

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

**Decision Regarding
an Application by
Global Greenhouse Produce Inc., a Designated Agency,
To Add Greenhouse Cucumbers to the Greenhouse Vegetable Crops
it is Authorized to Market**

COMMISSION PANEL:

George Leroux, Chair
Doug Gourley, Member
John Savage, Member
Robert Spetifore, Member
Peter Guichon, Member
Tom Demma, Registrar

APPLICANT:

Global Greenhouse Produce Inc.
("Global")

INTERESTED PARTIES:

BC Hot House Foods Inc.
("Hot House")
Country Fresh Produce Inc.
("CFP")
Greenhouse Grown Foods Inc.
("GGFI")

INTERVENOR:

Evergrow Greenhouse Ltd.
("Evergrow")

1 Issue Requiring Decision

1. The Commission is to reach a decision to approve or deny an application submitted by Global, a licensed Designated Agency, to have greenhouse cucumbers added to the regulated greenhouse vegetable crops that it is authorized to market for the 2007 crop year and thereafter.

2 Background

2.1 General

2. Greenhouse cucumbers are a Regulated Product under the British Columbia Vegetable Scheme (B.C. Reg. 96/80) and the Commission's General Order.¹
3. Global is a licensed Designated Agency authorized to market greenhouse tomatoes and greenhouse peppers grown in District 1.²

¹ See Part I – Introductory, Section 5 – Interpretation – of the General Order.

² See Schedule 1 – Designated Agencies – of the General Order.

2.2 Request by Global to Add Greenhouse Cucumbers to Authorized Crops

4. Global has requested to add greenhouse cucumbers to the regulated Greenhouse Vegetable Crops it is authorized to market for the 2007 crop year and thereafter.³
5. Part XV – *Marketing of “New” or Additional Regulated Product by Existing Agencies* - of the General Order makes provision for a Designated Agency to add to the regulated products it is authorized to market subject to Commission approval.
6. Global’s request was based on a potential transaction whereby the ownership of Global would change, the Production Allocation of one of Global’s suppliers, B.C. Vegetable 1 Limited Partnership (BC Veg) would be transferred to another Producer, and the potential transferee, Sun Select or its designate, would seek to have a portion of the Production Allocation changed from greenhouse tomatoes to greenhouse cucumbers.
7. The General Order outlines procedures for the Designation of Agencies, including procedures for reviews of existing Agencies.⁴

2.3 The Hearing

8. The Commission determined to hold a Hearing for the purpose of considering Global’s application⁵, and to further its review of Global pursuant to the proposed ownership changes to the Agency.⁶
9. The Commission Chair constituted a Panel of the Commission comprised of Producer Members not having a direct interest in the matters intended to be brought before the Hearing.
10. A Hearing was held on March 22, 2007 at the Commission Offices in Surrey, B.C. The Hearing was held on short notice at the request of the applicant. All Agencies were informed of the Hearing on March 16, 2007, and no Agency objected to the short notice period.

3 The Parties’ Positions

3.1 Global’s Application

11. Global seeks to have greenhouse cucumbers added to the regulated Greenhouse Vegetable Crops it is authorized to market effective as soon as possible. The purpose of this request by Global is to ensure the Agency has the authority to market this crop if and when Sun Select purchases certain assets of BC Veg, including shares in Global.

³ See letter dated Feb. 26, 2007 from Global to the Commission.

⁴ See Part XIV – Procedures for Designation of Agencies, Sections 9 – 16.

⁵ See Part XV – Marketing of “New” or Additional Regulated Product by Existing Agencies – Section 3.

⁶ See Part XIV – Procedures for Designation of Agencies, Sections 9 – 16.

12. Global's marketing policy has been to facilitate each of its Licensed Producers to establish their individual "go to market" strategies independent of each other. Sales and marketing functions and resources are individual to each Producer. Sales may be through the Agency or through a Producer's subsidiary or affiliated company, with the Global Agency serving largely to meet regulatory requirements of reporting and information collection.
13. Sun Select, as part of the proposed transaction, will become a shareholder in Global. Additionally, it is Sun Select's intention to market its production of greenhouse vegetables through Global exclusively to Oppenheimer.⁷ Sun Select currently markets to Oppenheimer through an agreement whereby B.C. Hot House serves as the Agency of record. This agreement has been the subject of dispute between Sun Select and B.C. Hot House, and Sun Select failed to meet its reporting requirements to the Commission in 2006.
14. BC Veg is in receivership. PriceWaterhouseCoopers (PWC) is the Receiver, and had previously been a monitor appointed by BC Veg's lenders. PWC was also engaged to market the assets of BC Veg, including its fixed assets in Delta and its shares in Global. BC Veg is the majority shareholder in Global.
15. Global expressed its interest that on the sale of BC Veg's assets, including the Global shares which would result in a material change in Global's ownership structure, that the Commission maintain the Agency license and that it not issue directives materially changing Global's marketing policies.

3.2 Greenhouse Grown Foods Inc. (GGFI) Position

16. GGFI is a Designated Agency authorized to market greenhouse tomatoes, peppers and cucumbers produced by two Licensed Producers.
17. GGFI advised that whether Global could market greenhouse cucumbers was not the issue: the issue goes to the purpose and function of and Agency.
18. GGFI does not support Agencies that do not undertake direct marketing on their own account, that do not develop direct relationships with retailers, and which simply serve as administrative instruments to fulfill regulatory requirements such as market reporting and sponsoring Production Allocation requests.
19. GGFI opposes a Producer within the Global Agency using the Agency as a flow through to market directly and exclusively to a wholesaler. Moreover, it points out that when the Country Fresh Agency was licensed to begin operations in 2006 it was on the basis that this Agency would be the primary vehicle by which Oppenheimer would source B.C.

⁷ Note – there is a small exception in that Sun Select has an agreement with B.C. Hot House to provide it Ramiro Peppers.

grown greenhouse vegetables. Now, after only 1 year, there are a series of applications before, or intended to be before, the Commission that will result in Sun Select becoming a shareholder in Global with the sole purpose being to market directly and exclusively to Oppenheimer. While GGFI is still opposed to Country Fresh's marketing strategy, it wonders why Sun Select cannot be directed through Country Fresh.

3.3 Country Fresh Produce Inc. (CFP) Position

20. CFP is a Designated Agency authorized to market greenhouse tomatoes, peppers and cucumbers produced in B.C. by eight (8) Licensed Producers.
21. CFP informed the Panel that it had no objection to Global being authorized to market greenhouse cucumbers.
22. CFP did, however, oppose Global being authorized to market greenhouse cucumbers in 2007 based on the proposed timing and the already established production and marketing plans of Producers and Agencies for 2007. This objection was based on the potential for higher price volatility and lower net grower returns for established greenhouse cucumber producers.

3.4 BC Hot House Foods Inc. (Hot House)

23. Hot House is a Designated Agency authorized to market greenhouse tomatoes, peppers and cucumbers produced in B.C. by twenty-three (23) Licensed Producers.
24. Hot House informed the Panel that the issue was not whether Global marketed greenhouse cucumbers or not, but whether they would be authorized to market greenhouse cucumbers for the 2007 crop year.
25. Hot House's opposition was based on the concurrent application by the BC Veg / Sun Select group to transfer greenhouse tomato Production Allocation to greenhouse cucumbers, and to market these cucumbers in the latter half of 2007. In Hot House's opinion, this will be disruptive to the market causing increased price volatility, greater potential for non-exportability product back-up into the local market, and lower net grower returns.

3.5 Evergrow Greenhouse Ltd. (Evergrow)

26. Evergrow Greenhouse Ltd. is a Licensed Producer with experience in producing Long English cucumbers and bell peppers. Evergrow requested and was granted intervener status for this Hearing.
27. Evergrow's concern was the proposed plan by Sun Select to transfer tomato Production Allocation to greenhouse cucumbers and to begin producing in the latter half of 2007. Evergrow was, accordingly, not inclined to support Global's request to have cucumbers added to the Greenhouse Vegetable Crops it is authorized to market.

4 Commission Findings

28. On January 17, 2007 the B.C. Farm Industry Review Board (FIRB) wrote to the Commission and stated:

The conferring of an agency designation is a privilege under the *Nature Products Marketing (BC) Act*. It is non-transferable and is not approved in perpetuity. The designation of agency may be reviewed by the Commission from time to time and upon any material changes in the conditions giving rise to the initial approval. In the event of a proposed sale of the business of the agency, by way of sale of assets or shares, the party seeking to continue the business must receive the Commission's prior approval. Without prior approval, the agency designation will terminate.

29. There are two (2) questions before the Commission. Firstly, whether to authorize Global to market greenhouse cucumbers. And secondly, whether there is an application by Global or Sun Select to sell or purchase shares in Global.
30. Global applied for authorization to market greenhouse cucumbers on February 26, 2007. Its application was positioned within a possible sale of BC Veg's assets to Sun Select, and Sun Select subsequently converting a portion of BC Veg's tomato Production Allocation to cucumbers. All these matters were "conditional upon the completion of the proposed asset purchase by SunSelect."⁸
31. The Commission finds that there is no application before it regarding the sale or transfer of BC Veg's shares in Global to SunSelect or any other party. The Commission has initiated a review of Global's operations and will consider any application for prior approval of the sale or transfer of BC Veg's Global shares at the time it receives an application and in light of its ongoing review of the Agency.
32. Global is presently authorized to market greenhouse cucumbers and greenhouse tomatoes. This authorization is the outcome of its Agency application in 2001 at which time the members of Global were not producing or marketing cucumbers. Since beginning operations in 2002 Global has not sought authority to market greenhouse cucumbers.
33. None of the competing Agencies opposed Global having authority to market greenhouse cucumbers. Indeed, most indicated that it made good sense for a marketer to have available all three products – tomatoes, cucumbers and peppers.
34. For 2007 Global has only 2 active Producers, both producing greenhouse peppers. With BC Veg's tomato production suspended for 2007 and with no cucumber production assigned to Global, the Agency is only marketing peppers in 2007.

⁸ Letter from Vern Toews, President, Global – February 26, 2007.

35. The Commission recognizes that not having authority to market all three Greenhouse Vegetable Crops is a situation that limits an Agency's ability to offer certain programs to retailers that will better manage price risk. In the Panel's view this provides benefits to Producers shipping through Global and has the potential to enhance orderly marketing, subject to the marketing approach taken.
36. At the same time, the Commission questions whether Global has a marketing program for cucumbers or the staff or expertise to market cucumbers. SunSelect, on behalf of Global, presented a marketing plan that showed increased demand for cucumbers, particularly in the U.S. market, together with a plan to market cucumbers through Oppenheimer. It is clear to the Panel that SunSelect has a marketing plan in conjunction with Oppenheimer. However, SunSelect is not a principal in Global, is not directed to ship through Global, and does not presently have greenhouse cucumber Production Allocation. SunSelect's marketing plan also raised a number of questions concerning the operation of Global and potentially Country Fresh. These will be further examined through the ongoing review of Global in the event that there is a change in ownership of the Agency.

5 Commission Decision

37. Pursuant to Part XV of the General Order, the Commission authorizes Global to market greenhouse cucumbers effective April 1, 2007 subject to Global demonstrating that it has a licensed Producer with greenhouse cucumber Production Allocation marketing through the Agency.
38. Pursuant to Part XIV, Sections 9 – 16, the Commission directs Global to submit a current share register, a copy of the current shareholder's agreement, a report outlining its marketing strategy and approach together with a list of key customers and amounts shipped to each in 2006, and any agreements with Producers shipping through Global. The aforementioned is to be submitted to the Commission by April 30, 2007.
39. Global is also directed to seek prior approval from the Commission for any further changes in the share structure, ownership or operation of Global. Such prior approval is not to be considered automatic and will, in part, depend upon the Commission's current review of Global together with the plans submitted by potential new principals in Global.



George Leroux, Chair

The decision date is April 2, 2007