

	Page
(c) The Panel's Finding under Article 9.1(c).....	2329
7. Article 3.3 of the Agreement on Agriculture .....	2329
8. Article 10 of the Agreement on Agriculture .....	2330
(a) The Two Elements under Article 10.1 .....	2332
(b) An "other" Export Subsidy under Article 10.1.....	2333
9. Article 8 of the Agreement on Agriculture .....	2337
10. Article 3 of the SCM Agreement .....	2337
C. The Tariff-Rate Quota for Fluid Milk.....	2339
1. Facts and Claims of the Parties .....	2339
2. Article II:1(b) of GATT 1994 .....	2340
3. The Licensing Agreement.....	2343
VIII. CONCLUSIONS .....	2344

## I. INTRODUCTION

1.1 This proceeding has been initiated by two complaining parties, the United States and New Zealand.

1.2 In a communication dated 8 October 1997 (WT/DS103/1), the United States requested consultations with Canada in accordance with Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), pursuant to Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 19 of the Agreement on Agriculture, Article 30 of the Agreement on Subsidies and Countervailing Duties ("the SCM Agreement") and Article 6 of the Agreement on Import Licensing Procedures with respect to export subsidies of Canada on dairy products and the administration by Canada of its tariff-rate quota for fluid milk and cream. The United States and Canada held consultations in Geneva on 19 November 1997 but these consultations did not result in a resolution of the dispute.

1.3 On 29 December 1997 New Zealand requested consultations with Canada pursuant to Article 4 of the DSU, under Article 19 of the Agreement on Agriculture and Article XXII:1 of the GATT 1994 with regard to Canada's Special Milk Classes Scheme. New Zealand and Canada held consultations on 28 January 1998 but these consultations did not result in a resolution of the dispute.

1.4 On 2 February 1998, the United States (WT/DS103/4) and on 12 March 1998, New Zealand (WT/DS113/4), each requested the establishment of a panel with standard terms of reference.

1.5 In its request, the United States claims that:

- (a) "The Government of Canada is providing subsidies, and in particular export subsidies, on dairy products through its national and provincial pricing arrangements for milk and other dairy products without regard to the export subsidy reduction and other WTO commitments undertaken by Canada. Specifically, the Government of Canada established and maintains a system of special milk classes through which it maintains high domestic prices, promotes import substitution, and

Report of the Panel

provides export subsidies for dairy products going into world markets. These practices distort markets for dairy products and adversely affect US sales of dairy products."

- (b) "In addition, although Canada committed under the Marrakesh Agreement Establishing the World Trade Organization to permit access to an in-quota quantity of 64,500 tonnes (product weight basis) under a tariff-rate quota for imports of fluid milk and cream, Canada has refused to permit commercial import shipments within the quota. Instead, Canada is administering this tariff-rate quota in a manner that denies market access."
  - (c) "These measures appear to be inconsistent with the obligations of Canada under the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Import Licensing Procedures. The measures in question are the Canadian Dairy Commission Act, agreements of the Canadian Dairy Commission, the Interprovincial Comprehensive Agreement on Special Class Pooling (as well as the P-4, P-6, and P-9 interprovincial pooling agreements), the National Milk Marketing Plan (and amendments thereto), operations of the Canadian Milk Supply Management Committee, the Dairy Products Marketing Regulations, and Canada's administration of its tariff-rate quota on fluid milk and cream (as reflected in its implementation of its WTO Schedule of Concessions)."
  - (d) "These measures are inconsistent with the obligations of Canada under Articles II, X, XI, and XIII of the GATT 1994; Articles 3, 4, 8, 9, and 10 of the Agreement on Agriculture; Article 3 of the Agreement on Subsidies and Countervailing Measures; and Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures."
- 1.6 In its request, New Zealand claims that:
- (a) "The Government of Canada is providing export subsidies on dairy products in contravention of its export subsidy reduction and other WTO commitments as encapsulated by the Agreement on Agriculture and the General Agreement on Tariffs and Trade 1994 (GATT 1994). The dairy export subsidy scheme in question is commonly referred to as the "special milk classes" scheme. The background to, and details of, the "special milk classes" scheme is contained, though not necessarily exclusively, in the following documents:
    - (i) the Canadian Dairy Commission Act;
    - (ii) the Comprehensive Agreement on Special Class Pooling (the P9 Agreement);
    - (iii) the National Milk Marketing Plan (NMMP);
    - (iv) the Agreement on All Milk Pooling (the P6 Agreement); and
    - (v) the Western Milk Pooling Agreement (the P4 Agreement)."
  - (b) "The "special milk classes" scheme referred to above is inconsistent with Canada's obligations under the following provisions:

- (i) Articles 3, 8, 9 and 10 of the Agreement on Agriculture; and
- (ii) Article X:1 of the GATT 1994."

1.7 The Dispute Settlement Body (DSB) agreed to each of these requests for a panel at its meeting of 25 March 1998 (WT/DSB/M/44). The DSB further agreed that the two panels be consolidated as a single panel pursuant to Article 9.1 of the DSU with the following standard terms of reference:

"To examine, in the light of the relevant provisions of the covered agreements cited by the United States in document WT/DS103/4 and by New Zealand in document WT/DS113/4, the matters referred to the DSB respectively by the United States and New Zealand in these documents, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements".

1.8 On 12 August 1998, the parties to the dispute agreed on the following composition of the Panel:

Chairman: Professor Tommy Koh  
 Members: Mr. Guillermo Aguilar Alvarez  
 Professor Ernst-Ulrich Petersmann

1.9 Australia and Japan, and the United States in respect of the New Zealand claims, reserved their rights to participate in the Panel proceedings as third parties.

## II. FACTUAL ASPECTS

### A. *The Canadian Dairy Sector*

#### 1. *General*

2.1 In Canada, milk production is divided into two categories: fluid milk and industrial milk. Of all milk deliveries, approximately 40 per cent is processed into table milk and cream (fluid milk); the remaining 60 per cent is processed into dairy products such as butter, cheese, milk powders, ice cream and yoghurt (industrial milk).<sup>1</sup>

2.2 Dairy producers are individual farmers who are licensed to produce milk and sell it, through marketing boards, to dairy processors. The processors are made up of the dairies that process the raw milk for fluid or industrial use, as well as further processors who use the basic dairy components as inputs for other products (such as frozen pizzas, prepared flour mixes, and confectionery). The processors then sell the value-added product on the domestic market or export it on international markets.

2.3 In Canada, there are approximately 23,800 dairy farms which in 1996/97 produced 77.5 million hectolitres of milk, compared to 84,260 dairy farms which produced 75.5 million hectolitres of milk in 1974/75 following the introduction of sup-

<sup>1</sup> The raw milk provided by the farmer to the processor is usually broken down at the initial stage of processing into its basic "constituents" (cream and skim milk) or into "components" (such as butterfat, protein and other milk solids). The various types of fluid milk (e.g., 3.25 per cent, 2 per cent, 1 per cent) and cream are created by re-blending the cream and skim milk to the desired butterfat content level.

Report of the Panel

ply management.<sup>2</sup> Virtually all production of milk comes from farms that produce for both fluid and industrial markets.

2.4 While fluid milk in general is produced and consumed locally within each of Canada's provinces, industrial milk products move in significant volumes across provincial boundaries or are exported from Canada.

2.5 Quebec and Ontario are the most important dairy-producing provinces in Canada. Quebec is the largest producer of industrial milk, retaining close to 50 per cent of the national share of industrial milk, followed by Ontario with approximately 30 per cent. The dairy processing industry is also centred primarily in Quebec and Ontario.

2. *Components of the Canadian Dairy Policy*

2.6 The basic components of Canada's supply management system for industrial milk are:

- (a) production quotas;
- (b) administered support prices; and
- (c) border protection.

2.7 Regulatory jurisdiction over trade in dairy products is divided between the federal government and the provinces. While the federal government has constitutional authority over inter-provincial and international trade, other aspects of production and sale of milk are under provincial jurisdiction.

2.8 The federal government pays a subsidy of C\$3.04 per hectolitre for industrial milk produced to meet domestic requirements. To this point in time, this subsidy is being phased out with the subsidy reduction being passed on to the marketplace through support price adjustments. The subsidy is expected to be eliminated by February 2002.

2.9 The federal government maintains tariffs and tariff quotas on imported dairy products. The following table summarizes the base and final bound tariffs for selected dairy products as bound in Canada's WTO Schedule:

**Table 1 - Tariff Binding for Selected Dairy Products**

Products	Base Tariff	Final Bound Rate (2000)
Milk	283.8%, minimum \$40.6/hl	241.3%, minimum \$34.5/hl
Cheddar Cheese	289.0%, minimum \$4.15/kg	245.6%, minimum \$3.53/kg
Butter	351.4%, minimum \$4.71/kg	298.7%, minimum \$4.00/kg
Yoghurt	279.5%, minimum \$0.55/kg	237.5%, minimum \$0.47/kg
Ice Cream	326.0%, minimum \$1.36/kg	277.1%, minimum \$1.16/kg
Skim Milk Powder	237.2%, minimum \$2.36/kg	201.6%, minimum \$2.01/kg

2.10 Low-rate tariff quota commitments are applicable to the following products and quantities: fluid milk (64,500 tonnes); cream - not concentrated (394 tonnes); concentrated or condensed milk or cream (11.7 tonnes); butter (1,964 tonnes in-

<sup>2</sup> 1996/97 Annual Report of the Canadian Dairy Commission and Agriculture and Agri-Food Canada: "Long Term Dairy Policy Consultation Paper" (May 1996).

creasing to 3,274 tonnes); cheese (20,412 tonnes); yoghurt (332 tonnes); powdered buttermilk (908 tonnes); dry whey (3,198 tonnes); other products of milk constituents (4,345 tonnes).

2.11 Canada operates an Import for Re-Export Programme under the authority of the Export and Import Permits Act.<sup>3</sup> Under this programme permits to import dairy products on an Import Control List may be issued by the responsible Minister subject to such conditions as are described in the permit or in the regulations. There are no specific policy guidelines or administrative instructions with respect to this programme, which has been in operation for a number of years. Imports under this programme consist of storable and tradeable components of milk, such as skim and whole milk powders and butter. No permits for milk for manufacturing purposes have been requested by Canadian processors under this programme, but fluid milk is imported under the programme in retail packages for use on, or eventual re-export by, cruise ships passing through Canada.

### 3. *The Canadian Dairy Commission (the "CDC")*

2.12 The Canadian Dairy Commission is a Crown corporation established under the Canadian Dairy Commission Act (the "CDC Act").<sup>4</sup> Its mandate is set out in the following way in the text of the CDC Act:

"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."<sup>5</sup>

2.13 The powers of the CDC are set out in Article 9.(1) of the CDC Act (Box 1).

#### Box 1

"9. (1) The Commission may

- (a) purchase any dairy product and sell, or otherwise dispose of, any dairy product purchased by it;
- (b) package, process, store, ship, insure, import or export any dairy product purchased by the Commission;
- (c) 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, quantity or on any other basis of volume, quality or on any basis that the Commission deems appropriate;
- (d) 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;
- (e) undertake and assist in the promotion of the use of dairy products, the improvement of the quality and variety of and the publication of information in relation to those products;

<sup>3</sup> Canada, Exhibit 35.

<sup>4</sup> The abbreviation "CDC Act" refers to the CDC Act as amended.

<sup>5</sup> CDC Act, Section 8.

Report of the Panel

- (f) establish and operate a pool or pools in respect of the marketing of milk or cream, including
- (i) distributing money to producers of milk or cream received from the marketing on any quantity of milk or cream, or any component, class, variety or grade of milk or cream from the pool or pools;
  - (ii) deducting from the money distributed under sub-paragraph (i) any necessary and proper expenses of operating the pool or pools;
- (g) establish the price, or minimum or maximum price, paid or to be paid to the Commission, or to producers of milk or cream, the basis on which that payment is to be made and the terms and manner of payment that is to be made in respect of the marketing of any quantity of milk or cream, or any component, class, variety or grade of milk or cream;
- (h) collect the price paid or to be paid to the Commission, or to any producer in respect of the marketing of any quantity of milk or cream, or any component, class, variety or grade of milk or cream, or recover that price in a court of competent jurisdiction;
- (i) subject to an agreement entered into under section 9.1, establish and operate a programme in respect of the quantities and prices of milk or cream, or of any component, class, variety or grade of milk or cream, necessary for the competitive international trade in, and the promotion and facilitation of the marketing of, dairy products, including:
- (i) distributing money for the purpose of the equalization of returns to producers in respect of that milk or cream, or that component, class, variety or grade, from which those dairy products are made, and
  - (ii) deducting from the money distributed under sub-paragraph (i) any necessary and proper expense of operating the programme; and,
- (j) do all acts and things necessary or incidental to the exercise of any of its powers or the carrying out of any of its functions under this Act."

2.14 The CDC receives its funding from the federal government of Canada as well as from producers and from market transactions.<sup>6</sup> Its members (a Chairman, Vice-Chairman and Commissioner) are appointed by the federal government, and the CDC is accountable to the federal Parliament, reporting to the Minister of Agriculture and Agri-Food.<sup>7</sup>

2.15 The CDC establishes a national target price for industrial milk, which is an amount deemed to be adequate for producers to cover their costs and receive a fair return on their labour and investments. Using the target price as a basis, the CDC also establishes support prices<sup>8</sup> for butter and skim milk powder.<sup>9</sup>

<sup>6</sup> 1996/1997 Annual Report of the Canadian Dairy Commission, pp. 26 and 28-29.

<sup>7</sup> CDC Act, Section 4, establishes that: The Commission [CDC] is for all purposes of this Act an agent of Her Majesty in right of Canada.

<sup>8</sup> Currently, support prices are only used by the CDC for programmes to buffer domestic supplies seasonally and, to a very minor extent regionally and between processors. This is done through Plans A and B. Under Plan A, the CDC maintains butter stocks to buffer the domestic market against seasonal supply fluctuations. Sales from stocks acquired under this programme in 1996-97 amounted to less than 1 per cent of butter disappearance. Under Plan B, processors may sell butter to the CDC on condition that they repurchase it within the year. Sales of butter covered by this programme amounted to 18 per cent of domestic disappearance in 1996-97.

<sup>9</sup> 1996/1997 Annual Report of the Canadian Dairy Commission, under "Price Setting".

#### 4. *Provincial Milk Marketing Boards*

2.16 In each province a milk marketing board exists. The provincial milk marketing boards operate within a framework established under federal and provincial legislation. The CDC Act defines a board as<sup>10</sup>:

"'Board' means a body that is constituted under the laws of a province for the purpose of regulating the production for marketing, or the marketing, in intraprovincial trade of any dairy product".

2.17 The provincial milk marketing boards have all been given general authority by the federal and provincial governments in respect of the issuance and administration of quota, the pooling of returns, pricing, producer records keeping and reporting, inspection, and agreements to cooperate with other provinces and the CDC.

2.18 The membership of the provincial milk marketing boards is made up mostly or exclusively of dairy producers.<sup>11</sup>

2.19 It is prohibited for milk producers to sell any milk individually, without using the provincial milk marketing boards as an intermediary.

2.20 With the exception of 15 producers in Ontario, a producer must have a minimum quota holding to market milk on the domestic or international market.

#### 5. *The NMMP*

2.21 At a national level, the provincial marketing boards cooperate under the National Milk Marketing Plan (NMMP). The NMMP is signed by the boards for nine<sup>12</sup> of the ten provinces, some provincial government representatives<sup>13</sup>, and the CDC.

2.22 The text of the NMMP states that the

"[p]lan is a federal-provincial agreement in respect of the establishment of a National Milk Marketing Plan for the purpose of regulating the marketing of milk and cream products relating to Canadian domestic requirements and for any additional industrial milk requirements in Canada."<sup>14</sup>

2.23 The NMMP sets out the structure for the calculation of an annual national production target for industrial milk - the national Market Sharing Quota (MSQ).

2.24 The NMMP is supplemented by:

- (a) the Comprehensive Agreement on Special Class Pooling, (the "P9") which deals with the pooling of revenues from the Special Classes;

<sup>10</sup> CDC Act, Section 2 (Definitions).

<sup>11</sup> This is true for Ontario and Quebec and all other provinces except Nova Scotia, Alberta and Saskatchewan. In Nova Scotia, the board members are appointed by the provincial government with one member of five to be a producer. In Alberta and Saskatchewan, the provincial governments also appoint the members but historically producers are well represented on the boards. Currently, each five-member board includes two producers, one consumer representative and one processor representative. Nova Scotia, Alberta and Saskatchewan accounted for 1.91 per cent, 4.77 per cent and 2.51 per cent of domestic production in 1997. (Canada, Exhibit 3)

<sup>12</sup> Newfoundland is not a party to the NMMP (its producers produce almost exclusively for the local fluid milk market and it has not traditionally contributed to the industrial milk supply that was the subject of the NMMP).

<sup>13</sup> Canada, Exhibit 10 contains a full list of signatories.

<sup>14</sup> NMMP, A. (Introduction).

---

Report of the Panel

- (b) the Western Milk Pooling Agreement (the "P4"); and
- (c) the Agreement on All Milk Pooling (the "P6").

2.25 The Comprehensive Agreement on Special Class Pooling is an Agreement among the authorities of nine provinces and provincial producer boards that are signatories of the NMMP in respect of pooling of revenues from sales of milk components in special classes of milk used to service domestic and external markets. The Agreement provides for the adoption of the Memorandum of Understanding on Special Class Pooling (MOU) and an Addendum to that Memorandum of Understanding.<sup>15</sup>

2.26 The powers necessary to create the Special Classes and to administer the Special Milk Classes Scheme were conferred on the CDC by amendment to federal legislation (the CDC Act). It is implemented by the Canadian Milk Supply Management Committee (CMSMC).

6. *The CMSMC and the MSQ.*

2.27 As noted above, the CMSMC, established under the NMMP<sup>16</sup>, is the body that oversees the implementation of the Comprehensive Agreement on Special Class Pooling.<sup>17</sup>

2.28 It is composed of representatives of each provincial marketing board and the respective provincial governments.<sup>18</sup> Representatives of the Dairy Farmers of Canada (the "DFC"), the National Dairy Council (the "NDC") representing the dairy processors/exporters, and the Consumers Association of Canada participate although they do not have voting rights. The CDC acts as chair of the CMSMC.

2.29 Based on production and demand forecasts developed by the CMSMC Secretariat (economists from the CDC, the producer boards, the DFC and the NDC), the CMSMC sets the level of the MSQ. The MSQ is monitored and adjusted periodically to reflect changes in demand. Acting under the provisions of the NMMP<sup>19</sup>, the CMSMC calculates shares of the MSQ among the provinces.<sup>20</sup>

2.30 In *setting* the MSQ, the CMSMC takes into consideration:

- (a) the estimate of domestic demand for industrial milk in the coming year;
- (b) the estimated amount of butterfat that will enter the industrial milk system as surplus from fluid milk production, i.e., the "skim-off";
- (c) anticipated imports;
- (d) stocks of dairy products; and
- (e) planned exports.

2.31 Once a national MSQ has been agreed upon by the CMSMC, the next step is to *allocate* the MSQ between the provinces. This is done essentially on the basis of

---

<sup>15</sup> Comprehensive Agreement on Special Class Pooling, Introduction.

<sup>16</sup> NMMP, Section H.1.

<sup>17</sup> MOU, Schedule I, Section 1.

<sup>18</sup> Newfoundland sits on the CMSMC as an observer.

<sup>19</sup> NMMP, Section I, Quota Allocation.

<sup>20</sup> 1996/1997 Annual Report of the Canadian Dairy Commission, pp. 7-8.



historical market shares, with some limited latitude for adjustment through transfers of quota within regional arrangements. Since 1995 the MSQ has been established at the following levels (million hectolitres):

Marketing Year	1995/96	1996/97	1997/98	1998/99
MSQ Level	44.2	44.2	43.3	44.7

2.32 Subsequently, the provincial milk marketing board allocates quotas to individual farmers. In most provinces<sup>21</sup>, the board makes a single allocation<sup>22</sup> to each producer, which represents that producer's share of the domestic, and traditional export, milk market. The individual producer's share of the provincial quota, the producer's quota, is determined by the permanent quota rights held by that producer. While quotas were originally allocated on the basis of historic production levels, these quota rights are commercially tradable and, in many cases, have been acquired on a commercial basis.

2.33 In general, CMSMC decisions are taken by consensus. When votes occur, each province that is a member of the NMMP (provincial government representative and producer marketing board representative together) receives one vote. Some votes require a majority while others require unanimous consent. The CDC is empowered to take a decision in the event of a failure by members to agree at two meetings where the question concerns a matter *not* covered by the Comprehensive Agreement on Special Class Pooling. The Comprehensive Agreement on Special Class Pooling requires *unanimity*, including on all matters with respect to export trade.

## B. *The Canadian Special Milk Classes Scheme*

### 1. *Background*

2.34 Prior to 1995, the proceeds of levies paid by producers were utilized to fund the CDC's losses in exporting dairy surpluses.

2.35 Following the signing of the WTO Agreement in April 1994, the CDC "directed its activities toward developing alternatives to the use of producer levies".<sup>23</sup> With this in mind, a Dairy Industry Strategic Planning Committee was established. The CDC chaired this Committee and provided research and secretariat support for it. In October 1994, the Committee recommended the implementation of a "classified pricing system based on the end use of milk, national pooling of market returns, and coordinated milk allocation mechanisms."<sup>24</sup>

2.36 A Negotiating Subcommittee of the CMSMC was established, with representation from all provinces, to resolve how to implement a "special milk classes" scheme. This subcommittee presented its recommendations to federal and provincial Ministers of Agriculture in December 1994, who agreed that "some form of pooling of milk returns was urgently required to enable the dairy industry to meet Canada's

<sup>21</sup> In Alberta, producers receive two quotas, one for fluid milk, expressed in litres per day, and one for industrial milk, expressed in kilograms of butterfat per annum.

<sup>22</sup> This is usually expressed in kilograms of butterfat per day.

<sup>23</sup> 1994/1995 Annual Report of the Canadian Dairy Commission, page 4.

<sup>24</sup> 1994/1995 Annual Report of the Canadian Dairy Commission, pages 3-4.

---

Report of the Panel

---

international obligations and changing market conditions."<sup>25</sup> Ministers also agreed that the CDC Act should be amended to allow the CDC to administer the Special Milk Classes permit and national pooling arrangements. These amendments were passed in July 1995.<sup>26</sup>

2.37 The Special Milk Classes Scheme, which replaced the producer-financed levy system eliminated in 1995, is embodied in a Comprehensive Agreement on Special Class Pooling. The CDC, the provincial producer boards and the provinces that participate in the NMMP are the signatories of the Comprehensive Agreement on Special Class Pooling which became effective on 1 August 1995.

## 2. *The Special Classes*

2.38 The "Special Milk Classes" are the sub-classes of Class 5 milk in the national common classification system, under which the pricing of milk is based upon the end use to which the milk is put by processors. Classes 1 to 4 comprise:

- (a) Class 1: Fluid milk and cream for the domestic market;
- (b) Class 2: Industrial milk for the domestic market: ice cream, yoghurt and sour cream;
- (c) Class 3: Industrial milk for the domestic market: cheese;
- (d) Class 4: Industrial milk for the domestic market: butter, condensed and evaporated milk, milk powders and others.

2.39 The definition of the Special Milk Classes under Class 5 as contained in the Comprehensive Agreement on Special Class Pooling is as follows<sup>27</sup>:

- (a) Class 5(a) Cheese ingredients for further processing for the domestic and export markets.
- (b) Class 5(b) All other dairy products for further processing for the domestic and export markets.
- (c) Class 5(c) Domestic and export activities of the confectionery sector.
- (d) Class 5(d) Specific negotiated exports including cheese under quota destined for United States and United Kingdom markets, evaporated milk, whole milk powder and niche markets.
- (e) Class 5(e) Surplus removal.

2.40 Class 5(e), which is referred to as "surplus removal", is made up of both in-quota and over-quota milk. The *over-quota* portion of Class 5(e) represents the production that is in excess of the MSQ. The *in-quota* portion of Class 5(e) exports represents the milk production that is surplus to domestic and planned export needs. This "surplus" may be derived either from the:

- (a) "sleeve"<sup>28</sup>;

---

<sup>25</sup> 1994/1995 Annual Report of the Canadian Dairy Commission, pages 3-4.

<sup>26</sup> *Ibid.*

<sup>27</sup> Comprehensive Agreement on Special Class Pooling, Annex A.