



BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Supervisory Review Re:

Chicken Operating Agreement Amendments

SUBMISSIONS OF CHICKEN FARMERS OF CANADA

INTRODUCTION AND SUMMARY

1. Chicken Farmers of Canada (CFC) appreciates the opportunity to provide submissions as part of this supervisory review. CFC's submissions will address the issues and initial questions raised by the British Columbia Farm Industry Review Board (FIRB) in its letter of February 16, 2016, and incorporate the SAFETI principles cited by the FIRB (Strategic, Accountable, Fair, Effective, Transparent, Inclusive). CFC will also respond to concerns voiced in the February 26, 2016 submissions by the Primary Poultry Processors Association of British Columbia (PPPABC).
2. There are three overarching themes in CFC's submissions.
3. First, the process led by CFC and chicken boards (including the British Columbia Chicken Marketing Board (the "BC Board")) culminating in the proposed amendments has been fair, transparent, inclusive and effective, and the process has provided accountability. Processors

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(and other stakeholders) have had significant and repeated opportunities to participate in the process, both nationally through CFC and the CPEPC, and provincially through discussions between BC Board and the PPPABC. The FIRB and other supervisory boards have also been actively engaged, both nationally through the Farm Products Council of Canada (FPCC) and the National Association of Agri-Food Supervisory Agencies (NAASA), and provincially through the FIRB.

4. Second, the proposed amendments represent a strategic approach to national allocations. They strike a reasonable balance between the opportunity for all segments of the industry and all provinces to pursue differential growth and the desire to preserve existing production levels. The amendments to the Operating Agreement are good for the chicken farmers and industry stakeholders across Canada, and good for chicken farmers and industry stakeholders in British Columbia. The amendments should also be viewed in the context of related recent adjustments by CFC to the orderly marketing system relating to market development and specialty production that provide additional growth opportunities, particularly in British Columbia.

5. Third, the proposed amendments comply with government legislation, regulations, and agreements, notably, at the national level, the obligation to consider the principle of comparative advantage of production and the objects of a strong, efficient and competitive chicken industry having due regard to producer and consumer interests.

6. CFC therefore urges the FIRB to approve and sign the Operating Agreement amendments, and to authorize the BC Board to sign the amendments, as soon as possible, for the good of the industry, both nationally and in British Columbia.

THE BROAD CONTEXT OF THE AMENDMENTS

7. Before addressing the proposed amendments to the Operating Agreement, and responding to concerns voiced by PPPABC, it is helpful to look at the big picture.

8. The chicken industry has had to grapple with a number of challenges since a coordinated national orderly marketing system for chicken was established four decades ago, including:

- a) Maintaining the cooperative spirit that allowed the system to be created, and put an end to the counterproductive “chicken and egg” wars.
- b) Responding to market requirements while also taking into account the principle of comparative advantage of production, as required by federal legislation.¹
- c) Taking advantage of growth opportunities, particularly for developing markets for chicken (e.g., specialty, market development production) without destabilizing conventional markets.
- d) Building and maintaining a solid working relationship between chicken farmers, processors and other downstream stakeholders.
- e) Coping with growing international trade pressures and trade law requirements.

9. CFC responds to these ongoing challenges by working with chicken boards and with industry stakeholders to build a consensus and to find solutions. CFC continually engages with the national supervisory body, the FPCC, and obtains approval of FPCC for amendments to federal regulations. CFC also consults with provincial supervisory boards, particularly through the NAASA.

10. With respect to industry challenges that are beyond its powers, such as spent fowl imports and Tariff Rate Quota (TRQ) administration issues, CFC works with the relevant authorities, together with industry partners, to ensure that laws designed to protect the supply management system are properly administered and enforced.

11. The policy measures developed by CFC and its partners in response to these challenges must take into account the needs of all parts of the country and all segments of the industry. Inevitably, these measures involve compromise, the juggling of competing priorities, and complex dynamics. There are no perfect solutions.

¹ Section 23(2) of the *Farm Products Agencies Act* states:

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

12. As the FIRB has observed in a somewhat analogous context involving the BC Board: there is no “magic bullet”, and “very few policy questions in this area have a black or white answer”.² This is also true of the challenges CFC, the BC Board, and others have faced leading to the proposed Operating Agreement amendments.

HISTORICAL CONTEXT – THE “BOTTOM-UP” SYSTEM

13. In the early days of national supply management, CFC used a top-down formula to guide national allocations that had been developed in partnership with chicken boards and input from industry stakeholders. However, over time, that approach came to be viewed by many (including British Columbia farmers and industry representatives) as too restrictive and as limiting growth opportunities.

14. Thus, beginning in 1993, in an effort to be more flexible and market responsive, and to allow for differential growth, CFC moved to a “bottom-up” quota allocation approach in which chicken boards, after consulting with processors, submitted allocation requests to CFC for consideration. For a short period of time, in 1993 and 1994, no formal limits were placed on provincial allocation requests. Despite robust growth in the industry at the time, it was quickly recognized that limits and safeguards were required. As a consequence, additional checks and balances were developed, beginning with the 8% limit on provincial growth initially provided for in 1995, and the 5% limit on regional growth introduced in 1997.

15. The bottom-up system was formalized through 2001 FPA and Operating Agreement, which also coincided with British Columbia re-entering the FPA as a signatory province.³ Amendments to the Operating Agreement in 2006 incorporated the Anticipated Growth Rate

² BC FIRB, *Rainbow Poultry Ltd*, December 18, 2013, para 60, quoting BC FIRB, *Lilydale Co-operative Ltd*, February 21, 2005, paras 9 and 10, available online at http://www2.gov.bc.ca/assets/gov/british-columbians-and-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/rainbow_et_al_v_bccmb_decision_dec18_13.pdf.

³ 2001 Federal-Provincial Agreement for Chicken, implemented July 16, 2001. See also the description of the history of the 2001 FPA in the CFC Proclamation amendments, published in the *Canada Gazette*, Part II, Vol 136, No. 1, SOR/2002-1

(AGR) concept and certain other amendments, resulting in further safeguards in relation to provincial and regional growth.⁴

16. For a number of years after the bottom-up approach was first adopted, the system was able to provide some measure of differential growth. However, for a combination of reasons, the initial intent of facilitating differential growth became increasingly difficult to achieve. One factor was a sustained period of fairly low industry growth, which made it more difficult to get consensus on allowing some provinces to grow more quickly than others. In addition, certain industry stakeholders consistently sought lower growth rates and linked these growth rates to wholesale margins. Eventually, in some provinces (including British Columbia, beginning in 2010), processors stopped supplying market requirement information to their respective boards, preferring to submit numbers on a national or a regional basis. As a consequence, it became much more difficult for certain chicken boards to consult with their processors to identify market requirements, as intended by the Operating Agreement.⁵

17. The result was that quota allocations began to be distributed on a basis closer to a pro rata approach. Significant differential growth continued in relation to market development quota,⁶ which British Columbia processors initially took greater advantage compared to processors in other provinces.⁷ However, in other respects, beginning in 2005, provinces grew at more or less the same rate.

18. Allocating quota pro rata in turn contributed to growing tensions within the industry, illustrated by the withdrawal of Alberta from the FPA at the end of 2013. Pro rata allocations also held back the industry from fully pursuing growth opportunities, which in turn added to pressures on the system. FPCC became increasingly concerned about the incompatibility of pro

⁴ Schedule B to the Federal-Agreement for Chicken, amended November 3, 2006.

⁵ See section 3.08(a), which states in part that: “[T]he Provincial Commodity Board will consult with its processors using a “bottom up” approach and, having regard to the market requirements proposed by those processors, will arrive at the estimated provincial market requirements prior to the submission of the quota allocation request for the period to CFC”.

⁶ CFC’s Market Development Policy, as amended.

⁷ The allocation of market development quota to British Columbia between periods A-36 and A-90 (2000 to 2009) regularly achieved the maximum allowed at the time (14% of domestic allocation). The maximum has not been reached again since A-90.

rata allocations with CFC's obligation to consider the principle of comparative advantage, and CFC's statutory objects of promoting a strong, efficient and competitive chicken industry having due regard to the interests of producers and consumers. The situation became serious enough to jeopardize securing prior approval of quota allocations from FPCC. Provincial supervisory boards, including FIRB and NAASA, also voiced concerns about a pro rata approach to allocations, and related pressures within the industry.

19. CFC continued to support the bottom-up concept, and the idea of addressing provincial market needs taking into account consumer demand and requirements identified by industry stakeholders both nationally and provincially. But it became clear that the bottom-up system had to change to satisfy the objectives of the FPA,⁸ CFC's objects,⁹ and CFC's obligation to consider comparative advantage. It also became evident that addressing industry realities required a renewed commitment to cooperation and collaboration.

NEGOTIATING A NEW APPROACH

Initial Negotiations and Consultations – May 2009

20. As it has done when faced with other issues, CFC has responded to differential growth challenges by actively and intensively engaging with chicken boards, with industry groups represented on CFC's Board, as well as with FPCC and the NAASA.

⁸ The objectives of the FPA, as set out in s. 1.01 are as follows:

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.

⁹ Section 21 of the FPAA states:

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.

21. CFC has initiated numerous meetings and discussions, both formal and informal, about these issues over a period of seven years, dating back to the CFC-sponsored Stakeholder Consultation Workshop in May 2009 involving CFC, chicken boards, provincial supervisory boards, and industry stakeholders. The result of that workshop was a set of guiding principles to direct the subsequent consultations and negotiations. The FIRB and British Columbia processors attended this initial forum, and participated in many of the discussions since that time, either directly or through their national organizations. Provincial boards have also been repeatedly encouraged throughout this lengthy process to consult with their industry stakeholders, and CFC understands that the BC Board has done so on numerous occasions.

Negotiations and Consultations – mid-2009 to early-2013

22. The summary below of the discussions led by CFC captures some of the key milestones in the process:

- a) CFC consulted industry stakeholders on six possible options through the summer and fall of 2009, and receive comments of CPEPC and other stakeholders in August 2009.
- b) There was a consensus early on that the new approach should be based on a formula, while providing for a degree of flexibility and related safeguards. The principle of comparative advantage of production was a central part of the discussion, although as could be expected, there were many and varied ideas as to what this principle ought to mean from an allocation perspective.
- c) After failing to reach agreement through the 2009 consultations and subsequent CFC-sponsored discussions, CFC held a differential growth workshop in September 2010, at which 21 signatories to the Operating Agreement attended (including FIRB), along with the CPEPC, Further Poultry Processors Association of Canada, and the Restaurants Canada. A number of options were canvassed at that meeting but no consensus emerged.

- d) In late 2010 and early 2011, certain provinces, including but not limited to Alberta, began to express growing concerns about the need to encourage differential growth.
- e) CFC's Executive Committee presented a proposal to chicken boards in July 2011, and held consultations with industry stakeholders in September. CPEPC indicated during this consultation that it took no formal position as its individual members would be consulting with their respective chicken boards.
- f) Consultations and negotiations continued through 2012, involving multiple proposals by CFC and by various chicken boards and industry stakeholders. An intensive provincial board-led process began in late-September 2013. The first meeting, facilitated by CFC was held November 8-9 and the second on November 19-20. During this process, on November 22, 2012, Alberta advised the other signatories of its intention to withdraw from the Federal Provincial Agreement effective December 31, 2013. The third meeting was held December 6-7; however agreement was not reached.
- g) The end of 2012 and beginning of 2013 was a pivotal period. During that timeframe, efforts by CFC to secure a deal were particularly intense, and FPCC became increasingly proactive in demanding changes and setting a September 1, 2013 deadline for a deal.
- h) Following discussions with FPCC on December 12, 2012, at which FPCC indicated a degree of support for the proposed growth components, a further round of consultations was announced to try to reach agreement before February 22, 2013. This was the last day for Alberta to revoke its notice of withdrawal. A one-day meeting was held on January 15, followed by a two-day negotiation on February 19-20, 2013 in Ottawa that generated a degree of consensus around the idea of allocating future growth using a formula incorporating components for pro rata, population growth, supply share, economic, and quota utilization components. However, a consensus was not reached on the details of the formula.

23. The preceding summary captures some of the main developments in the 2009 to 2013 timeframe, but does not fully convey how hard CFC and others (including the BC Board) worked to move the discussions forward in a constructive direction for the good of the industry.

24. The BC Board is in a better position to describe the details of the consultations with its processors, both individually and through PPPABC, but CFC's understanding is that the BC Board took care to consult with provincial industry stakeholders throughout this process.

FPCC and FIRB Participation

25. As the above events unfolded, FPCC played an active role in encouraging a resolution to the differential growth challenge, and in liaising with provincial supervisory boards. The FPCC prepared its own guidelines on comparative advantage, and signalled to CFC its expectation that a differential growth methodology would be established. As noted above, FPCC made clear to CFC throughout 2012 and early 2013 that a differential growth methodology would need to be in place for September, 2013 (Period A-121). FPCC expressed this concern most directly in Laurent Pellerin's remarks to the 2013 CFC AGM and in approval letters for periods leading up to A-121. Mr. Pellerin's views were summed up in his statement to the 2013 CFC AGM that:

[O]ne thing that is clear to me: STATUS QUO IS NOT AN OPTION! (emphasis in original).¹⁰

26. The FIRB was also an active contributor to the discussion, notably, in the April 2013 letter from the FIRB to CFC.¹¹ Other provincial governments and government supervisory bodies weighed in as well.

Interim Agreement September 2013

27. On September 4, 2013, CFC and chicken boards reached a consensus on an interim approach to allocations for the Periods A-121 to A-126, which included signing a service

¹⁰ Notes for Remarks by the Farm Products Council of Canada to Chicken Farmers of Canada's 2013 Annual General Meeting.

¹¹ Letter from BC FIRB to FPCC and CFC, April 11, 2013 "Current National and Provincial Chicken Industry Issues", available online at http://www2.gov.bc.ca/assets/gov/british-columbians-and-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/appendix_d_13_apr_11_bcfirb_to_cfc_fpcc_re_chicken_allocation_final.pdf.

agreement with Alberta. CFC also agreed to engage a professional mediator to finalize a longer term agreement. The essential goal of the interim agreement and the service agreement was to meet the deadline set by FPCC and provide for stability in light of the withdrawal of Alberta, effective December 31, 2013. The methodology of the interim agreement included a formula that incorporated the following components: pro-rata; GDP; population growth; CPI; and quota utilization.¹²

28. CFC consulted with national stakeholder organizations in connection with the interim agreement, and chicken boards were encouraged to consult with their stakeholders at a provincial level.

29. Since January and February 2013, when a consensus among chicken boards began to develop around a component-based formula including CPI and GDP components, CFC was not made aware of any concerns from processors, from a national level or from British Columbia, around the CPI or GDP components. Indeed, the February 26, 2016 submissions of PPPABC in this supervisory review,¹³ are the first time, to CFC's knowledge, that PPPABC or its members have objected to the CPI and GDP components. Moreover, no complaint was lodged with FPCC concerning the specific components in the interim agreement formula, and no complaints regarding the specific growth components were made thereafter.

Agreement in Principle. Memorandum of Understanding and Proposed Operating Agreement Amendments

30. Although the September 2013 interim agreement was a step forward, much more work had to be done to get a long term deal. In an effort to move the process forward, CFC engaged the services of a professional dispute resolution mediator in October 2013 to work with CFC and chicken boards to help fashion a more permanent agreement. The mediator met individually with all chicken boards, as well as with CPEPC, FPPAC and CRFA. The three downstream stakeholder organizations also participated in the December 2013 negotiation and

¹² See the memo from David Janzen to CFC Board, August 16, 2013, setting out interim agreement.

¹³ Submissions of the PPPABC, February 26, 2016, available online at: http://www2.gov.bc.ca/assets/gov/british-columbians-and-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/correspondence/submissions_of_pppabc_feb_26_2016.pdf.

presented their views. The mediator did not manage to secure an agreement, but there was further convergence on some of the more troubling issues.

31. A breakthrough was reached in July 2014 in the form of an agreement in principle on a long term methodology for achieving differential growth reflecting due consideration of comparative advantage. The July 2014 agreement in principle was adopted through a November 2014 memorandum of understanding,¹⁴ which in turn formed the basis of proposed amendments to the Operating Agreement circulated to chicken board and supervisory board signatories in January 2015. After receiving comments and securing provincial board support, CFC circulated the proposed Operating Agreement amendments to all chicken boards and provincial supervisory boards in May 2015 for signature.

32. The May 2015 proposed Operating Agreement amendments did not initially settle the further processing component of the formula, but called for a permanent calculation to be implemented by A-134. Additional negotiations with respect to the further processing component took place culminating in an agreement in December 2015.

Support for Proposed Operating Agreement Changes

33. It would be an understatement to say that securing a consensus around differential growth has been difficult. However CFC is pleased with the growing support that has been shown. To summarize, at this time:

- a) All ten provincial commodity boards have indicated that they support the amendments.
- b) National industry stakeholder organizations on CFC's Board, CPEPC, FPPAC and Restaurant Canada also voted in favour of the amendments incorporating the further processing component.
- c) The OA amendments have been approved by provincial supervisory boards and chicken boards in: Newfoundland/Labrador, Nova Scotia, New Brunswick, Prince

¹⁴ Memorandum of Understanding for a long term chicken allocation agreement, November 10, 2014.

Edward Island, Ontario, Manitoba and Alberta, as well as the chicken board in Saskatchewan.

- d) FPCC has also signalled strong support for the accommodation of differential growth through the proposed OA amendments.
- e) Processor appeals launched in Manitoba and Saskatchewan after the deal was announced have been withdrawn or not pursued.
- f) The only provinces outside of British Columbia that have yet to fully approve the amendments are Saskatchewan and Quebec. In Saskatchewan, the Agri-Food Council announced in February 2016 its intent to approve the amendments but that has been put on hold due to the provincial election.¹⁵ In Quebec, the Régie des marchés agricoles et alimentaires is conducting a review, in particular, of provincial governance issues concerned with the proposed amendments.

POLICY REASONS SUPPORTING THE PROPOSED AMENDMENTS

34. There are compelling policy reasons why FIRB should support the recommendation by CFC, and by the BC Board, to sign the Operating Agreement amendments. The SAFETI principles endorsed by FIRB provide a useful way of working through these points.

The Process has been Fair, Transparent and Inclusive

35. As described above, the seven year process of negotiation and consultation leading to the proposed Operating Agreement amendments has been fair, transparent and inclusive.

36. Throughout the process, CFC and the BC Board have acted openly and fairly in providing information and soliciting input from stakeholders as well as from government supervisory bodies. In particular, CFC provided regular updates on the negotiations to FPCC and NAASA, including through meetings with the NAASA in May 2009, September 2010, October 2011, October 2012, September 2014 and March 2015. CFC also held stakeholder consultations at annual and/or summer CFC meetings from 2009 through to 2015. In addition, CFC also

¹⁵ Saskatchewan AFC's announcement came after a complaint to FPCC in 2015.

discussed allocation issues, and related differential growth issues, at almost every one of its open Board meetings, at which CPEPC was represented, along with representatives of federal and provincial supervisory bodies and various stakeholder groups. In all, these issues were discussed at more than 25 open CFC Board meetings between 2009 and 2015. In addition, CFC regularly attended CPEPC and other industry stakeholder meetings throughout this time period, during which additional presentations were made and further opportunities for input were solicited.

The Process has been Effective

37. As a national organization, CFC's focus is on the needs of the Canadian industry as a whole, rather than the needs of any specific province. Nevertheless, it should be noted that the input of British Columbia stakeholders to this process has been meaningful and effective, and this is reflected in positive results for the British Columbia industry. For example:

- a) In December 2015, CFC and chicken boards reached agreement for the calculation of the further processing component.¹⁶ This agreement directly reflected the input and concerns of British Columbia stakeholders. As compared to the previous proposed method of calculation, British Columbia's share of the component increased by 7%, and its share of national growth correspondingly increased by 0.7%. In the end, British Columbia's share of this component (14.069%) will exceed its share of Canada's population.
- b) In February 2016, in response to concerns of processors, CFC modified the allocation mechanism in its market development policy to increase the maximum allocation for a province to 16% of its domestic quota allocation (from 14%).¹⁷
- c) During the process of amending the Operating Agreement, the BC Board signalled a concern to CFC regarding levels of exempt production, listed in Annex 1 to the

¹⁶ Addendum to the Operating Agreement – Further Processing Component as per section 3.22 b), December 2, 2015.

¹⁷ CFC's Market Development Policy, amended February 2, 2016, section 8.1.

Operating Agreement. On February 3, 2016, CFC agreed to the BC Board's request for an exemption of its 2,000 bird permit program.¹⁸

38. Concurrently with the events described above, CFC developed and implemented a policy for specialty chicken in response to the needs of, among others, British Columbia specialty processors. The development and allocation of specialty chicken quota, separate from the regular base quota, resulted in approximately 600,000 kgs live of additional quota being available for supply to British Columbia processors. The decoupling of the specialty quota from regular quota is particularly significant for British Columbia, both because of the growth potential in the province and the fact that British Columbia accounts proportionately for a much larger share of the specialty market compared to other provinces.

Accountability

39. The process leading to the proposed Operating Agreement also reflects accountability to farmers, and to industry stakeholders, and serves to ensure consumer needs are met. The seven years of negotiations and repeated solicitation of input provided ample opportunity for those affected to make their views known and have their concerns addressed.

40. The federal legislation also incorporates accountability, requiring CFC to obtain prior approval of quota allocations from FPCC, which CFC has obtained for all periods since A-127. FPCC has dismissed the only two complaints since A-127 on the basis that the complaints were not well founded, and that the approach followed by CFC was reasonable. More specifically:

- a) On August 5 and 6, 2014, CFC's downstream stakeholders, CPEPC, FPPAC, and Restaurants Canada, complained to the FPCC regarding the allocation for period A-127. In their complaint, FPPAC and CPEPC submitted that the allocation of 5% above base was too high, indicating that western processors had recommended an allocation of 3% above base. The FPCC dismissed this complaint in September 2014.

¹⁸ CFC, Provincial Exemption Levels, passed February 3, 2016.

- b) On July 14, 2015, the Agri-Food Council of Saskatchewan complained to the FPCC regarding the allocation for A-133, arguing that CFC had not obtained approval of all signatories to the new methodology. The FPCC dismissed this complaint on October 1, 2015.

41. PPPABC, it should be added, has never complained to FPCC either about the methodology or the allocations resulting from that methodology.

42. This brings up a related point. With accountability comes responsibility. CFC is extremely disappointed that British Columbia processors have waited until a deal was finalized to complain that their concerns were not addressed, and have waited until now to identify concerns with two of the components of the methodology, components which have been included in all proposals since February 2013.

Strategic

43. The methodology in the proposed amendments represents the first time, since the beginning of pro-rata growth in 2005, that CFC and all ten chicken boards have reached consensus on differential growth and comparative advantage. The inability to agree on differential growth between 2005 and 2014 represented the most serious issue with respect to allocation decision-making the industry has faced since it became supply managed. Resolving this issue is a major strategic achievement, both from a national perspective and from a British Columbian perspective:

- a) First, this allows CFC to meet its obligation to consider comparative advantage, mitigating the risk future allocations will not be approved. This is not only a theoretical risk. As noted above, the FPCC signalled that it may refuse to prior-approve allocations beginning with A-121 unless they reflected consideration of comparative advantage. The absence of a national allocation, backed with an enacted quota regulation, would seriously jeopardize the whole system.
- b) Second, the methodology has facilitated the return of Alberta into the national system. Alberta departed the system over concerns regarding the disparity

between its production and its share of national population. This departure represented a serious risk to the system, especially in Western Canada. As a result of the methodology agreed upon in the MOU, Alberta is able to re-enter the national system.

- c) Finally, particularly since A-127, the methodology has facilitated strong growth in national allocations, furthering CFC's object of promoting a strong and competitive chicken industry. For example, all provinces, including British Columbia, have grown a minimum of 5.6% since A-127. The strong growth is in part a response to solid market fundamentals, but it is also a response to a framework that encourages that growth. By contrast, the de facto pro-rata approach that had developed previously held the industry back and did not adequately serve the needs of consumers.

44. The methodology of the amendments represents a fair approach to allocating growth. The methodology balances market share with a range of other factors based on credible, verifiable, and publicly available information. Each province has an opportunity to take advantage of the growth factors over time. The methodology thus provides for stability while enabling differential growth.

45. CFC will further address the impact of the methodology on British Columbia below, in addressing the concerns raised by the PPPABC.

46. It is also critically important to weigh the strategic risks if FIRB decides against the Operating Agreement amendments. Turning down the deal resulting from seven years of intensive negotiations carries a number of potential risks, such as:

- The real possibility CFC will be unable to obtain prior approval of quota amendments;
- The likelihood that Alberta will remain outside the FPA;
- The risk that other provinces may leave the system;
- Growing interprovincial tensions that could lead to an unravelling of the system;

- Increased likelihood of litigation, both nationally and provincially;
- Potential loss of public and government support for supply management.

AMENDMENTS COMPLY WITH GOVERNMENT LEGISLATION, REGULATIONS, AND AGREEMENTS

47. The amendments comply with relevant legislation, regulations, and agreements.
48. CFC will leave it to the BC Board to address the provincial legislation, while providing a national perspective on federal legal requirements
49. For one thing, the proposed amendments respect section 23(2) of the *Farm Products Agencies Act*, which requires that CFC consider the principle of comparative advantage of production when allocating quota increases. The methodology formalized by the amendments contains a number of factors relevant to comparative advantage. As noted above, FPCC has approved allocations since A-127, finding that the methodology appropriately took into account comparative advantage.
50. Further, for reasons discussed above, the amendments further CFC's statutory objectives of promoting a strong, efficient and competitive chicken production and marketing industry and to have due regard to the interests of producers and consumers of chicken.
51. In addition, although FIRB's initial questions in this supervisory review do not directly address the allocations made since A-127, CFC notes that these allocations are consistent with applicable legislation, regulation, and agreements. As noted above, under the existing Operating Agreement, CFC retains ultimate discretion in setting allocations. Furthermore, the FPCC has prior-approved each allocation since A-127. As noted above, a complaint was made by Saskatchewan AFC regarding the allocation for period A-133, based in part on the argument that the methodology of the MOU was inconsistent with the FPA and existing OA. The FPCC dismissed the complaint, finding the allocation was necessary for the implementation of CFC's marketing plan and provided for consideration of comparative advantage of production in accordance with section 23(3) of the *Farm Products Agencies Act*.

52. Finally, the FPA authorizes the process proposed by CFC to amend the Operating Agreement. Section 9.03 of the FPA provides that amendments to the Operating Agreement may be made upon the unanimous consent of CFC, provincial supervisory boards, and chicken boards. CFC continues to work toward obtaining this unanimous consent. The amendments will take effect when this consent is obtained.

ISSUES BEYOND THE AUTHORITY OF CFC, THE BC BOARD AND FIRB

53. As explained above, these amendments have been developed in the context of various other longstanding and ongoing challenges in the industry, including international trade issues (recently including the TPP), spent fowl imports, TRQs, pricing issues, and competitive issues between processors. CFC has worked with relevant authorities on many of these issues towards solutions that advance the interests of the industry as a whole.

54. These issues, however, fall entirely outside of the scope of CFC's authority and outside the scope of the Operating Agreement. CFC's authority is focused on the domestic production and marketing of chicken. The OA is part of the FPA and is the agreement that provides for the interlocking federal provincial cooperation. Accordingly, CFC's is not in a position to address the issues noted above.

55. With respect to imports of both spent fowl and chicken products subject to TRQs, CFC does not have the authority to monitor where these products are coming into the country, and to whom they are being sold, and thus CFC has no ability to factor these imports into provincial quota allocations. It must also be kept in mind that TRQ import permit rights (TRQ paper, as it is known in the industry), is privately traded by processor and other players, and is entirely outside of CFC's control or even knowledge. Similarly, no information was available to CFC while the deal was being negotiated detailing the quantities of spent fowl and TRQ imports that various individual processors and other stakeholders receive across Canada. The FIRB is in a similar position to CFC, with no such information being provided to date in this supervisory review.

56. With respect to the TPP, CFC can advise that, if ratified, it will require Canada to import an additional 26.7 million kg once Canada has fully implemented the agreement. The allocation of additional TRQ will be determined after ratification. There is no information available at this time regarding the details of TRQ allocation.

RESPONSE TO PPPABC SUBMISSIONS

57. CFC wishes to briefly respond to some of the assertions made by the PPPABC in their submission of February 26, 2016, to the extent those assertions are not already addressed by the submissions above.

58. First, the PPPABC alleges that processors did not have the opportunity to participate in the development of the MOU and the overall deal on differential growth. CFC has outlined above the extensive, repeated and lengthy process of consultation. CFC also expects that the BC Board will be able to provide additional details regarding consultations with the PPPABC and its members.

59. Second, the PPPABC suggests in various ways that the bottom-up approach allowed British Columbia to effectively determine its own allocations. This submission reflects a misunderstanding of the Operating Agreement. Under the Operating Agreement, CFC retained discretion to set national allocations, as it did under the 1978 FPA. The PPPABC similarly misunderstands the effect of the regional and provincial ranges and the anticipated growth rate. These did not provide provinces with a guarantee of a given level of growth upon request. Rather, they set upper limits on what provinces could request from CFC. Again, CFC has always retained discretion with respect to considering these requests and setting allocations.

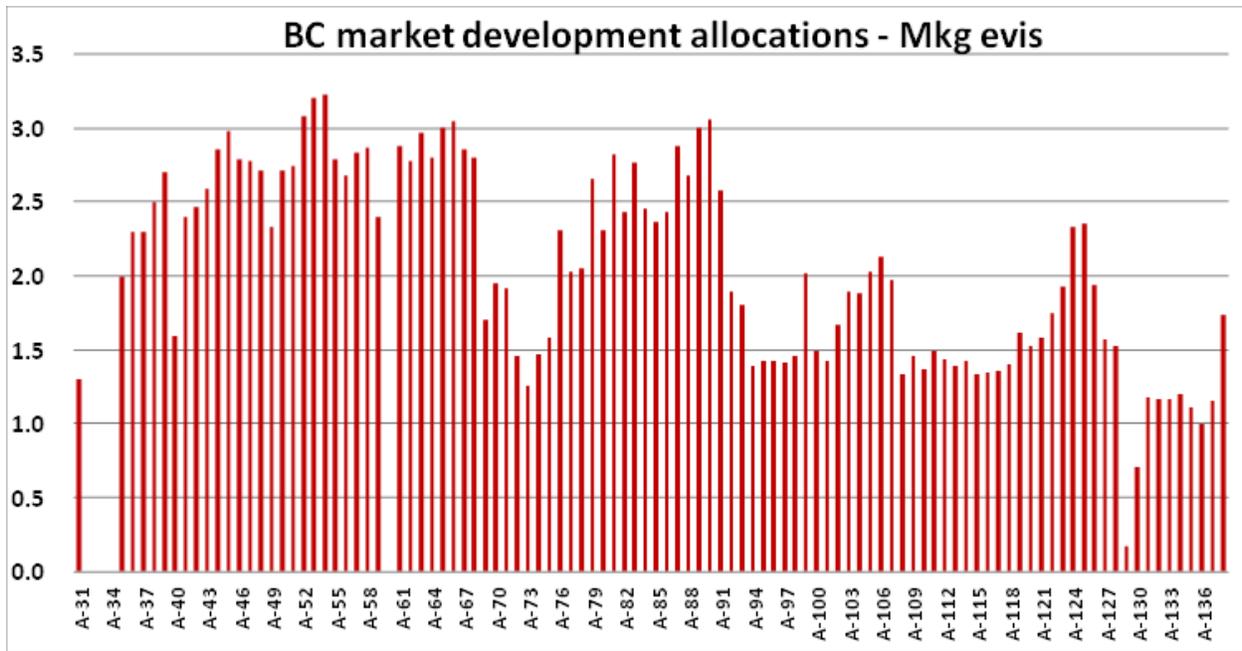
60. Third, the PPPABC suggests that the bottom-up approach functioned as intended for approximately a year and a half, beginning in 2001 with the signing of the FPA. As a point of clarification, the bottom-up system generated differential growth for approximately 10 years, beginning with the signing, in 1995, of the National Allocation and Pricing agreement and ending around the year 2005, at which point CFC began to set allocations on more of a pro-rata basis.

61. Fourth, the PPPABC suggests repeatedly in its submission that Western processors and British Columbia processors in particular have not received the growth they need. This is not reflected in the record, particularly in relation to market requests made since A-127, the first allocation made using the methodology CFC is proposing to formalize through the Operating Agreement amendments. Table 1 indicates the requests made by Western processors (either through direct requests, or by requests submitted on their behalf by CPEPC) since A-127, along with the actual allocation for both Western provinces collectively and for British Columbia. As Table 1 demonstrates, Western provinces have received greater growth than requested by Western processors in each of the periods since A-127, while British Columbia has, on average, received slightly more growth than requested by Western processors.

TABLE 1

Period	Request of Western Processors (vs base)	Western domestic allocation (vs base)	BC domestic allocation (vs base)
A-127	3.00%	4.40%	3.50%
A-128	3.00%	3.50%	2.70%
A-129	3.00%	3.50%	2.70%
A-130	3.00%	4.00%	3.10%
A-131	2.50-3.00%	3.50%	2.70%
A-132	2.50-3.00%	3.50%	2.70%
A-133	3.00%	5.10%	3.90%
A-134	4.00%	5.10%	3.90%
A-135	4.00%	5.20%	4.20%
A-136	4.00%	5.20%	4.20%
A-137	4.00%	5.10%	4.30%
A-138	4.00%	5.10%	4.30%
Average	3.40%	4.43%	3.50%

62. Another indicator that the market requirements of British Columbia processors are being met concerns market development production. Although British Columbia processors initially took full advantage of the market development program, their requests have trended downwards in recent years (see Chart 1 below), and in A-138 the allocation of market development quota to British Columbia represented only 7.3% of its domestic allocation, far below the maximum permitted (currently 16%):



63. Fifth, the PPPABC suggests that British Columbia is undersupplied relative to its population. However, there is no information to suggest that British Columbia suffers from a supply imbalance vis-à-vis the rest of Canada. The most recent national allocation, A-138, provided British Columbia with a share of the domestic allocation (approximately 14%) that exceeds its share of Canada's population (approximately 13%). British Columbia similarly received a significantly greater share of specialty production (52.63%) and market development production (24.29%) than its share of Canada's population.

64. In a related submission, the PPPABC takes issue with the discrete supply share for Ontario. However, this discrete supply allocation has a relatively limited impact on the overall allocation. In the most recent quota allocation set by CFC (A-138), the discrete supply allocation to Ontario equalled 199,529 kg (eviscerated weight), compared to an increase above-base in the national allocation of 8,140,017 kg. For British Columbia, the impact of the discrete supply allocation on British Columbia represented 65,339 kg, out of an increase above-base of 1,041,478 kg. This modest impact will diminish over time, as the discrete supply allocation, which uses a fixed amount of production, represents a decreasing share of a growing national market. The share of allocations for British Columbia and Western Canada will increase accordingly once the time-limited discrete supply to Ontario is completed.

65. It is also important to assess this discrete supply in conjunction with the supply share component of the formula. As a consequence of the discrete supply, the methodology limits Ontario's ability to take advantage of the supply share component. Specifically, Ontario's access to this component is limited to 30% in periods when Alberta also has access to this component. The supply share component is limited in other ways: it represents only 5% of the total allocation and furthermore is triggered only when a province's supply falls below 90% of their share of population.

66. Finally, the PPPABC argues that the components of GDP and CPI are not relevant to comparative advantage. As noted above, this is the first time that PPPABC has raised concerns with these components, despite having been aware of them since early 2013.

67. In any event, these components are both reasonable indicators of comparative advantage. Comparative advantage is an economic concept that can be reflected in many economic indicators. Comparative advantage is a distinct concept from competitive advantage, and is not limited to directly measuring actual production costs. For its part, CPI is a reasonable indicator bearing on comparative advantage as it generally reflects inflationary conditions in a province, which impact, directly or indirectly, the cost of production in that province. Income-based GDP (GDP that excludes capital purchases) is a general indication of disposable income, which in turn is likely to impact on the demand for chicken in a province.

68. These particular components, it should be added, are not unfavourable to British Columbia. In the periods of A-127 to A-138, CPI has been the component of the formula most favourable to British Columbia, and British Columbia's share of this component (15.009%) has exceeded its share of the pro-rata base. British Columbia's share of the GDP component (12.6219%) during these periods has been just below its pro-rata share, representing the fourth most favourable component for British Columbia out of the eight components in the formula.

69. PPPABC's submission implicitly suggests that growth should only be allocated on the basis of "actual costs at the farm level and at the processing level". This is an overly narrow view of comparative advantage which, as noted above, is a complex economic concept susceptible to multiple interpretations – especially in a supply managed context. Moreover,

provinces such as British Columbia tend to face higher costs for some items. British Columbia is unlikely to benefit if allocations are set exclusively on the basis of comparative advantage, particularly if comparative advantage is defined narrowly, as the actual costs of farms and processors.

70. An allocation formula based on PPPABC's submissions – which would limit growth in high-cost provinces whose supply share exceeds their share of population, and which would exclude CPI and GDP as components – would be very unlikely to favour the interests of British Columbia.

CONCLUSION

71. In conclusion, CFC urges the FIRB to sign the Operating Agreement amendments at the earliest possible opportunity, and to authorize the BC Board to do so as well. The amendments and related processes are and have been Strategic, Accountable, Fair, Effective, Transparent, Inclusive, from both a national and a provincial perspective. PPPABC has failed to make out a convincing case for turning down the deal, and have not provided a realistic alternative.