



October 14, 2003

The Honourable David Alward
Minister of Agriculture, Fisheries & Aquaculture
Province of New Brunswick
P.O. Box 6000
Fredericton, NB E3B 5H1

Dear Sir:

On behalf of the New Brunswick Farm Products Commission, I have the honor to submit the Annual Report for the period April 1, 2002 to March 31, 2003.

Respectfully submitted,

Hazen Myers
Chairman

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FARM PRODUCTS MARKETING COMMISSION

ANNUAL REPORT 2002-2003

History of the Commission:

The predecessor of the Farm Products Marketing Commission was the New Brunswick Marketing Board, which operated under an *Act to Promote the Production, Marketing and Distribution of Natural Products*. The Board, which reported to the Premier, was responsible for products of agriculture and/or of the forest, sea, lake or river and any article of food or drink, wholly or partly manufactured or derived from any such product.

On April 2nd, 1937, this Act was repealed, and replaced by the *Natural Products Control Act*, which provided for the establishment of marketing boards. The new supervisory board was called the *Natural Products Control Board* and reported to the Minister of Agriculture. On August 11, 1971, the New Brunswick Forest Products Commission was established under the *Forest Products Act*. Powers and duties of the Natural Products Control Board pertaining to Forest Products Marketing Boards were assigned to the New Brunswick Forest Products Commission.

In 1976, it was decided to remove fishery products from the Act and place them under separate legislation. This removal resulted in the development of a new Act, the *Farm Products Marketing Act*, which came into force on May 15, 1977. The Farm Products Marketing Commission was established pursuant to this legislation and held its first meeting on May 16, 1977. A number of amendments to the Act have been made since 1977, the most significant being in the 1985 session of the Legislature. These amendments provided for the transfer of responsibilities from the Dairy Products Commission to the Farm Products Marketing Commission, as well as the establishment of a Farm Products Appeal Panel to deal with pricing disputes between marketing boards, dealers, processors and consumers.

In March 1999, the *Natural Products Act* was introduced into the Legislature. This Act, which came into force April 15, 1999, replaced the following Acts:

- ◆ The Farm Products Marketing Act;
- ◆ The Farm Products Boards and Marketing Agencies Act;
- ◆ The Imitation Dairy Products Act
- ◆ The Natural Products Grades Act;
- ◆ The Dairy Products Act;
- ◆ The Dairy Industry Act; and
- ◆ The Potato Development and Marketing Council Act.

The *Natural Products Act* defines the scope of government regulation in the marketplace as it pertains to:

- ◆ The orderly marketing of food and forest products; and
- ◆ Food inspection which will be managed in conjunction with the Department of Health and Wellness under the Health Act.

The *Natural Products Act* provides:

- ◆ Flexibility to producer organizations with respect to naming their organizations;
- ◆ For the establishment of commodity development councils to encourage discussion between producers and other sectors of the industry on matters of mutual interest in an informal forum;
- ◆ For the establishment of promotional agencies;
- ◆ For the dissolution of the price appeal tribunal;
- ◆ For the Farm Products Commission to make changes of an administrative nature to marketing board powers;
- ◆ For the Farm Products Commission to delegate authority to industry to establish and administer quality and grade standards.

Mandate:

The Commission's mandate is as follows:

- ◆ Supervising activities of all producer organizations formed under the Act.
- ◆ Providing an appeal mechanism for those aggrieved by decisions made by such producer organizations.
- ◆ Negotiating and serving as a signatory to federal-provincial agreements relating to supply managed commodities.
- ◆ Administering the conciliation-arbitration process respecting potatoes used for processing.
- ◆ Administering the price setting process for fluid milk sold in the province.
- ◆ Licensing of those involved in the dairy products trade in New Brunswick including producers, transporters, graders, vendors and milk dealers.
- ◆ Food inspection as it relates to the establishment of product quality and identity standards.

- ◆ Establishment of Commodity Development Councils and Research and Promotion Agencies.

Vision:

A dynamic and accountable agri-food industry that has a reputation as a supplier of high quality and competitively priced food products

Mission:

The New Brunswick Farm Products Commission will strive to create an environment within the regulated agri-food sector that encourages stakeholders to focus their efforts on developing their industries.

In carrying out its mission the Commission is committed to the following values and principles:

- ◆ Cooperation between all industry stakeholders is key to the further development of the agri-food industry.
- ◆ The Commission will be viewed by those that it serves as an impartial, fair-minded agency that supports industry development.
- ◆ The orderly marketing system will enhance the viability of the agri-food industry within the global marketplace.
- ◆ The Commission will carry out the mandate provided for in the Natural Products Act to the common benefit of producers, processors and consumers.
- ◆ The Commission will use mediation whenever possible to resolve disputes.
- ◆ As a signatory to national supply management programs, the Commission will act to both protect and promote the interests of those industries.
- ◆ The Commission will promote transparency both in carrying out its mandate as well as in the operation of the eight marketing boards.

Strategic Direction Initiatives:

Ensure that marketing boards operate in an open and transparent fashion, in accordance with the wishes of producers, and within the regulations established under the *Natural Products Act*.

The Commission will conduct an annual review of the operations of each marketing board.

The Commission will ensure that each marketing board holds an annual producer meeting to review financial statements, as well as board activities for the previous year.

The Commission will ensure that marketing boards do not implement significant changes in policy without prior approval of producers.

Promote sector-wide collaboration to capitalize on market opportunities.

The Commission will facilitate the creation of *industry development councils* to foster the development of cross sector strategies in response to changing market forces.

The Commission, in cooperation with the Department of Agriculture, Fisheries, and Aquaculture will expose the industry to new ways to exploit market opportunities.

Provide authority and guidance to non-marketing board groups of producers who want to collect levies for research and promotion purposes.

Provided for in the *Natural Products Act*

Ensure that the development of the province's regulated agri-food industry is protected and promoted within national marketing systems.

The Commission will develop and pursue strategies that are beneficial to the province.

Duties and Responsibilities of the Commission:

The Commission is responsible for the overall conduct and performance of the regulated marketing system in New Brunswick. In that capacity it is responsible for ensuring that boards exercise the powers granted to them in the manner intended.

Through the powers vested in it by the Natural Products Act, the Commission may:

- ◆ Investigate, arbitrate, adjudicate upon, adjust or otherwise settle any dispute between producers, processors, distributors or transporters of farm products, or between any two or more of such classes of persons;
- ◆ Investigate the cost of producing, processing, distributing and transporting any farm product, prices, price spreads, trade practices, methods of financing, management, grading, policies and other matters relating to the marketing of a farm product;
- ◆ Recommend any marketing plan or the amendment of any plan to the Minister;
- ◆ Require persons engaged in the production or marketing of a regulated product to register with the Commission or local board;
- ◆ Require persons engaged in the production or marketing of a regulated product to furnish information relating to the product, including the completing and filing of reports or returns on a periodic basis or otherwise as the Commission or local board determines;
- ◆ Require the furnishing of security or proof of financial responsibility by any person engaged in the marketing of a regulated product and provide for the administration and disposition of all money or securities so furnished;
- ◆ Appoint inspectors for the purposes of this Act;
- ◆ Co-operate with a marketing board, local board, commodity board, marketing commission or marketing agency of Canada or of any province in Canada for the purpose of marketing any regulated product;
- ◆ Make orders and issue directives consistent with a plan or the regulations as are necessary to enforce the provisions of the Act or any plan.

Also, the Commission has the power to intervene directly in the marketing of dairy products. Intervention may include the following:

- ◆ The establishment and enforcement of marketing conditions that benefit both the dairy products trade and the general public;
- ◆ License milk dealers, producer suppliers, vendors and transporters;
- ◆ Make regulations or orders pertaining to milk quality, the inspection and classification of milk, and processing of dairy products;
- ◆ Control milk quality from the farm to the milk dealer;
- ◆ Make regulations pertaining to penalties on milk that fail to comply with standards of quality;
- ◆ Set the wholesale price of fluid milk products.

Members and Officials of the Commission:

Hazen Myers	Chairman
Robert Keenan	Vice-Chairman
Robert Strang	Member
Marie Theriault	Member
Constance Morrison	Member
Irene Reidpath	Member
Larry Dobson	Member
Dale McIntosh	Member
John Robinson	Member
Clinton McLean	General Manager (to end of Dec. 2002)
Robert Goggin	Acting General Manager (appointed Jan. 2003)
David Johnston	Commodity Analyst and Trade Relations Officer
Joan Allaby	Acting Regulations Analyst (appointed Sept. 2002)
Lisa Graham	Administrative Support (to Sept. 2002)
Julie Duguay	Administrative Support – temporary
Claudette St-Coeur	Administrative Support – temporary
Sharon Albert	Administrative Support (Feb. 2003)

Activities of the Commission during the year 2002-2003

The Commission met eleven times during 2002-2003 and was involved in the following activities:

◆ Environmental Stewardship Program

The Commission was involved in discussions with the Department of Environment and Local Government and the New Brunswick dairy industry regarding the establishment of an Environmental Stewardship Fund to finance the recycling of milk containers. In February 2003, the Commission increased the price of milk sold in 2L, 1L, and 500ml cartons to supply funding for this initiative. The Environmental Stewardship Fund has since been established through a Memorandum of Understanding between the NB Milk Dealers Association and the Department of Environment and Local Government and provides a mechanism by which solid waste commissions can access the funds they need to recycle milk containers.

◆ Pricing

As part of its mandate, the Commission is responsible for setting the price of fluid milk sold in the province. In February 2003, the Commission announced an increase in the maximum wholesale price of fluid milk. In determining this adjustment, the Commission analyzed returns to all stakeholders in the dairy industry and determined appropriate margins for producers, processors, and retailers. In addition, the Commission also considered funding requirements for the Environmental Stewardship Fund as mentioned above. As always in setting the price of milk, the Commission balanced the interests of producers, processors and consumers, maintaining competitive prices for New Brunswick consumers while encouraging a viable dairy industry.

◆ Regulations

When the *Natural Products Act* came into effect in April 1999, it replaced a number of other acts. Since that time, the Commission staff has been involved in the preparation of new regulations under the *Natural Products Act* pertaining to the various commodity boards under its supervision. During this year, Commission staff worked with both the NB Apple Marketing Board and the NB Milk Marketing Board to complete regulations for these commodities. In 2002-2003, the Commission made the following regulations pursuant to Sections 19 and 28 of the *Act*:

N.B. Reg. 2002-61 -The Apple Plan Administration Regulation

N.B. Reg. 2002-86 - The Milk Plan Administration Regulation

In addition, the Commission drafted the following regulations that were then enacted by the Lieutenant-Governor-in- Council:

N.B. Reg. 2002-60 - The Apple Plan and Levies Regulation

N.B. Reg 2002-86 - The Milk Plan and Levies Regulation

Among other things, these regulations change the names of the NB Apple Marketing Board and the NB Milk Marketing Board to the Apple Growers of New Brunswick and the Dairy Farmers of New Brunswick, respectively.

◆ **WTO**

Commission officials participated as the lead provincial trade representatives in disputes on Canadian Dairy Practices with the World Trade Organization. The Commission was the principal contact body for the Province in these dairy trade issues and worked in direct consultation with members of both the Federal Department of Foreign Affairs and International Trade and Agriculture and Agri-Food Canada. When the WTO panel decided against Canada in the dispute regarding Canada's dairy export practices, the Commission was involved in ensuring that New Brunswick complied with the conditions set out in the decision in a timely manner.

◆ **Agreement on Internal Trade**

Commission staff were involved in the discussion and activity that followed a decision of the Panel on the Agreement on Internal Trade (AIT) against New Brunswick regarding an application by Farmers Cooperative Dairy (Farmers) of Nova Scotia for a milk dealer's license.

Farmers had applied to the Commission for a license to market milk in New Brunswick in October 2000. After careful consideration of Farmers' application, the Commission decided not to grant the company a milk dealer's license. The Commission concluded that to grant this license would not be in the best interest of the general public. Subsequently, Farmers appealed the Commission's decision to the AIT Panel, arguing that by denying Farmers a license, New Brunswick was unfairly restricting access to the province's market and thus contravening the agreement. An AIT review panel was established that ruled in favour of Farmers and made recommendations that the Natural Products Act be amended to bring the Act more in line with the language contained in the AIT. Legal Counsel has been retained to undertake this task.

◆ **Orders**

The Commission approved eight Orders in 2002-2003. The Orders included borrowing Orders for the New Brunswick Potato Agency and the Dairy Farmers of New Brunswick and several Orders regarding the price of milk. One of the new Orders that the Commission put in place with respect to the latter, was a wholesale pricing Order in which the Commission incorporated an adjustment in the price of milk to provide for the Environmental Stewardship Fund.

Commission Orders made between April 1, 2002 and March 31, 2003:

- 2002-03 **NB Potato Agency Borrowing Order** - empowers the New Brunswick Potato Agency to borrow money from a financial institution for the 2002-2003 Spring Credit Advance Program.
- 2002-04 **NB Potato Agency Borrowing Order** - empowers the New Brunswick Potato Agency to borrow money from a financial institution for the 2002-2003 Advance Payment for Crops Program.
- 2002-05 **NB Potato Agency Borrowing Order** - empowers the New Brunswick Potato Agency to borrow money from a financial institution for operating purposes.
- 2002-06 **Milk Container Order** – stipulates the size of container in which a milk dealer may sell milk in New Brunswick.
- 2003-01 **Dairy Farmers of New Brunswick Borrowing Order** - empowers the Dairy Farmers of New Brunswick to borrow money from a financial institution.
- 2003-02 **Producer Pricing Order** – establishes the price processors must pay dairy producers for their milk; repealed.
- 2003-03 **Wholesale Pricing Order** - sets the minimum and maximum wholesale price for milk sold in New Brunswick.
- 2003-04 **Producer Pricing Order** – replaced 2003-02.

◆ **Annual Reviews**

In 2002-2003, the Commission conducted annual reviews of the following commodity organizations:

The New Brunswick Milk Marketing Board
 The Apple Growers of New Brunswick
 The New Brunswick Egg Marketing Board

◆ **Annual Meetings**

In fulfilling its supervisory role, the Commission attends the annual meetings of those producer organizations formed under the *Natural Products Act*, as well as of other relevant agricultural groups. During 2002-2003, Commission officials attended the annual meetings of the following groups:

- The New Brunswick Egg Marketing Board

- The New Brunswick Chicken Marketing Board
- The New Brunswick Turkey Marketing Board
- The New Brunswick Potato Agency
- The Dairy Farmers of New Brunswick
- The New Brunswick Cattle Producers
- The New Brunswick Hog Marketing Board

◆ **Supply Management Issues**

As a supervisory body, the Commission has a statutory obligation to oversee the operation of national supply management programs, to participate in discussions regarding provincial participation in those programs, to represent the province in federal/provincial-regulated marketing and trade agreements. In fulfillment of this obligation, Commission officials:

- Attended national supply management meetings for chicken, turkey, eggs, and milk.
- Participated in discussions with PEI, Nova Scotia, Quebec, Ontario, and Manitoba about the pooling of revenues from the sale of milk produced and marketed in these provinces.
- In addition, Commission officials attended the annual meetings of the National Association of Agricultural Supervisory Agencies, the Canadian Egg Marketing Agency, and the Chicken Farmers of Canada, as well as a meeting of the International Association of Milk Control Agencies.

◆ **Hearings**

The Farm Products Commission serves as an appeal body for those aggrieved by decisions made by local boards. In that regard, the Commission held two hearings in 2002-2003, one of which was the resumption of a hearing begun in 2001-2002.

Hearing of an appeal by the Goodine Dairy Farm of a decision of the New Brunswick Milk Marketing Board (Appeal launched in 2001, continued into 2003)

In December 2001, the Commission received notice of an appeal by the Mary and David Goodine Dairy Farm of a decision of the New Brunswick Milk Marketing Board to assess them full responsibility for the alleged contamination, transport and disposal of a load of milk in February 2001.

The Commission convened a hearing on March 15, 2002 to listen to the Goodine's appeal. During this hearing, counsel for the Appellant raised a preliminary objection of apprehension of bias on the basis that the Appellant's rights to receive a fair and impartial hearing before an independent tribunal

had been breached. The Commission decided against the Goodines on the preliminary objection. The Appellant then requested and was granted an adjournment in order that the Court of Appeal could rule upon the matter. The NB Milk Marketing Board in turn filed a motion with the Court of Appeal to quash the Appellant's Notice of Appeal.

The Court of Appeal heard the motion on May 14, 2002 and issued a ruling on May 30 granting the Milk Marketing Board's motion to quash the Goodine Dairy Farm's Notice of Appeal regarding an apprehension of bias.

The Commission reconvened on November 26, 2002 to hear the original appeal. After careful consideration of the evidence presented at the hearing and a review of the relevant legislation, the Commission dismissed the Goodine's appeal of the Milk Marketing Board's decision.

Hearing of an appeal by Armadale Farms of a decision of the New Brunswick Milk Marketing Board

In September 2001, the Commission received notice of an appeal by Joop Duivenvoorden of Armadale Farms of a decision by the Milk Marketing Board regarding a quota penalization. The Board imposed a penalty on the milk quota held by Armadale Farms because it believed that Mr. Duivenvoorden had not properly reported the amount of raw milk utilized by the Armadale processor portion of his operation.

The Commission convened a hearing April 24, 2002 to hear the appeal. During the hearing, questions were raised regarding the Commission's jurisdiction to consider the matter in question, namely the supply and measurement of milk delivered to processing plants, as well as the payment for that milk. The Chairman adjourned the hearing to allow both parties to prepare written submissions addressing this issue. The hearing was scheduled to reconvene in September 11, 2002. Counsel for Armadale Farms notified the Commission on September 10 that their client and the Milk Marketing Board had reached a formal agreement resolving the matter to the satisfaction of both parties.

Finances:

Farm Products Commission Expenditures for 2002-2003

<u>Account</u>	<u>Description</u>	<u>Expenditure</u>
3430	Civil Service Payroll	\$152,759
3450	Casual Payroll	\$ 36,693
3600	Benefits	\$ 5,650
3700	Membership Fees	\$ 400
4030	Advertising	\$ 1,242
4490	Catering	\$ 3,313
4500	Other Services	\$ 1,499
4550	Service Contracts/Inspection Services	\$ 450
4610	Postage	\$ 47
4700	Printing & Copying	\$ 662
4720	Parking	\$ 75
4730	Rentals	\$ 1,938
4760	Repairs	\$ 157
4790	Consulting Services	\$ 8,921
4860	Telephones	\$ 129
4900	Travel	\$ 47,849
5090	Subscriptions	\$ 260
5630	Supplies	\$ 417
5730	Stationary Supplies	\$ 1,521
6060	Office Furniture	\$ 463
6070	Computer Hardware	\$ 9,340
	TOTAL	\$273,785

National Farm Products Council

The National Farm Products Council was established in 1972 under the *Farm Products Marketing Agencies Act* to supervise agencies set up to administer national and regional marketing plans. The Act allows producers of farm products (other than industrial milk and wheat) to develop national or regional marketing plans.

The National Council advises the Federal Minister of Agriculture on all matters relating to the establishment, operation and performance of national agencies. The National Council has the power to call public hearings and hear appeals relating to agency operations as well as on any proposal to establish a new agency.

The National Council has four major responsibilities under the *Farm Products Marketing Agencies Act*:

- ◆ To advise the Minister of Agriculture on all aspects of the Act;
- ◆ To supervise the operations of the Chicken Farmers of Canada (CFC), the Canadian Egg Marketing Agency (CEMA), the Canadian Turkey Marketing Agency (CTMA) and the Canadian Broiler Hatching Egg Marketing Agency (CBHEMA);
- ◆ To work with agencies in promoting effective marketing in inter-provincial and export trade;
- ◆ To consult with provinces.

National Supply Management Agencies:

Chicken Farmers of Canada

Chicken Farmers of Canada was established in 1978 by the Governor in Council by a proclamation under the *Farm Products Marketing Agencies Act*. Following its establishment, the Agency entered into an agreement with the provinces that provides for an orderly marketing system for chickens. Chicken Farmers of Canada's primary purpose is to bring stability and order to the domestic chicken industry. Its mandate is to develop and maintain a healthy and viable chicken industry in the interests of both producers and consumers. This Agency is responsible for:

- ◆ Developing and implementing a marketing plan;

- ◆ Establishing a quota allocation system authorizing the marketing of chicken in inter-provincial and export trade;
- ◆ Promoting co-operation throughout the chicken industry;
- ◆ Licensing of those engaged in the inter-provincial or export trade of live chicken, including producers, processors, transporters, dealers and retailers;

Chicken Farmers of Canada manages a national production quota which it allocates to the provinces after consultation with industry. Production levels are set by the Agency for six separate production periods

Chicken Farmers of Canada is a non-profit organization whose administrative costs are funded by means of a levy which is paid by each producer for chicken marketed and is collected by the provincial Chicken Marketing Boards.

Canadian Turkey Marketing Agency

In 1974, the Governor in Council created the Canadian Turkey Marketing Agency (CTMA) by a proclamation under the *Farm Products Marketing Act*. A subsequent agreement between the Agency and the provinces established a system for the orderly marketing of turkeys.

The CTMA sets the annual level of national turkey production. Production quota is allocated to each province based on a formula and negotiation process. Allocation levels are adjusted throughout the year as relevant data, such as production statistics, poultry placements, storage stocks, and disappearance of turkey, become available. Each provincial marketing board is responsible for negotiating or setting its own prices.

Funding for the CTMA is obtained through levies that are collected on behalf of the Agency by the provincial marketing boards.

The CTMA also licenses individuals and companies involved in inter-provincial and export trade of turkeys, sources domestic or foreign turkey inventories for Canadian processors with proven markets, and promotes consumer awareness campaigns across Canada.

Canadian Egg Marketing Agency

The Canadian Egg Marketing Agency (CEMA) was established by proclamation by the Governor in Council in 1972 as part of a federal-provincial agreement to provide stability to the Canadian egg industry. CEMA's mandate is to:

- ◆ Establish the farm gate price of eggs;
- ◆ Regulate national supplies;
- ◆ Remove surplus eggs from domestic markets;
- ◆ Encourage consumption of eggs.

The CEMA regulates national production by allocating annual production quota which in turn is reallocated by provincial marketing boards to their producers. CEMA removes surplus eggs from the market on a weekly basis by directing them either to areas of short supply elsewhere in Canada, to the Canadian processing industry or to export buyers.

Funding for the CEMA is obtained through levies paid on each dozen eggs marketed. In 1975 CEMA introduced a central pricing system based on a cost of production formula that returned the cost of production and a reasonable profit to the average producer. The system, which is based on an independent cost survey that is updated regularly, is used to establish the farm gate price in each province.

Dairy Industry - National Perspective

There are two markets for milk in Canada. The fluid market (table milk and fresh cream) accounts for 40% of the milk produced, the remaining 60% is shipped to the industrial milk market to be manufactured into dairy products such as butter, cheese, yogurt and ice cream.

The Dairy Products Marketing Regulations, made under the *Canadian Dairy Commission Act*, provide federal jurisdiction over the marketing of industrial milk and dairy products in inter-provincial and export trade. A federal-provincial agreement, the National Milk Marketing Plan, sets out the structure for the calculation of the national industrial milk production target (Market Share Quota) required to meet the demand for domestic and export markets. The Plan establishes each province's share of the MSQ and provides for that quota.

The Canadian Milk Supply Management Committee administers the national plan and is chaired by the Canadian Dairy Commission. The committee has producer and government representatives from all provinces.

In 1995, certain provisions of the World Trade Organization Agreement replaced quantitative restrictions with tariff rate quotas. Currently imports of certain dairy products above historic levels are subject to high over quota tariffs. These high tariffs, however, will decline by 15 percent of their value over the six years that the current WTO Agreement on Agriculture is in effect.

Dairy stakeholders set up a special milk class pricing and pooling of market returns system in August of 1995 which allows dairy processors and further processors to remain competitive on domestic and global markets. Furthermore, since August 1, 1996, the revenue from all milk sales (fluid and industrial) has been pooled among the producers of Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Prince Edward Island. The four western provinces also have a similar arrangement, known as the Western Milk Pool. Manitoba is participating in both the Eastern and Western all milk pooling agreements.

Provincial marketing boards and commissions govern the production and marketing of milk within their own borders. As noted above, however, certain marketing activities related to industrial milk are carried out jointly between the federal government and the participating provinces according to the terms and conditions of the National Milk Marketing Plan.