au Compte  
(a) tous les deniers reçus par la Commission et provenant de ses opérations;  
(b) tous les honoraires des permis, tous les droits et toutes les taxes payés à la Commission;  
(c) tous les prêts consentis à la Commission par le ministre des Finances conformément à l'article 16; et  
(d) tous les montants payés à la Commission par l'Office de stabilisation des prix agricoles aux termes de la *Loi sur la stabilisation des prix agricoles* en vue de stabiliser le prix de quelque produit laitier.

Montants  
crédités au  
compte

Charges to  
Account

(3) There shall be paid out of the Consolidated Revenue Fund and charged to the Account  
(a) all expenditures under this Act, except those to be paid pursuant to section 14; and  
(b) all amounts paid to the Minister of Finance in repayment of loans made to the Commission pursuant to section 16 or as interest on any such loans.

(3) Doivent être payés sur le Fonds du revenu consolidé et débités au Compte  
(a) toutes les dépenses ressortissant à la présente loi, sauf celles qui doivent être payées conformément à l'article 14; et  
(b) tous les montants payés au ministre des Finances en remboursement des prêts consentis à la Commission conformément à l'article 16 ou à titre d'intérêt sur de tels prêts.

Montants  
imputés sur le  
compte

Limitation	(4) No payment shall be made out of the Consolidated Revenue Fund under this section in excess of the amount of the balance to the credit of the Account. 1966-67, c. 34, s. 15.	(4) Il ne doit être fait sur le Fonds du revenu consolidé, aux termes du présent article, aucun paiement en excédent du solde au crédit du Compte. 1966-67, c. 34, art. 15.	Limitation
Loans to Commission	16. (1) At the request of the Commission, the Minister of Finance may, out of the Consolidated Revenue Fund, make loans to the Commission on such terms and conditions as are approved by the Governor in Council for the purpose of exercising any of the powers of the Commission described in paragraph 9(1)(a).	16. (1) A la demande de la Commission, le ministre des Finances peut, sur le Fonds du revenu consolidé et selon les modalités qu'approuve le gouverneur en conseil, consentir des prêts à la Commission en vue de l'exercice de l'un quelconque des pouvoirs de la Commission mentionnés à l'alinéa 9(1)a).	Prêts à la Commission
Limitation	(2) The total amount outstanding at any time of loans made under subsection (1) shall not exceed three hundred million dollars. R.S., c. C-7, s. 16; 1974-75-76, c. 74, Sch. (AGR) vote 50a.	(2) Le montant total des prêts consentis aux termes du paragraphe (1) et en circulation à quelque moment que ce soit ne doit pas dépasser cent millions de dollars. 1966-67, c. 34, art. 16.	Limitation

## GENERAL

## DISPOSITIONS GÉNÉRALES

Inclusion of dairy product on Import Control List	17. The Governor in Council may include on the Import Control List established under the <i>Export and Import Permits Act</i> any dairy product the import of which he deems it necessary to control for the purpose of implementing any action taken under this Act to support the price of that dairy product or that has the effect of supporting the price of that dairy product. 1966-67, c. 34, s. 17.	17. Le gouverneur en conseil peut inclure sur la liste de marchandises d'importation contrôlée établie aux termes de la <i>Loi sur les licences d'exportation et d'importation</i> tout produit laitier dont, à son avis, il est nécessaire de contrôler l'importation en vue de mettre en œuvre quelque mesure prise aux termes de la présente loi pour soutenir le prix d'un produit laitier quelconque ou qui a pour effet d'en soutenir le prix. 1966-67, c. 34, art. 17.	Inclusion d'un produit laitier sur la liste de marchandises d'importation contrôlée
Inspectors	18. The Commission may appoint or designate any person as an inspector for the purposes of this Act. 1966-67, c. 34, s. 18.	18. La Commission peut nommer ou désigner toute personne pour occuper le poste d'inspecteur aux fins de la présente loi. 1966-67, c. 34, art. 18.	Inspecteurs
Powers of inspector	19. (1) An inspector may at any reasonable time enter any place in which he reasonably believes there is any regulated product and may require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, records or documents relating to that product.	19. (1) Un inspecteur peut, à toute heure raisonnable, pénétrer dans un lieu où, d'après ce qu'il croit raisonnablement, se trouve un produit réglementé et requérir de toute personne la production, pour les inspecter, de tous livres, registres ou documents se rapportant à ce produit ou en prendre des copies ou des extraits.	Pouvoirs des inspecteurs
Certificate of designation	(2) An inspector shall be furnished by the Commission with a certificate of appointment or designation and on entering any place under subsection (1) shall, if so required, produce the certificate to the person in charge thereof.	(2) Un inspecteur doit être pourvu par la Commission d'un certificat de nomination ou de désignation et, en pénétrant dans tout lieu prévu au paragraphe (1) doit, s'il en est requis, produire le certificat à la personne qui a la charge des lieux.	Certificat de désignation

Assistance to  
inspector

(3) The owner or persons in charge of any place described in subsection (1) and every person found therein shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act and shall furnish him with such information with respect to any regulated product found therein as he may reasonably require. 1966-67, c. 34, s. 19.

(3) Le propriétaire ou les personnes ayant la charge d'un lieu décrit au paragraphe (1) et toute personne qui s'y trouve doivent prêter à l'inspecteur toute aide raisonnable en leur pouvoir pour permettre à l'inspecteur d'exercer ses fonctions en vertu de la présente loi et doivent lui fournir les renseignements qu'il peut raisonnablement exiger concernant tout produit réglementé trouvé dans les lieux. 1966-67, c. 34, art. 19.

Aide à  
l'inspecteurObstruction of  
inspector

**20.** (1) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under this Act or any regulation made thereunder.

**20.** (1) Nul ne doit entraver ni gêner un inspecteur agissant dans l'exercice des fonctions que lui assigne la présente loi ou un règlement établi en vertu de ladite loi.

Entrave à un  
inspecteur

## False statement

(2) No person shall make a false or misleading statement either verbally or in writing to an inspector engaged in carrying out his duties or functions under this Act or any regulation made thereunder. 1966-67, c. 34, s. 20.

(2) Nul ne doit faire une déclaration fautive ou trompeuse, verbalement ou par écrit, à un inspecteur agissant dans l'exercice des fonctions que lui assigne la présente loi ou un règlement établi en vertu de ladite loi. 1966-67, c. 34, art. 20.

Fausse  
déclarationOffences and  
penalties

**21.** (1) Every person who, or whose employee or agent, contravenes or fails to comply with any provision of this Act or any regulation made thereunder is guilty of an offence and liable

**21.** (1) Toute personne qui a violé une disposition de la présente loi ou d'un règlement établi sous son régime, ou a omis de s'y conformer, ou dont l'employé ou l'agent a violé une telle disposition ou a omis de s'y conformer, est coupable d'une infraction et encourt

Infractions et  
pénalités

(a) on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or

a) sur déclaration sommaire de culpabilité, une amende d'au plus cinq cents dollars ou un emprisonnement d'au plus six mois, ou à la fois l'amende et l'emprisonnement; ou

(b) on conviction upon indictment to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or to both.

b) sur déclaration de culpabilité sur un acte d'accusation, une amende d'au plus deux mille dollars ou un emprisonnement d'au plus un an, ou à la fois l'amende et l'emprisonnement.

Offence by  
employee or  
agent

(2) In a prosecution for an offence under this section it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified.

(2) Dans des poursuites pour infraction au présent article, le fait d'établir que l'infraction a été commise par un employé ou un agent de l'accusé, que l'employé ou l'agent soit identifié ou non, constitue une preuve suffisante de l'infraction.

Infraction par  
l'employé ou  
l'agent

## Defence

(3) Where it is established in any prosecution for an offence under this section that the offence was committed by an employee or agent of the accused, it is a defence to the accused that he exercised all due diligence to prevent the commission of the offence. 1966-67, c. 34, s. 21.

(3) Lorsqu'il est établi dans toute poursuite pour infraction au présent article que l'infraction a été commise par un employé ou un agent de l'accusé, le fait pour ce dernier d'avoir exercé toute diligence pour prévenir l'accomplissement de l'infraction constitue pour lui un moyen de défense. 1966-67, c. 34, art. 21.

Défense

## REPORT TO PARLIAMENT

Report to  
Parliament

**22.** The Commission shall, within three months after the termination of each fiscal year, submit to the Minister in such form as he

## RAPPORT AU PARLEMENT

Rapport au  
Parlement

**22.** La Commission doit, dans les trois mois qui suivent la fin de chaque année financière, soumettre au Ministre, sous la forme que ce

may prescribe, an annual report of the financial transactions and other actions taken under this Act, and the Minister shall lay the report before Parliament within fifteen days after the receipt thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting. 1966-67, c. 34, s. 22.

dernier peut prescrire, un rapport annuel des opérations financières et des autres mesures prises en vertu de la présente loi, et le Ministre doit présenter le rapport au Parlement dans un délai de quinze jours après qu'il a été reçu ou, si le Parlement n'est pas alors en session, l'un des quinze premiers jours où le Parlement siège par la suite. 1966-67, c. 34, art. 22.

#### APPENDIX 4

### COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS CONCERNING COMMERCIAL PRACTICES OF THE CANADIAN DAIRY COMMISSION

#### RULES OF PRACTICE AND PROCEDURE

#### INDEX TO PRACTICE AND PROCEDURE

#### RULE

- I OBJECTS AND LIMITS OF THE INQUIRY
- II PROCEDURE IN COMMISSIONER'S DISCRETION
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- IV SCHEDULING OF HEARINGS
- V STATEMENT OF ALLEGATIONS AND DEFINITION OF ISSUES
- VI INSPECTION AND RECEIPT OF INFORMATION
- VII ORGANIZATIONAL HEARINGS
- VIII EVIDENCE STATEMENTS AND WITNESSES
- IX THE SUMMONING OF WITNESSES AND THE PRODUCTION OF DOCUMENTS
- X RIGHT TO QUESTION WITNESSES AND MAKE SUBMISSIONS
- XI NOTICES
- XII COMMUNICATION WITH THE COMMISSIONER
- XIII PAYMENT OF COSTS OF REPORTS, RESEARCH, WITNESS FEES AND WITNESS EXPENSES
- XIV WRITTEN AND ORAL SUBMISSIONS

#### I OBJECTS AND LIMITS OF THE INQUIRY

1. By Order in Council P.C. 1979-1586 dated the 25th day of May, 1979, (a copy of which appears as Appendix I to this Reports.), this Commission was established "to inquire into certain allegations made by Schafer Bros. Ltd. and Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd., Montreal, Quebec during the years 1966 to 1977 in respect of the export from Canada of skim milk powder".
2. The Commission is further specifically required to define the issues raised by the said allegations, to determine all relevant facts premised on those issues, and "to ascertain whether the Canadian Dairy Commission, its officers and employees have acted lawfully and fairly in their dealings with Schafer Bros. Ltd.". The Commissioner must report on these matters. He must also make "a recommendation as to whether any compensation should be paid to Schafer Bros. Ltd. and, if so, the basis on which such compensation should be determined".
3. The Commissioner is also empowered to make such other recommendations as he may deem appropriate.

#### II PROCEDURE IN COMMISSIONER'S DISCRETION

1. This Practice and Procedure has been established to ensure the orderly conduct of the Inquiry, to ensure that all interested persons may know the nature of the evidence that will be submitted to the Commission at each Public Hearing and to ensure them of a full opportunity to be heard.
2. This Practice and Procedure is published to advise all interested persons of certain general aspects of the manner in which the Commissioner proposes to conduct the Inquiry.
3. Nothing in this Practice and Procedure shall restrict the Commissioner or derogate in any way from the right and duty of the Commissioner to conduct the Inquiry, including all hearings, in such manner as he deems appropriate in his sole discretion.

### III COMMISSION COUNSEL AND STAFF

1. The duties of Commission Counsel are to assist the Commissioner, to assist in the orderly conduct of the Inquiry and to ensure that all relevant factors are submitted to the Commission.
2. Any member of the public or representative of any interested agency, group or corporation or any representative of any government may inquire at the Commission offices of any matter concerning the subject matter of this Inquiry and the Commission staff will attempt to satisfy any inquiry so made.

### IV SCHEDULING OF HEARINGS

The Commissioner shall from time to time fix a time and place for each hearing and public notice of such will be given.

### V STATEMENT OF ALLEGATIONS AND DEFINITION OF ISSUES

1. Prior to the Organizational Hearing, Commission Counsel will deposit for public inspection at the Commission's offices the following material:
  - (a) Commission advisors' statement setting out how the Canadian Dairy Commission operated during the years 1966 to 1977 relating to the export from Canada of skim milk powder.
  - (b) Commission advisors' outline of the economic aspects of the Inquiry.
  - (c) Commission Counsels' suggested summary statement or statements of the allegations that have been made by Schafer Bros. Ltd. and Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd., Montreal, Quebec during the years 1966 to 1977 in respect of the export from Canada of skim milk powder, together with documents and papers relating thereto.
  - (d) Commission Counsels' suggested definition of the issues raised by the allegations.
  - (e) Such other documents or papers as Commission Counsel deems appropriate.
2. At the Organizational Hearing Commission Counsel will file the materials referred to in paragraph 1, above, as part of the record, and submissions may be made at that time regarding the statement of the allegations and the definition of the issues.
3. At or after the Organizational Hearing the Commissioner, after hearing all representations, will determine what are the allegations and pronounce a statement of the allegations and will define the issues and pronounce a statement of the issues raised in the said allegations. The Commissioner may from time to time further define the issues by enlarging, consolidating, deleting or modifying the said statement of the issues.
4. The evidence to be given during the Inquiry will be confined to that which is relevant to the allegations determined and the issues defined as set out above.

### VI INSPECTION AND RECEIPT OF INFORMATION

Any member of the public, during public business hours of the Commission's offices, may inspect the documents deposited pursuant to Rule V hereof, the transcripts of the Public Hearings and any material filed as evidence with the Commission, and receive copies thereof where feasible provided such person pays a charge of 20 cents per page to defray the costs of such copying. (A copy of this Practice and Procedure and the Order in Council setting up the Commission, however, will be supplied to any person free of charge).

### VII ORGANIZATIONAL HEARINGS

1. An Organizational Hearing shall be held prior to the Public Hearings. At the Organizational Hearing all interested members of the public or representatives of any interested agency, group, corporation or government will be asked to file, in writing, suggestions for any amendment which he or she wishes the Commission to consider to Commission Counsels' suggested statement of the allegations or definition of the issues.
2. (a) At the Organizational Hearing any member of the public or representative of any interested agency, group, corporation or government who wishes to have counsel represent his, her or its position in any or all of the Public Hearings of the Commission will be invited to request that they be permitted to have counsel participate on their behalf at any or all Public Hearings of the Commission and to have the role of such counsel in such hearings determined. Any member of the public or representative of any interested agency, group, corporation or government who intends to make such request at such Organizational Hearing shall file at the Commission's offices three (3) days prior to the date fixed for such Organizational Hearing a statement which shall set out the role that it is proposed that such counsel will take at any Public Hearing and the reason for the wish to be represented by counsel.
2. b) Any member of the public or representative of any interested agency, group, corporation or government who fails to file such statement, or having filed such statement fails to attend or to be represented at such Organizational Hearing with respect to such request, shall, subject to the provisions of Rule X, be deemed to have waived any right to have counsel attend at any Public Hearing other than in a capacity as an observer.
3. Such other matters as may be relevant will also be dealt with at the Organizational Hearing.
4. Such further and other Organizational Hearings may be held as the Commissioner deems appropriate.

### VIII EVIDENCE STATEMENTS AND WITNESSES

1. Any member of the public or representative of an interested agency, group, corporation or government who wishes to appear and adduce evidence before the Commission shall file at the Commission's offices, on or before such date as is specified by public notice as

the last day for filing of evidence statements, an evidence statement which shall contain the following:

- (a) His or her name, address and telephone number;
  - (b) A statement as to whether he or she has a general interest or a special interest in the inquiry and the nature of his or her general or special interest;
  - (c) A statement as to whether his or her evidence will be of a factual nature or of an opinion nature. If his or her evidence will be of an opinion nature, he or she shall specify the special skill which he or she possesses by reason of experience or study which has rendered him or her peculiarly skilled on the topic relevant to the allegations and issues on which he or she intends to give evidence;
  - (d) A statement identifying the particular allegation or issue, or allegations or issues, to which his or her evidence will be directed;
  - (e) A full statement of his or her proposed evidence;
  - (f) If he or she intends to introduce any exhibit before the Commission to supplement or explain his or her statement, such as supporting documents, he or she shall attach to the statement a separate page, listing such exhibits (and see paragraph 5, below);
  - (g) If he or she intends to rely in whole or in part on the testimony of an expert, he or she shall attach to the statement a separate page or pages which shall set out the name, address and telephone number of such expert, the qualifications of such expert, the proposed evidence of such expert and a written acknowledgement by such expert that he or she is willing to attend before the Commission and to submit to examination and cross-examination if required to do so;
  - (h) An acknowledgement that he or she will attend before the Commission and submit to examination and cross-examination if required to do so;
  - (i) His or her signature.
2. Any evidence statement which is not in compliance with these provisions will not be accepted for filing but shall be returned for revision, amendment or correction as the case may be.
  3. The Commission staff will be available at the Commission's office to provide general guidance to members of the public in the preparation of evidence statements.
  4. An evidence statement accepted for filing shall be available for public inspection and copying pursuant to the provisions of Rule VI.
  5. If it is stated, in an evidence statement, that the person filing such evidence statement intends to introduce any exhibits before the Commission, he or

she must file a copy of the proposed exhibit or exhibits at the time of filing his or her evidence statement. If he or she fails to do so, and in the absence of special reason being shown to the satisfaction of the Commissioner as to why and the extent to which an exception should be made to this Rule, the Commission will not receive such exhibits into evidence.

6. In the absence of special reason being shown to the satisfaction of the Commissioner as to why and the extent to which any exception should be made to this Rule (for example, a witness appearing pursuant to a subpoena), no oral evidence will be received by the Commission from any person who has not filed an evidence statement, or from any expert with respect to whose evidence a statement has not been filed as set out above.
7. A person who has filed an evidence statement shall, when giving oral evidence, be limited to such matters as are set out in his or her evidence statement, except that a witness will be allowed to give such additional evidence as may be necessary to explain or demonstrate the facts set out in his or her evidence statement.
8. Where special circumstances exist and the Commissioner deems it appropriate, an evidence statement may be filed by Commission Counsel as part of the record of a public hearing if it is verified by affidavit.
9. If it appears to Commission Counsel, after reviewing evidence statements filed with respect to any allegation or issue, to be considered by the Commission, that there is evidence in addition to the evidence set out in the evidence statements, filed, which should be adduced before the Commission, Commission Counsel shall be entitled to call witnesses with respect to such evidence.
10. Commission Counsel shall endeavour to file an evidence statement with respect to any such witnesses, together with any exhibits to be introduced before the Commission through such witness, prior to the date fixed for the Public Hearing at which such witness will testify, provided that failure to do so shall not preclude Commission Counsel from calling such witness and introducing any such exhibits notwithstanding anything herein to the contrary.
11. The Commissioner in his discretion may allow reply evidence to rebut evidence given by another witness or witnesses and, in that event, the evidence of such rebuttal witness or witnesses shall be limited exclusively to rebuttal and the provisions of Rule VIII (6) shall not apply to any such witness or witnesses.
12. A Commission Counsel will be present at all Hearings and shall call such witnesses to give oral evidence as he in his discretion deems advisable.

#### **IX THE SUMMONING OF WITNESSES AND THE PRODUCTION OF DOCUMENTS**

The Commissioner on application may authorize the issuance of a subpoena to compel the attendance of a witness before any Public Hearing to give evidence and to

produce such documents and things as may be deemed requisite. Any person may request the Commissioner to issue such subpoena by filing written application at the Commission's offices at least fifteen (15) days prior to the date fixed for the Public Hearing at which it is intended to summon such witness. The application shall set out the name and address of the applicant and of the proposed witness, the nature of the evidence, document or thing believed to be possessed by such witness and the reason why the applicant believes the testimony, document or thing in the possession of such witness to be important. The applicant shall be advised of the Commissioner's decision, as to whether a subpoena should be issued or not, at least ten (10) days prior to the date fixed for the Public Hearing at which such witness is to be called. If it is the decision of the Commissioner to grant such application, it is the responsibility of the applicant to arrange for service of such subpoena and to pay to the witness to be subpoenaed such witness fees and conduct money as are prescribed in the Rules of the Federal Court of Canada.

#### **X RIGHT TO QUESTION WITNESSES AND MAKE SUBMISSIONS**

1. Any member of the public or representative of an interested agency, group, corporation or government who is not represented by counsel pursuant to the provisions of Rule VII but who, as a result of specific evidence given or to be given at a Public Hearing, wishes to be represented by counsel, may request permission from the Commissioner to be represented by counsel for purpose of cross-examining witnesses, making submissions and presenting evidence.
2. Any member of the public or representative of an interested agency, group, corporation or government may request Commission Counsel to ask a particular question of a witness at a Public Hearing and Commission Counsel may, in his discretion, ask such question.

#### **XI NOTICES**

1. Notice that the materials referred to in Rule V(1), above, have been deposited at the Commission's offices for inspection will be sent to Schafer Bros. Ltd., to Mr. Michel Choquette, to the Canadian Dairy Commission, and to such other persons as may be interested or the Commissioner deems appropriate.
2. All notices of Organizational Hearings and Public Hearings shall be published in such newspapers, periodicals and other manner as the Commissioner in his discretion may determine.
3. The Registrar of the Commission shall cause to be published, as aforesaid, the following:
  - (a) Initial Notice of the Establishment of the Commission and its purpose at such time as may be determined by the Commissioner;
  - (b) Notice of any Organizational Hearing within a reasonable time prior to the date fixed for such Organizational Hearing;

- (c) Notice of each Public Hearing for such days prior to the date fixed for any such Hearing as may be determined by the Commissioner.

4. No notice of any adjourned Public Hearing shall be published unless such a notice is deemed by the Commissioner to be advisable.

#### **XII COMMUNICATION WITH THE COMMISSIONER**

All communication with the Commission or the Commissioner shall be through and by the Registrar.

#### **XIII PAYMENT OF COSTS OF REPORTS, RESEARCH, WITNESS FEES AND WITNESS EXPENSES**

1. The Commissioner shall only consider authorizing, subject to approval by the Treasury Board, the payment of costs of such research, preparation of reports and witness fees on request of Commission Counsel as being necessary to enable Commission Counsel to adduce evidence before the Commission of all relevant factors as referred to by Rule III (1) and VIII hereof, or as the Commissioner otherwise deems necessary.
2. The Commissioner may in conjunction with his report recommend that certain payment be made to specific persons, agencies, groups or corporations who participate in the Inquiry to help defray the costs of their participation.

#### **XIV WRITTEN AND ORAL SUBMISSIONS**

On the conclusion of Public Hearings the Commissioner may, if he deems advisable, request oral or written submissions.

Dated this 9th day of October 1979.

Commission of Inquiry into Certain Allegations  
Concerning Commercial Practices of the  
Canadian Dairy Commission  
171 Slater Street  
Vanguard Building, 11th Floor  
Ottawa, Ontario  
Tel. (613) 995-9568

#### **MAILING ADDRESS:**

P.O. Box 1268  
Station "B"  
Ottawa, Ontario  
K1P 5R3

**APPENDIX 5**  
**STATEMENT OF THE ALLEGATIONS**

As suggested by Commission Counsel  
(Rule V (1) (c))

and

As amended (as underlined) at the  
request of Counsel for Schafer Bros. Ltd.

I. The Canadian Dairy Commission (hereinafter referred to as the "C.D.C."), its officers and employees acted unlawfully or unfairly during the years 1966 to 1977 in their dealings with Schafer Bros. Ltd. relating to the export from Canada of skim milk powder in that:

A.1.(a) The C.D.C. excluded Schafer Bros. Ltd. from the business of supplying Canadian skim milk powder to CONASUPO (a Mexican agency), and diverted business opportunities with CONASUPO to itself and to others, despite the following facts:

- (i) The interest of CONASUPO in Canadian skim milk powder resulted substantially from promotional efforts made and expense incurred by Schafer Bros. Ltd; and
- (ii) The promotional efforts were made and the expense was incurred by Schafer Bros. Ltd. in reliance upon assurances by the C.D.C. to Schafer Bros. Ltd. that the C.D.C. would cooperate fully with Schafer Bros. Ltd. in the event that possibilities of sales to CONASUPO materialized.

(b) In excluding Schafer Bros. Ltd. as aforesaid:

- (i) The C.D.C. used information supplied to it by Schafer Bros. Ltd. at the request of the C.D.C., which information had been obtained by Schafer Bros. Ltd. in the course of making its promotional efforts and investment;
- (ii) The C.D.C. took unfair advantage of its control over large stocks of Canadian skim milk powder and of its power to determine and grant export subsidies, and not so as to limit the generality of the foregoing, more specifically in that:
  - a) on April 26, 1968, the C.D.C. refused to provide 400 metric tons of high heat powder with a production date of 90 days or less, thereby causing Schafer Bros. Ltd. to be unable to be awarded a contract, and
  - b) on June 26, 1968 the C.D.C. refused to provide 330 metric tons of low heat powder, thereby causing Schafer Bros. Ltd. to be unable to be awarded a contract;
- (iii) The C.D.C. falsely represented that CONASUPO insisted upon dealing directly with the C.D.C.; and in fact in 1967, the C.D.C. proposed a direct agency to agency agreement with CONASUPO and Mr. S.C. Barry, then Chairman of the C.D.C. flew to Mexico in Oct. 1967 in order to negotiate such a direct agreement;

- (iv) The C.D.C. did not reveal to Schafer Bros. Ltd. its intentions to take over the market for the sale of Canadian skim milk powder to CONASUPO until this taking over took place in 1971-1972;
  - (v) The C.D.C. on several occasions was deliberately vague in its representations to Schafer Bros. Ltd. concerning availability of supplies and the amount of subsidy to be given, and
  - (vi) In 1971, the C.D.C. officially took over the market for the sale of Canadian skim milk powder to CONASUPO, thereby making it impossible for Schafer Bros. Ltd. to benefit from the 13 years of investment and promotional efforts which it had spent in the development of this market.
2. In January 1968 the C.D.C. prevented Schafer Bros. Ltd. from taking advantage of the first opportunity to make a major sale of Canadian skim milk powder to CONASUPO by:
- (a) refusing to make its stocks available to Schafer Bros. Ltd.,
  - (b) refusing to cooperate with respect to subsidies and financial arrangements,
  - (c) not indicating its intention of competing directly with Schafer Bros. Ltd. for a CONASUPO tender until January 24, 1968, and
  - (d) making a direct offer itself to CONASUPO involving C.D.C. stocks and benefitting from subsidies and financial arrangements which the C.D.C. had accorded to itself.
3. In August 1968 the C.D.C. sold a large quantity of skim milk powder to competitors of Schafer Bros. Ltd. at a price considerably lower than had been offered unsuccessfully by Schafer Bros. Ltd. to the C.D.C. for skim milk powder in January 1968, and considerably lower than was subsequently offered to Schafer Bros. Ltd. in October 1968. In fact some of the powder which was actually delivered by the C.D.C. constituted fresh 1969-produced powder. The C.D.C. thereby prevented Schafer Bros. Ltd. for almost two years from competing effectively in the sale of skim milk powder to certain foreign countries.
4. In the spring of 1969, the C.D.C. made it unnecessarily difficult for Schafer Bros. Ltd. to fill its first order from CONASUPO by:
- (a) repeatedly giving false and misleading information to Schafer Bros. Ltd. as to the availability, location and the heat treatment and bacteria characteristics of the skim milk powder available from the C.D.C. for the transaction,
  - (b) refusing to cooperate concerning financial arrangements, and
  - (c) causing Schafer Bros. Ltd. to incur additional laboratory, manufacturing, and transportation costs in order for them to be able to fulfil CONASUPO's contractual requirements.



5. In the spring of 1969, the C.D.C. prevented Schafer Bros. Ltd. from winning a contract with CONASUPO for the supply of 25000 tons of skim milk powder by:
    - (a) giving false and misleading information to Schafer Bros. Ltd. regarding the payment of export subsidies to Canadian firms dealing through foreign agents,
    - (b) refusing to make its stocks available to Schafer Bros. Ltd. and then agreeing to make its stocks available to other Canadian exporters, and
    - (c) discouraging Schafer Bros. Ltd. by announcing its intention of making a direct offer by itself to CONASUPO, involving C.D.C. stocks and benefitting from subsidies and financial arrangements which the C.D.C. would accord to itself.
  6. In 1969, 1970 and 1971, Schafer Bros. Ltd. lost out to a competitor on sales to CONASUPO as a direct result of irregular behaviour on the part of the senior officials of the C.D.C.
  7. In 1971, the C.D.C. frustrated a maturing business opportunity for Schafer Bros. Ltd. to structure a combination wheat/powder deal with Mexico by selling a large quantity of skim milk powder to CONASUPO.
  8. In the winter of 1975-1976, when the Philippines invited tenders for a large three year contract the C.D.C. made it unnecessarily difficult for Schafer Bros. Ltd., which was the only Canadian trader contending, to compete with foreign competitors by
    - (a) its lack of cooperation in providing timely assurances of prices and supplies, and also regarding preparation and support for important meetings, and
    - (b) falsely denying that a request had come from Manila for the Commission to attend an important meeting.
  9. In 1977, the C.D.C. made it virtually impossible for Schafer Bros. Ltd. to take advantage of the following business opportunities by failing to answer its inquiries or by unduly delaying information regarding the availability of supplies, subsidies or potential sale opportunities:
    - (a) a Peruvian inquiry in March concerning a certain type of high stabilized heat powder;
    - (b) a Mexican inquiry in August for a potential sale of 30000 tons of skim milk powder; and
    - (c) an Algerian call for tenders in November for 10000 tons of skim milk powder and 6000 tons of anhydrous milk.
  10. In 1977, the C.D.C. unnecessarily required an attestation certificate for Schafer Bros. Ltd. to export 1000 tons of skim milk powder to be used as animal feed in Chile.
- B. 1. The C.D.C. competed unnecessarily with private Canadian exporters.
2. The C.D.C. did not favour Canadian exporters, who dealt directly with foreign purchasers, over exporters who dealt through foreign agents.
  3. The C.D.C. did not offer reasonable assistance to private Canadian exporters in that:
    - (a) it did not cooperate fully in making supplies of skim milk powder readily available from its stocks, and
    - (b) it was inflexible with regard to the terms and conditions of financing transactions and in adjusting export subsidies.
  4. The C.D.C. was not sufficiently aggressive and efficient in assisting Canadian exporters, who were faced with stiff competition, to develop and maintain markets for surpluses of skim milk powder.
  5. The criteria and process by which the C.D.C. selected exclusive agents for its foreign sales were not subjected to adequate public scrutiny.
  6. The C.D.C. did not take specifications of importing countries adequately into account when adopting measures for the development of the domestic dairy industry.
  7. In 1969 the C.D.C. had in its stocks skim milk powder which contained bacteria characteristics substantially outside the C.D.C.'s own purchasing requirements.
  8. The C.D.C. showed preference to certain Canadian exporters of skim milk powder other than Schafer Bros. Ltd. by storing surplus milk powder in these other exporters' warehouses, by naming some of them to the Consultative Committee, by appointing them marketing agents of the C.D.C. for certain international markets, and by suggesting their names as potential beneficiaries to other Canadian Government Departments and international clients.
- II. As a result of the conduct referred to in Part I, above, Schafer Bros. Ltd. suffered losses and is entitled to be compensated for those losses.

## APPENDIX 6

### THE ISSUES RAISED BY THE ALLEGATIONS (Rule V(1)(d))

1. Are the allegations contained in Part I of the Statement of Allegations, or any of them, true?
2. If the allegations contained in Part I of the Statement of Allegations, or any of them, are true:
  - (a) Were the policies, practices and controls that were employed by the Canadian Dairy Commission consistent with the objects of the Canadian Dairy Commission as prescribed by section 8 of the Canadian Dairy Commission Act, R.S.C. 1970, c.C-7, and were they within the powers of the Canadian Dairy Commission as conferred by section 9 of that Act?

- (b) Were such policies, practices and controls necessary to achieve the objects of the Canadian Dairy Commission as prescribed by section 8?
  - (c) Were the powers of the Canadian Dairy Commission exercised within the framework of any general policy or criteria adopted to achieve the objects of the Canadian Dairy Commission as prescribed by section 8?
  - (d) Did the Canadian Dairy Commission or any of its officers or employees act unlawfully or unfairly in their dealings with Schafer Bros. Ltd. during the years 1966 to 1977?
3. If and to the extent that the Canadian Dairy Commission, its officers or employees acted unlawfully or unfairly during the years 1966 to 1977 in their dealings with Schafer Bros. Ltd. relating to the export from Canada of skim milk powder, did any such acts cause damage to Schafer Bros. Ltd.?
  4. Should any compensation be paid to Schafer Bros. Ltd. and, if so, upon what basis should it be determined?

#### APPENDIX 7

##### NAMES AND ADDRESSES FOR DIRECT MAILING OF COMMISSION PAPERS

1. (Canadian Dairy Commission  
2197 Riverside Drive  
Ottawa, Ont.)

Mr. Elwood G. Hodgins, Vice-Chairman  
Mr. H.M. Johnson, Commissioner  
Mr. L. J. Marcellus, Director Marketing Operations  
Mr. R. Tudor Price, Director, Market Intelligence  
Mr. R. Cloutier, Economic Advisor  
Mr. R.G. Lalonde, Director, Information  
Mr. W.A.J. Lenhardt, Legal Services, Dept. of Justice

Dr. S.C. Barry  
1004 — 200 Rideau Terrace  
Ottawa, Ont.

Mr. Ellard J. Powers  
R.R.#1  
Beachburg, Ont. K0J 1C0

Mr. J. Thibodeau  
National Farm Products Marketing Council  
Place de Ville  
Centre Bldg.  
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Ottawa, Ont. K1R 7S3

Mr. L. Atkinson  
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(Tel.) 263-8113

Mr. J.R. Sherk  
1072 Geurtin Street  
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Dr. H. Mestern  
1078 Wiseman Cr.  
Ottawa, Ont.

2. (Agriculture Canada  
Sir John Carling Bldg.  
Central Experimental Farm  
Carling Avenue  
Ottawa, Ont. K1A 0C5)

Mr. G. Lussier, Deputy Minister  
Dr. G. Fleischmann, Senior Assistant Deputy Minister  
Dr. G.I. Trant, Senior Assistant Deputy Minister  
Mr. P.C. Caskey, Director General, Agricultural Development Directorate  
Mr. H. Migie, Director, Food Markets Analysis Division  
Dr. D. Hedley, Director, Commodity Market Analysis  
Dr. B.B. Perkins, Director, Production Analysis  
Mr. Bruce Wilson, International Market Development  
Market Development Directorate, Agriculture Canada  
Rm. 6119, Sir John Carling Bldg., Carling Avenue  
Ottawa, Ont. K1A 0C5

Miss Veronica McCormick, Commodity Market Analysis  
Mr. M.E. Cluff, Economist, Policy Planning and Economics  
Mr. G.J. Birks, Economist, Policy Planning and Economics  
Mr. Sherman Lyman, Legal Services, Dept. of Justice

The Honourable E.R. Whelan, M.P.  
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Ottawa, Ont. K1A 0A6

The Honourable H.A. Olson  
The Senate  
Rm. 456-SParliament Buildings  
Ottawa, Ont.  
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3. (Department of Finance  
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Mr. J. Cole, Acting Assistant Director, Resources Branch

4. Department of Industry Trade and Commerce  
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Office of Coordinator

Multilateral Trade Negotiations  
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Canadian Consulate General  
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5. (Treasury Board)

The Hon. Perrin Beatty, M.P.  
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Mrs. R. Hubbard  
Natural Resources Group Chief  
Industry & Natural Resources Division  
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Mr. E. Cooke  
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6. (Consumer & Corporate Affairs Canada  
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Dr. George Post, Deputy Minister  
Dr. G. Lermer, Director, Resources Branch,  
Bureau of Competition Policy

7. (Health and Welfare Canada)

A/Dir. Gen. J.N. Kent  
Acting Assistant Deputy Minister  
Policy Planning and Information Branch  
Room 1464  
Ottawa, Ont. K1A 0K9

8. Department of Regional Economic Expansion

Mr. J.R. Millar  
Director General, Project Assessment  
and Evaluation Branch  
Dept. of Regional Economic Expansion  
Ottawa, Ont. K1A 0M4

(By hand)  
200 Rue Principale  
6th Floor  
Rm 6309

9. Department of External Affairs  
(Oct. 29) 3 copies sent to:

Mr. C.T. MacDonald  
External Affairs  
Departmental Director  
Commercial & General Economic Policy  
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Lester Pearson Building  
Ottawa

10. (Department of Justice)

Mr. H. Calof  
Assistant Deputy Attorney General  
Finance and Trade Branch  
Rm. 125  
Justice Bldg.

Mr. J.S. Milligan  
Rm. 120  
Justice Bldg.

11. (Privy Council Office)

Mr. John Tait  
Assistant Secretary to the Cabinet  
(Legislation and House Planning)  
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Mr. John Lawrence  
Legal Counsel  
Privy Council Office  
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K1A 0A7

12. Loto Canada

Mr. C. Curran  
Legal Services  
Loto Canada Inc.  
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13. (Economic Council of Canada  
333 River Road, Vanier

(Mailing address)  
P.O. Box 527  
Ottawa, Ont. K1P 5V6)

Mr. R.A. Jenness, Executive Director of Regulation  
Reference  
Dr. W. Stanbury, Director of Research  
Dr. D.P. DeMelto (Senior Researcher)

14. National Farm Products Marketing Council

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Mrs. June Menzies, Chairman

15. (Private Traders)

Bethune Import-Export  
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International Trade Division  
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Toronto, Ontario  
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Attn: Mr. H.T. Miles

Coopérative Agricole de Granby  
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Granby, Quebec  
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Attn: Mr. Frank Brunet

Coopérative Fédérée de Québec  
1055 du Marché Central  
Montreal, Quebec  
Attn: Mr. Fernand Morin

Eastern Townships Produce Ltd.  
140 Leger Street  
Sherbrooke, Quebec  
Attn: Mr. Dean R. Bishop

Gay Lea Foods Co-operative Limited  
100 Clayson Road  
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M9M 2G7  
Attn: Mr. W. George Fice

Jay I. Nicholson Ltd.  
4889 Yonge Street  
Willowdale, Ontario  
Attn: Mr. Noel C. Partridge

RLW Racine Farm Supplies Ltd.  
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Attn: Mr. Robert L. Racine

Roger Moreau & Co. Ltd.  
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Attn: Mr. R.P. Moreau

Ronald A. Chisholm Limited  
Suite 2501, 2 Bloor St.  
Toronto, Ontario  
Attn: Mr. T.A. Chisholm

Terfloth & Kennedy Ltd.  
2075 University Street  
Montreal, Quebec  
Attn: Mr. R. English

West India Trading Co. Inc.  
261 St-James Street West  
Montreal, Quebec  
Attn: Mr. A. De Vasconcelos

Ault Foods (1975) Ltd.  
(P.O. Box 430)  
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Winchester, Ontario  
Attn: Mr. S. Ault

16. (Trade Associations)

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Ottawa, Ont. K1T 5K2  
Attn: Mr. John Jackson, President

Canadian Export Association  
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Attn: Mr. T. Burns, President

Importers Association  
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Toronto, Ont. M5J 1B7

17. (Producer Organizations)

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Executive Secretary  
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Mr. François Lemieux  
Legal Counsel of DFC  
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Christian Farmers Organization  
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National Farmers Union  
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British Columbia Federation of Agriculture  
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M9M 2G7

Mr. John Bilyea  
Secretary  
Ontario Cream Producers' Marketing Board  
50 Maitland St.  
Toronto, Ont. M4Y 1C7

Mr. Lorne Hurd,  
Manager  
Ontario Milk Marketing Board  
P.O. Box 4027, Station "A"  
Toronto, Ont. M5W 1K2

Mr. Harry Parker  
Secretary  
Ontario Milk Marketing Board  
P.O. Box 4027, Station "A"  
Toronto, Ont. M5W 1K2

QUEBEC

M. M. Gingras  
Secretary  
Cooperative Fédérée de Québec  
Box 500  
Youville Postal Sta.  
Montréal, Quebec  
H2P 2W2

M. Roch Morin  
Secretary  
Federation of Industrial Milk  
Producers of Quebec  
515 Avenue Viger  
Montréal, Quebec  
H2L 2P2

M. Henri Dorval  
Secretary  
Federation of Milk Producers  
of Quebec  
515 Avenue Viger  
Montréal, Quebec  
H2L 2P2

M. Jean-Marc Kirouac  
Secretary  
L'Union des Producteurs Agricoles  
515 Avenue Viger  
Montréal, Québec  
H2L 2P2

Mr. Clément Lanou  
Secretary  
Quebec Carnation Company Milk  
Producers Board  
4509 Bourque Blvd.  
Rock Forest, Québec  
J0B 2J0

#### NEW BRUNSWICK

Mr. George B. Whalen  
Secretary  
New Brunswick Milk Marketing Board  
P.O. Box 490  
Sussex, New Brunswick  
EOE 1P0

#### NOVA SCOTIA

Secretary  
Nova Scotia Milk Producers  
Association  
P.O. Box 784  
Truro, Nova Scotia  
B2N 5E8

#### PRINCE EDWARD ISLAND

Secretary  
P.E.I. Dairy Producers Association  
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420 University Ave.  
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C1A 7Z5

Mr. David Clemons  
Manager  
Holstein-Friesian Association of  
Canada  
41 George Street  
Brantford, Ontario  
N3T 5R4

#### 18. PROVINCIAL MINISTERS AND DEPUTY MINISTERS OF AGRICULTURE

Mr. Gerald O'Reilly  
Deputy Minister of Rural Agricultural  
and Northern Development  
Confederation Building  
St. John's, Newfoundland  
A1C 5T7  
Telephone: 147-9-737-3228

Mr. Walter V. Grant  
Deputy Minister of Agriculture and  
Marketing  
1649 Hollis Street  
Halifax, Nova Scotia  
B3J 2M4  
Telephone: 162-9-424-3244

Mr. Andrew W. Humphrey  
Deputy Minister of Agriculture  
and Forestry  
P.O. Box 2000, 11 Kent Street  
Charlottetown, P.E.I.  
C1A 7N8  
Telephone: 178-892-4101

Mr. H. Raymond Scovil  
Deputy Minister of Agriculture and  
Rural Development  
Research Station, P.O. Box 6000  
Fredricton, New Brunswick  
E3B 5H1  
Telephone: 173-9-453-2450

M. Ferdinand Ouellet  
Sous-ministre de l'Agriculture  
200-A chemin Ste-Foy  
Québec (Québec)  
G1R 4X6  
Téléphone: 187-9-643-2336

Mr. Kenneth Lantz  
Deputy Minister of Agriculture  
and Food  
Parliament Buildings  
Toronto, Ontario  
M7A 1A3  
Telephone: 186-9-965-1044

Mr. R.C. Bailey  
Deputy Minister of Agriculture  
159 Legislative Building  
Winnipeg, Manitoba  
R3C 0V8  
Telephone: 161-946-7231

Mr. A.J. Webster  
A/Deputy Minister of Agriculture  
Government Administration Building  
Regina, Saskatchewan  
S4S 0B1  
Telephone: 121-9-565-5170

Dr. J.G. O'Donoghue  
Deputy Minister of Agriculture  
Agriculture Building  
Edmonton, Alberta  
T5K 2C8  
Telephone: 176-9-427-2145

Mr. Sig B. Peterson  
Deputy Minister of Agriculture  
Legislative Building  
Victoria, B.C.  
V8V 1X4  
Telephone: 175-569-387-5121

#### 19. Trade Journals

Country Guide  
Western Canada  
1760 Ellice Avenue  
Winnipeg, Manitoba  
R3H 0B6

Farm and Country  
3rd Floor  
10 St. Mary Street  
Toronto, Ontario  
M4Y 1P9

Food in Canada  
481 University Avenue  
Toronto, Ontario  
M5W 1A7

La Terre de Chez Nous  
Head Office  
Bernard Danis  
National Advertising  
Manager  
515 Viger Avenue  
Montreal, Ontario  
H2L 2P2

Modern Dairy  
Suite 21  
698 Weston Road  
Toronto, Ontario  
M6N 3R3

Le Producteur Agricole  
P.O. Box 1367  
11 Principale Street  
Bedford, Quebec  
J0J 1A0

Country Guide  
Eastern Canada  
150 Eglinton Avenue E.  
Toronto, Ontario  
M4P 1E8

Food in Canada  
625 President Kennedy Ave.  
Montreal, Quebec  
H3A 1K5

La Terre de Chez Nous  
Ontario & U.S.A.  
Mr. Tom McGoey  
Advertising Representative  
Suite 615, Victoria Tower  
44, Victoria Street  
Toronto, Ontario  
M5C 1Y2

20. Others

The Honourable Warren Allmand  
House of Commons  
Confederation Building  
Rm 783-CB  
Ottawa, Ontario  
K1A 0A6

Dr. R.M.A. Loyns  
Professor  
Agricultural Economics  
University of Manitoba  
Winnipeg, Manitoba

Dr. J. Forbes  
Professor  
Business Administration  
University of British Columbia  
Vancouver, B.C.

Professor T.J. Warley  
Agricultural Economics  
University of Guelph  
Guelph, Ontario

Professor D. Hartle  
University of Toronto  
Toronto, Ontario

Consumers' Association of Canada  
Yvonne Miles, President  
200, 1 Avenue  
Ottawa, Ontario

Standing Senate Committee on  
Agriculture  
The Senate  
Ottawa, Ontario  
K1A 0A4  
Attention: Mr. Albert F. Chambers

M. Paul Pouliot  
Journaliste "La Presse"  
7 rue St. Jacques  
Montréal, Québec  
H2Y 1K9

21. Persons Requesting Ongoing Notices Pursuant to  
Notice of Establishment

Mr. Jean Doiron  
La Voie Acadienne  
C.P. 420  
Summerside, I.P.E.  
C1N 4K2

Mr. J.D. Wilson  
131 Parkdale Ave., Apt. 66  
Ottawa, Ontario  
K1Y 1E7

Mr. L. Benzley  
Box 211  
Vancouver, B.C.  
V6C 2M3

M. Herbert Chas Colling  
Agricultural Commentator  
CBC Windsor Radio  
267 Pellissier Street Security Building  
Windsor, Ontario  
N9A 4K5

M. Marcel Viau  
10 535 rue St-Firmin  
Montréal, Québec  
H2B 2G9

M. M. L. Poisson  
4837 Hutchison, #4  
Montréal, P.Q.  
H2V 4A4

M. Allan Lutfy  
Lavery, O'Brien  
P.O. Box 2555  
Station "D"  
Ottawa, Ontario  
K1P 5W6

Ministry of Agriculture and Food  
Minister's Office  
801 Bay Street  
11th Floor  
Toronto, Ontario  
M7A 1A2

Mr. Blair Murray  
Dairy Cattle Specialist  
Ontario Ministry of Agriculture  
& Food  
Kemptville, Ontario

Mrs. Barbara Wallace, M.L.A.  
Cowichan-Malahat  
Room 227  
Legislative Buildings  
Victoria, B.C.  
V8V 1X4

#### **APPENDIX 8**

#### **APPEARANCES**

The counsel or representatives who appeared throughout or at various times during the Inquiry on behalf of interested persons or bodies are as follows:

1. Mr. Bruce C. McDonald and Mr. Jean-Guy Caron for the Commission of Inquiry;
2. Mr. Richard Lande, Mr. Alex Paterson, Q.C., Mr. Cyril Schwisberg, Q.C., for Schafer Bros. Ltd. and Mr. Michel Choquette;
3. Mr. Jean Bruneau, Q.C. and Mr. Wayne A.J. Lenhart, for the Canadian Dairy Commission;
4. Mr. E. Peter Newcombe, Q.C. and Mr. D. Simmons for Mr. H.R. Tudor Price, Director of Marketing Intelligence for the Canadian Dairy Commission;
5. Mr. Ronald W. Chisholm, Q.C. and Mr. Gregory W. Cooper for Ronald A. Chisholm Ltd.;
6. Mr. Donald G. Grant for Mr. L.J. Marcellus, Director of Marketing Operations for the Canadian Dairy Commission;
7. Mr. John P. Nelligan Q.C. for Mr. Gilles Choquette, Chairman of the Canadian Dairy Commission;
8. Mr. James B. Chadwick, Q.C. and Ms. W. Bryans for Ault Foods Ltd.;
9. Mr. John Wilson and Mr. F.P. Monteleone, for Mr. Robert J. Bertrand, Director of Investigation and Research, Combines Investigation Act;
10. Mr. Ronald B. Bishop and Mr. D. Curtis Bishop, for Eastern Townships Produce Ltd.;
11. Mr. James H. Smellie for Dairy Farmers of Canada;
12. Mr. Paul Olivier for the Secretary of State for External Affairs;
13. Mr. Duff Friesen for the Attorney General of Canada and for the Secretary of State for External Affairs.

#### **APPENDIX 9**

#### **LIST OF WITNESSES**

1. Dr. G.A. Hiscocks and Mr. L. Stephens
2. Dr. Lawrence A. Skeoch
3. Mr. David Schafer
4. Mr. George Schafer
5. Mr. Michel Choquette
6. Mr. Henri Trochu
7. Mr. J. R. Sherck
8. Mr. Jules Thibodeau
9. Dr. S. C. Barry
10. Mr. Philippe Pariseault
11. Mr. L. J. Marcellus
12. Mr. Gilles Choquette
13. Mr. Samuel G.K. Ault
14. Mr. Alex Hunt
15. Mr. S. B. Williams
16. Mr. H. R. Tudor Price
17. Mr. Ronald Bishop
18. Mr. Walter I. Pelley
19. Mr. Timothy A. Chisholm
20. Mr. Dr. James A. Elliot
21. Mr. Ellard J. Powers
22. Mr. G.R. McLaughlin
23. Mr. H.M. Johnson
24. Mr. Elwood G. Hodgins
25. Mr. Raymond M. Cloutier
26. Mr. John Tait
27. Mr. Steven Rosell
28. Mr. James R. Midwinter

#### **Persons Interviewed in Mexico City**

29. Sr Ben Nordermann
30. Sr Jose Luis Uriarte
31. Lic. Baltazar Rodriguez Ayala
32. Lic. Eduardo de la Torre



33. Sr Guiseppe Rocchi
34. Sr Alberto J. Benolol
35. Sr Enrique Rios Velazquez
36. Sr Fidenzio Arguelles

## APPENDIX 10

### LIST OF EXHIBITS

Exhibit 1: Copy of Orders in Council in both official languages of P.C. 1979-1586, dated May 25, 1979 and P.C. 1979-1649 together with P.C. 1979-1653 both dated June 13, 1979

Exhibit 2: Copy of Commission appointing the Honourable Mr. Justice Hugh F. Gibson dated June 22, 1979, signed by Mr. L. McCann, Deputy Registrar General of Canada (in both official languages)

Exhibit 3: Rules of Practice and Procedure of this Commission of Inquiry (in both official languages)

Exhibit 4: Notice of Establishment of this Commission of Inquiry (in both official languages)

Exhibit 5: Affidavit (re: Service and depositing of documents for public inspection) of Marcel A.J. Dompierre sworn November 22, 1979 (two (4 rings) black 9 x 14 binders containing pages 1 to 437)

Exhibit 6: Materials prepared by Mr. Michel Choquette and submitted to government officials prior to the establishment of the Commission of Inquiry (9 yellow volumes 9 x 14 containing approximately 2,400 pages)

Exhibit 7: Statement of the Allegations as suggested by the Commission Counsel in both official languages (Rule V(1) (c))

Exhibit 8: The Issues Raised by the Allegations as suggested by Commission Counsel in both official languages (Rule V(1) (d))

Exhibit 9: Review of the Canadian Dairy Commission prepared by Dr. G.A. Hiscocks assisted by Mr. L. Stephens, revised November 9, 1979 (Rule V(1) (a))

Exhibit 10: Materials relating to the paper filed as exhibit 9 above

Exhibit 11: Outline of Some of the Economic Aspects of the Inquiry prepared by Dr. L.A. Skeoch dated November 1979 (Rule V(1) (b))

Exhibit 12: Relevant Documents compiled by Commission Counsel prior to the organizational hearing (6 blue volumes 9 x 14 containing pages 1 to 1211)

Exhibit 13: Affidavit (re: Assurance and production of documents) of Marcel A.J. Dompierre sworn November 22, 1979 (one 4 ring black binder 9 x 14 containing pages 1 to 59)

Exhibit 14: Canadian Dairy Commission Annual Reports from 1966 to 1978 inclusive with financial statement for year ending 1979 in both official languages with the exception of the 1966/67 Annual Report

Exhibit 15: Copy of memorandum with attachment, dated November 26, 1979 transmitted to all counsel from Registrar Re: Notices

Exhibit 16: (40 page report, 8½ x 11) entitled "Milk Powder Mission to South America Jan. 27 to Feb. 11, 1979" Prepared by I.T. & C.

Exhibit 17: Copy of letter dated Dec. 4, 1979 to Mr. Dompierre from Mr. Lande Re: Submissions to Exhibit 7, "Statement of Allegations"

Exhibit 18: Graph — showing supply and demand curves

Exhibit 6C: Box containing original documents of Exhibit 6

Exhibit 19: Mr. David Schafer's evidence statement

Exhibit 20: Statement of Allegations as suggested by Commission counsel (Rule V(1) (c)) and as amended (as underlined) at the request of counsel for Schafer Bros. Ltd.—Amended Statement of Allegations Dated Jan. 8, 1980

Exhibit 13A: Affidavit of Marcel A.J. Dompierre sworn in Montreal on January 13, 1980 Re: Production of Documents

Exhibit 12A: 3 Volumes (2 grey-covered cerlox 9" x 14" and 1 blue covered cerlox 8½ x 11") Supplementary Relevant Documents Compiled by Commission Counsel Vol. 7, 8 & 9

Exhibit 21: Application dated December 23, 1979 made by counsel for Schafer Bros. Ltd. and Mr. Michel Choquette for the issuance of subpoenas

Exhibit 22: Evidence Statement of Mr. George Schafer Undated

Exhibit 23: Evidence Statement of Mr. Michel Choquette dated January 11, 1980

Exhibit 24: Evidence Statement of Mr. Robert C. Morgan dated December 28, 1979

Exhibit 25: Evidence Statement of Henri Trochu dated December 27, 1979

Exhibit 26: Evidence Statement of Mr. Edward Darby dated December 27, 1979

Exhibit 27: Evidence Statement of Mr. Edward Niemiec dated January 3, 1980

Exhibit 28: Evidence Statement of Mr. John Mohacsi dated December 28, 1979

Exhibit 29: Evidence Statement of Mr. Aloysius Vuk dated January 3, 1980

Exhibit 30: Evidence Statement of Mr. Hector Rodriguez Licea dated December 14, 1979

Exhibit 31: Evidence Statement (Spanish) of Mr. Baltazar Rodriguez Ayala dated December 11, 1979

Exhibit 31A: English Translation of Exhibit 31

Exhibit 32: Evidence Statement of Mr. Giuseppe Rocchi dated December 12, 1979

Exhibit 33: Evidence Statement of Mr. Alejandro Carrillo dated December 14, 1979

Exhibit 34: Evidence Statement of Mr. G. Balint dated January 7, 1980

Exhibit 35: Evidence Statement of Mr. Laszlo Bajor dated January 11, 1980

Exhibit 36: Copy of telex dated April 25, 1977 to Mr. Tudor Price from David Schafer Re: Test Samples Skim Milk Powder

Exhibit 37: Application dated January 18, 1979 by counsel for Schafer Bros. Ltd. and Mr. Michel Choquette Re: Issuance of Subpoenas

Exhibit 38: Legible copies of certain documents which were filed in Exhibits 12 & 12A but were illegible

Exhibit 39: Legible page 1152A of Exhibit 12

Exhibit 40: Legible page 1158A of Exhibit 12

Exhibit 41: Page 1614 as omitted from Exhibit 12A

Exhibit 42: Evidence Statement of Sydney Clifford Barry

Exhibit 43: Evidence Statement of J. Ross Sherk

Exhibit 44: Evidence Statement of Harold Richard Tudor Price

Exhibit 45: Evidence Statement of Lawrence John Marcellus

Exhibit 46: Evidence Statement of Timothy Angus Chisholm

Exhibit 47: Evidence Statement of Walter I. Pelley

Exhibit 48: Evidence Statement of Messrs. Curtis & Ronald Bishop

Exhibit 49: Affidavit of Marcel A.J. Dompierre, Registrar. Sworn Feb. 1, 1980 Re: Public Notices

Annex 24: Annex 24 — List of people attending a traders meeting of the C.D.C. May 13, 1976. To be attached to Exhibit 44 "Evidence Statement of Richard Tudor Price"

Exhibit 50: Copy of letter dated Aug. 5, 1975 to Shamrock, Attn: Antonio S. Isip from David Schafer

Exhibit 12B: Vol. 10 of Exhibit 12, supplementary Relevant Documents compiled by Commission Counsel (pp. 1654 to 1846) 9" x 14" blue-covered cerloxed book

Exhibit 51: Letter dated Jan. 28, 1980 to Mr. Dompierre from Mr. Lande with attachments (List of Questions)

Exhibit 52: Letter dated Jan. 29, 1980 to Mr. Dompierre from Mr. Lande with attachment (List of Questions)

Exhibit 53: Copy of letter dated July 26, 1979 from Algodonera Commercial Mexicano S.A. to St. Lawrence Seeds Ltd. Re: Cancellation of Agreement

Exhibit 54: Letter dated Feb. 7, 1980 from Mr. Lande to M. Dompierre, informing the Commission that clients have no evidence to support Allegations I.A.1(b) (ii) (a) and I.A.1(b) (ii) (b) contained in Exhibit 20

Exhibit 55: Copy of Telex, July 19, 1977 from Schafer Bros. to Mr. Oetalaar Re: Transfer of Letter of Credit

Exhibit 56: Copy of Telex, July 22, 1977 from G. Schafer to L.J. Marcellus Re: Transfer of Letter of Credit

Exhibit 57: Copy of Telex, July 26, 1977 from L.J. Marcellus to Schafer Bros. Re: Transfer of Letter of Credit

Exhibit 58: Copy of Certificate appointing George Schafer a Justice of the Peace

Exhibit 59: Telexes from Schafer to Counsel W.J. Millard dated Apr. 3/62, Apr. 3/62, Jan 17/68, Jan. 21/69 Re: Agent in New Orleans

Exhibit 60: Documents from Nelson Rockefeller, Laurence Rockefeller and Richard Aldrich to Mr. Schafer Re: Expo 67

Exhibit 61: List of questions and excerpt of evidence of George Schafer given on Feb. 8/80 Re: Mexican Monopoly

Exhibit 62: Copy of letter dated Mar. 2, 1964 from Royal Bank to Schafer Bros. Re: Money in bank by Schafer Bros. in 1964 \$225,000.00

Exhibit 63: Copy of letters dated Apr. 24/61 and May 2/61 from David Schafer to Ault Milk Products Ltd. Re: Mr. David Schafer's knowledge as to whether Ault Foods Ltd. and Ault Milk Products Ltd. are the same company

Exhibit A-1, A-2, A-3: Documents mentioned in Mr. David Schafer's Evidence Statement Exhibit 19

Exhibit 64: Copy letter of letter dated April 9, 1969 to Mr. D. Schafer from Mr. Balint Re: Offering of Bank Guarantee to Schafer Bros.

Exhibit 65: Xeroxed copy of book "Standard Methods for the Examination of Dairy Products", 14th Edition, Elmer H. Marth, Ph. D. Editor

Exhibit 6A: November 12, 1976 version of Resumé A (Exhibit 6)

Exhibit 6B: List of discrepancies between Oct. 6/76 Version of Resumé A (Exhibit 6) and Nov. 12/76 Version (Exhibit 6A)

Exhibit 66: Copy of memo from Commission Counsel to all Counsel dated Feb. 25, 1980, Re: Schedule for March 10-14 Hearing

Exhibit 67: Copies of four letters dated Feb. 25/80 from Registrar to Messrs. Newcombe, Grant, Chisholm and Lenhardt regarding documents requested from Schafer Bros. Ltd.

Exhibit 68: Copies of letters in reply to Exhibit 67 from Messrs. Grant, Bruneau and Lenhardt

Exhibit 69: Copy of letter dated Feb. 25/80 with attachment from Registrar to Mr. Lande requesting certain documents

Exhibit 70: Copy of letter dated Feb. 29/80 from Registrar to Mr. L. Atkinson, Former CDC Member, requesting his knowledge and/or information Re: Allegations (Exhibit 20)

Exhibit 71: Copy of letter dated March 4/80 from Registrar to External Affairs, Attn: Mr. G.C. Parks, Legal Advisory Division, with Mexican Interrogatories

Exhibit 72: Paper (bilingual) prepared by R.M.A. Loyns for the Economic Council of Canada entitled "Farm to Food Prices"

Exhibit 73: Copies (French & English) of small booklet entitled "1979-Dairy Facts and Figures at a Glance" published by the Dairy Farmers of Canada

Exhibit 74: Evidence Statement of Mr. Gilles Choquette dated Feb. 21/80. (French original and English translation)

Exhibit 75: Evidence Statement of Mr. Phillippe Pariseault, dated March 4, 1980

Exhibit 76: Evidence Statement of Mr. Samuel G.K. Ault

Exhibit 77: Evidence Statement of Dr. James Angus Elliott

Exhibit 78: Paper prepared by George R. McLaughlin, Commission Advisor, dated March 1980, entitled "The Evolution of Organization and Regulation in the Ontario and Canadian Dairy Industries"

Exhibit 78A: Schedules pertaining to Exhibit 78

Exhibit 79: Copy of letter dated July 2, 1970 from Thos. P. Gonzalez to Ronald A. Chisholm Ltd. responding to offer of 7,000 tons of powder milk

Exhibit 80: Copy of contract (Spanish) CNCP-121/70 between CONASUPO and Ronald A. Chisholm Ltd. July 1970 Re: 7,000 tons of powdered milk

Exhibit 81: Legible page 964 of Exhibit 12, Vol. 5 prepared by Commission staff

Exhibit 82: Letter dated March 6, 1980 from Mr. L. Atkinson to Registrar, in reply to Exhibit 70

Exhibit 83: Evidence Statement of Mr. Jules Gaston Morazain dated Feb. 12, 1980

Exhibit 84: Letter dated March 3, 1980 from David Schafer to M. Dompierre with bundle of documents requested from Schafer Bros. Ltd. et al

Exhibit 85: Memo dated March 7, 1980 from Mr. Lenhardt CDC Counsel, to Registrar, with bundle of documents

Exhibit A-4, 5&6: Documents contained in red-coloured file to be attached to David Schafer's Evidence Statement, Exhibit 19

Exhibit 86: English Translation of pg. 1724, Exhibit 12B, Vol. 10, Telex dated May 5/1969 from Co-op Granby to Mr. A. Benolol

Exhibit 87: English Translation of pg. 1722 of Exhibit 12B, Vol. 10, Telex dated May 5/69 from Co-op Granby to Mr. Benolol

Exhibit 88: Copy of contract (in Spanish) between CONASUPO and Ronald A. Chisholm Ltd. (CNSP 34/69 received H.M. Delvalle Nov. 18, 1969

Exhibit 89: English Translation of pg. 1662, Exh. 12B, Vol. 10, Letter dated Mar. 23/68 to Mr. Benolol from Mr. Licea, CONASUPO

Exhibit 90: English translation of pg. 1664 of Exhibit 12B, Vol. 10, letter dated Jan. 23/68 to Mr. Benolol from Mr. Licea

Exhibit 91: English translation of pg. 1709 of Exh. 12B, Vol. 10, letter dated April 28, 1969 to Mr. Benolol from Mr. Licea

Exhibit 92: English translation of pg. 1723 of Exh. 12B, Vol. 10, telex May 5/60 from Granby Co-op to Mr. Benolol

Exhibit 93: Copy of 2 pages of a survey prepared by US Agricultural Dept. Re: Retail Food Prices in Selected Capitals, Jan. 3/79 and Hours and Minutes Required to Earn Retail Value of Food, Mid-1979

Exhibit 94: English translation of pages 1655, 1658, 1659, 1672, 1676, 1677, 1696, 1702, 1703, 1705, 1736 of Vol. 10 of Exhibit 12B

Exhibit 95: Copy of Memo, dated Oct. 8/77 from Denyse Dignard to Mr. Tudor Price Re: Telegram dated Oct. 13/77 to Dr. Georges R. Schafer

Exhibit 96: Cdn. Exports of Dairy Products 1972-77 CDC Purchases, Sales & Inventory of Skim Milk Powder 1974-79

Exhibit 97: Copy of relevant documents (Telexes and Letters) Re: Schafer sale to Hungary of 1,500 MT of animal feed

Exhibit 98: Copy of telex dated May 3/76 from David Schafer to R. Tudor Price Re: Schafer sale from CDC of 1969 MT Cdn. smp.

Exhibit 99: Memo dated Oct. 10/79 (bilingual) to Commissioners and Section Heads from Gilles Choquette with confidential memo dated June 13/70 from Gilles Choquette to Commissioners and Section Heads Re: Commission of Inquiry

Exhibit 100: Copy of contract (Spanish) #0003-ILP-001/7 between CONASUPO and CDC Re: Sale of 14,000 MT smp

Exhibit 101: Copy of telex dated Feb. 15/77 from Mr. Tudor Price to Mr. John Mills, Commercial Counsellor Cdn. Embassy, Mexico City Re: smp to CONASUPO

Exhibit 102: Copy of telex dated Feb. 17/77 from Mexico ITCOTT WHB Re: CONASUPO

Exhibit 103: Copy of confidential memo dated Mar. 17/77 from R. Tudor Price Re: Mexico

Exhibit 104: Questions of Mr. Lande to Mr Tudor Price Re: Application under Sect. 41(2) Federal Court Act

Exhibit 105: Questions of Mr. Wilson to Mr. Tudor Price Re: Application under Sect. 41(2) Federal Court Act

Exhibit 106: Questions of Mr. Wilson to Mr. Hunt Re: Application Under Sect. 41(2) Federal Court Act

Exhibit 107: Affidavit of Mark MacGuigan, Secretary of State for External Affairs, sworn March 13, 1980, made pursuant to Sect. 41(2) of the F.C. Act

Exhibit 108: Letters dated from Oct. 1977 to Dec. 24/79 Re: Appointments to the Consultative Committee to CDC

Exhibit 109: Report of Special Committee of the Consultative Committee, dated Nov. 11/76 Re: Role of the Consultative Committee

Exhibit 110: Copy of letter dated Apr. 1/77 from B.H. Nordermann, General Manager Intercontinental de Mexico, S.A. to Ault Foods Ltd. Re: Appointment of Agent

Exhibit 111: Copy of handwritten note dated Dec. 9/75 of Mr. Tudor Price Re: Discussion with Canada Packers

Exhibit 112: Second Affidavit of Mark MacGuigan, Secretary of State for External Affairs, sworn March 14/80 made pursuant to Sect. 41(2) of the Federal Court Act

Exhibit 113: Order of Mr. Justice Gibson, Commissioner, Re: Application made pursuant to Sect. 41(2) of the Federal Court Act

Exhibit 114: Pertinent documents re: Calling Mr. E. Powers former CDC member as a witness before this Commission of Inquiry

Exhibit 115: Memo dated Mar. 13/80 from Commission Counsel to All Other Counsel Re: Written Submissions

Exhibit 116: Public Notice for Hearing, dated May 5, 1980

Exhibit 117: Letter dated Feb. 19, 1980, from Mr. Lande, withdrawing as counsel for Schafer Bros. Ltd.

Exhibit 118: Appearance of Mr. Schwisberg as one of the attorneys for Schafer Bros. Ltd., dated March 7, 1980

Exhibit 119: Submission of Mr. Lande on behalf of Schafer Bros. Ltd., received April 1, 1980

Exhibit 120: Joint submission by counsel for CDC, Mr. Tudor Price, Mr. Marcellus & Ronald A. Chisholm Ltd., received April 21, 1980

Exhibit 120A: Copy of letter of correction to joint submission (Exh. 120), dated May 5, 1980, from Mr. Lenhardt, counsel for CDC

Exhibit 120B: Letter of correction, dated April 30, 1980, from Mr. Chisholm, Re: Exh. 120

Exhibit 121: Submission by Mr. Newcombe, counsel for Mr. Tudor Price, received April 21, 1980

Exhibit 122: Submission by Mr. Grant, counsel for Mr. Marcellus, received April 21, 1980

Exhibit 123: Submission of Mr. Grant, counsel for Mr. Marcellus, Re: Costs, received April 21, 1980

Exhibit 123A: Letter dated May 8, 1980, from Mr. Grant, Re: submission for costs (Exh. 123)

Exhibit 124: Supplementary submission of Mr. Chisholm, counsel for Ronald A. Chisholm Ltd., received April 24, 1980

Exhibit 125: Submission of Mr. Chadwick counsel for Ault Foods Ltd., received April 22, 1980

Exhibit 126: Supplementary submission to Mr. Lande (Exh. 119) by Mr. Schwisberg, counsel for Schafer Bros. Ltd., received April 24, 1980

Exhibit 127: Submission by Mr. Lenhardt, counsel for CDC, in response to R.A. Chisholm Ltd., Mr. Marcellus and Mr. Schwisberg, received May 12, 1980

Exhibit 128: Supplementary joint submission of counsel for CDC, Mr. Tudor Price, Mr. Marcellus and Ronald A. Chisholm Ltd., received May 12, 1980

Exhibit 129: Letter dated May 8, 1980, from Mr. Schwisberg requesting an extension of time to file further submission

Exhibit 130: Letter dated May 15, 1980, to Mr. Schwisberg from the Registrar, Re: granting extension requested in Exh. 129

Exhibit 131: Memorandum dated Feb. 4, 1980, from Commission counsel to counsel for CDC, Re: general export subsidy information

Exhibit 132: Memorandum dated Feb. 19, 1980, from CDC counsel to Commission counsel in response to Exh. 131

Exhibit 133: Letter dated Feb. 26, 1980, from CDC counsel to Registrar, enclosing partial information on subsidies

Exhibit 134: Copy of letter dated May 2, 1980, from Registrar to CDC counsel requesting the further reply promised re: subsidies

Exhibit 135: Letter dated May 5, 1980, from counsel for CDC to Registrar, enclosing further information Re: subsidies (also Exh. 120A)

Exhibit 136: Copy of letter dated May 15, 1980, to counsel for CDC from Registrar, requesting more comprehensive information Re: subsidies

Exhibit 137: Letter dated April 14, 1980, from Mr. David Schafer, advising of error in transcript

Exhibit 138: Copy of letter dated March 17, 1980, from Mr. Lande to Mr. G. Schafer, Re: Undertaking to produce doctoral degree from U.C.L.A.

Exhibit 139: Letter dated April 14, 1980, from G. Schafer to Registrar, responding to Mr. Lande's letter, Exh. 138, with enclosure

Exhibit 140: Copy of letter dated May 2, 1980, from Registrar to Mr. Schwisberg, requesting comments Re: Exhibit 139

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Exhibit 142: Letter dated May 7, 1980, from Mr. Lande to Registrar in response to Exhibit 141

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Exhibit 185: Letter dated June 26, 1980, from Mr. Bruneau to Registrar, requesting adjournment of July 2 hearing

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Exhibit 198: Memorandum dated September 5, 1980, from Registrar to all counsel and other interested parties, advising of exhibit numbers for documents received by the Commission of Inquiry, dated September 5, 1980 (Nos. 189A through 197)

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## APPENDIX 11

### TOPICAL CONSIDERATION OF THE EVIDENCE

In assessing each of the allegations made by Schafer Bros. Ltd. and Michel Choquette, and in considering each of the issues raised by the said allegations, all of which allegations and issues are set out in Appendices 5 and 6 respectively to this Report, regard was had to each relevant part of the evidence.

In virtually all instances, and especially where the allegation or issue was of a general nature, relevant evidence appears at so many different places throughout the 27 volumes of testimony, and at such a number of the thousands of pages of documents filed as exhibits, that it is not practicable to seek to list the locations in the record of all the evidence relevant to each allegation and issue.

Anyone wishing to review such evidence in fuller detail than has been expressly referred to in the Report, should have reference to all of such evidence and to the Registrar's Record and Minutes of Hearings.

## APPENDIX 12

### Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission

### AN OUTLINE OF SOME OF THE ECONOMIC ASPECTS OF THE INQUIRY

Dr. L. A. Skeoch

November, 1979

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#### 1. Introduction

The objectives of the Canadian Dairy Commission are set out in very broad terms in section 8 of the Canadian Dairy Commission Act as being:

"...to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality."

The powers conferred upon the Canadian Dairy Commission (under section 9) are both broad and comprehensive, and include, among others, the power to

- "(a) purchase any dairy product and package, process, store, ship, insure, import, export, or sell or otherwise dispose of any dairy product purchased by it;
- (b) make payments for the benefit of producers of milk and cream for the purpose of stabilizing the price of those products...;
- (c) make investigations into any matter relating to the production, processing or marketing of any dairy product, including the cost of producing, processing or marketing that product."

On the surface, the listed objectives might appear to merit support but, surely, they must be made more specific to be meaningful.

Concepts such as "efficient production", "fair return", and "adequate supply" are essentially long-run in nature and are incapable of meaningful definition apart from a market context which takes account of broad domestic and international economic influences and pressures. Government policy with respect to agriculture appears, however, to assume that the time-scale is unimportant, that innovation and dynamic change can be largely left to take care of themselves, and that its major focus should be limited to achieving some defensible level of "government-guaranteed profitability."

As I have argued elsewhere, in dealing with agriculture it is important that we do not take as a basis for our analysis an oversimplified version of the processes of adjustment in a price-directed market economy. Adjustments in demand and in supply in response to changes in price, which would

give agricultural producers an income roughly equal to workers of equal skill in other sectors of the economy, encounter serious elements of friction on the score of mobility of factors, of high instability of prices, and of inelasticities and demand interactions on the consumption side, which make medium-term equilibrium a difficult objective to attain. A political element is also inevitably added in both the domestic sector and the export sector which for non-economic reasons postpones or prevents the process of adjustment from taking place.

In the agriculture and food sector of the economy, the best interests of consumers and producers would in simple terms require that:

- (1) the product be produced as efficiently as possible, in the short and in the long term;
- (2) that the costs of selling, of transportation and of handling be reduced to the minimum levels attainable;
- (3) that, given the conditions of market demand (i.e., available substitutes, competing sources of supply of the same product, etc.), the best selling price is secured. The consumer is entitled to the protection of these alternatives; the producer is entitled to the best efforts of the sellers to obtain the highest price in the market circumstances.

Producers and consumers can reasonably demand that processors, shippers, and distributors not only carry out their functions with maximum allocative efficiency but that they should also be put under pressure to be aggressively innovative.

These broad objectives would appear to assure a fairly straightforward and important role for combines policy. For a variety of reasons this prescription cannot be taken at face value. First, there is a myriad of agricultural assistance programs, federal and provincial, the net impact of which is almost impossible to appraise. Some are apparently designed to promote adjustment and change, others to hinder them. Some have differential regional impacts — and are maintained long after their original purpose has been served — if that can even be identified in some cases.

The regulatory process — that most infelicitous experiment in public policy — has intervened in the process of adjustment in ways impossible to weigh or measure, and so we could go on. The point is that attempting to impose a competitive regime in such settings cannot always produce predictable results. What we perhaps need first of all is an analysis of the changes required to rationalize the food and agriculture industry.

Basic to the whole analysis is a determination that there are no conflicts between the ends specified and the means provided to accomplish those ends. As Professor G.H. Gilson has remarked:

"Production control may be an effective way of raising farm prices but such a policy may be in serious conflict with the goal of efficiency in agricultural production."

[Evaluation of Objectives for Agriculture, Agricultural Economics Research Council of Canada, Publication No. 12, p. 24.]

On the same issue, Professor R. Schickele has observed:

"The relationship between the means and the end is a crucial issue in policy appraisal. The purpose of the policy may be fine, but, if the measures applied are inappropriate, the whole program may be a failure. When we criticize a public policy, we should make clear whether we criticize its purpose or the way it goes about to serve its purpose...Many a good objective has been discredited on account of poor measures employed to meet it. Our experiences with price-support programs, with farm-debt relief, with conservation programs, yield ample illustrations."

[Agricultural Policy. McGraw-Hill, 1954, p. 66. Quoted in Gilson, op.cit.]

It is not the purpose of the present paper to analyze the performance over time of the Canadian dairy industry. It is appropriate, however, to note that a number of recent studies by competent scholars and agencies have expressed serious doubts about the level of efficiency of the industry and the wisdom of the price policies adopted.

For example, L. Auer in his study, Canadian Agricultural Productivity (Economic Council of Canada, 1970), pointed out that yield levels in Canadian livestock production, although still well below U.S. levels, were showing improvement and there was some narrowing of the gap. "In the dairy field, the developments are less favourable for Canada. In the early postwar years, milk production per cow was about 15 percent below the U.S. level, but in more recent years it has been closer to 25 percent below the U.S. level." A similar gap, it should be noted, holds for the gap between Britain and Canada.

The Centre for the Study of Inflation and Productivity reported in The Monitor, Vol. 1, No. 2, Feb. 1979, under the title "The Dairy Industry: A Case Study of Economic Inefficiency" the results of a study of the operations of the Canadian Dairy Commission. Its evaluation of the means employed by the Commission (and, in certain respects, of its interpretation of the ends specified in the Canadian Dairy Commission Act) was overwhelmingly critical. One of their central criticisms focussed on the impact of Canadian Dairy Commission policies on market effectiveness.

"The masking of market signals inherent in current dairy pricing and support policies is in danger of inhibiting the continued development of a more efficient industry and is doing so at substantial economic cost to farmers and taxpayers alike."

A Report on Consumer Interest in Marketing Boards prepared for the Consumer Research Council (Ottawa, 1974), questioned "whether the apparent current objectives and programs of the Canadian Dairy Commission are appropriate in the longrun" on a number of grounds, among them the argument that "support at the manufactured product level may lead to unintended benefits to processors."

To determine whether the analysis and the strictures of these studies are warranted, in whole or in part, is not the purpose of this paper. Rather, it will be concerned with the question whether there are not less interventionist and less restrictive practices which can be used to achieve a higher

level of market effectiveness — especially in the longrun — and at the same time achieve the broad purposes of the legislation as set out in section 8. The major issues which will be examined are:

- (1) how to assure adequate accountability;
- (2) the criteria to be used for price discrimination;
- (3) the consequences of adopting a high-price line rather than a low-price line;
- (4) the issues involved in attempting to obtain "a fair return for their (dairymen's) labour and investment" by a domestic support price above "world levels";
- (5) the nature of appropriate commodity exchange practices.

Before undertaking an analysis of any area of agricultural regulatory policy, one is well advised to read the cautionary comment of the U.S. Justice Department's "Report of the Task Force on Antitrust Immunities":

"Federal agricultural regulation is one of the most complex regulatory schemes the mind of man has yet devised. Aimed at such diverse goals as assuring an adequate supply of milk, raising producer income, achieving and maintaining orderly marketing conditions, and preventing excessive price levels, the agricultural regulatory programs have generated a maze of complex rules and regulations almost impenetrable by intelligent laymen."

These words are fully as relevant for Canada as for the United States. Indeed, if anyone believes that there is some trick of formula, technique or administration that will "solve" the problems of agricultural adjustment, he is more likely to be a menace than a contributor to progress in this field.

The unavoidable reality is that outside an effective dynamic market economy, our society has no way to deter or penalize the wasteful use of resources, to compel technological innovation, or to direct production toward the satisfaction of consumer wants. Indeed, without competitive challenge, or the threat of such challenge, we cannot even measure waste, inefficiency, or technological stagnation. Barring international comparison, there is no standard by which to compare actual performance and possible performance.

Nevertheless, policy must move into the area of agricultural adjustment with one eye on dynamic change and the other on a "reasonable" level of stability.

It is basic to the policy area with which we are concerned that the conditions for easy and successful adjustment to changing economic circumstances are rarely encountered in agriculture. The decision whether to increase the output of a particular type of crop (or other product) is one which, in the nature of things, is likely to be taken by producers at much the same time. Given their large number, and in the absence of collusion, the transmission interval will be as long as the production period for the crop in question. Demand will frequently be inelastic, supply may be inflexible and storage possible only at heavy cost. To these factors may be added the disturbance introduced by the weather, and it follows that there is likely to be an inefficient adaptation of supply to changes in technology, new



products and demand conditions in general. Some sort of assistance to reduce fluctuations may often be required, whether it takes the form of government assistance, vertical integration, or a variety of other arrangements. The central issue is to reconcile the real needs of information to guide the adjustment and expansionary processes with market discipline and efficient selection.

The first task will consist in improving information. In a market economy, this is done essentially by the price system. Indeed, the market is a marvelously efficient mechanism. The formal collection of market information by survey methods, and the like, is a pale and ineffective substitute. The market-induced search by thousands of individual minds for maximum efficiency, for opportunities for experimentation and innovation, creates a productive and optimizing effect of great force. At the same time, market-oriented dynamic change in all its manifold and unpredictable dimensions does create short-run problems — but it continues to be our chief means of increasing real national product per capita.

Unfortunately, the response to these short-run problems too frequently takes the form of defence of the *status quo* through the entrenchment of existing interests. As L.L. Bogen has put it:

"We operate programs in the short-run as a practical matter, but the fear is, as Kenneth Boulding once rather facetiously stated, that the addition of the short-run doesn't add to the long-run, rather it leads to utter destruction."

("Trading Problems in International Markets."  
*Journal of Farm Economics*, Vol XL, No. 5, Dec.  
1958, p. 1755.)

Instead of confronting the difficult problems of bridging the short-run, long-run transition, the short-run is perpetuated by sterile regulations that avoid dynamic change. Rather than adjusting to the market, administrators attempt to create their own "market information" by imposing quotas on producers and consumers by arbitrary allocation devices buttressed by multiple-price systems of doubtful validity in terms of defensible price discrimination criteria, by deriving prices from a cost-justification base frequently determined by formula rather than from the pressure of market forces, and the like. Controls spread vertically and horizontally in order to avoid pressures that could challenge the *status quo*. Instead of devising incentives to adapt, "direct-and-control" methods are too often adopted to support a form of security based on the inhibition of change.

## 2. Government Intervention in the Canadian Dairy Industry

In Canada there are two different (but related) milk markets supplied by three categories of farmers. One market is that for fluid milk (beverage milk and fresh cream); the other is for milk used for industrial purposes (butter, cheese, ice cream, etc.). Producers of fluid milk are licensed and regulated by provincial milk marketing boards which establish prices, administer production quotas, and enforce sanitary regulations. The industrial milk market is supplied by cream producers, industrial milk producers, and by fluid milk (surplus) producers.

The industrial milk market is regulated by a federal agency, the Canadian Dairy Commission, which sets milk prices, supports the prices of butter and skim milk powder, administers producer quotas with the cooperation of the provincial milk marketing boards (for further discussion of this arrangement see Appendix "A"), and also distributes federal subsidies to producers. The Canadian Dairy Commission also carries out several marketing and trade functions: it is the sole importer of butter, regulates cheese imports, buys and exports skim milk powder (and, on occasion, butter and other milk products) which is in excess of domestic market requirements and collects levies from producers to assist in subsidizing these exports.

The marketing of fluid milk is controlled by provincial milk boards in every province except Newfoundland. These boards operate fluid milk quota programs and, in most cases, set the administered prices for fluid milk. The restriction of entry of non-quota holders into the fluid milk market makes possible a system of discriminatory pricing for fluid as against industrial milk which provides higher prices for the former group. These discriminatory controls create quota values which have consequences for the movement of resources, for investment valuation, and for producer management initiative that are difficult to quantify and appraise. The administered pricing of fluid milk is also carried out in some provinces under a system of resale price maintenance. Where such a practice prevails it tends to reinforce the protection of the processing and distributing sectors (often combined in single multi-product firms) which results from the marketing and trade functions of the Canadian Dairy Commission.

## 3. Types and Degrees of Intervention in Relation to Successful Adaptation, Efficient Selection of Entrepreneurs, and Market Discipline.

### (a) Assuring Adequate Accountability

Although the legislation does not impose a specific accountability requirement, it does, by the use of the expressions "efficient producers", "fair return" and "adequate supply", implicitly impose some requirement of market effectiveness. The failure to include any reference to long-run market-price levels does, however, raise some doubts. Nevertheless, the references to the other dimensions of performance are essentially long-run in nature and are incapable of meaningful definition apart from a market context which takes account of broad domestic and international economic influences and pressures.

It should be emphasized at the outset that a "cost justification" basis for prices and returns is static and retrospective in effect and in no sense provides a defensible standard of accountability.

(Note: the issue of cost justification and economic behaviour is explored at some length in the report, *Dynamic Change and Accountability in a Canadian Market Economy*, Ottawa, 1976, pp. 260-276. It is probably unnecessary to repeat here the substance of that analysis, but the concluding paragraph of the chapter may merit quotation:

"On the whole, we conclude that a short-run cost justification approach to price determination, whether adopted by private groups independently or with the sanction of public authority, is inimical

to the operation of a market system and, in a broader sense, is inconsistent with the operation of a dynamic, flexible economy. Not only does it lend support to established cost-price relationships but it tends to pass on in pre-ordained fashion any cost increases instead of having the shifting stresses of the market bring pressure to bear to modify such increases. The short-run cost-justification approach weakens the forces working for the introduction of new technology and new forms of business organization; it weakens the role of prices and profit in allocating resources, and places the emphasis on direct intervention to shift resources. By insulating substantial sectors of the economy from market pressures, it concentrates the burden of adjustment arising from economic change — and change does still go on in some sectors of the economy and in some areas of the world — on the remaining shrinking area of the economy occupied by the market-oriented industries.”)

What is needed is a broader and more market-oriented approach to accountability. The points in time at which accountability may be enforced are several. There is an ex ante measure when investment programmes are under consideration. The price structure should be designed to encourage adjustment to new technological and organizational developments, to new processes and substitute products, and the like, which may be discerned in the future. In other words, it is necessary for predictive purposes to incorporate some realistic measures of changes in the state of the arts. Such new dairy products as ultra high temperature milk which can be stored without refrigeration for a 60-day shelf life, if widely accepted, will obviously have a major impact on adjustments to the seasonal milk production pattern. Another competitive influence of importance may be found in the new “vegetable milk” product that is apparently more than a technical possibility. The time-response of milk production also appears to be changing. John R. King has reported that:

“(1) The supply elasticity of milk production in the short run appears to have been in the range of .15 to .30. Estimates of longer-run elasticity indicate it to be in the range of .35 to .50. (2) Producer response is occurring at a more rapid rate in recent years, so that long-run adjustments are not as long as they used to be. These findings should be of value, if utilized by those responsible for determining agricultural policy.”

(“The Response of Milk Production to Price,” Journal of Farm Economics, Vol. XL, No. 5, 1958, p. 1114.)

These considerations require the adoption of reproduction cost analysis based on the best prospective practices.

There is also an ex post check for accountability in the form of an audit of accounts. This check has a double purpose: to see if the anticipated results of the ex ante projection have been realized, and to determine whether a subsidy may cease to be necessary, or an investment no longer risky.

The periodicity of the accountability review may be long or short. At one extreme there may be a long-term review

(every five or six years?) of prospective new developments and of how the industry may be induced, and pressured, to adjust to these new conditions. There may be annual reviews of operating budgets and of the effectiveness of the transitional programme.

One thing to avoid is the tendency to look for “gaps” in the controls and to demand that they should be filled. Were no gaps left, there would be no flexibility. It is necessary to remember that a market economy has its untidy and mutable elements but that, over time, it has proven to be an effective guide to decades of prodigious economic growth. The special problems of the agricultural sector require a judicious selection of appropriate accountability devices to facilitate and promote broad, dynamic change and not to avoid the necessity for such change.

#### (b) Criteria for Price Discrimination

Discriminatory pricing practices and the restraints that permit or support them are basic elements in the federal and provincial dairy marketing programmes. It should be pointed out, in advance, that the term “price discrimination” encompasses a variety of types of market behaviour, and that the consequences will vary with the type of discrimination and with the circumstances in which it is employed.

In general, price discrimination may be defined roughly as:

- (1) variations in the price of the same product sold under similar conditions to different purchasers;
- (2) uniform prices charged different purchases for product-services that are not the same;
- (3) different prices to different purchasers for different varieties of the same product (or of various technically similar products) if the price differences are not the same as or proportional to the differences in their (long-run) costs of production.

This definition can also be applied, mutatis mutandis, to price discrimination on the part of buyers. It is important to keep this two-fold definition in mind, as the Canadian Dairy Commission, being a monopsonist-monopolist, engages in price discrimination on both sides of the market.

No attempt will be made to review in detail all the concepts and issues involved in the economic analysis of price discrimination\*, however, the major strategic aspects of the practice require brief reference.

The primary prerequisite of price discrimination is, of course, that there should be the power to discriminate, and this power rests upon some element of market imperfection. Sellers (buyers) must enjoy some degree of market power to practice price discrimination, although there need not be “substantial” control, far less anything approaching a position of monopoly (monopsony). Absence of (or imperfect) knowledge of the terms and conditions on which sales are being made in the market, product differentiation, fewness of sellers (buyers), and the like, all would make it possible to practice price discrimination.

\* A relatively brief discussion which avoids much of the technical jargon can be found in the author's Discriminatory Pricing Practices in the Grocery Trade (Queen's Printer, 1958), Chapter II.

Assuming the power to discriminate, it will be advantageous to do so when the market for the product can be separated into parts, or customers can be segregated, so that the seller can increase his profits by charging different prices in the different sub-markets. If the elasticities of demand (a measure of the change in the amount purchased in response to a change in the price) in the various sub-markets are almost the same at relevant prices, then discrimination is without any point. Even where the elasticities are different, the seller must be able to prevent the re-transfer of goods from the lower-priced market to the higher-priced market and he must be able to do so at a cost that is not so great as to offset the gain from discrimination. He must also be able to prevent elements of demand from shifting from one sub-market to another.

The first condition (different elasticities) is probably fairly common; the condition of non-transferability of supply and demand is less frequently met with. Where there is a genuine sole-seller (monopolist) or sole-buyer (monopsonist), particularly one endowed with governmental authority to impose conditions creating sub-markets, the scope and effectiveness of price discrimination is obviously substantially increased.

The discriminating seller will then charge a relatively high price in the sub-market in which demand is less elastic and a lower price in the sub-market in which demand is more elastic, thereby increasing his profit above the level which it would reach if he sold his product at a single price.

The precise technical conditions under which the seller will maximize his profit can be summarized briefly by saying that the marginal revenue (roughly, the addition to total revenue from the sale of an added unit) in each separable market must be equal (although because of the different elasticities of demand, the relation between marginal revenue and price will be different in each sub-market), otherwise it would pay to shift units from one sub-market to another. In addition, the common marginal revenue must equal marginal cost.

These principles are the ones that apply to what is called "third-degree discrimination" — and it is these that are most commonly considered to be relevant to the analysis of price discrimination. In addition, there is "perfect discrimination" (also called "first-degree discrimination") under which the seller attempts to sell each unit at the highest price the buyer will pay, with a different price for each such unit. Such systems are rarely encountered, although some public utility pricing systems which charge a high price for the first "block" of power used, a lower price for the second "block", and so on, constitute an approximation to perfect discrimination. There is also "chaotic discrimination" which takes a number of forms, such as secret price cuts to some buyers, while others are charged the published list price.

Other categories involve discrimination between products or uses of a product, spatial discrimination (both of which are used by the Canadian Dairy Commission), discrimination on a time basis (e.g. telephone rates), personal discrimination (usually kept secret), and still others.

The major question about price discrimination relates to its effects on major aspects of economic performance. The three dimensions of basic importance are its effects on the

allocation of resources, on productive efficiency and on income distribution.

With reference to the first, the basic issue concerns the relative quantities in which various goods are produced and what constitutes the best ratio from the standpoint of buyer satisfaction. Where there are both monopolistic and monopsonistic elements, reinforced by third-degree discriminatory pricing — as in the case of the regulated dairy industry — and especially where a variety of products is involved (such as butter, cheese, skim milk powder, fluid milk), it becomes extremely difficult to predict the ratio of price to marginal cost for the different product industries. Where the same product is sold in different sub-markets at different prices, we can say in terms of aggregate welfare that the sub-market with an elastic demand will be charged lower prices and "too large" a share of resources will be devoted to supplying it, whilst the sub-market having an inelastic demand will be charged higher prices and "too small" a share of resources will be devoted to supplying it. (Cf., Joe S. Bain, Price Theory, pp. 413-414.)

Available information does not permit an assessment of the nature and extent of the impact of Canadian Dairy Commission policies on the allocation of resources, particularly in view of the high-price line adopted. There are, nevertheless, a few comments of a general nature that should be made.

Control of the supply of processing-distributing services is an element of major importance in examining the allocation-of-resources issue. To take the example used by Professor W.H. Nicholls, market power in the cheese industry may be fairly well limited by the competition of other uses for the raw milk, but if large dairy processing firms handle a major proportion of all alternative uses of milk, this raises a serious question as to the effectiveness of inter-product competition for the use of our agricultural resources in protecting farmers and consumers from elements of market power in the processing-distributing industries.

Nicholls comes to a rather pessimistic conclusion on this subject:

"Regulatory agencies have all too often pacified distributor and producer groups by authorizing a further increase in the price to producers and in dealers' margins at the expense of a higher price to the unorganized consumer... Thus, it is the milk consumer that pays, receiving in return the somewhat doubtful benefits of a 'stable' rather than a potentially 'chaotic' market."

(Imperfect Competition within Agricultural Industries, pp. 195, 196)

In view of the increasing concentration in the Canadian dairy processing-distributing industry, the possibility that stability and "pacification" may be purchased at too high a price cannot be ignored.

The issue of the impact of price discrimination on productive efficiency relates to the question whether such discrimination promotes the achievement of economies of scale from the technological and organizational points of view, and also, less commonly, whether price discrimination assists in the development of innovations. These are difficult questions to explore since much depends on the time

allowed for variations in output to take place. A period long enough to give sufficient observations to be persuasive, is almost certain to involve significant changes in the technique of production. Yet information of this sort becomes more vital as public regulatory and support programmes are extended to ever-widening sectors of agriculture. Hence the importance of *ex ante* accountability.

Finally, we should be know something about the impact of price discrimination on income distribution. It is generally conceded that where there are few firms, as in monopolistic, oligopsonistic or monopsonistic market structures, and where price discrimination is practiced, excess profits tend to emerge and to be maintained so far as barriers to entry exist and depending upon the magnitude of such barriers. Where the barriers derive from government intervention, the persistence of the excess profits, perhaps disguised by cost-justification calculations, is difficult to identify and more difficult to eliminate.

It should be added that some economists suggest that the excess profits (and thus worsened income distribution) arising from discrimination provide an incentive to greater efficiency, to a higher level of investment and to more vigorous pursuit of new techniques. Analysis of such relationships must be tailored to the individual case.

So far, we have made only limited progress in devising analytical techniques that are precise or accurate enough to provide a conclusive picture of the social and sectional benefits and costs of price discrimination in the sale of farm products, generally. In particular, we cannot distinguish between the impact on "rich" and "poor" consumers, a type of knowledge that is necessary about any publicly-supported programme.

It is obvious from the issues raised in this section that many basic questions about the impact of price discrimination on producers and consumers remain unexplored, in part because they are not perceived as vital issues, in part because the techniques needed for their analysis are not easily available. This suggests that tests of market effectiveness should take the place of unproved or unpredictable discrimination policies wherever possible. This is particularly true in the case of the Canadian Dairy Commission, since it acts as monopsonist and monopolist, so that the Commission can use its power as monopolist to validate its decisions as monopsonist, and *vice versa*. Its over-all control imposes a special accountability burden on all its decisions.

**(c) Consequences of adopting a High-Price Line rather than a Low-Price Line**

One of the basic difficulties about agricultural support policy is that price support is generally formulated in accordance with a "high-price line". The home market prices are kept above world market prices by means of protection at the border. The alternative is a "low price line", under which world market prices are accepted domestically but with the farmers being given subsidies on products produced (and/or perhaps other subsidies). One of the consequences of a high price line is that the protection at the border must to a large extent — but not in all cases — be applied to processed products, and not to pure agricultural products produced by agricultural enterprises. For example, price support under a high-price line is not

applied to producer milk but to processed products that are traded internationally, such as butter, cheese, and milk powder. This means that the price regulations will cover a substantial part of the food processing industry and not just the farm sector, despite the fact that the controls are really intended to apply only to agriculture. Consequently, not only is agriculture sheltered from competition but so also is a more or less substantial portion of the food industry.

Even when this consideration is recognized, and when it is also accepted that the consumer as consumer plus taxpayer comes out ahead because he gets more from his total payments under the low-price line than under the high-price line it is still often argued that since food prices are weighed on one scale and tax payments on another, the political consequences of the low price line may be less advantageous than the high price line. But, however that may be, the longer-run consequences of the high price line, especially for the processing industry, is too often ignored in our calculations.

There is a tendency for processing industries involved in such marketing arrangements — and more generally as well — to adopt a uniform pricing formula, and such a formula having once been adopted as "the one best scheme" for the industry, its very existence will encourage resistance to change. Uniform schemes are sometimes revised in detail, but is unusual for a new edition to embody any fundamental departure from the original scheme. Thus each scheme tends to crystallize the state of costing practice which existed when it was first devised.

These tendencies are reinforced if there is a trend to concentration and integration in the processing and distribution of milk and milk products. Schedule "B" and "C" make it clear that this process has reached the stage where public policy might legitimately become concerned.

Table 1 makes it clear that the possibility referred to in Schedule "C" of an increase in processing and distribution margins paralleling the formula-based producer price increase is not without merit. It will be noted that the August 1979 Canadian Dairy Commission butter price was 207.4 per cent of the January 1973 price; over the same period the margin between the Canadian Dairy Commission price and the retail price was 240.0 percent. Similarly, for cheese, the August 1979 wholesale price was 228.3 percent of the January 1973 price, and over the same period the change in the wholesale-retail margin was 208.5 percent. Although these relationships do not precisely parallel the high-price, low-price line differential, they do provide a rough approximation, which indicates the strong probability of the validity of the criticism.

**(d) Issues Raised by the Attempt to Obtain a "Fair Return" for Dairymen's Labour and Investment.**

The double-barreled objective of tying price policy to a profitability target and a labour-income target gives rise to a number of distortions and a basic escalation problem if prices are expected to serve as economic signals. In the longer-run, such a policy tends to divorce the controlled sector from other sectors of the economy, thus requiring the adoption of more intrusive forms of control.

The consequences of substituting costs derived from fixed prices for competitive market-determined costs are force-

fully set out in this brilliant comment by MacFarlane and MacEachern:\*

Table 1

Average Monthly CDC and Retail  
Prices of Creamery Butter at  
Toronto  
(cents per pound)

	1973 (Jan.)	1976 (Jan.)	1979 (Jan.) (Aug.)	
CDC Price (93 score)	68.0	103.0	132.0	141.0
Retail Price (first grade)	73.0 5.0	109.0 6.0	142.0 10.0	153.0 12.0

CDC price, 1979 as per cent of 1973 = 207.4%

Mark-up (retail price minus CDC price)  
1979 as per cent of 1973 = 240.0%

Average Monthly Weighted Wholesale Price of  
Cheddar Cheese at Belleville Exchange and  
Average Retail Price at Toronto\*  
(cents per pound)

	1973 (Jan.)	1976 (Jan.)	1979 (Jan.) (Aug.)	
Wholesale Price (in bulk lots)	62.6	106.0	133.1	142.9
Retail Price (medium coloured)	113.0 50.4	187.0 81.0	229.0 95.9	248.0 105.1

Wholesale price, 1979, as per cent of 1973 = 228.3%  
Wholesale-retail margin, 1979, as  
per cent of 1973 = 208.5%

\*Source: Monthly Dairy Report, Ontario Ministry of  
Agriculture and Food

"In the case of a high domestic support price established for a commodity above world levels, this increase in price obviously will bring forth more production unless output controls are imposed. At the same time though, while giving the impression of improving the position of farming, the benefits derived from such a program are almost immediately reflected in the producers' cost structure. This means that if correct accounting is followed the comparative production costs have increased for that commodity and its competitive

position has deteriorated relative to the rest of the world. It is usually forgotten that price is a major determinant of costs as well as vice versa and if landholders' incomes are increased as a result of higher prices then this is capitalized into the factor with the more inelastic supply, usually land. The same effect on cost takes place from subsidized credit, price stabilization schemes, tax rebates and the many other forms of agricultural production assistance which become capitalized and alter the cost structure. Hence domestic agricultural policy has direct effects on the comparative advantage of home commodities and has an important relationship to trade policy. Price and income policies resulting in subsidized production frequently end up requiring export assistance in order to be traded in world markets. Export subsidy is quite common in agriculture of advanced economies and to do this includes such things as export certificates, direct subsidy, special transportation rates, storage cost reduction, tax relief of various kinds, as well as provision of marketing assistance such as trade fairs, missions and selling organizations. In addition to these devices, a number of others are used with the primary aim of increasing farm exports or improving the agricultural trade balance and at the same time alter the competitive position of agricultural products. These include such things as: exchange depreciation, reduction in wages or other factor prices, restrictions on imports by means of tariffs, quotas, and non-tariff barriers."

\* Gordon A. MacEachern and David L. MacFarlane, "The Relative Position of Canadian Agriculture in World Trade," Economic Council of Canada, Conference on International Trade and Canadian Agriculture, 1966.

Expressed in somewhat different terms, we can say that increases in the value of farm assets deriving from quota, or other, controls, from expectations of inflation or some other factor, tend to lower the estimated labour income (since it is a residual) used in the comparisons. That is, in the official calculations, the amount to be deducted from the farmer's total income to provide him with a "fair return" on his investment, will increase; as a result, the labour income will decrease. As the value of the farmer's assets grow, the gap between a fair income for him and for other workers will thus widen.

If, then, the price support is raised with a view to closing the gap in "fairness" of incomes, the increased price support will gradually be capitalized in the market value of farm assets. Thus, the investment return requirement will gradually rise, so that the intended increase in labour income does not materialize. And so the mutually-interacting escalation continued. Entry to the controlled sector becomes more difficult; prices give the wrong signals — that is, do not reflect true economic scarcity — and transfer of resources and new technological developments fail to respond as they would if comparative market efficiencies and prices prevailed.

That this relationship is quite realistic is indicated by experience in the flue-cured tobacco industry. As is indicat-

ed in the footnoted account\* the value of farm acreage for farms possessing tobacco selling rights (quotas), experienced an explosive increase over a 30-year period from something in the neighbourhood of \$10 per acre to something in the neighbourhood of \$3,000. Even if these figures are substantially inflated, the increase in "investment value" which they would represent imposes a barrier to entry of a serious nature and represents an increase in "costs" which make effective competitive performance in the export market difficult to achieve.

\* In the Restrictive Trade Practices Commission report on the flue-cured tobacco industry in Ontario (1956), reference was made to a study prepared by Professor W.E. Haviland, which reported that:

"It is in Norfolk [county] that Canadian tobacco has aptly earned the title *Green Gold*. In recent years some sandy land in this country which has sold for \$10 an acre before tobacco's advent was valued at as much as \$300 an acre."

Haviland considered this an unusual increase; the more common change in land values was a three-or-four-fold increase.

The Commission also referred to a report which suggested, in 1951, that tobacco selling "rights" would give a farm valuation of about \$500 per acre on the total farm acreage or \$1,000 per acre on the tobacco acreage. Although the Commission considered these figures to be rather high, it did conclude that "the acreage allotments by the Association are considered to have a substantial value per acre" (Report, p. 51).

In a 1977 newspaper report (The Globe and Mail, March 26, 1977) the following analysis of the per acre value of tobacco land subject to quota rights, and the determinants of that value, appeared:

"We've got to assess the situation and decide whether the producer can afford to produce for the export market", Mr. Raytrowsky said, "We can't afford to produce below cost".

"One of the cost elements for the Ontario producer is quotas for the production and marketing of tobacco. While there has been a reduction in the price of quotas recently, as late as two years ago quotas traded for as much as \$3,000 an acre, which is equivalent to \$5,000 to \$6,000 an acre on a producer's actual production.

"The capital value of such quotas is roughly equivalent to the differential between the Ontario price and the price judged competitive in world markets, a government official noted."

#### (e) *Commodity Exchange Practices*

The markets for dealing in the purchase and sale of many staple products are organized into produce exchanges. These are associations of dealers, brokers, and, in some cases, speculators, who meet together for trading in both cash and future sales of specified commodities. The exchanges are provided with elaborate facilities to enable their members to transact business quickly and without formality; they report immediately all sales and send out price quotations so that they quickly become known to all interested buyers and sellers; and they provide their members with information and services designed to facilitate informed, orderly trading. Indeed, the value of ample and accurate information and statistics — daily, weekly, monthly — is not always fully appreciated, but the absence of such information can quickly provide misleading signals to those engaged in the production, distribution and consumption of the products in question.

The short-run price signals of the market are, of course, less important where comprehensive government controls are imposed on the market, although in such circumstances the longer-run requirements of accountability render the suppression of market signals related to dynamic change a very serious matter for the industry and the economy, as has been argued above.

Nevertheless, even for the short-run operation of government-regulated commodity markets, certain procedures

must be observed for the orderly, dependable handling of transactions.

One of the obvious requirements of any product that is the subject of dealings in an organized market on a large scale, is that its quality can be determined by tests that yield almost identical results when applied by different competent officials. Until an official grade (or grades), possessing functional significance, has been declared, the technical conditions are not present for organized trading in bulk.

In addition, such restricted markets, along with more open markets, need to make provision for:

- (1) a market place;
- (2) detailed, regular market information;
- (3) the fixing of the level of commission rates;
- (4) the regulation of the forms of contracts employed for cash (and future) trading;
- (5) a procedure to establish the official price for the various grades of product for each business day; and
- (6) a system for the arbitration of disputes.

Furthermore, provision is customarily made for legal action:

- (1) against fraud or negligence on the part of any person involved in dealing in or in the handling of the specified product;
- (2) against exploitation arising from excessive charges for services rendered; and
- (3) against indirect losses due to the quality of the product undergoing deterioration before it reaches final markets.

Since thorough-going market controls create their own market "information" by allocative decisions which severely limit the scope for individual producers and sellers to respond to the imposed market signals, there is a tendency for the planning authority to consider the result as representing an equilibrium situation, and any departure from it as representing "instability". As a result of the inevitable limitations in the knowledge of such authority, especially about longer-run technical and organizational developments, the realization of equilibrium, in practice, can never be more than approximate. The closest approximation to an "equilibrium" in agricultural industries, which promotes successful economic transformation, efficient selection of entrepreneurs, and market discipline, is an arrangement in which both competition and deliberate coordination play some part. Where central direction dominates the market, it is virtually impossible to assure that the economic signals of prices and profitability should occur in rough conformity with economic needs, scarcities, and productive capabilities. As a first step in moving towards a more flexible system, it is imperative that the central authority should experiment with devices — such as a variety of contracts between buyers and sellers — which possess some of the economic signalling effectiveness of the produce exchange, inadequate as it may be, by itself.

#### 4. Conclusion

It seems clear that the objectives of legislation setting up the Canadian Dairy Commission could be achieved with a much lower and less comprehensive level of intervention than has been employed. Furthermore, that some of those interventionist policies, in their longer-run consequences, seriously conflict with the legislative intent, namely, the adoption of a high-price line with its umbrella effect over the processing-distributing sector, the version of cost-justification as a basis for return on capital (and its indirect effect on calculations of labour income), the failure to develop an effective accountability programme, and some aspects of its price discrimination policies.

The most important thing remains to be said: economic progress depends, as much as on any other factor, on the energy, inventiveness and creative imagination of particular men, attributes which are more likely to be developed and maintained by opportunities for independent action and by the relatively unconfined exercise of initiative. The consequences of excessive centralization may be more serious in the long than in the short run. As George B. Richardson of Oxford University has remarked -

"The central authority might, it is true, deliberately set out to favour diversity of decisions by its subordinate agencies, but there is no strong presumption that it will in fact do so; while every man will admit to his fallibility, few of them, as Mill observed, think it necessary to take precautions against it."

[Information and Investment, pp. 219-220]

The forces of economic progress are not self-perpetuating but tend to come to rest through the entrenchment of existing interests. The search for stability too often becomes a search for pseudo-security, security, that is, that is based on the inhibition of change, and the avoidance of dynamic change. The fact that these considerations are incapable of precise quantification is no reason for doubting their basic importance.

#### SCHEDULE "A"

##### MONTHLY DAIRY REPORT

(Ontario Ministry of Agriculture and Food — June 1979)

##### *Interim Comprehensive Milk Marketing Plan*

In Canada there are two milk markets; one for milk used for fluid purposes (beverage milk and fresh cream) and one for milk used for industrial purposes (butter, cheese, ice cream, etc.) Industrial milk is mainly under federal jurisdiction while fluid milk is primarily a provincial responsibility. The following report deals with the industrial milk sector only.

In December of 1970, Ontario and Quebec were the first two provinces to sign the Interim Comprehensive Milk Marketing Plan with the Canadian Dairy Commission (CDC). Except for Newfoundland, by 1974 all provinces in Canada had joined this plan. (Table 1).

**Table 1**  
**Market Sharing Quota Entitlement by Province**

Province	Date of Entry into Plan	April 1 1976	April 1 1977	April 1 1978	August 1 1979 <sup>1</sup>	Provincial percentages
						August 1 1979
— million kg butterfat —						
Prince Edward Island	Dec. 1/71	2.22	3.10	3.10	3.10	1.9
Nova Scotia	Apr. 1/74	1.86	2.03	1.99	1.99	1.2
New Brunswick	Apr. 1/74	2.04	2.23	2.18	2.18	1.3
Quebec	Dec. 1/70	76.75	80.53	78.92	78.92	48.0
Ontario	Dec. 1/70	50.53	52.60	51.55	51.55	31.3
Manitoba	July 1/72	6.30	6.55	6.42	6.42	3.9
Saskatchewan	July 1/72	3.99	4.16	4.28	4.28	2.6
Alberta	Apr. 1/72	10.84	11.27	11.04	11.04	6.7
British Columbia	Oct. 1/73	4.99	5.20	5.10	5.10	3.1
<b>Canada</b>		<b>159.53</b>	<b>167.67</b>	<b>164.58</b>	<b>164.58</b>	<b>100.0</b>

<sup>1</sup> The dairy year is presently being changed from April to March period to an August to July period.  
Source: Dairy Farmers of Canada Facts and Figures 1979, Table 23.

The main intention of the plan was to guarantee industrial milk producers a fair return for their efforts and investment. A formula known as the Industrial Milk Returns Adjustment Formula was adopted in 1975. This formula

indexes the target price of milk to cash input costs and to the consumer price index. The Federal Minister of Agriculture announces the official target price for producers based on this formula and the Canadian Dairy Commission sup-

ports the target price by offering to purchase butter and skim milk powder at stated prices.

In order to sustain the price for industrial milk without the Canadian Dairy Commission incurring enormous purchases of butter and skim milk powder, it has been necessary to set production quotas for producers, known as Market Sharing Quota (MSQ). The size of the total

Canadian quota (Table 2) is decided by the Canadian Milk Supply Management Committee, which is composed of producer and provincial government representatives and chaired by the Canadian Dairy Commission. The committee adjusts the Canadian quota in such a manner as to balance production with Canadian requirements for butter-fat at the current price.

**Table 2**  
**Canadian Market Requirements for Industrial Milk**  
**(Demand by Product)**

	1974/5	1975/6	1976/7	1977/8	Estimate 1978/9
— million hectolitres of milk —					
Butter	30.6	29.3	28.1	26.6	25.5
Cheddar Cheese	9.2	9.0	8.8	8.9	9.0
Other Cheese	6.3	6.6	7.0	7.8	8.4
Other Products	6.9	6.9	6.9	6.9	6.9
Canadian Requirements	53.0	51.8	50.8	50.2	49.8
less cheese imports	2.4	2.2	2.3	2.3	2.2
	50.6	49.6	48.5	47.9	47.6
less skim-off	3.5	3.8	4.0	4.3	4.5
<b>TOTAL CANADIAN REQUIREMENTS</b>	<b>47.1</b>	<b>45.8</b>	<b>44.5</b>	<b>43.6</b>	<b>43.1</b>

\*Source Canadian Dairy Commission.

While producer-to-producer transferability of MSQ within a province varies from province to province, MSQ may not be traded between producers in different provinces. Within the Interim Comprehensive Milk Marketing Plan there is a provision for interprovincial transfer of MSQ based on each province's production performance. Since interprovincial transfer of MSQ is based on production performance, and also because a successful market sharing plan must meet market demand, a high level of MSQ utilization is important. Currently provincial shares of MSQ are frozen, until August 1, 1980 by agreement of the Canadian Milk Supply Management Committee. The last interprovincial transfer of MSQ took place April 1, 1976. At present a sub-committee of the Milk Supply Management Committee is completing a review of the entire Interim Comprehensive Milk Marketing Plan. A follow up report will appear in a future issue.

#### SCHEDULE "B"

##### Concentration and Integration in Processing and Distribution of Milk and Milk Products\*

##### **Milk**

Between 1945 and 1975, Dominion Dairies Ltd. acquired 17 dairies, Silverwoods Dairies Ltd. acquired 21, Borden's increased their dairies by eight, Beatrice foods (owned by

Beatrice Foods Corp. of Chicago) acquired 31 and Beckers Milk Co., six. The number of franchised dairies increased by 119 firms in the 10 years between 1965 and 1975. The franchises appear to predominate in smaller communities, while mergers are accentuated in larger areas. The franchises consist of dairies that distribute milk already processed and packaged by larger dairies that have processing plants.

In a submission to the Royal Commission on Corporate Concentration, the Ontario Milk Marketing Board claimed that "the result of all this concentration in the milk processing industry has been a lessening of competition. In addition, there is the danger that a vast majority of the fluid milk business will fall into the hands of one or two large processors who will have virtual control of the market".

With corporate retailers entering into the processing and distribution of milk and other dairy products, the trend towards vertical integration in the dairy industry is increasing. Beckers, with 515 stores, is a wholly-owned subsidiary of Silverwood Industries Ltd. George Weston Ltd., which controls dozens of retail organizations, owns and operates Donland's Dairy in Toronto, Royal Dairy in Guelph, Clark Dairy in Ottawa, Neilson's Ice Cream in Toronto and has a 50 per cent interest in Foremost Dairy in Vancouver, a milk processor and ice cream manufacturer.

Although integration backward from retailer to processor may add stability, and, in some cases, increase competition



in those situations where a few large dairy companies may otherwise be able to monopolize the processing of milk products, the Ontario Milk Marketing Board warned:

This continuing vertical integration between retailers and milk processors is, we submit, a dangerous and undesirable trend. It leads to the concentration of the milk processing and retailing industries into fewer and fewer hands. The great danger, if this trend continues, is that price competition would be curtailed with the result that consumers would pay excessive prices for dairy products such as fluid milk, cheese and ice cream.

\* Bureau of Competition Policy, Consumer and Corporate Affairs Canada, Application of Competition Policy to the Food and Agriculture Sector (1978)

In Quebec, the Bureau is precluded from examining mergers between dairies by the Quebec Agricultural Marketing Act, which gives regulatory powers to the Quebec Agricultural Marketing Board. The Board controls all aspects of processing and distribution of dairy products. A similar situation exists in some other provinces.

#### SCHEDULE "C"

##### Concentration and Competition in Ontario's Fluid Milk Industry\*

###### **"Government Supervision of the Fluid Milk Trade"**

"Since 1934 the Ontario government has been deeply involved in all aspects of the fluid milk industry, from primary production to final retailing. At the distributor level the government, through its quasi-judicial Milk Board, has played the role of policeman and watchdog and has exerted a powerful influence on prices, trade practices, conditions of entry, indeed the whole competitive environment, or lack of it, in the industry.

"From 1934 to 1948 the Board set prices to consumers and to producers directly, thereby forcing distributors to operate at specified margins. After the scathing criticisms of this retail price control by Justice Wells in 1947, it was abandoned, only to be replaced in 1951 by a system of formula pricing.

"Licensing has been a major instrument of government control and supervision over the industry. The Board (and its successor, the Milk Commission of Ontario) has the power to prevent any operator from participating in the fluid milk trade in Ontario simply by refusing to grant him a licence. Through its licensing policy the Board has promoted a reduction in the number of existing distributors, and has discouraged new firms from entering the trade. By prescribing specific territories or distribution areas on its licences, moreover, the Board has effectively insulated individual markets and individual dairies from outside competition, and curbed potential expansion by certain aggressive firms. These artificial restrictions have mitigated [sic] against the drive for more efficient handling and distribution of fluid milk. Multiplant firms, for example, have been

forced to continue operating branches in small centres, rather than serving these centres from outside, in order to protect their licensing privilege in such centres. Much the same result has been achieved in smaller centres such as Oakville, Cobourg and Trenton by the enactment of municipal by-laws to protect their local dairies from out-of-town competition.

\* Duncan Allan, "Concentration and Competition in Ontario's Fluid Milk Industry", Ontario Economic Review, Vol. 3, No. 7, Nov. 1965, pp. 3-14.

###### **"The Present Position of the 'Big Three'"**

"In 1947 Justice Wells made the following observations on the significance of the 'Big Three' in the Ontario fluid milk industry:

'These three companies unquestionably exercise a large influence in the industry in Ontario, not only because of the efficiency of their methods and the high quality of their products, but because of the lead which they give independent concerns which operate in a similar fashion.'

"In addition he noted that the 'Big Three' controlled 30 per cent of the market for fluid milk, chocolate drink and cream in 1945. As we have seen this 'Big Three' share climbed to some 35 per cent by 1961. Today it may be closer to 40 per cent of total industry sales.

"This postulation that the 'Big Three' market share has risen considerably since 1961 is supported by two observations. First, there has been an intensification of merger activity in general since 1961 and the 'Big Three' have played a leading role in this activity. Five large independents have been absorbed by the 'Big Three' subsequent to our 1961 measure of concentration (Paulger's-Blantyre, Terrace Hill, Mason's, Roselawn Farms, and Rainbow); only three of the largest independents, on the other hand, have purchased additional sales volume since 1961. Second, and perhaps equally important, has been the tremendous expansion in 2% sales since 1961, as opposed to an actual decline in standard milk sales. This shift in the product mix of the industry has almost certainly boosted the sales of the larger dairies such as the 'Big Three' relative to the sales of distributors handling only the regular line of milk.

The present 35 to 40 per cent control of industry-side sales by the three large chain dairy organizations considerably understates their actual or potential economic power in particular markets. In each of the five major markets except Toronto, the 'Big Three' along with a single independent virtually overwhelm other distributors. In Toronto, four aggressive independents — Becker, Donlands, Valley View and Findlay-Kemp, have prevented the 'Big Three' market share from climbing above 60 per cent. The overall trend, however, is clearly in the direction of greater concentration of sales and control of the fluid milk industry in the hands of a few giant firms.

###### **"Interdependence of Distributors in Pricing"**

"In our earlier discussion of the nature of demand for fluid milk, it was noted that the pricing behaviour and trade practices of distributors in a market tend to be identical or uniform. The basic reason for this uniformity in behaviour is the high degree of interdependence among distributors, due to:

- (a) the limited number of firms in each market;
- (b) the homogeneous nature of the product, which means that consumers will readily shift from one distributor to another;
- (c) the inelastic demand curve in a market;
- (d) the identical buying price or cost to distributors for their raw milk requirements.

"Under these conditions, a price reduction by any distributor in a market will in all probability be met by the others, and conversely, any single firm will be reluctant to raise prices for fear that his competitors won't follow. In essence this means that the collective body of distributors in any given market finds it in its best interests to practise restraint or discipline in the matter of pricing. This predisposition towards a 'live and let live' policy in pricing and the tranquility it implies is often spoken of and praised as market stability or orderly marketing.

"The interdependence and essential unity of interests of distributors in Ontario are reflected in their highly effective trade organization — the Ontario Milk Distributors Association. Under the OMDA, distributors have come together in each market to present a united front in bargaining with producers and with unions. The OMDA has also acted to bring about simultaneous retail price increases across the province whenever the government-sponsored pricing formula has indicated an increase in producer prices. In recent years there has been some evidence of a schism developing with the OMDA, with the small distributors lined up on one side and the large dairies on the other.

"In 1948 some vigour was restored to the industry by relaxing the direct control of retail prices. At that time the Milk Board was sufficiently wary of the potential for collusion among distributors that it held on to the power to impose maximum retail prices — a power which it retains to this day. Despite the strong distributor predisposition to avoid price competition, and despite a solid tradition of identical pricing, however, decontrol was rapidly followed by a revival of price competition in the industry."

### APPENDIX 13

Commission of Inquiry into  
Certain Allegations Concerning  
Commercial Practices of the  
Canadian Dairy Commission

### THE EVOLUTION OF ORGANIZATION AND REGULATION IN THE ONTARIO AND CANADIAN DAIRY INDUSTRIES

(The Schedules are produced separately)

George R. McLaughlin  
March 1980

(1) Veronica McCormick, *A Hundred Years in the Dairy Industry*, (Dairy Farmers of Canada, 1968), p. 124

(2) *ibid.*, p. 154

1. "In the early days of settlement, butter and cheese was made on the farm, generally for the family use. Farm cheesemaking was a skill that was handed down from one generation to another and was often a family aptitude."<sup>(1)</sup>
2. In communities where farmers did not have the skills within their own families, cheese and butter factories were developed by those who did have the skills, usually on an individual proprietor or joint stock company basis. Many of these factories were "co-operatives" in the sense that they made cheese or butter for a number of local farms, and the farmers concerned may have co-operated in the establishment of the factory. In these cases the factory owner assumed all the costs of manufacturing and marketing and returned to the farmer the sale value of the product less his costs and a margin of profit. There were also true co-operatives among these early factories; i.e. non-profit organizations of farmers which provided services at cost for the benefit of the members.
3. Governments encouraged factory organization because it provided a vehicle through which to provide instruction to farmers in improved production techniques and quality of product. Co-ordination and co-operation among factories resulted from this instruction, and from inspection, and by 1900 organizations representing groups of factories had evolved in most rural areas.
4. Producers also began to organize around the turn of the century. Those who produced cream and industrial milk, as it has come to be called, organized locally around the factory to which they delivered their products. Producers of milk for direct human consumption ("fluid milk") organized, initially around urban markets, to attempt to secure better prices and conditions from the distributors to whom they sold their milk. Such organizations began in Hamilton and Montreal as early as 1903.
5. Producer dissatisfaction during periods of low prices stimulated the forces of organization. The Ontario Milk and Cream Producers' Association was formed in 1917. Its main purposes were: "To act as a medium of communication, to advise re the enactment of dairy legislation, to establish a bureau of information on dairy problems, to offer mutual protection, to establish a uniform system of time contracts in relation to milk pricing, to obtain a better deal re traffic rates on railways and to conduct a publicity campaign to promote the consumption of milk"<sup>(2)</sup>. As part of its attempt to fulfill its purposes of providing information to producers the Association originated the Ontario Milk Producer magazine in June of 1925, which is still published by Ontario's milk producers.

Initially only fluid milk and cream producers were involved, but as the manufacture of condensed and evaporated milk and milk powder became more important producers shipping milk for such uses became represented within the Association. This Association appears to have been the first instance in Canada where all the producers of milk were organized within one provincial association. It is remark-

able that, considering its lack of finances and the separate concerns of its diverse groups, it continued to function for fifteen years.

6. In 1932 the producers of fluid milk organized The Ontario Whole Milk Producers' Association (later "The Ontario Whole Milk Producers' League") to attempt to deal more directly with what they regarded as the extremely low prices and unsatisfactory conditions of sale. The creation of this organization meant the end of the comprehensive 1917 association, and the old organization became defunct. Formation of The Ontario Whole Milk Producers' Association and the disintegration of the Ontario Milk and Cream Producers' Association was followed by the formation of The Ontario Concentrated Milk Producers' Association in 1934 and the Ontario Creamery Patrons' Association in 1935.
7. Independently of these developments The Ontario Cheese Factory Patrons' Association came into existence in 1933 as a federation of county organizations of milk producers shipping to cheese factories. Most provincial dairy organizations in other provinces came into existence much later.
8. In the early 1930's chaos in milk pricing, discriminatory buying practices and an increasing number of farmers turning to milk production in search of steadier incomes, brought about provincial milk control legislation, beginning with Manitoba in 1932. This control was exercised primarily over fluid milk insofar as prices and pricing methods were concerned, although control over the quality of all milk offered for sale also has been exercised. In most provinces, fluid milk prices are still established by provincial government bodies called variously "Milk Board" (B.C.), "Public Utility Board" (Alta.), "Milk Control Board" (Sask. and Man.), "Milk or 'Dairy' commission" (Ont., N.S. and P.E.I.), "Dairy Products Commission" (N.B.), or "Agricultural Marketing Board" (Quebec), although in some provinces such bodies are only involved in pricing where there is a dispute between buyer and seller as to the price that should be established. One of the primary functions of these boards is the inspection and licensing of milk distributors and milk processors, the pressure for which arose out of the severe price competition of the thirties when established procedures for quality control, payment of farmers, and so on either were not uniformly applied or did not exist. Out of these chaotic conditions was born the idea of marketing quotas for fluid milk.<sup>(3)</sup>

<sup>(3)</sup> See "Milk Marketing in Ontario" — an address to the Toronto Board of Trade, March 6, 1972 by George R. McLaughlin, at page 5 (Schedule 1)

<sup>(4)</sup> S.C. 1934 (24 and 25 Geo.5), c.57, (Schedule 2), amended by The Natural Products Marketing Act Amendment Act, 1935, S.C. 1935 (25 and 26 Geo.5), c.64 (Schedule 3).

<sup>(5)</sup> Reference re The Natural Products Marketing Act, [1936] S.C.R. 398 (Schedule 4); affirmed by *A.-G. B.C. v. A. — G. Canada*, [1937] A.C. 377 (Schedule 5)

<sup>(6)</sup> S.C. 1944, c.29 (Schedule 6)

<sup>(7)</sup> S.C. 1947, c.10 (Schedule 7)

<sup>(8)</sup> S.C. 1957-58 (6 Eliz. II, v.1) c.22 (see Schedule 8 for statute as it appears at R.S.C. 1970), c.A-9, and Schedule 9 for the extensive amendments enacted as S.C. 1974-75, c.63.

<sup>(9)</sup> See Schedule 8, Agricultural Stabilization Act, Section 10(1)(a).

9. It was also during the depression years that the Federal Government began its first major support of farm prices. The Natural Products Marketing Act, 1934 <sup>(4)</sup> would have controlled prices and market quantities of butter and cheese had it not promptly been declared *ultra vires*<sup>(5)</sup>.
10. During World War II the Federal Government began to pay subsidies for fluid milk, manufacturing milk and farm-separated cream. The main purpose was to increase production through incentives to farmers while at the same time holding down prices to consumers. In 1944 Parliament passed The Agricultural Prices Support Act, 1944<sup>(6)</sup> to support farm prices during the transition from war to peace and to prevent a repetition of the farm prices collapse of 1921.
11. The Agricultural Products Act, passed in 1947<sup>(7)</sup> extended the Federal Government's activities to taking ownership of agricultural products and contracting with overseas purchasers for the sale of its holdings of surplus products into the export market.
12. In 1958 the Agricultural Stabilization Act<sup>(8)</sup> was passed, replacing the Agricultural Prices Support Act. The purpose of this new legislation as set out in the preamble was to stabilize "the prices of agricultural commodities in order to assist the industry of agriculture to realize fair returns for its labour and investment, and to maintain a fair relationship between prices received by farmers and the costs of the goods and services that they buy, thus to provide farmers with a fair share of the national income". The Agricultural Stabilization Board, created to carry out the provisions of the Act, used the offer-to-purchase-method<sup>(9)</sup>, applied primarily to butter and cheese, as a means of stabilizing returns in the dairy industry. It also used the method of direct subsidies to producers of manufacturing or industrial milk from 1959 to 1963, and since 1965. However, until the beginning of the Canadian Milk Supply Management Program in 1970, that portion of the milk from fluid producers which was not required by dairies for fresh fluid milk sales, and which was used instead to make manufactured dairy products, did not qualify for any of the direct federal subsidies. It was felt that fluid milk producers received enough money from the fluid sales portion of their deliveries, and that a subsidy on the manufactured portion could not be justified.
13. In 1966 the Agricultural Stabilization Board established an export assistance levy of 10¢/cwt., which was deducted from the subsidy payments to producers of manufacturing milk and cream as a means of defraying some of the losses on export of product made from such milk. Since it was a deduction on subsidy payable, and since the manufacturing milk shipments of fluid milk producers did not qualify for subsidy, fluid milk producers contributed to the surplus to be exported but were not required to help pay the costs of export of such surplus. This cost fell solely on the manufacturing milk and cream shipper through the export assistance levy.
14. The Federal Government had introduced its offer-to-purchase/direct subsidy program of dairy industry support in part because of pressure from producers,

processors and provincial governments. The problem of accumulated surpluses in 1963, particularly of butter, was acute. The First Canadian Dairy Conference was called by the industry to try to deal with the trends in production and marketing and "to discuss constructive policies for the future of the industry". It arose also in part as a result of the collapse in Ontario of attempts to forge one united dairy producer marketing organization, and the resultant indefinite postponement of talks between Ontario and Quebec producers concerning co-ordinated action on milk marketing problems. The Conference's main recommendation was the formation of a co-ordinating and advisory committee, "to be called the Canadian Dairy Advisory Committee", constituted to make recommendations on principles and policies of benefit to the industry as a whole. The Committee distributed its report to the industry in August 1965.<sup>(10)</sup> One of the recommendations was that a National Dairy Authority be established.<sup>(11)</sup> The Canadian Dairy Commission Act was passed in July 1966<sup>(12)</sup>, and the Commission was fully operative by April of 1967.

15. In the interim between the Dairy Conference of 1963 and the Canadian Dairy Commission's commencement of operations in 1967, the dairy producers in a

<sup>(10)</sup> See Schedule 10 for The Report of the Canadian Dairy Advisory Committee, 1965.

<sup>(11)</sup> *Ibid.*, page 22, para. 20.1

<sup>(12)</sup> S.C. 1966, c.34 (Schedule 11)

<sup>(13)</sup> The Ontario Cheese Producers' Marketing Board was established in 1937 under Ontario's Farm Products Marketing Act [R.S.O.1937, c.75 — see Schedule 12]. It replaced a marketing scheme set up in 1935 under the federal National Products Marketing Act, 1934, which was set aside when the latter act was declared ultra vires in 1936. It had authority to control the local auction markets or "cheese boards". Late in 1951, it was made the agency to market all Ontario cheese sold for export, and did so by purchasing any and all Ontario cheese surplus to Canadian requirements at minimum prices negotiated with the licensed buyers.

<sup>(14)</sup> The Ontario Cream Producers' Marketing Board was established in 1947 under Ontario's Farm Products Marketing Act, 1946 [S.O. 1946, c.29 — see Schedule 13]. However, marketing regulations were not made until 1955, when provision was made for negotiations of minimum prices for cream; the terms and conditions of production and sale of cream to creameries, and the deduction by creameries of fees from producers to be paid to the Board.

<sup>(15)</sup> The Ontario Concentrated Milk Producers' Marketing Board was constituted in 1954 under Ontario's Farm Products Marketing Act to represent all producers whose milk was shipped to manufacturing plants. It had authority to represent all producers in price negotiations, arbitrations and representations to governments on industry support programmes. It required all milk manufacturers to deduct fees from producers for payment to the Board.

<sup>(16)</sup> The Ontario Whole Milk Producers' League was granted statutory powers in 1957 under The Milk Industry Act, 1957 [S.O. 1957, c.70 — see Schedule 14] to negotiate for all provincial fluid milk producers market differentials above and below the formula price (introduced in 1954), terms and conditions of sale and transportation rates.

These four groups of producers had been represented for many years by voluntary associations, and it was largely the buying practices of the buyers of milk throughout the decade after World War II that persuaded them to seek statutory powers of representation.

<sup>(17)</sup> Enacted as S.O. 1965, c.72. See Schedule 15 for the Act as it stood at the end of 1978, and Schedule 16 for The Milk Amendment Act, 1979, which authorizes the delegation of certain powers to the Canadian Dairy Commission.

<sup>(18)</sup> See Schedule 17 for the Committee's summary of its principal recommendations.

<sup>(19)</sup> See Schedule 18 for a description of O.M.M.B. and its powers — "Ontario Milk Marketing System", address by G.R. McLaughlin to the National Mastitis Council, Inc., August 14, 1975.

number of provinces had been searching for ways to deal more equitably with the problems arising between fluid milk and manufacturing milk producers. Manufacturing milk producers were demanding better prices, and "greater equity", especially in dealing with the surplus of milk from fluid milk producers which found its way into the processing of manufactured milk products, thus adding to the surplus and holding down the price.

16. Failure to agree on one overall milk marketing plan, despite successive repeated attempts by the Ontario Cheese Producers' Marketing Board,<sup>(13)</sup> the Ontario Cream Producers' Marketing Board,<sup>(14)</sup> the Ontario Concentrated Milk Producers' Marketing Board,<sup>(15)</sup> and The Ontario Whole Milk Producers' League,<sup>(16)</sup> all of which had been granted statutory marketing powers of various kinds through the 1940's and 1950's, resulted in the request by these groups in 1963 for the Ontario Minister of Agriculture to create one marketing organization. This he did in 1965, after convening an inquiry into the problems of the industry by a non-industry committee chaired by Professor S.G. Hennessy of the University of Toronto. The Milk Act<sup>(17)</sup> of Ontario, which was a response to the Report of the Milk Industry Inquiry Committee,<sup>(18)</sup> replaced all previous milk marketing regulations. It created the Ontario Milk Marketing Board to replace three of the previous four dairy producer organizations in Ontario and to reorganize the producer part of the industry.<sup>(19)</sup> The Ontario Cream Producers' marketing Board, because of the different nature of its product, continued in existence.
17. At about the same time the Quebec Federation of Industrial Milk Producers (La Federation des Producteurs de Lait Industriel de Quebec) organized with marketing powers under the Quebec Agricultural Marketing Board, and the Quebec Fluid Milk Producers Federation (La Federation des Producteurs de Lait (Naturel) du Quebec), spearheaded by the experiences of the Montreal Whole Milk Producers suppliers' Board, followed suit. These boards in Ontario and Quebec had authority to represent all of their province's producers in matters of pricing and of quotas. As a consequence of the formation of the Canadian Dairy Commission, with authority to deal with marketing problems in interprovincial and international trade, and the Milk Marketing Boards (or Federations) in Ontario and Quebec, with authority to deal with pricing and quotas, the essential elements were present to carry out some of the most important recommendations of the Canadian Dairy Advisory Committee.
18. Initially the Canadian Dairy Commission used "subsidy eligibility quotas" to indicate to producers that portion of their milk production on which direct subsidy could be expected to be received. The Commission was required to carry out the Government's plan to pay subsidy only on the volume of milk from manufacturing or industrial milk producers that was required for Canadian consumption. In addition it deducted from the subsidy payment (as the Agricultural Stabilization Board had done before it) an export assistance levy to cover its losses on export, if

any. The inequity in this plan was that fluid milk producers could produce as much milk surplus to their quota or share of the fluid market as they wished, such milk contributing to the surpluses then existing, and while attracting no federal subsidy, neither did it contribute anything to the cost of surplus disposal or export assistance. However fluid milk producers did receive the market price for such milk, a price which was supported by the C.D.C.'s Commission's offer-to-purchase program.

19. In order to contain the surplus production of manufacturing or industrial milk by fluid milk producers as well as by manufacturing milk producers, and to assure the farmers' active participation in the cost of the export assistance program, it was necessary for those organizations with statutory powers over prices and quotas to work together with those operating the price support, subsidy and export assistance programs.
20. This led to the organization, in late 1970, of the Canadian Milk Supply Management Committee and the Interim Comprehensive Milk Supply Management Agreement,<sup>(20)</sup> which was initially signed by Ontario, Quebec and the Federal Government through their respective agencies. In most of the other provinces fluid milk production was the major part of their dairy industries. Ontario and Quebec produced about 75% of Canada's total supply and over 80% of its manufacturing or industrial milk. When these provinces realized they could obtain subsidy funds for the non-fluid portion of the production of their fluid milk producers they took the necessary steps to establish provincial agencies with statutory powers to administer quotas, and then join the national plan. All nine dairy producing provinces were signatories by the end of 1974. (Newfoundland imports almost all of its dairy product requirement.)
21. While the Federal Government, through its agency the Canadian Dairy Commission, has the authority to use quotas as a means of distributing its subsidy funds (e.g. subsidy eligibility quotas), it appears to have no constitutional right to use quotas for the pricing of a product within a province. Provincial agencies appear to have no constitutional authority to make levies against market returns to cover costs of export, and hence the necessity for such agencies to seek and obtain an "extension of powers" under Federal legislation.<sup>(21)</sup>
22. This was the package that was possible to implement through the co-operation of the provincial milk producers organization and the provincial and federal governments' dairy marketing agencies. The cement which brought and held it all together, was the dairy producers' desire over many years to find a way to solve the supply and price problem across the country in a manner they found more satisfactory. The attraction which brought the provincial governments to agreement so readily (compared at least to all previ-

ous attempts) was the additional federal subsidy payable on manufacturing or industrial milk produced by fluid milk producers.

23. The Canadian Dairy Commission has carried on the programs of the Agricultural Stabilization Board in its support price program (offer-to-purchase) and its direct subsidy program, although these have been modified over the years. Since the advent of the Canadian Milk Supply Management Program and the Committee which establishes the annual policies respecting the quotas (called "market-sharing quotas" or "MSQ", as opposed to fluid milk quotas) it has been accepted that the national quota should approximate Canada's requirements on a butterfat — basis for manufactured milk products plus traditional exports less permitted imports. The national quota is adjusted periodically to reflect predicted changes in demand or policy in these three areas. Since marketing quotas can only be administered provincially, changes in the provincial allotments of MSQ lead in turn such adjustments by the provincial milk marketing agencies, among the producers within the province, as may be agreed to by the Canadian Milk Supply Management Committee. It has been accepted generally that such direct subsidy funds as the Federal Government decides to pay on manufacturing or industrial milk will be prorated over all of the MSQ representing Canadian domestic requirements for butterfat. The Federal Government could establish the total of the MSQ to be produced rather than allowing the Committee to do so by dictating the amounts on which it is prepared to pay subsidy. It is participant in the Committee, however, and has generally been satisfied to use its influence within the Committee in the establishment of the annual MSQ, rather than to do so arbitrarily outside the Committee through dictating the amount of the MSQ to be covered by subsidy.
24. The Canadian Dairy Commission operates an offer-to-purchase program in which it establishes floor prices at which it will buy product (butter and skim-milk powder primarily) if there are no other buyers above that price. Butter has traditionally been a very seasonal product from a manufacturing point-of-view and most of it has been produced during the pasture season. In order to stabilize butter prices to consumers and butterfat prices to dairy farmers and the C.D.C. (and the Agricultural Stabilization Board before it) has purchased butter at its established floor prices during the spring, summer and fall and sold it back to the trade in the winter time at its floor price plus storage costs. When butter became surplus to Canadian requirements it was in the C.D.C.'s possession, and it was the C.D.C. which was obligated to find an export market for it at the best possible price. When dairy farmers became responsible, through the export levy, for financing the difference between domestic prices and export market prices for products supported through the C.D.C.'s programs, they became much more interested in the C.D.C.'s export marketing programs and much more demanding that the C.D.C. provide the same or better marketing expertise in world markets as our major competition; i.e. Australia, the EEC and New Zealand.

<sup>(20)</sup> See Schedule 19 for a description of the Committee and its purposes and for copies of the agreements.

<sup>(21)</sup> See Schedule 20 for the Agricultural Products Marketing Act, R.S.C. 1970, c.A-7 and the Ontario Milk Order of 1970 made thereunder.

25. This led to an expansion of the C.D.C. staff in the marketing area as well as a tightening up of its supervision of agents involved in the handling of the products for which it carried the export responsibility. It also led to a more public accounting to provincial producer organizations of the Export Equalization Fund,<sup>(22)</sup> into and out of which producer monies were paid.
26. Since the MSQ was established to represent Canadian requirements for butterfat, since a hundred pounds of milk yields approximately 4.2 lbs. of butter and 8.0 lbs. of skim milk powder, and since Canadians use about the same quantities of each, it follows that satisfying Canada's requirements for butterfat brings forth a surplus of skim milk powder. The gradual reduction in the number of farm-separated cream producers and in the number of creameries, and the increase in factory-separation with the consequent increase in skim milk (which was previously fed to swine, calves and poultry on mixed farms) created a surplus of skim milk powder following on the heels of these new controls which had been designed to relieve the previous problem of surplus butter. The butterfat exchange program, undertaken over the past few years by the C.D.C., is an attempt to find export markets for dairy products containing both the butterfat and skim milk portions of milk, (i.e. whole milk) thus reducing our skim milk powder surplus. It may require an increase in butter imports to provide our Canadian requirements for butter, to the extent that the butterfat exported in whole milk products may deplete the supply required for domestic use. At the same time, however, world prices of whole milk products are generally well above world prices of skim milk powder, thus reducing the export assistance required from dairy farmers.
27. One of the achievements of the C.D.C. is the excellent avenues of communication which have been opened as a result of the creation of the Canadian Dairy Commission and the various provincial, federal and federal-provincial programs which have evolved as a result. In addition to the Consultative Committee to the Canadian Dairy Commission, which was made up of producer and processor representatives, and which, at least up to February, 1977, (since which time it has not met,) was used much like a board of directors by the first two Commission chairmen, the Commission has met with representatives of groups affected by its policies at their request. Its members attend most provincial producer and processor meetings in each

province as well as accepting invitations to more local meetings when possible. This whole area of communication has assisted materially in broadening the understanding of Canada's dairy producers not only of Canadian dairy problems and policies, but of the problems and policies of the international market as well.

28. Throughout the development of marketing techniques involving federal-provincial co-operation, attempts continued to remove the pricing of milk from short-term political considerations to more long-term industry stability considerations. There evolved in Ontario a trial of formula pricing of fluid milk in 1954. It became mandatory with the passage of the Milk Industry Act (1957). While the original formula was amended several times and placed under a moratorium in 1965, fluid milk prices to producers in Ontario were again established through a formula<sup>(23)</sup> agreed upon by the newly formed producers marketing board, the processors organization and the provincial government in 1968. Formula pricing of fluid milk was introduced into British Columbia with the Milk Industry Act of 1956.<sup>(24)</sup>
29. Formula pricing was requested of the Federal Government over a number of years, to be applied to its pricing influences on manufacturing milk. Finally, formula pricing was introduced in April of 1975,<sup>(25)</sup> as an indication of the prices which should be received by dairy farmers for manufacturing or industrial milk. The Federal Government accepted the obligation to establish the combination of product support prices and direct subsidies at a level which would permit acceptable margins to processors and return to producers the price indicated by the formula.
30. The dairy industry in Canada is very tightly controlled as to volumes and prices. Producers have been willing, after some 60 years of uncertain markets and unstable prices, to accept that the volumes of milk to be produced must bear a close relationship to the available markets for dairy products if some guarantee of "reasonable returns" is to be forthcoming. They have supported the establishment of, and have established themselves, agencies which are necessary to control the volumes and the prices which prevail in the industry. They have been seeking ways to accomplish this kind of security for their investment of capital and labour since dairy organizations began at the beginning of this century. Present programs and industry structure will continue to evolve as it is influenced by changing markets and new technology.

#### *Fluid Milk Prices and Quotas*

31. The price received by dairy farmers for fluid milk is a provincial responsibility. Such prices are generally established through negotiation and, if necessary, by arbitration. In some provinces prices to farmers are established by government regulation after public hearings. In Ontario, prices are established by regulation of the producer marketing board, and are then subject to appeal to a government tribunal. Some provinces also regulate prices which processors and retailers may charge consumers. Formulae are used in

<sup>(22)</sup> The Export Equalization Fund is a separate accounting procedure operated by the Canadian Dairy Commission into which producer export levies and returns from domestic sales of imported butter are credited and out of which purchases of products (under the offer to purchase programme) are charged. In simplified terms, any shortfall in the account in one year is made up by increases in producer export levies the following year, and likewise any surplus in the account is offset by reductions in producer export levies the following year.

<sup>(23)</sup> See Schedule 21, "Pricing Fluid Milk at the Farm Level (An Explanation of Formula Pricing for Raw Milk from the Farm as practiced in Ontario)", O.M.M.B.

<sup>(24)</sup> See Schedule 22 for Milk Industry Act, S.B.C. 1956, c.28.

<sup>(25)</sup> See Schedule 23 for descriptive material regarding the Returns Adjustment Formula.

many provinces to indicate the level of prices to farmers in relation to production costs and market conditions.

32. Fluid milk is produced under a daily quota in the hands of each producer of fluid grade milk. Such quota is the amount or share he has of the total fluid milk requirements of his province, region or market. It is in fact a contract which requires him to supply a certain daily volume of milk, usually with some tolerance allowed for unseen circumstances, and which guarantees him a certain level of payment for the quota milk, based upon compositional and hygienic quality.

#### *Industrial Milk Prices and Quotas*

33. Industrial milk prices are influenced by the Federal Government through an offer-to-purchase programme operated by its agency, the Canadian Dairy Commission. Such activity supports the market price of certain industrial milk products, namely, butter, skim milk powder and cheddar cheese. In addition, returns from the marketplace are supplemented by a direct federal subsidy to producers on milk which is required to meet Canada's domestic requirements, less imports, plus exports. The subsidy is paid to each producer on milk produced within his annual industrial milk quota, called market-sharing quota or MSQ. The total of the market-sharing quotas in the hands of producers is that amount estimated to be required to bring forth Canada's requirements.
34. Target returns to producers for industrial milk are indicated by a formula operated by the Federal Government. The Government uses the combination of the price-support programme and the direct subsidy programme to provide the means of achieving the level of returns indicated by the formula. However, it is up to the provincial pricing authorities, through whatever method they have for establishing prices, to obtain returns for milk through the price support programme sufficient to meet the formula's target returns. The price support programme sets minimum prices for the designated industrial milk products mentioned earlier. In setting its minimum prices, the Federal Government must allow for reasonable manufacturing and marketing margins for processors, or producers cannot achieve, whether through negotiations or otherwise, the target returns indicated by the industrial milk formula.
35. Producers who overproduce their quotas are required to pay an export assistance levy to the Canadian Dairy Commission. Such levy is established to offset any losses created by having to export the products made from such milk at below Canadian domestic prices.

#### *Plant Supply Quotas*

36. Plant supply quotas originated in Ontario in 1970 as a means of allocating the residual supply of industrial

(26) To avoid excessive transportation costs, the province was divided into three regions. Little or no industrial milk flowed across the regional boundaries at the time the regions were established.

milk among the traditionally surplus products manufactured from such milk, namely, butter, skim milk powder and cheddar cheese. When the Ontario Milk Marketing Board was seeking a method of marketing industrial milk from its producers it held discussions with processors of alternative marketing methods. The two which emerged as the most likely alternatives were selling by auction or supply by quota. While the larger plants seemed to favour the auction method, the smaller plants feared for their milk supply. The quota supply method was finally agreed upon by the processors, the producers and the government.

37. Essentially, each existing processor of industrial milk products, i.e. butter, skim milk powder, evaporated and condensed milk and cheddar cheese, was allocated a quota equal to his previous year's receipts of milk. The Board guaranteed to supply each processor with the same percentage of milk relative to the total supply in his region that his quota was of the total quota in his region.<sup>(26)</sup> If his quota was 10% of the total quota in his region he was allocated 10% of the supply in his region available for manufacture into the industrial milk products mentioned. These plant supply quotas were negotiable between plants, to assist in structural adjustment in the processing industry and to allow flexibility between plants. They also provided a guarantee that a processor who acquired another processing business or plant by purchase would receive the milk supply associated with the purchased plant. One of the brakes on structural adjustment had been the inability of a selling processor to guarantee that the farmers would not ship to some other plant after the sale had been completed. This resulted in financial offers for small processing facilities too low to permit the owners to retire their debts and have any equity left for themselves. It was, in most cases, the supply of milk, rather than the small plant with outdated facilities, which attracted the purchasers.

#### *From the Farmer's Viewpoint*

38. If a person wishes to become a dairy farmer in Ontario by producing milk for sale there are a number of steps he must take:
  1. He may purchase an existing dairy farm with facilities for cattle housing and milk production and handling which meet the Provincial Government's requirements from a hygienic standpoint, or he may purchase any kind of farm and construct or renovate to provide such facilities. He cannot sell milk until he has been authorized to do so by a Fieldman of the Ontario Ministry of Agriculture and Food.
  2. He must apply to the Ontario Milk Marketing Board for a licence to market milk, which licence will be issued when the Board has been informed by the Ministry that the production facilities have met its requirements.
  3. He should acquire one of two kinds of quota, or he may acquire some of each kind. If he does not, he can only expect to receive from the Board the world market price for his milk

shipments, and this is a price with which he could not survive under Canadian cost conditions.

The two kinds of quota are: (a) Group 1 Pool Quota ("fluid quota") — which designates his share of the fresh fluid milk market, and is a daily quota; and (b) Marketing-sharing Quota — which designates his share of the industrial or manufacturing milk market, and is an annual quota. Over 90% of existing dairy farmers in Ontario have both kinds of quota.

Group 1 Pool quota remains fixed, subject to increases or decreases at the producer's option or as referred to below. However, something less than 100% of that quota qualifies for the fluid pooled price, inasmuch as there is more quota in the hands of producers than the volume of sales to consumers at fluid milk prices. The OMMB issues more quota than sales to permit producers the margin to produce at a level sufficient to offset the underproduction of some of their colleagues. Producers are allowed to produce 20% under their Group 1 Pool quota without penalty. However, if they produce less than 80% of their total fluid quota for two consecutive months their quota is reduced so that the average production of those two months becomes 80% of their reduced quota. Production which exceeds the requirements of the fresh fluid market is directed by the OMMB to industrial milk plants, and thereby becomes industrial milk. The producer would be paid for this milk at world price levels, by having an export levy assessed against it, unless the producer protected himself by acquiring a Market-share quota to cover that volume. With a Market-share quota, he would be paid the industrial pooled price.

4. He could acquire such quota in the following ways:

(a) with the farm, provided he purchased it as a going concern; i.e. land, buildings, herd and quota.

(b)(i) before 1976, he could purchase Group 1 Pool or "fluid" quota through private transaction, subject to OMMB approval, a 25% transfer assessment, and a maximum holding of 10,000 pounds. The transfer assessment provided that for each 100 pounds (or litres) disposed of by the seller, the purchaser could only acquire 75 pounds, the other 25 pounds being retained by the OMMB. The quota accumulated through the transfer assessment is used to encourage producers who produce only industrial milk to upgrade their production facilities in order to quality to ship fluid grade milk. When they qualify, they are issued free fluid quota by the OMMB based upon their historical production levels allocated in equal installments over a period not to exceed four years and one day. This is called the Graduated Entry Program: i.e. entry into the Group 1 or fluid Pool.

(ii) from 1976 all fluid quota relinquished by producers was sold to the OMMB at \$16.00 per pound. It was then reallocated to producers after deductions had been made for the Graduated Entry Program on a first-come first-served basis up to a maximum for any one producer of 10% of his existing quota.

(c) from the beginning of MSQ in 1970, such quota has been freely negotiable among producers, subject to OMMB approval of each transaction.

(d) beginning in March 1980, all quota (both fluid quota and MSQ) will be transacted through a provincial quota exchange operated by the OMMB. The only exceptions are in the case of on-going operations changing hands, and transfers within the immediate family. In these instances, the transfers may be made directly between the parties concerned, and no transfer assessment will be taken by the Board.

39. In order to permit a broader sharing of fluid quota among producers, the OMMB does not permit the transfer to a producer of any fluid quota which when added to what he already holds would exceed 75% of his normal production.

40. A new producer, having purchased a farm, brought it up to qualifying standards, and having applied for an received a licence to produce milk from the OMMB, is in a position to acquire a her and quota. In march 1980 he will be able to purchase his quota requirements on the monthly quota exchange operated by the OMMB, whether he does it all at once or in stages to match his growth in production. If he has purchased an on-going operation, including the herd, or if he has purchased from a member of his immediate family, he can acquire the quota direct without going through the exchange.

41. Once in production, he will sell his milk to his marketing board, the OMMB, to market it for him. In fact the OMMB buys the milk from him at his farm, and sells it to the processors. In contracts with milk transporters as agents to pick up the milk at the farm and deliver it to a designated processing plant. The farmer may not know the plant destination of his milk, and he may not care for he is paid the same wherever it goes. The processor pays the OMMB on the basis of the end use of the milk. Prices vary from fluid milk use (the highest priced category, called Class 1) to that used for the manufacturing of butter and skim milk powder (called Class 5). The returns from Classes 1 and 2, which are fluid uses, are pooled and the pooled or average price is paid to each producer in relation to his fluid quota, modified by factors for hygienic and compositional quality, less OMMB costs for administration of the Board and for promotion and advertising, and less a pooled transportation charge. Classes 3 to 5 are industrial use categories, and returns from the sale of milk used in these categories are pooled, and this pooled price is paid to each producer in relation to his MSQ, modified by factors for hygienic and compositional quality, less OMMB costs, and less a pooled transportation charge.



42. In addition, the OMMB deducts from MSQ milk export levies and forwards them to the Canadian Dairy Commission to offset the difference between the domestic returns for industrial milk and the returns from the export sale of industrial milk products which are excess to Canada's requirements. There are three levy rates: (i) A levy assessed on milk produced within the MSQ, called the "within-quota levy", used to export the excess skim milk powder produced from milk within the quota; (ii) A levy on the extension of the MSQ called the "sleeve", which is known as the "contingency levy", and is used to export both the butterfat and skim milk portion of milk, should part or all of the "sleeve" production be surplus to Canada's requirements; and (iii) A levy on milk produced over the MSQ and the "sleeve", called the "over-quota levy", and is used to sell the total of the butterfat and skim milk powder portions of the milk supply that is surplus to Canada's needs.

The purpose of the "sleeve", is to permit producers to market milk within their MSQ which exceeds their share of domestic requirements in order to offset the shortfall in the production of other producers. Current levy rates are: within-quota ' \$1.00/cwt. (\$2.27/hl); contingency ' \$1.30/cwt. (\$2.95/hl) of which .30/cwt. (.68/hl) is refunded on that portion of MSQ production in the "sleeve" which, by the end of the dairy year, is determined not to be surplus to Canada's requirements: over-quota ' \$8.00/cwt. (\$18.15/hl).

43. The producer can expect to receive monthly from the Canadian Dairy Commission a subsidy cheque, currently at the rate of \$2.66/cwt. (The export levy has already been deducted by the Board from its payment for the MSQ milk). The only limitation on subsidy payments is that such payments will not be made for milk produced outside of MSQ, nor on more than 900,000 pounds of MSQ milk per individual producer. However a two-person partnership made up of active participants in the farm operation may have a maximum MSQ for subsidy purposes of 1,800,000 pounds of MSQ, and where a three-person partnership is involved, the maximum MSQ for subsidy purposes is 2,700,000 pounds.
44. On entering the milk production business the new producer will have had a visit from an OMMB Fieldman. He will have learned that his fluid milk prices are determined by a formula reflecting his costs of production, the buying ability of the consumer, and the general economic situation in Ontario. The formula is calculated by the Statistics Branch of the Ontario Ministry of Agriculture and Food, as an agency independent of both the producer and processor. The prices are determined from the formula by the OMMB and made effective through a regulation.
45. He knows that his industrial milk returns are determined by a formula which Agriculture Canada calculates and which the Canadian Dairy Commission uses to influence dairy product prices through price support/offer to purchase programs and to pay him a direct subsidy on his MSQ productions. The product support prices are made effective by milk price regu-

lations of his marketing board. In all cases pricing regulations are subject to appeal to a provincial government tribunal.

46. He knows that when the formula price moves up or down by a certain margin, in the case of both formulae independently changes in his returns from milk sales will be forthcoming.
47. He knows that if he underproduces his fluid quota by 20% for two successive months, his quota will be reduced to reflect the underproduction. He knows that if he underproduces his MSQ on the year by more than 85% his quota the following year will be reduced to reflect this. He knows that if he produces milk of inferior hygienic quality he will suffer a financial penalty in the form of a lower price, and risk being disqualified from producing for the market. He knows that if he produces milk of an inferior compositional quality, he will be paid less for his milk accordingly. He knows that if his management is high calibre, he can count on a steady, almost predictable income from his milk sales, and can plan and budget accordingly.

#### LIST OF SCHEDULES

- \*1. "Milk Marketing in Ontario," by G.R. McLaughlin, March 6, 1972.
2. The Natural Products Marketing Act, 1934, S.C. 1934 (24 & 25 Geo. 5), c.57.
3. The Natural Products Marketing Act Amendment Act, 1935, S.C. 1935 (25 & 26 Geo. 5), c.64.
4. Reference re The Natural Products Marketing Act, (1936) S.C.R. 398
5. A.-G. B. C. v. A.-G. Canada, (1937) A.C. 377.
6. The Agriculture Prices Support Act, 1944, S.C. 1944, c.29.
7. The Agricultural Products Act, S.C. 1947, c.10.
8. Agricultural Stabilization Act, R.S.C. 1970, c.A-9.
9. An act to amend the Agricultural Stabilization Act, S.C. 1974-75, c.63.
10. Report of the Canadian Dairy Advisory Committee, 1965.
11. Canadian Dairy Commission Act, S.C. 1966, c.34.
12. The Farm Products Control Act, R.S.O. 1937, c.75.
13. The Farm Products Marketing Act, 1946, S.O. 1946, c.29.
14. The Milk Industry Act, 1957, S.O. 1957, c.70.
15. The Milk Act, R.S.O. 1970, c.273 or amended to 1978.
16. The Milk Amendment Act, 1979 (Ontario).
17. Summary of Principal Recommendations of the Ontario Milk Industry Inquiry Committee (1965).

- \*18. "Ontario Milk Marketing System", by G.R. McLaughlin, August 14, 1975.
- \*19. Description of the Canadian Milk Supply Management Committee and its purposes, the Agreement regarding Market Sharing Quota, and the Interim Comprehensive Milk Marketing Plan.
- 20. Agricultural Products Marketing Act, R.S.C. 1970, c.A-7, and the Ontario Milk Order S.O.R./70-519.
- 21. "Pricing Fluid Milk at the Farm Level (An explanation of Formula Pricing for Raw Milk from the Farm as practices in Ontario), O.M.M.B.
- 22. Milk Industry Act, S.B.C. 1956, c.28.
- 23. Descriptive material regarding the Returns Adjustment Formula.

\*Schedules reproduced below

## SCHEDULE 1 TO MR MCLAUGHLIN'S REPORT

### MILK MARKETING IN ONTARIO

An Address to the Toronto Board of Trade, on March 6, 1972, by  
George R. McLaughlin, Chairman  
The Ontario Milk Marketing Board

Farming has much in common with other kinds of industry. The production of food, whether of animal or vegetable origin, is still the basic resource industry. In our kind of economy, success in farming, as in most things, is based upon the knowledge and skills of the trade and is measurable in terms of living standards achieved. As a way of life, it continues to differ from that of urban people, but that difference is not nearly so great as it once was.

As a business, farming employs many of the same principles, as urban business. It differs, however, in that the proprietor himself provides most of the capital, the management skills and much of the labour, and he puts these things to work in a production enterprise, which, in many ways, is a "factory without a roof".

One of the strengths of our kind of democracy has been the opportunities for and the success achieved by individual entrepreneurs. Farming has been and continues to be one of the major bulwarks against the ever-so-gradual movement towards a robot-like society, where a few push the buttons and the rest react. Within farming, dairying particularly has remained an individual entrepreneurial type of business, mostly, I suspect, because the returns to capital, management and labour have not been sufficient to attract corporate attention. Experiences in the United States and elsewhere have amply demonstrated this.

Since each of these dairy farming businesses, and there are over 20,000 of them in Ontario alone, are subject to the business decisions of their individual owner-managers, a major problem exists in attempting to have these decisions made with due consideration to their effect on the industry

as a whole. The individuals react to differing market situations on the basis of their individual skills, ambitions and resources. These are generally unknown on a collective basis, and it has been virtually impossible to estimate with any acceptable accuracy, when and to what extent any reaction to changing conditions might take place. As a consequence the use of market information as a basic consideration of the individual in his decision-making has not been nearly so significant a factor as the situation facing him as an individual on his own farm. In other words, farmers have been much more individual farm production oriented than overall market oriented.

Let us look at the effects of this on our dairy farming industry. In the case of the individual dairy farmer, the situation has worked much like this. A dairy farmer would decide he needed more income. Perhaps he wanted to send a son to college or take him into partnership, or perhaps he needed to offset the effects of inflation or simply cover the increasing costs of his business inputs. He could increase his income by three possible means. He could sell more produce at the same price. He could sell the same amount of produce at a higher price. He could reduce his costs of production to leave him a greater net. Since experience over the years has shown him as an individual that he has little influence on the price of the product he had to sell or on the cost of the things he needed to buy to carry on his business, he would invariably choose to increase his production. He would borrow part of the necessary capital required to increase his herd and facilities, and would have calculated his repayment on the basis of existing market prices. However, unknown to him, other individual dairy farmers would have been making the same decision, perhaps for different reasons. The cumulative effect of these individual decisions in the past has been an increase in total volume of milk beyond what could be sold at existing prices resulting in a reduction in price for all milk produced, and a lowering of the living standards of all dairy farmers. This kind of situation, of course, caused additional hardship for those involved in repaying borrowed capital used for generating more income because their living standards would be even more seriously reduced if they had to maintain their repayments at the former rates unless they could renegotiate their loans.

Over the years, the reaction of dairy farmers to these circumstances has been manifest in creating organizations which could take steps to minimize the uncertainties that plagued their operations. Milk production is a high cost industry, and this probably explains why dairy farmers have been leaders among farmers in organizing to provide some increase in security for their investment. Over the years they have learned, as did those in the professions and those in the factories, that some sort of legislative authority was required in order to protect their interests individually and collectively, with enough safeguards to assure that the public interest was adequately protected. The evolution of these organizational efforts brought forth the Milk Act in 1965, out of which was born the Ontario Milk Marketing Board.

The Board consists of twelve dairy farmer members elected by the dairy farmers in twelve regions of the province, plus a representative of the farmers who separate the milk on the farm and sell only the cream portion for butter-making. It is financed solely by the dairy farmers

and operates on less than 1 per cent of the farm value of the milk sold. It purchases all the milk from the dairy farmers and sells it to the processing industry, contracting with the transporters to move the milk from the farms to the processing plants via the most efficient routing. It is empowered to establish terms and conditions of sale to processors, including prices, which it does through a form of negotiation. It pools the returns it receives from the processors for payment to the dairy farmers so that they all share equitably in these returns in relation to the quality and quantity each sells to the Board.

The effect of the historically recurring cycle of over and under supply on the milk processing industry and, for that matter, on the segments of agriculture which provide the inputs for our dairy farming businesses also has been instability, with strained facilities and resources at one time, and unused facilities and wasted resources at another. The effect on the consuming public has been fluctuating supply and price. It is virtually impossible to measure the reduction in purchasing power during the lengthy and recurring periods of over-production and low returns, which have plagued our industry in the past, and the loss this represents to the rest of our economy. It is virtually impossible to measure the loss in increased efficiency of production which otherwise would have occurred had the farmers had the confidence and the money to invest more readily in new technological developments.

It can be said that one of the major objectives of the Ontario Milk Marketing Board is to improve producers' returns in a stable market — not a fixed market, but a stable market. This means that a way must be found to indicate to dairy farmers what the size of the market is at any given time, and to persuade them to consider the market when making on-the-farm decisions. Evolution of market quotas as a means of doing this has been going on since the mid-Thirties.

What is a market quota? It is really a share of the market for milk granted to each dairy farmer for his use while he remains in milk production, and it was based originally upon his most recent production experience. There are basically two distinct markets in this province and in this country. The first we call the fluid milk market, being the market for milk which is sold fresh in the liquid form. It requires a regular daily supply, so the quotas associated with this market are daily quotas. To assure a regular daily supply the milk used for this purpose is paid for at higher prices. Each qualified dairy farmer receives this top price on the volume of milk shipped in relation to his fluid milk quota. The total of the fluid milk quotas in the hands of the dairy farmers is established to bring forth the required amount of milk for the fresh liquid market.

The other market in Canada we call the industrial milk market, being the market for milk which is manufactured or processed into milk products like cheese, butter, milk powder, condensed milk, and many other products. Since these products are storable and are not required on a fresh daily basis, the quotas associated with this market are annual quotas. The total of the industrial milk quotas in the hands of dairy farmers is established to bring forth the required amount of milk for the milk product market within Canada and to satisfy our traditional export markets. A dairy farmer may hold either one or both kinds of quotas or no quota at all. He may overproduce his quota or

quotas. However, we have three price levels for milk — the highest price for fresh fluid milk covered by a fluid milk quota, a middle price for industrial milk covered by an industrial milk quota, and a lower price (based mostly on the world price) for milk produced over quota or without a quota. The latter is surplus milk which has to be exported in some form, and the costs of export are borne by the individuals who overproduce.

The overall effect of pricing in relation to available markets and having those markets identified for each producer is a form of supply management — i.e. managing the supply to meet market requirements. Milk quotas are market quotas, and are not as sophisticated supply management tools as production quotas. A milk quota does not prevent a dairy farmer from producing and marketing milk outside the quota if he decides he can compete at over-quota prices, whereas production quotas as used in some commodities prevent a farmer from selling any product produced over his quota.

A dairy farmer may expand or contract his business or his income by negotiating the purchase or sale of his quota from or to another dairy farmer. In this way, each dairy farmer's quota or share of the market is protected to a considerable extent from the activities of other dairy farmers, and he has a greater security for his investment than he has ever had before. When combining the effects of quotas of this nature with reasonable prices, greater stability in the marketplace occurs, opportunities for dairy farmers to invest in efficiency-increasing technology are enhanced, and one way or another this benefits everyone. Sometimes in the past, schemes have been tried to expand the market for milk by encouraging overproduction to keep the prices low. At other times, programs have been launched to try to short the market so that the prices to farmers would go up. The objective of the Ontario Milk Marketing Board is to have slightly more than enough milk supply so that we never go short, while at the same time eliminating the wide fluctuations in supply and price that have played such havoc with the industry over the years. In addition, we spend more resources than ever before to try to expand our markets, through promotion and advertising, improved marketing, product improvement and new-product development.

There is a lot of suspicion about marketing boards. Most of this seems to be a result of misinformation or lack of understanding, and stems largely from the legislative authority which allows them certain monopolistic powers. There is no question that monopolistic powers can be badly used, and that is why agricultural marketing legislation has a good deal of governmental involvement to protect the public interest. A study of the legislation reveals, however, that these powers granted to marketing boards are not greatly different and are certainly no more monopolistic than the legislative powers granted to labour unions and professional groups such as doctors and lawyers. The powers are necessary in an industry or a segment of society like factory labour or the professions or farming, made up as they are of hundreds and thousands of individuals. The question is whether there are sufficient safeguards against the abuse of such legislative power. We in the dairy farming business realize full well that our survival as individual entrepreneurs and as an organization depends upon how well we demonstrate our belief in the tenet — "Not just today, but tomorrow; not just for me, but everyone."

## SCHEDULE 18 TO MR. MCLAUGHLIN'S REPORT

Address to the

1975 Summer Meeting  
NATIONAL MASTITIS COUNCIL, INC.  
Royal York Hotel, Toronto, August 14, 1975

### ONTARIO MILK MARKETING SYSTEM

By: George R. McLaughlin, Chairman,  
THE ONTARIO MILK MARKETING BOARD

Mr. Chairman, Visitors to Canada, Ladies & Gentlemen:

I appreciate the opportunity to participate in your 1975 Summer Meeting, and in particular to have been asked to make a few remarks about a topic which is close to my heart.

Ontario enjoys a rather unique system of milk marketing — not unique in the world, for it is very much a copy of the milk marketing systems in the United Kingdom — but unique in North America. All the milk produced for sale on the farms of Ontario can only be sold by the farmer to one buyer. All the milk produced in Ontario for sale to Ontario processors (whether they process it for fluid milk sales or manufacture it into dairy products) can only be purchased by processors from one seller. That buyer from the farmers and seller to the processors is The Ontario Milk Marketing Board.

It contracts with about 277 transporters to deliver the milk from 16,250 farmers to the plants of 184 processors. It establishes the prices which the processors will pay for milk they receive, and the rates to be paid transporters for delivering it. In 1974, it billed processors \$391.5 million for almost 5 billion pounds of milk, out of which it paid transporters \$20.1 million, retained \$2.5 million for administration of the marketing system and allied activities and \$1.7 million for market expansion efforts on behalf of milk and milk products, and paid the \$367.2 million balance to the producers.

The Ontario Milk Marketing Board is a milk producers' organization. Some call it a compulsory co-operative. Its policies are established by a Board of 13 Members, all of whom must be dairy farmers, and 12 of whom are elected by milk producers in their respective regions for four-year terms on a rotating basis. One Member is appointed by the Ontario Minister of Agriculture and Food to represent farm-separated cream producers who have an organization of their own. The appointee is usually their Chairman, and he provides an essential liaison function between the two organizations. The Board has a staff made up of 94 persons in head office; 17 marketing personnel in the field, whose primary functions are the assignment of farms to transporters, milk direction to plants, and discussions on haulage rates with individual transporters; 16 Fieldmen who assist producers with on-farm milk production problems and the interpretation of Board and Government policies; and 15 people handling the warehousing and sale of cheddar cheese. The chain of communications between the Board and producers is completed through the annual election by producers of 54 Milk Committees on a County and District basis. These Committees work closely with Board Members and Fieldmen in the two-way communication flow from

producer to Board and vice-versa, in the establishment of major Board policies, and in performing valuable public relations functions in their own areas.

The Board is financed totally by a check-off or licence fee which is deducted by the Board from processor payments before these are paid over to producers. The current administrative licence fee is 6¢ per cwt. on all milk. In addition, a deduction of 4½¢ per cwt. is made from fluid grade milk and 1¢ per cwt. from manufacturing grade milk for market expansion activities such as advertising, promotion, publicity, nutritional education, new product development and consumer research.

The Board is constituted under provincial marketing legislation, and in the public interest, its activities are subject to scrutiny by the Ministry of Agriculture and Food. In addition to its pricing authority, it has the statutory power to licence producers, to establish price pools, to set quotas, to appoint agents, to establish conditions of purchase and sale, to purchase milk to its own account for whatever purpose, among other things. Further, it operates for the industry two cheddar cheese exchanges in Ontario, and has the statutory authority to purchase or to sell cheese on these exchanges. It also owns two cold storage warehouses with a combined capacity of 17 million pounds of cheddar.

In its formal dealings with the various sectors of the industry, it deals through three statutory committees established under the legislation and regulations, known as the Advisory Committees to the Board for Milk, for Transportation and for Cheese. The Board tables all of its policies affecting the other sectors of the industry at the appropriate committee meetings for full discussion and possible amendment before implementation. In the event that anyone believes himself aggrieved by a Board decision, he may appeal the decision to a special tribunal within the Ministry of Agriculture and Food, known as The Milk Commission of Ontario. This is an appeal tribunal, not an arbitration board. Let me illustrate:

If the OMMB proposes to increase the price of milk used in any certain category or categories, it provides an agreed-upon term of notice to the processors. They have the opportunity then, through the Advisory Committee for Milk on a formal basis, and/or privately on an informal basis, to indicate their views on the appropriateness or otherwise of the Board's proposal. After giving due consideration to these representations as well as to all the available pertinent data bearing on the matter, the Board will make a decision and authorize a regulation to be filed establishing the new price or prices as of a specific date. The processors may choose to appeal this decision to The Milk Commission of Ontario (which they frequently do). The Commission then must decide whether the Board's decision is ill-advised or not. Since the Commission itself has no power to establish prices, it cannot determine what the price should be, but only whether the Board's price is or is not proper in the circumstances. If and when it decides against the Board, the Board must establish a new price.

In our experience to date, and we have over 20 years experience with arbitration prior to the Board's formation, this appeal mechanism is a much more flexible and satisfactory basis for establishing prices. It puts a good deal more responsibility into the approach by all parties, even

though the appellant may look upon it from the standpoint that he cannot lose, and thereby appeal more Board decisions than may appear reasonable.

In its pricing activities for fluid milk, the Board uses as a guide an economic formula which has been generally recognized and accepted by all in the industry. Target prices for manufacturing milk are now also established by formula, and are made effective by a combination of Federal Government product support prices and direct subsidy. The Ontario Milk Marketing Board is a member of the national federation of milk producer organizations, which we call Dairy Farmers of Canada. In this arena, we have been directly involved in the negotiations which led to the new pricing formula for industrial (manufacturing) milk, which we hope will result in greater pricing stability to that segment of our milk supply.

I mentioned that we have the statutory authority to establish quotas for marketing milk. We use fluid milk quotas to represent the requirements of our market for fluid grade milk, and these are provincial quotas. They are negotiable to allow milk producers to plan and carry out the needs of their own farm operations without undermining the operations of other producers. In many respects, the program is similar to some Class I Base Plans in the US. We use manufacturing (industrial) milk quotas to represent the national requirements of our industrial milk market. This is a national supply management program, but is administered by provincial milk marketing organizations within each province under a signed agreement between them and the Canadian Dairy Commission, a Federal Government agency. While quotas to share the manufacturing market (which we call Market-Sharing Quotas or MSQ) are negotiable between producers within a province in the same way as are fluid milk quotas, the movement between provinces is a block movement once each year based upon a utilization formula which was negotiated after the quota program began and is also now covered by signed agreement.

Our Grade A producers then have two quotas — a fluid quota to represent their share of the Class I market, and a market-sharing quota to represent their share of the industrial or manufacturing milk market — and they can adjust these to suit their on-farm circumstances. Our manufacturing grade producers have one quota only — that which indicates their share of our national market for milk products. These are market quotas, not production quotas. Any producer may overproduce his quota if he wishes, but he knows in advance that the returns for such over-production will be what we can get for his milk on the export market, less costs of export of the products involved.

We operate two basic price pools. With some geographical exceptions, all Grade A milk producers (holders of fluid quotas) receive the same pooled price for milk shipped within their fluid quotas, and all producers receive the same pooled price for milk shipped within their industrial milk quotas (MSQ). Any producer who does not hold a fluid quota, but wishes to do so and can qualify, can obtain such a quota by purchase from another producer or free from the Board on a gradual basis over a period not to exceed five years.

The Ontario Milk Marketing Board objective is to improve the income of milk producers and the market

stability for milk in order that their net returns for management, investment and labour will be equal to comparable enterprises.

In this connection then, our interests lie not only in the direction of pricing milk, but also in milk production input costs and on-farm efficiency. Our organization, representing, as it does, every milk producer in Ontario, is engaged in continued efforts to affect structural adjustment on our dairy farms within tolerable limits; to improve the format of and participation in Government and industry programs which will improve on-farm efficiency; to alert legislators and others to the problems of milk producers which they cannot individually or collectively resolve by themselves; to stimulate research in areas of greatest need, and to improve the image of the milk producer in the eyes of the public.

In co-operation with the Ontario Ministry of Agriculture and Food, and the Ontario Dairy Council, we share equally the financing of the operations of the Central Milk Testing Laboratory at Guelph, where every producer's milk is tested for butterfat for payment purposes, and also for protein and lactose. We are the sponsors of a major research study, just now reaching completion, into the implications for all interested parties of pricing milk on one or more components in addition to butterfat.

We have been interested in mastitis work at the University of Guelph for some years, and have contributed to the maintenance of a small control herd of dairy cows as well as to Dr. Newbould's work with the Coulter Counter. Our hope has been that a program might evolve for alerting herd owners to sub-clinical mastitis in their herds in time for them to take proper control measures — as well as to assure that good preventive programs are being employed on our dairy farms. You will be hearing more about this from the experts.

Milk producers in Ontario then operate a central selling agency for all milk, and set the prices which shall be paid; have quotas to designate the size of market for both fresh fluid milk and manufactured milk products; and receive pooled returns for the milk produced for each of these categories. The competition between producers is no longer based upon such milk marketing factors as who can make the best deal with the dairy. It is based upon production and management factors.

The efficiency of our cow population and of our dairy farm operators looms larger when the milk marketing factors have become uniform.

We can identify all kinds of challenges now and into the foreseeable future, which will keep us on our toes to provide the dairy farmer with the know-how, and get him to use it, that will be needed to meet the needs and competition for food.

Not the least of these challenges, and perhaps the greatest of them is that associated with the prevention and control of mastitis. We are determined to gain meaningful progress in this area, for we believe that the practical early identification and treatment of mastitis in a dairyman's herd together with a good preventive program can be a big step forward in helping the Board to achieve its objective of improving milk producers' incomes.

The kind of dairy industry we have into the future depends upon how we adjust to our markets for milk and

milk products. It also depends upon the efficiency of our dairy farmers — and of the animals they depend upon. Affecting that efficiency is the work you and others around

the world are doing in the realm of mastitis prevention and control. We need your talent and experience. Keep up the good work!

## SCHEDULE 19 TO MR MCLAUGHLIN'S REPORT

### CANADIAN MILK SUPPLY MANAGEMENT COMMITTEE

#### Function

To develop policy and administer a Supply Management program for industrial milk and cream under producer market quotas designed to balance production with market requirements.

#### Participating Agencies

The Canadian Dairy Commission is Signatory to the comprehensive Milk Marketing Plan on behalf of the Federal Government. Provincial Governments and Milk Marketing Agencies which represent producers in each province are participating Signatories to the Plan. The parties to this Agreement are:

On behalf of the Canadian Government

On behalf of the Govt. of P.E.I.

“ “ “ producers “ “

“ “ “ the Govt. of N.S.

“ “ “ producers “ “

“ “ “ the Govt. of N.B.

“ “ “ producers “ “

“ “ “ the Govt. of Quebec

“ “ “ producers “ “

“ “ “ the Govt. of Ontario

“ “ “ producers “ “

“ “ “ the Govt. of Manitoba

“ “ “ producers

“ “ “ the Govt. of Saskatchewan

“ “ “ producers “ “

“ “ “ the Govt. of Alberta

“ “ “ producers “ “

“ “ “ the Govt. of B.C.

“ “ “ producers “ “

- The Canadian Dairy Commission

- The Natural Products Mktg. Board

- The P.E.I. Milk Mkt. Sharing Quota Board

- The N.S. Dairy Commission

- The N.S. Milk Producers Assoc.

- The N.B. Dairy Products Commission

- The N.B. Milk Marketing Board

- The Agric. Mktg. Board of Québec

- The Federation of Milk Producers of Québec

- The Federation of Industrial Milk producers of Québec

- The Milk Commission of Ontario

- The Ontario Milk Marketing Board

- The Ontario Cream Producers Mktg. Board

- The Milk Control Board of Manitoba

- The Milk Control Board of Manitoba

- The Saskatchewan Milk Control Board

- The Saskatchewan Milk Control Board

- The Alberta Dairy Control Board

- The Alberta Dairy Control Board

- The Milk Board of British Columbia

- The Milk Board of British Columbia

#### How and When established

The Comprehensive Milk Marketing Plan is the result of close co-operation and consultation. A working party consisting of representatives of the industry and Governments developed the plan under the leadership of "Dairy Farmers of Canada", the National organization of Canadian Milk producers. The plan was then finalized by the Canadian Dairy Commission and signed to take effect by Ontario and Quebec on December 1, 1970, and by Prince Edward Island on December 1, 1971. Alberta acceded to the Plan on April 1, 1972, Saskatchewan and Manitoba on July 1, 1972, and B.C. on October 1, 1973. New Brunswick and Nova Scotia acceded to the Plan on April 1, 1974.

#### Why Established

The purpose of the comprehensive Milk Marketing Plan is to manage the Canadian Milk Supply by means of market sharing quotas in order to provide a balance between the domestic supply of butterfat and the requirements of the Canadian market for butterfat in manufactured products plus commercial exports. These objectives are in support of the specific objectives of the Canadian Dairy Commission which are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers with a continuous and adequate supply of Dairy products of high quality.

### How the Canadian Milk Supply Management Committee functions

Under the Comprehensive Milk Marketing Plan, the Canadian Milk Supply Management Committee was formed to develop policies and co-ordinate and manage the system. The Management Committee consists of three representatives from each participating province, one of whom represents the provincial Government or Board, and two represent the provincial producer Boards or Federations, and three representatives of the Canadian Dairy Commission. The Canadian Milk Supply Management Committee is chaired by a Member of the Canadian Dairy Commission and meets every two months, usually in Ottawa.

Under the Plan, Signatory Agencies have (a) established market sharing quotas for individual producers under their jurisdiction and in accordance with policies established by the Canadian Milk Supply Management Committee, (b) administer the adjustment of quotas, and (c) the orderly transfer of quotas between producers; (d) Signatory Agencies collect directly, or indirectly, through factories, such levies as are determined by the C.D.C. from market payments of all industrial milk and cream delivered by each producer under their jurisdiction, and (e) remit these levies and account for them monthly to the Canadian Dairy Commission.

The levy fixed by the C.D.C. is determined in relation to the cost of disposing of dairy products surplus to Canadian requirements in export markets. The rate of the levy on deliveries of industrial milk and cream by each producer up to the amount of his market share quota is fixed in relation to the cost of disposal of dairy products which are surplus to Canadian requirements. The rate of levy on deliveries in excess of a producer's market sharing quota is fixed at the greater of a minimum over quota rate which is set by this Committee and the cost of disposing of the products manufactured from whole milk in export markets.

A Secretariat of five staff members from the Signatories of Ontario, Québec, the Maritime provinces, the Western Provinces and the Canadian Dairy Commission has been charged with arrangements for Meetings, research, and the preparation of background material for policy proposals.

### Provincial Government Input

Producer Milk Marketing Agencies in each participating province operate under provincial legislation. Upon accession to the Comprehensive Milk Marketing Plan, existing Agencies received the authority required to administer the provisions of the Plan at the provincial level. In provinces where such Boards were not in existence, they were formed for the purpose of administering the provisions of the Plan.

### Federal Government Input

Federally the Canadian Milk Supply Management Committee draws on two principal sources of authority. First, the "The Canadian Dairy Commission Act", Chapter 34, 1966, provides in Section 12 for Marketing on a quota basis and for fixing and collecting of levies.

Secondly, under the Agricultural Marketing Act, Chapter A/7 of the Revised Statutes of Canada, 1970, and Section 2.2. the Federal authority to collect levies on

products which enter interprovincial and international trade is delegated to provincial Milk Marketing Agencies.

### Financing

Provincial Milk Marketing Agencies are financed by producers through a deduction of a specific administrative charge made by the Agency from the market payment for all industrial milk and cream delivered by each producer under their jurisdiction. These revenues are used to cover expenditures for salaries, travel, office space, supplies and other administrative expenses.

The Canadian Dairy Commission meets expenses arising from its participation in the Canadian Milk Supply Management Committee from the regular appropriation of Parliament for the administration of the Commission.

### Contact for Additional Information

Mr. Ellard Powers, Chairman  
Canadian Dairy Commission  
2197 Riverside Drive  
Ottawa, Ontario  
K1A 0Z2, Canada.  
Telephone: 998-9490

Canadian Dairy Commission  
September 30, 1975

March 16, 1973

### Agreement in respect of Market Sharing and Subsidy Eligibility Quotas of producers living in one Signatory Province and shipping to another Signatory Province.

If a producer living in one Province wants to ship to a Province other than that to which he is now shipping, he applies to the Province in which he has been shipping to transfer his quota to the Province to which he wishes to ship.

This will then be treated as a transfer between the same producer and the quota will be cancelled by the Province to which he was shipping and transferred to the Province to which he will ship.

Any Subsidy Eligibility quota attached will move with the Market Sharing quota and both will be treated as a transfer not eligible for reallocation or transfer for twelve months after the transfer, except in the case of a catastrophe.

A producer electing to ship to one Province under the above arrangement may not again transfer his Market Share quota to another Province for a period of one year except with the approval of the Provincial Agencies concerned; and with respect to Subsidy Eligibility quotas, with the approval of the Canadian Dairy Commission.

Each Provincial Agency shall "lease" from its reserve any quota allotted to a non-resident producer delivering into that Province additional to the original basic allocation to that producer. If such a producer transfers his produc-

tion back into his Province of residence, his total Market quota is eligible for transfer. The amount of "leased" Market Share quota which has moved out of that Province in a Dairy year will be recorded by the Provincial Adminis- trating Agency.

The amount of Market Quota transferred interprovin- cially shall be reviewed annually. Any Market Quota trans- ferred interprovincially shall be released by the Province to which it was transferred and returned to the Provincial entitlement of the Province from which it was transferred.

## CANADIAN MILK SUPPLY MANAGEMENT COMMITTEE.

### AGREEMENT of Signatories

on

### Interprovincial Adjustment of Market Sharing Quota and on Methods to Increase and Decrease the Total Market Sharing Quota.

#### A. Parties to this AGREEMENT are on behalf of:

Canada	—	The Canadian Dairy Commission
<b>PARTICIPATING PROVINCES:</b>		
P.E.I.	—	The Natural Products Marketing Board.
	—	The P.E.I. Milk Market Sharing Quota Board.
Quebec	—	The Agricultural Marketing Board of Quebec.
	—	The Federation of Milk Producers of Quebec.
	—	The Federation of Industrial Milk producers of Quebec.
Ontario	—	The Milk Commission of Ontario.
	—	The Ontario Milk Marketing Board.
	—	The Ontario Cream Producers' Marketing Board.
Manitoba	—	The Milk Control Board of Manitoba.
Saskatchewan	—	The Milk Control Board of Saskatchewan.
Alberta	—	The Alberta Dairy Control Board.
British Columbia	—	The Milk Board of British Columbia.

#### Objectives:

B. 1. To provide a balance between the domestic supply of butterfat and the requirements of the Canadian market for butterfat in manufactured products plus normal exports.

2. To establish annually the Total Market Sharing Quota.

3. To achieve efficient utilization of Market Sharing Quota by adjusting annually all participating provinces to a common level of utilization of Market Sharing Quota.

#### Definitions:

C. 1. "Total Market Sharing Quota" (MSQ) is the sum of Market Sharing Quotas which is allocated to producers in Canada plus such quantities of MSQ available for distribution to producers by

2. "Provincial Market Sharing Quota" is the total of MSQ in the hands of producers in a province, plus the quantities of MSQ available for distribution and held by the Agency, or the Agencies, in that province at a given date.

3. The "Basic Entitlement" of Market Sharing Quota is as follows: (in Million pounds of butterfat).

P.E.I.	6.5
Quebec	196.8
Ontario	148.8
Manitoba	18.1
Saskatchewan	14.7
Alberta	34.1
British Columbia	11.5

4. The "Special Allotment" of Market Sharing Quota is: (in Million pounds of butterfat).

P.E.I.	0.5
Manitoba	1.5
Saskatchewan	0.9
Alberta	1.9

5. "Performance Period" is a set of 12 consecutive months which by agreement of the Canadian Milk Supply Manage- ment Committee will be used to establish utilization.

6. "Canadian Average Utilization" is the percentage that industrial milk and cream shipments of all participating provinces is of the Total Market Sharing Quota.

7. "Utilization of a participating province" is the percent- age that industrial milk and cream shipments of a province are of the provincial Market Sharing Quota.



D. Adjustments to Industrial Milk and Cream Shipments

Industrial Milk and Cream Shipments of any Province may be adjusted:

- a) by the amount of the increase in fluid sales of each Province, if any.
- b) by an amount equal to 1% of Fluid sales of each Province.
- c) by an amount to take into account consequences of a catastrophe as this is understood in relation to quota maintenance requirements for individual producers.

E. Method of Interprovincial Adjustment

(Subject to Section "H")

1. Interprovincial adjustment of Market Sharing Quotas takes place annually, effective on the first day of April.
2. The Canadian average Utilization of MSQ and the Utilization of MSQ in each participating province are established annually.
3. The amount of MSQ which each province will have at April 1st each year will be the amount that will bring each province to the same utilization of the Total MSQ that has been established for the year beginning on that date.
4. Participating provinces whose utilization in the performance period is lower than the Canadian average will release the amounts of MSQ which will increase their Utilization at April 1st to the Canadian Average Utilization.
5. Participating provinces whose utilization in the performance period is higher than the Canadian average will receive the amount of MSQ which will lower their Utilization at April 1st to the Canadian Average Utilization.

F. Increase or Decrease in the Total Market Sharing Quota.

(Subject to Section "I")

1. Any decrease or increase in the Total Canadian MSQ will take effect annually on the first day of April.
2. Interprovincial adjustment having been completed according to part "D", any increase or decrease that may be required in the Total MSQ will be achieved by applying the necessary uniform percentage increase or decrease to the provincial MSQ's at April 1st.

G. Allocation to Producers

Market Sharing Quota received by a province under this Agreement, will be allotted to individual producers on the basis of a program submitted to the Canadian Milk Supply Management Committee.

H. Special Provisions for Initial Interprovincial Adjustments

1. The first interprovincial adjustment will be for Quebec and Ontario on April 1st, 1974, and will be for 50% of the

amount indicated by the method set out in Part "D", even if this adjustment reduces a province below its basic entitlement.

2. On April 1, 1975, the provinces of Prince Edward Island, Quebec, Ontario, Manitoba, Saskatchewan, and Alberta, will be subject to interprovincial adjustment, and on April 1, 1977, the province of British Columbia will be subject to interprovincial adjustment; but on April 1, 1975, the provinces of Prince Edward Island, Manitoba, Saskatchewan and Alberta, and on April 1, 1977, the province of British Columbia, will be subject to only 50% of the amount indicated by the method set out in Part "D". When there is a decrease for provinces starting in adjustment, in no case will the reduction go below the basic entitlement plus special allotment that had been given to a province for its use.

3. The starting date of adjustment for Saskatchewan is April 1, 1975, except that if that province reverses its down trend in production of industrial milk and cream by the end of the dairy year 1974-75, its starting date of adjustment will be April 1, 1977.

I. Special Provisions for Increase or Decrease in Total Market Sharing Quota During the Initial Adjustment Period

If total market sharing quota is to be reduced, the procedures set out in Section "E" will be followed except that:

- a) At April 1, 1974, no province shall have its provincial MSQ reduced or further reduced below its basic entitlement of MSQ plus special allotment that has been given to a province for its use.
- b) At April 1, 1975, Quebec and Ontario shall be subject to the full reduction, even if this would have the effect of reducing a province below the basic entitlement, but the provinces of Prince Edward Island, Manitoba, Saskatchewan and Alberta starting in adjustment at April 1, 1975, and British Columbia starting in adjustment at April 1, 1977, would not be reduced below the basic entitlement plus special allotment that has been given to a province for its use.
- c) If at April 1, 1975, the starting date for interprovincial adjustment under Part "G" for Saskatchewan is determined to be April 1, 1977, no reduction in its provincial MSQ below its basic entitlement plus special allotment shall take place before April 1, 1978.

The Undersigned parties hereby accept the attached Agreement on Interprovincial Adjustment and on Methods to Increase and Decrease the Total Market Sharing Quota.

[signed on behalf of]:

Canadian Dairy Commission

Prince Edward Island Natural Products Marketing Board

The Prince Edward Island Milk Market Sharing Quota Board

The Agricultural Marketing Board of Quebec  
The Federation of Milk Producers of Quebec  
The Federation of Industrial Milk Producers of Quebec  
The Milk Commission of Ontario  
The Ontario Milk Marketing Board

## CANADA

### INTERIM COMPREHENSIVE MILK MARKETING PLAN

Whereas it is anticipated that appropriate agencies of several provinces and of Canada will agree to participate in the implementation of a Comprehensive Milk Marketing Plan, which would include the establishment and administration of market sharing quotas for producers of milk or cream to be used in the production of processed dairy products;

Whereas it is desirable that the adoption of a comprehensive plan be opened for ratification by appropriate agencies in all provinces;

Whereas the appropriate agencies of the provinces of Quebec and Ontario propose to establish and administer market sharing quotas forthwith;

Whereas the participation of the federal and provincial authorities is required to assure the adoption and implementation of a comprehensive plan.

#### Agreement

1. The signatory parties to this agreement convene to implement the provisions of the Interim Comprehensive Milk Marketing Plan.

#### Parties

2. The participating parties are the federal and provincial commissions and boards, producers boards and other agencies, signatories to this document.

#### Interpretation

3. In this Plan "Commission" means the Canadian Dairy Commission;

"comprehensive marketing plan" means a plan regulating the marketing of a product in a manner as determined by agreement, legislative provisions and orders or regulations, signed or adopted by the federal and provincial authorities;

"fluid milk producer" means a producer holding a fluid milk quota allocated by a provincial authority signatory, or any other producer, part or all of the milk or cream delivered by whom is used for fluid milk products; "fluid milk products" means milk or cream of any composition, chocolate drink containing milk, or buttermilk to be used in liquid form other than condensed or evaporated;

"industrial milk" means all milk delivered by industrial milk producers, and all milk delivered by fluid milk producers in excess of the quantity used for fluid milk products;

"industrial milk producer" means a producer who delivers milk or cream used solely for manufacture into processed dairy products;

"market sharing quotas" means a quota allocated by a provincial authority to a producer who markets milk or cream to be used in the production of any processed dairy product;

"milk" includes cream;

"processed dairy products" means any product, other than fluid milk products, made from milk;

"subsidy eligibility base" means a figure allocated by the Commission, as a base from which to calculate subsidy eligibility, to a fluid milk producer;

"subsidy eligibility quota" means a quota allocated by the Commission to an industrial milk producer.

#### Scope

4. The Plan applies in each province concerned to
- (a) subject to paragraph (b), fluid milk producers and industrial milk producers, and
  - (b) all producers of all other provinces concerned shipping milk to the said province
    - (i) who are not under a provincial marketing plan of the province in which the milk is produced, or
    - (ii) who are subject to exception to the provisions of said provincial plan,

when such producers agree to conform, and conform to the provisions of the provincial plan, order, rules, directives, or decisions of the authorities of the province to which the said milk is shipped or when they are subject to regulations adopted pursuant to a delegation of authority granted under the Canada Agricultural Products Marketing Act.

#### Establishment and Adjustment of Market Sharing Quotas

5. The provincial agencies signatory to this agreement agree to establish market sharing quotas for producers under their jurisdiction in accordance with the provisions of section 6.

6. (1) In the case of an industrial milk producer holding a subsidy eligibility quota the market sharing quota shall be based on the greater of his deliveries in the twelve months from April 1, 1969 to March 31, 1970 or his subsidy eligibility quota at the time of establishment of the market sharing quota.

(2) In the case of an industrial milk producer not holding a subsidy eligibility quota the market sharing quota shall be based on his deliveries in the twelve months from April 1, 1969 to March 31, 1970.

(3) In the case of a fluid milk producer holding a subsidy eligibility base the market sharing quota shall be based on the greater of his deliveries in the twelve months from April 1, 1969 to March 31, 1970 or his subsidy eligibility base at the time of establishment of market sharing quotas, minus a figure calculated under a formula agreed to by the parties representing the quantity of milk or cream delivered by him in the said twelve month period and used for fluid milk products.

(4) In the case of a fluid milk producer not holding a subsidy eligibility base the market sharing quota shall be based on his deliveries in the twelve month period from April 1, 1969 to March 31, 1970 minus a figure calculated under the formula mentioned in subsection (3)

(5) If a producer was not in milk or cream production as of April 1, 1969, and does not hold a subsidy eligibility quota or base at the commencement date of the application of market sharing quotas, his annual production for the purpose of establishing a market sharing quota shall be calculated under a formula agreed to by the parties.

7. Market sharing quotas may be adjusted in accordance with procedures and provisions agreed to by the parties either by the transfer of a quota in whole or in part from one producer to another or with respect to adjustment in the total existing market sharing quotas.

#### Assessment for Cost of Surplus Disposal

8. A levy, toward the cost to the Commission of disposing of dairy products surplus to Canadian requirements shall be made by or on behalf of each producers board from the market payment for all industrial milk delivered by each producer under the jurisdiction of each provincial authority and the amounts as assessed remitted by the producers boards to the Commission.

9. In lieu of the Commission collecting a levy directly from producers holding subsidy eligibility quotas, or bases by means of holdbacks from subsidy payments to them, the Commission hereby designates each signatory producers board as its agent, and on its behalf, to collect such levy from such producers by means of deductions from the market payments to them and the producers boards hereby accept such designation.

10. here shall be one rate of levy on deliveries of industrial milk by each producer up to the amount of his market sharing quota and another rate on his deliveries in excess of his market sharing quota, both rates to be as specified by the Commission. All deliveries by a producer who does not hold a market sharing quota shall be considered to be in excess of market sharing quotas.

11. The amounts accrued from the levy on deliveries up to market sharing quotas shall be forwarded by each producers board to the Commission at the end of each month. The amounts accrued from the levy on deliveries in excess of market sharing quotas shall be forwarded to the Commission as arranged between it and the producers boards.

12. auditors or other persons employed, or designated by, the Commission are empowered to examine the books, records and accounts of the producers boards or persons

acting on their behalf, in so far as they concern the provisions of the Plan.

#### Orders and Regulations

13. Subject to the provisions of section 15, no amendments to any Order or Regulations bearing on the provisions and purposes of the Plan shall be made by any signatory party without prior notification to the other signatories and their concurrence that such amendment or modification does not contravene the purposes and provisions of the Plan.

14. Subject to the provisions of section 15, no Order or Regulation not conforming to the Plan shall be adopted or approved by any of the signatory parties.

#### Duration and Coming into Force

15. (1) The plan shall come into force on December 1, 1970.

(2) This Interim Plan may, with the concurrence of the signatory parties, be replaced by a Plan open to adherence by the appropriate agencies of all provinces.

(3) Any party may withdraw from the Plan or any replacement thereof

(a) as of the first day of April of any year by giving notice in writing to the other parties prior to the thirty-first day of March of the preceding year, or

(b) on the failure of any other party to carry out any of the terms of the agreement and Plan.

#### Management and Co-ordination Committee

16. (1) A Management and Co-ordination Committee is formed and shall consist of three representatives of each province, one of whom shall represent the provincial government board and two of whom shall represent provincial producer boards, and three representatives of the Commission under the chairmanship of a member of the Commission.

(2) The Committee shall meet at the request of the Chairman or of any member to consider any matters concerning the operation of the Plan.

Dated at Ottawa, this 14th day of January 1971.

The Canadian Dairy Commission

[signatures — original and on accession — omitted]

	<u>Date of Entry</u>	<u>First Year of Adjustments</u>
P.E.I.	December 1, 1971	April 1, 1975
Nova Scotia	April 1, 1974	April 1, 1977
New Brunswick	April 1, 1974	April 1, 1977
Quebec	December 1, 1970	April 1, 1974
Ontario	December 1, 1970	April 1, 1974
Manitoba	July 1, 1972	April 1, 1975
Saskatchewan	July 1, 1972	April 1, 1975
Alberta	April 1, 1972	April 1, 1975
British Columbia	October 1, 1973	April 1, 1977

This Agreement dated the      day of      1974 between:

The Canadian Dairy Commission

The Ontario Milk Marketing Board

The Milk Commission of Ontario

The Ontario Cream Producers' Marketing Board

Prince Edward Island Milk Market Sharing Quota Board

Prince Edward Island Natural Products Marketing Board

Alberta Dairy Control Board

Nova Scotia Dairy Commission

all parties of the First Part

and

New Brunswick Marketing Board

New Brunswick Dairy Products Commission

party of the Second Part

Whereas with a view to the implementation of a Comprehensive Milk Marketing Plan several of the parties of the First Part entered into a Plan Agreement at Ottawa on the 14th day of January 1971.

And Whereas from time to time others of the First Part have entered into the said Plan Agreement upon terms and conditions agreed to by all parties of the First Part.

And Whereas the part of the Second Part desires to become a party to the said Plan Agreement upon the understandings hereafter set out and the parties of the First Part have agreed as follows:

1. New Brunswick fluid milk producers do not hold either a subsidy eligibility base or quota and consequential amendments are necessary, to wit:

References to "Subsidy Eligibility Quota" shall be read as "Subsidy Eligibility".

2. (1) The Plan Agreement as it affects the New Brunswick Milk Marketing Board shall come into force on the 1st day of April 1974 being the date agreed upon between the Canadian Dairy Commission and the party of the Second Part.

(2) Notwithstanding paragraph (1) of this section the provisions of section 8 of the Plan Agreement shall take effect on and from the 1st day of August, 1974.

3. In the case of an industrial milk producer his Market Share Quota shall be the greater of his deliveries in the 12 months from April 1, 1973 to March 31, 1974 or the Subsidy Eligibility held by him as of March 31, 1974 and subsection 1 of section 6 of the Plan Agreement as it affects the Second Part is hereby amended to give effect to this understanding.

4. Subsection 2 of section 6 of the Plan Agreement is presently deemed inapplicable because in the absence of a Subsidy Eligibility Quota entitlement a producer's Market Share Quota shall be established pursuant to subsection 1 of section 6 as amended above.

5. Subsection 3 of section 6 is presently deemed inapplicable in the absence of subsidy eligibility bases or quotas.

6. Subsection 4 of section 6 of the Plan Agreement as it affects the Second Part shall be presently deemed to read as follows:

(4) In the case of a fluid milk producer the market sharing quota shall be based on his deliveries in the twelve month period from April 1, 1973 to March 31, 1974 minus a figure calculated under a formula agreed to by the parties hereto as representing the quantity of milk or cream delivered by him in the said twelve month period and used for fluid milk products, subject to such a fluid milk producer holding a minimum market sharing quota equivalent to 10% of the quantity of milk so delivered and used for fluid sales.

7. Subsection 5 of section 6 of the Plan Agreement as it affects the Second Part shall be deemed to read as follows:

"A new producer shall be allocated a Market Sharing Quota in accordance with the rules of the Second Part agreed to by the Canadian Dairy Commission"

8. The Second Part agrees to become a party to the Plan Agreement of 14 January 1971 as amended and subject to the above noted amendments relative to New Brunswick and further agrees to the provisions of the said Plan Agreement in so far as they relate to the previous signatories now forming the Party of the First Part. In Witness Whereof the Parties of the First and Second Part have severally executed this Agreement.

[signatures omitted]

This Agreement dated the      day of May 1974 between:

The Canadian Dairy Commission

The Ontario Milk Marketing Board

The Milk Commission of Ontario

The Ontario Cream Producers' Marketing Board

Prince Edward Island Natural Products Marketing Board

Prince Edward Island Milk Market Sharing Quota Board

Alberta Dairy Control Board

all parties of the First Part

and

The Nova Scotia Dairy Commission

party of the Second Part

Whereas with a view to the implementation of a Comprehensive Milk Marketing Plan several of the parties of the First Part entered into a Plan Agreement at Ottawa on the 14th day of January 1971.

And Whereas from time to time others of the First Part have entered into the said Plan Agreement upon terms and conditions agreed to by all parties of the First Part.

And Whereas the party of the Second Part desires to become a party to the said Plan Agreement upon the understandings hereafter set out and the parties of the First Part have agreed as follows:

1. Nova Scotia fluid milk producers do not hold either a subsidy eligibility base or quota and consequential amendments are necessary, to wit:

References to "Subsidy Eligibility Quota" shall be read as "Subsidy Eligibility".

2. (1) The Plan Agreement as it affects the Nova Scotia Dairy Commission shall come into force on the 1st day of April 1974 being the date agreed upon between the Canadian Dairy Commission and the party of the Second Part.

(2) Notwithstanding paragraph (1) of this section the provisions of section 8 of the Plan Agreement shall take effect on and from the 1st day of June, 1974.

3. In the case of an industrial milk producer his Market Share Quota shall be the greater of his deliveries in the 12 months from April 1, 1973 to March 31, 1974 or the Subsidy Eligibility held by him as of March 31, 1974 and subsection 1 of section 6 of the Plan Agreement as it affects the Nova Scotia Dairy Commission is hereby amended to give effect to this understanding.

4. Subsection 2 of section 6 of the Plan Agreement is presently deemed inapplicable because in the absence of a Subsidy Eligibility Quota entitlement a producer's Market Share Quota shall be established pursuant to subsection 1 of section 6 as amended above.

5. Subsection 3 of section 6 is presently deemed inapplicable in the absence of subsidy eligibility bases or quotas.

6. Subsection 4 of section 6 of the Plan Agreement as it affects the Nova Scotia Commission shall be presently deemed to read as follows:

(4) In the case of a fluid milk producer the market sharing quota shall be based on his deliveries in the twelve month period from April 1, 1973 to March 31, 1974 minus a figure calculated under a formula agreed to by the parties hereto as representing the quantity of milk or cream delivered by him in the said twelve month period and used for fluid milk products, subject to such a fluid milk producer holding a minimum market sharing quota equivalent to 10% of the quantity of milk so delivered and used for fluid sales.

7. Subsection 5 of section 6 of the Plan Agreement as it affects the Nova Scotia Dairy Commission shall be deemed to read as follows:

"A new producer shall be allocated a Market Sharing Quota in accordance with the rules of the Nova Scotia Dairy Commission agreed to by the Canadian Dairy Commission"

8. The Nova Scotia Dairy Commission agrees to become a party to the Plan agreement of 14 January 1971 as amended and subject to the above noted amendments relative to Nova Scotia and further agrees to the provisions of the said Plan Agreement in so far as they relate to the previous signatories now forming the Party of the First

Part. In Witness Whereof the Parties of the First and Second Part have severally executed this Agreement.

[signature omitted]

March 3 1977

Canadian Milk Supply Management Committee

Agreement of Signatories  
on  
Interprovincial Adjustment of  
Market Sharing Quota and on Methods  
to Increase and Decrease the Total  
Market Sharing Quota

A. Parties to this AGREEMENT are on behalf of Canada — The Canadian Dairy Commission

Participating Provinces:

Prince Edward Island

- The P.E.I. Marketing Board
- The P.E.I. Milk Market Sharing Quota Board
- The P.E.I. Milk Commission

Nova Scotia

- The Nova Scotia Dairy Commission

New Brunswick

- The New Brunswick Milk Marketing Board
- The New Brunswick Dairy Products Commission

Quebec

- La Régie des marchés agricoles du Québec
- La Fédération des producteurs de lait du Québec
- La Fédération des producteurs de lait industriel du Québec

Ontario

- The Milk Commission of Ontario
- The Ontario Milk Marketing Board
- The Ontario Cream Producers' Marketing Board

Manitoba

- The Manitoba Marketing Board
- The Manitoba Milk Producers' Marketing Board

Saskatchewan

- The Milk Control Board of Saskatchewan

Alberta

- The Alberta Dairy Control Board

British Columbia

- The Milk Board of British Columbia

## B.

Objectives

1. To provide a balance between the domestic supply of butterfat and the requirements of the Canadian Market for butterfat in manufactured products plus exports.
2. To establish at least annually the Total Market Sharing Quota.
3. To achieve efficient utilization of Market Sharing Quota by adjusting annually all participating provinces to a common level of utilization of Market Sharing Quota.

## C.

Definitions

1. "Total Market Sharing Quota" (M.S.Q.) is the sum of "Estimated Domestic Requirements", an appropriate "Sleeve", and any additional amounts required for implementation of Clause D2.
2. "Estimated Domestic Requirements" is the amount of butterfat calculated on the basis of a full dairy year which is estimated to be required from Canadian production for meeting market requirements for industrial or manufactured dairy products, and this amount shall be arrived at by taking account of expected exports, expected imports, the level of storage stocks of industrial or manufactured dairy products, and expected recovery of butterfat from standardization of fluid milk.
3. "Sleeve" is the amount of the Total Market Sharing Quota that is in excess of "Estimated Domestic Requirements", less additional amounts required by Clause D2. It shall not at any time be less than 5% of or exceed 10% of the Total Market Sharing Quota.
4. "Provincial Market Sharing Quota" is the total of Market Sharing Quota which under the terms of this Agreement are allocated to the producers in a province or which are available for allocation and held by the Agency or Agencies in that province at a given date.
5. "Performance Period" is a set of 12 consecutive months which by agreement of the CMSMC will be used to establish utilization.
6. "Canadian Average Utilization" is the percentage that "Industrial Milk and Cream Shipments" of all participating provinces are of the Total Market Sharing Quota.
7. "Utilization of a Participating Province" is the percentage that "Industrial Milk and Cream Shipments" of a province are of the provincial Market Sharing Quota.

"Industrial Milk and Cream Shipments" are amounts of "industrial milk" as defined in the Interim Comprehensive Milk Marketing Plan, recorded in a Performance Period and adjusted in amount according to the provisions of this Agreement.

## D.

Allocation of  
Market Sharing Quota

1. At the date of signing of this Agreement the amount of Provincial Market Sharing Quota for each province are as follows:

## Market Sharing Quota Entitlement by Province

## Market Sharing Quota Entitlement by Province

	mil lbs. B.F.	mil cwt of milk 3.5%
P.E.I.	6.825	1.950
Nova Scotia	4.477	1.279
New Brunswick	4.914	1.404
Quebec	177.547	50.728
Ontario	115.968	33.134
Manitoba	14.439	4.125
Saskatchewan	9.176	2.622
Alberta	24.840	7.097
British Columbia	11.463	3.275
CANADA	369.649	105.614

*Source: 1977 Agreement on interprovincial adjustment & market sharing quotas and on methods to increase and decrease the total market sharing quota: Canadian Milk Supply Management Committee*

[See Schedule 19 to Appendix 13 of this Report].

2. The existence of protected amounts of Provincial Market Sharing Quota as provided in this Agreement shall not result in lesser allocations of M.S.Q. to any province than would have been the result of the application of this Agreement in absence of these protected amounts.

The method of application of this provision shall be to this provision shall be to add to the estimate of requirements, prior to determination of the sleeve, the additional amounts of quota required to protect the M.S.Q. of any province.

3. By decision of the CMSMC meeting of March 9th and 10th, 1976, on April 1, 1976, a Special Allotment to Saskatchewan of 1 million lbs. butterfat was made. A further Special Allotment of up to 0.7 million lbs. butterfat is to be made on April 1, 1977, conditional on Saskatchewan's production level achieving at least 95% of the 1976-77 Market Sharing Quota allocation. Any shortfall below 95% of Saskatchewan's 1976/1977 Market Sharing Quota will be deducted from 0.7 million lbs. butterfat additional quota allotment.

## E.

Adjustment to Industrial  
Milk and Cream Shipments

1. Industrial milk and cream shipments of a province may be adjusted by an amount to take into account consequences of a catastrophe as this is understood in relation to quota maintenance requirements for individual producers.
2. Amounts produced by a province within the Sleeve or in excess of Provincial M.S.Q. shall not be included in "Industrial Milk and Cream Shipments" for purposes of calculating Utilization of a Participating Province.
3. Deliveries of farm separated cream used in the calculation of "Industrial Milk and Cream Shipments" of a Participating Province may for three years, beginning with April 1, 1977 adjustment and including the April 1, 1979 adjustment, be those made in the 12 months prior to the Performance Period, subject to the following:

- (a) If a province wishes to utilize this provision, its right to do so is subject to its providing to the CMSMC, information and analysis on the operation of the quota

system in that province respecting the occurrence of double counting that the Committee accepts as satisfactory to it.

- (b) The total of shipments of farm-separated cream used for calculation of utilization of a province shall not by reason of the application of this provision, exceed the maximum amount that might otherwise be arrived at under the terms of Clause E2.
- (c) That provinces utilizing this provision shall not receive M.S.Q. from other provinces under Section F.

F. Method of Interprovincial Adjustment  
(Subject to Section "I")

1. Interprovincial adjustment of Market Sharing Quotas takes place annually, effective on the first day of the dairy year.
2. The Canadian Average Utilization of M.S.Q. and the Utilization of M.S.Q. in each Participating Province are established annually.
3. The amount of M.S.Q. which each province will have on the first day of each dairy year will be the amount that will bring each province to the same utilization of the Total M.S.Q. that has been established for the year beginning on that date.
4. Participating provinces whose utilization in the Performance Period is lower than the Canadian average will release the amounts of M.S.Q. which will increase their Utilization on the first day of each dairy year to the Canadian Average Utilization.
5. Participating provinces whose utilization in the Performance Period is higher than the Canadian average will receive the amount of M.S.Q. which will decrease their utilization on the first day of each dairy year to the Canadian Average Utilization.

G. Increase or Decrease in the  
Total Market Sharing Quota  
(Subject to Section "J")

1. Any decrease or increase in the Total Canadian M.S.Q. will take effect annually on the first day of each dairy year or more frequently if required.
2. Interprovincial adjustment having been completed according to Section F on the first day of each dairy year, any increase or decreases that may be required in the Total M.S.Q. at that date or subsequently in that dairy year will be achieved by applying the necessary uniform percentage increase or decrease to the Provincial M.S.Q.

E. Allocation to Producers

Market Sharing Quota received by a province under this Agreement will be allotted to individual producers on the basis of a program submitted to the Canadian Milk Supply Management Committee.

I. Special Provisions for  
Interprovincial Adjustments

Interprovincial movements of quota shall not reduce for any province, its Provincial share of estimated domestic require-

ments to less than 20% of its fluid sales in the Performance Period. This clause shall be reviewed during 1977, to determine its appropriateness in light of experience, for the interprovincial quota adjustment on April 1, 1978.

J. Special Provisions in the Event  
of a Decrease in Total  
Market Sharing Quota

If Total Market Sharing Quota is to be reduced the procedure set out in Section "G" will be followed except that:

- (a) The provincial share of estimated domestic requirements of Prince Edward Island will not be reduced if it is at or below the amount of 6.5 million lbs. of butterfat.
- (b) The Provincial Share of estimated domestic requirements of a province shall not be reduced to less than 20% of its fluid sales in the Performance Period. This clause shall be reviewed during the year 1977 to determine its appropriateness in light of experience for the quota allocation of April 1st, 1978.

K. Application of Agreement

The provisions of this Agreement will take effect as of the date of its signing, and shall replace the "Agreement of the Signatories on Interprovincial Adjustment of Market Sharing Quota and on Methods to Increase and Decrease the Total Market Sharing Quota" dated October 10, 1973. In the application of the provisions of the Agreement, the first interprovincial adjustment of quotas shall take place on April 1, 1978.

The undersigned parties hereby accept the attached Agreement on Interprovincial Adjustment of Market Sharing Quota and on Methods to Increase and Decrease the Total Market Sharing Quota.

The Canadian Dairy Commission  
[signatures omitted]

APPENDIX 14

COOPÉRATIVE FÉDÉRÉE DE QUÉBEC

April 8, 1980.

Honourable Mr. Justice Hugh F. Gibson  
Commission of Inquiry  
P.O. Box 1268  
Ottawa, Ontario  
K1P 5R3

Dear Mr. Justice:

Pursuant to your request, I am pleased to send you with this letter, detailed explanations on production and disposal of dairy products in Canada, together with general comments on Canadian dairy industry and the operations of both fluid milk quota and industrial milk quota.

I hope that those details are clear and will give you all the information you wish. If there is any further explanation you will require, please do not hesitate in contacting me.

Yours very truly,

PHILIPPE PARISEAULT

Director —  
Dairy Division.

PP/ml  
Enclosure:1

### PRODUCTION AND DISPOSAL OF SKIM MILK POWDER

Approximately one-third of the milk sold off Canadian farms is used in the "fluid" trade, for sale to consumers as liquid milk. The remaining two-thirds is processed into a wide range of dairy products — butter, cheese, skim and whole milk powder, evaporated and condensed milk, yogurt, etc.

With few exceptions, the production of processed products is in reasonable relation to the known market for them. The major exception is skim milk powder. It is a by-product of the manufacture of butter from whole milk. For each pound of butter made from the butterfat from milk, the drying of the residual skim milk yields two pounds of skim milk powder.

Earlier in the present century butter was made primarily from cream "separated" on the farm and delivered to creameries by farmers. The skim milk was fed, on the farm, to calves, pigs and poultry.

Over the ensuing period, and particularly since mid-century, dairy farming has become increasingly specialized in fewer and larger farm units (Note 1). With this, the practice of "separating" cream on farms has diminished, with a corresponding increase in deliveries of whole skim milk as a source of butterfat for butter production, and a corresponding increase in the production of skim milk powder. This is illustrated in the following data from Statistics Canada.

TABLE 1: Milk: production and utilization

	Total production		Utilization of milk			
	of milk, 1978 ( <sup>000 tons</sup> )	(%)	Industrial (%)	Fluid (%)	On farm (%)	Total (%)
P.E.I.	93.9	1.2	82.8	10.8	6.4	100.0
N.S.	171.2	2.3	30.2	65.1	4.7	100.0
N.B.	112.5	1.5	31.3	63.2	5.5	100.0
QUE.	2,989.7	39.2	74.0	20.8	5.2	100.0
ONT.	2,645.5	34.7	57.1	35.8	7.1	100.0
MAN.	323.0	4.2	55.2	34.3	10.5	100.0
SASK.	237.2	3.1	48.9	37.8	13.3	100.0
ALTA.	577.3	7.6	54.0	35.7	10.3	100.0
B.C.	464.6	6.1	32.3	60.2	7.5	100.0
CANADA	7,614.8	100.0	61.0	32.1	6.9	100.0

### Production, Metric Tons

Year	Butter	Skim Milk Powder	% S.M.P. of Butter
1920	50,662	2,650	5.23
1930	84,255	6,490	7.70
1940	120,076	11,971	9.96
1950	118,598	24,160	20.37
1960	145,332	78,003	53.67
1970	148,684	164,399	110.56
1978	98,916	114,993	116.52

\*Source: Statistics Canada

At present levels of production, approximately 40 per cent of the powder is used in Canada. The remaining 60 per cent must find an export market.

The domestic price is supported by the Canadian Dairy Commission as, previously, by the Agricultural Stabilization Board. That domestic price, normally, is above the price available in export markets, for two reasons. Canada, because of geography and climate, is a relatively high cost milk producing country compared, for example, to New Zealand where year-round grazing of cattle is possible. And, under periodic long supply conditions internationally, prices required to move product are low even by the standards of lower cost producing areas.

This necessitates, in the case of exports by private firms, a subsidy to the difference between the Canadian support price and the world price. In the case of exports by the C.D.C., it results in losses of similar dimensions between its buying and selling prices.

The levy imposed on the producers is calculated to cover the losses created by that difference between the support price and the world price. It does also apply to other dairy products such as evaporated milk, cheddar cheese, etc. That levy can be increased or decreased depending on the total cost of surplus disposal.

### BRIEF COMMENTS ON THE CANADIAN DAIRY INDUSTRY

The objective of these brief comments is merely to explain some basic facts about our Canadian dairy industry.



## Overview

The dairy industry is a major part of Canada's agriculture. In 1978, receipts from the sale of dairy products at the farm level totalled \$1.75 billion, or 14.7% of all farm cash receipts. On a comparative basis, farm receipts from dairy products rank third in Canada, following beef (21.7%) and wheat (15.2%).

## Production

At the production level, the dairy industry is most important in eastern Canada, Quebec and Ontario being responsible of 74% of all the milk produced in Canada.

From Table 1, it can be seen that the utilization of the production differs greatly from a province to another. For example, only 20.8% of the milk produced in Quebec goes for fluid purposes, whereas 60.2% is used in the fluid form in B.C.

Even if utilization is different from a province to another, the Canadian requirements are more or less the same each year:

TABLE 2: Uses of milk at the canadian level

Fluid milk	32%	
(whole, 2%, skim, chocolate)		
Industrial milk	62% or 32%	as a % industrial milk 52%
—Butter	32%	52%
—Cheddar cheese	12%	19%
—Specialty cheese	8%	13%
—Ice cream mix	6%	10%
—Concentrated whole milk	4%	6%
Consumed on farm	6%	
	100%	

The Canadian dairy industry basically consists of two separate sectors:

- the fluid milk sector which produces milk for consumption in fluid form; the control of fluid milk supplies is under provincial jurisdiction since little fluid milk has traditionally moved interprovincially.
- the industrial milk sector, which is under federal jurisdiction since a significant amount of processed milk products (butter, cheese, etc.) moves in interprovincial markets.

## The fluid milk sector

Provincial milk boards or governmental agencies control the marketing of fluid milk in all provinces except Newfoundland. Several of these provincial milk boards are regulatory boards composed of government appointees (ex. B.C.); other are marketing boards whose members are elected from producer representatives (ex. Ontario).

The various provincial milk acts and their regulations generally provide for the licensing of producers and vendors, the control of milk quality, the establishment of minimum sanitary standards, the establishment of fluid milk prices and the classification of milk by utilization.

The control of supplies of fluid milk by fluid milk quotas is established at the provincial level according to the provincial consumption. For example, in Quebec, the fluid milk consumption reached 13 millions of hundredweights of milk in 1978. The amount of 13 x 125%: 16.25 millions of hundredweights of fluid milk quotas are to be released to the producers in 1979. Some quotas are emitted in excess so that the consumer can be guaranteed all his requirements. There is more milk produced during spring and summer, and this causes some uncertainties at the supply level.

During the year 1979, if we make the hypotheses that the consumption of milk was maintained at the same level as in 1978, the fluid milk producers were paid the Class I price for only 80% of their fluid milk quotas: 13/16.25: 80%. The rest of their milk was used and paid in the same manner as the milk produced by the industrial milk producers. This milk is called "surplus milk".

The surpluses of milk produced under fluid milk quotas, but not required by the fluid milk market, have to be produced under the market sharing quota (MSQ) released by the Canadian Dairy Commission (CDC). This "surplus milk" will then cause no harm to the supply management of industrial milk and will be eligible to the C.D.C. subsidy on industrial milk, as explained in the next chapter.

The following example, at the producer level, will help to understand:

A fluid milk producer of 300,000 lbs/year with a fluid milk quota of 150,000 lbs/year will be paid this way:

- volume paid at Class I price: 150,000 lbs x 80%: 120,000 lbs.
  - volume of exclusion (milk considered as fluid milk used in Class II, like cream, etc.) 120,000 lbs x 3.4%: 4,080 lbs.
  - remaining volume that has to be covered by a MSQ: 300,000 lbs — 120,000 — 4,080: 175,920 lbs.
  - subsidized volume (at \$2.66/cwt) 175,920 x 95%: 167,124 lbs.
  - volume in the sleeve 175,920 x 5%: 8,796 lbs.
- This volume may be subsidized or not depending on canadian requirements. The specific levy on this volume is refundable if this milk is needed for canadian requirements.
- volume produced under export quota 175,920 x 3%: 5,277 lbs.

So, to recapitulate, the fluid milk producer receives:

lbs	x	market price	subsidy	gross revenue
120,000	x	16.04		19,248.00
4,080	x	11.56		471.65
167,124	x	11.56	2.66	23,765.03
8,796	x	11.56	2.66	1,250.79
5,277	x	11.56	1.33	680.20
305,277	lbs			\$45,415.67

His average gross revenue is \$45,415.67/3,052.77 cwt: \$14.88/cwt

The control of supplies by fluid milk quotas is established at the provincial level according to the provincial consumption. The surpluses of milk not produced under the fluid milk quotas have to be produced under the market sharing quota (MSQ) at the federal level.

#### *The industrial milk sector: price fixing mechanisms*

While the price of milk for fluid purposes is established at the provincial level, (it now ranges from \$18.58/cwt in B.C. to \$14.49/cwt in Manitoba), the price for industrial milk is obtained by a rather complex formula including indexation mechanism, support price for butter and powder, subsidy and levies.

The Figure 1 will help to understand the system (Annex I)

The Canadian Dairy Commission (CDC) guarantees a minimum market price for butter and powder, the latter being a by-product necessarily produced with butter. The market cannot go under the minimum price since the C.D.C. will buy any stock at the announced price. If we deduct the processors' margin from the guaranteed market price, we obtain the producers' market return which, along with the direct subsidy of \$2.66/cwt, makes the C.D.C. Target Support Price.

The Target Support Price is one important element of the system, since it is determined by the industrial milk returns adjustment formula, instituted in April 1975. This indexation formula is composed of three major components which are assigned weights:

- a cash input index: 45%
- a family labor earnings index: 35%
- a judgment factor: 20%

Whenever the formula indicates an increase of 2%, the C.D.C. has to adjust the Target Support Price according to the calculated increase.

In return to the implication of the federal government in the support of industrial milk price, the producers agreed to be responsible for the storage and the exportation of the skim milk powder. They are now paying an in-quota levy of \$1.00/cwt of milk because the C.D.C. is losing, on the average, 55¢ on each pound of skim powder sold in the international market.

When some milk is produced in excess of the MSQ of the producer, he must pay an over-quota levy of \$8.00/cwt on this milk. This levy is very high but provides a good tool to control overproduction, since there is no economic incentive to produce milk with such a levy.

The producer has a security margin of 5% of his MSQ (called the sleeve) before having to pay such a penalty. If the sleeve is needed for canadian requirements this milk will be paid like the rest of the industrial milk. If not needed, the milk produced within the sleeve will receive no subsidy and a supplementary levy of 25¢/cwt will be paid by the producer to take care of the extra export costs. Producers also have a 5¢/cwt levy instituted for the milk produced under the export quotas.

Since a good part of the butterfat sold in Canada comes from the skim-off of fluid milk, a 20¢/cwt levy is also collected on all deliveries of fluid milk.

#### *Industrial milk sector: supply management*

The C.D.C. agreed to support the industrial milk target price in as much as the producers agreed to control the milk supply. The federal government was not interested in subsidizing an unlimited amount of milk, but only the milk needed for Canadian consumption.

So, based on historical production made by each province in 1967-68, the C.D.C. allocated to each province the right to produce a certain volume of industrial milk called market sharing quota (MSQ), and each province distributed this quota amongst its producers.

**TABLE 3: Market sharing quotas, including export quotas**

	( <sup>1</sup> 000 kg of butterfat)	%
P.E.I.	3,270	2.0
N.-S.	2,089	1.2
N.-B.	2,291	1.4
QUE.	82,786	48.0
ONT.	54,073	31.0
MAN.	5,733	4.0
SASK.	4,490	2.6
ALTA.	11,583	6.7
B.-C.	5,345	3.1
CANADA	172,660	100.0

Producers were allocated their share of the canadian requirements based on their historical production level for the same year. The global amount of milk to be produced is decided by the Canadian Management Supply Committee, whose chairman is the president of the C.D.C. All provinces are represented at this Committee by their governmental agencies or producer marketing board.

The administration of the market sharing quotas at the provincial level is under the responsibility of the marketing boards (in Ontario, the O.M.M.B. and in Quebec, the Federation of Industrial Milk Producers). There are wide differences amongst the provinces in this regard, and the differences are tolerated by the C.D.C. inasmuch as they don't endanger the whole supply management system.

In Quebec, MSQ are sold and purchased at public auctions. In Ontario, bids and offers for MSQ are channelled by an exchange quota system working by telex. Elsewhere, MSQ are sold to and bought from the provincial marketing board at a nominal price. One has to consider that, in P.E.I., N.B., Manitoba, Sask. and Alta., not all the MSQ are fully used by the producers. That means that MSQ has a very low commercial value for producers in these provinces, whereas in Quebec, producers are ready to pay \$6. or \$7./lb of butterfat for the right of producing additional amounts of milk.

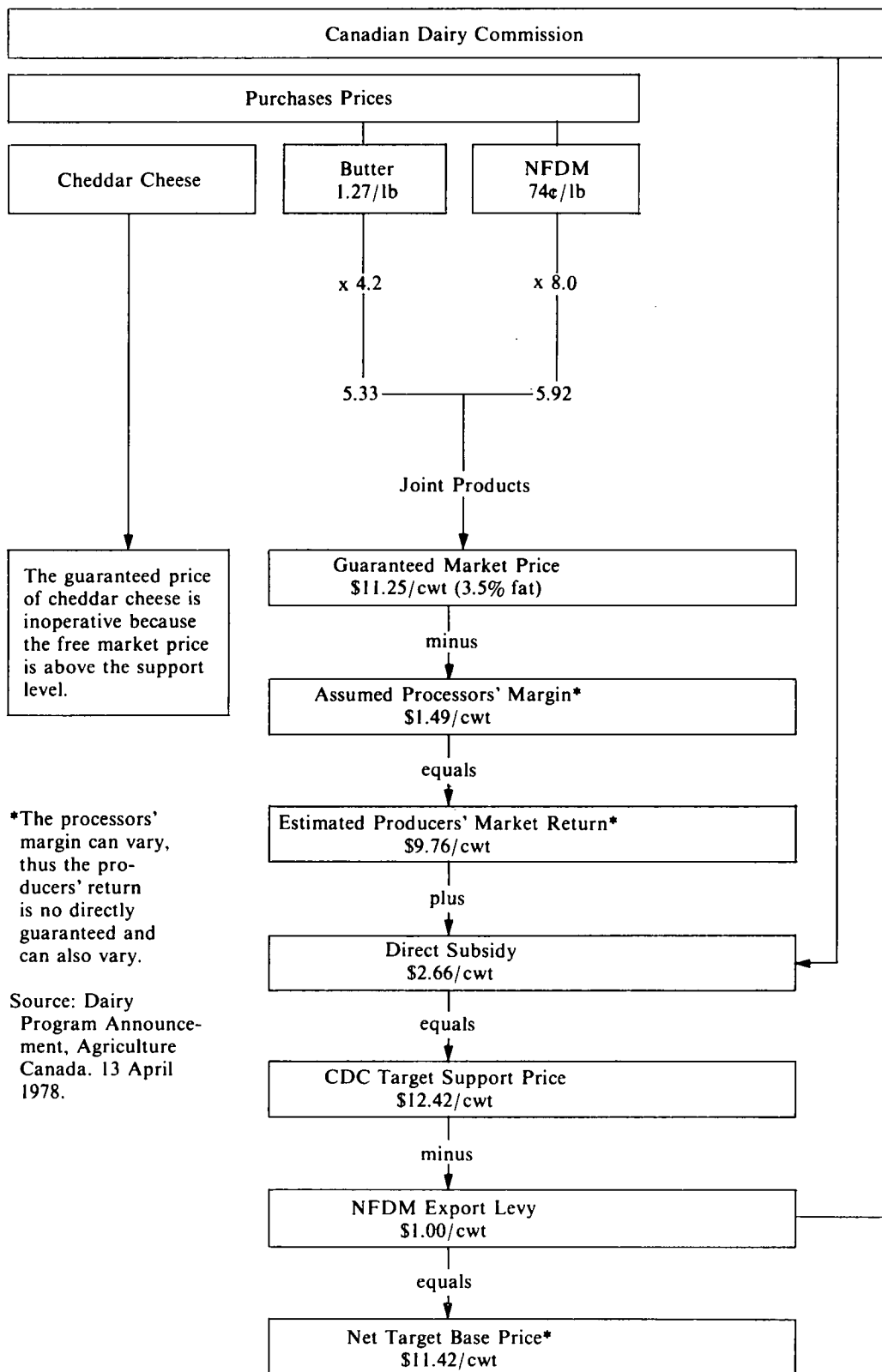
If we go deeper in the manner MSQ are managed, we will see that, for example in Quebec, a producer has to produce 90% of his MSQ, otherwise the Federation will give him only 111.1% of his actual production. These MSQ removed from the producer are put in reserve. Whenever a producer sells his quotas, the Federation takes 25% of the MSQ for the reserve. This reserve is used either to be distributed equally amongst actual producers or to attenu-

ate an eventual decrease of MSQ decided by the Canadian Management Supply Committee. A producer can lend to another producer a maximum of 20% of his MSQ for a period not exceeding two years, etc.

Again, all this regulation about MSQ is decided by producers at the provincial level and has to be approved by "La Régie des marchés agricoles" and finally by the C.D.C."

# ANNEXE 1:

FIGURE 1: Canadian Industrial Milk Price Support System, April, 1, 1978



## APPENDIX 15

*This is Exhibit No. 9 filed on November 23rd 1979 at Ottawa, Ontario.*

### REVIEW OF THE CANADIAN DAIRY COMMISSION BACKGROUND, CREATION, POLICY AND OPERATIONS

Dr. G.A. Hiscocks assisted by L. Stephens October 12, 1979 Revised November 9, 1979

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## SECTION I: HISTORICAL BACKGROUND

### Introduction

1.1 The history of the Canadian dairy industry during the twentieth century is essentially a story of continuing fluctuations in supply, demand & prices. These ups and downs have involved not merely the production of milk on the farm but a whole series of features of the dairy industry. These features include:-

- i) total demand for milk and the demand for individual products (fluid milk, cheese, butter, concentrated milk, evaporated milk, ice cream mix and so on)
- ii) production factors such as costs, farm alternatives to milk production, surges in immigration and population movement, weather, labor supply
- iii) organization and policy of the industry groups eg distributors, processors, producers of fluid milk, of milk for butter, or for cream or for other products
- iv) prices received by farmers and processors and distributors
- v) extent and type of government intervention, assistance, laws and organizations.

The changes in these five groups of factors have had a fundamental impact on the behaviour, structure and legislation in this industry. The impact has been particularly significant for the new legislation and the new government authorised organizations over the last twenty years. A brief survey of these five groups of factors will help clarify the manner in which these influences have moulded the dairy industry into the shape and form it takes in 1979.

### Supply and Demand Changes

1.2 The dairy industry, after its early beginning in the pre-Confederation settlement period experienced its fastest growth from Confederation to the turn of the century. Since 1900, total milk production continued to expand reaching a peak in 1965. A decline and a levelling-off period has followed (see Table 1). From 1920, for example, production rose from 11.0 billion lbs. to 18.0 billion lbs. in 1970. However, within each decade there were wide fluctuations. Between 1920 and 1929 there was a 23 percent difference between the smallest and the largest level of annual production. During the 1960's the variation was only 4.5 percent. Recalling that milk is a perishable product, requiring expensive refrigeration equipment to keep it fresh or rapid processing if it is to be processed, the impact on the requirement for, and utilisation of, storage and factories is considerable given a year to year supply variation.

TABLE 1—TRENDS IN CANADIAN MILK PRODUCTION AND ITS VARIABILITY 1920-1978

	Total Milk Production	(billion	Lowest within the 10 year period*	pounds)	Highest within the 10 year period*	Size of Fluctuation: % change from lowest to highest %
1920	11.0		11.0		13.5	22.7
1930	13.1		13.1		15.8	20.5
1940	15.2		15.2		16.5	8.5
1950	14.9		14.9		17.7	18.8
1960	17.7		17.7		18.5	4.5
1970	18.0		16.9		18.0	7.5
1978	17.3		**		**	**

\*i.e. for 1920, the 10 years 1920 through 1929

Source: Handbook of Agricultural Statistics, Part VII Dairy Statistics 1920-73, Catalogue No. 21-515

\*\*Ten year comparison not available

1.3 Along with this production variation, important changes took place in the demand for milk for different uses (see Table 2). The major changes were:-

- i) a fairly steady rise in the quantity of milk consumed directly as fluid milk and cream rising from 14.5% of production in 1920 to 32.6% in 1978
- ii) an increase in milk going to butter production, with a peak production in World War II

(primarily for export) and a decrease in butter use during the 1970's. In 1920 almost half the butter was made on farms but by 1960, this "farm" butter had become insignificant and "creamery butter" (ie, made in a factory) reached a peak in 1970.

- iii) a fluctuating use of milk for the production of cheddar cheese—the peak here was in the 1890's with another peak in World War II and a rise again in the 1970's

- iv) a rapid rise since 1960 in the use of whole milk for manufacture and for cream cheese
- v) a rapid rise in the use of milk for the production of concentrated whole milk products to peak in the 1960's with a decline thereafter
- vii) a steady decline in the milk used on farms for home consumption and for livestock feed. The decline in the number of farms and in people living on farms (especially those with dairy cows) is the significant factor here.

#### Factors Affecting Supply and Demand

1.4 Through the 1930's, World War II, and the recent inflation (1973 to date), rising farm costs led many farmers to reduce or cease production. During the 1940's, for example, dairy farmers could not find

hired workers and labor shortages were serious and in the 1970's also created problems. Weather conditions in particular years have accounted for some of the production variation. In addition, the growth in wheat exports from the prairies, especially in the period from 1910—1930, encouraged many dairy farmers to leave Ontario and migrate to the prairies to grow wheat. In more recent times, and especially since 1945, milk production in the prairie provinces has declined steadily as farmers concentrated on grains. At the same time, the continuous increase in the Canadian population has resulted in a growing domestic demand for fluid milk, for cheese and for ice cream. On the other hand, the demand for butter has been adversely affected by nutrition concerns over animal fat, as well as its higher price relative to margarine, leading to a decline in total butter consumption in the last few years.

TABLE 2—TRENDS IN UTILISATION OF MILK—CANADA 1920-1977

	Fluid uses	Farm butter	Factory butter	Total butter	Cheddar cheese	Other cheese	Con. milk	Ice cream	Used on farms	Total Production
	(billions pounds)									
1920	1.6	2.4	2.6	5.0	1.7	—	.2	.1	2.4	11.0
1930	2.5	2.3	4.4	6.7	1.3	—	.2	.2	2.2	13.1
1940	3.1	1.8	6.2	8.0	1.6	—	.4	.2	1.9	15.2
1950	4.1	.7	6.1	6.8	1.1	—	.8	.4	1.7	14.9
1960	5.0	.2	7.5	7.7	1.2	.1	1.2	.7	1.8	17.7
1970	5.2	—	7.7	7.7	1.8	.6	.7	.8	1.2	18.0
1977	5.8	—	5.8	5.8	1.9	1.4	.8	1.0	1.2	17.1*

Source: Handbook of Agricultural Statistics: Part VII, Dairy Statistics, 1920-73, Catalogue No. 21-515

\*Due to a change in the way Statistics Canada obtained this information, the figure for total production in 1977 is not comparable to that for previous years; nor is it the sum of the itemised products. (The comparable figure would be 17.9.)

1.5 The different uses for milk led in the early years to the organisation of dairy farmers into different groups producing milk for different markets. When transportation was by horse and refrigeration was not widespread, cities, towns and villages were supplied by local farmers. However, as fluid milk generally sold (and continues to sell) at a higher price than milk used for manufacturing, due to freshness and higher sanitation standards, other dairy farmers wanted a share of this market. The strong desire to receive the highest price created a situation where the fluid milk distributors could bargain with dairy farmers. When butter, then cheese and then concentrated and evaporated milk factories were built, each factory drew its milk from local farmers. Some farmers separated the cream and skim milk and delivered the cream to butter factories, while others delivered whole milk to cheese plants or to concentrated milk plants or to evaporated milk plants. Each fluid milk distributor and each factory made pricing arrangements separately and sometimes contracts with farmers about delivery quantities, e.g., fluid milk was needed all year round, but butter and cheese could be stored. Some

farmers, therefore, produced milk in the summer when costs were lower and accepted low annual average prices, others tried to deliver year round.

1.6 This process led eventually to farmers organising themselves into associations according to the type of milk use. This was especially true in Ontario and Quebec. These different groups became self-centered and tended to ignore some of the major changes taking place in the industry and the market for their products. For example, the fluid producers, whose market was constantly expanding, did not want to let other farmers into this market. The farmers supplying milk for butter blamed margarine and butter imports for their low prices. Cheese milk farmers blamed foreign countries and international problems for their low prices. Even the distributors and processors would not look to broad solutions to their problems and aggravated the industry's difficulties by over-building plants, duplicating milk transportation routes and circumventing many negotiated plans and government schemes.

### Impact on Prices

- 1.7 The key problem that arose was centered on the prices received by farmers for milk and the prices at which milk and milk products could be sold. The 1930 depression brought very low prices for dairy products largely due to the drastic reduction in Canadian butter and cheese exports and the fall in consumer incomes. Larger volumes of milk were pushed into the fluid market and retail milk prices fell to very low levels. Fluid milk prices began to strengthen after Provincial Government intervention with the establishment of Milk Control Boards for the marketing of fluid milk. The 1939-45 war brought a price increase with a strong demand for butter and cheese and evaporated milk for export. Britain made contracts with the Canadian Government for the annual sale of large quantities of food during the war. The Wartime Dairy Products Board paid subsidies to farmers to boost production but a shortage of labour impeded its efforts. The expiry of the British contracts during 1953 to 1955 resulted in chaos, as neither the domestic market, nor other overseas markets could absorb all the milk and products then available. Prices declined and farmers were forced to organise and lobby governments for action. Thus the 1950's and 1960's were years of very active farm organization efforts and of new legislation both nationally and provincially.

### Government Intervention

- 1.8 The chaos in the 1930's had led provincial governments to introduce controls into the fluid milk market. These generally involved

- i) the definition of a market area (a city or town) to which farmers could deliver
- ii) a quota or volume for each farmer to deliver daily or annually and
- iii) negotiated contracts between each farmer and the distributor relating to supplies, price, quality, price for "over" supply for that market area, etc.

Each farmer was allowed to deliver to one distributor. Only farmers with quotas could deliver in that market area. In Ontario alone this resulted in over 170 market areas and a large number of different price levels for fluid milk in the province. Indeed, it sometimes meant that individual distributors paid different prices to farmers, even within one market area. However, it did lead to some stability and in fact to slight increases over time in the prices received by farmers for fluid milk. However, the restrictions on entry into the fluid market depressed the prices in the manufacturing milk market. In order to try to deal with these depressed prices, governments at various times and in different ways began to intervene in the marketing of manufacturing milk products. The first federal attempt in this regard was by the Dominion Marketing Board, established under the Natural Products Marketing Act 1934. Through the use of a subsidy, surplus butter was diverted to export. Then in 1935-36, a 1.5¢ a lb. subsidy was paid on all milk

going for cheese and this step had the effect of stabilizing the price of all milk. But the Supreme Court declared the Natural Products Marketing Act (1934) *ultra vires* in July 1936. The Federal Government decided to leave the scene to the Provincial Governments.

### Wartime Intervention

- 1.9 World War II brought major Federal Government intervention in the market for dairy products. In 1939-40 surplus butter went to families on welfare who were issued vouchers for which stores supplied butter. The government re-imbursed the banks who in turn re-imbursed the stores according to the number of vouchers received. Subsidies were introduced for fluid milk, manufacturing milk and cream, largely to increase production while keeping down inflation and the price to consumers. The subsidies were paid by the Wartime Price and Trade Board from September 1942 and were taken over by the Agricultural Food Board of the Department of Agriculture in 1943. The subsidies to farmers to increase milk production were phased out during 1946 and 1947.

### Post-War Government Role

- 1.10 The Federal Government then made a commitment to support post-war agricultural prices and incomes. In 1944, the Agricultural Prices Support Act set up the Agricultural Prices Support Board which was empowered to support farm prices including milk by the purchase of product or by paying farmers deficiency payments. The Board began in 1946 with a policy of temporary, not permanent assistance.

- 1.11 In 1947, the Government passed the Agricultural Products Act which gave it authority to enter into bulk contracts with foreign Governments and to contract for storage and processing. The Wartime Meat, Dairy and Special Products Boards which had carried out the buying, storage, etc. for the wartime contracts were continued to enable Canada to meet the post-war world's food needs, especially those of Britain.

- 1.12 Subsidies to try to maintain the prices of dairy products were paid on a temporary basis. The price of butter was supported in Montreal at 58¢/lb in 1948, cheese for export was subsidized in 1950. In March 1951 all the wartime powers of the federal government expired. To replace these, the Agricultural Products Board was set up in December 1951 with wider powers than its predecessors. However, it did not establish a permanent subsidy system but dealt with each situation and each year as it came. By 1952, European agriculture had recovered from the war and post-war devastation, production was at record levels and Britain had a monetary crisis. Direct contracts with the U.K. government ended in 1955 and imports from dollar countries, ie, U.S. and Canada were strictly limited. These events had a major impact on Canadian agricultural exports which were considerably reduced. The new post-war trading situation meant that adjustments were necessary in the whole economy. The Canadian Government did not believe



it should attempt to provide large subsidies to agriculture to ease the adjustment problems in one sector of the economy.

- 1.13 The new Federal Government in 1958 took a different approach with the Agricultural Stabilization Act 1958 which set a minimum support level for nine "named" agricultural products including butter and cheese (not fluid milk or skim milk powder) at 80% of the 10 year average price. No clear policy for the dairy industry emerged with this new legislation. At the beginning of each dairy year (then May 1st) Ministers announced the levels of farm prices or support subsidies and other price and income arrangements.

### Summary

- 1.14 During the 30 years from the depression, dairy farmers received very varied government help, from moments of intense activity and encouragement to periods of self-help and almost apathy or even annoyance with farmers. While the Federal Government financial help was the largest, provincial governments also went through the similar swings. Milk Producers in B.C. for example had many marketing problems until finally, in 1954, the Government appointed the Honourable Mr. Justice J.V. Clyne to make a comprehensive study of milk production and marketing. He recommended a series of changes for a stronger, more centralised operation under a revised statute and the provincial government acted on his advice. It took a series of reports and many efforts by a range of farm organisations to achieve similar developments in Ontario which did not reach fruition until 1965.
- 1.15 From 1934, when the Ontario Milk Control Board started administering fluid milk areas, prices (including retail) and quotas, four distinct groups of dairy farmers emerged, with varying degrees of organisation, and with similar groups for distributors and processors. They were the fluid milk producers, the cheese milk producers, the cream producers (for butter) and the concentrated milk producers. Proposals, plans and subsidies tended to deal with these separate groups and the problems of each. In fact, marketing boards were established, whereby groups of farmers producing and marketing one product could legally organize and control the product, negotiate with buyers, raise levies to operate and buy, sell, store and even subsidise. Thus 1934 saw the Ontario Cheese Producer Marketing Board begin, 1946 the Cream Producers Marketing Board and 1954 the Concentrated Milk Producers Marketing Board.
- 1.16 Similar situations had been occurring across Canada associated with local developments peculiar to each province. More milk was being produced in B.C. and Quebec (as well as Ontario) and, thus, the three provinces experienced fairly similar problems while less milk was being produced in Manitoba, Saskatchewan, Nova Scotia and New Brunswick. With the concentration of population and milk and dairy product manufacture in the central provinces of Ontario and Quebec, and the need to dispose of any surplus from this region, the marketing problems of these two provinces tend to depict the whole dairy problem.
- 1.17 In addition, some problems had developed in the dairy industry which both the industry and governments had become reluctant to face. The Hennessey Inquiry in Ontario was one result of this build up of problems and provides a useful list. There was the decline of Canada as an exporter of dairy products, leading to the greater dependence on the domestic market within Canada. Part of this export problem was the large and increasing export subsidies of other exporting countries which made international trading difficult for Canada. On the consumer side, there was the concern with reducing animal fat consumption, leading to lower butter consumption per capita and to the growth of 2% milk (reduced from the standard 3.5% butterfat). Associated closely with these moves was the rising popularity of margarine. It is important to note that while Hennessey stressed the above "external" problems in 1963, they continue to be important issues in 1979.
- 1.18 The Hennessey Inquiry also reported that within the dairy industry itself, there were continuing problems. The fluid milk producers remained in a preferred position (except perhaps in British Columbia where all types of milk producers were integrated into one major marketing board). Entry was restricted into the higher priced fluid milk market and all milk surplus to fluid requirements received a lower price. However, there was a high capital cost to buy into the fluid milk business, thus raising the cost of production and in Ontario, the quota system for fluid milk was not working properly. The Channel Island milk producers had won themselves a preferred position. At the same time milk processing was being integrated into plants producing a range of products but no moves were being made to integrate producers. There was a growth of unused capacity in production and processing due to marketing arrangements which artificially segmented the market and prevented milk switching from one use to another and from an over-utilized plant to one which was under-utilized. Progress was slow in upgrading milk quality and sanitation standards on farms, in dairies and in plants. One reason given for these problems was the lack of communication all through the industry and between provinces. It was suggested that the leaders of both farmers and processors were failing to recognize and respond to the evident need for joint action and that the provincial agencies and the Provincial Governments were failing to recognize these changes and pressures within the industry. There was also a suggestion that there was a lack of confidence in the Federal Government, which had provided subsidies, price support and import controls and announced these each year.
- 1.19 This was the background and situation for the Canadian dairy industry in the early 1960s.

## **SECTION II: CREATION OF THE CANADIAN DAIRY COMMISSION**

### The Demand for a National Authority

- 2.1 The 1960s opened with increasing pressure for dairy farmers and the dairy industry to get together. The establishment and the work of the Hennessey Inquiry

in Ontario, beginning in 1963 with a series of public hearings all through the province, was an important motivator. But national action was needed. At the Annual Outlook Conference held by the Federal Department of Agriculture in November 1962, the Canadian Federation of Agriculture called for a national dairy conference to chart a course for the future of dairying in Canada. This proposal was widely supported and the so-called First Canadian Dairy Conference was held in Ottawa February 21-22, 1963. It was a unique occasion because never before had 70 leaders from the dairy industry in the Federal and Provincial Governments, Farmers Organizations and Processors gathered together to discuss the problems, the future and proposals for action. A speech by the Executive Secretary of the Dairy Farmers of Canada proposed...

"a national authority to assure the responsibility for the marketing of milk and milk products, both domestic and export, in the interests of the Canadian dairy producers. On the whole, I would conceive a national authority to be engaged mostly in the field of regulation matters rather than being itself a buyer and seller of milk and milk products. This latter function might not be performed by it at all, or performed only in special cases of need — as in surplus disposal programs, or market stabilisation measures".

He went on to describe its powers, which did not include trading. However, he did hedge a little when he said

"I also realise that the need of the Authority for them (its powers) at any particular time and to any particular extent must be determined by study and experience".

2.2 In its report, the Conference asked that an advisory committee be appointed to consider a wide range of items, amongst which a National Agency was listed separately as requiring continuing study. This advisory committee was to be composed of 16 members of which one was to be appointed by the Federal Government and one from each of the 5 regions (Atlantic, Quebec, Ontario, Manitoba/Saskatchewan and Alberta/British Columbia) by the Dairy Farmers of Canada, the National Dairy Council (the processors) and the Provincial Governments.

2.3 The Federal Minister of Agriculture, Hon. Harry Hays appointed the Committee and it had its inaugural meeting June 24, 1963 in Ottawa. In fact, seven full committee meetings were held between October 1963 and March 1965, as well as many meetings of its four sub-committees. Its 27 page report (plus appendices) was finalized and published in August 1965. Its recommendations covered research; quality, marketing and "other". On marketing, it had four pages, mostly devoted to a clear and straightforward set of views on a national dairy authority. After dealing with objectives, legislation, status, composition and financing, eight separate functions were listed. One of these gave the Committee "authority in the field of foreign trade and to act on matters related to exports and imports, subject to government policy". Then follows an illustrative example concerned with possible profits

to be made from imports. It was suggested that any profits should be used for export assistance.

However, the example referred only to the kinds of powers the national authority would need and the kinds of action it might take in foreign trade and made no reference to who should actually do the trading.

2.4 With the Canadian Dairy Conference and the Canadian Dairy Advisory Committee Report, the General movement towards a national authority was now strong. The Federal Government took the ideas on board. The Liberals were re-elected in November 1965 and the Hon. J.J. Greene, Minister of Agriculture introduced into the Committee of the House on Thursday June 16, 1966 the Canadian Dairy Commission Bill C-205. Second reading began June 23 after widespread support for it had come from across the House. During Second Reading, the Minister made it clear that

"It is not possible at this time to indicate, other than in a broad way, the manner in which the Commission will operate. The dairy industry is a complex and ever changing entity, and with these changes, different approaches will doubtless be needed on the part of the Commission. The legislation has been drafted to provide for sufficient flexibility to permit the Commission to meet the objectives set for it, despite changing structures in the Canadian dairy industry." (June 20, 1966, p. 6657)

Third reading was completed June 23, 1966, the Act went quickly through the Senate and received Royal Assent on 11th July 1966.

#### The Canadian Dairy Commission Act 1966

2.5 The Act to provide for the The Canadian Dairy Commission came into force on October 31, 1966 and the Commission became fully operative with the start of the new dairy year on April 1, 1967. The Commission is a federal government crown corporation, consisting of 3 members appointed by the Governor in council: a chairman, a vice-chairman and one other members. The Commissioners are directly responsible to the Minister of Agriculture. The offices of the Commission are in Ottawa. The Chairman is the Chief Executive Officer of the Commission.

2.6 **Objective:** The objective, as stated in the Act, is as follows:

"To provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of products of high quality."

2.7 **Powers:** The authority granted the C.D.C. to achieve this objective may be summarized as follows:

1. to purchase, store, process or dispose of dairy products in any way it desires
2. to make direct payments to producers

3. to investigate matters pertaining to the production, processing and marketing of any dairy product
  4. to help to promote the use of dairy products
  5. to deduct levies from payments to producers.
- 2.8 Regulations:** These powers are to be carried out subject to and in accordance with any regulations made under this Act. Specifically, the Governor in Council may make regulations controlling the marketing of any dairy product, including regulations on quotas, agencies licencing, record keeping, fixing and collecting levies, seizure and disposal. No regulations have been authorized by the Governor in Council regarding the marketing of dairy products by the CDC since its inception in 1966.
- 2.9 Consultative Committee:** The Minister is required to appoint a Consultative Committee consisting of a chairman and eight other members. Each member is appointed for up to three years. The Committee is designed to advise the Commission on matters pertaining to the production and marketing of dairy products, as requested by the Commission. A full Committee was appointed when the Commission was established and was generally active in the early years. It continued to meet up the February 8, 1977, when terms of appointments expired and were not renewed. In October 1979 the vacancies are being filled.
- 2.10 Commissioners:** The Commission came into being on October 31st, 1966 and Dr. S.C. Barry was appointed Chairman on December 1st, 1966. For seven years prior to his appointment, Dr. Barry had been the Deputy Minister of Agriculture. As Deputy Minister, Dr. Barry had responsibility for the Agricultural Stabilization Board and was very familiar with all the developments in federal dairy policy and programs up to that time. Mr. L.A. Atkinson was appointed Vice-Chairman. He had been the General Manager of the Frazer Valley Milk Producers, which was the largest farmer dairy co-operative in British Columbia with extensive processing facilities. Mr. Atkinson thus brought to the Commission an understanding of the dairy processors' concerns. Mr. M.J. Thibaudeau, a Quebec dairy farmer, was appointed Commissioner on 15 March 1967 to bring into the Commission the interests of the producers.
- 2.11 Source of Funds:** The Commission, under the Act, receives each year, following determination by the Governor in Council pursuant to the Agricultural Stabilization act, a total amount to be paid by the Agricultural Stabilization Board to the Commission for the purpose of stabilizing the price of milk and cream. Each year the Commission is instructed to submit to the Minister of Agriculture an outline of the program by which it proposes to carry out its functions for the following fiscal year. All expenditures for salaries, travelling expenses and administration (except those in the opinion of the Minister directly attributable to action by the Commission to stabilize the price of any dairy product) are paid out of monies appropriated by Parliament for that purpose.

**2.12 Commission Staff:** Mr. D.B. Goodwillie served as Director of Marketing from April 1, 1967 until his death in October 1972. Previously he had been Chief of Marketing for the Agricultural Stabilization Board and was already very familiar with the dairy product market. Dr. H. Mestern joined the Commission about the same time as its economist, R.J. Labossière became Director of Subsidy Administration in August 1968 and A.O. Blouin was made Secretary-Treasurer. Mr. J.R. Sherk filled the position of Director of Marketing from January 1973. With this core of officers, the Commission had a staff of 25 in December 1967. From then on it was a steady build-up to 37 persons in 1969-70, 45 in 1973-74, and 53 in 1976-77. During this time there have been major changes in the key personnel. For example, Dr. Barry retired in 1973 and was replaced by Ellard Powers, an Ontario farmer who first joined the Commission when Mr. Atkinson retired. Mr. Powers was replaced by acting Chairman Ken Savage in July 1976. He, in turn, was succeeded as Chairman Ken Savage in July 1976. He, in turn, was succeeded as Chairman in November 1976 by Gilles Choquette, previously Executive Assistant to the then Minister of Agriculture, the Honourable E.F. Whelan, and before that Assistant Executive Secretary to the Canadian Federation of Agriculture, responsible for dairy. Following Mr. Thibaudeau's resignation in November 1976, Mr. Elwood Hodgins was appointed Vice-Chairman in May 1977. Mr. H.M. Johnson was appointed commissioner in 1973 and is still there. On the staff side, Mr. R. Tudor-Price joined in October 1975 as Director of Market Intelligence. Mr. Sherk, who was on loan from Agriculture Canada, retired in December 1974. In October 1974, Mr. Marcellus was appointed Director of Marketing Operations.

#### Relationships with Other Organisations

- 2.13 Agriculture Canada:** At the outset, the Chairman of the Agricultural Stabilization Board, Mr. S.B. Williams, (also the new Deputy Minister) worked closely with Dr. Barry on the annual dairy program. On Dr. Barry's retirement, this relationship continued with Mr. Powers but as the staff and their experience increased, the Commission steadily took greater control of the development of policy and its implementation. Agriculture officials thus became less involved in policy and the widespread activities of the Commission. However, Agriculture Canada was very involved with the formulation of the long term dairy policy established in 1975. In the areas of quality control and inspection, Agriculture officials continued to work closely with the Commission and more particularly with the processors.
- 2.14 Industry, Trade & Commerce:** At all times there have been close working relationships between the Commission and the Department of Industry, Trade and Commerce which has been responsible for trade development, trade control and trade agreements. Officials both in Ottawa and in Canadian Embassies assisted in seeking export markets and aiding Canadian exporters, the Commission and its staff. The Minister of Industry, Trade and Commerce administers the Export and Import Permits Act, under which

control of imports is regulated. Dairy policy development has involved increasingly severe restrictions on imports of dairy products. In addition, the Department took the lead in the negotiations for an International Skim Milk Powder Agreement under the General Agreement on Tariffs and Trade in 1970, and in subsequent discussions on dairy products.

- 2.15 **Provincial Governments and their Agencies:** With the divided jurisdiction which has evolved in the milk industry between the provincial governments covering fluid milk pricing and quotas, and the federal government covering industrial milk pricing and quotas,<sup>1)</sup> it has been essential that close relationships be maintained between all Departments of Agriculture and the provincial Marketing Boards. Initially these were informal agreements, but, encouraged by the producers' organisation, formal arrangements were set up with the Canadian Supply Management Committee, chaired by the C.D.C. Chairman but with all provinces represented. Meetings were held every two months to review production levels, quota allocation and distribution, and consumption and utilisation. This close liaison also applied to the Dairy Farmers of Canada's national dairy promotion organization, the Canadian Dairy Foods Service Bureau, to which the federal government, through the CDC, made contributions in 1976.

<sup>1)</sup> This division arises primarily because very little fluid milk crosses provincial boundaries and, in fact, is frequently produced close to the city where it is consumed. Dairy products made from manufacturing milk often enter interprovincial and export trade and thus come under the preview of the Federal Government.

- 2.16 **Dairy Farmers of Canada:** The C.D.C. has always worked closely with the dairy farmers' organization, attending meetings, receiving representations and developing policy. It would be fair to suggest that the C.D.C. has generally acted in favour of the dairy farmers. Internationally the C.D.C. has participated in the International Dairy Federation and hosted the annual convention in Canada in 1977.
- 2.17 **National Dairy Council:** The processors and traders present their views through their National Dairy Council and its provincial bodies. The C.D.C. has worked closely with the NDC since the C.D.C. was established.

#### Role of the Canadian Dairy Commission

- 2.18 The Canadian Dairy Commission was, in fact, placed in the role of the central governing body to which all parts of the billion dollar industrial milk and cream sector of the total milk industry were looking for leadership and direction; yet, at the same time, jurisdiction was divided between provinces and the federal government and farmers and the trade and processors were uncertain of their positions. Thus the C.D.C. was faced with meeting the requirements and expectations of the government, and of producers, processors, traders and consumers.
- 2.19 The Federal Government was providing the necessary funds for operating expenses and for subsidies to

farmers, for price support, marketing, research and promotion to help the Commission's program function; and the Government had certain expectations that the Commission would overcome, or at least alleviate and contain, the eruptions and pressures in an industry facing difficult problems and that it would be able to bring about change. The producers' expectations for the future were that the financial rewards for them would be what they could regard as a fair market price or return. Processors, serving as the middlemen between the producer and the consumer, believed that they needed some assistance in the marketing process because supplies of industrial milk could readily be in excess of the demand for the products if prices were not adjusted to remove the surplus. Furthermore, the seasonality of industrial milk production and the fact that some products, eg. skim milk powder, were being produced in excess of domestic requirements, demanded in the eyes of the producers and processors, a system of product removal from the market in order not to depress the prices farmers received for their milk. The consumer desired a continuous supply of safe, clean and nutritious dairy products in volumes sufficient to satisfy consumption at the prices offered. It was into this set of expectations that the C.D.C. was established as a Crown Corporation, type C, with wide powers because of its commercial operations, with an extremely large number of farmers with dairy cows delivering some milk for manufacturing, including many farms with only a few cows. It is also relevant that, in general, the climate in Canada is not ideally suited to milk production compared with that of other countries and with other farm commodities. However, in some parts of Canada, other farm employment opportunities were almost non-existent without major structural changes and heavy investment. As a result, the Canadian dairy industry does not compare well in terms of efficiency with the dairy industry in many other countries.

### **SECTION III: FEDERAL DAIRY POLICY — SOME DETAILS AND CHANGES OVER TIME**

#### Introduction

- 3.1 There are two milk markets in Canada — fluid milk and manufacturing (industrial) milk. Policies relating to the dairy industry in Canada can therefore be divided according to the use to be made of the milk. In many respects, the division between fluid and manufacturing milk policy arises from jurisdictional differences between levels of government. Provincial governments are almost totally responsible for both fluid marketing and policies that affect fluid milk prices. The policies for manufacturing milk are largely established by the Federal Government, although the actual administration of the programs emanating from Federal policies is often carried out by the Provinces.
- 3.2 The different practices in the handling of the two types of milk, particularly those in operation in the 1950's and 1960's, supported the division of policy responsibilities between the federal and provincial

governments. Milk for fluid consumption must be transported with minimum delay, is costly to transport and is perishable. Dairy products such as butter, cheese, and skim milk made from manufacturing milk are, on the other hand, storable and easily transportable. In general, this division of responsibilities is also in keeping with the intent of the BNA Act which supports provincial jurisdiction over intraprovincial matters and federal jurisdiction over both interprovincial matters and international trade. Little fluid milk crosses provincial boundaries, while dairy products move interprovincially and into export trade.

3.3 The markets for manufacturing and fluid milk have been virtually independent. The market for manufacturing milk and cream is mainly supplied by farmers whose output is destined solely for that market and the market for fluid milk is filled by other dairy farmers. There is, however, an overlap between the two markets because milk produced for the fluid market in excess of fluid milk demand has to be diverted to manufacturing use. Thus the policies of the Federal Government, and the changes in them, relate to the manufacturing milk sector of the dairy industry. In recent years there has been substantial progress towards integration and by 1977, Manitoba, for example, was fully integrated with no separation of fluid and manufacturing at the farm level.

3.4 The Federal Government is primarily responsible for manufacturing milk pricing and supply control through the operations of the Agricultural Stabilization Act (1958) and the Canadian Dairy Commission Act (1966). The Canadian Dairy Commission is the Federal Agency that has responsibility for administering Federal Dairy Policy. The development of this policy has been largely in response to circumstances that have led the government to intervene to try to improve market conditions, especially prices, for manufacturing milk and dairy products. Three phases can be identified in this policy development:

- i) Up to 1966-67 and the creation of the Commission (CDC).
- ii) 1966-67 to 1975; the creation of the C.D.C. and the announcement of the "long term dairy policy".
- iii) 1975 to present, the operation of the "long term dairy policy".

**i) Up to 1966-67 and the Creation of the C.D.C.**

3.5 Federal involvement with the dairy industry in Canada began in the depression years of 1935 and 1936 when Federal programs to support the price of certain dairy products were introduced in an attempt to minimize large changes in price and to increase the income to dairy farmers. The emergency situation created by World War II resulted in special Government involvement. In order to prevent the recurrence of a farm price collapse after the war, similar to the one that followed World War I the Federal Government passed the Agricultural Prices Support Act in 1944. The Agricultural Prices Support Board, which administered the Act, became operative in 1946, but

it made no major purchases of dairy products until 1949. A revolving fund of \$200 million was available to the Board for use as working capital in its purchase programs designed to maintain price levels for farm products including dairy.

3.5 The war and immediate post-war period was one of food shortages and programs were designed to foster production and encourage, and even contract for, large and continuous volumes of exports. With the cessation of the fighting and a slow return to normality, especially in North America, concern arose over imports of dairy products into Canada. Thus in July 1951 dairy products were placed under the Exports and Imports Permits Act. From that time, dairy products have generally been subject to restrictive import control.

3.7 In order to permit the Federal Government to buy and sell agricultural products and, in particular, to enter into contracts with foreign governments, the Agricultural Products Board Act was passed in 1951. The Board that the Act set up under the Minister of Agriculture became the operating arm of programs that took surplus products off the market, stored them, had them processed, etc. or resold them or arranged for their export. This Board works closely with the Agricultural Stabilization Board and, in fact, since 1958 has had the same three-man membership. Mr. L.W. Pearsall was the first chairman of the Stabilization Board. Mr. S.B. Williams succeeded him and remained chairman of both boards until his retirement in 1975: he was also the Deputy Minister of Agriculture from 1967.

3.8 The powers of the Agricultural Products Board are, with the authority of the Governor in Council and under the direction of the Minister, to:-

- i) sell or deliver agricultural products to the government or agency of any country as part of any agreement made by the Government of Canada with that government or agency; and for these purposes purchase and arrange to purchase, sell or deliver agricultural products;
- ii) purchase or negotiate contracts to purchase agricultural products on behalf of the Government or agency of any country;
- iii) buy, sell or import agricultural products;
- iv) require information to administer the Act;
- v) store, transport or process or contract to store, transport or process agricultural products.

However, unless given prior approval it could not buy, sell or import at a loss and had to cover handling, storage, and transportation costs.

3.9 The Agricultural Stabilization Act was passed in 1958 and superceded the Agricultural Prices Support Act. The Agricultural Stabilization Board, the new administrative agency, was charged with guaranteeing the prices of butter and cheese (as well as other agricultural products) each year at 80 percent of the average price realized over the previous ten years. The Government could, however, increase the support

prices above this level if such factors as the cost of production justified it. The revolving fund was increased to \$250 million.

3.10 The purpose of the Agricultural Stabilization Act, 1958, is to stabilize "the prices of agricultural commodities in order to assist the industry of agriculture realize fair returns for its labor and investment, and to maintain a fair relationship between prices received by farmers and the costs of goods and services that they buy, thus providing farmers with a fair share of the national income". The Act establishes a three member Board which may:-

- i) purchase any commodity of the prescribed price;
- ii) pay to producers, directly or through an agent, the difference between the prescribed price and the average market price;
- iii) make payments to stabilize prices;
- iv) sell, package, process, store, ship, export or otherwise deal in any commodity;
- v) enter into contracts and appoint agents;
- vi) purchase at request of the federal department;
- vii) do all that is necessary to fulfill its duties. This legislation is the basis of all Federal price support to the Canadian manufacturing milk industry. All money paid to the Canadian dairy farmers by the Federal Government or its agencies in respect of income and price support must come within the authority of this Act. The Act was revised in 1977 to improve the level of price support to farmers but its powers and responsibilities remain the same.

3.11 Given these three policy instruments — the Stabilization Board, the Products Board and import controls — federal dairy policy and programs slowly evolved in the 1950's through to 1967 when the Dairy Commission took over. While some programs were only temporary, the Board did introduce features that have become permanent parts of the national dairy policy. Beginning in May 1, 1959, a direct subsidy was paid to producers of manufacturing milk through the processors of 25¢ per 100 lbs. (except to those producers shipping a portion of their milk to the fluid trade). This direct subsidy was discontinued on May 1, 1963 because milk production had risen. From the outset, the Board continued the "offer to purchase" program for butter, setting an annual price at which it would buy, store and resell butter. This program grew out of the wartime and post-war activities of the Boards that purchased dairy products for export. When the export market for butter virtually disappeared, the Products Board and then the Stabilization Board made an offer to buy butter from processors (on the basis of stated quality and other specifications). The Board stored and resold the butter. In general, the Board was offered large volumes of butter during the peak manufacturing milk production season of the spring and summer. At this time, prices of butter fell and the action of the Board maintained

or "supported" a steady product price. During the fall and winter seasons, butter production was low and distributors bought butter from the Board to sell to retailers. With these supplies back on the market, prices did not rise in the "off" season. Thus a stabilizing effect was created.

3.12 However, a large build-up of butter stocks occurred during the mid-1960's due to a combination of rising milk production and declining per capita consumption of butter as margarine continued to rise in popularity. This problem led the government to adopt some special programs. For the 1962-63 dairy year the Federal Government maintained butter at a wholesale or ex-plant price of 64 cents per lb. But to encourage higher consumption, it added a consumer subsidy of 12 cents a lb. In addition, large subsidies were paid on butter and butter oil for export. Within two years the large stocks of butter that had accumulated were considerably reduced but only after the industry had been shocked into recognizing that per capita consumption was declining, that price was important, and that milk production would have to be controlled if costly surpluses were to be avoided.

3.13 Most dairy products other than butter were in balance. The demand for cheese was strong and no direct support price was needed as long as the support price for butter was underpinning the market. However, the by-product of butter manufacture is skim milk. When the cream was separated on the farm, the skim was fed to livestock. In the post-war period, more and more whole milk was being delivered to the processing plants and less skim returned to the farm. The reasons included the adoption of bulk transport for milk and the price competitiveness of substitute feeds for skim milk. This surplus skim has had to be dried, and sold in a range of markets. The market within Canada is small. The international demand is largely for human consumption in the poorer developing third world countries, who want to pay as little as possible for the product; prices are even lower in the animal feed market. An additional determinant of the low world price has been the competition between developed countries to dispose of their surplus powder in the world market, using export subsidies, while protecting their own higher domestic price.

3.14 Thus in the early 1960's the price that the factory could get for its skim milk powder was low — in the region of 5¢ a lb. This price, together with the butter price which the Agricultural Stabilization Board (A.S.B.) supported around 64¢ a lb., determined what a milk factory could pay farmers for their milk. So the A.S.B. began to support the price of skim milk powder with an "offer-to-purchase" program similar to butter. But it also began to build up stocks of the powder, and had to provide temporary export subsidies. To try to avoid the problem of large stocks, it restricted the "offer-to-purchase" program to a maximum quantity it was prepared to buy. Nevertheless, the volumes of production of milk powder continued to increase and the problem of disposal became greater.

3.15 For the year 1965-66, the government tried to raise the average returns received by manufacturing milk

producers to \$3.50 per 100 lb. milk. This was the first attempt to provide a uniform price for all manufacturing milk, regardless of its utilisation. Up to this point, each factory had paid producers according to the price it could get for its products, whether they were butter, skim milk, cheddar cheese, whey, evaporated milk, specialty cheese, etc. The plan involved supporting the butter price, and continuing the consumer subsidy and the export subsidies, as well as two direct subsidies to farmers to reach an average of \$3.50. First, there was a payment to cover the difference between actual average price farmers would eventually receive for their milk from the factories and the Government price of \$3.30 per 100 lbs. milk. Second, a payment based on each farmer's production in the previous year and graduated according to the size of that production. The average value of this payment was about 20 cents.

- 3.16 This complicated system was replaced by a new program for 1966-67, which, in fact, built on the past but in the process established the system in general use by the C.D.C. up to the present. An average gross return for farmers was established: for 1966-67 it was \$4.10 per 100 lbs. milk. The A.S.B. announced a support price for butter and skim milk powder which allowed the processors to pay farmers \$3.25 per 100 lbs. milk. It also announced a direct payment to farmers of 85¢ per 100 lbs. but, as a new step, deducted 10¢ to pay for export subsidies on product surplus to the Canadian market. This deduction was known as the "hold-back levy". The systems to operate these programs had been developed by the previous work of the A.S.B.

#### ii) The Period 1966-67 to 1975

- 3.17 The C.D.C. assumed responsibility for the administration of the Federal Government's dairy program commencing with the 1967-68 dairy year which ran from April to March. Two problems faced the dairy industry when the C.D.C. was established; production levels were above domestic requirements, and the structure of the farming sector was characterized by a large number of small-scale operators, many of whom had limited alternative economic opportunities. A workable policy and system had been developed and the Commission appointed several from Agriculture Canada to operate it. In order to keep manufacturing milk production in line with market requirements, the C.D.C. introduced a quota for each farmer, based on his previous year's deliveries. This quota entitled each farmer to the direct subsidy payment that was known as the Subsidy Eligibility Quota or S.E.Q. The Commission also restricted the maximum and minimum size of the quota. In 1966-67 fluid milk in excess of fluid milk market requirements was paid subsidy on production above 125 percent of fluid sales.
- 3.18 This quota system was the first step towards a managed milk and dairy product supply program. At this stage it covered only 80 percent of manufacturing milk production because the balance came from farmers with fluid milk quotas who produced excess fat for manufacturing use or from fluid milk distributors who found themselves with excess (as a result of changes in consumer demand) which they diverted to manufacturing use. As the income from manufacturing milk became more remunerative (factory price plus direct subsidy) many farmers began to ship more milk than allowed under their S.E.Q. although no subsidy was payable on shipments above the S.E.Q. The hold-back levy continued and in 1969, the C.D.C. introduced an "over quota" levy or holdback paid on production in excess of farmers' quota which was equal to twice the levy he paid on his within quota milk shipments. In 1970 this "over quota" levy was raised to 26 cents per 100 lbs. milk.
- 3.19 Many farmers especially in Ontario and Quebec believed that one of the main causes of the cyclical over-production of manufacturing milk was the lack of a guide to the size of the market available to individual producers. In order to overcome this problem, the Dairy Farmers of Canada developed a "comprehensive and equitable" marketing plan that was to cover all milk used for manufacturing, including excess fluid milk. The Federal Government negotiated this plan with the Provincial Governments and producer groups and an agreement was eventually signed by the C.D.C. and participating agencies in the provinces. Ontario and Quebec joined the Plan in December 1970 while other provinces joined later; Prince Edward Island on December 1971; Alberta, April 1, 1972, Manitoba and Saskatchewan in July 1972; British Columbia, October 1, 1973; Nova Scotia and New Brunswick April 1, 1974.
- 3.20 The main provision of the Comprehensive Milk Marketing Plan was that the provincial agencies would allocate individual market quotas to producers and deduct a levy on deliveries within quota, and those in excess of quota, from the market price on behalf of the C.D.C. and remit these levies monthly to the Commission. The C.D.C. would make the subsidy payments at the full rate, without holdback deductions, and undertook to restore the subsidy quotas to the level existing at the beginning of the 1970-71 dairy year in the participating Provinces. The Plan included a committee, known as the Canadian Milk Supply Management Committee, comprising three representatives from each province; one representing the Provincial Government board or commission, and two representing Provincial producer boards, and three representatives of the C.D.C., under the chairmanship of a member of the C.D.C. Observers from the Dairy Farmers of Canada and participating agencies attended the meetings as required. The Committee continues to meet every two months and more often when required and is responsible for administering the supply management program.
- 3.21 All producers were registered with the C.D.C. and with the Provincial Milk Marketing Boards, who allotted quotas to producers already licensed by them. Fluid producers in provinces with pooling arrangements approved by the C.D.C. and already licensed by the Provincial Board, also became registered with the C.D.C. Manufacturing milk quotas were allotted to them for milk in excess of that covered by fluid quotas. Under the Comprehensive Milk Marketing Plan, market quotas became freely negotiable be-

tween producers. The C.D.C. arranged to reallocate the S.E.Q. of a seller to a buyer upon written proof that the market quota had been transferred. The "in-quota" levy remained the same as the "holdback" from direct subsidy. The "over-quota" levy was set on the basis of the funds required to sell milk solids in world markets, with a minimum rate of \$1.50 per 100 lbs. milk as a discouragement to producing above the quota level.

3.22 There was an immediate reduction in the over quota levy deducted from manufacturing milk producers who had shipped over their subsidy quota. Producers' new market quotas covered their current level of production, and they paid the market quota levy of 0.26¢ instead of their over-subsidy quota "holdback" of \$1.25. The reduction in export charges was possible because market quotas now included all shipments of manufacturing milk and the in-quota levies were collected on a larger quantity of milk than before.

3.23 In 1974, the C.D.C. dropped the S.E.Q. concept and subsidies were paid on all milk produced within the Market Share Quota. During 1970-1975, however, the M.S.Q. did not operate as a real constraint on milk production because, as provinces entered the Comprehensive Milk Marketing Plan, they received concessions in the size of their basic quota entitlements. In addition, these quota entitlements were protected against a reduction in size for three years. As a result, more M.S.Q. was available in the market-

ing system than was necessary to meet domestic requirements of manufacturing milk. In fact, not all M.S.Q. was utilized during the years 1970-75 and domestic production declined for several reasons including: the establishment of S.E.Q. in 1967; improvements in alternatives available to dairy farmers; increasing input costs that placed producers in a cost-price squeeze; and adverse weather conditions. The Government, which had succeeded in removing the surplus problem of the late 1960's, was now faced with a production shortage. During 1972-73, substantial volumes of butter had to be imported by the C.D.C. Faced with the problem of declining production and the severe price inflation affecting farm costs, the Government increased the target price to farmers six times between April 1st 1973 and January 24, 1975. These target price increases, combined with the payment of direct subsidies to farmers on all Market Share Quota, encouraged an increase in production.

3.24 The price and subsidy levels established by the C.D.C. in its first eight years are set out in Table 3 below. In particular, the offer-to-purchase price for skim milk powder rose from the 20¢ a lb. for 1967-71 up to 51¢ a lb. by January 1975. The "holdback" to cover the export subsidy costs rose from 11¢ per 100 lbs. milk in 1967-68 to 26¢ in 1970-71 and then, on the new basis of provinces remitting the levy to the C.D.C. on a target volume of milk, it changed from 10¢ in 1971-72 to 15¢ in 1974-75.

TABLE 3  
SUPPORT PRICES FOR BUTTER AND SKIM MILK POWDER, DIRECT  
FEDERAL SUBSIDY AND WITHIN QUOTA LEVIES FOR MANUFACTURING  
MILK IN CANADA 1967-1975

<u>Year</u>	<u>Butter</u> c/lb.	<u>Skim Milk</u> <u>Powder</u> c/lb.	<u>Direct</u> <u>Federal</u> <u>Subsidy</u> \$/100lbs.	<u>Within</u> <u>Quota</u> <u>Levy</u> \$/100 lbs.
Apr 1 1967	63.0	20.0	1.21	0.11
Apr 1 1968	63.0	20.0	1.31	0.15
Aug 1 1969	63.0	20.0	1.31	0.21*
Sept 30 1968	65.0*	20.0	1.31	0.21
Apr 1 1969	65.0	20.0	1.25	0.26
Apr 1 1970	65.0	20.0	1.25	0.26
Apr 1 1971	65.0	24.0	1.25	0.10
Aug 16 1971	68.0	26.0*	1.25	0.10
Apr 1 1972	68.0	29.0	1.25	0.10
Apr 1 1973	71.0	35.0	1.45	0.10
Aug 1 1973	71.0	38.0*	2.01*	0.10
Apr 1 1974	77.0	50.0	2.30	0.15
June 1 1974	77.0	50.0	2.56*	0.15
Aug 1 1974	85.0*	54.0*	2.56	0.15
Jan 24 1975	90.0*	59.0*	2.56	0.15

\*change at date other than beginning of new dairy year April 1



### iii) 1975 — 1977 — The Long Term Dairy Policy

- 3.25 The policy issue of the period 1973-75 became the need to avoid the ad hoc nature of the annual dairy program announcement and frequent interim adjustments, and to strive for a better balance between maintaining a dairy industry and the increasing costs to consumers and taxpayers. On the one hand milk production had to be maintained to meet domestic butter and cheese requirements in the face of rapidly rising production costs, and on the other, the increases in consumer prices for dairy products and in taxpayer costs for direct subsidies to farmers had to be dealt with. The Federal government undertook a review of dairy policy and after two years announced in April 1975 a five year policy.

The Minister of Agriculture, in announcing this long term policy outlined its main elements, but did not go into its technical details. One of the main components of this policy was the introduction of a returns adjustment formula, which would form the basis for establishing returns to dairy farmers for manufacturing milk. The base return was set at \$11.02 per 100 pounds of milk effective April 1, 1975. This base was to be adjusted in relation to changing production costs as reflected in the cost formula which comprised of (i) an index of cash costs of milk production (45% weight), (ii) the rate of change in the CPI as a proxy for the farmer's labour input cost (35%) and (iii) judgemental factors (20%) such as significant changes in the level of stocks of dairy products; changes in the returns to dairy producers in other milk producing countries; and major changes in competitive processing costs. A change of more than 4% in the formula would lead to price changes either up or down.

The Market Share Quota would continue as an essential feature in balancing domestic supply and market requirements, and would continue to complement the price support and direct subsidy elements of the Dairy Program.

An additional feature of the long term policy was the government's stated intent to progressively increase

the share of producer returns coming from the market-place. The government would not raise direct subsidy payments, per unit of milk and cream, or total dollar expenditures above 1975 levels (i.e., \$266 million).

- 3.26 On April 1, 1975, butter was supported at 90¢ a lb., skim milk at 60¢ and the "in quota" levy for support sub-expanded by 15-16% during 1975 but remained within the total MSQ of 121 million cwt. But production exceeded projected domestic requirements by 11 million cwt during 1975-76 and so the C.D.C. reduced the amount of M.S.Q. on which the subsidy would be paid for the remainder of the dairy year (i.e., to March 31, 1976) in order to hold total subsidy payments on milk to the \$266 million authorized in the long term Dairy Policy. Due to the under-utilization of their M.S.Q. some provinces did not, in fact, cut production at all. For the next year, however, while increasing the support prices as determined by the cost formula, and doubling the in-quota levy, the total MSQ was cut by 14 percent and set at approximately 95 cwt (an original cut of 18 percent and an increase of 4 percent in October 1976).

- 3.27 While the total M.S.Q. issued is related closely to domestic and commercial export requirements, there is no one-to-one correspondence between the two. The national M.S.Q. for manufacturing milk and cream consists of market requirements, special allotments for some minor producing provinces and a tolerance of "sleeve" — generally around 5 percent — a feature that was introduced in April 1976. Subsidies are not paid on the sleeve (unless at year-end the sleeve production is found to be needed); its purpose is to provide sufficient flexibility in the quota system to ensure adequate milk supplies are forthcoming to meet requirements. For individual producers who fill their subsidized M.S.Q. the sleeve lessens the risk of incurring over-quota penalties. The global M.S.Q. was further reduced by approximately 2% in July 1977, after an increase of 4% in October 1976 and 1% in April 1977.

The support price developments from 1975 to 1977 are summarized in Table 4.

Table 4  
Support Prices for Butter and Skim Milk Powder, Direct  
Federal Subsidy and Within Quota Levies for Manufacturing  
Milk in Canada 1975-1977

	Support Price Butter ¢/lb.	Support Price SMP ¢/lb.	Direct Federal Subsidy \$/100	Within Quota Levy \$/100
Apr 1 1975	90.0	64.0	2.66	0.45
Jul 1 1975	103.0*	64.0	2.66	0.65*
Apr 1 1976	108.0	68.0	2.66	1.35
Apr 1 1977	118.0	70.0	2.66	1.20

\*change at date other than beginning of new dairy year April 1

## SECTION IV: OPERATIONS OF THE CANADIAN DAIRY COMMISSION

### Introduction

4.1 Previous sections have described the objectives, powers, staffing and sources of funding of the Commission (Section II) and the policies that were put into play before the Commission was established and some of the changes made by the Commission (Section III). This section sets out to describe some of the specific operating practices of the Commission. There are four major areas of which three are important as far as skim milk powder is concerned.

They are: -

- i) Direct Subsidy to Farmers
- ii) "Offer-to-Purchase" Program
- iii) Storage and Inventory Control Procedures
- iv) Marketing, especially for export

As indicated in Section III, all these programs were started by the Agricultural Stabilization Board and the Agricultural Products Board before the Dairy Commission came into being. Thus the Commission inherited the procedures and, in some cases, the personnel, and has refined them over its 13 year history.

### Direct Subsidy to Farmers

4.2 The level of this subsidy has been decided by Cabinet each year and announced immediately prior to the dairy year as a part of the next year's program. Since the announcement of the five year long-term policy in 1975, this direct subsidy has remained constant at \$2.66 per 100 lbs milk. From the administrative point of view, from the beginning, the needed information has been which farmers would be eligible, how often was it to be paid and for what volume of milk. All dairy farmers must be registered with the Commission which maintains an ongoing record in close cooperation with the provincial milk marketing boards. Commencing in 1967, the subsidy has been paid monthly on the basis of reports of the previous month's deliveries from each farmer. In addition, from 1967 until the Comprehensive Plan was signed by each province (signatures were made between 1970 and 1974) both "in-quota" and "over-quota" levies had to be deducted from this monthly payment. The Commission made all these detailed rules and with the assistance of the staff of the Agricultural Stabilization Board, the data processing facilities of Agriculture Canada, and the cheque-issuing facilities of the Department of Supply and Services carried out the work.

### Offer-to-Purchase

4.3 The offer-to-purchase program applies to butter and skim milk powder. The Agricultural Stabilization Board had purchased dry skim milk from its initial establishment in 1958. On April 25, 1966, for example, the Agricultural Products Board, which can be employed to support the A.S.B., was authorized to purchase up to 100 million lbs of spray process dry

skim milk at a price not exceeding 18 cents a lb., and on May 26, 1966 to purchase 25 million lbs of roller dry skim milk at a price not exceeding 17 cents a lb. (In fact, there is no record of any purchases of "roller" dried skim milk.) The Canadian Dairy Commission took over from the A.S.B. on April 1, 1967, and as long as the skim milk powder met the Commission's specifications, the Commission purchased it at the announced support price. (These prices are shown later under "Marketing".)

### Mechanics of Tendering Skim Milk Powder to Commission:

4.4 The procedures may be broken into two parts:

- i) for the processors
- ii) for the Canadian Dairy Commission

The processor wishing to tender Canada First Grade skim milk powder to the Canadian Dairy Commission must comply with all regulations and specifications as set out by:

- i) Agriculture Canada — grade standards for Canada First Grade skim milk powder
- ii) Offer-to-Purchase Specifications of the Canadian Dairy Commission. (These specifications are readily available if required.)

The C.D.C. specifications call for stricter standards than do those of Agriculture Canada for Canada First Grade skim milk powder.

The basic steps to be followed by the processor are:

- i) to decide upon the quantity of skim milk powder to be prepared for tender to the C.D.C.
- ii) to process the milk, manufacture and package the skim milk powder in accordance with Regulations and C.D.C. specifications
- iii) to follow approved sampling procedures in order to obtain individual and composite samples representative of the complete production run for that particular lot for tender. (Copies of approved sampling procedures and methods of analysis are available)
- iv) to submit samples for grading and analysis by an approved laboratory to obtain chemical, micro-biological and physical analyses, including testing for Direct Microscopic Clump Count (D.M.C.C.), freedom from Salmonella, and to determine the Whey Protein Nitrogen (WPN) content. The work of grading may be done by the Plant Products Laboratory in Ottawa or in plant laboratories certified by Agriculture Canada under Dairy Plant Laboratory Analysis (D.P.L.A.P.) and accordingly authorized to do this work, either for their own production, or on a contractual basis for a competitive industrial milk processor.
- v) when a certified plant laboratory does the grading work, a duplicate set of samples must be forwarded to the Plant Products Laboratory

in order that analysis checks may be completed and routine surveillance maintained on the performance of the laboratory located at processing plant level

- vi) upon completion of the plant laboratory analysis, and if the product is found to be tenderable to the C.D.C., then the results must be transmitted in approved form (normally by telex in recent years) to Agriculture Canada for issuance of Canada First Grade grading certificate. This step normally follows 5-7 days after the milk is processed and the powder is manufactured. Agriculture Canada completes the grade certificate, sending 1 copy directly to the Canadian Dairy Commission, and sending 4 copies through to the processing plant.
- vii) on the processor's receipt of grading certificate, or notification that the certificates have been issued, the processor must contact the C.D.C., usually by telephone or by telex. The processor offers the tender lot to the C.D.C., requests a C.D.C. lot number and warehouse shipping instructions.
- viii) The C.D.C. advises the warehouse of the incoming shipment. The processor ships the product to the designated warehouse, and arranges for weighing and issuing of Official Weight Certificate.
- ix) Upon receipt of Warehouse Receipts and Official Weight Certificates the processor is then able to submit an invoice supported by the required documents to the C.D.C. for payment. This step normally follows 5-7 days after receipt of the warehouse shipping instructions from the C.D.C.
- x) payment from the C.D.C. should be received in approximately 20 days from date of invoice, or 45-55 days from date of product manufacture.

Time is important throughout the entire procedure especially to ensure maintenance of high quality product. Since 1970 the product must not be over 45 days of age on tendering to the C.D.C. (when the Commission first took over the maximum age was 60 days which was steadily reduced to 35 days but this was found to be impractical). This offer to purchase program gives the processor the chance to sell and move his product quickly and as the costs of storage and interest have risen, in recent years especially with interest over 1% per month and tender lots valued from \$25,000 and more, this offer to purchase program gives the processor the chance to sell and move his product quickly and thus keep his accounts receivable to a minimum.

- 4.5 **Quality Control:** When these programs were first established in the 1950's the volume of skim milk powder produced each year was relatively small. In 1957 production was 120 million lbs but this had nearly tripled to 316 million lbs by 1967. Prior to 1974, all samples of skim milk powder had to be submitted to the Plant Products Laboratory in Ottawa

for official analysis. Because of the lack of grading facilities, long and unnecessary delays in getting grading results were experienced, some times as much as 65-75 days. These lengthy delays created a variety of problems, including old product, shortage of warehouse space at plant levels, mistakes and missing samples in the backlog at the central laboratory, along with serious financial constraints on the processor because of the large, heavy inventories he had to carry.

- 4.6 The solution to this problem was not found until June 1974 when a processor, working closely with Agriculture Canada and the Commission, established the first certified laboratory located in a manufacturing milk processing plant. The requirements on these laboratories are very stringent, and the plant laboratories must perform exacting work in order to retain their status of certification. They perform a valuable and useful function in expediting the grading of the skimmed milk powder and their competent and qualified personnel can maintain a comprehensive Quality Control and Quality Assurance program within the plant on its total operations. By September 1979, 10 such plant laboratories had been certified.
- 4.7 **Tendering Process by Commission:** At the start of each Dairy Year (April 1 from 1967 to 1978) the new specifications for the skim milk powder offer-to-purchase programs were sent to all processors by the Commission. Advance information (normally through the National Dairy Council) was available, including the reasons for any increased requirements in the specifications. The most notable change has been the gradual reduction in the tolerance permitted for D.M.C.C., along with some reduction in the permitted age of the powder at time of tender acceptance. While from time to time there was expected resistance to change, for the most part the processors accepted the stricter standards and co-operated fully with the Canadian Dairy Commission in working to achieve them.
- 4.8 Step one for the Commission is to set out the specifications of the offer-to-purchase program and then, literally, to wait for skim milk powder to be tendered. The first official notice of incoming product is the receipt of the Canada First Grade certificate from Agriculture Canada. Upon receipt of the grading certificate, and the tender offer from the processor by telephone or telex, the C.D.C. allots a C.D.C. lot number and provides warehouse shipping instructions to the processor. The responsibility for lining up warehouse space rests with the C.D.C., but authorized inspectors of Agriculture Canada ensure that the space meets the standards required. In this connection, more than 30 warehouses have been used for storage purposes by the Commission throughout Canada.
- 4.9 Upon receipt of the processor's invoice complete with supporting grade certificates, Warehouse Receipts and Official Weight Certificates, the Commission processes the seller's invoice for payment at the announced price in effect at that time.

## Storage and Inventory control

4.10 The storage and inventory control system used by the C.D.C. in 1979 represents improvements to the system made since it was first inherited from the A.S.B. in 1967. As far as possible, the dates when major changes were implemented are noted. It properly breaks into two sections:

1. Storage Warehouses — inspection, selection, approval, monitoring on-going storage operations and housekeeping;

2. Storage Records and Inventory Reports.

4.11 **Storage Warehouses** — In the early days of the C.D.C. it was the practice, upon receipt of advice from a warehouse offering space for storage of product, for the C.D.C. to request the Dairy Products Division of Agriculture Canada to inspect the facilities and make recommendations. Upon receipt of the inspection report, the C.D.C. approved or rejected the storage facility, having given consideration to the quality of facilities, its accessibility, availability of transportation, geographic location, the storage needs, the cost, etc. In order to obtain more uniformity in the reporting by Agriculture Canada inspectors, a standardized form was produced during 1968. In addition, the Commission issued, in 1968, a set of terms and conditions for storage facilities which covered both independent warehouses and storage attached to manufacturing plants. A more elaborate description of guidelines for the inspection of warehouses where dairy products are stored was produced during 1974 through the joint efforts of the Dairy Products Division of Agriculture Canada and the C.D.C., as an integral part of the development of an overall Quality Assurance program. (A note to file by H.J. Mestern, General Manager of the C.D.C. from September 1973, dated December 20, 1974, sets out the purpose and targets of the Quality Assurance Group.)

In 1976 a new Report on Storage Conditions was developed for completion by Agriculture Canada inspectors. The frequency of inspections may vary. Normally inspections would be at least monthly, but

Table 5: Number of Warehouses Used by C.D.C.,  
by Province,  
1974-1977 (as of August 31)

	1974	1975	1976	1977
	numbers			
Quebec	12	11	20	16
Ontario	5	6	3	3
Manitoba	1	2	1	1
Saskatchewan	—	1	1	2
Alberta	—	1	3	3
British Columbia	—	1	—	—
Maritimes	—	1	2	2
TOTAL:	18	23	30	27
TOTAL BAGS				
STORED:	1,252,000	2,663,000	2,628,000	1,507,000

more frequently if problems were evident and corrections necessary. The distribution of copies of this 5-part form facilitated improved control, viz. warehouse, C.D.C., Regional Quality Co-Ordinator, Inspector in charge, and file. Following a complete review of the systems employed in 1978, all C.D.C. contracts (including warehousing) and tenders take the form of a legal contract authorized by a resident lawyer, and supervised by the Inventory Control Manager. Table 8 shows by provinces, the number of warehouse locations in use between 1974 and 1977.

## 4.12 Storage Records and Inventory Reports

Prior to 1974 and the development of the Quality Assurance program described above, the inventory procedure was followed:

- i) the product was purchased on Canada First Grade Certificates issued by the Dairy Products Division of Agriculture Canada;
- ii) the product was stored in warehouses inspected by the Dairy Products Division;
- iii) storages were periodically inspected by the Dairy Products Division, reporting acute problems to the C.D.C.;
- iv) the policy of the C.D.C. was that of "a heavy hand" and a black list of unsatisfactory performances by both warehouses and/or processors was maintained;
- v) book inventories were kept and any shortages of product were charged back to the warehouses when the stocks were cleared out of that location;
- vi) each warehouse was required to report directly to the C.D.C.'s auditors the quantity of product held in storage for the C.D.C. as of March 31 each year.

4.13 There are strong indications that the pressures of product and customer complaints demanded action when in 1974-75 the Director of the Dairy Products Division (Mr. K. Savage) developed the Quality Assurance Programs. The need for improved inventory controls at that time is evidenced by the setting up by the C.D.C. of an inventory audit system, completing a physical audit of each storage at least annually, and more frequently if circumstances required. To attain this, the job of Warehouse Inventory Manager was established late in 1974.

## Control of Book Inventory

4.14 At the start of each dairy year, the C.D.C. established the lot number series, to be issued in consecutive order to the plants tendering for the sale of skim milk powder to the C.D.C. A Purchase Journal maintained the details of each purchase, including storage location. Warehouse inventory cards, made out for each lot number, stored in each warehouse, provided the information for the Monthly Book Inventory. On April 1, 1979 the program was computerized, eliminating the manual system which had been maintained

from the outset without much change. Between 1967 and 1977 no record was maintained in the inventory section of either D.M.C.C. or WPN analyses. Commencing in 1978, D.M.C.C. was recorded, but even then a physical examination of each warehouse inventory card would be required to search out location of product meeting special requirements.

### Marketing

4.15 The Canadian demand for butterfat at the prices set each year, according to the policy decisions, has exceeded that for the rest of the milk content, i.e., solids-not-fat, and this surplus has been turned into skim milk powder. In the 1950's, the volume of skim milk powder was not large, world prices were not high, and Canadian processors could sell their powder either in Canada or for export without too much difficulty. As explained earlier, the Agricultural Stabilization Board began to provide some price support for skim milk powder by arranging for the Agricultural Products Board to buy a given volume and sell it for export at a lower price. But over the years the volume of skim milk powder has increased as fewer farmers delivered cream to the factories and more and more delivered whole milk. Beginning in 1967, an "offer-to-purchase" system was introduced for all skim milk powder meeting the declared specifications.

4.16 The highest returns for skim milk powder are obtained where it is marketed for human consumption in Canada. Such powder is marketed to consumers, mainly in instantized form, and is used in the home as an alternative to liquid milk or evaporated milk, but direct consumption in this form is low. There is also domestic market usage for human food uses in combination with other foods (ice cream, baking instant breakfasts, chocolate crumb etc.) and for institutional use. Lower quality skim milk powder has traditionally been marketed domestically for animal feed use.

Especially during the period 1964-70, production of skim milk powder increased while domestic usage did not — indeed some traditional markets (e.g. enriched bread) were lost to competing products. As a consequence, first the A.S.B. and then the C.D.C. were forced to seek export markets for the quantities of skim milk powder that were acquired under the offer to purchase program and could not be sold into the domestic market.

4.17 World markets for skim milk powder already existed but were well-supplied by New Zealand, Australia and the major European exporting countries (now the E.E.C.). Furthermore, such markets have brought widely fluctuating returns, sometimes at or below New Zealand costs of production as a consequence of export subsidization from the E.E.C. and the limited ability of the importing countries to find foreign exchange for such imports because they were mostly relatively poor developing third world countries. (New Zealand is able to produce milk and skim milk powder at about the lowest cost in the world). From time to time exports of skim milk powder for animal feed have been made in order to eliminate excess inventories which have been over-hanging the world market;

such sales have to be at prices competitive with other protein sources and have been very low. Finally, the donation of skim milk powder as aid to the Developing Countries through, first the Department of External Affairs and, then the Canadian International Development Agency has become a regular feature of Canada's Food Aid commitment through World Food Program and bilaterally. The Canadian International Development Agency purchased its requirements from the C.D.C. at the C.D.C. support price but since 1975 has purchased at the world price.

4.18 Canada has been and remains one of the world's major exporters of milk powder, following New Zealand, the European Economic Community and Australia. Other exporting countries include Argentina, Poland, U.S.A., Sweden and Switzerland. The result for the large supplies exported by these countries and relatively scarce markets have led to very low and fluctuating world prices. Many countries had added large export subsidies to assist their exports and avoid large stocks. It was this situation that the Commission inherited from the A.S.B. in 1967. Initially the Commission would pay a subsidy to an exporter on evidence that the powder had been exported. In other words, the trader would buy the powder at the Canadian Support Price then export it, or at least sell it for export, and then submit the shipping papers as evidence of the sale for export in order to receive the export subsidy. Similarly, a processor would sell his own production for export and submit the shipping papers in order to claim the export subsidy. After a year of operations, the Commission then allowed purchases from its own stocks at 2 cents a lb. above the export price and eventually at the price at which the powder was to be exported.

4.19 The concern of the Commission was that export subsidies were given for genuine exports and not for sales that could re-enter the domestic market. Hence the desire to have evidence of exports before payment of subsidies. Nevertheless, this procedure meant that export traders and processors who exported had to carry large costs (mostly interest on borrowed money) between the time they acquired the powder and the Commission remitted the export subsidy. It soon became clear that the Commission would have to facilitate exports it is was to avoid a rapid build up of stocks which would involve large storage costs, and loss of value to stored product. Under ideal storage conditions skim milk powder will be good for up to two years with no loss of colour or texture or nutritive value. Vitamin deterioration may occur if any has been added. The requirement for fresh powder from the processor of the C.D.C. is mainly because the product may undergo long periods of transport and storage by the purchaser under less ideal conditions than in Canada before final consumption. If it should deteriorate in colour and texture, it can then only be sold for animal feed at about one-half the price if for human food consumption. Thus one objective of the Commission has been to keep stocks to a minimum.

However, the larger the export subsidy required to make sales for export, the less money available to farmers who have to pay "holdback" or "in-quota"

levies to meet these subsidies. So an almost opposite Commission objective is to keep the subsidy as low as possible.

- 4.20 World prices for skim milk powder were so low in the 1960's that many countries wanted them raised. After protracted negotiations within the membership of the General Agreement for Tariffs and Trade, the leading exporters signed an agreement to keep prices for powder for human consumption above 20 cents a lb. The agreement is felt to serve a useful purpose in providing a minimum level for human food world market sales. Both the minimum price in the agree-

ment and the actual world market price have moved up from the 1970 level.

- 4.21 It is very difficult to obtain a statistical series of prices of skim milk powder exported from Canada but an approximate idea may be found by calculating the annual price from the quantity and value of annual exports as shown by Statistics Canada. In Table 6 these calculations are shown in comparison with the announced support price for skim milk powder. An estimate of the export subsidy can be made by subtracting the export price from the support price.

Table 6: Canadian Support Prices, Average Export Prices and Average Export Subsidies Dried Skim Milk Powder 1962-1978

	Annual Support Price (Apr/Mar)	Average Export Price cents per lb.	Estimated Average Annual Subsidy
1962	a)	8	
1963	a)	9	
1964	a)	13½	
1965	a)	15	
1966	a)	15½	
1967	20	16½	3½
1968	20	9¼	10¾
1969	20	7½	12½
1970	20	10	10
1971	24 <sup>b)</sup> :26 <sup>c)</sup>	16¾	7¼:9¼
1972	29	27	2
1973	35:38 <sup>d)</sup>	29	6:9
1974	50:54 <sup>d)</sup>	43	7:11
1975	59 <sup>e)</sup> :64	36	23:28
1976	68	20¾ <sup>f)</sup>	47¼
1977	70	19	51
1978	72	21	51

a) no announced price b) as of Feb. 8 c) as of Aug. 16 d) as of Aug. 1 e) as of Jan. 24 f) C.D.C. suggests this figure is too high

Source: Annual Support Price: Annual Federal Government Announcements

Average Export Price: Calculated from Statistics Canada quantity and value trade statistics

Estimated Average Annual Subsidy: the difference between the above two columns

- 4.22 In order to fit together the desire to sell skim milk powder for export using an export subsidy but not to put this subsidy too low, the Commission has always had a marketing officer whose role was to keep in very close touch with the international market and to advise the Commissioners and especially the Chairman on the appropriate level of subsidy. This has been done through regular contact with the officials and marketing board staff of other exporting countries, with importing countries and Canadian and other traders.

- 4.23 Determination of international market prices is an important requirement of the job of international marketing. The practice to two of the major exporting countries have important influences on the price mechanism. The practice of the European Economic Community in setting an international price for milk powder for export, similar to our domestic support price, along with publishing the level of export subsidy (called "restitution") provides a good indication of the

export selling price of the E.E.C. New Zealand provides another pricing guide through their annual and semi-annual contract and pricing reviews with their "Evergreen" contract customers. There are apparently seven or eight large international customers who rely substantially on New Zealand for their requirements and as a total group account for about 20% of the world trade. While the contract prices are not published, by one means or another the information becomes available and serves as a strong indicator of New Zealand's market analyses and forecasts. A third source for market information comes from public tenders and general trade information. Analysis of all this information is complicated by various credit terms, detailed specifications, delivery schedules, length of contracts, rebates or other special arrangements employed or offered by the exporter.

- 4.24 Given this complex information gathering process, from a market that is not making daily sales and where there are no daily, weekly or monthly quota-

tions, even privately amongst traders, let alone published, the Commission staff had to take a position on price on a continuous basis — both current price levels and future trends up to 18 months ahead. This position of the Commission on world and particular market prices provided the basis for the decision on the level of export price for the powder the Commission had in stock, allowing a lower price for the older powder as animal feed and small differentials in price for larger volumes. At first the only price indicator was the market but then the GATT Agreement provided a minimum level for powder for human consumption (powder for animal feed could be sold at less than the agreed minimum). With the existence of this export subsidy, Canadian trading firms made offers to foreign countries and/or buyers and confirmed supplies and price with the Commission. Traders would, in fact, try to press the Commission to increase the export subsidy and thus put the traders in a more competitive (and/or profitable) position.

- 4.25 Within this process of price determination (current and forecast) and export subsidy setting, no evidence has been found of any basic principles or rules that were followed in export subsidy setting. Nor has any evidence been found of a short and long term marketing strategy which would propose markets in which to sell current year stocks and purchases and in the longer term, future markets that might be explored and developed and the price strategy that would be needed to capture them. However, within the context of price, it is important to consider that Canada is a small producer of skim milk powder in relation to the E.E.C. As a result, it is the E.E.C. and to some extent New Zealand which assert the fundamental influence on world market prices. (See attached table of inventories of Canada and the E.E.C.) The E.E.C.'s announcements from time to time of the levels of restitution set the world price level. Canada cannot be, and is not a price setter but a price follower in normal circumstances because, as a whole, our small volume has no significant impact on the world market. As such Canada's pricing policy options are very limited; given that situation, the Canadian Dairy Commission marketing strategy has been to sell at best possible prices. Largely due to transport cost considerations, the C.D.C. considers South America, Central America and the Caribbean as its 3 main

natural markets for human grade skim milk powder. (Sales outside these markets in 1976 to 1978 were either sales to recombining plants resulting from our relations with Australia which need Canada's quality of powder for recombining or were animal feed sales which are NOT markets the C.D.C. wants to develop because of the very low prices.)

- 4.26 Since about 1976 a more systematic approach has been taken. The Commission export price is more generally known within the trade, and within the Commission longer term plans are made about export targets. Some of the difficulties in planning ahead for expansion of exports is shown by the annual purchases, sales and year-end stocks of skim milk powder of the C.D.C. (Table 7). This shows that purchases fluctuated in line with farm milk production, fluctuations which may have been due to a loose quota administration or an inadequate price incentive for farmers. But it also shows that the volume of exports went through a series of peaks and troughs that do not seem to be related closely with purchases and stock changes. In that large stocks involve heavy inventory carrying charges and loans from the Department of Finance, good management would indicate minimizing year-end carryover stocks. However, the data in the Tables should also be matched with purchases and sales of butter. In 1973/74 and 1974/75, imports of butter had to be made, as much as 50 million pounds in 1974/75, which if produced in Canada would have meant at least another 100 million pounds of its by-product skim milk powder being tendered and purchased by the C.D.C. for resale on export markets. The period of 1973/74 was one of trying to stimulate production, not planning for possible expansion. At that time close-by markets, including the U.S.A., were easily available and absorbed all our skim milk powder available for export.

- 4.27 The period of shortages must be related to the very sudden 1975/76 surplus, an overnight surplus, which also occurred in the E.E.C. and other major dairy countries. With such a world-wide glut, marketing strategies for everyone aimed at maximizing the volume of export sales, including world market sales for animal feed. The failure, if any, was in underestimating the production potential, domestically and worldwide, and selling quickly enough. Further, the world market is not a gentleman's market, agreements are not necessarily kept and one must recognize that. However, prices plummeted from 45 cents in March in 1975 down to 16 cents a pound until prices reached the previously agreed GATT minimum price and prevented a further drop. On the way down there were no significant buyers until the price hit rock bottom. By the time countries could accurately reassess the situation and communicate among sellers for a more rational price level, it was all over, the surplus was there and it was a buyer's market.

- 4.28 Domestic industrial milk production was not stable prior to 1976. Production stability became the first goal and the fundamental aspect of the overall marketing strategy to minimize losses on skim milk powder exports. Once M.S.Q. was brought in line with Canadian requirements and, via the over-quota

Table 7:  
SKIM MILK POWDER STOCKS

1977	E.E.C. (million lbs.)	CANADA
APRIL	1,031	90
MAY	1,073	93
JUNE	1,031	93
JULY	1,250	95
AUGUST	1,255	83
SEPTEMBER	1,240	83
OCTOBER	1,236	82
NOVEMBER	1,127	69
DECEMBER	1,096	65

Source: The Canadian Dairy Commission

levy, farmers received world market prices for their surplus products, milk production stability became a reality as evidenced by the excellent control in dairy years 1976/77, 1977/78 and 1978/79.

**Table 8: Skim Milk Powder Purchases, Sales and Year End Stocks by Canadian Dairy Commission 1967-78**

	<u>Purchases</u>	<u>Sales</u> millions lbs.	<u>Year end</u> <u>Stocks</u> <u>March 31</u>
1967-68	n.a.	n.a.	n.a.
1968-69	198	123	172
1969-70	171	272	69
1970-71	116	180	5
1971-72	104	109	—
1972-73	206	143	63
1973-74	112	161	15
1974-75	172	99	89
1975-76	328	134	282
1976-77	228	326	194
1977-78	247	381	61

n.a.: not available as of 12 October 1979

Source: Canadian Dairy Commission

**4.29 The marketing strategy, since 1977, has been clear cut:**

1. to clear previous inventories of surplus skim milk powder, if necessary by selling them as feed.
2. protect Canadian human grade powder markets (by GATT negotiations and pricing structures designed to keep those markets, even at some cost, etc.)
3. to diversify as quickly as possible into dairy products other than skim milk powder which give better returns. The evidence of a marketing strategy has been the identification of natural markets and the process of protecting them. For a year and a half the Canadian Govern-

ment has been negotiating for an international dairy arrangement under the GATT with respect to milk powders and has concurred that Canada should not participate in the milk powder protocol unless Canada's commercial interests in its natural markets of Mexico and Caribbean rim countries are fully protected. Perhaps to the dismay of some traders, C.D.C. has identified and pursued its major and stable markets where it feels long term benefits are higher.

Since 1977, this strategy has resulted in (i) the 1975/76 surplus stocks being cleared out, (ii) programs such as the Butterfat Exchange Program, and the product diversification to such products as whole milk powder and evaporated milk are in the place and returning higher value for the surplus solids which result from supplying domestic butterfat requirements, and (iii) the expansion in M.S.Q. of 3 million hundredweights of milk for products for export in 1979.

**4.30 Statistics on Production, Domestic Use and Exports**

Statistics Canada information on skim milk powder from 1959-1977 provides details of the above events. The following table 9 shows stocks, production, domestic disappearance and exports. Production has increased from 176 million lbs in 1959 to 346 million lbs in 1976. Domestic disappearance (where the data may not be quite accurate) fluctuates between 100 and 130 million lbs while exports have steadily risen from 48 million lbs in 1960 to a peak of 367 million lbs in 1977. Throughout this period, year-end stocks were very variable from 22 million lbs on January 1, 1960 to 329 million on January 1, 1976, with peaks and lows in between.

- 4.31 Exports have gone to many different destinations throughout the world but a few countries have grown to be consistently large buyers. Table 10 shows the seven largest destinations of powder in each year from 1962-1978. Cuba was consistently a large buyer until 1976 but beginning in 1969, Mexico has been the largest buyer. Beginning with smaller purchases in 1976, the Philippines moved into third place in 1977 and 1978.**



Table 9—Skim Milk Powder—Production, Utilization, Stocks 1959-77

<u>Year</u>	<u>Stocks Jan. 1</u>	<u>Produc- tion</u>	<u>Total Supplies</u> million pounds	<u>Exports</u>	<u>Domestic Disappear- ance</u> (a)	<u>Stocks Dec. 31</u>
1959	77.3	176.4	253.8	110.5	121.3	21.9
1960	21.9	172.0	193.9	48.0	122.7	23.2
1961	23.2	213.0	236.2	53.1	153.3	29.9
1962	29.9	192.3	222.2	35.7	133.0	53.5
1963	53.5	176.1	229.6	55.6	153.0	21.0
1964	21.0	203.0	224.0	42.1	153.4	28.5
1965	28.5	222.2	250.7	86.3	138.9	25.5
1966	25.5	263.5	289.0	69.4	163.6	55.9
1967	55.9	316.1	372.1	95.0	139.6	137.5
1968	137.5	360.4	497.9	127.1	161.8	209.0
1969	209.0	395.1	604.1	238.3	212.2	153.6
1970	153.6	362.4	516.0	297.2	133.0	85.9
1971	85.9	301.1	389.0	248.5	100.8	37.6
1972	37.6	343.2	380.9	126.2	91.7	163.0
1973	163.0	309.7	472.7	268.7	113.6	90.5
1974	90.5	302.5	393.0	129.3	127.4	136.3
1975	136.3	411.3	547.6	104.2	114.1	329.4
1976	329.4	350.4	679.8	216.6	143.4	319.8
1977	319.8	346.4	666.3	367.1	175.3	123.9

Source: Statistics Canada Dairy Statistics, Catalogue No. 23-201

(a) CDC reports that "because of the lag in Statistics Canada reporting a more accurate range of domestic disappearance is 100-130-million lbs. and not 100-200 million lbs. that that this column might suggest.

Table 10—Skim Milk Powder—(1962-1977) Quantity and Value

<u>Year</u>	<u>Name of Country</u>	<u>Quantity (100 lbs.)</u>	<u>Value (\$)</u>
<u>1962</u>	Cuba	108,810	784,881
	Italy	73,045	463,104
	Venezuela	26,079	229,251
	Jamaica	20,773	186,032
	Hong Kong	9,387	144,431
	Switzerland	21,898	142,219
	Trinidad	17,043	132,807
<b>* Total</b>		<b>356,888</b>	<b>2,864,659</b>
<u>1963</u>	Cuba	116,277	928,944
	Netherlands	82,481	713,072
	Denmark	49,907	390,968
	Spain	35,687	341,973
	Italy	26,198	292,950
	Trinidad	26,796	273,048
	Venezuela	25,087	238,568
<b>* Total</b>		<b>555,564</b>	<b>5,178,992</b>
<u>1964</u>	Cuba	177,328	2,434,171
	Italy	65,410	944,609
	Venezuela	38,098	520,923
	Netherlands	27,123	369,227
	Jamaica	21,120	312,709
	Trinidad	18,112	226,961
	Yugoslavia	13,228	146,490
<b>* Total</b>		<b>421,388</b>	<b>5,735,960</b>

<u>Year</u>	<u>Name of Country</u>	<u>Quantity (cwt)</u>	<u>Value (\$)</u>
<u>1965</u>	Netherlands	298,555	4,351,616
	Cuba	253,766	3,865,419
	Italy	106,808	1,574,597
	Venezuela	71,018	1,074,393
	Rep. of South Africa	26,432	446,278
	United Kingdom	17,459	264,943
	Jamaica	17,254	272,387
<b>* <u>Total</u></b>		<b><u>862,583</u></b>	<b><u>12,916,768</u></b>
<u>1968</u>	Japan	281,928	4,371,000
	Netherlands	96,679	1,384,000
	Italy	65,882	1,071,000
	Venezuela	48,284	778,000
	Cuba	44,092	671,000
	India	38,358	471,000
	Jamaica	16,763	299,000
<b>* <u>Total</u></b>		<b><u>694,472</u></b>	<b><u>10,742,000</u></b>
<u>1967</u>	India	223,721	3,595,000
	Netherlands	184,012	3,051,000
	Cuba	106,440	1,673,000
	Italy	87,636	1,479,000
	Venezuela	69,043	1,103,000
	Japan	69,236	1,054,000
	Mexico	57,534	934,000
<b>* <u>Total</u></b>		<b><u>949,727</u></b>	<b><u>15,539,000</u></b>
<u>1968</u>	Cuba	331,341	2,209,000
	Belgium-Luxemburg	213,883	1,225,000
	Denmark	82,396	1,142,000
	Italy	123,289	1,105,000
	Venezuela	67,775	935,000
	Jamaica	51,957	738,000
	Netherlands	60,665	650,000
<b>* <u>Total</u></b>		<b><u>1,266,882</u></b>	<b><u>11,747,000</u></b>
<u>1969</u>	Mexico	495,640	4,154,000
	Cuba	577,653	3,735,000
	Venezuela	90,930	1,359,000
	Belgium-Luxemburg	256,585	1,358,000
	Spain	185,053	1,238,000
	Japan	103,156	574,000
	Jamaica	48,973	551,000
<b>* <u>Total</u></b>		<b><u>2,383,009</u></b>	<b><u>17,606,000</u></b>
<u>1970</u>	Mexico	696,126	9,711,000
	Cuba	619,162	4,730,000
	Spain	413,186	2,867,000
	Sweden	171,729	1,742,000
	Venezuela	121,636	1,396,000
	Indonesia	139,194	1,210,000
	Chile	71,607	752,000
<b>* <u>Total</u></b>		<b><u>2,971,535</u></b>	<b><u>29,095,000</u></b>
<u>1971</u>	Mexico	520,314	11,151,000
	Cuba	598,676	10,645,000
	Sweden	207,235	3,674,000
	Spain	209,973	2,155,000
	India	135,741	1,848,000
	Venezuela	82,634	1,736,000
	Belgium-Luxemburg	145,177	1,717,000
<b>* <u>Total</u></b>		<b><u>2,403,960</u></b>	<b><u>40,387,000</u></b>
<u>1972</u>	Mexico	441,788	11,669,000
	Cuba	195,125	5,814,000
	India	154,780	4,008,000
	Venezuela	70,489	2,049,000
	Japan	68,057	1,934,000

<u>Year</u>	<u>Name of Country</u>	<u>Quantity (cwts)</u>	<u>Value (\$)</u>
	Columbia	36,776	1,010,000
	Viet Nam	20,525	651,000
<b>* <u>Total</u></b>		<b><u>1,145,065</u></b>	<b><u>30,888,000</u></b>
<u>1973</u>	United States	800,455	28,082,000
	Cuba	709,072	19,130,000
	Mexico	484,963	12,692,000
	Venezuela	121,572	3,367,000
	India	101,997	2,761,000
	Brazil	53,089	1,317,000
	Columbia	47,600	1,299,000
<b>* <u>Total</u></b>		<b><u>2,676,327</u></b>	<b><u>77,854,000</u></b>
<u>1974</u>	Mexico	613,310	24,988,000
	Cuba	251,171	11,021,000
	United States	225,063	10,528,000
	India	48,523	2,065,000
	Venezuela	39,414	1,857,000
	Uruguay	25,309	1,155,000
	Pakistan	17,748	728,000
<b>* <u>Total</u></b>		<b><u>1,291,728</u></b>	<b><u>55,358,000</u></b>
<u>1975</u>	Mexico	257,438	11,326,000
	Cuba	256,849	7,692,000
	Brazil	67,460	1,653,000
	Senegal	33,712	1,553,000
	Venezuela	25,568	935,000
	Honduras	17,663	700,000
	Japan	22,222	500,000
<b>* <u>Total</u></b>		<b><u>801,633</u></b>	<b><u>28,865,000</u></b>
<u>1976</u>	Mexico	507,906	10,417,000
	Spain	343,491	7,713,000
	Cuba	236,147	5,420,000
	Bulgaria	310,629	5,086,000
	Japan	192,037	2,644,000
	Algeria	66,439	2,302,000
	Brazil	84,547	1,728,000
<b>* <u>Total</u></b>		<b><u>2,164,160</u></b>	<b><u>44,798,000</u></b>
<u>1977</u>	Mexico	915,384	18,317,000
	Japan	483,097	7,345,000
	Philippines	300,443	5,949,000
	Spain	197,170	3,983,000
	Taiwan	216,217	3,958,000
	Thailand	130,828	2,610,000
	Chile	117,244	2,354,000
<b>* <u>Total</u></b>		<b><u>3,670,631</u></b>	<b><u>69,775,000</u></b>

\*Total includes exports to all destinations.

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#### APPENDIX 16

##### STATEMENT OF EVIDENCE OF MICHEL CHOQUETTE

1. In February 1974 I met Mr. David Schafer and his son, Mr. George Schafer, chairman and president, respectively, of Schafer Bros. Ltd., who both told me of their grievances against the Canadian Dairy Commission with respect to the exportation of Canadian skim milk powder.
2. The Schafers told me that they believed they had been treated unfairly by the Canadian Dairy Commission on more than one occasion, that they had lost potential business as a result of what they felt was unfair intervention on the part of this government organization, and that they believed they were entitled to financial compensation for these losses.
3. The Schafers told me that they did not particularly wish to sue the Government of Canada, even though they believed they might have legal grounds to do so, and that they were inclined to look at the matter more as a moral question than a legal one, hoping that a sense of fair play would prevail and an amicable settlement could be reached.
4. The Schafers informed me that although they had often approached the Canadian Dairy Commission itself to discuss compensation, the Dairy Commission had flatly refused to consider the matter.
5. The Schafers told me, moreover, that they and Mr. David Schafer's Member of Parliament, the Hon. Warren Allmand, had attempted to have Schafer Bros.' grievances examined in depth by three successive Ministers of Agriculture, that by its own admission the Department of Agriculture had, in each of these cases,

relied on what present or past officials of the Canadian Dairy Commission had had to say about the said grievances, and that this route had brought them no closer to the relief which they sought.

6. After having examined Schafer Bros.' grievances in a preliminary fashion, I came to the conclusion that they were sufficiently serious to warrant a fair and impartial hearing by a body other than the Canadian Dairy Commission.
7. Since there was no federal ombudsman in Canada, I decided to take the matter to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, and to provide him as well as the Hon. Warren Allmand and the then Minister of Agriculture, the Hon. Eugene Whelan, with whatever material I could prepare or assemble to assist these gentlemen in arriving at a proper assessment of Schafer Bros.' grievances.
8. To this end I wrote what I chose to call Résumé A, primarily a historical account of Schafer Bros.' negotiations with and sales to the governments of Cuba and Mexico and of the company's dealings in this respect with the Canadian Dairy Commission and its predecessor, the Agricultural Stabilization Board. (Résumé A has been filed with the Commission of Inquiry).
9. Included as part of Résumé A are introductory notes which I prepared to provide general information about skim milk powder: methods of drying, packing, storing; heat treatment (low, medium and high heat); whey protein nitrogen analyses; direct microscopic clump (DMC) count; Canadian government purchasing regulations, testing and grading; government warehousing and lot registration numbers; government export subsidies for the private trade; the growing surplus situation; the Canadian Dairy Commission Act; terms and abbreviations commonly used in the export trade; etc.
10. In writing Résumé A, I based myself upon the following sources of information:
  - a) many detailed discussions with the Schafers.
  - b) several discussions with Mr. Gilles Choquette (no relation), then Executive Assistant to the Minister of Agriculture, the Hon. Eugene Whelan.
  - c) a large quantity of letters, telexes and telegrams received or sent by Schafer Bros. Ltd.
  - d) other documents in the possession of Schafer Bros. Ltd.
  - e) material I obtained from Statistics Canada, the library at Agriculture Canada, Information Canada, the Queen's Printer, the American Dry Milk Institute, the American Public Health Association, FAO, the Canadian Embassy in Mexico City, the Mexican government, etc.
  - f) written answers to certain questions obtained for me from the Canadian Dairy Commission by Mr. Gilles Choquette, then Executive Assistant to Mr. Whelan.

- g) signed statements by certain Mexican officials and individuals.
11. Photocopies of all sources of information referred to under c), d), e), f) and g) above were assembled as the three folders of justificatory documents accompanying Résumé A: 1951-1968; 1969-1970; and 1971-1976. (These three folders of documents have been filed with the Commission of Inquiry).
  12. In December 1975, while I was still completing Résumé A and its documentation, I became aware of certain events taking place concerning a possible sale of milk powder to the Philippines by Schafer Bros. Ltd. and the company's dealings in this respect with the Canadian Dairy Commission. Given that these events seemed to suggest problems similar to those which the Schafers appeared to have experienced in the past with the Canadian Dairy Commission, I decided to document these events as they happened, in a series of memos to Mr. Gilles Choquette, then Executive Assistant to the Minister of Agriculture, the Hon. Eugene Whelan.
  13. In writing these memos, I based myself upon the following sources of information:
    - a) detailed discussions with the Schafers.
    - b) conversations with Mr. Gilles Choquette.
    - c) letters and telexes received or sent by Schafer Bros. Ltd.
    - d) other documents in the possession of Schafer Bros. Ltd.
  14. These memos, along with relevant documents referred to under c) and d) above, were submitted successively to Mr. Gilles Choquette from December 1975 to September 1976, and later all this material was assembled as Résumé C (which has been filed with the Commission of Inquiry).
  15. When I completed Résumé A, which is dated November 12, 1976, I submitted copies of this résumé and its three accompanying folders to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, to the Hon. Warren Allmand, and to Mr. Gilles Choquette, who had just been appointed Chairman of the Canadian Dairy Commission.
  16. At the same time I also submitted to each of these gentlemen a bound copy of my memos to Mr. Gilles Choquette and related documents concerning the possible sale to the Philippines, which bound copy was also dated November 12, 1976 and was, as mentioned above, labelled Résumé C. (I chose to call this material Résumé C for the simple reason that at this time I envisaged submitting another brief called Résumé B. I later decided that Résumé B was not sufficiently relevant to Schafer Bros.' grievances against the Canadian Dairy Commission, and therefore did not submit it.)
  17. Both Résumé A and Résumé C were prepared and documented by myself, and together constitute what I consider to be a fair representation of the position of Schafer Bros. Ltd. with respect to the company's efforts to open up new markets for Canadian skim milk powder in Cuba, Mexico and the Philippines, and with respect to the company's dealings with various officials of the Agricultural Stabilization Board or of the Canadian Dairy Commission in the process.
  18. In 1975, as I was in the process of preparing Résumé A, I was asked by Mr. Gilles Choquette, then Executive Assistant to the Minister of Agriculture, the Hon. Eugene Whelan, to write a reply to what I felt were inaccurate arguments (concerning Schafer Bros.' grievances) already put forward by the Canadian Dairy Commission and the Department of Agriculture in various letters to the Schafers or to Mr. David Schafer's Member of Parliament, the Hon. Warren Allmand.
  19. I therefore wrote, once I had completed and submitted Résumé A and Résumé C, what I titled the Report to Mr. Gilles Choquette, a long (182 pp.) letter dealing individually with the various arguments, and definitively stating Schafer Bros.' case. (This report, which is dated July 25, 1977, has been filed with the Commission of Inquiry).
  20. In preparing this Report to Mr. Gilles Choquette, I based myself on the same sources of information I had used in the preparation of Résumé A, above described, as well as on additional documents made available to me by the Prime Ministers's Office. I attached these new documents to my Report — along with what I considered to be the most important of the documents already submitted in the folders accompanying Résumé A — as Appendices 2-78. Appendix 1 consisted of a condensed and therefore more readable version of Résumé A. (All documents which accompanied the Report to Mr. Gilles Choquette, that is to say Appendices 1-78, have been filed with the Commission of Inquiry).
  21. When I completed the Report to Mr. Gilles Choquette, I submitted copies of this report and its accompanying documentation to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, to the Hon. Warren Allmand, and, of course, to Mr. Gilles Choquette, by then Chairman of the Canadian Dairy Commission.
  22. Shortly after this I wrote and submitted to the above-named individuals an addendum to Résumé C (Philippines), which is dated August 11, 1977. (This addendum has been filed with the Commission of Inquiry).
  23. In preparing this addendum to Résumé C, I based myself on the same sources of information I had used in preparing Résumé C, as well as on new documents made available to me by the Schafers. These documents were attached to the addendum (and have been filed with the Commission of Inquiry).
  24. I then wrote an addendum to my Report to Mr. Gilles Choquette. This addendum, which is dated August 15, 1977, and which takes the form of a memo to Miss Mary E. Macdonald, then Administrative Assistant to the Prime Minister, the Hon. Pierre Elliott Trudeau, was submitted at the time to Miss Macdonald as well as to the Prime Minister, to the Hon. Warren Allmand, and, I believe, to Mr. Gilles Choquette. (This addendum has been filed with the Commission of Inquiry).

25. In preparing this addendum I based myself on the same sources of information I had used in the preparation of Résumé A and my Report to Mr. Gilles Choquette, as well as on conversations I had had with Miss Macdonald and Mr. Gilles Choquette, on documents shown to me by Mr. Choquette, and on new documents made available to me by the Prime Minister's Office. These new documents were attached to this August 15, 1977 addendum (and have been filed with the Commission of Inquiry).
26. I then wrote a memo to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, concerning answers which I had not been able to obtain from the Canadian Dairy Commission. This memo, which is dated August 30, 1977, was submitted at the time to the Prime Minister and to the Hon. Warren Allmand. (The memo has been filed with the Commission of Inquiry).
27. In preparing this memo, I based myself on the same sources of information I had used in the preparation of Résumé A and my Report to Mr. Gilles Choquette, including conversations with Mr. Choquette. I attached to this memo certain documents which I had already submitted with Résumé A and with the Report to Mr. Gilles Choquette. (These documents have, as stated above, been filed with the Commission of Inquiry).
28. I later wrote a memo to Mr. J.S. Milligan, a lawyer for the Department of Justice, concerning further and more recent events related to Schafer Bros.' continuing efforts to export Canadian milk powder and to the company's dealings with the Canadian Dairy Commission, considering these events to be of a similar nature to those described in some of my previous submissions. This memo, which is dated November 30, 1977, was submitted at the time to Mr. Milligan, as well as to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, and to the Hon. Warren Allmand. (This memo has been filed with the Commission of Inquiry).
29. In preparing this memo I based myself on discussions with the Schafers, and on new documents made available to me by the Schafers. These documents were attached to this November 30, 1977 memo (and have been filed with the Commission of Inquiry).
30. I also submitted to Mr. Milligan, around this time, Schafer Bros.' suggested compensation figures (which have been filed with the Commission of Inquiry).
31. I later wrote a letter to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, which is dated September 19, 1978. (This letter has been filed with the Commission of Inquiry).
32. Throughout the five years I prepared the above material, and in the additional year or so that has elapsed since then, I have never received any fee, salary, remuneration or other compensation, either directly or indirectly, from the Schafers of any other person, firm, corporation or organization for any of the time I have devoted to this matter. Nor is it my intention ever to claim such payment at any time in the future, even in the event the Schafers receive compensation from the Government of Canada. I have signed an affidavit to this effect dated December 13, 1977, which I submitted at the time to Mr. J.S. Milligan of the Department of Justice.
33. The Schafers have, however, reimbursed me for most of the out-of-pocket expenses — such as typing, photocopying, stationery, travel to and from Ottawa, telephone, courier service, etc. — which I have incurred on their behalf since 1974 in preparing and submitting the above-described material.
34. Moreover, in consideration of the fact that from 1974 to 1978 my work on their behalf occupied virtually all my time and deprived me of the opportunity of earning income, during this period Messrs. David and George Schafer guaranteed the repayment of a loan in the principal amount of approximately \$12,000 made to me by the Bank of Montreal, and Mr. George Schafer guaranteed the repayment of a loan in the principal amount of \$1,500 made to me by the Bank of Nova Scotia. Such guarantees are in no way arrangements intended to provide me with compensation in any form. It is not my intent that the Schafers should ever be called upon to repay these loans in my stead, my clear intent being to repay such loans myself as soon as my financial situation permits it. I have, in fact, already begun to repay these two loans to the banks in question.
35. I have never been employed in any capacity by Schafer Bros. Ltd. or personally by Mr. David Schafer or Mr. George Schafer.
36. I have never been involved with Schafer Bros. Ltd. or with Messrs. David or George Schafer personally in any business matter of any kind, nor is it my intention to do so in the future.
37. The above is of a factual, and not of an opinion nature.
38. I am prepared, if required to do so, to attend before the Commission of Inquiry, and to submit to examination and cross-examination.

MICHEL CHOQUETTE

Montreal, Quebec  
January 11, 1980



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