



BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Supervisory Review Re:

Chicken Operating Agreement Amendments

FINAL SUBMISSIONS OF CHICKEN FARMERS OF CANADA

April 27, 2016

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A. Introduction and Summary

1. The April 12, 2016 letter of the British Columbia Farm Industry Review Board (“FIRB”) seeks input on the following question:

Is a differentiated regional growth mechanism required in the proposed Operating Agreement in order to address concerns raised by the Primary Poultry Processors Association of BC (PPPABC) that the proposed Operating Agreement, including the Chicken Farmers of Canada (CFC) decision-making structure, leaves them at a competitive disadvantage?

2. As CFC will explain in these submissions, a differentiated regional growth mechanism (“DRA” or “Differentiated Regional Allocation”) is not required in the proposed Operating Agreement to address PPPABC’s concerns since:

- a) PPPABC has not substantiated those concerns;
- b) The DRA mechanism sought by PPPABC is unsound, has little industry support and to insist on such a mechanism would create unwarranted risks for the industry without necessarily even benefitting British Columbia; and
- c) PPPABC has failed to take advantage of other, more direct and more appropriate routes to address its concerns.

3. FIRB should sign the Operating Agreement amendments, and authorize the British Columbia Chicken Marketing Board (the “BC Board”) to do so as well. As CFC explained in its earlier submissions,¹ the amendments and related processes are and have been Strategic, Accountable, Fair, Effective, Transparent, and Inclusive, from both a national and a British Columbia perspective. PPPABC has failed, despite ample opportunities, to make out a credible case for turning down the deal, and has not provided a realistic alternative. Rejecting the

¹ CFC submission, March 18, 2016, see especially paras. 34 to 46.

Operating Agreement amendments would pose huge risks for the chicken industry and would not benefit British Columbia.

4. In light of the panel's comments in FIRB's letter of April 12, 2016, CFC's submissions will largely focus on PPPABC's concerns related to the impact of TRQ and spent fowl imports on domestic allocations, as well as the DRA concept favoured by PPPABC. CFC will only respond to a limited number of additional points raised in PPPABC's submission to ensure that FIRB has an accurate picture of the facts.

B. PPPABC's core concern is with TRQ and spent fowl imports

5. PPPABC repeatedly argues against the proposed amendments to the Operating Agreement because they do not address what is described as the "significant shortage of allocation for BC".² To understand what PPPABC means by the alleged "significant shortage" requires further explanation.

6. To begin with, it is important to understand what PPPABC is not saying. More specifically, PPPABC is not disputing evidence presented by CFC and/or the BC Board showing that:

- a) British Columbia currently receives a greater share of the domestic allocation than its share of Canada's population.³
- b) Under the methodology in the amended Operating Agreement, British Columbia will continue in the coming years to receive a greater share of the domestic allocation than its share of Canada's population.⁴
- c) British Columbia processors have in recent years received more – not less – than the allocations they requested, either through direct requests, or requests submitted on their behalf by CPEPC.⁵

² PPPABC submission, April 4, 2016, para. 2.

³ CFC submission, March 18, 2016, para. 63.

⁴ BC Board submission, March 31, 2016, paras. 30 and 31.

- d) The CPI and GDP components of the proposed differential growth formula are generally favourable to British Columbia.⁶
- e) The discrete supply component to Ontario has a relatively limited impact on the overall allocation.⁷

7. The crux of PPPABC's concerns is what PPPABC refers to as "the significant additional kilograms coming into Central Canada through TRQ and fowl".⁸ PPPABC similarly claims that future increases in import access under the Trans-Pacific Partnership (TPP) will disproportionately flow to the East. In other words, PPPABC contends that British Columbia should receive more in the way of a domestic allocation for chicken because the province receives less in the way of TRQ and spent fowl imports than other provinces, and will receive proportionately less of the increase in imports under TPP.

C. PPPABC has not substantiated its core concern

8. As CFC will explain, the claims by PPPABC are not backed by reliable and accurate information. Moreover, PPPABC has not pointed to a practical and effective method to obtain the information needed to verify, let alone act on, PPPABC's concerns. Thus, in addition to the jurisdictional problems previously identified by CFC with respect to chicken imports and TPP,⁹ there is no reasonable basis to act on PPPABC's complaints.

9. The only information presented by PPPABC on the subject of chicken and fowl imports consists of the following:

⁵ CFC submission, March 18, 2016, para. 61.

⁶ CFC submission, March 18, 2016, para. 68.

⁷ CFC submission, March 18, 2016, para. 64.

⁸ PPPABC submission, April 4, 2016, para. 80.

⁹ CFC has previously noted, at para. 55 of its March 18, 2016 submission, that CFC's jurisdiction relates solely to domestic production. CFC has no jurisdiction over imports of chicken. Likewise, neither the BC Board nor FIRB have any jurisdiction over imported chicken.

- a) Part of a CFC PowerPoint presentation, dated April 2012 (based on 2011 data);¹⁰
and
- b) A presentation on behalf of British Columbia processors made on December 6, 2013 (which uses the data of CFC's presentation with respect to TRQ volumes).¹¹

10. According to PPPABC, this information proves that British Columbia processors are undersupplied compared to processors in Central Canada. More specifically, CFC's April 2012 PowerPoint presentation is said by PPPABC to confirm that "the vast majority of TRQ came into Ontario, closely followed by Quebec".

11. PPPABC fails to mention that on another slide of the same PowerPoint presentation, left out of the excerpts provided by PPABC to FIRB, CFC expresses caution based on the significant limitations of the provincial data.¹²

12. To elaborate, the excerpt of CFC's presentation shows two pieces of information for each province, provided by Global Affairs Canada (or the Department of Foreign Affairs and International Trade, as it then was). The first – "TRQ Allocation" – is the volume of TRQ allocated (by province) based on the address listed on the TRQ application.¹³ The second – "TRQ Imports" – is the volume of TRQ chicken that entered Canada through each province.¹⁴

13. Neither TRQ Allocation nor TRQ Imports necessarily indicates in which province the chicken was processed and sold, since:¹⁵

¹⁰ PPPABC documents, Page 26.

¹¹ PPPABC documents, Page 37.

¹² CFC Supplementary Documents, Tab 1, page 27. CFC identified the following limitations:

- 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 Affidavit of Michael Dungeat, sworn April 27, 2016, para. 5.

¹⁴ Affidavit of Michael Dungeat, sworn April 27, 2016, para. 6.

¹⁵ Affidavit of Michael Dungeat, sworn April 27, 2016, paras. 4 to 13.

- a) TRQ Imports only shows the point of entry into Canada, not the final destination within Canada. For example, product destined for a processing plant in Manitoba could enter Canada through Ontario.
- b) The company that holds TRQ is not necessarily the same as the company that uses TRQ to import product into Canada. TRQ import rights are transferred in a private and confidential secondary market throughout Canada. Indeed, CFC has been led to understand that the majority of TRQ is transferred rather than used by the initial holder.
- c) The company that holds the import permit (reflected in TRQ Allocation by Province) may authorize a particular shipment of chicken to be sold to another company in Canada, either in the same province or another province, and either a related or an unrelated company.
- d) A major processor may operate in multiple provinces, or have their head office in one province and their processing plant in another province. For example, Maple Leaf Foods has major processing plants in both Ontario and Alberta.¹⁶ However, Global Affairs Canada lists Maple Leaf Foods as based in Ontario alone.¹⁷

14. The summary data from Global Affairs Canada also fails to capture the complex corporate relationships between various processing companies. For example, CFC understands that some British Columbia processors own further processors located in Ontario, such as DC Foods, which is owned by Sunrise Farms, Elmira Poultry, which is owned by Hallmark Poultry, and Janes Family Foods, which is owned by Sofina.¹⁸ There may be other corporate relationships between Western processors and further processors in Central Canada, which are not a matter of public knowledge in the industry and thus are not known to CFC (or to the BC

¹⁶ Affidavit of Michael Dungle, sworn April 27, 2016, para. 11.

¹⁷ 2016 Chicken Quota Holders List, Global Affairs Canada – Traditional Importers – Processor, CFC Supplementary Documents, Tab 2.

¹⁸ Affidavit of Michael Dungle, sworn April 27, 2016, para. 12.

Board or FIRB). As a consequence, British Columbia processors may own or control some of the TRQ volume which appears to flow into Ontario.

15. These complex corporate relationships make it difficult to reach straightforward conclusions regarding the flow of product between provinces. For example, based simply on the information provided in PPPABC's submission, it is not clear why and how Sunwest (owned by Sunrise Farms) and JD Sweid (owned by Hallmark Poultry) purchased third-party product to bring into their British Columbia further processing plants. There is no information to indicate the origin of this product, and whether it came from other plants owned or controlled by Sunrise Farms and Hallmark Poultry.

16. Furthermore, the summary data from Global Affairs Canada does not provide a provincial breakdown of TRQ volumes between the sectors which receive a TRQ allocation – the foodservice sector, the wholesaling sector, and the processing sector.¹⁹ If there is a regional imbalance, therefore, the data does not indicate in which sector the imbalance occurs. This is important, given the focus of PPPABC on the processing sector. PPPABC's submissions create the erroneous impression that all TRQ imports in Central Canada benefit processors in that region, when in reality, imports to the foodservice and wholesale sectors compete with supplies by processors.

17. In short, the information relied on by PPPABC is woefully inadequate to back up, let alone quantify, PPPABC's claims about the imbalance between supply to Central Canada and Western Canada.

18. Furthermore, even if FIRB accepts as reliable the data relied on by PPPABC, that data would suggest that British Columbia processors do not use all of the TRQ allocated to them. In 2011, the data from Global Affairs Canada reproduced in CFC's presentation indicates 4.6 million kg of TRQ was allocated to British Columbia holders but only 2.8 million kg entered Canada through British Columbia. Why was that? CFC does not know for sure, but a reasonable inference is that two things may have happened. First, British Columbia processors may have

¹⁹ Affidavit of Michael Dungeat, sworn April 27, 2016, para. 8.

allowed further processing operations they own in Central Canada to use TRQ allocated to British Columbia processors. Second, British Columbia processors may have decided to sell their TRQ rights to processors in other provinces, i.e., to keep the economic rent associated with the TRQ while allowing processors in other provinces to actually import the product.

19. Assuming that British Columbia processors frequently sell a large portion of their TRQ import rights to processors or further processors in other provinces, one might want to know the business reasons behind such a choice. A likely explanation is that it is more profitable in many instances for BC processors to transfer their TRQ to related further processors or to competing processors in other provinces, rather than import the chicken to British Columbia and then process and market it within the province.²⁰ Under either of these scenarios, it is misleading to suggest that British Columbia processors are unable to access chicken imports through TRQs.

20. The same pattern can be seen in other Western provinces which, if the 2011 Global Affairs Canada data are treated as representative, also bring considerably less chicken into the province than the TRQ allocation to the province. Specifically:

- in Alberta, 0.3 million kg was imported into the province compared to a TRQ allocation of 1.7 million kg.
- in Saskatchewan, 0.0 million kg was imported into the province compared to a TRQ allocation of 0.1 million kg.
- in Manitoba, 0.5 million kg was imported into the province compared to a TRQ allocation of 1.3 million kg.

21. Relatedly, the secondary market for TRQ also means that, regardless of the initial allocation of TRQ, British Columbia processors could purchase the necessary TRQ to serve their markets. PPPABC has provided no evidence in this supervisory review that British Columbia

²⁰ The largest chicken-producing U.S. states (Arkansas, Georgia, Maryland, North Carolina, and Mississippi) are located in the southwestern United States, significantly closer to Ontario and Quebec than to British Columbia. (Affidavit of Michael Dungeat, sworn April 27, 2016, para. 19).

processors have been unable to purchase TRQ on the secondary market in the quantities required to serve their markets. Again, the evidence suggests the issue is less about supply, and more about business choices.

22. Finally, PPPABC has presented no data on how additional TRQ resulting from the TPP will impact on relative provincial supply volumes. Indeed, the methodology for allotting that additional TRQ has not been developed or even proposed by the federal government. This may explain why PPPABC submission of April 4, 2016 does not mention TPP.

23. PPPABC's allegation that British Columbia processors lack access to fowl imports²¹ is also unsubstantiated. PPPABC's presentation of December 2013 posits that, based on AAFC data, Central Canada receives 100% of fowl imports into Canada. CFC closely monitors available information regarding fowl imports. CFC is not aware of any such data supplied by AAFC, indicating the volume of fowl imports received by each province or region, and certainly is not aware of any data indicating that Western and Atlantic Canada receive no fowl imports whatsoever.²²

24. In any event, pursuant to Canada's trade commitments dating back to the 1988 Canada/U.S. *Free Trade Agreement*,²³ fowl imports are not subject to import controls. PPPABC has not provided any evidence to demonstrate that British Columbia processors cannot import the fowl necessary for their needs. Thus, contrary to the inference suggested by PPPABC that "BC processors did not have access to... fowl imports",²⁴ FIRB should infer that British Columbia processors decided for their own business reasons not to import fowl.

25. It is also important for FIRB to understand that a major portion of so-called fowl imports are in fact illegal broiler meat. CFC and CPEPC are both on record as seeking to block these illegal imports.²⁵ If those efforts succeed, they will take care of or at least substantially diminish

²¹ PPPABC submission, April 4, 2016, para 28.

²² Affidavit of Michael Dungate, sworn April 27, 2016, para. 18.

²³ Annex 706 of the *Free Trade Agreement*, which was in turn carried into the *North American Free Trade Agreement*, "'spent fowl' commonly called 'stewing hen'" is exempt from import controls on product.

²⁴ *Ibid.*

²⁵ Affidavit of Michael Dungate, sworn April 27, 2016, para. 15.

the spent fowl issue PPPABC has raised. PPPABC should support efforts to enforce Canada's border measures, rather than pressure FIRB to take a stance that could be construed as condoning or encouraging circumvention of Canada's customs laws.

26. For the above reasons, PPPABC has not demonstrated let alone quantified any competitive disadvantage for British Columbia processors resulting from the Operating Agreement amendments and in particular, resulting from TRQ and other imports. More generally, PPPABC has failed to show that BC processors are being under-supplied by the domestic orderly marketing system.

27. Moreover, PPPABC has not explained how the availability of imports are relevant to the principle of comparative advantage in making over-base allocations. PPPABC's position appears to be largely driven by the goal of preserving British Columbia's provincial market share in processing, which is difficult to reconcile with the principle of comparative advantage CFC is required to consider in making quota allocations.²⁶

D. Requirement for DRA mechanism not an appropriate response to PPPABC concerns

28. Even if FIRB considers that British Columbia processors may have legitimate concerns, a determination by FIRB that the Operating Agreement requires a DRA mechanism is not an appropriate response to these concerns for several reasons:

- a) The proposed DRA mechanism is unclear, unworkable, and in any event will not correct any alleged imbalance;
- b) Implementing a DRA mechanism would require a new national consensus among all signatories. PPPABC has not done the work needed to build such a consensus, and there is no evidence this consensus could be achieved at any point in the foreseeable future;

²⁶ Section 23(2) of the *Farm Products Agencies Act*, R.S.C., c. F-4, s. 6.

- c) Insistence by FIRB of the need for a DRA mechanism as a precondition for approving Operating Agreement amendments is likely to create a crisis in the industry and put the orderly marketing system at risk; and
- d) Other, more appropriate avenues remain open to PPPABC to address issues regarding TRQ and imports.

29. CFC will address each of these points in more detail.

i. Proposed DRA mechanism not workable and does not address PPPABC's concerns

30. The DRA mechanism was presented to CFC for consideration at its September 2015 meeting. As presented, the DRA mechanism proposed to modify the allocation process in two key ways:

- a) CPEPC would collect requests from individual processors and determine the national and regional weighted averages of those requests.
- b) After CFC set the allocation using the methodology of the MOU, CPEPC would compare the allocation, on a regional basis, to processor requests. The regional allocations would be increased to match processor requests, to a maximum increase of 3%.²⁷

31. This proposal contains several shortcomings and ambiguities.

32. First, it is not clear why this proposal would correct any imbalance between Western and Central Canada. Processors in all regions, including Central Canada, could request the maximum permitted, potentially resulting in an increase of 3% for all regions.

33. Second, this proposal would significantly disrupt one of CFC's core functions – setting appropriate national allocations responsive to the needs of the market. CFC directors must

²⁷ Presentation, "Differentiated Regional Allocation – Matching Production to Consumer Demand in a regionally diverse Canada", August 7, 2015, CFC's Supplementary Documents, Tab 3.

determine the total national allocation through careful analysis of market data and stakeholder recommendations, including the recommendation of CPEPC.²⁸ Under this proposal, the national allocation established by CFC directors could be subsequently adjusted upward at the stipulation of a non-signatory organisation by up to 3%. This would significantly impair CFC's ability to ensure that the market receives the appropriate volume of chicken – a basic pillar of supply management.

34. To illustrate the magnitude of this challenge, CFC established allocations in 2014 and 2015 that averaged approximately 3.0% percent above base.²⁹ This proposal, if it had been in effect, could have doubled the above-base portion of the allocations from 3.0% to 6.0%. In periods of lower growth, (PPPABC considers the growth in 2014 and 2015 to be “unusual and not expected to continue”³⁰) this proposal could be even more disruptive to national allocations.

35. To say that the proposed DRA mechanism has not been fully developed is an understatement. On this point, CFC agrees with the observation of PPPABC that allocation of chicken is complex.³¹ Following the presentation of the proposed DRA mechanism, CFC requested basic information about the proposal.³² CFC has yet to receive a substantive response.³³ Manitoba Chicken Producers and other western provincial boards did what they could to advance the DRA concept, but were unable to do so without further details from the advocates of the proposal, particularly PPPABC. This is disappointing, particularly given the length of the negotiations leading to the proposed Operating Agreement amendments, and the extensive efforts by CFC and provincial boards (notably, the BC Board) to consult with and seek input from industry stakeholders.

²⁸ Affidavit of Michael Dungate, sworn April 27, 2016, para. 25.

²⁹ *Ibid.*

³⁰ PPPABC submission, dated April 4, 2016, para. 72.

³¹ PPPABC submission, dated April 4, 2016, para. 86.

³² Letter from Mike Dungate to Wayne Hiltz, September 18, 2015, CFC Supplementary Documents, Tab 4.

³³ Affidavit of Michael Dungate, sworn April 27, 2016, para. 22.

ii. No evidence of broad support for DRA mechanism or efforts to build that support

36. Not only has PPPABC failed to provide details as to how the proposed DRA mechanism would work, it has provided no evidence that the proposal has any potential to receive the required unanimous support of provincial boards and supervisory boards, or the support of industry stakeholders.

37. Indeed, the evidence in this supervisory review indicates the contrary. The Alberta Chicken Producers and the Chicken Farmers of Saskatchewan have explained to FIRB that the Western chicken boards made every reasonable effort to garner support for the proposal, but that consensus was not possible, even among Canadian processors.³⁴ PPPABC itself describes the prospect of convincing Central Canadian stakeholders to include a DRA mechanism as “insurmountable”.³⁵

38. In this supervisory review, no stakeholder or signatory has indicated a willingness to re-open negotiations for the purpose of including a DRA mechanism in the Operating Agreement. CPEPC, which would play a key role in administering the proposed DRA mechanism, has not made submissions in this supervisory review. Following the presentation of the DRA proposal, CPEPC advised the Western chicken boards that, while a majority of CPEPC members believed that a regional component may be necessary to achieve consensus among processors on the proposed Operating Agreement, the majority of CPEPC members did not support the proposal as presented.³⁶

39. The shortcomings of the DRA proposal likely contributed to the difficulty for the PPPABC to secure broad support for the proposed DRA mechanism. As an example of one shortcoming, the proposed DRA mechanism contemplates an adjustment significantly out of proportion to the discrete supply share to Ontario, the element of the amended Operating Agreement to which PPPABC most strongly objected. In the allocation for period A-138, the discrete supply

³⁴ Alberta Chicken Producers submission, dated March 18, 2016, page 2; Chicken Farmers of Saskatchewan submission, dated March 18, 2016, page 1.

³⁵ BC Board submission, dated April 4, 2016, para. 54.

³⁶ Letter from Robin Horel, dated September 22, 2015, CFC Supplementary Documents, Tab 5.

share consisted of 199,529 kg, or approximately 0.117% of the national allocation. Meanwhile, a 3% increase in the allocation to Western provinces in the same period would have represented 1,527,153 kg, a swing over seven times as large as the discrete supply share.³⁷

40. The lack of diligence in PPPABC's efforts to gain the support of signatories or stakeholders for the proposed DRA mechanism also likely contributed to the difficulty in securing support. The submissions of three Western chicken boards – the BC Board, Alberta Chicken Producers, and Chicken Farmers of Saskatchewan – indicate that PPPABC members did not, as planned, advocate for the DRA proposal at the CFC meeting on September 1-2, 2015 at which it was presented.³⁸ Indeed, the processor representative responsible for presenting the DRA proposal failed to even attend that meeting,³⁹ and as previously mentioned, no answer was provided to CFC concerning the details of how the DRA mechanism would work. It is difficult for FIRB to treat the DRA mechanism as a serious, credible proposal when PPPABC has not treated it as such in dealings with industry partners.

41. Given the lack of signatory support for the DRA proposal and of any further effort by PPPABC to pursue it, a decision by FIRB requiring a DRA mechanism prior to signing the amendments to the Operating Agreement would create considerable uncertainty in the industry and require further negotiations with no obvious prospect of a new deal. As CFC has previously submitted,⁴⁰ this presents an unacceptable risk to the system, including the risk that one or more provinces leave the system. Moreover, it is not an option to go back to how allocations were done in the past, since FPCC has made it clear that to do so would not meet the requirements of subsection 23(2) of the Act.⁴¹

³⁷ Affidavit of Mike Dugate, sworn April 27, 2016, para. 26.

³⁸ Alberta Chicken Producers submission, dated March 18, 2016, page 2; Chicken Farmers of Saskatchewan submission, dated March 18, 2016, page 1; BC Board submission, dated March 31, 2016, para. 43.

³⁹ BC Board submission, dated March 31, 2016, para. 43.

⁴⁰ CFC submission, dated March 18, 2016, para. 46.

⁴¹ Notes for Remarks by the Farm Products Council of Canada to Chicken Farmers of Canada's 2013 Annual General Meeting, CFC Background Documents, Tab 11.

iii. Other avenues available to PPPABC to address concerns

42. The signing of the Operating Agreement amendments by British Columbia signatories does not preclude PPPABC from making efforts, on its own or in collaboration with other stakeholders, in raising legitimate issues backed by reliable evidence. Indeed, PPPABC will continue to have multiple formal and informal avenues to address industry issues after the Operating Agreement amendments come into effect.

a) **Farm Products Council of Canada**

43. FPCC has broad statutory authority to ensure that CFC operates in accordance with its objects, including the authority to hear and determine complaints.⁴² It has the authority to hear and determine complaints made by anybody directly affected by the operations of an agency such as CFC.⁴³

44. FPCC is accordingly best placed to address PPPABC's concerns, particularly to the extent those concerns are framed on a regional basis (an imbalance between Western and Central Canada) and are primarily directed at the operations of CFC rather than the operations of a particular provincial chicken board. In particular, FPCC has the mandate to address PPPABC's assertion that CFC allocation decisions do not comply with its statutory objects and/or that those decisions fail to take into account the principle of comparative advantage.

45. As CFC noted in its submission on March 18, 2016, PPPABC has not made a complaint to FPCC over any of the allocations made since A-121, all of which have utilized some form of a differential growth formula. This is remarkable, given PPPABC's statements about having longstanding concerns with respect to the operation of CFC in the allocation process.⁴⁴ PPPABC argues that processors have launched appeals in Manitoba and Saskatchewan regarding the A-127 allocation. These appeals were in fact directed at the MOU and were both withdrawn.⁴⁵ In

⁴² *Farm Products Agencies Act*, R.S.C., c. F-4, s. 6.

⁴³ *Ibid*, s. 7(f).

⁴⁴ PPPABC submission, dated April 4, 2016, para. 8.

⁴⁵ Affidavit of Mike Duncate, sworn April 27, 2016, para. 27.

any case, FPCC remains a more appropriate authority to address these concerns than the supervisory boards in those provinces.

46. It is irresponsible for PPPABC to suggest, at paragraph 59 of its April 4 submission, that FPCC's prior approval of CFC allocations compromises its ability to hear complaints about those allocations. The Saskatchewan Agri-Food Council ("AFC") complained to FPCC about the allocation for period A-133 on grounds also applicable to previous allocations approved by FPCC. No participant in that complaint process, including AFC, suggested that FPCC could not fairly hear the complaint because of its approval of previous allocations.

b) Minister's authority over TRQ allocation

47. Under the *Export and Import Permits Act*, R.S.C. 1985, c. E-19, the Minister of Foreign Affairs has discretion over the methodology for allocating TRQ among applicants. The Minister exercises this discretion in a Notice to Importers which sets out the allocation method.⁴⁶ More to the point, the Minister has virtually untrammelled discretion to modify this method if he or she considers it appropriate.⁴⁷

48. If PPPABC and its members have legitimate grievances concerning access to TRQ, those issues should be raised with the appropriate authority, which in this instance is Global Affairs Canada. There is no evidence before FIRB that PPPABC or its members have raised their concerns with the Minister regarding TRQ allocation methodology. Similarly, to the extent PPPABC is concerned about how additional TRQ resulting from the TPP will eventually be allocated, those concerns should be raised through appropriate channels, rather than speculating that additional TPP access will "enter Canada disproportionately in the East".⁴⁸

c) Other opportunities for engagement

49. Notwithstanding PPPABC's perceptions, there will remain significant opportunities for PPPABC and its members to engage with boards, supervisory boards, and CFC over the

⁴⁶ Affidavit of Michael Dungeat, sworn April 27, 2016, para. 7.

⁴⁷ See [*Canadian Assn. of Regulated Importers v. Canada \(Attorney General\)*](#), [1994] 2 FCR 247, 1994 CanLII 3460 (FCA), CFC Supplementary Documents, Tab 6.

⁴⁸ PPPABC submission, February 26, 2016, page 4.

concerns of British Columbia processors. CFC is a consensus-based organization that seeks to have due regard to the interests of producers and consumers as well as industry stakeholders. As highlighted in CFC's submission on March 18, 2016,⁴⁹ CFC has recently responded to various legitimate stakeholder concerns, including through the development of a specialty program, refinements to the market development program, and engagement with the government regarding illegal imports of chicken declared as spent fowl and abuse of the Duties Relief Program. CFC has a solid track-record of seeking to resolve stakeholder concerns, where feasible, through good-faith discussions and consultations aimed at establishing a common ground.

50. The submissions and documents of the BC Board demonstrate a similar approach at a provincial level. In particular, the regular meetings of the Pricing and Production Advisory Committee reflect a collaborative approach, affording the opportunity to processors, growers, and the BC Board representatives to work together on various, ongoing issues in the industry.

51. Currently, there are several areas where PPPABC members could productively provide their input to CFC and provincial boards.

52. For example, as discussed above, CFC continues to work on issues related to illegal spent fowl imports and abuse of the Duties Relief program, and would welcome the support and cooperation of PPPABC in these efforts. CFC was pleased to see the announcement, made concurrently with the conclusion of TPP negotiations, that the federal government will intensify on-going anti-circumvention measures to enhance Canada's border controls, including 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 of Canada's Duties Relief Program.⁵⁰ However, much more needs to be done to address this problem, and open engagement by industry stakeholders will be an important part of the solution.

⁴⁹ Paras. 37-38.

⁵⁰ News Release, "Government of Canada Delivers New Programs for Supply Management Sector", October 5, 2015, Ottawa, Ontario, Agriculture and Agri-Food Canada, CFC Supplementary Documents, Tab 7.

53. CFC also continues to work to refine the further processing component of the Operating Agreement that uses the best available information. As noted by PPPABC at paragraphs 50 to 53 of its submissions, CFC took into account the concerns of processors and stakeholders with the interim methodology in the MOU for the further processing component. CFC has adopted a different solution while a robust methodology is developed.⁵¹ CFC's work in this area would benefit from the input and cooperation of processors. CPEPC has been actively engaged in this process and PPPABC could likewise become more engaged on this front.

54. CFC notes that PPPABC considers the market development program to have had the purpose, at least initially, of addressing the lack of access of British Columbia processors to white meat.⁵² CFC reviews the market development program on an annual basis.⁵³ If there are ways that the program could be improved, CFC would appreciate the feedback of processors and provincial boards.

55. Finally, following the implementation of the amended Operating Agreement, PPPABC can still engage with its industry partners to develop policy proposals responsive to its concerns and acceptable to a broad range of stakeholders. As noted above, the DRA mechanism does not meet these criteria. As demonstrated by the lengthy process leading up to the MOU and the amendments to the Operating Agreement, building a national consensus on policy issues requires tremendous and sustained effort. On future issues, both the industry as a whole and PPPABC members would benefit if PPPABC made sustained efforts to work with CFC and other stakeholders towards viable and acceptable solutions.

56. It should be added that, if, in the future, British Columbia experiences exceptional circumstances that justify an increase in the provincial range, British Columbia processors can also consult with the BC Board regarding whether the possibility of the BC Board making an exceptional circumstances request. The amended Operating Agreement retains section 4.08 of the existing Operating Agreement, which allows provincial boards to request increases in the

⁵¹ Affidavit of Michael Dungeat, sworn April 27, 2016, para. 29.

⁵² PPPABC submission, April 4, 2016, para. 28.

⁵³ Market Development Policy, section 11.1, CFC Background Documents, Tab 9.

provincial range for one or more periods. British Columbia has previously benefitted from this mechanism to address short-term circumstances, notably, in relation to the 2010 Winter Olympics.⁵⁴ However, exceptional circumstance requests can potentially address longer terms situations, including the possibility of additional production being added to the provincial base of a particular province. Exceptional circumstance requests are decided by double majority vote and are subject to CFC's Exceptional Circumstances Clause Policy.⁵⁵

E. Other issues

57. CFC notes FIRB's comment that "the existing Operating Agreement does include the level of import permits as a consideration in determining domestic allocation (i.e., in reviewing regional ranges)." To be clear, CFC considers the level of imports – on a national basis – when setting the total national allocation. CFC does not consider detailed information about provincial or regional TRQ volumes when setting its allocations.⁵⁶

58. CFC also wishes to address certain of the assertions made by PPPABC in its April 4, 2016 submission.

59. First, PPPABC cites section 41 of the *Farm Products Agencies Act* as delineating CFC's objects. Section 41 relates to promotion and research agencies created under Part III of the Act. CFC is a marketing agency created under Part II of the Act.

60. Second, PPPABC continues to assert that allocations since A-121 are inconsistent with the FPA and the Operating Agreement. The Saskatchewan complaint regarding A-133 made essentially the same allegation to the FPCC.⁵⁷ The FPCC dismissed that complaint as being without merit. PPPABC also asserts the existing Operating Agreement provides no discretion to CFC in setting allocations. This argument was also rejected by the FPCC Complaint Committee, which found that "CFC has discretion with setting allocation to the extent that subsection 23(2)

⁵⁴ Affidavit of Michael Dugate, sworn April 27, 2016, para. 31.

⁵⁵ CFC Supplementary Documents, Tab 14.

⁵⁶ *Ibid*, para. 25.

⁵⁷ Letter from R.T. Tyler to the Farm Products Council of Canada, dated July 14, 2015, CFC Supplementary Documents, Tab 8.

is respected.”⁵⁸ That discretion, it should be added, is subject to checks and balances, including the requirement for prior approval by FPCC, ongoing supervision by FPCC, and the complaint route to address CFC-related concerns.

61. Third, PPPABC suggests that, under the proposed amendments, a range of provisions of the Operating Agreement are now susceptible to amendment by special vote, provisions that previously required the agreement of all provincial boards and supervisory boards to amend. PPPABC lists eight such provisions (ss. 3.05, 3.27, 3.28, 4.01, 4.03(b), 4.02, 4.05, and 4.06).

62. Sections 3.27 and 3.28 are not part of the existing Operating Agreement, as they relate to the differential growth formula. However, all of the remaining provisions – sections 3.05, 4.01, 4.03(b), 4.02, 4.05 – can already be amended by special vote under the existing Operating Agreement.⁵⁹

63. Fourth, PPPABC asserts that, for a number of years the international market for dark meat has been depressed, and therefore in recent years, Western processors generally have not taken up market development quota at the levels seen previously. However, beginning in October 2005, and leading up to period A-138, Saskatchewan has applied and received the maximum amount of market development quota (14% of domestic allocation) in all but three periods (A-74, A-75, and A-91).⁶⁰

64. Fifth, PPPABC argues that it was not consulted on the content of the MOU until after negotiations concluded. However, in a letter to all signatories, dated April 14, 2014, PPPABC made detailed comments on the status of negotiations, including the issue of a discrete supply to Ontario and a recent proposal by Quebec.⁶¹ The level of detail contained in this letter

⁵⁸ 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, September 2015, page 3, CFC Supplementary Documents, Tab 9.

⁵⁹ CFC Background Documents, Tab 1, page 35, 37, 38.

⁶⁰ Affidavit of Michael Dungeat, sworn April 27, 2016, para. 30.

⁶¹ Letter of Sunrise Poultry Processors Inc., Sofina Foods Inc., Farm Fed Processors, Hallmark Poultry Processors Ltd. to all signatories and PCPEC, dated April 16, 2014, PPPABC documents, page 57.

undermines PPPABC's suggestion that it was unaware of the content of the MOU until after its execution in July 2014.

65. CFC will not make submissions at this time on the balance of factual assertions in the submissions of PPPABC, dated April 4, 2016, as they do not directly relate to FIRB's question in its letter of April 12, 2016. If FIRB requires additional submissions regarding any of these points, or intends to consider them further, CFC would be pleased to provide such further submissions.