

Supervisory Review of Proposed Amendments to the CFC Operating Agreement (Federal Provincial Agreement for Chicken)

SUBMISSIONS OF THE PRIMARY POULTRY PROCESSORS ASSOCIATION OF BC

APRIL 4, 2016

Overview

1. This submission of the Primary Poultry Processors Association of BC ("PPPABC") responds to the submissions received by FIRB on March 18, 2016.
2. Fundamentally, the PPPABC is opposed to the proposed amendments to the Operating Agreement because they do not address the significant shortage of allocation for BC which has arisen over the past 10 years due to the failure of CFC to respond to the market needs of BC processors. This is not a problem which arose in 2014. It is a problem which arose as early as 2003-2004 as a result of CFC's decision to allocate growth pro rata across regions. The market in the West has grown faster than in other parts of the Canada, but the allocation to Western provinces has not kept pace. This resulted in constant complaint from the Western processors and ultimately the decision by Alberta to leave the national system.
3. The Memorandum of Agreement (the "MOU") signed by all provincial boards in the summer of 2014 forms the basis for the proposed amendments to the Operating Agreement. The MOU does not correct the shortage of supply for BC. Instead, the proposed amendments exacerbate the problem and lock BC into a disadvantaged position which will persist for the duration of the new agreement. The differential growth formula is insufficient to address the supply shortage in BC, and will simply allow for adjustments on the perimeters, based on factors which do not address the fundamental market issues. Further, the proposed amendments grant new powers to CFC which may allow it to further erode volume to the West without the oversight of the provincial supervisory boards. The proposed amendments do not foster a strong, efficient and competitive chicken marketing industry in BC.
4. The BC Chicken Board entered into the MOU and supports the approval of the proposed amendments to the Operating Agreement for political reasons, not because it is in the best interests of the chicken industry in BC. As stated in meetings following the

execution of the MOU, and in its industry communique, the Chicken Board agreed to the MOU because the government was threatening change the composition and mandate of the CFC board of directors if a deal was not reached:

All ten provinces showed the flexibility and willingness to compromise that was required to reach an agreement at the absolute eleventh hour. Failure to reach an agreement would have had far reaching implications that would have resulted in intervention by government that could have completely altered the composition and mandate of CFC and CFC's board of directors. The result of failure at this juncture could have had the immediate result of less representation and decision making authority by Canadian chicken farmers at the CFC table.

Industry Communique July 11, 2014 [Processors
Book of Documents "PD" page 65]

Farm Products Agencies Act

5. The CFC is created under the *Farm Products Agencies Act*, RSC 1985, C. F-4. Pursuant to the Act, the objects of CFC are:

s.21 (a) to promote a strong, efficient and competitive production and marketing industry for the regulated product or products in relation to which it may exercise its powers; and

(b) to have due regard to the interests of producers and consumers of the regulated product or products.

s.41 The object of an agency is to promote a strong, efficient and competitive industry for the regulated products in relation to which it may exercise its powers by promoting the marketing and production of the products and by conducting and promoting research activities relating thereto, having due regard to the interests of producers and consumers and, where applicable, importers of the regulated products.

6. The PPPABC submits that the proposed amendments to the Operating Agreement do not have regard to the interests of consumers, and do not promote a strong, efficient and competitive industry across the country and, in particular, in the West. Western Canadian consumers are undersupplied by product grown and processed in the West. For the last ten years Western processors have been undersupplied with the product they need to maintain a healthy primary processing and further processing industry.

Governing Agreements

7. The chicken industry in Canada is managed pursuant to the 2001 Federal Provincial Agreement for Chicken (the "FPA"). The proposed amendments to the Operating Agreement are intended to replace the current Schedule "B" Operating Agreement.

8. The PPPABC have had concerns with respect to the operation of CFC in the allocation process for a number of years, and this has been exacerbated since CFC began making allocations pursuant to the MOU in the summer of 2014.
9. In January 2015 CPEPC challenged CFC on the legality of it proceeding with allocations made under the MOU. CFC replied that it did not have a legal opinion on the MOU. CFC satisfied itself that its directors faced no legal liability proceeding in the way they did, and relied on the prior approval of allocations by FPCC.

Letter from CPEPC to CFC dated January 20, 2015
[PD page 96]

Email from Mike Dungate of CFC to Robin Horel of
CPEPC dated February 7, 2015 [PD page 94-95]

10. However, there can be no question that CFC is acting contrary to the FPA. By making allocations under the MOU since A-127, CFC has effectively been operating under an amended Operating Agreement without the approval of all supervisory boards, contrary to section 9.03 of the FPA.
11. It is no answer to say CFC is exercising its discretion in making such allocations. Schedule “B” requires quota allocations to be made in accordance with the Operating Agreement. There is no discretion for CFC to use a different method, unless such allocation is in strict compliance with s. 7(1) of the Operating Agreement (which the MOU allocations are not).
12. Further, the proposed amendments to the Operating Agreement contain provisions regarding future amendments that are not compliant with s. 9.03 of the FPA. Section 9.03 of the FPA requires any amendments to the Operating Agreement to be made only with the unanimous consent of the Provincial Supervisory Boards, the Provincial Commodity Boards and CFC.
13. Despite section 9.03 of the FPA, several key sections in the proposed amendments to the Operating Agreement would be subject to future amendment by a special vote. A special vote is defined to mean a CFC vote with the support of all Provincial Commodity Boards present for the vote. It does not require all the Boards to be present or in support. It does not require the support of downstream stakeholders. And it does not require the support of the Supervisory Boards. It is therefore conceivable that significant

modifications could be made the Operating Agreement in the absence of key Provincial Commodity Boards and other non-commodity members of CFC, such as CPEPC.

14. The sections which are proposed to be capable of amendment by special vote are:
 - (a) s. 3.05, setting the anticipated growth rate, regional range, and provincial range,
 - (b) s. 3.27, amending the methodology for calculating the differential growth components,
 - (c) s. 3.28, amending the weighting of differential growth components, and adding or subtracting components,
 - (d) 4.01, establishing a new regional range,
 - (e) 4.03(b), determining new market indicators in the review of regional ranges,
 - (f) 4.02/4.05, changes to the percentages underlying temporary changes to regional ranges, and
 - (g) 4.06, establishing a new provincial range.
15. The sections which contemplate amendment by special vote are significant to the operation of the Operating Agreement, and allowing amendment by special vote will allow CFC to make significant changes to the Operating Agreement without the level of oversight required under the FPA.
16. The Operating Agreement contains the details of how CFC will manage the allocation process, and provides the basis for the supervisory boards granting or withholding their consent to the proposed amendments which are before FIRB on this review. The proposed changes to the voting requirements on key allocation issues represent a fundamental change in governance, giving more discretion to CFC to act without the agreement of downstream stakeholders and supervisory boards.

History of BC's Participation in the National System

17. BC withdrew from the national system in the early 1990s. Before BC agreed to re-enter the national agreement in 2001, BC processors received assurances that allocations would be made responsive to the market needs of the BC processors.

Letter from R. Husdon of BC FIRB to D. Fuller of CFC, Oct. 27, 2000 [PD page 6-8]

Letter from D. Fuller of CFC to R. Husdon of BC FIRB, Dec. 8, 2000 [PD page 9-11].

18. Contrary to the submissions of CFC at para. 15, the bottom up system in the 2001 FPA and Operating Agreement did not “coincide” with BC re-entering the FPA as a signatory province. Rather, the market responsiveness formula known as the “bottom up” process for allocation requests was developed specifically to satisfy BC and was the basis upon which BC agreed to sign the FPA.

Letter from W. Jeske of BCCMB to E. Conroy, Minister of Agriculture of BC re new Federal Provincial Agreement, Apr. 11, 2001 [PD pages 12-13]

Letter from R. Husdon of BC FIRB to BCCMB, June 4, 2002 [PD page 14-15]

Letter from R. Husdon of BC FIRB to D. Fuller of CFC, Oct. 7, 2002 [PD page 16-17]

19. At the time that BC signed the FPA, “processors were assured that the “bottom up” approach . . . provided the necessary safe-guard to enable them to satisfy their marketing requirements.”

Letter from R. Husdon of BC FIRB to BCCMB, June 4, 2002 [PD page 14]

20. The bottom up allocation system was created to recognize that growth of the market differs between regions. BC entered the national chicken marketing plan “with the understanding that the “system had the flexibility to meet the production requirements of all regions.”

Letter from R. Husdon of BC FIRB to D. Fuller of CFC, Oct. 7, 2002 [PD page 16]

21. The Western markets have grown more quickly than other parts of Canada, and processors in the West consistently request allocations at higher levels than Central and Eastern Canada. However, the current system as it is being implemented by CFC has not been able to meet the production requirements of Western Canada.
22. At para. 59 of its submissions, CFC suggests the processors do not understand the effect of regional and provincial ranges and the anticipated growth rate. This is not a correct assertion. What the processors understand is what was assured to them upon the re-entry of BC into the national system—i.e. that the system would be market responsive based on regional requirements of the processors.

23. The processors' expectation of a true bottom up allocation system is consistent with the position of FIRB in 2013:

... The system for chicken provides a bottom up process intended to translate legitimate requests for increased allocation to meet demonstrated market demand. If such allocation decisions are not being made, it leads to the question whether sufficient accountability and strategic assessment is being applied to national allocation setting.

Letter from BC FIRB to CFC and FPCC, April 11, 2013, p. 3. [PD page 28-33, at p. 30]

24. At para. 16-17, and 60 of its submissions, CFC admits that the bottom up allocation system and allowance for differential growth stopped being employed by CFC in its allocation system within a few years of the new FPA becoming operational, and CFC began allocating pro rata across all regions. CFC suggests the pro rata allocations began in 2005. In fact, CFC began making pro rata allocations as early as 2003-2004.
25. The movement to pro rata allocations began when CFC abandoned the use of regional ranges, as set out in the current Operating Agreement. Regionally differentiated allocations are of paramount concern to the West. The failure of CFC to use the regional range mechanism in the current Operating Agreement led to the regional disparity in supply between the West and Central regions, and ultimately led to Alberta leaving the national system.
26. Pro rata allocations are directly contrary to the assurances given to BC when it agreed to the FPA in 2001. The Western processors stopped providing their market requirement information to the BC Board in 2006-2007 out of protest with the allocation system. The Western market needs had been disregarded for a number of years and pro rata allocations were consistently made regardless of the Western needs. As such, contrary to the assertion by CFC at para. 16, this protest by the processors did not cause the pro rata allocations, but rather was in response to the pro rata allocations.
27. As a result of the failure of the allocation system to adequately address the market needs of the West, two major Western processors, Hallmark Poultry and Sunrise Poultry, pulled out of the CPEPC in approximately 2003 or 2004, and did not join back in until 2005. CPEPC was not able to deliver positions that reflected the needs of the West. In 2013, the Western producers began submitting their own independent market needs to the CFC process. In December 2014 CPEPC for the first time submitted to

CFC a request which identified that the Western processors sought an allocation higher than the allocations sought the Central and Eastern regions.

Letters from Western processors to CFC dated
November 8, 2013, January 15, 2014, and
November 4, 2014 [PD page 34-36]

Letter from CPEPC to CFC dated December 23,
2014 [PD page 90-93]

28. In para. 17 CFC asserts that BC initially took greater advantage of market development quota. However, this statement does not reflect what the market development quota was and why it was put into place. Because the BC processors did not have access to supplemental white meat imports, through TRQ and fowl imports, in the same volume as the processors in Central Canada, BC processors developed a unique program which they called the "export program". The kilograms produced under this additional "export" production were then exported and sold by the processors internationally. The kilograms exported were comprised, for the most part, of back halves, or dark meat, allowing the equivalent kilograms of white meat to stay in the domestic market. In this way the BC processors were able to acquire additional white meat for the domestic fresh and further processed markets. When BC re-entered the FPA, the market development program was amended to capture the BC export program.
29. After re-entry, BC processors continued accessing the export program they had developed, although under the FPA the program was renamed "market development quota." The product acquired by the BC processors under market development quota represented growth in the BC fresh and further processed markets. It is not correct to assert, as CFC does in para. 17, that the provinces grew at more or less the same rate but for the market development quota. The use of market development quota in fact demonstrates that BC was growing at a differentially increased rate over other regions.

Consultation

30. PPPABC takes issue with the statement made in para. 35 of the CFC submission and says the process has not been fair, transparent or inclusive of the Western processors and the interests of the Western processors.
31. The BC processors were not adequately consulted on the content of the MOU before it was signed by the provincial boards. BC processors acknowledge there were updates provided from time to time by the BC Chicken Board. However, the Chicken Board did

not engage the processors in meaningful discussion about the rationale for proposed changes, or the impact of the proposed changes on the BC industry. In fact, over the course of the development of the MOU there was little, if any, meaningful dialogue on ramifications and potential repercussions to the BC industry if the MOU was implemented.

Provincial Chicken Board

32. Periodically the provincial board gave updates to the Pricing and Production Advisory Committee (PPAC) on the general state of negotiations. However prior to the provincial boards signing the MOU in July 2014 no content of the proposed agreement was provided to the processors at the PPAC meetings.
33. In 2012, while the processors were invited to provide some input to an analysis on differential growth prepared by Don Ference, they were not consulted with on the development of the MOU itself.
34. On December 6 2013 representatives from the Western processors attended a meeting with the Western boards where the concepts under negotiation were discussed. At that meeting the processors made a presentation outlining their concerns, and attempted to educate the provincial boards. The processors outlined all the factors to explain why the West was chronically short of product, and why the West needed an increased allocation to correct the ongoing market imbalance. No draft of the MOU was presented to the processors for their input at this meeting.

Excerpt from December 6, 2013 presentation
[PD page 37]

35. On May 15, 2014 the processors and the Chicken Board met at PPAC to discuss their concerns with CFC's allocations under the then current Operating Agreement and their concerns with what they understood were the current positions in the negotiations for the MOU. Specifically, the BC processors identified the following concerns:

The processors position respecting the issue is as follows:

- They feel already disadvantaged and feel the situation is getting worse (significantly more product is moving into the west from outside of BC). It has a significant impact on processors by negatively affecting price and ability to service customers.
- They do not want the Board to give up any product to Central Canada, effectively drawing the line at providing some product for redistribution in Western Canada only.

- Processors willing to make accommodations for Supply Management but limit it to giving up a limited amount of kilograms within the Western Region.
- BC processors are willing to do more to garner support in the other western provinces respecting the separation of issues, TRQ and fowl. (total supply)
- BC Processors support a regional allocation (preferably using the existing regional ranges in the CFC Operating Agreement).
- Processors are unhappy with the directions the DG discussions have progressed, giving credence to team Ontario's of claim of requiring more simply to increase Ontario's power position at the expense of the other provinces.

Minutes of PPAC meeting May 15, 2014 [PD page 60-64 at page 60-61]

36. None of the concerns raised by the processors in the May 15, 2014 meeting were addressed in the MOU or the proposed amendments to the Operating Agreement.
37. The BC Chicken Board did not meet with the processors as a group, or individually, to review drafts of the MOU prior to the MOU being agreed to in July 2014.
38. The first time the BC Chicken Board met directly with the BC processors to present the MOU (or any draft of the MOU) was on July 23, 2014, when the Board presented the signed MOU and told the processors that BC would have to agree to it.
39. The justification given by the Board to the processors was that if BC did not agree to the proposed amendments to the Operating Agreement, FPCC would amend or dissolve CFC. The justification for the proposed amendments to the Operating Agreement was that if the proposed amendments to the Operating Agreement were not accepted, the composition and role of CFC was in jeopardy. The Chicken Board did not justify the MOU on the basis that it benefited BC processors, or satisfactorily addressed the supply imbalance between Central Canada and the West which had been the source of frustration in the allocation system for over 10 years.

Notes of meeting July 23, 2014 between Board and
PPPABC [PD page 7-70]
Industry Communique, July 11, 2014 [PD page 65]

CFC - CPEPC

40. CPEPC was excluded from the negotiations between CFC and the provincial boards, with two exceptions as discussed below.

41. Periodically CFC would provide updates as to the process ongoing with the provincial boards, but the substance of the negotiations was not reported on in any meaningful way. There were no stakeholder consultations at annual or summer meetings, as alleged in para. 36 of the CFC submissions. There was simply periodic reporting in the meetings.
42. CFC did not regularly attend stakeholder meetings with the Western processors, contrary to para. 36 of the CFC submission.
43. At para. 30 of its submission CFC states that the downstream stakeholders (including CPEPC) participated in a December “negotiation” within the context of the ongoing mediation. This is incorrect. In December 2013, CPEPC approached CFC asking to be part of the mediation process which was ongoing with CFC and the provincial boards. Contrary to para. 30 of CFC’s submission, CFC refused to allow CPEPC to participate. Rather, on one occasion CPEPC was invited to make a presentation to the mediator. This presentation was not a dialogue or engagement in the mediation. It was simply one opportunity CPEPC was given to present information. Once the presentation was complete, Mr. Horel for CPEPC left the process and was not invited to participate or even observe the mediation. And while the mediator prepared a report, the report has never been produced to CPEPC or the processors.

Presentation by CPEPC to CFC differential growth
facilitation, December 18, 2013 [PD pages 38-55]

Letter from CPEPC to CFC, December 19, 2013
[PD page 56]

44. In March 2014 CPEPC met with nine provincial boards, including the BC Chicken Board, and discussed a proposal to accommodate the re-entry of Alberta in the national system. The Western provinces agreed to give up allocation to Alberta, and also Quebec would give up allocation to Alberta. The Western processors agreed with this proposal as it would move more allocation to the West, where it was needed. The West could not agree with any product moving to Central Canada. Ontario would not accept the proposal as it did not direct additional product to Ontario. This was the second and last time CPEPC was directly involved in the negotiations of what became the MOU.

Letter from Western processors dated April 16,
2014 [PD pages 57-59]

Consultation after the fact

45. At para. 37 of the CFC submission, various statements are made about meetings with and input from the processors. However, all of this “consultation” was after the fact. The MOU was already accepted by CFC and the provincial boards on July 8, 2014, and after that very little of substance could be changed.
46. To the extent changes have been made to the market development program after acceptance of the MOU, these changes illustrate the lack of understanding at the level of CFC and the provincial boards on issues which are of central importance to processors.
47. For example, the provincial boards do not understand that the market development quota program is economical only if the international price for dark meat is high enough that the processors do not experience a loss on the exports. As discussed above, market development quota is a mechanism for processors to increase the white meat component of their domestic allocation, by exporting excess dark meat. Western processors developed it to assist them in their competitive position against processors in Central Canada who have access to high levels of imports, both TRQ and fowl.
48. For a number of years, however, the international market for dark meat has become depressed, and the processors are now losing money on export. Because processors need to at least break even for the program to be effective, the market development quota has not been taken up by processors at the levels seen earlier. Thus, the increase in market development quota to 16% of the domestic quota was not asked for by the Western processors and does not assist them.

see para. 62 of CFC submission and associated
table which shows diminishing access to MDQ

49. The true impact of this state of affairs is a further market imbalance for Western processors. Western processors cannot import white meat in sufficient volume to compete with Central Canada because they don't have the same access to TRQ and fowl, and now the export program is no longer cost effective. All of this results in less available white meat for Western processors and further processors. Increasing the percentage of market development quota will not assist – it simply makes available to Western processors more product on which they can lose money. The Saskatchewan processors (which also have common interests with BC processors) were consulted by the Saskatchewan Chicken board on this increase, and the processors expressly told

the Board that they did not want it. The processors met with the Saskatchewan Agri-Food Council the same day and said they did not want more market development quota. Nevertheless, changes to the proposed amendments to the Operating Agreement to increase the available market development quota were made against the advice of the processors.

50. Another example of the lack of understanding of the provincial boards when negotiating components of the proposed amendments to the Operating Agreement in the absence of key input from the processing sector can be seen in the treatment of the further processing sector in the formula for differential growth. The proposed amendments to the Operating Agreement introduce a component to the differential growth formula to address further processing. The proposed amendments to the Operating Agreement state that a calculation will be made based on the provincial share of the federally registered establishments that are designated 6f by CFIA. The method proposed by CFC is not helpful or accurate in assessing the needs of the further processing sector.
51. The location of “6f designated further processing facilities” is not appropriate as a proxy to allocate further processing volume. The definition of a “further processed product” has never been well articulated, nor is there agreement in the industry as to what constitutes a further processed product. 6f designations do not distinguish between plants that use domestic and imported chicken, nor do they distinguish between plants that process domestic broiler meat vs those who might use fowl as a raw material. The 6f designation also includes any plant that might have poultry as an ingredient (eg a pizza plant that uses chicken as a topping). It does not distinguish between large and small volume production facilities.
52. CFC has attempted to deal with the further processing methodology. A survey was proposed and rejected by the processors for a number of reasons, which are outlined in correspondence dated April 21, 2015.

Letter from Ron Kilmury on behalf the Western
processors, April 21, 2015 [PD pages 99-100]

53. CFC presented an interim solution in October 2015 to address the further processing sector. This remains unsettled at present. The proposed amendments to the Operating Agreement which are before FIRB contain the deficiencies noted by the processors at the outset. If the proposed Operating Agreement is accepted, there can be no guarantee that the problems with the further processing methodology will be corrected,

leaving the processors with a flawed methodology. The processors are not content to rely on CFC to use a special vote to change this methodology, as discussed above. Further the special vote does not require input from or disclosure to the further and primary processing sectors, which is clearly problematic given the lack of understanding of the provincial boards with this issue.

Letter from CFC to FPCC dated October 16, 2015
[PD pages 106-107]

54. The processors attempted to convince the provincial boards to make changes to the agreement in the spring of 2015. CPEPC suggested layering the concept of a regional differential growth factor onto the MOU and not eliminating the market responsiveness pool. The proposal from the Western processors was generally acceptable to the Western boards, but the prospect of bringing Central Canada on side was insurmountable. There was no incentive for Ontario to make further changes given that under the proposed amendments to the Operating Agreement Ontario improved its competitive position over Western processors by depriving the Western processors of needed product and receiving for itself additional product which it could then market in the West.

Memorandum from CPEPC to CFC dated February
17, 2015 [PD page 97-98]

Letter from Chicken Farmers of Saskatchewan,
Sofina Foods, and Prairie Pride Natural Foods to
Agri-Food Council, Saskatchewan, dated July 29,
2015 [PD page 101-102]

55. The Chicken Board did meet with the Pollon of Hallmark in February 2015. However, this meeting was not an attempt to understand the processor's concerns, but was an attempt to persuade the Pollons to remove their support from the position of the Western processors. The Chicken Board suggested that if the MOU was not approved it might put supply management at risk.
56. At para. 38 of the CFC submission, CFC states that additional production is allocated to BC for specialty production. The specialty allocation for BC is simply a recognition that BC miscalculated its specialty production when the original 2001 FPA was implemented, resulting in specialty production being grown within mainstream production limits for many years. This situation was unique to BC – in the other provinces specialty

production was grown outside the mainstream allocation, and the mainstream allocations were unaffected by specialty production.

57. In para. 41 of its submission, CFC states PPPABC has never complained to FPCC about the allocations made under the MOU. Western processors have certainly challenged allocations under the MOU, including launching appeals in BC, Saskatchewan and Manitoba of the A-127 allocation. The appeal launched by PPPABC in fact formed the genesis of the within supervisory review, as the PPPABC consented to its appeal being dealt with through this supervisory review process.
58. Additionally, although a formal appeal was not filed CPEPC complained to Laurent Pellerin of FPCC on numerous occasions, Mr. Kilmury on behalf of the processors met with Mr. Pellerin to discuss concerns with the allocations under the MOU, and Mr. Pellerin met with the Western processors in July 2014 where the processors registered their complaint about the use of the MOU in making allocations for A-127.
59. Further, given the allocations made pursuant to the MOU were preapproved by the FPCC, this preapproval may in fact have compromised FPCC on any appeal of such allocations.

Differential growth – comparative advantage

60. The FPAA states that CFC must consider comparative advantage of production when making quota allocations for additional growth:

s. 23 (2) In allocating additional quotas for anticipated growth of market demand, an agency shall consider the principle of comparative advantage of production.

61. This has been expressly recognized by FIRB in various correspondence, including as recently as September 15, 2015.

Letter from FIRB to Chicken Board and processors,
September 15, 2015 [PD page 103-104, at page
103]

62. In 2005 NAASA reported to the Federal/Provincial/Territorial Ministers of Agriculture on the principles underlying comparative advantage. The factors suggested as relevant included population growth, market growth, processing capacity, expansion capabilities, and environmental and bio-safety concerns. In 2013 FIRB accepted these principles as still relevant.

Letter from FIRB to CFC and FPCC, dated April 11,
2013, page 2 [PD page 28-33 at page 29]

63. Similarly, FPCC issued Guidelines for the Consideration of Comparative Advantage of Production (the “Guidelines”), with the purpose of defining FPCC’s interpretation of comparative advantage under s. 23 of the FPAA and assisting the FPCC in determining whether the principle of comparative advantage has been given due consideration in the allocation of additional quotas based on growth in market demand. The Guidelines, which apply to all national marketing agencies established under Part II of the FPAA, came into effect on September 1, 2013.

Farm Products Council of Canada Guidelines for the Consideration of the
Comparative Advantage of Production [PD page 1-5]

64. The Guidelines mandate that an agency have regard to a number of indicators when determining allocations based on comparative advantage. These indicators fall into three broad categories, including:
- (a) Production: indicators or variable which demonstrate a province or region’s advantage in the production of the regulated product.
 - (b) Processing: indicators or variables which demonstrate a province or region’s advantage in the processing or further processing of the regulated product.
 - (c) Retail and Consumption: indicators or variables of both the size and growth of the retail industry, consumer market or demand within a given province or region.

Farm Products Council of Canada Guidelines for the Consideration of the
Comparative Advantage of Production [PD page 3-4]

65. The differential growth factors in the proposed amendments to the Operating Agreement do not track the Guidelines. GDP and CPI are not proxies for the retail industry, consumer market or demand for a specific commodity, namely chicken. CFC must assess the true market growth for chicken, not general market indicators.
66. In para. 21(d) CFC states that the Western processors began expressing concerns about differential growth in late 2010. This is not accurate. The Western processors had concerns with the failure of CFC to provide the West with differential growth going back as early as 2003 – 2004, when CFC began making pro rata allocations. These concerns were expressed repeatedly, and resulted in the processors taking the steps as outlined above. While Alberta suffered the most as a result of the failure of differential growth, the processors in all the Western provinces were unable to obtain sufficient

provincial production to meet their market needs throughout most of the 2000s to the present.

67. With respect to the differential growth formula, the processors were not given specifics of the differential growth formula until July 2014, after the MOU was signed by the provincial boards. The fundamental concerns of the processors relate to the fact that the formula does not address the real issue – which is the need to have a flexible allocation process that reflects true market needs and which assesses relevant comparative advantages in a dynamic and meaningful way. The formula approach does not address the substantive problem – namely that the West needs more allocation. Instead it superficially appears to address certain factors in a formulaic way that does not actually address the true issue. This formula will not deliver the production to BC which BC requires.
68. Unlike the FPCC Guidelines and the factors cited by NAASA, the MOU methodology does not address market realities and is thus not responsive to current market needs. Rather the methodology requires consideration of factors like GDP and CPI, which are backwards looking and of little assistance when allocating for the future. The end result is that the methodology employed in the MOU does not ensure that allocations are based on present need.
69. When the processors were provided with the MOU in July 2014 they did object to the differential growth formula. In particular they were deeply concerned with the formula approach for further processing, which the BC Board presented to them as a victory but in fact would have resulted in further losses to BC further processors. The inclusion of the further processing formula, as developed by the BC Board in the absence of any input from the BC processors, points to the failure of the BC Board to adequately consult with key stakeholders on issues with which the BC Board does not have a full understanding.

Letter from PPPABC to CPEPC, FPCC, CFC,
provincial marketing boards and provincial
supervisory boards, dated April 16, 2014 [PD page
57-59]

Letter from PPPABC to CPEPC, FPCC, CFC,
provincial marketing boards and provincial
supervisory boards, dated August 5, 2014 [PD
page 71-73]

Letter from Western processors to CPEPC, CFC,
FIRB, and BCCMB dated April 21, 2015 [PD page
99-100]

70. At para. 43(a) CFC states that the proposed amendments to the Operating Agreement meet its obligation to consider comparative advantage. However, the formula created by proposed amendments to the Operating Agreement does not fundamentally and substantively address the historic shortage of product in BC, and the supply imbalance experienced by Western processors. More concerning is that this formula will lock BC into another decade of undersupply and eroding competitive position as against Central Canada.
71. At para. 43(b) CFC states the proposed amendments to the Operating Agreement have allowed Alberta to come back into the national system. While PPPABC supports the re-entry of Alberta, the differential growth formula will continue to exacerbate the disparity which arose in the past and motivated Alberta to leave. Differential growth and a consideration of comparative advantage must allow for ongoing assessment of real market needs. This will not be achieved on a formula that assesses past performance indicators—such as GDP and CPI-- many of which are quite irrelevant to market considerations for processors.
72. At para. 43(c) CFC draws the conclusion that the MOU has created or facilitated a growth in the market. This is not factually correct. The MOU has coincided with a period of strong, short term growth due to external influences, such as domestic replacement of illegal fowl imports and short term increases in beef prices over the last 18 months. The increased beef pricing in recent years is demonstrated in the Urner Berry price graph from 2003 to 2016. The growth in the chicken market from 2014-2015 was unusual and is not expected to continue for reasons entirely unrelated to the MOU. Per capita chicken consumption has not changed significantly over the last 10 years.

Urner Berry Pricing [PD page 109]

Per capita consumption of various meats 1960-
2105 [PD page 108]

73. At para. 46 of its submissions, CFC sets out what it argues are the negatives of not signing the proposed amendments to the Operating Agreement. However, what FIRB must consider is whether the proposed amendments to the Operating Agreement are in the best interests of the BC industry. Do the proposed amendments to the Operating

Agreement address the supply imbalance in the West, does it provide a satisfactory mechanism to ensure that the market needs will be met in the future, will it further compromise and potentially jeopardize the further processing industry, does it meet consumer needs in BC, and ultimately is it in the best interests of BC as whole, including all participants in the supply chain and consumers of the products?

74. PPPABC says that the proposed amendments to the Operating Agreement do not address the supply imbalance in the West. While it does move some allocation to Alberta, which is supported by PPPABC, it also moves product out of the West to Ontario. PPPABC says the mechanism for differential growth will not effectively address ongoing market needs for BC processors. The supply imbalance in the West, which is fundamentally not addressed in the proposed amendments to the Operating Agreement, will continue to drive processing to Central Canada, and the entire Western value chain will suffer. A further strengthening of the Central Canadian processing and further processing industry will not benefit BC and will result in investment moving out of BC to Central Canada.
75. Increased volumes in Central Canada and reduced volumes in B.C. will fundamentally erode the competitiveness of the BC Poultry supply chain. It will further disadvantage growers, processors, further processors and eventually the BC consumer. The farm, processing, and further processing industries in BC will all suffer with reduced volume while at the same time the stakeholders in Central Canada will see an improvement in all these areas. Reducing the financial competitiveness in the BC industry is not in the best interests of the BC poultry industry or BC consumers.
76. At para. 66-70 of its submission, CFC takes issue with the concerns raised by PPPABC with comparative advantage formula. The PPPABC has a fundamental concern with the use of a formula to assess comparative advantage and the need for differential growth. The assessment is more nuanced than any formula will allow. Instead of the market controlling where the product is needed, as assessed by the processors who must respond to their markets, the formula will simply send product where the formula dictates. The focus on GDP and CPI are indicative of the problems with a rigid formula. For example, there is no historical correlation between GDP or CPI and differential provincial chicken consumption, yet under this formula GDP and CPI will be factors. GDP and CPI also assess growth backwards in time, not forward where the market needs are. These factors highlight the fundamental problems with the use of a formula.

Impact of TRQ and fowl

77. In its submission CFC takes the position that it has no control over TRQ and fowl imports, and as such it cannot take these into account in determining provincial allocations.
78. This is a disingenuous position for CFC to take. CFC cannot refuse to take into account the supply share available to Central Canada through TRQ and fowl. This has been recognized by FIRB in 2013:
- Domestic allocation is flawed. While pricing is one influence on the national allocation, there are other distorting influences that are not appropriately considered in the national allocation process. These influences – such as tariff rate quota, plant supply quota and spent fowl imports – have a significant repercussion on the volume and timing of regional processor production requests in the bottom-up allocation system. While some of these are outside of direct CFC control, there may be more effective and accountable ways to take them into consideration in the allocation setting process.

Letter from FIRB to CFC and FPCC dated April 11,
2013 [PD page 28-33 at page 30]

79. CFC has extensive data on the distribution of TRQ across the country. In a presentation in 2012 by Yves Ruel of CFC, CFC presented data which confirmed the vast majority of TRQ came into Ontario, closely followed by Quebec. The remainder of the country has access to insignificant amounts of TRQ. In addition to TRQ, Central Canada receives the bulk of the fowl imports.

CFC Chicken Tariff Rate Quota [PD pages 21-26,
in particular page 26]

80. The significant additional kilograms of chicken coming into Central Canada through TRQ and fowl must be taken into account when determining the market needs of PPPABC. The processors in Central Canada have a significant advantage over the processors in the West. The volume of the additional production is significant, and the cost of the additional production is much less than domestic production. The additional kilograms are directed to the further processing sector and have allowed the further processing sector in Central Canada to dominate the frozen chicken market across the country.
81. The total supply into the regions was demonstrated to the Western boards at the December 6, 2013 meeting held with the processors. A power point presentation was made to outline the processors' concerns. One key slide illustrated the significant impact of fowl and TRQ into the Central region, as against the West. While the West receives 32% of the domestic allocation, when fowl and TRQ are added into the supply mix, the West's supply share is reduced to 28%. Conversely, Central Canada starts with

60% of the domestic allocation, but when fowl and TRQ are added into the total supply, Central Canada's share is increased to 65%.

Excerpt from December 6, 2013 presentation, [PD page 37]

Chicken meat supply and disappearance 2013 [PD page 27]

Concerns Relating to new method of Allocation of Chicken Production (excerpts), [PD page 74-77 at page 75]

82. Recent surveys of retailers in BC, Alberta and Ontario demonstrate that virtually all the chicken in freezer sections originates out of Central Canada. JD Sweid and Sunrise Poultry conducted surveys of large retailers in BC, Alberta and Ontario to assess where the frozen further processed products being sold had originated. The surveys demonstrated that in BC and Alberta 85.4% of the product came from non-Western processors. In fact, 75% of further processed product sold by retailers in BC and Alberta originated with processors in Central Canada. The surveys also demonstrated that Central Canadian processors also dominated in sales out of retailers in Ontario. Only 4% of the product sold in Ontario originated with BC processors.

Retailer Audit Report, March 2016 [PD page 115-131]

83. Similarly, Central Canadian processors dominate sales to top volume restaurant chains in Canada. Of the top ten restaurants in terms of market share, six are supplied either 100% or 90% from processors outside of BC, one is supplied 50% from processors outside of BC, two are supplied with fresh product within the regions, and only one national restaurant chain is supplied by BC processors. The lack of supply share available for Western processors is having a direct, negative impact on the ability of Western processors to compete on regional and national contracts. The largest restaurant chains in BC are supplied by processors outside BC. In other words, chicken processed in Central Canada dominates restaurant sales.

Poultry Supply to Top Restaurant Chains in Canada [PD page 105]

84. The supply imbalance in favour of Central Canada has allowed product from Central Canada to effectively displace Western processors in the frozen sections of the majority of the major Western retailers. Western Canadian processors are also disadvantaged

across the country as Central Canadian processors dominate Ontario retailers. As such, it cannot be said that Western processors have displaced Central Canadian suppliers in the same way.

85. The allocation system must take into account product available to processors from all sources – domestic, TRQ, fowl, and any other sources. If CFC only addresses domestic allocation in isolation, the supply imbalance will never be addressed, Western processors will continue to be disadvantaged and Western consumers will continue to purchase product from elsewhere irrespective of their desire to purchase from within local regions.

Supply imbalance

86. Allocation of chicken is complex. Processors make their requests to CPEPC based their knowledge of the markets they are selling into – what is needed, and what the market can bear. Western processors in making this calculation have to look to their competition across the country. For over 10 years there has been a supply imbalance in favour of Central Canada which allows product from Central Canada to come into and overwhelm Western markets and displace Western processors from Western customers. The Western processors need more product to establish and maintain their markets. Central Canada traditionally makes much lower requests than the West. But every time an allocation increase is made to Central Canada pro rata with the West, this introduces more product into the system for Central Canadian processors, which turn around and sell that excess product into Western markets. The supply imbalance is perpetuated.

Letter from Western processors to CPEPC, CFC, FPCC, provincial marketing boards, and provincial supervisory boards, dated April 16, 2014 [PD pages 57-59]

Letter from Western processors to CPEPC, CFC, FPCC, provincial marketing boards, and provincial supervisory boards, dated August 5, 2014 [PD pages 71-73]

87. At para. 61 of its submissions, CFC suggests that Western processors and BC processors in particular receive more allocation than they request, and have done so since A-127. CFC Table 1 is designed to illustrate this. However, the CFC Table 1 is misleading, as is the suggestion that Western processors have nothing to complain about as their requests have been exceeded.

88. CFC Table 1 does not show the Central Canadian requests. Because Central Canada request a significantly lower percentage increase each period, it disproportionately benefits from the pro rata allocation. For example, whenever the West gets an amount 1% higher than their request, the Central Canadian processors receive an allocation 2% higher than their request. This is the result of the pro rata allocation which CFC has implemented since 2003-2004. It is even more extreme with the Eastern processors who have a high cost environment, and no request for growth. They too receive a pro rata allocation increasing their production in provinces which absolutely have no ability to produce and process it on a cost effective basis.
89. The pro rata allocations made by CFC for over 10 years are contrary to orderly marketing, because the markets evolve at different rates across the country. It is no answer to the Western processors to say that CFC issued allocations close to their requests, when at the same time CFC is issuing allocations to Central Canada in excess of its market needs. Rather than creating an orderly supply across the country reflecting provincial and regional market needs, the pro rata allocations over the past 10 years have oversupplied the Central region providing it with a competitive advantage over the West and the ability to significantly encroach on the market share of Western processors. The proposed amendments to the Operating Agreement do nothing to address this historical fact.
90. At para. 63 of its submission the CFC argues that BC is not under supplied relative to its population. However, what CFC fails to include in its calculation is the substantial product coming into Central Canada through TRQ and fowl. This additional production must be considered when assessing the true needs and impacts of the allocation system on the processors. While CFC only allocates domestic production, when processors assess their market needs and supply needs, they include all product available to them that allows them to produce the products their markets require. When assessing the volume of raw product available to them, domestic, TRQ, MDQ, and fowl are all taken into account. CFC must recognize the other sources of product available to processors across the country when making domestic allocations, particularly where certain sources are significant and located in Central Canada effectively to the exclusion of the Western provinces. When all sources of product are included in the calculation, the West is undersupplied relative to its population. On Western retail counters and in food service restaurants, this imbalance has been conclusively demonstrated to show that Western processors have been displaced in favor of Central Canadian product.

Excerpt from Concerns Relating to new method of
Allocation of Chicken Production [PD page 74-77 at
page 75]

91. The inclusion of any additional supply share to Ontario under the proposed amendments to the Operating Agreement is unacceptable to the BC processors. Ontario has not demonstrated any need for this additional production, and Central Canadian processors consistently ask for less percentage allocation than the Western processors. In fact, Robin Smith of the Chicken Board advised the processors that Ontario did not provide a proposal for why it should receive additional allocation under the proposed amendments, and never justified a need for more product. It is clear that Ontario demanded the transfer of supply share from BC to Ontario simply in order to improve the competitive position of Ontario over the West.
92. In contrast, BC has demonstrated ongoing need for additional production and it is being asked to give up production. To the extent some production from other provinces must be directed to Alberta, BC processors see this as reasonable. However, no production should be directed to Ontario. It will only be sold back into the West to further displace Western processors from Western retail and food service customers. This is not in the best interests of BC farmers, processors, further processors, Western Canadian consumers, or the national system.

Current state of supply for BC

93. BC processors must be able to remain competitive in the Canadian market. The two pressures on competitiveness are supply and price. Pricing of live product continues to be a challenge for Western processors. They cannot maintain their competitive position if they are also not able to get the supply of product they need. The proposed amendments to the Operating Agreement will have a significant impact on the BC processors' ability to obtain the volume of product they need. The proposed amendments perpetuate and aggravate the supply share advantage held by Central Canadian processors, which is presently resulting in BC processors being pushed out of Western frozen and further processed markets.
94. At present, BC processors and further processors are being forced to import raw product from third party suppliers. There is simply not enough production available in BC through domestic allocation and high cost MDQ for the further processors to meet their needs. The cost of this product is higher than it would be and the product is not as fresh

as it would be if produced in BC. Further, there are additional costs associated with transportation which have to borne by the processors. It is being purchased to maintain market share and plant efficiencies. It is not a long term sustainable model. BC further processors require access to sufficient fresh local product to remain competitive nationally.

95. Sunwest and JD Sweid have compiled a summary of the volume of third party product they have had to bring into their BC further processing plants to meet their current customer needs. The combined volumes, using bone-in kg, DFAIT methodology, for the past three years are:

2013 – 12,210,536 kg
2014 – 8,616,045 kg
2015 – 10,280,352 kg

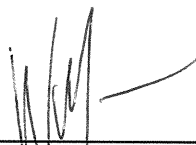
96. These volumes represent between 6-9% of the total domestic allocations for BC. In other words, the two major further processors in BC are unable to meet their productions needs through the domestic allocation process.
97. These imports are being brought into BC to simply meet existing sales. The BC processors and further processors are constantly on the defence, acquiring product to maintain what they have as Central Canada continually takes more Western market share. To overcome the current displacement created by Central Canadian product, the BC processors require substantially more volume than what they have received over the last 10 years through CFC.

Conclusion

98. The BC processors have been underserved through theCFC allocation process for the past 10 years. While the current Operating Agreement contained a mechanism for regional and provincial ranges, which would have accommodated Western growth, CFC chose to abandon that process and issue allocations pro rata across the country.
99. The last 10 years of allocation have resulted in a significant supply imbalance in favour of Central Canada, and a loss of competitive position for Western processors. Western processors and further processors have significantly lose market share, especially in the prepared and frozen food market sectors, and the trend is accelerating. Further processors are importing product just to defend their shrinking market share and do not have sufficient supply to take back markets lost to Central Canada.

100. The supply imbalance harms the entire BC industry and should have been at the forefront of the negotiations on the MOU and the proposed amendments. The supply imbalance needed to be corrected first. Only once it was corrected could the parties fairly begin looking at differential growth and comparative advantage assessments for the future.
101. The proposed amendments to the Operating Agreement do not fundamentally address the competitive disadvantage BC is in as a result of 10 years of pro rata allocations. The process did not adequately take into account the impacts on the BC industry and consumer markets. The BC Chicken Board and CFC failed to properly consult with the processors and take their interests into account. The differential growth formula is inadequate to address the shortfall in allocation presently experienced by BC processors, and is also inadequate to address future market needs. The formula takes into account irrelevant factors and does not assess the most relevant factors – namely the market needs of the processors.
102. The processors say that for the proposed amendments to be acceptable, they must include regional range components which can be relied upon to be implemented. There can be no discretion for CFC to avoid its obligation to respond to the market needs of the different regions, especially where those needs vary between regions.

Dated: April 4, 2016



Wendy A. Baker, QC
Counsel for the Primary Poultry
Processors Association of BC

