

June 15, 2016

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VIA EMAIL

File: 064902.0012

BC Farm Industry Review Board
1st Floor
780 Blanshard Street
Victoria BC V8W 2H1

Attention: John Les, Chair
Jim Collins, Executive Director

Dear Sirs/Mesdames:

**Re: Primary Poultry Processors Association of BC
Supervisory Review of Proposed CFC Operating Agreement
Response to CFC's Comments on Section 3.28**

The Primary Poultry Processors Association of BC ("PPPABC") has the following response to the June 9, 2016 letter from the Chicken Farmers of Canada ("CFC") in which CFC submits that the proposed special voting provisions in section 3.28 of the amended Operating Agreement are compatible with section 9.03 of the Federal Provincial Agreement ("FPA").

PPPABC disagrees that the two provisions are compatible. In its previous submissions, PPPABC has raised its concerns regarding the legality of section 3.28 and its effect on downstream stakeholders [See Submissions of PPABC from April 4, 2016 (paras. 12-16) and May 11, 2016 (paras. 19-23)].

PPPABC repeats and relies on its previous submissions. The special vote provisions are not consistent with the FPA, which requires oversight and accountability of CFC decisions where amendments to the operating agreement—including fundamental changes to allocation methodology—are contemplated.

Section 3.28 circumvents provisions in the FPA that hold CFC accountable. In doing so, CFC reduces oversight of its decisions, which will diminish its accountability to downstream stakeholders and, ultimately, the public consumer.

Legal Framework

Section 9.03 of the FPA requires that all amendments to the Operating Agreement be made only with the unanimous consent of the Provincial Supervisory Boards, the Provincial Commodity Boards and the CFC. From a British Columbia perspective, this means that the

Operating Agreement cannot be changed without the consent of the British Columbia Chicken Marketing Board (“BCCMB”) and FIRB.

Certain provisions in the proposed amendments to the Operating Agreement, including the provision at issue here, section 3.28, would permit CFC to circumvent section 9.03 by allowing the Operating Agreement to be amended by special vote.

Section 3.28 of the proposed amendments to the Operating Agreement states:

Amendments to the weighting of components, or the addition or subtraction of components may be authorized by special vote.

“Special vote” is defined in Schedule B of the FPA as: “a CFC vote having the support of all Provincial Commodity Board members present for the vote.” This definition is maintained in the proposed amendments to the Operating Agreement.

Although the definition of special vote remains the same, CFC proposes to dramatically change the operation of the special vote by extending it to a much broader category of decisions, including those made pursuant to section 3.28. This broadening is particularly problematic to the PPPABC because a special vote does not require the consent or input from CFC downstream members. Significant decisions which directly impact the processors’ operations would be possible with no input from them. PPPABC submits that changes to s. 3.28 require unanimous approval under section 9.03 of the FPA, and cannot be amended by special vote.

If s. 3.28 can be amended by special vote, this could result in changes to the methodology of quota allocations as set out in the proposed amendments to the Operating Agreement without the unanimous approval of the Provincial Commodity Boards and the Provincial Supervisory Boards. This is directly contrary to what is required under section 9.03 of the FPA.

Response to Comments of CFC

CFC contends that section 3.28 maintains the dual concerns of stability and flexibility that are built into the FPA. CFC insists that these flexibility mechanisms, including permitting amendments by special voting, are fundamentally important to the orderly marketing system. CFC argues that the differential growth formula must be adaptable to respond to changes in the market because obtaining unanimous approval of amendments as required under the FPA simply takes too long.

While some flexibility is built into the current Operating Agreement in terms of the special vote provisions, section 3.28 is not only directly contrary to section 9.03, it also undermines the purposes of the FPA and extends beyond the kinds of decisions that should be permitted by special vote.

The purposes and objectives of the FPA are set out in section 1.01 as follows:

This Agreement provides for the orderly marketing system for chicken coordinated in a flexible and market responsive manner having appropriate safeguards so as to provide consistency,

predictability and stability in accordance with the following objectives:

- a) to optimize sustainable economic activity in the chicken industry;
- b) to pursue opportunities in both domestic and international markets;
- c) to enhance competitiveness and efficiency in the chicken industry; and
- d) to work in the balanced interest of producers, industry stakeholders and consumers.

[Emphasis added.]

As set out in section 3.15, the proposed amendments to the Operating Agreement include a differential growth formula consisting of components, component weighting and component calculation methodology. If adopted, allocations over the national base will be made pursuant to this methodology. However, should CFC determine that the formula is not working, it would be able under section 3.28 to amend the Operating Agreement to adjust the allocation methodology by special vote.

CFC implies that only necessary but minor adjustments to the quota methodology will be permitted under section 3.28. However, section 3.28 allows sweeping alterations to how over base allocations are made, including the addition or subtraction of the components that comprise the differential growth formula. These components include:

- (a) Provincial Share of the National Base (45%);
- (b) Population Growth (7.5%);
- (c) Income-based Gross Domestic Product (7.5%);
- (d) Consumer Price Index (7.5%);
- (e) Farm Input Price Index (10%);
- (f) Quota Utilization (7.5%);
- (g) Further Processing (10%); and
- (h) Supply Share (5%).

The proposed amendments to the Operating Agreement, including the differential growth formula comprised of the above components, are required to be adopted unanimously by all the commodity boards and supervisory boards. However, under the proposed amendments, any one of these factors could be eliminated by special vote, another factor could be added that would dilute the weighting of the others, or the weighting of these components could radically shift.

The components identified in the methodology, and their relative weighting, is fundamental to FIRB's assessment of whether the proposed amendments to the Operating Agreement should be approved. If FIRB were to approve the proposed amendments, and PPPABC submits that it should not so approve, s. 3.28 would allow the commodity boards to make substantive changes to the Operating Agreement which may undermine the basis of FIRB's approval.

Permitting such fundamental changes to the differential growth formula—i.e. the methodology by which allocations are made—without the input and unanimous consent of the provinces would eliminate the safeguards built into section 9.03, would decrease consistency and predictability and would fail to account for the balanced interests of all industry stakeholders. In short, it would work at cross purposes to the foundational objectives of the FPA.

CFC notes that some things in the current Operating Agreement can be amended by special vote. However, those provisions allow for certain market-responsive adjustments to be made based on the outcome of the application of the allocation methodology. Unlike section 3.28, the current Operating Agreement does not permit the allocation methodology itself to be altered by special vote. Changes to the allocation methodology should require unanimous approval of the commodity and supervisory boards, given that the allocation methodology is fundamental to FIRB's assessment as to whether the public interest is met in the current proposal.

CFC also states that special votes will be rare and will be preceded by lengthy discussions and negotiations. CFC points to its "track record" in using the existing special voting procedures "sparingly and responsibly". This provides little comfort to the processors. First, while CFC may previously have engaged industry stakeholders in discussions and negotiations preceding a special vote, such transparency is not required by the special voting procedures. Second, CFC's consultation record with processors in connection with the proposed amendments to the Operating Agreement, which have been discussed at length in this supervisory review, leaves doubt as to whether its concerns would be accounted for in any special vote made under section 3.28. Ultimately, even if consultation occurs, amendments to the Operating Agreement methodology could still be made without the consent of all stakeholders.

Finally, CFC submits that other safeguards are in place to limit its discretion, including supervision by FPCC and the requirement in CFC's bylaws that all members be present for special votes. However, if FPCC has involvement, it would only come after an allocation has been made. And while CFC's bylaws may currently require that all members be present for special votes, bylaws can be unilaterally amended by CFC and are thus not subject to any oversight at all. These limitations do not provide the accountability to downstream stakeholders that CFC suggests they do.

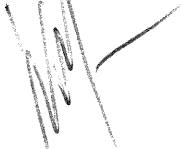
Conclusion

Changes to the Operating Agreement cannot be made except in accordance with section 9.03. Nevertheless, section 3.28 attempts to circumvent section 9.03 of the FPA by permitting an amendment to the Operating Agreement by special vote and without the unanimous consent of the supervisory and commodity boards. In doing so, the proposed amendments to the Operating Agreement go far beyond what is currently permitted to be adjusted by special vote to include fundamental changes to the methodology by which allocations are made. PPPABC submits that section 3.28 is neither consistent nor compatible with the requirements of the FPA or the purposes and objectives behind it. Altering the differential growth formula without the consent of all provinces would decrease stability and predictability and would silence important stakeholder voices.

Yours truly,

MILLER THOMSON LLP

Per:



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