

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

**Supervisory Review Re:
Chicken Operating Agreement Amendments**

**CHICKEN FARMERS OF CANADA:
SUPPLEMENTARY DOCUMENTS**

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Chicken Tariff Rate Quota (TRQ)

April 24, 2012



Chicken TRQ

- Role of TRQ
- Eligibility
- Allocation Methodology
- 2012 Allocation
- Import Rules
- 13% Rule

Role of TRQ : Access Level

Agreement	WTO	NAFTA
7.5% Access Level	86-88 Consumption	Prev. year's production
Volume	39.9 Mkg (Constant)	77 Mkg (2012)
In-quota tariff	5.4%	0%
Over-quota tariff	238 to 253%	238 to 253%

Role of TRQ: Support Domestic SM

- > Respect International Obligations
 - » WTO: 39.9 Mkg
 - » NAFTA: 7.5% of previous year's production
- > Predictable Level of Imports
- > Canadian Market
 - » 92.5%: Domestic production
 - » 7.5%: Imports

Role of TRQ: Support Domestic SM

- > Help Balancing the Market
 - » Wings, tenders, breasts
- > Economic Advantage
 - » Difference between Import and Domestic prices
 - » Usually around \$2.00/kg
- > Secondary Market
 - » Possibility to sell the import allocation

Role of TRQ: Other Imports

> Covered by the TRQ

- » Shortages, Imports to Compete, Test Marketing, (above the TRQ)
- » IREP (conditional on re-export)

> Outside the TRQ

- » Non-ICL Products Manufactured Outside Canada
- » Spent Fowl

Eligibility: Quota Holders

> Traditional

- » Companies importing previous to 1979 (CCMA-CFC)
- » 20 companies in 2012
- » 21.4 Mkg

Eligibility: Quota Holders

> Processors

- » Active in the processing sector
- » Buying and selling minimum of 250,000 kg/year
- » 223 companies in 2012
- » 17.9 Mkg

Eligibility: Quota Holders

> Distributors

- » Active in the distribution sector
- » Buying and selling minimum of 220,000 kg/year
- » 183 companies in 2012
- » 7.7 Mkg

Eligibility: Quota Holders

> Foodservice

- » Active in the foodservice sector
- » Buying and selling minimum of 220,000 kg/year
- » 61 companies in 2012
- » 3 Mkg

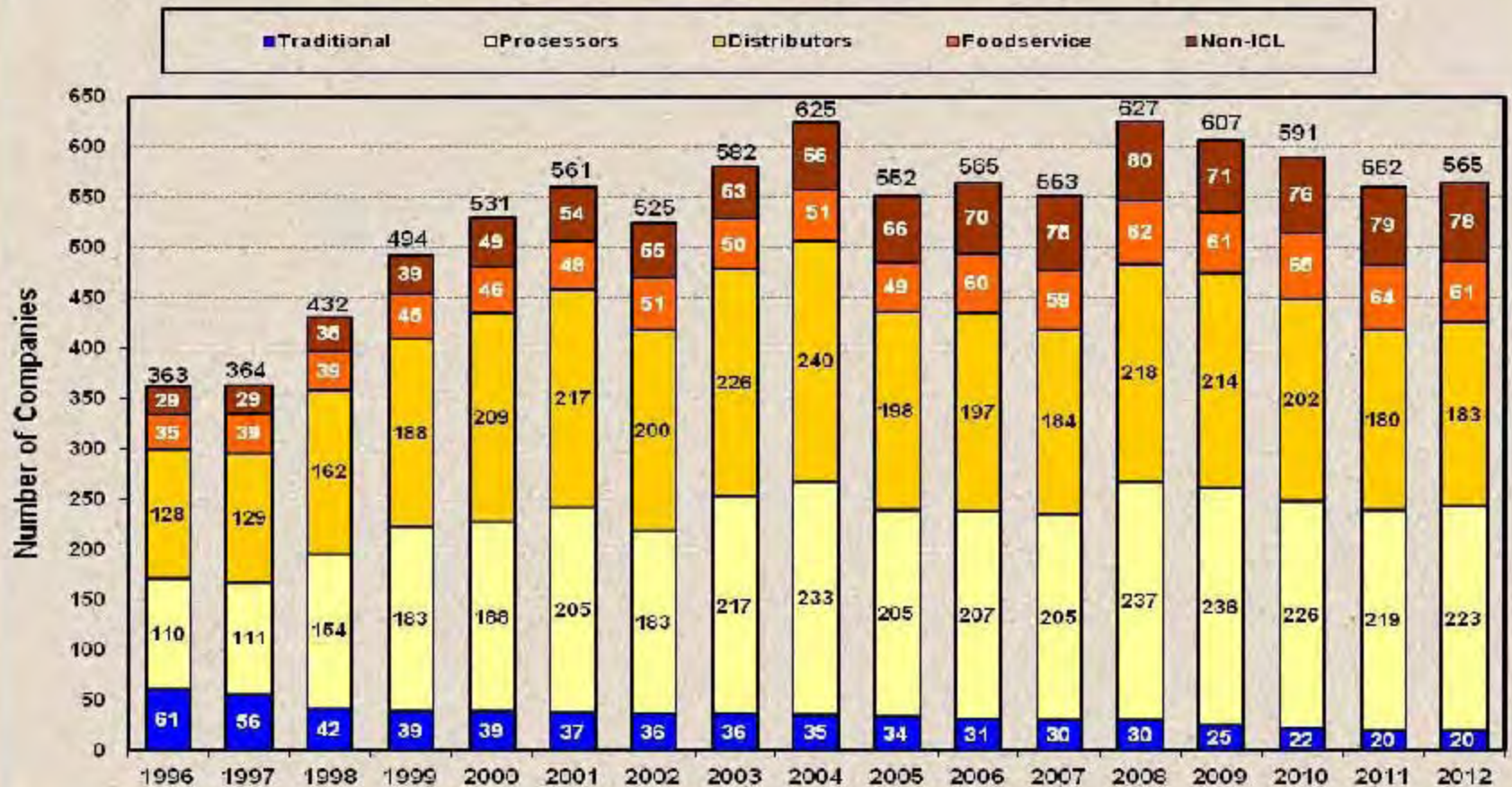
Eligibility: Quota Holders

> Non-ICL (FTA)

- » Specially Defined Mixtures (13% rule)
 - Products containing 87% or less chicken
 - Finished product not subject to Import Control –
But chicken ingredient is controlled by the TRQ
- » Limitations for meat-on-meat (2005)
- » Processed products with less than 20% chicken
- » 78 companies in 2012
- » 30.6 Mkg

Quota Holders

TRQ Quota Holders, 1996-2012



Allocation Methodology Before 2000

- > Global TRQ: 7.5%
 - » 1st: Traditional → Constant Volume
 - » 2nd: Non-ICL → Growing Demand
 - » Remaining: Pools (Processors, Distributors, Foodservice) → Declining Share of the TRQ but higher volume due to increase in production
- > In 2000: Growth of the Non-ICL larger than production growth → Share and volume decline for pools
- > Pressure from pools to increase import levels

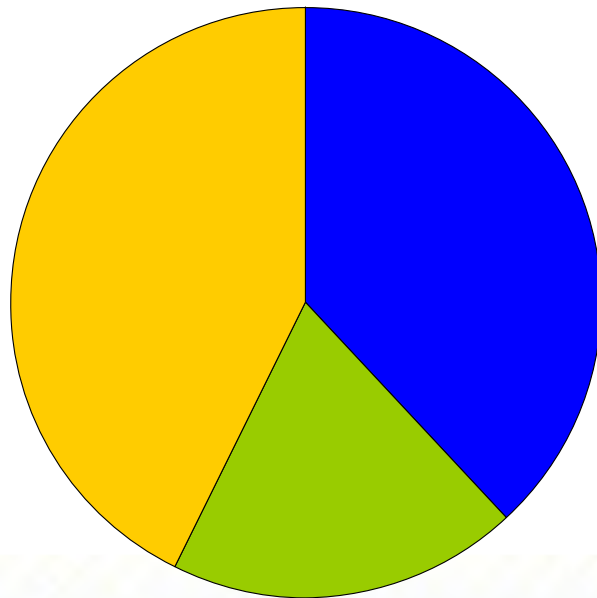
Allocation Methodology 2000 and After

> Global TRQ: 7.5%

- » 1st: Traditional → Constant Volume
- » 2nd: Pools → Fixed Percentage Share (Processors, Distributors, Foodservice)
- » 3rd: Non-ICL
 - Remainder of TRQ
 - Supplementary Imports for Growing Demand

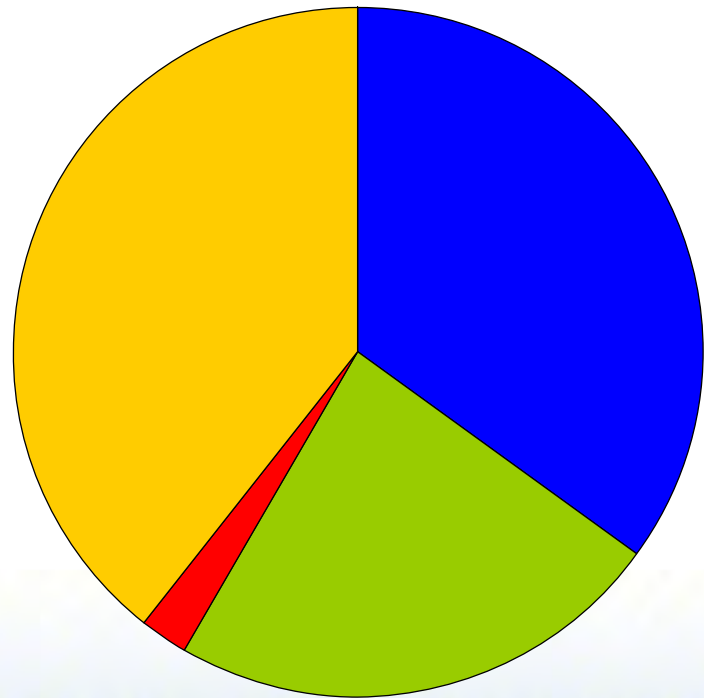
TRQ Allocation 1999 vs. 2000

1999: 7.5%



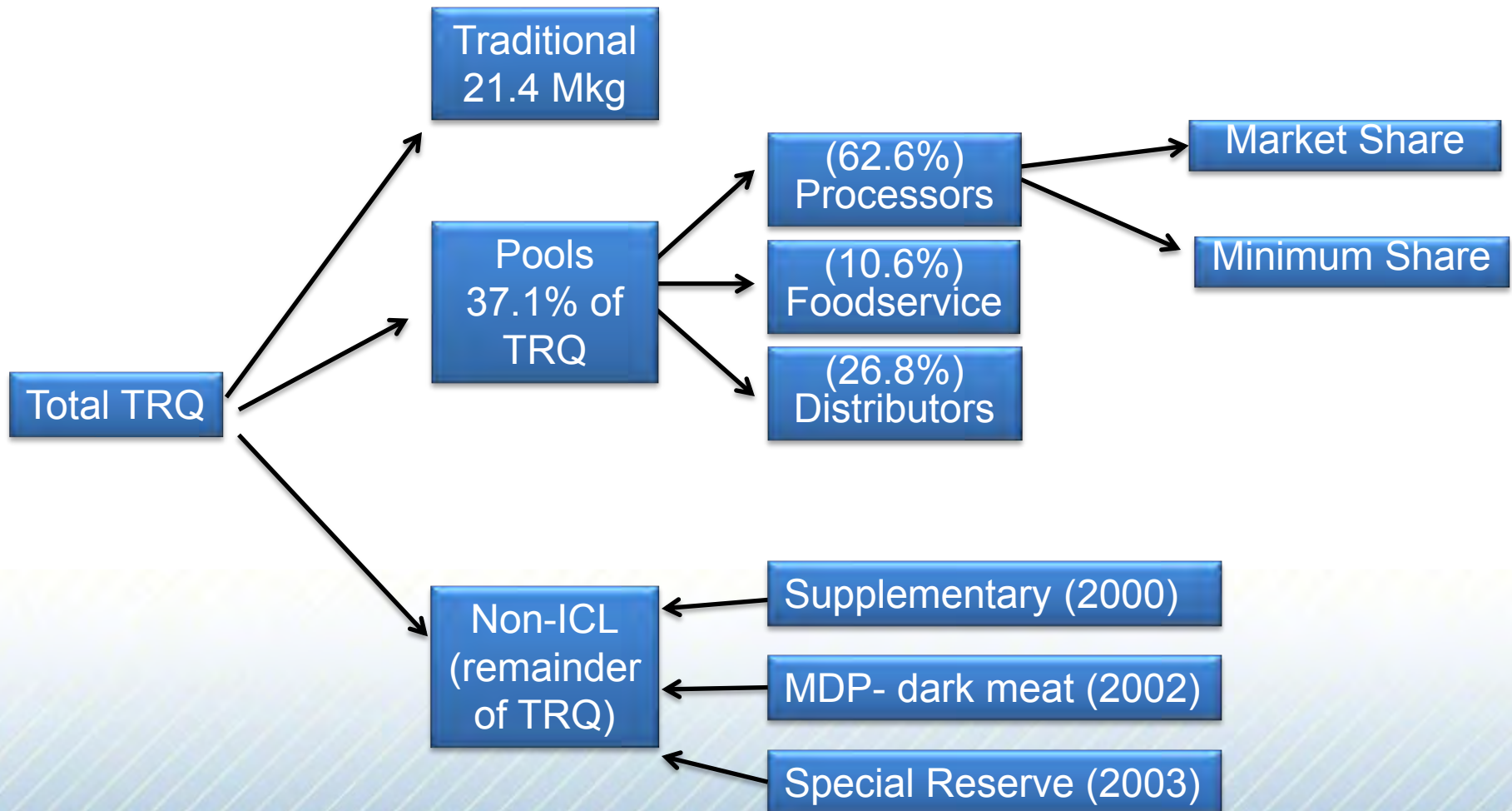
■ Traditional ■ Non-ICL ■ Pools

2000: 7.75%

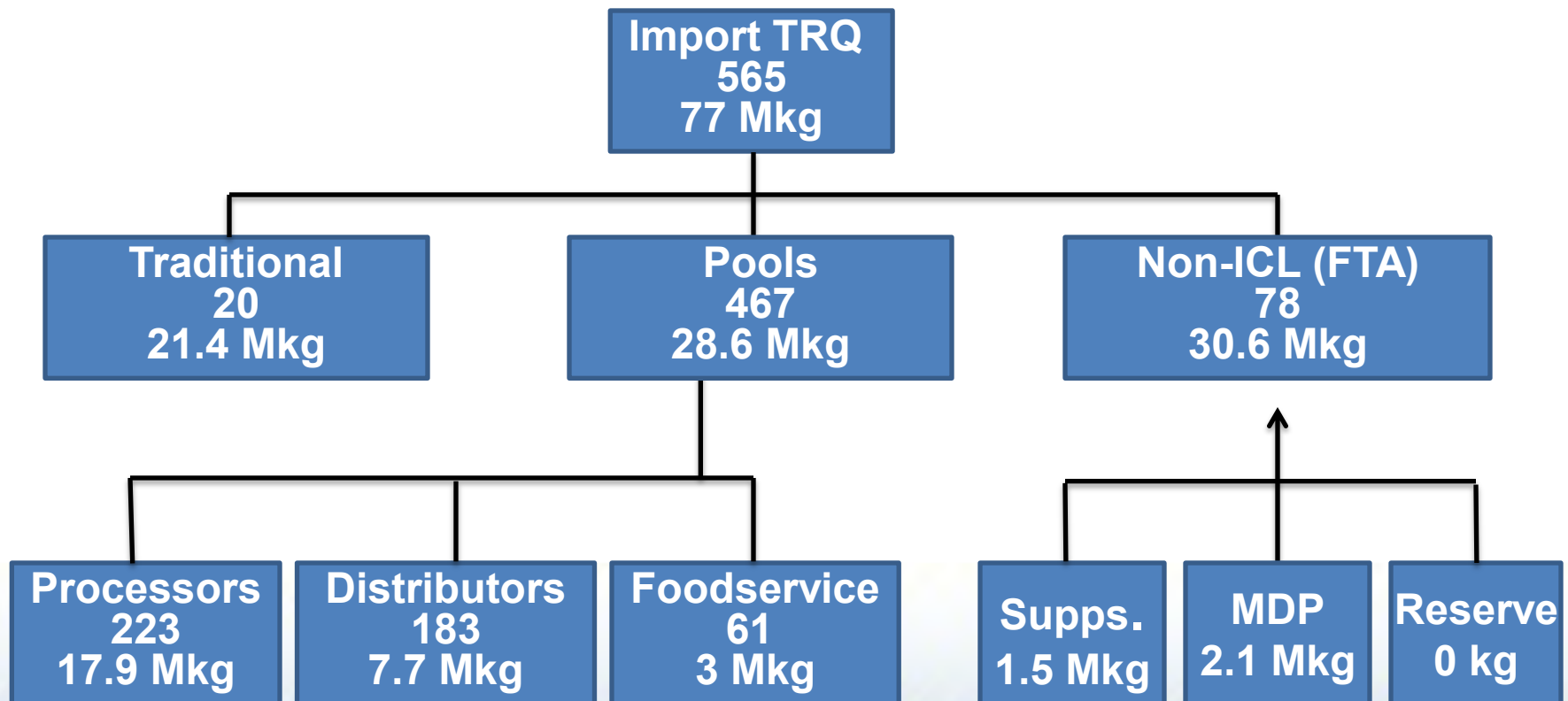


■ Traditional ■ Non-ICL
■ Supplementary ■ Pools

2012 TRQ Allocation



2012 TRQ Allocation



2012 TRQ Allocation

> Non-ICL

- » Dark meat from CFC Market Development Policy
- » Special Reserve
 - Difference between current and 2001 MDP volume (51.9 Mkg) multiplied by 7.5%
- » Allocation in Two Steps
 - 1st: share that is covered by the 7.5% TRQ
 - 2nd: Like for Like Basis for 2nd Part

2012 TRQ Allocation

> Non-ICL

» Supplementary (Above the 7.5% TRQ)

- Need to Apply after 1st Part Used (95% of their request in 2012)
- Like-for-Like basis for 2nd Part (5% of their requests)

» Like-for-Like for all Low Value Inputs

- Like-for-Like
 - Must import the chicken cut used in the Non-ICL product (i.e. no import of wings if breast meat is the ingredient)
- Low Value Inputs
 - Ground, trim, finely textured and/or diced are only allocated on a like-for-like basis

2012 TRQ Allocation

> Non-ICL

» Meat-on-Meat (2005)

- Classified as Non-ICL products
- Meet the 13% rule (contain maximum 87% chicken)
- Do not meet the spirit (not a mix of meat and non-meat)
e.g.: tournedos
- Limited to 2004 volume (5.7 Mkg)
- Cap reduced with demand (3.8 Mkg in 2012)

2012 TRQ Allocation

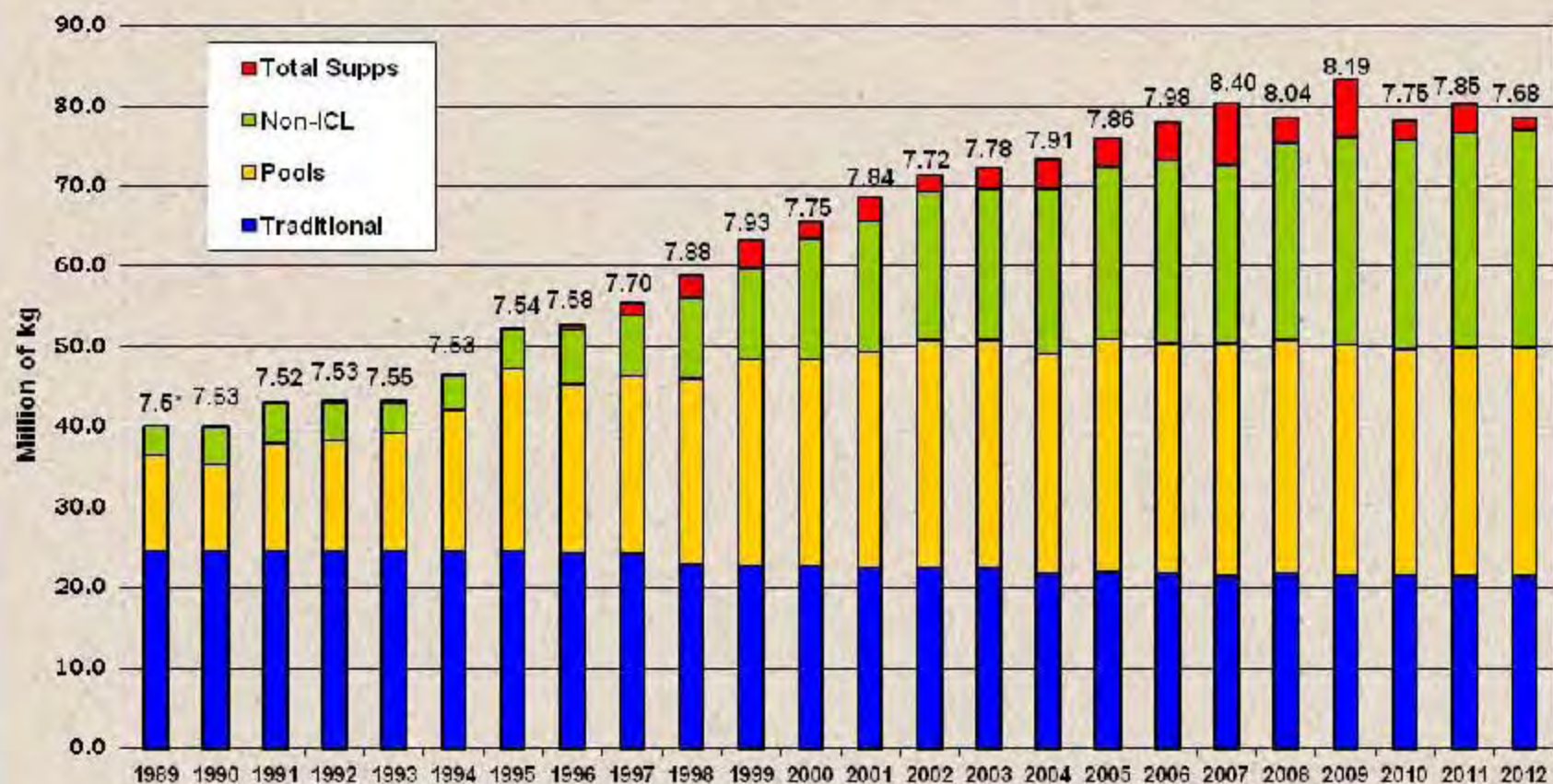
> Distributors

- » Equal share of 7.7 Mkg
- » 41,906 kg per applicant in 2012

> Processors

- » Split 17.9 Mkg between small and large
 - Small: 59,374 kg each in 2012
 - Large: 5.7 Mkg - based on market share (\$ difference between purchases and final sales)

Allocation of the Chicken TRQ, 1989-2012



* Chicken TRQ Access Level (% of previous year's production)

Source: Statistics Canada; EICB and CFC

Legend: Non-ICL: Canadian manufacturers of products not subject to import controls

Pools: Processors, Distributors, Restaurants and Foodservice Operators

Traditional: Importers of chicken prior to the establishment of a National supply management in 1979

Import Rules

- Import Quota not product specific
 - » Like-for-Like only for supplementary imports
 - » Need 2 kgs of import allocation when importing boneless products
- Small quota holders (less than 100,000 kg)
 - » Approx. 455 companies
 - » Approx. 21.8 Mkg
 - » Anytime during the year

Import Rules

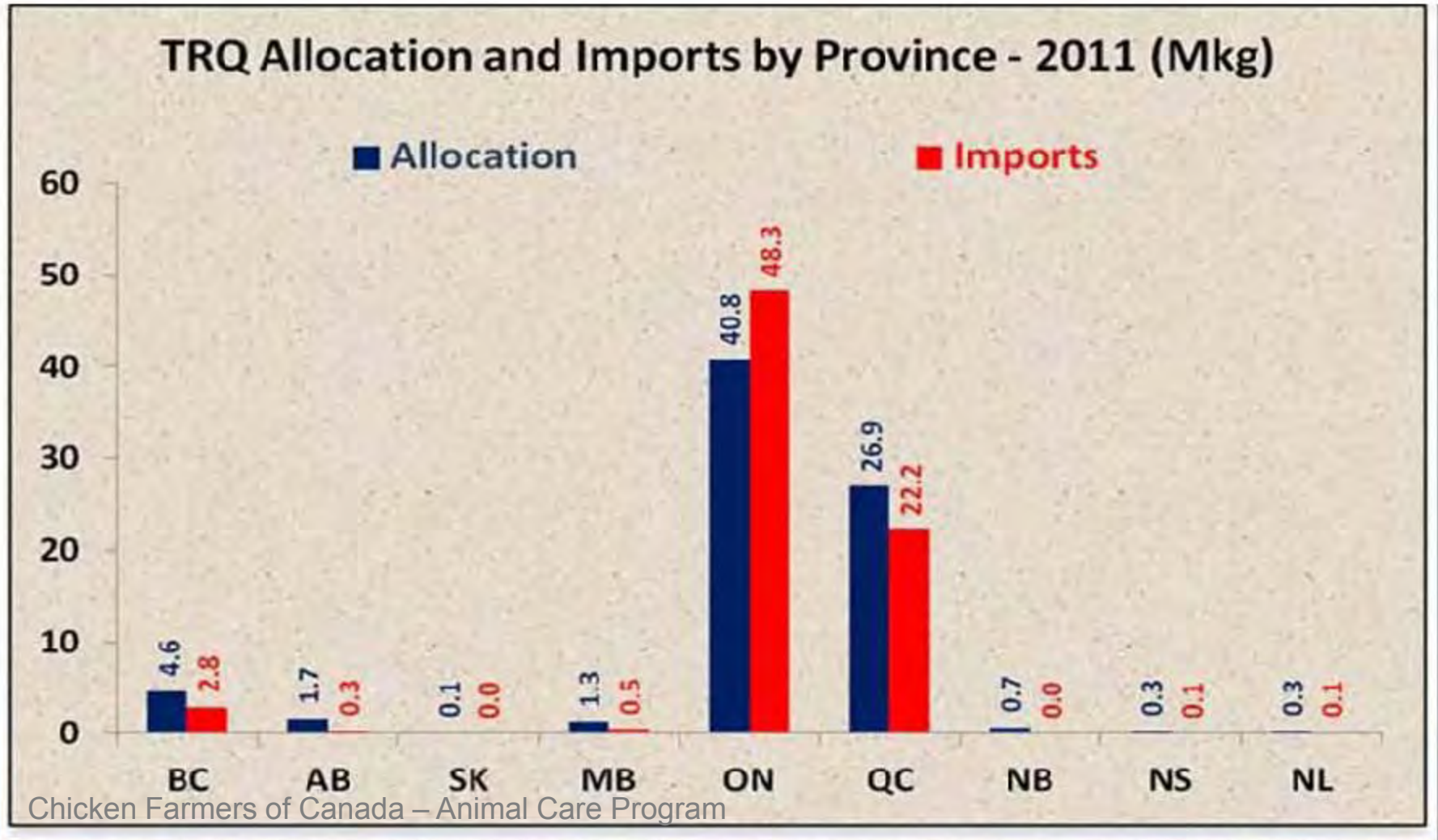
- Large quota holders (more than 100,000 kg)
 - » Approx. 110 companies
 - » Approx. 55.2 Mkg
 - » Up to 30% in 1st Quarter, 60% in Q2, 90% in Q3 and 100% in Q4

Import Rules

> Usage Rule

- » Must use 90% or Use Return Policy
- » Can Return Quota prior to October 1st
- » Return Quota to be Reallocated
- » If you import less than 90%
→ reduced allocation next year
- » Always 100% Utilization

Import Rules – Provincial Shares



Import Rules

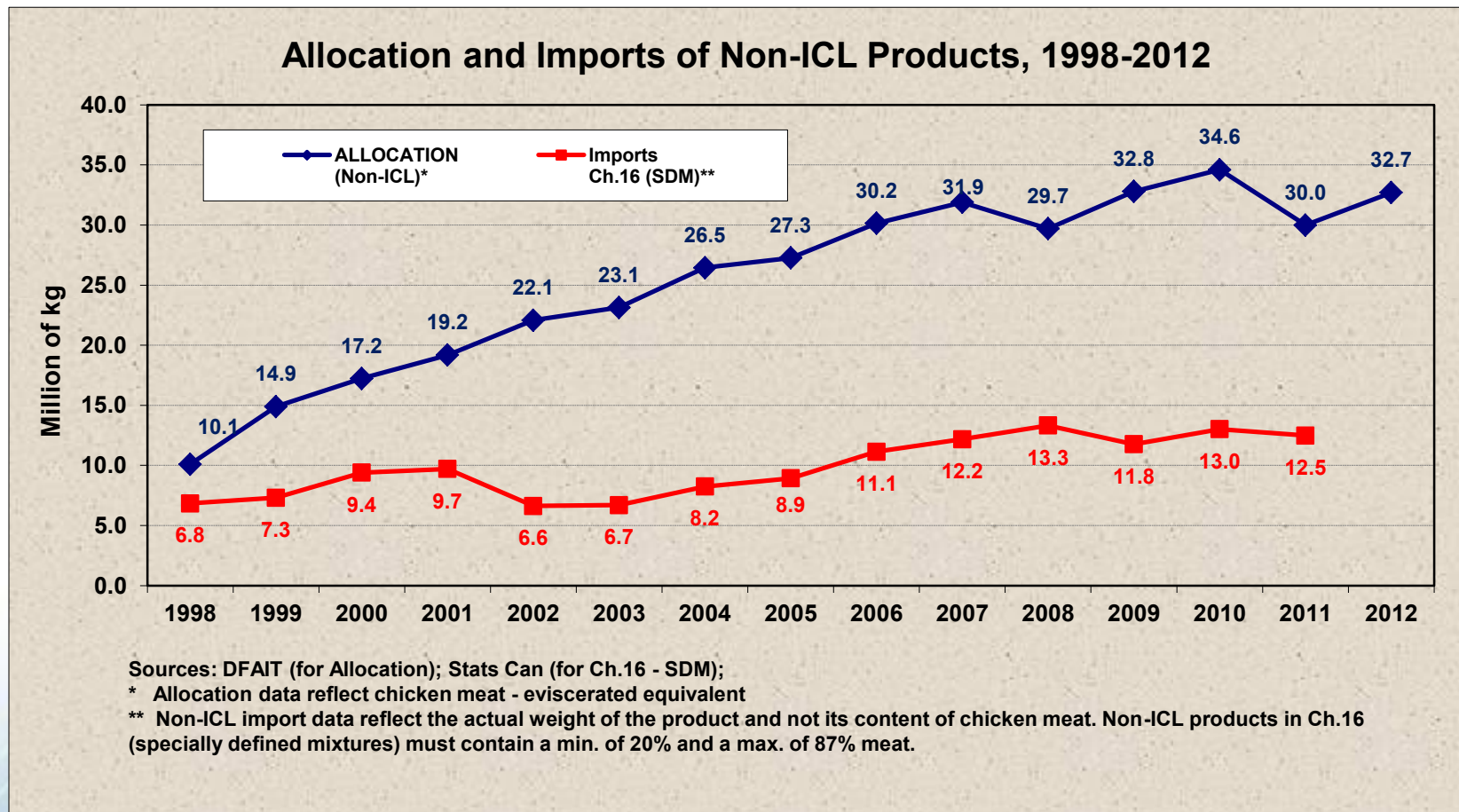
> Limitations of Provincial Data

- » Only consider address on application form (head office)
- » Transferable
 - Most import allocation are transferred
 - Need to consider the economic benefit from the sale of import allocation
- » Importation is measured at the point of entry, not final destination

13% Rule or Specially Defined Mixture Rule (SDM)

- > As per WCO (World Customs Organization) HS classification, products classified in Ch.16 must have a minimum meat content (by weight) of 20%; maximum content is 100%
- > The 13% rule basically states that products containing between 20% and 87% chicken meat are NOT import controlled

Domestic Allocation and Imports of Non-ICL Products



Domestic Allocation and Imports of Non-ICL Products

- > The **BLUE** line represents the import allocation of chicken meat requested by Canadian manufacturers of non-ICL products
- > The **RED** line represents actual imports of non-ICL products with at least 20% chicken content (most originating in US): the numbers reflect the weight of the final product and not the weight of the chicken meat content

Why it is Important to Change the 13% Rule?



Why it is Important to Change the 13% Rule?



TRQ Administration

- > DFAIT Website
- > Quota Holders, Rules, Statistics
- > www.international.gc.ca/controls-controls/prod/agri/chicken-poulet/index

Questions, Comments:
Yves Ruel
(613) 566-5917
yruel@chicken.ca

Thank You!



Global Affairs Canada

[Home](#) > [Trade](#) > [Services and Tools](#) > [Export and Import Controls](#) > [Controlled Products](#)
> 2016 Chicken Quota Holders List – Traditional Importers – Processor

2016 Chicken Quota Holders List

Traditional Importers – Processor

116278 Canada Inc.
365, rue Beaubien Ouest
Montreal QC H2V 1C8

Cargill Ltd.
10 Cuddy Blvd.
London ON N5V 5E3

Central Bernard Butcher Corp.
2001-32nd Avenue
Lachine QC H8T 3J1

Maple Leaf Foods Inc.
6897 financial Drive
Mississauga ON L5N 0A8

Maple Lodge Farms Ltd.
8301 Winston Churchill Blvd.
Brampton ON L6Y 0A2


Pinty's Delicious Foods Inc.
5063 North Service Road, Suite 101
Burlington ON L7L 5H6

Sofina Foods Inc.
3340 Orlando Drive
Mississauga ON L4V 1C7

Date Modified: 2016-02-25

- Differentiated Regional Allocation

*Matching production to
consumer demand
in a regionally diverse Canada*

- 
- *The Differentiated Regional Allocation (DRA) proposal addresses the issue of and possible means to establishing a bottom-up regional allocation component to operate in conjunction with the current CFC proposed MOU*
 - This proposed DRA method has been jointly developed by representatives of the western provincial boards and western primary poultry processors
 - Two provincial supervisory signatories have already formally advised that they cannot sign the MOU. This proposal has been developed with the *intent* to provide a way forward for the Canadian chicken industry, by way of a modified MOU that seeks to support the approval of the current MOU and Operating Agreement amendments, which would facilitate Alberta's re-entry into the FPA; and it is intended to serve in the interest of the chicken industry's customers across Canada
 - As you will see in the presentation, the proposal is built on principles that respect the current allocation formula, afford opportunity for all regions to access the proposed Differentiated Regional Allocation, and support an efficient, transparent, robust, bottom-up allocation method.



Principles for a Differentiated Regional Allocation (DRA)

1. Safeguarded:
 - no province loses production; regional allocation does not draw from other provinces' allocation
 - producers are paid the minimum live price
 - Differentiated Regional Allocation is capped
2. Maintains the integrity of and respects the MOU
3. Affords opportunity to all regions
4. Supports an efficient and transparent allocation process
5. Supports a bottom-up approach
6. Market-responsive and adaptive to consumer demand



PROCESS

Administering Differentiated Regional Allocation (DRA)

Provincial Submissions:

- Each region's processors will continue to submit processor numbers as is done currently
- Board's will submit their requirements to CFC as per current practice

Processor Submissions to CPEPC:

- Each Region's processors* will submit its individual processor numbers for the region to CPEPC staff
- CPEPC Staff will use the template formula** to translate each processors' submissions into a national CPEPC number using the +/- 4% sleeve safeguard

**CPEPC is required to obtain submissions from all CPEPC Members and non-CPEPC members that have >10% of the provincial production*

***formula is a weighted avg. based on processors' market shares*



PROCESS

Administering Differentiated Regional Allocation (DRA)

- CPEPC will submit the national number to CFC based on the weighted average shares of the processors' submissions
- CFC Directors will set the allocations for the two periods at the same time
- CPEPC staff will disclose the DRA numbers for the regions for the two periods to CFC staff
- The DRA's for the two periods will be presented to the CFC Directors following the setting of the allocations for the two periods
- Should the option for DRA in region(s) be exercised, the limit is a maximum of 3% over the base allocation

Example:

Differential Regional Allocation	
*** Only change yellow cells ***	
Cycle AGR	4.0%

Process:

Differential Regional Allocation						Process:	
*** Only change yellow cells ***							
Cycle AGR	4.0%						
CFC National Allocation	5.00					Allocation is set by CFC Board with no prior visibility into the DRA	Step 3
Processor Request Range (low-high)	0%	8%					
A-136 Example							
Regionals	Requests	Difference (CFC vs Regional) Max at 3%	DRA	Bases	DRA kgs	DRA Volumes are revealed: CPEPC Staff provides the Regional Requests and subsequent volumes (within the safeguards) to CFC Staff. CFC Staff reveals the DRAs for the Regions to CFC Directors. The DRA kilograms are included in the total allocation for the period. **	Step 4
Western	5.68	0.68	0.68	51,503,285	352,638		
Central	5.36	0.36	0.36	98,849,927	356,059		
Eastern	3.67	-1.33	0.00	13,305,306	-		
CPEPC National	5.33					CPEPC A136 national submission to CFC	Step 2
Province	Company Name	Company Mkt Share*	Allocation Request	Provincial Request	Provincial Mkt Share	Regional Request	CPEPC Staff collects submissions from all CPEPC Members and Processors with >10% of provincial production, and inputs into template to produce weighted average for the national submission and for each Region. Each Regional Request is held in confidence by CPEPC staff until CFC Board sets the allocation for that period.
Western Region							
British Columbia	Comp #1	50.0%	6.00				
	Comp #2	28.0%	5.50				
	Comp #3	22.0%	5.25	5.70	14.30%		
Alberta	Comp #1	45.0%	6.00				
	Comp #2	29.0%	5.80				
	Comp #3	26.0%	6.10	5.97	9.38%		
Saskatchewan	Comp #1	56.0%	5.70				
	Comp #2	44.0%	5.90	5.79	3.59%		
Manitoba	Comp #1	50.5%	5.10				
	Comp #2	49.5%	4.75	4.93	4.19%	5.68	
Central Region							
Ontario	Comp #1	31.0%	5.80				
	Comp #2	28.0%	6.10				
	Comp #3	22.0%	3.50				
	Comp #4	12.0%	5.10				
	Comp #5	7.0%	5.50	5.27	33.39%		
Quebec	Comp #1	37.0%	5.50				
	Comp #2	33.0%	6.10				
	Comp #3	20.0%	5.10				
	Comp #4	8.0%	4.50				
	Comp #4	2.0%	2.00	5.47	27.01%	5.36	
Eastern Region							
New Brunswick	Comp #1	60.0%	5.10				
	Comp #2	40.0%	4.00	4.66	2.84%		
PEI	Comp #1	100.0%	5.10	5.10	0.37%		
Nova Scotia	Comp #1	100.0%	3.00	3.00	3.54%		
NFLD	Comp #1	100.0%	3.00	3.00	1.39%	3.67	
*for all processors >10% provincial volume							
**unless a Special Vote is passed with respect to the DRA(s)							



PROCESS

Administering Differentiated Regional Allocation (DRA)

- Trigger for the DRA:

$$\text{DRA} = \text{Regional processors' submission} > \text{National Allocation}^*$$

**capped at the 3% safeguard*

- Default: the DRA will form part of the total allocation
- A DRA may be disproved through a CFC Special Vote
- Adjustments to Base:
 - Annually when bases are adjusted, 50% of each region's proven DRA allocation for the previous 6 periods will be added to the bases of the provinces in that/those region(s)



PROCESS

Administering Differentiated Regional Allocation (DRA)

- **Allocation to Provinces in the Regions:**

Under the Operating Agreement, each region is required to have a Regional Agreement for distributing allocation within the region.



Safeguards for a Workable Differentiated Regional Allocation (DRA)

A DRA is capped at a maximum of 3%

- Available to any region (Western, Central and Atlantic)
- Option for Central and Atlantics to operate as one region

Example: If Central Canada qualifies for a DRA in one period, the volume of its DRA is capped at 3% of the total of the production allocated to the provinces in that Region for that period



Safeguards for a Workable Differentiated Regional Allocation (DRA)

Range of Processor Submissions: AGR

- Processor submissions to CPEPC are held within a $\pm 4\%$ sleeve of the AGR for each period*

*Function: CPEPC will run the region's average submissions:

- If majority of submissions are within the sleeve, the average of the numbers will form the submission
- If majority of submissions are outside of the sleeve (higher or lower), all numbers will be factored into the submission to CPEPC
- CPEPC will communicate the range of submissions back to the processors within each region



Outcomes

- Expectation that appeal will be dropped in British Columbia
- Higher level of success for Saskatchewan to sign the Operating Agreement
- Expectation that all nine provinces signing the Operating Agreement would bring Alberta back into the FPA
- MOU and Discrete Supply remain intact
- Demonstrates the system's flexibility and market-responsiveness
- Disciplines the allocation system



September 18, 2015

Wayne Hiltz
General Manager
Manitoba Chicken Producers
1357 Kenaston Boulevard
Winnipeg MB R3P 2P2

Re: Differentiated Regional Allocation (DRA)

Thank you for providing us with an opportunity to submit Chicken Farmers of Canada's (CFC) input and comments on the DRA proposal. We would like to make the following comments.

1. The proposal suggests that the kilograms resulting from the DRA will be in addition to the national and provincial allocations as determined by the allocation formula and set by the CFC board of directors. Is this correct?
2. The proposal is not clear on how additional kilograms will get distributed within a region and between processors within a province. For example, if the allocation formula results in (a) provincial allocation(s) that is/are higher than the amount of kilograms asked for by the processors in that/these province(s), will this/these province(s) be excluded from receiving kilograms resulting from the DRA in the region the province(s) belongs to? If a province receives an amount of kilograms through the formula that is lower than what the processors in the province requested but the amount of kilograms through the formula combined with the DRA kilograms is higher than the amount requested, will the province only receive kilograms up to the requested amount? What happens to the kilograms that are left over? Similarly for a (a) processor(s) within a province: will they receive additional DRA kilograms if its/their submitted number(s) is/are lower than the amount of kilograms they will receive as a result from the formula-driven allocation?
3. The DRA speaks to vesting of kilograms received under the DRA through fully or partly adding these kilograms to a provincial base. From what we understand, the purpose of the DRA is to address occasional differences in regional needs, comparable to an exceptional circumstances request. If this is the case, should these kilograms be added to the base?

4. The proposed safeguard cap at a maximum of 3% of a region's allocation seems aggressive when compared to even the elevated level of growth that we have allocated in the last two years.
5. How do the AGR and the DRA work together? In the example in the proposal, the volume requests from two regions exceed the regional range as determined by the AGR, and the regional range would have to be increased to 5.36% to make it work. What happens if there is no triple majority to approve this? Using the example in the proposal, will the West receive a DRA of 0.32% (5.68% minus 5.36%)?
6. How does CFC incorporate this into its allocation rationale and request for prior-approval to FPCC?
7. Regarding the range of processor submissions and calculating the regions' average submissions, the difference between the first and second bullet point is unclear.
8. The DRA could result in oversupplying the market after Directors have determined the right amount of supply. CFC's main responsibility is to supply the market with the right amount of chicken, not to under or over supply the market.
9. As we saw previously with the market responsiveness pool, is there a significant risk that all three regions will request the maximum with the result that there is no regional differentiation?

Again, thank you for giving us the opportunity to provide input. Please don't hesitate to contact us if you require additional information.

Regards,



Mike Dungate
Executive Director



Canadian Poultry and Egg Processors Council
Conseil canadien des transformateurs d'œufs et de volailles

September 22, 2015

To: Wayne Hiltz, MCP
Clinton Monchuk, CFS
Karen Kirkwood, ACP
Bill Vanderspek, BCCMB

From: Robin Horel, CPEPC

Subject: CPEPC input into Differential Regional Allocation (DRA) Proposal

Folks: At the September CFC meeting, the 4 Western Boards requested a response from CFC stakeholders to the DRA proposal. This is CPEPC's response to your request.

Since receiving the DRA proposal dated August 7, CPEPC members reviewed the proposal at a special meeting and through subsequent e-mail communication. We held a conference call on September 11 to finalize our position and produce the response that you have asked for.

As noted in our February 17th letter to CFC, the majority of CPEPC members continue to believe that adding a component of Regional DG to the MOU is necessary in order to get all provinces to sign onto the agreement. CPEPC members reconfirmed their support for a component of regional differential growth (available to any region, provided checks and balances are in place), within the proposed new allocation system for chicken (that includes the other elements of the MOU). As we noted in February, this would entail:

- a) Ensuring checks and balances are put in place
- b) Working with other parties at CFC to flesh out the mechanics of how a Regional Differential Growth component would work
- c) The allowance for regional Differential Growth would be in addition to the other elements of the MOU

CPEPC believes it is important to respond to regional supply requirements as part of the MOU. It is important that we find good, collaborative solutions that will allow all provinces to sign on to the agreement. Supply Management stakeholders need to show a commitment to unity and modernization. Having said that, the majority of CPEPC members are not supportive of this particular DRA proposal.

There were a number of concerns expressed by processors with the proposal, but they really boiled down to the issue of being satisfied with checks and balances – in other words how to ensure additional (differential) regional growth does not end up flowing out of the region. CPEPC staff has been given a mandate to explore options internally as well as to work with other stakeholders toward

a solution that will work for processors and provinces across Canada. At your convenience, I would be happy to talk with you about potential next steps in order to find a solution that is acceptable to all Canadian processors that will allow for a component of regional differential growth in addition to the other elements of the MOU. We are hopeful that a solution that is acceptable to all Canadian processors would also be acceptable to all provincial chicken boards and provincial supervisory boards as well.

Regards,

A handwritten signature in black ink, appearing to read 'K. Robin Horel', is written over a light grey rectangular background.

K. Robin Horel
President and C.E.O.

cc. CPEPC Chicken Sector Members

1994 CarswellNat 840
Federal Court of Canada, Court of Appeal

Canadian Assn. of Regulated Importers v. Canada (Attorney General)

1994 CarswellNat 1461, 1994 CarswellNat 840, [1994] 2 F.C. 247, [1994] F.C.J. No.
1, 164 N.R. 342, 17 Admin. L.R. (2d) 121, 55 A.C.W.S. (3d) 10, 73 F.T.R. 80 (note)

**ATTORNEY GENERAL OF CANADA, CANADIAN BROILER HATCHING EGG
MARKETING AGENCY and CANADIAN HATCHERY FEDERATION v. CANADIAN
ASSOCIATION OF REGULATED IMPORTERS, PARKVIEW POULTRY LTD.,
BERTMAR POULTRY LTD., GEORGE TSISENPOULOS, HENRY NEUFELD,
ZIGMOND TIBAY, HENRY KICKERT, EVA SZASZ PETERFFY, PAUL DINGA,
C & A POULTRY LTD., ZOLTAN VARGA, JAKE DROST, GEORGE DROST,
JOE DROST, MELICAN FARMS LTD., JOE SPECK, MARINUS KICKERT,
CHECKERBOARD HATCHERY, BRAMPTON CHICK HATCHING CO. LTD.,
ZOLTAN KOESIS, ROE POULTRY LTD., GABE KOESIS and HENRY FOIS**

CANADIAN HATCHERY FEDERATION, ATTORNEY GENERAL OF CANADA and CANADIAN
BROILER HATCHING EGG MARKETING AGENCY v. CANADIAN ASSOCIATION OF REGULATED
IMPORTERS, PARKVIEW POULTRY LTD, BERTMAR POULTRY LTD., GEORGE TSISENPOULOS,
HENRY NEUFELD, ZIGMOND TIBAY, HENRY KICKERT, EVA SZASZ PETERFFY, PAUL DINGA,
C & A POULTRY LTD., ZOLTAN VARGA, JAKE DROST, GEORGE DROST, JOE DROST, MELICAN
FARMS LTD., JOE SPECK, MARINUS KICKERT; CHECKERBOARD HATCHERY, BRAMPTON CHICK
HATCHING CO. LTD., ZOLTAN KOESIS, ROE POULTRY LTD., GABE KOESIS and HENRY FOIS

Heald and Linden JJ.A. and Gray D.J.

Heard: December 1, 2 and 3, 1993

Judgment: January 6, 1994

Docket: Docs. A-316-93, A-363-93

Counsel: *Marlene Thomas* and *Chris Parke*, for appellant.

François Lemieux and *David Wilson*, for cross-appellant Canadian Broiler Hatching Egg Marketing Agency.

Douglas Hodgson and *Herman Turkstra*, for cross-appellant Canadian Hatchery Foundation.

Paul Stott and *John Pepall*, for respondents.

Subject: Public; Corporate and Commercial

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Administrative law

II Prerequisites to judicial review

II.2 Nature of tribunal under review

II.2.a Crown

II.2.a.ii Ministers of Crown

Administrative law

III Requirements of natural justice

III.3 Statutory requirements and powers

Commercial law

VI Trade and commerce

VI.11 Exports and imports

VI.11.a General principles

International trade and customs

I Import and export regulation

I.1 General principles

Headnote

Administrative Law --- Prerequisites to judicial review — Nature of tribunal under review — Crown — Ministers of Crown

Administrative Law --- Requirements of natural justice — Statutory requirements and powers

Trade and Commerce --- Exports and imports

Requirements of natural justice — Statutory requirements and powers — Ministerial adoption of import quota scheme for hatching eggs and chicks having adverse impact on certain importers — Minister not being obliged to give notice to those affected before putting scheme in place — Governing legislation not requiring such notice to be made. .

Discretion of tribunal under review — Abuse of discretion — Minister adopting import quota scheme for hatching eggs and chicks — Decision to adopt scheme being discretionary act in nature of policy guideline — Decision immune from judicial review unless made in bad faith, not in accordance with procedural fairness or based on irrelevant considerations — Minister properly exercising discretion.

In 1989, the Governor in Council placed broiler and hatching eggs in the Import Control List under the *Export and Import Permits Act*, pursuant to the recommendation of the Minister of International Trade. A notice to importers was issued stating the annual global quota and the principles of allocation. The goal of the principles was to gradually shift the allocation of import quota from those who had imported in the past to federally registered hatcheries on the basis of market share. The affected importers applied for an order in the nature of certiorari quashing the import allocation quota decision and an order in the nature of mandamus requiring the Minister, at least temporarily, to issue import permits based on historic importation patterns. The application was allowed. The resulting orders were appealed.

Held:

The appeals were allowed.

The trial judge erred when she found that the Minister's issuance of the notice to importers was an exercise of a statutory power and, therefore, subject to judicial review. The notice was issued under the Minister's discretionary policy guidelines and was not subject to ordinary review. A decision made under such guidelines could only be reviewed where the discretion was not exercised in good faith and in accordance with the principles of natural justice, or where reliance was placed on considerations irrelevant or extraneous to the statutory purpose. There was no question that the Minister exercised the discretion in good faith. Further, the Minister did not have to give notice of the decision establishing the quota, since such a notice was not contemplated by the legislation. Finally, in order for a court to interfere with a policy decision of government, not only must there be reliance on irrelevant matters, there must be a lack of evidence supporting the

Minister's decision. The Minister's decision, while based in part on some irrelevant and less relevant matters, was also made in consideration of relevant matters. Further, there was ample evidence to support the decision.

The trial judge erred in quashing the Minister's decision; therefore, the remedy she ordered was set aside. Because of the result of the first appeal, there was no need in the second appeal to consider whether she exceeded her jurisdiction in ordering the remedy in question.

Table of Authorities

Cases considered:

Bates v. Lord Hailsham of St. Marylebone, [1972] 3 All E.R. 1019, [1972] 1 W.L.R. 1373 (Ch. D.) — referred to

Bedesky v. Ontario (Farm Products Marketing Board) (1975), 8 O.R. (2d) 516, 58 D.L.R. (3d) 484 (Div. Ct.), affirmed (1975), 10 O.R. (2d) 105, 62 D.L.R. (3d) 265 (C.A.), leave to appeal to S.C.C. refused (1975), 10 O.R. (2d) 106 (note), 62 D.L.R. (3d) 266 (note) — referred to

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Cantwell v. Canada (Minister of the Environment) (1991), 6 C.E.L.R. (N.S.) 16, 41 F.T.R. 18 [affirmed (June 6, 1991), Doc. A-124-91 (Fed. C.A.)] — referred to

Maple Lodge Farms Ltd. v. Canada, (sub nom. *Maple Lodge Farms Ltd. v. R.*) [1981] 1 F.C. 500, 114 D.L.R. (3d) 558, 42 N.R. 312 (C.A.), affirmed [1982] 2 S.C.R. 2, 44 N.R. 354, 137 D.L.R. (3d) 558 — applied

Martineau v. Matsqui Institution (1979), [1980] 1 S.C.R. 602, 13 C.R. (3d) 1, 15 C.R. (3d) 315, 50 C.C.C. (2d) 353, 106 D.L.R. (3d) 385, 30 N.R. 119 — referred to

National Anti-Poverty Organization v. Canada (Attorney General), [1989] 3 F.C. 684, 36 Admin. L.R. 197, 60 D.L.R. (4th) 712, 99 N.R. 181, 26 C.P.R. (3d) 440 (C.A.) — referred to

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Reference re Canada Assistance Plan (Canada), [1991] 2 S.C.R. 525, 1 Admin. L.R. (2d) 1, 58 B.C.L.R. (2d) 1, [1991] 6 W.W.R. 1, (sub nom. *Reference Re Constitutional Question Act (British Columbia)*) 127 N.R. 161, 1 B.C.A.C. 241, 1 W.A.C. 241, (sub nom. *Canada Assistance Plan (British Columbia)*) 83 D.L.R. (4th) 297 — referred to

Thorne's Hardware Ltd. v. R., [1983] 1 S.C.R. 106, 46 N.R. 91, 143 D.L.R. (3d) 577 — referred to

Vancouver Island Peace Society v. Canada, [1992] 3 F.C. 42, (sub nom. *Vancouver Island Peace Society v. Canada (Minister of National Defence)*) 53 F.T.R. 300 — referred to

Statutes considered:

Aeronautics Act, R.S.C. 1985, c. A-2 —

s. 5

s. 6

Broadcasting Act, R.S.C. 1985, c. B-9 —

s. 11(5)

Export and Import Permits Act, R.S.C. 1985, c. E-19 —

s. 5(1)

s. 8(1)

Farm Products Marketing Agencies Act, R.S.C. 1985, c. F-4 —

s. 16

s. 17

s. 21

s. 23

Government Organization Act, 1983, S.C. 1980-81-82-83, c. 167 —

s. 4

s. 6

Grain Futures Act, R.S.C. 1985, c. G-11 —

s. 5(2)

Transportation of Dangerous Goods Act, R.S.C. 1985, c. T-19 —

s. 22(1)

[Appeals from decision reported at \[1993\] 3 F.C. 199](#), 15 Admin. L.R. (2d) 161, [62 F.T.R. 172](#), granting orders in the nature of certiorari and in the nature of mandamus.

The judgment of the court was delivered by *Linden J.A.*:

1 These two appeals are from decisions of the Trial Division. On April 1, 1993, the trial judge granted an order in the nature of certiorari quashing a decision of the Secretary of State for External Affairs which allocated import quotas for hatching eggs and chicks to hatcheries on the basis of natural market share [reported at [15 Admin. L.R. \(2d\) 161](#)]. It was also ordered that a decision on this matter be made on relevant grounds after hearing submissions from the applicants. In addition an injunction was issued to prevent any claw-back of quota from the historical importers until such decision is taken. This order reads as follows:

- a) an order in the nature of certiorari, quashing the decision of the Minister for International Trade, as adopted by the Secretary of State for External Affairs, allocating import quota for hatching eggs and chicks to hatcheries only, across Canada, on national market share.

b) order in the nature of mandamus requiring that the Secretary of State for External Affairs make a decision with respect to the system of import quota allocation only after having received submissions from the applicants and by taking into account only relevant considerations; and

c) an interim order in the nature of an injunction requiring that the Secretary of State for External Affairs not implement any further retrieval or claw back of the quota from historical importers until a decision as set out above is taken.

2 The second order being appealed from was dated May 27, 1993 and was meant to supplement the original order of April 1, 1993. In it, the court ordered also:

(a) Seventeen per cent (17%) of the quota for hatching egg and chick imports for 1993 shall be allocated to historic importers;

(b) From January 1, 1994 the quota will be allocated to historic importers at the level it was issued to them in 1991, adjusted for the increase in the quota base to 21.1% of domestic production of broiler hatching eggs which resulted from the agreement of September 13, 1990 between Canada and the United States;

(c) The remainder of the 1994 quota will be allocated to hatcheries on the basis of market share until the Secretary of State for External Affairs makes a decision in accordance with paragraph 2 of the order of April 1, 1993 herein;

(d) In the event the Secretary of State for External Affairs has not made a decision by October 1, 1994, the parties are at liberty to seek a further interim order from this Court;

(e) This order shall take effect on July 1, 1993.

This latter order was made with the consent of the Attorney General and the applicants below, but over the objections of the Canadian Hatchery Federation and the Canadian Broiler Hatching Egg Marketing Agency.

3 The facts are briefly the following. The respondents are individuals and companies who, prior to the decision being challenged, imported broiler hatching eggs and chicks from the United States without regulation. They are referred to as the "historical importers" and they have been represented by the Canadian Association of Regulated Importers, which is a trade group representing importers of broiler hatching eggs and chicks, as well as importers of other products.

4 The Canadian Broiler Hatching Egg Marketing Agency is a national marketing agency established by proclamation on December 29, 1986 under the *Farm Products Marketing Agencies Act*, R.S.C. 1985, c. F-4, ss. 16 and 17.

5 The Canadian Hatchery Federation represents 89 hatcheries across Canada, including most of the major hatcheries. It is composed of seven regional associations.

6 During the hearings in 1983 that led up to the establishment of a national marketing agency for these products, the Chicken Broiler Hatching Egg Producers Association urged the creation of such an agency to control imports of broiler hatching eggs and chicks to protect the market of domestically produced broiler hatching eggs. In a report written after these hearings (May 23, 1984), the National Farm Products Marketing Council found that some importers had used the threat of imports of hatching eggs and chicks in bargaining with domestic producers for lower prices. It also reported that low import prices in central Canada had an effect on prices in other provinces as well.

7 Not long after (December 29, 1986), following further discussions and consultations, a proclamation was issued creating the Canadian Broiler Hatching Egg Marketing Agency (CBHEMA) which would have the authority to regulate the marketing of broiler hatching eggs and chicks from member provinces for interprovincial and international trade. On September 1, 1987, CBHEMA recommended to the Minister of Agriculture that the Governor in Council place broiler hatching eggs and chicks on the Import Control List under the *Export and Import Permits Act*.

8 On May 8, 1989 the Governor in Council placed broiler hatching eggs and chicks on the Import Control List. This was done pursuant to the recommendation of the Secretary of State for External Affairs (actually the Minister of International Trade operationally).

9 On the same day as the products were placed on the list, May 8, 1989, a Notice to Importers was also issued, which is the main subject of these two appeals. In the Notice to Importers the annual global quota and principles of allocation were included. The goal of the principles set out in the notice was to gradually shift the allocation of import quota from those who had imported in the past (the historical importers) to federally registered hatcheries on the basis of market share. Excerpts from that seven-page notice include:

Principles of Quota Allocation

11. In 1989, the main criterion for determining the size of quota allocated to individual applicants will be the average level of their annual imports during 1984 through 1988, inclusive. However, any remaining quota not allocated on this basis will be allocated to federally-registered hatcheries on the basis of market share.

12. Applicants requesting quota allocations for 1989 are requested to submit a summary of their imports for the calendar years 1984 through 1988, along with Customs entry documents to substantiate this import performance.

13. Federally-registered hatcheries applying for a quota allocation on the basis of market share must provide information on the total numbers of chicks sold for chicken production in calendar year 1988. Market share, determined on this basis, is subject to verification by External Affairs.

14. In each of the years from 1990 to 1993 inclusive, 25 percent of the quota allocated on the basis of historical import performance will be retrieved each year and reallocated to federally-registered hatcheries only, on the basis of market share. For 1994 and beyond, the entire quota will be reallocated each year to federally-registered hatcheries only, on the basis of market share.

Quota Utilization

15. Quota holders will be permitted to import up to their annual quota level at any time during the calendar year.

16. The quota allocation may be used to import either broiler hatching eggs or chicks for chicken production. Each chick will be counted as 1.27 hatching eggs.

17. If a quota holder uses less than 90 percent of quota allocated, the allocation in the next year will normally be reduced to the actual level of utilization. Quota not used in any calendar year will not be available for carryover to the next calendar year. (See affidavit of Catherine Anne McKinley, particularly Exhibit "A" thereto, A.B., Vol. 4, pp. 755, 756 and 757).

A challenge to this notice was launched by the respondents in the Trial Division, leading to the two orders that have been appealed to this court.

10 The first issue is whether the Minister's issuance of the Notice to Importers dated May 8, 1989 was a discretionary decision in the nature of policy or legislative action, which is virtually unreviewable, or whether it was the exercise of a statutory power, reviewable according to the ordinary principles of administrative law. The trial judge held that it was the exercise of a statutory power and hence reviewable in the ordinary way, wherefrom she proceeded to quash the decision. With respect, I am of a different view — that the promulgation of the notice was a discretionary act in the nature of a policy guideline and hence was largely immune from review.

11 Section 5(1) of the *Export and Import Permits Act*, R.S.C. 1985, c. E-19, reads as follows:

5.(1) The Governor in Council may establish a list of goods, to be called an Import Control List, including therein any article the import of which the Governor in Council deems it necessary to control for any of the following purposes;

(a) ...

(b) to restrict, for the purpose of supporting any action taken under the *Farm Products Marketing Agencies Act*, the importation in any form of a like article to one produced or marketed in Canada the quantities of which are fixed or determined under that Act; ...

Section 8(1) of the same Act states:

8.(1) The Minister may issue to any resident of Canada applying therefor a permit to import goods included in an Import Control List, in such quantity and of such quality, by such persons, from such places or persons and subject to such other terms and conditions as are described in the permit or in the regulations.

There is no challenge to the legislative nature of placing the article on the list; the challenge is to the Notice to Importers which inter alia outlines an annual global quota, principles of quota allocation and matters dealing with the issuance of permits.

12 The decision of *Maple Lodge Farms Ltd. v. Canada*, (sub nom. *Maple Lodge Farms Ltd. v. R.*) [1981] 1 F.C. 500 (C.A.), affirmed [1982] 2 S.C.R. 2, is of significance in this case. In a similar fact situation, it was held that the authority given to the Minister to grant permits under subs. 8(1) was discretionary. Thus, according to Mr. Justice McIntyre in the Supreme Court of Canada (pp. 7-8):

In construing statutes such as those under consideration in this appeal, which provide for far-reaching and frequently complicated administrative schemes, the judicial approach should be to endeavour within the scope of the legislation to give effect to its provisions so that the administrative agencies created may function effectively, as the legislation intended. In my view, in dealing with legislation of this nature, the courts should, wherever possible, avoid a narrow, technical construction, and endeavour to make effective the legislative intent as applied to the administrative scheme involved. It is, as well, a clearly-established rule that the courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

It was also held that the Minister could issue policy guidelines outlining the general requirements for the granting of permits, for that would be helpful to applicants to know in general terms what the policy and practice of the Minister will be, as long as they do not confine the Minister so as to fetter his discretion (see pp. 6-7).

13 The Supreme Court of Canada was merely echoing the principles expressed by Mr. Justice Le Dain (as he then was) in the Federal Court of Appeal in *Maple Lodge Farms*, supra, at pp. 513-514:

... guidelines, which are not regulations and do not have the force of law, cannot limit or qualify the scope of the discretion conferred by statute, or create a right to something that has been made discretionary by statute. The Minister may validly and properly indicate the kind of considerations by which he will be guided as a general rule in the exercise of his discretion ... but he cannot fetter his discretion by treating the guidelines as binding upon him and excluding other valid or relevant reasons for the exercise of his discretion ...

14 After all, these policy guidelines are not regulations; they may be easily changed from time to time, depending on the economic and political climate as well as the international situation. They are a useful guide only, which is as it should be.

15 As for the finality of policy decisions, a similar view was expressed in *Thorne's Hardware Ltd. v. R.*, [1983] 1 S.C.R. 106, by Mr. Justice Dickson (as he then was):

Decisions made by the Governor in Council in matters of public convenience and general policy are final and not reviewable in legal proceedings. Although ... the possibility of striking down an order in council on jurisdictional or other compelling grounds remains open, it would take an egregious case to warrant such action. (p. 111)

Although the trial judge was correct in noting that these guidelines would cause economic loss to certain parties, they were, nevertheless, in my view, discretionary policy guidelines, and hence, within the purview of the Minister and not subject to ordinary review, save according to the three exceptions set out in *Maple Lodge Farms*.

16 Turning to the *Maple Lodge Farms* exceptions, therefore, no one questions that the Minister acted in good faith. Criticisms were levelled at the substance of his decision and the method of arriving at that decision, but no allegations of bad faith have been made. Thus, that exception is not applicable here.

17 As for the need to comply with natural justice principles in this case, there is a fundamental disagreement. The trial judge held that some form of notice to the respondents was required as well as an effective opportunity to be heard. The appellants challenge this view, whereas the respondents support it.

18 Generally, the rules of natural justice are not applicable to legislative or policy decisions. As has been clearly stated by Sopinka J. in *Reference re Canada Assistance Plan (Canada)*, [1991] 2 S.C.R. 525 at 558:

... the rules governing procedural fairness do not apply to a body exercising purely legislative functions.

A similar statement was made by Dickson J. (as he then was) in *Martineau v. Matsqui Institution* (1979), [1980] 1 S.C.R. 602, at 628:

A purely ministerial decision, on broad grounds of public policy, will typically afford the individual no procedural protection, and any attack upon such a decision will have to be founded on abuse of discretion. Similarly, public bodies exercising legislative functions may not be amenable to judicial supervision.

(See also Estey J. in *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735 at 758; *Bates v. Lord Hailsham of St. Marylebone*, [1972] 3 All E.R. 1019 (Ch. D.).)

19 More particularly, it has been held that the principles of natural justice are not applicable to the setting of a *quota policy* although they may be to *individual decisions* respecting grants of quotas. In *Bedesky v. Ontario (Farm Products Marketing Board)* (1975), 58 D.L.R. (3d) 484 (Ont. Div. Ct.), affirmed (1975), 62 D.L.R. (3d) 265 (Ont. C.A.), leave to appeal refused (1975), 62 D.L.R. (3d) 266 (note) (S.C.C.), Mr. Justice Morden stated at p. 507 [58 D.L.R. (3d)]:

No authority was cited to us for the proposition that the principles of natural justice respecting the right to notice and the right to be heard are applicable to govern a body such as the Chicken Board with respect to the devising and adopting of a quota policy. In fact, the law would appear to be to the contrary ...

I can see no reason to differentiate the situation where, as here, it is a Minister rather than a Board that is establishing the quota. Some may be damaged while others may gain by such a quota, but the exercise is essentially a legislative or policy matter, with which courts do not normally interfere. Any remedy that may be available would be political, not legal. It might have been a considerate thing for the Minister to give the respondents notice and an opportunity to be heard, but he was not required to do so.

20 In essence, what the respondents are seeking here is to impose a public consultation process on the Minister when no such thing has been contemplated by the legislation. There are statutes in which regulations or policies cannot be promulgated without notifying and consulting the public. (See, for example, *Grain Futures Act*, R.S.C. 1985, c. G-11, subs. 5(2); *Aeronautics Act*, R.S.C. 1985, c. A-2, ss. 5 and 6; *Transportation of Dangerous Goods Act*, R.S.C. 1985, c. T-19, subs. 22(1); and *Broadcasting Act*, R.S.C. 1985, c. B-9, subs. 11(5).) No such legislative provision appears in the *Export and Import Permits Act*, something that Parliament could have inserted if it wanted notice to be given and consultation with the public to be held.

21 The last basis of attack on the Minister's conduct was that it was based on irrelevant factors and was not supported by the evidence. The trial judge was of the view that there was no evidence that the system adopted would support domestic supply management, that there was any consideration of the increased concentration of the market that might arise, nor of reliance on the Deloitte, Touche study which may have supported the decision. Rather she decided that the main focus was to transfer profits from one segment of the market to another, which might cause disruption of the market. Accordingly, the trial judge quashed the decision of the Minister because it was "based on irrelevant consideration." With respect, I am of the view that the trial judge erred in this regard as well.

22 It is not fatal to a policy decision that some irrelevant factors be taken into account; it is only when such a decision is based entirely or predominantly on irrelevant factors that it is impeachable. It is not up to the court to pass judgment on whether a decision is "wise or unwise." (See *Cantwell v. Canada (Minister of the Environment)* (1991), 41 F.T.R. 18, at p. 36 per MacKay J.) This court, because these matters involve "value judgments," is not to "sit as an appellate body determining whether the initiating department made the correct decision ..." (See Strayer J. in *Vancouver Island Peace Society v. Canada*, [1992] 3 F.C. 42 (T.D.), at 49.)

23 As this court stated in *National Anti-Poverty Organization v. Canada (Attorney General)* (1989), 36 Admin. L.R. 197, "Even if one were to assume that the Governor in Council acted with a dual purpose in mind (one falling within his mandate ... and the other falling outside his mandate ...) I doubt that this could advance the respondents' case." For, as the Supreme Court of Canada has explained, "Governments do not publish reasons for their decisions; governments may be moved by any number of political, economic, social or partisan considerations." (See *Thorne's Hardware*, supra, at pp. 112 and 113.)

24 In other words, for a court to interfere, there must be reliance primarily on irrelevant matters as well as an absence of evidence supporting the Minister's decision.

25 The relevant legislative provisions to be considered here are subss. 5(1) and 8(1) of the *Export and Import Permits Act* which are reproduced above. It should be noted that, in establishing the Import Control List, the Governor in Council must deem it necessary "for the purpose of supporting any action taken under the *Farm Products Marketing Agencies Act*." Counsel for the respondent contended that this necessarily incorporated s. 23 of that Act into the decision-making considerations binding upon the Minister. Section 23 reads as follows:

23.(1) A marketing plan, to the extent that it allocates any production or marketing quota to any area of Canada, shall allocate that quota on the basis of the production from that area in relation to the total production of Canada over a period of five years immediately preceding the effective date of the marketing plan.

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

He further argued that, because subs. 23(1) stipulates that the historical method of allocation must be used in setting up a marketing plan, the use of the machinery in the *Export and Import Permits Act* must also be in accordance with that principle. In my view, this is too narrow a reading of these sections. This contention, if it were accepted, would virtually prevent the Minister from departing from the historical patterns of production, something that would render nugatory the capacity of the Minister to change trading patterns in the commodities under consideration. This could not have been the object of Parliament.

26 In "supporting any action taken under the *Farm Products Marketing Agencies Act*," not only must the Minister have regard to history in subs. 23(1), but he must also consider the "principle of comparative advantage" in subs. 23(2) as well as other sections of the Act. For example, the Minister must also consider s. 21 of the Act which describes the objects of an agency as follows:

21. The objects of an agency are

(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.

This indicates that the Minister must take into account a very broad range of considerations, not only the historical situation, in arriving at his decisions.

27 A detailed reading of the record indicates that the considerations taken into account by the Minister included a wide variety of matters and were not as limited as the trial judge thought. While there may have been some irrelevant and less relevant matters taken into account, there were also many relevant ones that were assessed.

28 There is no need for me to list each and every factor nor piece of relevant evidence that was considered, but I shall mention a few illustrative ones. The Minister considered various quota allocation systems, that is, the traditional method, a phased-in allocation to hatcheries on a provincial market share basis and a phased-in allocation to hatcheries on a national market share basis. (See Gosselin affidavit, Appeal Book, Volume V, pp. 1089-1118.) The advantages and disadvantages of each of these alternatives were weighed (see, for example, Drohomereski affidavit, Appeal Book, Volume II, pp. 310-314). Evidence was adduced concerning the advantages of shifting import allocations on a phased-in basis as between hatcheries and limiting imports only to hatcheries, such as reducing inequalities between traditional importers and those who did not possess any quotas (see Gosselin, cross-examination, Appeal Book, Volume V, pp. 1169-1170; CBHEMA submissions, Appeal Book, Volume II, p. 467 and Volume IV, p. 1102), improving the degree of market responsiveness by adjusting allocations annually on the basis of market share (see De Valk affidavit, Appeal Book, Volume I, p. 294), producing savings by passing on the benefits of the lower prices of imports (see McKinley cross-examination, Appeal Book, Volume IV, p. 840), and granting imports to the hatchery segment of the industry that had a long-term view of optimal supply arrangements (see Gosselin cross-examination, Appeal Book, Volume V, pp. 1180-1182). There was also evidence of support for the system adopted by the Minister from CBHEMA, the Canadian Chicken Marketing Agency, the Ontario Chicken Producers Marketing Board and others. Evidence was also introduced to show that the quota system adopted would support supply management of hatching eggs and chicks. (See, for example, Gosselin evidence, Appeal Book, Volume V, pp. 1167, 1176, etc; Drohomereski evidence, Appeal Book, Volume IV, p. 510; McKinley evidence, Appeal Book, Volume IV, pp. 791, 921 etc.) There is no need to add further examples, of which there are many.

29 In conclusion, there is ample evidence in the record to support the decision made by the Minister to adopt the system he did. In doing so he relied on relevant factors. This is not to say that the evidence demonstrated that he necessarily made the right decision. That is not the standard of review that we must apply. Indeed, even if it could be shown that he may have made the wrong decision, this court would have no business interfering with it in these circumstances.

30 As to the remaining issues to be dealt with, the trial judge was correct in deciding that, while the Minister for International Trade may have made the initial decision, it was done with the approval of the Secretary of State for External Affairs. In other words, the Secretary of State for External Affairs adopted, as his own, the decision made originally by the Minister for International Trade. It was, therefore, not an unauthorized sub-delegation of authority. (See *Government Organization Act*, 1983, 29-30-31, Elizabeth II, ss. 4 and 6.)

31 There is no basis for contending that the doctrine of reasonable expectations was applicable on these facts, since there was no promise to consult nor any such practice which might have been reasonably relied upon by the respondents. (See *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, at 1203.)

32 Because of the result in the first appeal, there is no need to consider in the second appeal whether the trial judge exceeded her jurisdiction insofar as the remedy she ordered. Since the trial judge erred in quashing the decision of the Minister, the remedy she ordered must also be set aside.

33 These appeals will both be allowed and the order for certiorari dated April 1, 1993 quashing the Minister's decision will be set aside as will the order dated May 27, 1993 of the court setting interim quotas.

Appeals allowed.

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Canada protects supply management system

October 5, 2015 – Ottawa, Ontario – Agriculture and Agri-Food Canada

The Government of Canada announced today a series of new programs and initiatives for supply-managed producers and processors to support them throughout the implementation of the Trans-Pacific Partnership (TPP) and the Canada-EU Trade Agreement. Under both agreements, the three pillars of the supply management system will remain protected.

The following programs will be implemented:

- The Income Guarantee Program will keep producers whole by providing 100 per cent income protection to producers for a full 10 years from the day TPP comes into force. Income support assistance will continue on a tapered basis for an additional five years, for a total of 15 years. \$2.4 billion is available for this program.
- The Quota Value Guarantee Program will protect producers against reduction in quota value when the quota is sold following the implementation of TPP. \$1.5 billion has been set aside for this demand-driven program, which will be in place for 10 years.

The Government also announced two additional programs:

- The \$450 million-Processor Modernization Program will provide processors in the supply-

managed value chain with support to further advance their competitiveness and growth.

- The Market Development Initiative will assist supply-managed groups in promoting and marketing their top-quality products. To support the initiative \$15 million in new funding will be added to the AgriMarketing Program.

In addition to the long-term \$4.3-billion investment outlined above, the Government will intensify on-going anti-circumvention measures that will enhance our border controls. These measures include requiring certification for spent fowl, preventing importers from circumventing import quotas by adding sauce packets to chicken products, and excluding supply-managed products from the Government Canada's Duties Relief Program. Cheese compositional standards, introduced by the Government of Canada in 2008, have been maintained. The Government remains committed to ensuring they are enforced, so the standards we have for Canadian cheese are fully maintained.

The Canadian Dairy Commission and the Farm Products Council of Canada will work with Agriculture and Agri-Food Canada to ensure the Income Guarantee and Quota Value Guarantee programs are delivered to producers in an effective and efficient manner. The Government will continue to work closely with dairy, poultry and egg producers and the entire supply-managed sector to implement these initiatives.

These Cabinet-approved initiatives will support producers and processors throughout the implementation period of TPP and the Canada-EU Trade Agreement.

The TPP will secure new market access opportunities for Canadian dairy, poultry and egg exports. Dairy, poultry and egg producers and processors will benefit over time from increased duty-free access to the United States and all other TPP countries. This will include complete tariff elimination on some specialty cheeses, including several artisanal cheeses, entering the United States.

Despite significant and broad demands from several of our TPP negotiating partners, Canada has offered only limited new access for supply-managed products. This access, which will be granted through quotas phased in over five years, amounts to a small fraction of Canada's current annual production: 3.25% for dairy (with a significant majority of the additional milk and butter being directed to value-added processing), 2.3% for eggs, 2.1% for chicken, 2% for turkey and 1.5% for broiler hatching eggs.

Related products

- [Programs for Canada's dairy, poultry and egg processors and industry](#)
- [Programs for Canada's dairy, poultry and egg farmers](#)

Additional links

- [New programs for supply management sector](#)
- [Trans-Pacific Partnership \(TPP\) Free Trade Negotiations](#)

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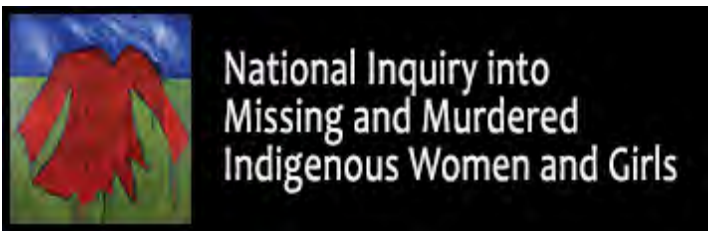
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Ministry of
Agriculture

Agri-Food Council

Saskatchewan

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Regina SK S4S 0B1

Tel: (306) 787-5978
Fax: (306) 787-5134

July 14, 2015

The Registrar
Farm Products Council of Canada
Central Experimental Farm
960 Carling Avenue
Building 59
OTTAWA ON K1A 0C6

Dear Registrar:

Please accept this formal complaint pursuant to clause 7(1)(f) of the *Farm Products Agencies Act* (FPAA) and clause 5(b) of the Farm Products Council of Canada's (FPCC) Interim Complaint Guidelines from the Agri-Food Council of Saskatchewan (AFC) regarding the A-133 allocation decision made by the Chicken Farmers of Canada (CFC). AFC complains about the following issues:

- (1) That CFC used a new growth quota distribution mechanism (GQD mechanism) to distribute growth quota to the provinces without support from all twenty signatories to the Operating Agreement (OA), and that by setting allocation using this new mechanism, if that allocation is approved by FPCC, would result in economic loss to Saskatchewan in the form of lost chicken production and an undersupplied processing sector; and
- (2) That CFC does not appear to have established any written formal allocation protocols for setting national allocations. The lack of formal written protocols raises serious concerns with the transparency and legitimacy of the entire allocation setting process. It has created confusion around the CFC table with its members and raises serious questions about the overall governance and leadership of the organization. The absence of formal protocols has resulted in unequal treatment and has not allowed provinces to fully participate in the allocation process.

AFC is affected by these issues because, as outlined below, they raise serious concerns regarding the validity and applicability of the Federal-Provincial Agreements (FPA) and other subsequent agreements in the actual operation of the

supply management system. CFC's decision to move forward with the application of a proposed GQD mechanism with the full knowledge that more than one signatory is unable to support such a mechanism at this time raises serious concerns about the ability of provinces, in this case Saskatchewan in particular, to be heard within the supply management system. It raises concerns about the ability of the system to function as a whole, about CFC's willingness to negotiate and consult in good faith, and the long-term stability of the national system.

Regarding the second issue, the CFC's failure to follow a transparent decision-making process in accordance with its own by-laws has serious implications for the ability of a participant at the CFC table to adequately and appropriately prepare for CFC allocation meetings. AFC was unable to discuss any proposed changes with our provincial commodity board or to provide advice on how to proceed. This impacted the ability of AFC to fulfill its role as a supervisory board.

Issue #1: Use of the Proposed Amended OA and GQD Mechanism

The supply management system is based upon mutual cooperation and agreement between all signatories to the OA. This is the only way that the system can be maintained long-term, as it is the only way to ensure that the unique needs of each member province are being considered and addressed. The OA is the critical document to ensure this occurs. If the importance of negotiation and consultation with the provinces or the OA itself is diminished, the system as a whole is diminished, and inevitably will fall apart.

Recently, CFC proposed an amended OA that incorporated a new GQD mechanism. This new mechanism would impact the industry in every province and the provincial policies that govern those industries. Initially, CFC sought the participation of the provinces, and there was some initial success as the amended OA received the tentative support of the ten provincial marketing boards. At this point, it is our understanding that two provincial marketing boards have yet to agree to sign the amended OA which includes this proposed new mechanism.

However, since A-127 and including A-133, CFC has been using a new GQD mechanism to determine provincial quota. This is contrary to the practice in place since approximately 2005 of distributing new growth quota *pro rata*. In using this new proposed GQD mechanism without first obtaining the approval of the twenty

OA signatures, CFC has bypassed meaningful negotiations with the provinces, and thereby has diminished the system as a whole.

AFC has stated formally on two occasions that it is not in agreement with the proposed amended OA and the use of the proposed new GQD mechanism in its current form¹ as it does not address the needs of the chicken industry in Saskatchewan, nor those of Canada's chicken industry overall. The British Columbia Farm Industry Review Board also has stated that it is not in a position to approve the proposed amended OA². There is an ongoing appeal in British Columbia regarding the use and appropriateness of the proposed amended OA and new GQD mechanism. This appeal has been put on hold while the industry in the West – producers and processors – work to find solutions to processor-raised issues with the agreement. From our understanding, producers and processors have made significant progress in their efforts.

Additionally, given the difficulty CFC has experienced in determining a method for measuring the proposed further processing component of the GQD mechanism, it has become clear that the use of that variable is not possible as intended.

Nevertheless, CFC has continued to use and FPCC has continued to approve the proposed new GQD mechanism to set allocations. In the FPCC's June letter to Mr. David Janzen regarding the approval of the A-132 allocation, FPCC stated that it believes the proposed new GQD mechanism is consistent with article 1.01 of the FPA which states:

This Agreement provides for an 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.

¹ Council letter to Mr. David Janzen, dated April 28, 2015: "Council has decided not to approve any proposed amendment to the Operating Agreement that includes the parameters set out in the November 2014 MOU." This statement was reiterated in a letter to Mr. Janzen dated June 4, 2015.

² British Columbia Farm Industry Review Board letter to Mr. Mike Dungate dated June 19, 2015.

However, it is the position of AFC that the use of the proposed new mechanism without the agreement of and meaningful negotiations with all signatories harms the industry in Saskatchewan, is contrary to the OA and harms the system as a whole. The use of the proposed new GQD mechanism without proper negotiations with and agreement of all signatories actually fosters the avoidance of the consideration of the questions that relate to the objectives posed in article 1.01 of the FPA and that work to prepare the industry for the future, while encouraging proactive solutions to strengthen the industry today. This is contrary to section 21 of the FPAA:

21. The objects of an agency are:

- (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.

In the FPCC's June letter to Mr. David Janzen regarding the approval of the A-132 allocation, FPCC conveyed its position that the use of the proposed new GQD mechanism was "part of an ongoing process to arrive at a provincial distribution methodology which is more reflective of section 23(2) of the FPAA".

While AFC understands that any new GQD mechanism agreed to by all signatories will likely contain a different approach to comparative advantage, it is not appropriate for CFC or FPCC to bypass critical negotiations and consultations to impose, in CFC's view, a better application of comparative advantage. This is especially so when opposition to the proposed comparative advantage mechanism has been clearly expressed.

Even if using the best GQD mechanism was required by the FPAA, CFC is not in the position to single-handedly determine what that mechanism is. This decision can only be made through cooperative negotiations and consultations between CFC (including downstream parties) and all provincial signatories. It is not appropriate, nor is it in accordance with the purposes of the FPA or FPAA, for CFC to impose its view of comparative advantage on the group as a whole. Saskatchewan is committed to continuing cooperative negotiations and consultations with all signatories and CFC to come to an agreement that considers the needs of each province and the system as a whole.

The continued use of the proposed new GQD mechanism raises concerns with all FPAs and their associated OAs and the willingness of national agencies to honour the commitments made in those agreements. CFC's unilateral imposition of the proposed new GQD mechanism should raise concerns for all signatories and for FPCC.

Relief Sought Regarding Issue #1

Clause 7(1)(d) of the FPAA requires FPCC to review all orders and regulations that are proposed to be made by agencies that are necessary for the implementation of the plan. Clause 7(1)(f) of the FPAA grants FPCC the power to make inquiries and to take such actions within its powers as it deems appropriate in relation to any complaints received.

AFC requests the following relief in regards to the use of the proposed new GQD mechanism by CFC:

1. That FPCC not approve allocation A-133, as the use of the proposed new GQD mechanism is not supported by all signatories, as has been communicated on more than one occasion, and that FPCC direct that the allocated growth quota be distributed *pro rata*, as was the agreed-upon process prior to the use of the proposed new GQD mechanism.
2. That FPCC direct CFC that all future growth quota be distributed *pro rata*, as was the agreed-upon process prior to the use of the proposed new GQD mechanism, until such time as an alternative, mutually acceptable mechanism is derived.
3. As an alternative to 1 and 2, that FPCC directs that Saskatchewan is not bound by any allocation based on the proposed new GQD mechanism and may continue to adhere to the *pro rata* GQD mechanism, and shall not incur any penalties associated with any difference in production between the two mechanisms, including any overproduction penalties. CFC has stated in a formal letter to Saskatchewan that the use of the proposed new GQD mechanism is "non-binding"³, and therefore it would not be appropriate for Saskatchewan to incur any penalties resulting from declining to use the proposed new GQD

³ Letter to Council from Mr. David Janzen dated January 28, 2015: "we are proceeding on the clear understanding that the MOU is not binding on CFC and on provincial boards" (page 2).

mechanism.

4. That FPCC direct CFC to resume meaningful negotiations with all signatories and work towards mutual agreement among all signatories on a new GQD mechanism and a new direction forward.

Issue #2: Change in Allocation Setting Procedures

Until the A-133 allocation meeting, there has been a three-step process to conclude the process of setting allocation. First, a straw vote confirming a supportable national allocation motion is passed. Second, CFC staff generates provincial allocation numbers based on the straw vote. Representatives from each provincial marketing board would then confirm that the CFC-generated provincial allocation numbers are accurate given the proposed national allocation. This confirmation must be provided by each of the provinces before moving forward. Lastly, a formal vote to support or reject the proposed national allocation is held.

At the A-133 CFC allocation meeting, CFC staff or executive unilaterally altered this process. Instead of three distinct steps, the second step was omitted. This is a fundamental change to the nature of allocation setting. In the three-step process, without consensus regarding the proposed provincial allocation numbers an allocation can not be set because the proposed allocation would not proceed to the formal vote. This means a province cannot not be forced into an allocation that would be detrimental to its provincial industry. The three-step process promotes cooperation between the provinces and CFC and works to foster stability within the system.

However, in the process unilaterally determined by CFC staff or executive for the setting of A-133, the second step was omitted and the matter proceeded directly to the formal national allocation vote, which can pass by a double majority vote (section 3.09 of the OA) resulting in a signatory province that is not in agreement with the allocation being forced to be subject to that allocation despite potential detriment to its provincial industry.

Such a fundamental process change should be a policy decision. CFC's General

By-laws (section 37)⁴ states:

Where appropriate, the Executive or any other committee of CFC shall make recommendations concerning policy options presented by the committee. Any recommendations shall be forwarded to each member of CFC in sufficient time prior to a meeting of CFC in order to allow a member of CFC to consult, as appropriate, with their Provincial Commodity Boards...

This procedure was not followed.

Through a comprehensive exploration of CFC's policies posted on its Online Business Initiative website, AFC staff was unable to locate a formal, written procedure for setting allocation at the allocation meeting. In the absence of formality, adhering to the previously agreed to convention takes on additional importance. Given the critical nature of the allocation process to the industry as a whole and to the practical operation of the OA, CFC, in consultation with the provinces and downstream parties, should develop clear, formal, written procedures for determining allocation.

Relief Sought Regarding Issue #2

Clause 7(1)(f) of the FPAA grants FPCC the power to make inquiries and to take such actions within its powers as it deems appropriate in relation to any complaints received.

AFC requests the following relief in regards to the unilateral alteration of the allocation process at A-133:

1. That FPCC not approve CFC's proposed allocation for A-133 as the standard three-step process to conclude allocation setting was changed unilaterally.
2. That FPCC direct CFC to comply with its existing protocol for revising its policy with respect to the process for setting allocations and that the revised process be written down and available to all CFC board members and OA signatories. That is, that the CFC policy committee review the existing policy

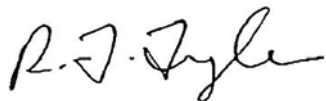
⁴ Accessed through the CFC's Online Business Initiative on July 9, 2015.

and provide proposed changes to the CFC board prior to the CFC meeting at which the proposed changes are to be implemented. The CFC board will discuss the proposed policy changes and either adopt the proposed changes or send the proposal back to the policy committee with recommendations and suggestions. This process continues until a new policy can be set through a majority vote of all CFC board members. The resultant approved written policy would then be made available to all CFC members and OA signatories. This process should be followed in the amendment of any CFC policy.

We have copied the CFC chairman, Mr. David Janzen, and Executive Director, Mr. Mike Dungate, on this complaint, along with all other signatories to the FPA and other Saskatchewan industry parties.

Should you require more information regarding this complaint, please contact Corey Ruud, General Manager of the Council, at 306-787-5978 or corey.ruud@gov.sk.ca.

Sincerely,



R.T. Tyler
Chair, Agri-Food Council

cc: The Honourable Gerry Ritz, Minister of Agriculture and Agri-Food Canada
Honourable Lyle Stewart, Minister of Saskatchewan Agriculture
Honourable Norm Letnick, Minister of British Columbia Agriculture
Honourable Rachel Notley, Minister of Alberta International and
Intergovernmental Relations
Honourable Oneil Carlier, Minister of Alberta Agriculture and Forestry
Honourable Ron Kostyshyn, Minister of Manitoba Agriculture, Food and Rural
Development
Honourable Jeff Leal, Minister of Ontario Agriculture, Food and Rural Affairs
Honourable Pierre Paradis, Ministre of Québec Agriculture, Pêcheries et
Alimentation

Honourable Jean-Marc Fournier, Ministre délégué aux Affaires
intergouvernementales canadiennes du Québec
Honourable Rick Doucet, Minister of New Brunswick Agriculture, Aquaculture
and Fisheries
Honourable Keith Colwell, Minister of Nova Scotia Agriculture
Honourable J. Alan McIsaac, Minister of Prince Edward Island Agriculture and
Forestry
Honourable Derrick Dalley, Minister of Newfoundland and Labrador Natural
Resources
Honourable Keith Hutchings, Minister of Newfoundland and Labrador
Municipal and Intergovernmental Affairs
Ms. Alanna Koch, Deputy Minister, Saskatchewan Ministry of Agriculture
Mr. Laurent Pellerin, Chairman, Farm Products Council of Canada
Mr. John Les, Chairman, British Columbia Farm Industry Review Board
Mr. Bruce Beattie, Chairman, Alberta Agricultural Products Marketing Council
Mr. Ken Caldwell, Chairman, Manitoba Farm Products Marketing Council
Mr. Gerald Kamenz, Chairman, Ontario Farm Products Marketing Commission
Ms. Françoise Gauthier, president, Régie des marchés agricoles et
alimentaires du Québec
Mr. Robert Shannon, Chairman, New Brunswick Farm Products Commission
Mr. Ken Peacock, Chairman, Nova Scotia Natural Products Marketing Council
Mr. Michael Carmichael, Chairman, Prince Edward Island Marketing Council
Ms. Rita Legge, Chairman, Newfoundland Farm Industry Review Board
Ms. Diane Pastoor, Chairperson, Chicken Farmers of Saskatchewan
Mr. David Janzen, Chairman, Chicken Farmers of Canada
Mr. Robin Smith, Chairman, British Columbia Chicken Board
Ms. Erna Ference, Chairperson, Alberta Chicken Producers
Mr. Jake Wiebe, Chairman, Manitoba Chicken Producers
Mr. Henry Zantingh, Chairman, Chicken Farmers of Ontario
Mr. Pierre-Luc Leblanc, Chairman, Fédération des producteurs de volailles du
Québec
Mr. Marc Cormier, Chairman, Chicken Farmers of New Brunswick
Mr. Paul Cook, Chairman, Chicken Farmers of Nova Scotia
Mr. Dean Good, Chairman, Chicken Farmers of Prince Edward Island
Mrs. Ruth Noseworthy, Chairperson, Chicken Farmers of Newfoundland and
Labrador
Mr. Jeff McDowell, Vice President of Poultry Operations, Sofina Foods Inc.
Mr. Ron Patterson, CEO, Prairie Pride Natural Foods Ltd.

Mr. Clinton Monchuk, CEO, Chicken Farmers of Saskatchewan
Mr. Mike Dungate, Executive Director, Chicken Farmers of Canada
Mr. Corey Ruud, General Manager, Agri-Food Council



Farm Products Council
of Canada

Conseil des produits agricoles
du Canada

COMPLAINT COMMITTEE'S FINAL REPORT AND RECOMMENDATIONS

SEPTEMBER 2015

FARM PRODUCTS COUNCIL OF CANADA

COMPLAINT COMMITTEE'S FINAL REPORT AND RECOMMENDATION

IN THE MATTER OF THE INQUIRY INTO THE COMPLAINT BY THE AGRI-FOOD COUNCIL OF SASKATCHEWAN AGAINST CHICKEN FARMERS OF CANADA CONCERNING THE QUOTA ALLOCATION SET FOR PERIOD A-133

The Complaint Committee was established pursuant to paragraph 7(1)(f) of the *Farms Products Agencies Act* (FPAA) and was mandated to investigate the complaint brought forward by the Saskatchewan Agri-Food Council (AFC) against the methodology employed by the Chicken Farmers of Canada (CFC) in setting the allocation for the A-133 period.

The role of the Complaint Committee was to collect evidence from both Parties to determine what recommendation, if any, with respect to the complaint brought forward by AFC on CFC's proposed A-133 allocation, may be made to the Farm Products Council of Canada (FPCC).

The Committee held an informal meeting on August 4, 2015, where in addition to previously received written material from the Parties, the Committee heard supplementary evidence presented by the Parties.

Summary of AFC's Position

In setting the allocation for A-133, CFC used a new growth quota distribution (GQD) mechanism to distribute growth quota to provinces without the support from all twenty signatories to Schedule B of the Federal-Provincial Agreement (FPA) for Chicken. Schedule B is also referred as the Operating Agreement (OA). AFC claims that if the proposed allocation for A-133 is approved by the FPCC, Saskatchewan would incur economic loss in the form of lost chicken production and an undersupplied processing sector.

Additionally, CFC did not appear to have in place any written formal allocation protocols for setting national allocations. The lack of formal written protocols raises serious concerns with Saskatchewan with respect to the transparency and legitimacy of the allocation process.

AFC requests that FPCC not approve the allocation for A-133 and directs CFC to distribute future growth on a *pro rata* method. As an alternative, AFC requests that FPCC directs that Saskatchewan not be bound by any allocation that is based on the new GQD mechanism and that Saskatchewan be allocated its *pro rata* share of any allocation.

The Committee noted that the allocation methodology documented in the OA is a "bottom-up" methodology. The provincial boards consult with processors in their province to determine the market requirements for the province and submit these market requirements to CFC. CFC will determine the quota allocation having regard to the market requirements submitted by each province. This approach allows for provinces to be allocated quota at different growth rates but since 2005, the Agency has allocated quota based on a *pro rata* methodology.

AFC is also requesting that FPCC directs CFC to comply with its existing protocols with respect to the process in setting an allocation. Any change in this process should be first reviewed by CFC's Policy Committee and introduced to the Board at a later meeting.

Summary of CFC's Position

CFC views the allocation setting decision for A-133 as a considered, consensus-driven approach. CFC does not agree with AFC that the OA mandates the setting of the allocation on a *pro rata* basis. Alberta signatories withdrew from the FPA due to allocations being set on a *pro rata* basis rather than based on differential growth.

A memorandum of understanding (MOU) was agreed to by all ten provincial chicken boards and CFC in November 2014, which incorporated an allocation methodology including elements designed to reflect comparative advantage of production. The MOU is now being drafted as an amendment to the OA. The intent is to have support of the OA amendments from all ten provincial commodity boards before circulating the OA amendments to the supervisory boards. CFC agrees that an amended OA, approved by all signatories, is necessary to ensure the long-term sustainability of the supply management system for chicken. Until this agreement is reached, CFC believes it has the responsibility to set allocations to take into account market requirements as well as the views of the stakeholders.

CFC disagrees that the approval of A-133 would result in economic loss to Saskatchewan and an undersupplied processing sector. CFC provided data indicating that for allocations A-127 to A-133, Saskatchewan chicken producers received for each period an allocation that exceeded the volume requested by Saskatchewan chicken processors.

CFC disagrees with AFC's claim that the process followed by CFC lacked transparency and legitimacy as the process followed is not in a policy. CFC states that they do have a policy for setting allocation and this policy was followed when A-133 was set. In addition, this policy affords all provincial boards the opportunity to participate. Prior to setting the A-133 allocation, there was extensive input from all provincial commodity boards as well as industry organizations.

With respect to the relief sought by AFC, CFC's view is that all but one (for FPCC to not approve the A-133 allocation) request goes beyond FPCC's authority. The FPCC cannot dictate to CFC that the Agency must allocate using a *pro rata* methodology. Nor can FPCC relieve Saskatchewan of its responsibilities of respecting the quota set by CFC.

The Complaint Committee's Findings

The Committee concurs with the AFC that not all twenty signatories have indicated their support for the new QGD mechanism. However, the Committee rejects the notion that certain signatories' silence may be construed as opposition to the QGD mechanism.

The Committee is of the view that CFC and the provincial chicken boards have invested a significant amount of time and resources into investigating alternative distribution schemes that incorporate, in some fashion, comparative advantage of production. CFC did not single-handedly arrive at the methodology used in allotting quota to provincial boards; all provincial boards were in agreement as can be shown by the signatures of the ten provincial chairs on the MOU signed in November 2014.

Prior to the A-127 period, for the six periods starting with period A-121, CFC had already ceased setting the allocation of 100 percent of quota on a *pro rata* basis. While, prior to period A-121, allocations had been set on a *pro rata* basis, in the Committee's view, this approach was not consistent with the intent of the redrafted 2001 FPA and associated schedules, which allowed for differential growth amongst provinces to be considered in allocation setting.

In the view of the Committee, allocating solely on a *pro rata* basis is not in conformity to subsection 23(2) of the FPAA:

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

Pro rata distribution of CFC's allocation, in the Committee's view, is not consistent with CFC's objects as outlined in section 21 of the FPAA:

21. The objects of an agency are:

- (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.

It is the Committee's view that CFC is obligated to distribute the volume of chicken allocated above the base shares in consideration of the principle of comparative advantage of production. The *Chicken Farmers of Canada Proclamation* constitutes subordinate legislation as the authorities for this document are derived from the FPAA and the OA is incorporated by reference in CFC's Proclamation. The Committee further believes that CFC has the discretion with setting allocation to the extent that subsection 23(2) is respected.

With respect to the claim that Saskatchewan chicken producers will incur an economic loss and that chicken processors in Saskatchewan will be under-supplied, the Committee is of the view that the AFC did not successfully demonstrate that the processing sector will be undersupplied. For allocations A-127 through A-133, processors in Saskatchewan requested from Chicken Farmers of Saskatchewan 40.250 million kg eviscerated. CFC accordingly allocated Saskatchewan 40.412 million kg eviscerated, 0.162 million kg eviscerated above the amount requested by processors.

Therefore, in the Committee's view, the AFC did not demonstrate the economic impact of the loss of chicken production in Saskatchewan as a result of the new QGD mechanism for allocation period A-133.

With regard to the second issue brought by the AFC, the Committee disagrees with the AFC's claim that, because CFC does not follow any written formal allocation protocols, provinces are not able to participate fully in the allocation process and supervisory boards are not able to fulfill their roles.

FPCC staff, as well as Council members attending CFC meetings where allocations are discussed, have repeatedly reported that during CFC meetings, the Chair offers ample time for discussion on allocation. They also report that all provinces and downstream stakeholders are actively encouraged to participate in discussions at CFC's allocation meetings.

Relief Sought by AFC

Other than the request by the AFC that FPCC not approve the A-133 allocation, the relief sought by AFC exceeds the powers of the FPCC's as detailed in section 7 of the FPAA.

It is the Committee's understanding is that FPCC does not have the authority to direct CFC on how to distribute allocation.

AFC as a Signatory to the FPA for Chicken

Although not directly linked to the complaint, during the Informal Meeting of August 4, 2015, CFC queried whether the AFC had the authority to enter into the FPA, which contains the OA. AFC indicated such authority exists and after a request by the Committee, AFC provided in its letter of August 11, 2015, to the Chair of the Complaint Committee, as evidence of its legal authority to enter into an FPA, copies of the provincial act, *The Agri-Food Act, 2004* and a regulation, *The Agri-Food Regulations, 2004*. CFC reviewed the documentation and, in a letter dated August 12, 2015, stated that, pursuant to the MOU dated July 16, 2001, once the AFC notifies the other FPA signatories, it will automatically become a signatory to the FPA.

The Complaint Committee's Recommendation to FPCC

Based on the evidence and the findings, the Complaint Committee believes there is insufficient merit in the Complaint to warrant the Committee providing specific comments to FPCC regarding their upcoming consideration of the A-133 allocation.

The Committee is of the view that supply management is a successful public policy that is based on cooperation between numerous parties with various interests. Having a Member province not in agreement to a major policy is not ideal for the long-term stability of the sector. The Committee recommends to FPCC that they encourage CFC and AFC to continue discussions to find an acceptable solution to this issue.

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> 2016 Chicken Quota Holders List – Processor Pool

2016 Chicken Quota Holders List

Processor Pool

1126039 Ontario Inc. (OA City Wholesale Meat Co.)
7171 Torbram Road, Unit 57
Mississauga ON L4T 3W4

1216011 Ontario Inc.
2691 Markham Rd., Unit #13
Scarborough ON M1X 1L4

1254545 Ontario Ltd.
30 Titan Rd, Unit 22
Toronto ON M8Z 5Y2

1301192 Ontario Inc.
43 - 110 Dynamic Drive
Scarborough ON M1V 5C7

1305107 ONTARIO LTD. O/A (TORONTO WHOLESALE MEATS Co)
30 Rivermede Road, #3
Vaughan ON L4K 3N3

1376371 Ontario Inc. / Golden Phoenix Meat
3066 Jarrow Ave.
Mississauga ON L4X 2C7

1438879 ONT. (A & B WHOLESALERS)
40 Nugget Avenue, Unit 5
Scarborough ON M1S 3A8

1458935 ONT. LTD (Shefa Meats)
195 Bridgeland Ave.
Toronto ON M6A 1Y7

1478843 Ontario Inc.
29-2691 Markham Road
Scarborough ON M1X 1L4

1505040 ONTARIO LIMITED (Eagle Poultry Processing)
442 Brimley Road, Units #4 & #5
Scarborough ON M1J 1A1

1519694 ONTARIO INC
135 Select Avenue, Units 8&9
Scarborough ON M1V 5C7

1697221 Ontario Ltd. o/a J&J Trading
40 Skagway Ave., Unit 4
Scarborough ON M1M 3V1

1729787 ONT. LTD (BIG RED MARKET)
133 Front St. N., Unit #1
Thorold ON L2V 4L8

1749348 Ontario Inc. O/A Tillsonburg Custom Foods
20 Vance Drive
Tillsonburg ON N4G 4W9

2036461 Ontario Inc.
30-2691 Markham Rd.
Scarborough ON M1X 1L4

2052783 Ontario Inc. (O/A valentino Meat Company)
815 Melford Drive Unite # 8
Scarborough ON M1V 2P9

2055637 Ontario Ltd. (O/A L&B Wholesale Meat)
120 Dynamic Drive Unit #38
Scarborough ON M1V 5C8

2227276 ONTARIO LIMITED
442 Brimley Road, Unit #3
Scarborough ON M1J 1A1

2240731 Ontario Inc.
7171 Torbram Rd., Unit 54-55
Mississauga ON L4T 3W4

2270699 Ontario Ltd.
120 Dynamic Drive Unit #40
Scarborough ON M1V 5C8

2285575 Ontario Inc.
2375 Tedlo Street, Unit 7
Mississauga ON L5A 3W7

2313182 Ontario Inc. o/a Metro Poutry
392 Dearhust Drive
Brampton ON L6T 5H9

2634-6221 Québec Inc.
140 Larivière
Saint Bernard Sud QC J0H 1G0

2720353 Canada Inc.
4800 Saint Ambroise #112
Montreal QC H4C 3N8

3944280 Canada Inc.
7010 St-Dominique St.
Montreal QC H2S 3B7

573349 Ontario Limited
121 Shorncliffe Road
Toronto ON M8Z 5K7

6358403 Canada Inc.
11020 rue secant
Montreal QC H1J 1S5

9013-2382 Québec Inc.
2120, rue Siguoin
Drummondville QC J2C 5Z4

9020-2516 Quebec Inc.
5671 Industrial Blvd.
Montreal North QC H1G 3Z9

9026-6446 Quebec Inc.
7922 19th Avenue
Montreal QC H1Z 3S3

9056-2307 Quebec inc. (Boucherie Charcuterie Benito)
11 525, 4th Avenue
Riviere-des-Prairies QC H1E 2Y8

9070-6953 Quebec In.
2910 Fleury Est
Montreal QC H2B 1M4

9107-1068 Quebec Inc.
116 Roy Est
Montreal QC H2W 1L9

9108-7692 Quebec Inc. (Operating under S.T.R. Viandes en Gros Enr.)
7401 18th Avenue
Montreal QC H2A 2N4

9131-6885 Quebec Inc. (Aliments Kanuk Foods
8955A rue Meilleur
Montreal QC H2N 2A3

9167-5132 Québec Inc.
2395A, 2e rue
Sainte-Sophie QC J5J 1N6

9168-9406 QUEBEC INC. CUISINE AMIR
3300 Boul. Industriel
Laval QC H7L 4R9

9175-9654 Québec Inc.
6968, rue Marconi
Montreal QC H2S 3K1

9185-8662 Québec Inc.
125, Chemin Saint-Édouard
Saint-Urbain de Charlevoix QC G0A 4K0

9210-9693 Quebec In.
7725 18e avenue
Montreal QC H2A 2N5

A & B HOLDINGS INC.
12827-76th Avenue, Suite 105
Surrey BC V3W 2V3

Abate Rabbit Packers Ltd.
7497 Jones Baseline R.R. #1
Arthur ON N0G 1A0

Abattoir Charron Inc.
349, Ste-Julie Est
Saint-André-Avellin QC J0V 1W0

Abattoir Ducharme Inc.
110, rue Authier
St-Alphonse de Grandby QC J0E 2A0

ADP Direct Poultry Ltd.
34 Vansco Road
Toronto ON M8Z 5J4

Agma Poultry & Meat Co. Ltd.
6580 Jeanne Mance
Montreal QC H2V 4L2

AKME Poultry Eggs & Butter Inc.
65, Pépin
Saint-Eustache QC J7R 6Z8

AL-AMEEN HALAL POULTRY SUPPLIES
5318 Finch Avenue East Unit 13
Scarborough ON M1S 5G2

ALIMENT MEDI INC.
5150 Fairway
Lachine QC H8T 1B8

Alimentation Asie-Motreal inc.
3010A rue Anderson
Terrebonne QC J6Y 1W1

ALIMENTS DESAUTELS FOODS INC.
20731, Concession 5
Green Valley ON K0C 1L0

ALIMENTS PRO-MARQUE INC.
11695 Philippe-Panneton
Montreal QC H1E 4M1

Al-Mahdi Halal Meat Trading Inc.
54-110 Dynamic Drive
Toronto ON M1V 5C7

Alsafa & Almarwa Meat Processing Inc.
49-51 Six Points Rd.
Etobicoke ON M8Z 2X3

Alzahraa Halal Meat Inc.
865 210 Silver Star Blvd.
Scarborough ON M1V 5J9

AM Wholesale Meats Ltd.
2450 Anson drive
Mississauga ON L5S 1G2

Amir Quality Meats Inc.
2740A Slough Street, Unit #3
Mississauga ON L4T 1G3

Au Coq Wallon Inc.
C.P. 13
Marieville QC J3M 1H1

B&C Food Distributors
6711 Butler Crescent
Saanichton BC V8M 1Z7

Babo Meat Inc.
9 - 40 Nugget Avenue
Scarborough ON M1S 3A8

Barron Poultry Ltd.
7470 Essex County Rd., 18
Amherstburg ON N9V 2Y7

Besmeats Wholesale Inc.
#41-110 Dynamic Drive
Scarborough ON M1V 5C7

Blue Jay Wholesale Ltd.
392 Deerhurst Drive, Unit B
Brampton ON L6T 5H9

C & G Kandalepas
96 Second Road E.
Stoney Creek ON L8J 3J2

Can Fung Investments LTD.
515 42 Ave SE
Calgary AB T2G 1Y7

Capital Packers Inc.
12907-57 Street
Edmonton AB T5A 0E7

Cardinal & Son (Gilles Cardinal Ltd.)
1051 Sydney St. PO Box 353
Cornwall ON K6H 3K1

Cericola Inc.
PO Box 1330
Bradford ON L3Z 2B7

Champagne Poultry Inc.
18-30 Titan Road
Toronto ON M8Z 5Y2

CHANG & SING TRADING
2370 Midland Ave, E., Unit A30
Toronto ON M1S 5C6

Charlies Meat & Seafood Ltd.
61 Skagway Avenue
Toronto ON M1M 3T9

CHEONG HING WHOLESALE MEATS LTD.
63 Silver Star Blvd., Unit E-1
Scarborough ON M1V 5E5

Cheung shing Meat Company Ltd.
170 Nantucket Blvd. Unit # 7
Scarborough ON M1P 2N9

Chiho Meats Ltd.
458 Prior Street
Vancouver BC V6A 2E5

Choy's Holdings Incorporated
2-4751 Shell Road
Richmond BC V6X 3H4

CM Meat Trading Ltd.
120 Dynamic Drive, Unit # 32
Scarborough ON M1V 5C8

Concord Premium Meats Ltd.
125 Edilcan Drive
Concord ON L4K 3S6

Country Poultry Processing Inc.
7707 Fourth Line, R.R. #2
Wallenstein ON N0B 2S0

Country Robbon Inc.
P.O. Box 803
St. John's NL A1C 5L7

De Boer's Poultry Inc.
4485 Harvester Road
Burlington ON L7L 4X3

Distribution Groumet Excellence (8673705 Canada Inc.
233, boul. Saint-Elzéar ouest
Laval QC H7L 3N5

Dixie Poultry Company Ltd.
3078 Jarrow Ave.
Mississauga ON L4X 2C7

Dixie Trading Co. Ltd.
1707 Sismet Rd. Unit 4
Mississauga ON L4W 2K8

Dunnville Meat Products Ltd.
6495 Rainham Road
Dunnville ON N1A 2W8

Eastern Meat Solutions Inc.
19 Rangemore Rd.
Etobicoke ON M8Z 5H9

ENS POULTRY INC.
6424 8th Line, RR1
Elora ON N0B 1S0

Erie Meat Products Ltd.
3240 Wharton Way
Mississauga ON L4X 1C1

EVEREST WHOLESALE MEAT LTD.
Unit C26-C28, 7171 Torbram Rd.
Mississauga ON L4T 3W4

Exceldo Coopérative
5700, rue J. B. Michaud, Bureau 500
Lévis QC G6V 0B1

Farm Fresh Poultry Co-Operative Inc.
191 John Street N., Box 729
Harriston ON N0G 1Z0

Farmcrest Foods Ltd.
1880-30th Street S.W.
Salmon Arm BC V1E 3J9

Ferme Avicole Laplante Ltd.
3105 Dunning Road
Sarsfield ON K0A 3E0

FERME D' AMOURS SNC
190, rue Fort Georges
Ste-Angèle-de-Monnoir QC J0L 1P0

Ferme des Voltigeurs Inc.
2350 boul. Foucault
Drummondville QC J2E 0E8

FONTEL MEAT WHOLESALE
2561-2563 Drew Road
Mississauga ON L4T 1G1

Food Roll Sales (Niagara) Ltd.
8464 Earl Thomas Avenue
Niagara Falls ON L2G 0B6

FU SHENG TRADING
63 Silver Star Blvd, Unit E7
Scarborough ON M1V 5E5

General Trading Meat Limited
2480 Cawthra Rd., Unit 20
Mississauga ON L5A 2X2

Grand River Foods Ltd.
190 Vondrau Drive
Cambridge ON N6E 1B8

Granny's Poultry Cooperative
750 Panfora Avenue East
Winnipeg MB R2C 4G5

H & B Poultry and Meats Ltd.
1672B S.E. Marine Drive
Vancouver BC V5P 2R6

H. HEIN FOODS Ltd. (o/a HIGH COUNTRY POULTRY LTD)
6112-30th Street, S.E.
Calgary AB T2C 2A6

Hafiz Halal Poultry Inc.
116 Bloor St. East
Oshawa ON L1H 3M2

Hallmark Poultry Processors Ltd.
1756 Pandora Street
Vancouver BC V5L 1M1

Hassan Meat Supply Inc.
2370 Midland Ave, E., Unit A32
Toronto ON M1S 5C6

Highland Poultry Fine Foods Ltd
1-225 Nebo Road
Hamilton ON L8W 2E1

HING MAN MEAT INC.
5320 Finch Avenue East Units 14-15
Scarborough ON M1S 5G3

Hung Shing Meat Trading Ltd.
32 Commander Bld.
Toronto ON M1S 3E7

HUO SHENG TRADING LTD.
63 Silver Stard Blvd., Unit 21
Scarborough ON M1V 5E5

J & J DAILY MEAT WHOLESale
2399 Cawthra Rd, Units 34-35
Mississauga ON L5A 2W9

J & S Fresh Meat Wholesale Inc.
1-120 Barbados Boul.
Scarborough ON M1J 1L2

J&K Poultry Ltd.
771 East Cordova St.
Vancouver BC V6A 1M2

J&W Foods Inc.
1-2201 Brimley Road
Scarborough ON M1S 4N7

K & G Meat Inc.
#58-110 Dynamic Drive
Scarborough ON M1V 5C7

K&R Poultry Ltd.
31171 Peardonville rd.
Abbotsford BC V2T 6K6

Kaima Enterprises Inc.
40 Nugget Ave. Unit 6
Scarborough ON M1S 3A8

KAM FAI MEAT CO. LTD.
23 Milliken Blvd., Unit # B13
Toronto ON M1V 5H7

King Capon Ltd.
PO Boc 353
Sharon ON L0G 1V0

Kretschmar
71 Curlew Drive
Toronto ON M3A 2P8

Kwan Shun Food Trading Ltd.
110 Dynamic Drive, Unit 35
Scarborough ON M1V 5C7

Landmark Poultry Inc.
7171 Torbram Rd., Suites C29-C31
Mississauga ON L4T 3W4

LANG HING WHOLESALE MEAT LTD
27 Milliken Blvd, Suite D17
Scarborough ON M1V 5H9

Les Aliments Ares Inc.
7060 Alexandra St.
Montreal QC H2S 3J4

Les Aliments Egg Roll Inc.
10-634, avenue l'Archevêque
Québec QC H1H 3A2

Les Aliments La Brochette Inc.
404, route 104
Mont St-Grégoire QC J0J 1K0

Les Aliments Pek (1997) Inc.
111745 6th Street
R.D.P. Montreal QC H1E 1R8

Les Aliments Supreme
5445 Ramsay
St. Hubert QC J3Y 2S3

LES ALIMENTS VESTAR FOODS INC.
6449 Abrams Road
Saint-Laurent QC H4S 1X9

Les Entreprises Nile Inc.
376 av. Beaumont
Montreal QC H3N 1T4

Les Produits de Viande Pac-Rite Inc.
10045 avenue de Bruxelles
Montréal-Nord QC H1H 4R1

Les Viandes Col- Fax Inc.
3673 Autoroute 440 W
Laval QC H7P 5P6

Les Viandes Lacroix Inc.
4120 Casavant ouest
St-Hyacinthe QC J2S 8E3

LES VOLAILLES EUROPA
9470 Charles de Latour
Montréal QC H4N 1M2

Lesters Foods Ltd.
2105 Industriel Blvd.
Laval QC H7S 1P7

Leung, Wah King o/a Chuen Kee Co.
10481 Woodbine Bypass
Markham ON L6C 0K4

LIAN HING MEAT TRADING INC.
1-3501 McNicoll Avenue
Toronto ON M1V 2N3

Lo and Lau enterprises Ltd.
1205 East Hastings Street
Vancouver BC V6A 1S5

LOWBANK FARMS LTD.
4510 Hwy. 6 Sorth, P.O. Box 786
Hagersville ON N0A 1H0

MacGregors Meat & Seafood Ltd.
265 Garyray Drive
Toronto ON M9L 1P2

Madina Fine Foods Inc.
128 Sunrise Avenue
Toronto ON M4A 1B3

Man Kwong Enterprises Ltd.
1233 Glen Drive
Vancouver BC V6A 3M8

Maple Meat Trading Ltd.
120 Dynamic Drive, Unit # 33
Scarborough ON M1V 5C8

Marketing 3000 Plus Inc. / O/P D&D Poultry
25 A Passmore Ave.
Scarborough ON M1V 4T4

Markham Quality Meats Ltd.
290 Yorktech Drive, Unit #3
Markham ON L6G 1A6

MAYFAIR TRADING CO. LTD.
63 Silver Star Boulevard, Unit D-15
Scarborough ON M1V 5E5

McDonald Poultry & Meat Supplies Ltd.
1225 East Hastings Street
Vancouver BC V6A 1S4

Mike Wholesale Meat Ltd.
2445 Lucknow Drive
Mississauga ON L5S 1H9

Montenac International inc.
2316, 32nd Avenue
Lachine QC H8T 3H4

Mountainview Poultry Farms
3815 16th Street, S.E.
Calgary AB T2G 4W5

New Frontier Poultry Inc.
442 Brimley Rd., Units 1 & 2
Scarborough ON M1J 1A1

Newton's Hi-Quality Meats Ltd.
12481-80th Avenue
Surrey BC V3W 3A4

NIKILAOS FINE FOODS LTD.
225 Nebo Road, Unit 5
Hamilton ON L8W 2E1

OLYMEL S.E.C.
2200, avenue Pratte
St-Hyacinthe QC J2S 4B6

OSL Meat Wholesale Ltd.
2691 Markham Road, Unit # 10
Scarborough ON M1X 1L4

PERFECT POULTRY INC
239 Toryork Drive
Toronto ON M9L 1Y2

Pixtar Canada Inc.
11106 Winston Churchill Blvd.
Georgetown ON L7G 4S7

Poulet de Grain Lequin Desroches SENC
1024, Chemin Brodeur
Granby QC J2J 0H9

POULTRY SPECIALTIES INC.
39 Cedar St.
Tillsonburg ON N4G 2Y2

Premier meat Packers Inc.
270 Joseph-Carrier Blvd.
Vaudreuil QC J7V 5V5

QG MEAT LTD.
120 Dynamic Drive, Unit 36
Scarborough ON M1V 5C8

Quality A Meats Inc.
16 Strathearn Ave Unit # 1-2
Brampton ON L6T 4P1

Riverview Poultry Ltd.
6245 Pearson Street
Smithville ON L0R 2A0

Rosstown Natural Foods Ltd.
2325 Bradner Road
Abbotsford AB V4X 1E2

Salaison Alpha Ltd.
10800 du Golf
Anjou QC H1J 2Y7

Salaison la maison du rôti Inc
1969 Mont-Royal Est
Montreal QC H2H 1J5

Scali's Quality Meats Inc.
7875 Tranmere Drive, Unit 1
Mississauga ON L5S 1T8

Service Alimentaire Desco Inc.
97 rue Prévot
Boisbriand QC J7G 3A1

Shing Lung Trading Ltd.
1889 Albion Road, Unit 6
Etobicoke ON M9W 5S9

Shiva Chicken Wholesale Canada Inc.
186 Bartley drive, Unit # 12A
Toronto ON M4A 1E2

SJ Poultry Processing Ltd.
60 Nugget Ave., Unit 11
Scarborough ON M1S 3A9

Skyhawk Meat Products Ltd.
442 Brimley Rd., Units 10 & 11
Scarborough ON M1J 1A1

Smithville Meat Wholesalers Ltd.
7171 Torbram Road, Units 32-33
Mississauga ON L4T 3W4

Solmaz Food Inc.
755 Queensway East, Unit #16
Mississauga ON L4Y 4C5

South Edmonton Produce (1978) Ltd.
7545 72nd Street
Edmonton AB T6B 1Z3

ST. CLEMENTS POULTRY Inc.
25 Hollinger Crescent
Kitchener ON N2K 2Z1

St. Helen's Meat Packers Ltd.
1-3 Glen Scarlett Road
Toronto ON M6N 1P5

SU YAN'S MEAT TRADING
27 Milliken Blvd, Suite 5
Scarborough ON M1V 5H9

SUM SUM TRADING
5310 Finch Ave. East, Unit 10
Scarborough ON M1S 5G2

Sunchef Foods Inc.
9750 Boul. Des Sciences
Montreal QC H1J 0A1

Sunrise Poultry Processors Ltd.
13538 73 Avenue
Surrey BC V3W 2R6

SUPER SELECT , LES VIANDES
1520-52 Ave.
Lachine QC H8T 2X9

T. & R. Sargent Farms Ltd.
189 Mill Street
Milton ON L9T 1S3

TAMSCO FOOD SYSTEMs INC
50 Copernicus Boulevard
Brantford ON N3P 1K5

Tarson Food Inc.
1990 Powell Street
Vancouver BC V5L 1J3

Tender Choice Foods Inc.
4480 Paletta Court
Burlington ON L7L 5R2

Thessalia Meat Market Inc.
1320 Chabanel West
Montreal QC H4N 1H4

T-One Trading Ltd.
Unit # 20, 38 Thornmount Drive
Scarborough ON M1B 5P2

Toronto Sun Wah Trading Inc.
18 Canmotor Avenue
Etobicoke ON M8Z 4E5

TRI R Foods International Inc.
5246 Timberlea Boulevard
Mississauga ON L4W 2S5

Two sisters Poutry & Meat Ltd
5791 Sidley St.
Burnaby BC V5J 5E6

Union Poultry Canada Inc.
70 Denison St., #2
Markham ON L3R 1B6

Van Lee Poultry & Meat Supply Inc.
8-38 Thornmount Drive
Scarborough ON M1B 5P2

Vannee Meat & Poultry Ltd.
165-1991 Savage Road
Richmond BC V6V 0A4

Viandes Dunham Inc.
2349 rue Principale
Dunham QC J0E 1M0

Viandes Riendeau Ltée
399 des Industries
Repentigny QC J5Z 4Y8

Volailles Régai Inc.
955, rue Michelin
Laval QC H7L 5B6

WELLINGTON POULTRY LTD.
7514 Wellington Rd., Unit 109, R.R. 4
Arthur ON N0G 1A0

Wingsum International Trading Inc.
3110-21331 Gordon Way
Richmond BC V6W 1J9

WONG 'S FOOD TRADING CO. LTD.
63 Silver Star Blvd, Unit E8
Scarborough ON M1V 5E5

Woodward Meat Purveyors Inc.
1346 Spears Rd.
Orkville ON L6L 5V3

World Meats Inc.
2255 Dunwin Drive, Unit 3
Mississauga ON L5L 1A3

Yongda Meat Supply co. Inc.
2691 Karkham road, Unit 24
Toronto ON M1X 1L4

Yvon Bellerive Incorporée
1360, blvd. Trudel est
Saint-Boniface QC G0X 2L0

Date Modified: 2016-02-25

Global Affairs Canada

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> [Notice to Importers - Chicken and Chicken Products](#)

Notice to Importers

Chicken and Chicken Products (Items 96 to 104 on the *Import Control List*)

Serial No. 869

Date: November 12, 2015

This Notice replaces Notice to Importers No. 864 dated November 7, 2014, and will remain in effect until further notice.

This Notice is provided pursuant to the authority of the *Export and Import Permits Act* (EIPA) and its corresponding regulations.

In Brief

Imports of chicken and chicken products into Canada are subject to import controls under Canada's *Export and Import Permits Act* (EIPA). Accordingly, an import permit is required for shipments of chicken and chicken products to enter Canada. Import permits for shipments of chicken and chicken products destined to the Canadian market are issued to allocation holders under Canada's tariff rate quota (TRQ) for chicken and chicken products, which is administered by Foreign Affairs, Trade and Development Canada (DFATD).

The access quantity for the chicken and chicken products TRQ is 39,900,000 kilograms or 7.5% of the previous year's domestic production as reported by Statistics Canada, whichever is greater. The allocation period for the chicken and chicken products TRQ extends from January 1 to December 31, inclusive.

This Notice to Importers sets out the policies and practices pertaining to the administration of the TRQ, including the allocation, underutilization, return and transfer policies. This Notice also explains how to apply for import permits.

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[Allocation to the Food-Service Pool](#)

[Allocation to processors of chicken products not on the *Import Controls List* \(non-ICL Group\)](#)

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- **Appendix 1 - [Application for a share of the chicken TRQ](#)** (PDF, 215 KB)

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1. Purpose

1.1. The purpose of this Notice is:

- (a) to set out the policies and practices pertaining to the administration of Canada's TRQ for chicken and chicken products;
- (b) to invite applications for allocations under the TRQ for the next quota year; and
- (c) to explain how to apply for permits for imports of chicken and chicken products.

2. General Information

2.1. Background

2.1.1. In accordance with its commitments under the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO), Canada has in place a TRQ for imports of chicken and chicken products.

2.1.2. Under Canadian TRQs, in any given year, a predetermined quantity of imports of a good controlled under the EIPA can enter Canada at a lower rate of duty, while imports over this quantity are subject to higher rates of duty. The TRQs therefore have three components: an import access quantity negotiated with Canada's international trade partners; a within access commitment rate of duty that applies to imports up to the access level; and a higher, over access commitment rate of duty for imports over the access level.

2.1.3. The within and over access rates of duty that apply to imports of chicken and chicken products can be found in Canada's [***Customs Tariff***](#).

2.1.4. Pursuant to the EIPA and its corresponding regulations, when deciding whether to issue an import allocation or whether to consent to a transfer, the Minister shall take into account whether the import allocation holder has furnished false or misleading information in connection with any reports required by the Act or the regulations made under the Act or by any condition of an import allocation or import permit during the 12-month period preceding the period in respect of which the import allocation or transfer is to apply. Furthermore, the Minister may attach conditions to import allocations and/or to import permits, and may amend, suspend, cancel or re-instate import permits and allocations.

2.1.5. Failure by an applicant to provide any information requested by DFATD, or failure to comply with any condition of an allocation or permit issued pursuant to the EIPA may result in the rejection of the application for an allocation under the chicken TRQ, the reduction or cancellation of an allocation

issued pursuant to the EIPA, or the cancellation of associated permits.

2.2. Access Quantity

2.2.1. The access level for the chicken and chicken products TRQ negotiated under NAFTA is 7.5% of the previous year's domestic chicken production (which includes regulated domestic, export and non-regulated production) as reported by Statistics Canada.

2.2.2. The access level for the chicken and chicken products TRQ negotiated under the WTO is 39,900,000 Kilograms.

2.2.3. The access level for the chicken and chicken products TRQ that applies in a given quota year is the greater of the NAFTA or WTO quantity. DFATD's website will always present the TRQ access quantity that applies in a given year.

2.3. Allocation Period

2.3.1. The quota allocation year for the chicken and chicken products TRQ extends from January 1 to December 31, inclusive.

2.3.2. Eligibility for an allocation, and the size of that allocation, will be assessed on the basis of each applicant's activities in the chicken industry during the reference period of September 1 to August 31 immediately preceding the new quota year. Applicants must be active in the chicken industry at the time of application, and must remain active throughout the quota year for which they are seeking an allocation.

3. Products Covered

3.1. This Notice pertains to items 96 to 104 of the *Import Control List* (ICL), namely chicken and chicken products falling under heading Nos. 01.05, 02.07, 02.09, 02.10, 16.01 and 16.02 in the list of tariff provisions set out in the Schedule to the [Customs Tariff](#).

3.2. This Notice also covers specially defined mixtures of chicken products falling under tariff item Nos. 1602.32.11 and 1602.32.92. and which are not on the ICL (non-ICL).

Chapter 16 of the [Customs Tariff](#) contains the following Supplementary Note concerning specially defined mixtures: Specially defined mixtures of tariff items Nos. 1602.31.11, 1602.31.92, 1602.32.11 and 1602.32.92 means chicken or turkey or a product containing chicken or turkey, wherein 13% or more of the total weight of the product is comprised of goods other than the following: chicken, turkey, bread or breading, batter, oil, glazing, other coatings and bastes, and any added water (including that used in marination, glazing, other coatings, bastes, breading and batter). For the purposes of this definition, the weight of all ingredients shall be taken from the product specification sheets for that product required under the *Meat Inspection Act* for product labelling purposes. Examples of such products include: chicken cordon bleu, breaded breast of chicken cordon bleu, chicken Kiev, breaded breast of chicken Kiev, boneless Rock Cornish hen with rice, stuffed Rock Cornish hen, boneless chicken with apples and almonds, chicken Romanoff Regell, chicken Neptune breast, boneless chicken Panache and chicken TV dinners.

3.3. In addition to specially defined mixtures, chicken products are considered as non-ICL products if they are classified under headings No. 19.02 (Pasta), No. 19.04 (Rice Preparations), No. 19.05 (Pastry), No. 20.04 (Other vegetables prepared or preserved, frozen), No. 20.05 (Other vegetables prepared or preserved, not frozen), No. 20.06 (Fruits and vegetables preserved by sugar) No. 21.03 (Sauces and preparations), No. 21.04 (Soups), and No. 21.06 (Food preparations).

3.4. Importers who require a determination as to whether the product they intend to import is eligible under the chicken and chicken products TRQ are encouraged to obtain an advanced tariff classification ruling from the appropriate regional client service office of the Canada Border Services Agency (CBSA).

4. Allocation Policy

4.1. The chicken and chicken products TRQ is allocated to three groups:

- (a) the traditional group;
- (b) the processor, distributor and food-service group; and
- (c) processors of chicken products not on the *Import Control List* (non-ICL group)

4.2. A reserve (reserve) equivalent to the Chicken Farmers of Canada's (CFC) Market Development Program (MDP) level in the previous year, less the MDP level in 2001, multiplied by 7.5% is normally established.

4.3. The allocation to the traditional group is calculated first. The quantity allocated to this group is equal to the quantity that was allocated to this group in the previous quota year, as adjusted since (e.g., for under-utilization). The eligibility criteria for applicants in this group, and the method for allocating the quantity reserved for this group, are set out in [section 5](#);

4.4. The quantity allocated to the processor, distributor and food-service group is calculated once the allocation to the traditional group has been completed. The quantity allocated to this group is equal to the quantity that was allocated to this group in the previous quota year, multiplied by the percentage of growth in the TRQ, minus the reserve.

4.5. The quantity allocated to this group is divided into three pools:

- the processor pool receives 62.55%,
- the distributor pool receives 26.81%, and
- the food-service pool receives 10.64%;

4.6. The eligibility criteria for applicants in the processor, distributor and processor pools, and the method for allocating the quantities reserved for these pools, are set out in sections [6](#), [7](#) and [8](#).

4.7. The quantity allocated to the non-ICL group is equal to the quantity of TRQ that is available once the allocation to the first two groups has been completed, plus the reserve. The intent of this policy is to assist Canadian manufacturers to compete with *like* imported products that can enter Canada duty-free or at a low rate of duty as a result of the NAFTA. These imported products, principally from the U.S., are required by the *Canadian Food Inspection Agency* (CFIA) to be manufactured within a Hazard Analysis Critical Control Points (HACCP)-controlled environment.

4.8. The eligibility criteria for applicants in the non-ICL group, and the method for allocating the quantity reserved for this group, are set out in [section 9](#).

4.9. If the non-ICL demand exceeds 4.8 million kilograms, the Minister will reconsider the allocation method set out in this notice.

4.10. Individual applicants are eligible for only one allocation, except for eligible non-ICL processor applicants that are also eligible for an allocation by meeting the criteria established under the processor pool or the food service pool.

4.11 Except as per sections [4.10](#) and [8.6](#), where two or more applicants are considered to be related, they shall normally be eligible for only one allocation. Applicants for an allocation are required to provide a list of related persons. Applicants should consult Appendix 11 for the definition of related persons as it applies for the purpose of this Notice.

4.12. Quota holders with an import allocation equal to or greater than 100,000 kilograms may use up to 30% of their allocation in any one allocation year quarter. Any portion of an allocation not utilized in one quarter may be carried over to successive quarters up to the cumulative carryover. Allocation holders with allocations of less than 100,000 kilograms may use their allocation at any time during the year after receiving their final allocation. This section does not apply to allocations in the non-ICL group.

4.13. All import allocations expire at the end of each allocation year and all applicants interested in receiving an import allocation must reapply each year.

4.14. To ensure an orderly transition between quota years, eligible applicants may receive, upon DFATD's receipt of a complete application, advances of up to 30% of their initial allocation in the previous year for the first quarter of the new quota year. Advances to applicants likely to be subject to an under-utilization penalty (pursuant to [section 11.1](#)) will be evaluated on a case-by-case basis.

5. Allocation to the Traditional Group

5.1. The quantity allocated to the traditional group is allocated to eligible applicants who were allocation holders under this group in the previous year. Eligible applicants will normally receive their full allocation from the previous year, as adjusted since (e.g., for under-utilization).

5.2. Traditional allocation holders may obtain an import allocation subject to demonstrating their active involvement in the chicken industry by meeting the criteria for the processor pool, the distributor pool or the food-service pool. (The relevant criteria are set out in [section 6](#) for processors, [section 7](#) for distributors and [section 8](#) for food-service operators.)

5.3. Eligible traditional allocation holders may choose to remain in the traditional group or to transfer permanently to the processor, distributor or food-service pool. On request, DFATD will advise a traditional allocation holder of its prospective share under the other pools.

5.4. Applicants in this group that fail to apply for an allocation, or that do not meet the eligibility criteria, will not be eligible for an allocation and will not be eligible for a traditional allocation in subsequent quota years. These applicants may, however, apply under the processor, distributor or food-service pools in future years.

6. Allocation to the Processor Pool

6.1. For purposes of this Notice, a processor carries on activities that involve the slaughtering of chicken, cutting up of eviscerated chicken, de-boning of eviscerated or cut up chicken, or further processing of chicken meat in federally or provincially registered Canadian plants owned and operated by the applicant. Further processing includes, but is not limited to, the manufacturing of such products as patties, nuggets, fingers, rolls or roasts produced from chicken meat. This also includes the further processing function of marinating, smoking or drying, coating or seasoning chicken meat. Only processed products on the ICL are eligible. (Refer to [Appendix 10](#))

6.2. A processor applicant must have been active in the processing sector of the chicken industry throughout the entire reference period, buying at least 250,000 kilograms of chicken and subsequently selling at least 250,000 kilograms of processed chicken and chicken products that are on the ICL. **Note that only products bought that are subsequently processed and sold by the applicant can be included in the application.**

6.3. The proportion of the processor pool allocated to market-share applicants and to equal-share applicants was fixed in 2002 at the 2001 ratio of 30.5 : 69.5. DFATD will calculate applicants' allocations based on either market-share or equal-share depending on which is most advantageous to each applicant.

6.4. Only products that have been processed in Canada in federally or provincially registered plants owned and operated by the applicants may be included in their market-share calculation.

6.5. Market-share is calculated on the basis of the dollar difference between purchases and sales of processed product only.

6.6. Distribution sales by processors, i.e., where they do not process the product bought and sold, must be excluded from the market-share calculation.

6.7. Processed product bought and sold for the export market, as well as non-ICL products, sales at the retail level to consumers and any products which contain meat from old roosters or spent fowl, must be excluded from the market-share calculation.

6.8. Joint applications by affiliated firms submitted by the parent company for the processor pool will be considered in calculating the allocations. However, if the parent company or an affiliated company does not meet the 250,000 kilograms threshold, the chicken purchases or sales of that company cannot be included in the parent company's calculation of its total chicken purchases or sales.

6.9. The term final sales, as used in this Notice, includes final sales revenues from sales to any third party. It does not include revenue from any intra-company transfers.

7. Allocation to the Distributor Pool

7.1. For purposes of this Notice, a distributor is an establishment that buys (i.e., takes ownership of and financial responsibility for) chicken and re-sells it to other businesses. Note that product bought and sold for the export market, non-ICL products, non-arm's length sales, sales at the retail level to consumers, live chickens, any products which contain meat from old roosters or spent fowl, and products bought from or sold to other distributors must all be excluded from the minimum volume threshold calculation. In addition, a distributor is an establishment that uses warehouses and trucks in carrying on its trade (either the renting or purchasing of warehousing and transportation services is considered to meet this criterion). Applicants must be able to substantiate that they meet the relevant criteria throughout the entire reference period covered by their application.

7.2. Commission brokers do not meet the distributor definition and are not eligible for an allocation under the TRQ. For purposes of this Notice, commission brokers procure or sell on behalf of others without taking ownership of or financial responsibility for the chicken or chicken products.

7.3. Retail companies that have separate divisions that purchase and distribute chicken to non-affiliated companies may qualify as distributors. A company that qualifies as a distributor under this definition may apply for a portion of the distributor pool and must state on the application form that the applicant is a distributor as well as a retailer.

7.4. Retail companies that have central buying operations and sell to corporate or franchise stores (or co-op members in the case of cooperatives), who arrange the delivery (in owned or contracted trucks) and charge the individual store for warehousing and for the chicken product may also qualify as distributors.

7.5. The allocation to the distributor pool is allocated on an equal-share basis.

7.6. An applicant must meet a minimum volume threshold requirement and activity requirements in order to be eligible for an allocation under the pool. In particular, a distributor must have been active in the distribution sector of the chicken industry during the reference period, buying at least 220,000 kilograms and subsequently selling at least 220,000 kilograms of chicken.

8. Allocation to the Food-Service Pool

8.1. The food-service pool is allocated according to the following formula: 70% allocated to restaurant and food-service companies whose **volume (non-eviscerated equivalent)** of chicken purchases is equal to at least 50% of their total volume of meat purchases (i.e., including poultry, fish, beef and pork, but excluding vegetables, french fries, beverages, etc.), and 30% allocated to restaurant and foodservice companies whose **volume (non-eviscerated equivalent)** of chicken purchases is less than 50% of their total volume of meat purchases.

8.2. These two segments of the foodservice pool will be allocated to eligible applicants in the foodservice sector on the basis of market-share to larger foodservice operators and on the basis of a minimum equal-share of 18,144 kilograms to smaller foodservice operators.

8.3. An applicant must meet a minimum volume threshold requirement and the activity requirements outlined below in order to be eligible for an allocation under the foodservice pool. In particular, a foodservice applicant must have been active in the foodservice sector of the chicken industry during the reference period, buying and subsequently selling at least 220,000 kilograms of chicken.

8.4. Market-shares within the foodservice pool are calculated on the basis of total purchase volumes excluding non-ICL products, any products which contain meat from old roosters or spent fowl, and non-chicken purchases.

8.5. In the case of foodservice chains, applications for an allocation under the foodservice pool will only be considered from the system-wide brand owners of such chains. DFATD will not entertain separate requests from entities (e.g., franchisees) within the same brand organization, even if they individually or in combination meet the 220,000 kilogram threshold.

8.6. In the case of entities comprised of a parent company and one or more subsidiaries, one application is required by the parent company. This request should be accompanied by individual application forms and accountant letters and affidavits for the different affiliates or business brands. Based on this information, the amount of TRQ the parent company is eligible for in each of the categories will be calculated, after which the parent company will be advised of its total import allocation. If an affiliate or business brand does not meet the 220,000 kilogram threshold, the chicken purchases of that affiliate or business brand cannot be included in the parent company's calculation of its total chicken purchases.

9. Allocation to processors of chicken products not on the *Import Control List* (non-ICL Group)

9.1. For purposes of this Notice, a processor of chicken products not on the ICL is a processor that:

- (a) carries on activities in eligible Canadian Federally-registered meat and poultry establishments in good standing that have received HACCP recognition or acknowledgment, which are owned and operated by the applicant;
- (b) manufactures non-ICL products (as set out in [Section 3](#)), using ICL products as input; and
- (c) sells these products at the wholesale level.

Non-arm's length sales and sales at the retail level to consumers must be excluded from the application.

9.2. Processors considered to be related to foodservice companies may be eligible for an allocation under the non-ICL portion of the chicken TRQ subject to the following conditions.

- **That the applicant guarantee, in writing, that production of these products is for retail sale only;**
- **That the applicant undertake to pay for an independent auditor, approved by the Department, to evaluate and certify that these products are, and will be, produced and sold for retail sale only; and**
- **That the applicant undertake to have such evaluations done as often as quarterly, if so requested by the Department, and to bear all associated costs.**

9.3. Subject to [section 4.7](#), eligible processors of non-ICL chicken products may receive up to one kilogram of import allocation for each kilogram of chicken inputs used in their production of non-ICL products in the reference period. If non-ICL demand exceeds the quantity available to the non-ICL group within the TRQ, the allocation will be done on a pro-rata basis. Only products that have been processed in Canada in federally-registered, HACCP-approved plants owned and operated by the applicant may be included.

9.4. All chicken input requirements for production of non-ICL products beyond the authorized allocation will need to be supplemented through the Import-to-Compete program on a like-for-like basis. (Detailed further in Notice to Importers *Chicken and Chicken Products - Supplemental Imports*)

9.5. Processors of eligible non-ICL chicken products must continue to produce non-ICL products throughout the quota year to maintain their eligibility under this group.

9.6. Applicants are advised that Appendix 3 requires applicants to provide information concerning the total amount of ground meat, trim meat and diced meat used in the production of non-ICL chicken

products, as TRQ allocated for eligible non-ICL products using this type of chicken meat will be authorized on a like-for-like basis.

9.7. Products and Ingredients that are not Eligible for non-ICL Allocation

(a) Chicken products produced from old roosters and spent fowl, commonly called stewing hens, are not eligible for non-ICL allocations.

(b) All chicken products exported from Canada, and the production of eligible products for which only packaging was performed, must be excluded.

c) Meat-on-meat products are normally not eligible for non-ICL allocations. For purposes of this policy provision, meat-on-meat products are products that contain meat other than chicken and turkey, unless such product also contains at least 7% non-meat ingredients (non-meat ingredients do not include spices and seasonings). Product identified in annex 706 of the Canada-U.S. FTA are exempt from this policy provision.

d) Brochettes are normally not eligible for non-ICL allocations. For the purposes of this Notice, brochettes are defined as products composed of chicken with other ingredients on a skewer (any type of pick or rod having a function or shape similar to a skewer is considered to be a skewer).

(e) Mechanically separated meat (MSM) and finely textured meat are normally not eligible for non-ICL allocations. In the event MSM or finely textured meats are not available domestically at U.S.-competitive prices, the Minister may authorize supplemental imports for MSM or for finely textured meat.

(f) Chicken products that are merely cooked and/or marinated and/or spiced are on the ICL and are not, therefore, eligible for a non-ICL allocation.

(g) In the case of non-ICL products that include marinated chicken, the weight of the chicken prior to marination must be used.

(h) Both naturally occurring and added skin are ineligible to be included as part of the weight of the chicken in non-ICL products.

(i) Added fat is not eligible to be included as part of the weight of the chicken in non-ICL products.

9.8. Applicants requesting dark meat under the non-ICL portion of the chicken TRQ will not normally receive a TRQ allocation. Applicants must nevertheless continue to include volumes of both white and dark meat in their applications. The dark meat portion is to be supplied by the CFC Market Development Program (MDP). A description of the program is available from the CFC. In order to acquire the supply from a primary processor under the MDP, processors should contact DFATD to obtain a numbered and dated letter for each purchase order. Access to supplementary imports will continue to be made available in circumstances where the MDP is not able to meet specific processor needs at prices competitive with U.S. product landed in Canada. (Further details in Notice to Importers *Chicken and Chicken Products - Supplementary Imports*.)

9.9. It is the responsibility of applicants, not accountants, to state that their products are not on the ICL. Domestic manufacturers who wish to know whether the product they intend to manufacture using chicken imported under a non-ICL allocation meets the definition of specially defined mixtures should obtain a determination by contacting the CBSA.

9.10. With respect to products for which an applicant is seeking an allocation under the non-ICL group, only information about products for which a CBSA determination has been received, along with the corresponding finished product recipe including the process and composition of the meat (see Appendix 3), may be submitted as part of the application.

9.11. DFATD will consider the information that the applicant provides along with any other relevant information when allocating the non-ICL portion of the chicken TRQ so as to ensure that the non-ICL portion of the chicken TRQ is allocated in conformity with the underlying policy intent as indicated in [section 4.7](#) of this Notice. Applicants may be required to provide additional information to support their application. Such additional information may include evidence of the actual quantity of poultry used to manufacture non-ICL products, the number of units produced in the reference period information concerning supply arrangements, and customer information. Evidence, such as product specifications, original supplier invoices, proofs of payment and production records, may be requested.

In some circumstances, it may be necessary to review the product specification sheets and the accountant's working papers. Moreover, DFATD retains the right to request laboratory analysis of non-ICL products and certification by an independent public accountant (or an accountant named by DFATD) of the information provided on the application form. Should this prove necessary, all costs will be borne by the applicant.

10. How to apply for an Allocation

10.1. Applicants who wish to apply for an allocation under the chicken and chicken products TRQ are invited to submit their application form and any other relevant documents no later than December 15, 2015.

- Applicants under the processor and distributor pools must submit the form provided in Appendix 1.
- Applicants under the food service pool must submit the forms provided in Appendix 1 and 2.
- Applicants under the Non-ICL group must submit the form provided in Appendix 3.

10.2 All quantities of chicken and chicken products reported on the application and supporting documents must be expressed in eviscerated equivalent kilograms using the conversion factors by commodity codes, which are set out in Appendix 10.

10.3. All applicants for an allocation are required to include as part of their application:

- a sworn affidavit; and
- a letter from an independent qualified professional (normally an accountant) verifying the information included in the application.

10.4. For the purposes of this Notice, an accountant is defined as a member in good standing of one of the three professional accounting bodies in Canada (C.A., C.G.A. or C.M.A.) who is registered with his/her provincial professional organization to provide accounting services and is independent from the applicant (i.e., is not an owner or a partner of the company applying for an import allocation and is not in an employee - employer relationship involving the applicant).

10.5. The affidavit and the letter from the accountant must be in the exact format of the models attached to this Notice (see Appendices 4 and 6 for processors and distributors; Appendices 5 and 7 for foodservice operators; Appendices 8 and 9 for non-ICL applicants). Any changes to the wording of the prescribed affidavit or letter are permitted only if required by professional standards. In the event that changes are made, the applicant or the accountant must discuss these, in advance, with DFATD.

10.6. The information that the accountant and the applicant provide will be considered when allocating the chicken TRQ. However, an applicant may also be required to provide evidence of the actual quantity of chicken bought and subsequently sold (final sales) in the previous year, such as originals of supplier invoices, proofs of payment and sales invoices. Accountants may be asked to explain the procedures used in greater detail and may be asked to provide DFATD with copies of all working documents. Moreover, DFATD retains the right to request additional information, including that of an independent public accountant (or an accountant named by DFATD) certify the information provided on the application form. Should this prove necessary, all costs will be borne by the applicant.

10.7. Section 18 of the EIPA forbids any person to knowingly induce, aid or abet any other person to contravene any of the provisions of the EIPA. Such contraventions by an applicant or its accountant may lead to prosecution for offenses under the EIPA.

10.8. Applications sent by MAIL or COURIER should be addressed to the chicken and chicken products quota manager at DFATD. The name and mailing address of the chicken and chicken products quota manager can be obtained on the DFATD website, under [Contact Us](#).

10.9. Applications sent by EMAIL should be sent to chicken-poulet@international.gc.ca. Applicants sending their application by email should be prepared to present the original version of their application at DFATD's request. Failure to do so may lead to the cancellation of any

allocation issued pursuant to the application and/or the cancellation of associated permits.

10.10 For legibility reason, applications sent by facsimile will not be accepted.

10.11. Applications postmarked after December 15, 2015, or in a format other than that required, will not be considered. Lost applications will not normally be considered without acceptable proof that they were sent before the deadline (e.g., courier receipt).

10.12. The declaration in the application form allows DFATD access to any information in the files of Agriculture and Agri-Food Canada or the CFIA pertaining to the applicant in relation to the application for an import allocation or to subsequent applications for, or concerning the use of, import permits. Normally, applicants are informed of any such requests for information.

11. Under-Utilization and Return Policies

11.1. Under-Utilization Policy

11.1.1. An allocation holder with a utilization rate less than 90% in the previous quota year may have its allocation adjusted downward by an under-utilization penalty for the new quota year.¹

11.1.2. For allocation holders that under-utilized in the previous quota year, allocations in the new quota year will be reduced by the percentage of the allocation not utilized in the previous quota year.²

11.1.3. Allocation holders that under-utilized during the previous quota year will be advised of the applicable under-utilization penalty before the allocations are finalized for the new quota year.

11.2. Return Policy

11.2.1. Allocation holders may return any portion of the balance of their allocation no later than October 1 of the quota year. Any portion of an allocation that is returned by this date will be considered as having been used for purposes of administering the under-utilization policy in [11.1.1.](#)

12. Transfer Policy

12.1. The Minister may allow the transfer of allocations between allocation holders. All requests for transfer of allocations must be referred to DFATD for consideration.

13. Supplemental Imports

13.1. The Minister may, at his discretion, authorize imports of chicken and chicken products in excess of the import access quantity. The Notice to Importers *Chicken and Chicken Products - Supplemental Imports*, explains the administration of supplemental imports for chicken and chicken products. The Notice is available on the DFATD website at [Chicken And Chicken Products – Supplemental Imports \(Items 96 To 104 On The Import Control List\).](#)

14. Import Permits

14.1. Types of Permits

14.1.1. An import permit issued by DFATD is required for every shipment of chicken and chicken products covered by this Notice to enter Canada. For a given shipment, importers may either present a shipment-specific import permit or invoke the appropriate General Import Permit (GIP).

14.2. Shipment-Specific Import Permits

14.2.1. Shipment-specific import permits are normally issued on demand to allocation holders up to the amount of their allocation under Canada's chicken and chicken products TRQ. Shipments entering Canada under a shipment-specific import permit can normally do so at the within access rate of duty.

14.2.2. To claim the within access rate of duty for a shipment, the importer must present the shipment-specific import permit to CBSA at the time of final accounting.

14.2.3. Shipment-specific import permits will not normally be issued retroactively for shipments that have already been imported into Canada, including under the authority of a GIP, regardless of the importer's allocation.

14.2.4. For a shipment-specific import permit to be considered valid, the name on the permit must match exactly the name of the importer on CBSA's B3 Customs entry and related documents at time of final accounting. Furthermore, the quantity on the permit must be the same as the net quantity on the Customs Invoice. It is incumbent on the recipient of the permit to ensure that a permit application is made in the name of the importer of record and includes the correct quantity. Questions about the proper procedures to fill out customs entry documents should be addressed to local CBSA officials.

14.3. General Import Permit

14.3.1. The GIP that applies for chicken and chicken products is *General Import Permit No. 100 – Eligible Agricultural Goods*. There is no limit to the quantities of chicken and chicken products that can enter Canada under the GIP; however, such imports will be subject to the higher over access rate of duty.

14.3.2. Shipment-specific import permits will not be issued for shipments already imported into Canada under the authority of the GIP, regardless of the importer's allocation.

14.4. How to Apply for a Permit

14.4.1. Information about the permit application process, including information about fees, the monthly billing system, and information required from applicants, is available on the DFATD website: [Applying for an Import Permit](#).

14.4.2. Importers that wish to apply for an import permit are required to submit Form EXT1466, "Application for Permit", which can be obtained on the DFATD website (a paper copy will be provided upon request): [Application for Import/Export Permit](#) (PDF*, 95.2 KB).

14.5. Quantity to Report on Shipment-Specific Import Permit

14.5.1. Chicken and chicken product quantities reported on a shipment-specific import permit must be declared in eviscerated equivalent. The list of conversion factors by commodity code is available in Appendix 10.

14.5.2. Chicken products that are partially deboned are considered to be boneless for import control purposes and the corresponding boneless EIPA chicken codes must be used when requesting import permits. As examples, fresh chicken breasts that have been partially deboned so that only the keel bone or cartilage remains will be considered boneless for import control purposes. A boneless chicken breast with or without skin with part or all of the wing bone attached (generally referred to as Chicken Supreme) will also be considered boneless for import control purposes. Importers should refer to Appendix 10 for the appropriate EIPA code that should be entered into the related application. Importers who are unsure as to whether or not the product they intend to import is considered bone-in or boneless should obtain guidance from DFATD.

14.5.3. Processed Chicken - Adjustment for Non-Chicken Ingredients

- Importers may take advantage of a provision whereby only the chicken portion of processed chicken products (i.e., those beginning with product codes 1601 or 1602) on the ICL will be deducted from an applicant's global quota allocation at the time the import permit is issued. For the purposes of this section, non-chicken ingredients include breading, battering, salt and spices **ONLY**. Water, including that used in marination, is considered part of the chicken.
- Applicants wishing to make use of this provision must list the gross and net weight of the

chicken, in actual weight, on the import permit application form. The gross weight should be entered in the box marked QUANTITY and the net weight should be entered in the box marked DOCUMENT QUANTITY. Please note that for products that consist only of chicken (i.e., containing no breeding or battering), the DOCUMENT QUANTITY and the QUANTITY should be the same. Applications for permits to import processed chicken that do not contain both the gross and net weight will not be accepted.

- Importers of non-processed chicken (i.e., those beginning with product codes 0105, 0207, 0210) need to fill out only the QUANTITY box on the import permit application form.
- Applicants making use of this provision to deduct non-chicken ingredients must submit the product recipe and production procedures.
- Applicants making use of this provision must also indicate the product number in the box marked COMMENT on the import permit application form. Failure to provide this information will result in the rejection of the permit application.

15. Contact Us

15.1. Names and direct phone numbers for quota manager(s), permit officer(s), and the Help Desk are available on the DFATD website: [Contact Us](#).

15.2. For directory assistance, you may call 343-203-6820.

Notes

¹ *The utilization rate (%) will be calculated for every allocation holder as follows:*

Utilization Rate (%) = (Actual Level of Use (kg) / Total Allocation Granted (kg)) X 100%

Where:

Actual Level of Use (kg) = Permits Used (kg) + Returns (kg) + Transfers Out (kg)

And:

Total Allocation Granted (kg) = Initial Allocation (kg) + Transfers In (kg)

² *The under-utilization penalty will be calculated as follows:*

Underutilization Penalty (kg) = Pre-penalty Allocation (kg) X Underutilization Rate (%)

Where:

"Pre-penalty Allocation (kg)" is the allocation that the allocation holder would have been eligible for in the new quota year, if the allocation holder had not under-utilized in the previous quota year.

And:

Underutilization Rate (%) = 100% - Utilization Rate (%)

Date Modified: 2015-11-12



**Chicken Farmers
of Canada**

How We Do It



YouTube

What's Trade Got to Do With it?

An effective supply management system requires the ability to determine supply from all sources, domestic as well as international.

An effective supply management system requires the ability to determine supply from all sources, domestic as well as international. In order to be sustainable, the supply management system relies on three pillars: import controls, production discipline, and producer pricing. Import controls are essential to maintaining the stability of supply in Canada – it ensures that Canadian market demand for chicken is primarily met by Canadian farmers.

The volume of chicken imported into Canada is controlled by Tariff Rate Quotas (TRQs), which allow a calculated volume – or “quota” – of chicken to enter Canada with little or no tariff and higher tariffs for volumes exceeding said quotas. Combined with domestic production discipline – which discourages under- and over-production – TRQs ensure that there are no shortfalls or surges in the chicken supply, keeping prices stable and predictable. Finally, the system contains mechanisms that provide farmers with a fair and stable return for their product, keeping chicken farming sustainable.

What is a TRQ?

Tariff rate quotas set limits to the amount of chicken allowed into Canada with little or no tariff. As a signatory to the WTO Agreement on Agriculture – which came into effect on January 1, 1995 – Canada converted its existing agricultural quantitative import controls to a system of TRQs. TRQs were designed to offer some level of protection to countries’ sensitive agriculture sectors. Canada operates 21 of the world’s 1,425 TRQs, while the United States has 54 and the European Union has 87.

Under these TRQs, imports are subject to low “within access commitment” rates of duty up to a predetermined limit. Canada allows more than double its WTO commitment of 39,843,700 kilograms through its North American Free Trade Agreement (NAFTA) commitment, which is 7.5% of its previous year’s production. Unrestricted imports in excess of this limit are subject to significantly higher “over access commitment” rates of duty.

To demonstrate this system for chicken, the TRQ level for 2013 was set at 77.7 Mkg, representing 7.5% of the amount of chicken produced in Canada the year before. Imports up to 77.7 Mkg can then be imported with either a very small tariff or none whatsoever. Imports originating from the US pay 0% tariff because of the NAFTA and imports from other WTO members are subject to a tariff of 5.4% because of the WTO. All imports above the 77.7 Mkg limit are subject to a tariff of 238% (whole chicken) regardless of their origin,

which would make imports significantly less appealing under normal circumstances.

TRQ Administration

The department of Foreign Affairs, Trade and Development (DFATD) plays a very important role in operating the TRQ system in Canada. They allocate the privilege to import at the "within access commitment" rates of duty to firms by issuing import allocations – or "import quotas" – as long as the firms meet the necessary terms and conditions. The Tariff Quota Advisory Committee (TQAC) was mandated to provide advice to the Minister of International Trade on the administration of the TRQ allocation system. The committee is comprised of CFC, CHEP and industry stakeholders (represented by CPEPC, FPPAC, CRFA, CARI, FPC, and NFDA) and government officials from several departments.

Chicken products not covered by the TRQ (Non-Import Control List products):

- Chicken meat products containing 13% or more other products (HS Chapter 16); e.g., TV dinners, entrees ("specially defined mixtures") – those are products with 87% or less chicken.
- Food preparation containing less than 20% chicken (HS Chapters 19, 20 & 21); e.g., meat pies, soups, egg rolls, etc.

Allocation of the TRQ

Import quotas – in this 2013 example – are allocated to 566 Canadian companies that meet criteria in one of five pools: traditional, processors, foodservice, distributors, and non-import control list (non-ICL) products. The traditional pool receives its fixed quantity (20.9 Mkgs). The processor, distributor and foodservice pools are allocated 37.1% (processors: 62.6%, distributors: 26.8%, foodservice: 10.6%). The non-ICL pool receives its full requirements through the volume remaining in the regular allocation, special reserves, the market development policy and the supplementary imports to complete allocation.

Companies qualifying as both processors and distributors are allowed to apply under both pools but only receive one allocation; related or affiliated companies are only eligible for one allocation as well. Companies that use less than 90% of their allocation in any year have their allocation in the next year reduced to their actual level of use.

Supplementary Import Permits

The Minister of International Trade can authorize the importation of quantities of chicken and chicken products in excess of the import access quantity if they judge that it's necessary to help meet Canadian demand. There are four categories of supplementary permits, and each category is subject to different conditions and procedures outlined below.

1. Supplementary imports for market shortages

Applications for supplementary imports to meet market shortages must meet the whole bird substitution policy, whereby market shortages are assessed in terms of the domestic industry's supply and demand situation, based on production for the whole bird market. Applications for poultry parts are authorized only when there is a shortage of whole birds. Supplementary imports of parts when whole birds are available would interfere with the adjustment mechanisms in the market.

2. Supplementary imports to import chicken for the manufacturing of

2. Supplementary imports to import chicken for the manufacturing of products exempt from the Import Control List (import to compete)

Manufacturers having an import allocation for processing of chicken products that are not on the Import Control List (ICL), referred to as "FTA quota", are required to have exhausted all of their FTA quota allocation for the year before supplemental import permits may be issued under this provision.

Manufacturers importing chicken under this provision must substantiate that the chicken imported is used to produce products exempt from the ICL.

3. Supplementary imports to import chicken and chicken products for further processing and re-export (import to re-export)

All products manufactured from the imported chicken products must be exported within a period of three months from the date of issuance of the import permit.

The applicant must provide DFATD with copies of the import documents, including a CFIA inspection certificate for each import, document the use of imported chicken in the production of the exported product, and provide the export shipping documents. Failure to supply the documents may disqualify an applicant for additional import to re-export permits.

4. Supplementary imports to import chicken and chicken products for the purpose of test marketing

Import permits supplementary to the annual TRQ may be issued to facilitate the test marketing of new products that are unique or are produced with unique processes and require a substantial capital investment for their production. Companies that intend to do test marketing on a specific product must normally plan the activity within their annual TRQ allocations. Companies having a basic quota allocation must exhaust this allocation before supplementary imports may be issued under this provision. The supplementary import permits are only available to firms that market product directly to consumers. Companies are required to commence production in Canada as soon as feasible after the successful completion of the test marketing program.

How We Do It

What is Supply Management?

How Does it Work?

Impact of Imports

Duties Relief Program

Spent Fowl

Specially Defined Mixtures

What's Trade Got to Do With it?

History of Supply Management

Why Should I Care?

About Us



Chicken Farmers of Canada is responsible for ensuring that our 2,700 farmers produce the right amount of fresh, safe, high-quality chicken and that our farmer's views are taken into account when important agriculture and policy decisions are made.

Careers

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Contact Us

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September 22, 2015

Clinton Monchuk
Chief Executive Officer
Chicken Farmers of Saskatchewan
224 Pacific Ave, Suite 201 (Rumley Building)
Saskatoon, Saskatchewan.
S7K 1N9

Re: Differentiated Regional Allocation (DRA) Proposal

Dear Clinton,

I would now like to share with you feedback from the Chicken Farmers of Ontario (CFO) Board regarding the above noted proposal.

CFO fully understands and appreciates the efforts being made by Chicken Boards in Western Canada, in collaboration with your respective processors, in gaining support for signing the amended Operating Agreement. As you are aware, CFO and the Ontario Farm Products Marketing Commission have signed the amended Operating Agreement, demonstrating that Ontario strongly supports the amended Operating Agreement.

This Agreement reflects the Memorandum of Understanding that was approved by all provincial boards following the successful completion of the development of a differential growth mechanism that includes a robust formula that achieves the objective of providing differential growth opportunities for all provinces and a discrete supply to Ontario, that partially addresses an objective of correcting Ontario's market share imbalance between demand and supply.

The DRA proposal presented is not consistent with either of these objectives. In essence, the proposal would restrict the additional opportunity to one region only, and given it was developed in collaboration with western processors, it would be assumed that western provinces would routinely seek additional supply through the proposal.

Related to the other objective, the proposed vesting to provinces in the region would neutralize at best, but more likely counter the intended evolution of provincial market shares that guided the development of the current differential growth mechanism.

You may also recall that during the development of the MoU, the concept of a regional approach was presented and rejected during its development. The reasons above for having rejected it then, remain today, and CFO is disappointed that efforts continue to address new objectives at the expense of focusing on supporting the current amended Operating Agreement.

In addition, the governance over national volume allocations rests with the CFC Board of Directors, with each representative currently advancing volume allocation recommendations. CFO has difficulties in supporting a process whereby any party would be assigned a role that is inconsistent with current governance.

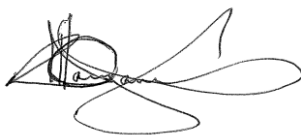
Regarding fact-based analysis in support of the western proposal, Ontario has not been privy to any fact-based analysis that demonstrates the differential need for western processors. While CFO respects the requests that have been made by western processors that have contradicted CPEPC recommendations, these requests have not been substantiated.

In this regard, you may be interested in the following analysis:

- Based on actual allocations from A-127 to A-134 using the DG allocation formula, the Western region's market share has been above its pro-rata market share except in A-132.
 - In that quota period, the region's market share was virtually equal to pro-rata (31.306% vs 31.307%).
- Overall, after 8 quota periods, the Western region is further ahead in market share compared to pro-rata (31.469% vs 31.452%).
- The minimum national allocation for the region to maintain pro-rata market share varied across the quota periods from 2.54% in A-127 to 3.60% in A-134.
- Assuming the market share distribution of each of the elements in the DG formula does not change significantly over time, national allocations above ~3.5% should generally result in the Western region achieving an overall market share that is greater than pro-rata.

Taking all of the above into account, the CFO Board does not support the proposal. Rather, the Board encourages those who continue to have concerns with signing the amended Operating Agreement to revisit the benefits of a stable national chicken supply management system, with stability benefiting farmers, processors and distribution channels in their province and across the country.

Sincerely,



Rob Dougans
President and CEO

cc: Henry Zantingh, Chair, Chicken Farmers of Ontario

EXCEPTIONAL CIRCUMSTANCES CLAUSE

Policy

“Exceptional Circumstances” refer to market, not production related circumstances that cannot be met by normal market growth within the flexibility of the regional range and the provincial range, and that may necessitate an increase in the provincial range. These procedures have been established by the CFC Board of Directors pursuant to section 4.07 of the Operating Agreement.

The Exceptional Circumstances Clause is not designed to deal with normal growth within the flexibility of the 5% regional range, the 8% provincial range and the 1.5% market responsiveness pool.

The Exceptional Circumstance Clause allows Directors the flexibility to address specific market requirements beyond the 8% provincial range. The application of this clause needs to be consistent with CFC’s responsibility to manage supply. An exceptional circumstance request can relate to a specific event, or other unusual circumstance where the additional allocation is driven by the specific event or unusual circumstance. An increase in the provincial range as a result of the Exceptional Circumstances Clause requires a double majority vote.

Procedure

1. Provincial boards submit written request to CFC.
2. CFC staff analyze the request and provide an independent report to Directors.

CLAUSE SUR LES CIRCONSTANCES PARTICULIÈRES

Politique

« Circonstances particulières » signifie les circonstances qui se rapportent au marché et non à la production, auxquelles la croissance normale du marché à l’intérieur de la souplesse de l’échelle régionale et de l’échelle provinciale ne peut répondre, et qui peuvent nécessiter une augmentation de l’échelle provinciale. Ces procédures ont été établies par le Conseil d’administration des PPC selon la section 4.07 de l’Entente opérationnelle.

La clause sur les circonstances particulières n’a pas été conçue comme un moyen d’aborder les questions liées à la croissance normale et qui ont trait à la fluctuation de l’échelle régionale de 5 p. 100, de l’échelle provinciale de 8 p. 100 et au fonds commun de 1,5 p. 100 d’adaptation au marché.

La clause sur les circonstances particulières donne aux administrateurs la souplesse nécessaire qui leur permet de répondre à leurs besoins de marché qui nécessitent d’aller au-delà de l’échelle provinciale de 8 p. 100. L’application de cette clause doit aller de pair avec les responsabilités des PPC, en ce qui a trait à la gestion des approvisionnements. Une demande de recours à la clause sur les circonstances particulières peut être liée à des circonstances particulières ou à une situation hors de l’ordinaire. L’approbation de l’allocation supplémentaire est alors motivée par ces circonstances particulières ou cette situation hors de l’ordinaire. Une augmentation de l’échelle provinciale résultant de la clause sur les circonstances particulières requiert un vote à double majorité.

Procédure

1. Les offices provinciaux font une demande écrite aux PPC.
2. Le personnel des PPC analyse la demande et remet ses conclusions aux administrateurs des PPC.

3. Directors discuss the request at a Board meeting or conference call in advance of the setting of the allocation for the applicable period(s). After a full discussion, Directors will make their decision solely on the merits of the request.
4. A review process should be put in place to assure the appropriateness of Directors' decisions.
5. Any province submitting an exceptional circumstance request shall do so a minimum of four weeks prior to setting the allocation for the period(s) in which the exceptional circumstance occurs.

3. Les administrateurs en discutent, lors d'une réunion ou une conférence téléphonique précédant la détermination de l'allocation pour les périodes en cause. Après en avoir discuté à fond, les administrateurs prendront une décision basée uniquement sur la validité de la demande.
4. On devrait mettre en place un processus d'examen visant à vérifier la pertinence des décisions des administrateurs.
5. Tout office provincial, qui présente une demande de recours à la clause sur les circonstances particulières, le fera dans un délai minimal de quatre semaines précédant la détermination de l'allocation, pour la ou les période(s) où se produiront les circonstances particulières.

Provinces submitting requests, and Directors discussing and evaluating requests should be guided by, but not limited to, the following questions:

Les offices provinciaux demandeurs et les administrateurs évaluateurs prendront leur décision, en s'inspirant des critères ci-dessous, sans toutefois nécessairement s'y limiter.

- a) Is the request tied to a specific event?
- b) Is the request unique or does it reflect high market demand that is better addressed through an increase in the range?
- c) Does the region still remain within the national range?
- d) Will the request be market disruptive for other provinces?
- e) What are the current market conditions?
- f) Does the request require additional capital investment?
- g) Does the request reflect a shift in production or market from another province?
- h) Should the additional production be added to the provincial base?

- a) La demande est-elle liée à des circonstances particulières?
- b) S'agit-il d'une demande isolée ou est-ce que les besoins accrus du marché motiveraient une augmentation de l'échelle?
- c) Les allocations régionales demeurent-elles sous la barre de l'échelle nationale?
- d) La demande perturbera-t-elle le marché des autres offices provinciaux?
- e) Quelles sont les conditions actuelles du marché?
- f) La demande requiert-elle des investissements de capitaux supplémentaires?
- g) La demande est-elle faite parce que la production ou le marché dans une autre province fait l'objet de changements?
- h) Les quantités supplémentaires de production de poulets devraient-elles être ajoutées à la base provinciale?

If you have any questions concerning this policy please contact Jan Rus at the CFC office.

Si vous avez des questions à cet égard, veuillez communiquer avec Jan Rus aux PPC.