

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND AN APPEAL FROM A DECISION OF THE BRITISH COLUMBIA
CHICKEN MARKETING BOARD TO AMEND THE NEW ENTRANT PROGRAM RULES

BETWEEN:

WOODCREEK FARMS, VERARD FARMS LTD., BNC FARM INC.,
CHAHAL ESTATE LTD., JACK AND JOANNA NEELS, AND
CAMP RIVER POULTRY LTD.

APPELLANTS

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Christopher K. Wendell
Corey Van't Haaff
Al Sakalauskas

For the Appellants

Self-Represented

Date of Hearing

May 18, 2017

Place of Hearing

Abbotsford, British Columbia

INTRODUCTION:

1. The Appellants, Woodcreek Farms, Verard Farms Ltd., BNC Farm Inc., Chahal Estate Ltd., Jack and Joanna Neels, and Camp River Poultry Ltd., are six chicken growers all located in the Lower Mainland area of the province that raise specialty chicken pursuant to quota issued by the British Columbia Chicken Marketing Board (“the Chicken Board”).
2. The Appellants initially received their quota by way of a new entry grower program (NEP) for specialty chicken. Specialty chicken is defined in Schedule 4 to the Chicken Farmers of Canada Market Development Policy – Part II: Specialty Policy and includes Silkie, Blue Leg Taiwanese, Hong Kong Golden and other non-mainstream chicken breeds. The specialty designation originally included organic chicken, however (as further discussed below) it has recently been determined that the production of organic chicken will be reallocated to the mainstream quota system, with that reallocation occurring over the next several years. The initial allocation for the specialty NEP was made in 2007 for 7,716 kilograms live weight per 8-week cycle and subsequently increased in 2013 to 11,189 kilograms live weight per 8-week cycle. Due to strong specialty chicken demand, the Appellants have recently been producing over base quota. The percentage over base utilization for 2016 ranged from 115 to 201 percent.
3. None of the Appellants currently grow mainstream chicken, and all are involved in other off-farm employment.
4. In December of 2016, after several months of consultation with the industry including the specialty growers and, for clarity, the Appellants in this case, the Chicken Board notified its members by email of changes that it had approved to the NEP rules. The Panel notes here that the NEP has separate rules for specialty growers and separate rules for mainstream growers. In its December 2016 decision, the Chicken Board created a quota matching program for mainstream new entrant growers only, whereby mainstream new entrant growers would initially receive an increased amount of quota (to 20,000 kilograms live weight per 8 week cycle) and would then also have the ability to gain further quota through a “buy one get one” (BoGo) program which would match quota purchased by new entrant mainstream growers up to an additional 10,000 kilograms live weight per 8-week cycle. In total, the approved changes could provide new entrant mainstream producers with quota up to 40,000 kilograms live weight per 8-week cycle.
5. The December 2016 decision of the Chicken Board to approve the NEP changes was applied only to the mainstream NEP. The Appellants took issue with the fact that it was only the mainstream new entrant growers who could access this additional quota, and not the specialty growers, despite their inclusion in the consultation process. However, the

Appellants did not take issue with the general increase in quota to mainstream new entrant growers and that part of the December 2016 decision is not under appeal in this proceeding.

6. The Appellants have from the outset conceded that, given the manner in which quota is allocated in the specialty system, and the ability of specialty growers to over utilize their quota based on processor demand, there is no need or reason to issue further quota in the specialty market at this time. Instead what the Appellants are seeking by way of this appeal is to be provided mainstream quota under the BoGo program in the same amount as the new entrant mainstream growers are being provided, with the net result that Appellants would become producers of both specialty and mainstream chicken if the December 2016 decision was amended as they request.
7. The British Columbia Chicken Growers Association (the “BCCGA”) initially appealed the December 2016 decision with respect to the issue of how the quota would be obtained to support the increase in quota for new entrant growers in the December 2016 decision. However upon consideration and review of the Board’s further document production in this appeal, the BCCGA abandoned its appeal and withdrew as an intervener in the Appellants’ appeal.
8. On March 7, 2017 the parties attended a pre-hearing conference call at which time it was determined that the appeals would be heard jointly, and that one set of written reasons would be issued to the parties. It was further determined that at the hearing of the matter, Jason Lindhout of Woodcreek Farms would act as the representative for the entire group of Appellants and that the Appellants would collectively provide the documents that they intended to rely upon to the Panel and to the Chicken Board.
9. The Appeal was heard on May 18, 2017 in Abbotsford, B.C. The parties provided their closing submissions in writing with the Appellants providing their written submissions on May 29, 2017, the Chicken Board providing their Response on June 2, 2017 and the Appellants providing their final reply submissions on June 9, 2017.

ISSUE:

10. Did the Chicken Board err in its December 2016 decision to amend the NEG program rules to create a quota matching program for mainstream new entrant growers but not to extend the matching program to specialty new entrant growers?

BACKGROUND:

APPELLANT'S CASE:

11. Three of the Appellants, (Mr. Jason Lindhout, Mr. Henk Roos and Mr. Ard Hoogeveen) gave evidence as a panel in support of their position that the BoGo program included in the changes to the NEP should be extended to new entrant specialty growers. The Appellant panel gave evidence in part as follows:

- (a) Specialty growers were initially included in the consultation process undertaken by the Chicken Board during the course of its review into how to improve the NEG program for chicken growers in the province. During that review process, both Mr. Roos and Mr. Hoogeveen were provided with questionnaires to which they responded. The Appellant panel noted that their inclusion in the consultation process indicated to them that they would be included in any changes that were ultimately made by the Chicken Board.
- (b) The Appellant panel noted that, as specialty growers, they are subject to the same cost of production and market pressures that the Chicken Board identified for new entrant mainstream producers. In particular, the Appellant panel noted that financial viability issues are just as challenging for specialty new entrant producers as they are for mainstream new entrant producers. The Appellant panel repeatedly questioned why the Chicken Board relied on market demand for specialty chicken, and why the issue of financial viability, which was identified by the Chicken Board as an issue for mainstream new entrant producers, was not considered, or at least not equally considered, with respect to specialty new entrant producers.
- (c) The Appellant panel noted the four main barriers to viability identified in the Respondent's Board Briefing note dated May 12, 2016 being:
 - i. the amount of incentive quota issued to new entrant growers is unsustainable;
 - ii. the price quota is high and returns are low;
 - iii. the declining transfer rule (10-10-10)¹ deters financial institutions from allowing new entrant growers to use quota as an asset; and
 - iv. new entrant growers are unable to access small amounts of quota to increase their farm size

¹ 10-10-10 refers to a declining assessment whereby a producer seeking to transfer quota is subject to a 100% assessment in year one (effectively, non-transferability) which is subsequently reduced by 10% per annum until it reaches 10% in the 10th year where it remain thereafter.

They say all four of these barriers apply to specialty growers in the same manner that they apply to mainstream growers.

- (d) The Appellant panel gave evidence that they were all currently working only part-time as chicken farmers and that to the extent that they could obtain increases in mainstream quota through the BoGo program they would improve their ability to become viable solely as chicken farmers. They take offence to the suggestion the mainstream new entrant growers are family farmers trying to remain viable and vested in the industry while specialty new entrant growers are simply looking for free quota.
- (e) The Appellant panel noted that for previous quota increases associated with the NEP, specialty growers and mainstream growers had been treated identically. They noted that, based on that previous equal treatment, compounded by their inclusion in the Chicken Board's review, it was their reasonable expectation that they would be treated in a like manner for any changes arising from the Chicken Board's review process in 2016.
- (f) The Appellant panel provided several graphs which they produced based on information compiled from their own operations as well as from local feed providers and other resources to develop cost of production figures for both specialty and mainstream growers. The graphs were provided to demonstrate the difficulties specialty new entrant growers have in remaining viable and the disadvantage they face by being kept at entry-level quota as opposed to 40,000 kilograms per cycle.
- (g) The Appellant panel reviewed the SAFETI analysis that had been undertaken by the Chicken Board, which analysis they considered to be fundamentally flawed as:
 - i. there was a lack of transparency in the Chicken Board's presentation of its review insofar as it was never brought to the specialty growers' attention that the review was being conducted solely for the purpose of improving the viability of mainstream growers;
 - ii. the initial inclusion of specialty growers in the consultation process led the specialty growers to the reasonable conclusion that they were going to be included in any changes that were made to the NEP rules;
 - iii. the overarching fairness of the Chicken Board's SAFETI analysis was flawed as there was no reason to treat specialty growers differently than mainstream growers when, in fact, they were all new entrant growers and they all faced the same types of financial pressures.

- (h) The Appellant panel stated that they were keen to expand their modest operations in order to transition into viable producers and to avoid the possibility that they, too, would be forced to sell their quota and exit the industry prior to achieving that viability.
- (i) When cross examined by counsel for the Chicken Board, the Appellant panel members all conceded that, at least for the last year (2016), they had, in fact, been producing in excess of their actual quota allocation as there had been significant demand from processors, which was not represented on the graphs provided. The Appellant panel further conceded that their sector of the chicken industry is distinct from the mainstream sector in that they can produce in accordance to demand from processors regardless of the amount of quota actually allocated to each specialty grower.²
- (j) In response to the Chicken Board's suggestion that specialty growers can over-produce their actual quota allocation, the Appellants argue that when the quota currently issued for organic chicken is reintroduced into the specialty and mainstream chicken markets as described further below, the effect will be that all over-production will cease for specialty new entrant growers. Further, they say that their overproduction does not give them any more ability to secure financing for their operations as their lenders do not consider the ability to overproduce as being equivalent to an increase in quota.

RESPONDENT'S CASE:

12. The Chicken Board also presented its witnesses as a panel with Board member Allister Johnston, Chair Robin Smith, and Executive Director Bill Vanderspek appearing on behalf of the Chicken Board. The Respondent panel gave evidence in part as follows:
 - (a) Mr. Johnston gave a summary of the efforts that had been made by the Chicken Board commencing in the late fall and winter of 2015 and proceeding through the entirety of 2016, culminating with the decision of the Board in December of 2016 to change the NEP rules (the decision that is currently under appeal).
 - (b) Mr. Johnston stated that the review process had included a questionnaire sent to growers in the NEP, which was noted by the Appellants, as well as in-person meetings with growers and consultation sessions with the Primary Poultry Processors Association of BC, Farm Credit Canada, and other key industry organizations in order to ascertain the best ways to improve conditions for new entrant mainstream growers.

² Specialty chicken growers, unlike mainstream growers, are not constrained by over production penalties to produce only within certain tolerances.

- (c) Mr. Johnston noted that from the outset the Chicken Board had always intended to change the NEP rules only with respect to mainstream growers as the Chicken Board viewed that the specialty and the mainstream programs were entirely independent of each other and that it was the mainstream growers that needed the most assistance in terms of achieving viability and reducing the tendency to “cash out” when quota is fully vested.
- (d) Mr. Johnston stated that the specialty growers were included in the initial consultation process as it was a survey of all new entrant growers to gather information from all regions and all sources. He noted that in the Lower Mainland, the NEP was dominated by specialty growers and that, in order to gather information in terms of the pressures facing growers in that area, it was inevitable that the consultation process would include specialty growers.
- (e) Mr. Johnston stated that he believed that the Chicken Board had undertaken its SAFETI analysis from the outset and throughout its review of the NEP. His view is that the Chicken Board undertook a fair and comprehensive review and that the changes that were made to the program were the reasonable result of that process.
- (f) Mr. Smith gave evidence as to the respective differences between the way specialty chicken and mainstream chicken are each allocated. Specialty chicken is not subject to the national allocation system whereby the Chicken Farmers of Canada set a national allocation, a percentage of which is distributed to British Columbia for distribution to mainstream growers on a *pro rata* basis. Instead, specialty processors define their own market which then becomes the allocation for specialty chicken growers. If the market grows, specialty chicken growers are permitted to grow additional chicken. He noted that significant efforts had been made over the course of the last several years to increase the market (including foreign markets) to provide greater production opportunities for specialty growers in British Columbia and that those efforts had been very successful, demonstrated by the fact that several of the Appellants were growing specialty chicken far in excess of their quota allotment due to demand from processors for their product.
- (g) Mr. Smith further noted that the funding for the efforts that had been made to generate the benefits for the specialty producers had been obtained, for the most part, through levies largely paid by mainstream producers and that in general, the specialty market had benefited significantly from the efforts of the Chicken Board and of mainstream producers.

- (h) Mr. Vanderspek gave evidence that his review of the quota production requests by the specialty growers for 2017 closely track the requests that were made in 2016 and that the over-utilization of quota that had been noted in 2016 would likely continue into this year and possibly for the foreseeable future.
- (i) Mr. Vanderspek noted that the Chicken Board was somewhat constrained in its ability to increase quota to specialty growers until the issue of the reallocation of organic chicken had been completed. Essentially growers with specialty quota allocations for organic chicken need to choose whether to convert to mainstream quota (and continue to grow organic chicken) or to use their specialty quota to grow a true specialty chicken.³ That reallocation process is expected to be completed by 2020. Once the process of the reallocation of organic chicken has completed, Mr. Vanderspek indicated that the Chicken Board would be in a better position to increase quota to the specialty growers. In fact, Mr. Vanderspek noted that the Chicken Board's stated intent was to increase specialty quota if that was still practical once the issue of re-allocating organic production had been completed.
- (j) The Respondent panel noted that the specialty and mainstream segments of the NEP each have different markets and different returns. The feedback gathered by the Chicken Board helped them to determine that while the specialty program already had appropriate provisions in place, there was a clear and present need for changes in the mainstream program.
- (k) The Respondent panel noted that there was nothing stopping new entrant specialty growers from purchasing mainstream quota in order to become mainstream growers and improve their overall viability.
- (l) The Respondent Panel noted that addressing needs of the NEP was not a one size fits all solution that would fit the two distinct segments of the NEP, and that the current decision under appeal was concentrated on mainstream growers to address their needs, and did not, in and of itself, create any disadvantage to specialty growers.
- (m) The Respondent Panel also testified that, as the NEP had two different quota streams, any offer of mainstream to the specialty growers would be funded by the mainstream sector.
- (n) The Respondent panel collectively gave evidence that the specialty NEP and mainstream NEP were so independent of each other that it would have never crossed

³ The specialty class is comprised of Asian chicken, as described in paragraph 2 above.

the Chicken Board's mind to allocate mainstream quota to the specialty new entrant growers.

- (o) The Respondent panel noted that, based on the efforts that had been made in the past on behalf of the specialty growers, the Chicken Board would consider it to be fundamentally unfair to expect the mainstream producers to support a matching program for specialty growers to obtain mainstream quota, as requested by the Appellants.
- (p) In response to questions from the Panel, the Respondent panel collectively acknowledged that it had been the Chicken Board's intent from the outset to only change the rules with respect to new entrant growers for mainstream production. However, they felt quite strongly that in treating the specialty market differently than the mainstream market they were not treating the Appellants unfairly as these were two different segments of the NEP.

ANALYSIS:

13. The Appellants have not challenged the authority of the Chicken Board to amend the NEP Rules as contemplated in the December 2016 decision. Furthermore, the Appellants have not challenged the increase in allocation to new entrant mainstream producers as set out in that decision. The singular issue on this appeal is whether the Appellants should be included in the second part of the December 2016 decision (the BoGo) which provides that the Chicken Board will match any quota purchased by a mainstream new entrant grower up to a total amount of 10,000 kg.
14. Importantly, as noted above, the result that the Appellants are seeking is not that they will have additional specialty quota provided to them, but rather that they seek mainstream quota through the BoGo program to the extent that they choose to access that NEP. The result being that if the Appellants are successful in this appeal they will have access to both specialty and mainstream quota with the latter being available under the BoGO program (for clarity, they can also purchase mainstream quota at the prevailing rate).
15. When the Panel questioned the Appellants regarding their ability to produce both specialty and mainstream chickens on their farms, the Appellants were quite confident that they could find or build the barn space to accommodate mainstream production. They indicated that the benefits of specialty new entrant growers having access to additional mainstream quota would give them a foothold in the mainstream market and assist regional small and niche processors. It would help them achieve the viability that the Chicken Board indicated

was of its primary concern for mainstream growers, and which the Appellants argue should be equally applicable to them.

16. The Chicken Board noted both in its evidence and its submissions that producing mainstream chicken and specialty chicken in the same barn or on the same farm is far more complicated than it may initially appear and simply adding mainstream quota to a specialty farm would not create economies of scale. Due to the nature of the birds involved there are entirely different supply chains (separate hatcheries, chick, feed and live haul schedules), growth cycles and processors which would essentially require two entirely different operations to be undertaken.
17. Over and above the Chicken Board's concerns with the fairness and reasonableness of the Appellants' request for "free mainstream quota", the Chicken Board also contends that providing the Appellants with mainstream BoGo quota not only creates logistical issues related to setting up essentially an entirely new operation, it is also inconsistent with the Chicken Board's regional diversification goals. Because specialty new entrant chicken growers and their processors are located in the Lower Mainland, any mainstream quota issued to them would not serve regional processors, contrary to the Chicken Board's NEP objectives. The Chicken Board also notes that the increases in quota associated with the December 2016 decision have already been allocated and the result of granting the Appellants' appeal would be to remove quota from the mainstream system to the detriment of mainstream producers.
18. In reviewing the Appellants' evidence and submissions, it is the Panel's understanding that the Appellants' main arguments in this appeal are that the December 2016 decision of the Chicken Board was the result of a flawed process, insofar as it was procedurally unfair to include the Appellants in a consultation process which was never intended to be for their benefit, and the Chicken Board's decision unfairly differentiates between mainstream and specialty new entrant growers. As such, the Appellants argue that the December 2016 decision does not represent sound marketing policy.

Procedural Fairness

19. It is common ground in this Appeal that from the outset the intent of the Chicken Board in undertaking its review of the NEP was to determine measures that could be taken to improve the viability of mainstream new entrant growers. Furthermore, it is uncontested that the Chicken Board included specialty new entrant growers in the consultation process as part of that review.

20. The Appellants' argue that, by including specialty new entrant growers in the consultation, they were led to believe that any changes that arose as a result of the review would include them as well. They further argue that prior to the December 2016 decision all new entrant growers were treated the same for the purposes of changes to quota allocation and that it was their reasonable expectation that such similar treatment would continue.
21. The Chicken Board states that while the consultation process included some specialty growers, the focus was always on the mainstream new entrant growers as that was where the Board identified potential problems with viability. Furthermore, the Chicken Board argues that its focus on mainstream new entrant growers is entirely justified given the Board's mandate to act actively to encourage growth in the industry.
22. BCFIRB's Accountability Framework directs marketing boards to conduct their decision making processes based on a SAFETI (Strategic, Accountable, Fair, Effective, Transparent and Inclusive) analysis. The intent of the framework is that a decision arrived at, based on the SAFETI principles, should reflect a fair process and represent sound marketing policy.
23. With respect to the process undertaken by the Chicken Board in this case, the Chicken Board spent a significant amount of time and resources reviewing the challenges that exist for mainstream new entrant growers and then developed the policy changes which were ultimately manifested in the December 2016 decision. The documentary record supports the evidence given by Chicken Board member Allister Johnston in terms of the extensive consultation process that was undertaken with industry stakeholders, including the specialty growers. Based on that record, this Panel agrees with the Chicken Board that its process was for the most part congruent with SAFETI and the accountability framework set out above.
24. However, insofar as the Chicken Board's process failed to clearly identify to the stakeholders from the outset, and in particular to the specialty growers, that this review was being undertaken only with respect to mainstream new entrant growers, the process was not sufficiently transparent, and raised (or at least confirmed) the Appellants' expectations that they would be included in any changes to quota allocation to new entrant growers.
25. The Chicken Board's lack of transparency with respect to the focus of its review does not appear from the record to have been driven by any attempt by the Board to obfuscate or avoid its obligations to a particular group of growers. Rather, it was clear from the testimony given by the Board's panel of witnesses that it seemed evident to them that the specialty NEP and the mainstream NEP were so completely distinct that it would make no sense to tie changes in one sector to changes in the other.

26. In fact, the key reference to the specialty growers in the Chicken Board's December 2016 decision record states "At this time there is no need to extend this offer to specialty new entrants as the needs of the specialty chicken market are being adequately supplied and under a separate allocation system".
27. The crux of the disagreement between the parties with respect to the issue of transparency, and in fact with respect to this appeal generally, is the Chicken Board's position that mainstream new entrant growers and specialty new entrant growers are entirely distinct groups, as opposed to the Appellants' position that all new entrant growers should be considered to be part of one group that simply operates in two different sectors of the industry. It was clear during the hearing of the appeal that both parties consider their positions on this characterization issue to be self-evidently correct, even though their respective positions were polar opposites.
28. Based on the Chicken Board's position that there are two distinct groups, its conduct in directing its attention toward the needs of mainstream new entrant growers was entirely appropriate as in the past, similar attention had been directed towards establishing and promoting the specialty market, which had the effect of benefiting the Appellants. From that perspective, any lack of transparency in disclosing to the specialty growers that they were not likely to benefit from the review being undertaken of the mainstream growers was inconsequential as the Board was acting entirely within its mandate and the Board's decision did not otherwise affect the specialty quota held by the Appellants, despite the appearance to the Appellants and possibly others that their views were being sought for the consultation's purpose.
29. Based on the Appellant's position, treating one group of new entrants differently than other new entrants was discriminatory, and unfair and the associated lack of transparency in the decision making process with respect to the real focus and target of any proposed changes, resulted in procedural unfairness which cannot be justified in the circumstances.
30. With the benefit of hindsight, it is clear that the Chicken Board ought to have disclosed from the outset that its review process was intended to address the viability of mainstream new entrant growers only with any proposed changes to the NEP. Had that disclosure been made up front, then there could have been a fulsome debate within the industry as to the two positions set out above. Unfortunately, it appears that the distinction only became apparent to both parties once the December 2016 decision had been made and this appeal filed.

31. In all of these circumstances, this Panel does not find that the process undertaken by the Chicken Board was unfair. The evidence demonstrates that the Chicken Board undertook a process which was as comprehensive and complete as it reasonably understood it was obligated to provide in the circumstances. While we say this with the benefit of hindsight, the transparency of the Chicken Board's process would have been improved had it clearly articulated the intended target of its review. However, given that the underlying focus and target of the review was to improve the viability of mainstream new entrant growers, we find the net result of any change to the transparency of the process for the Appellants would have been marginal. The Panel also accepts that the specialty NEP is unique and distinct from the mainstream NEP. The benefits that flow from that uniqueness, including the ongoing over utilization of quota due to processor demand and higher returns in excess of cost of production, benefit only the specialty growers in the current market conditions.

Sound Marketing Policy

32. Given the analysis above with respect to procedural fairness, the issue remains whether the underlying decision not to include the specialty new entrant growers in the BoGo program in the December 2016 decision represents sound marketing policy. With respect to this issue, the argument of the Appellants as we understand it is that it is fundamentally unfair, and therefore contrary to sound marketing policy, to treat one group of new entrant growers differently than another group.

33. It is worth noting that insofar as the Appellants have not appealed the first part of the December 2016 decision (increases in overall quota allocation only to mainstream new entrant growers), they are acknowledging that some measure of discrimination or partiality in the Board's decision-making regarding quota allocation between specialty and mainstream growers does not offend them. The Appellants acknowledge that it does not make sense to increase the overall quota allocation to specialty growers at this time, both because the real allocation is entirely driven by the demands of processors, and because the returns to specialty growers are in fact significantly higher than to mainstream growers and as such, their viability is not as dependent on an initial increase in overall quota.

34. From that initial acknowledgement regarding differential treatment for the general increase in quota, the Appellants then transition to the position that as new entrants they should be provided access to the BoGo program to give them the same access to mainstream quota under the mainstream NEP.

35. The panel finds this transition from acknowledging the differences and benefits of the specialty allocation, to leveraging a strict definition of what constitutes a new entrant grower in order to gain a foothold in the mainstream market, is not logically coherent or

fair. We agree with the Chicken Board that the Appellants are attempting to gain access to the benefits to the mainstream new entrant growers without taking into account the unique benefits provided solely to the specialty growers noted above. We find this is not consistent with sound marketing policy.

36. While we appreciate the Appellants desire to become full-time chicken growers, and that they face their own difficulties in terms of viability, the Appellants own evidence and submissions go most of the way to demonstrating the Chicken Board's position that the two different sectors should be treated differently according to their distinct pressures and needs.
37. There will invariably be instances in which one sector will see steps taken by the marketing board to improve the lot of another sector and feel unfairly treated if they are not receiving the same benefits despite similar challenges. The evidence from the Chicken Board's panel of witnesses was that to a certain extent that was exactly the situation for mainstream growers when the Chicken Board was spending the time and resources necessary to get the specialty market to the place that it is at today.
38. However, the obligation of the Chicken Board to the industry in its entirety cannot be interpreted so as to constrain the Board from ever taking steps to positively develop one sector, for fear of demands from another sector. Importantly for the Panel in this case, the Chicken Board specifically acknowledged and agreed that further increases in specialty quota and other changes to the specialty NEP may be undertaken over time as certain issues including the reallocation of organic chicken are addressed. Presumably at that time, the benefits which accrue to the specialty growers will not necessarily have to be equally available to the mainstream new entrant growers as it seems unlikely that the two markets will be exactly synchronized such that it makes sense that the changes be identical.
39. None of this is meant to constrain the decision making of the Chicken Board going forward except to note that in making future decisions which differentiate between the specialty and mainstream sectors of its industry, it would be well advised to communicate from the outset if it intends to make decisions specifically in the interest of one sector or the other such that any concerns regarding that distinction can be addressed as part of that process. That way, the benefits of broad consultation would be realized and the risk of raised expectations alleviated.

CONCLUSION

40. This Panel has not been persuaded by the Appellants that the Chicken Board erred in its December 2016 decision not to extend the BoGo matching program to the Appellants. We accept the arguments of the Chicken Board that it should have the ability to address the needs of one sector without having to apply changes made in that sector across the board. While we have acknowledged the Chicken Board's procedural error in failing to disclose its intentions to all concerned from the outset, we nevertheless agree that addressing the viability of mainstream new entrant growers by way of increases in quota allocations as contemplated in the December 2016 decision reflects sound marketing policy.

ORDER

41. The appeal is dismissed.

42. There will be no order as to costs.

Dated at Victoria, British Columbia, this 10th day of August, 2017.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Christopher K. Wendell



Corey Van't Haaff



Al Sakalauskas