



July 21, 2015

Ms. Nathalie Vanasse
Farm Products Council of Canada
Central Experimental Farm
960 Carling Avenue
Building 59
Ottawa ON K1A 0C6

Dear Ms. Vanasse:

Re: Complaint by Saskatchewan Agri-Food Council Respecting Period A-133

Chicken Farmers of Canada (CFC) regrets that the Agri-Food Council of Saskatchewan (AFC) has brought a complaint to Farm Products Council of Canada (FPCC or Council) respecting the CFC allocation decision for Period A-133. As explained in this Response,¹ AFC's complaint is founded on unsubstantiated claims that reflect a misunderstanding of how the orderly marketing system for chicken operates. Key aspects of the relief sought by AFC are not within FPCC's authority, and are in any event wholly inappropriate in the circumstances. CFC remains committed to maintaining a dialogue with signatories and stakeholders, including AFC, and AFC should be encouraged to do the same. The complaint should be dismissed in a timely manner and CFC's allocation for Period A-133 should be prior approved by FPCC.

CFC will offer process recommendations in the conclusion of this Response in order to enable the complaint to be handled on an expeditious basis as intended by FPCC's Interim Complaint Guidelines. To assist all concerned, CFC will also assemble and forward separately a book of documents addressing matters relevant to the AFC complaint.

This Response should be read in conjunction with CFC's letter to FPCC setting out the rationale for CFC Directors' A-133 allocation decision.

AFC's Claims Regarding CFC A-133 Allocation Decision Not Substantiated

The criticisms by AFC of CFC's allocation decision for A-133 are not backed with solid evidence.

For one thing, AFC paints an inaccurate picture of the events leading to the allocation decision for Period A-133. AFC portrays CFC as having moved away from the agreed upon process of *pro-rata*

¹ CFC submits this Response pursuant to s. 7 of FPCC's Interim Complaint Guidelines.

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quota allocations without provincial board support and without a willingness to negotiate and consult in good faith, thereby diminishing the system and failing to follow a transparent decision-making process.²

The reality is that CFC's allocation decision respecting A-133 is a part of a considered, consensus-driven response to long-standing and complex challenges in the chicken industry. Moreover, the Operating Agreement does not, as suggested by AFC, mandate the setting of allocations on a *pro-rata* basis absent signatory approval of the proposed amendments. On the contrary, CFC has discretion in the setting of allocation within the context of a bottom up system designed to facilitate differential growth in a flexible and market responsive manner.³

It is true that CFC for a period of time exercised its discretion to allocate market growth primarily on a *pro-rata* basis. However, this approach was criticised by many as failing to facilitate differential growth and as unduly constraining overall growth in the industry. Indeed, Alberta signatories withdrew from the FPA due in large part to concerns relating to the *pro-rata* allocation approach. FPCC added its voice to those expressing concern, advocating for greater consideration by CFC of comparative advantage. For example, in approving the allocation for A-117, FPCC stated:

As with previous allocations, Council is of the view that CFC did not fully consider the principle of comparative advantage of production when setting the allocation for A-117.⁴

FPCC expressed similar concerns in its approval of allocations for periods A-118 and A-119, and even suggested that FPCC would not approve allocations in A-121 and beyond unless they demonstrated a greater consideration of comparative advantage.⁵

CFC responded to these challenges by engaging in a lengthy and intensive consultation process with provincial boards, as well as with provincial supervisory boards and industry stakeholders. This engagement included:

- A stakeholder forum between CFC and provincial boards, provincial supervisory boards, and industry stakeholders in May 2009, which resulted in an agreed set of guiding principles.
- Discussion of allocation issues, and related differential growth issues, at more than 25 open CFC Board meetings between 2009 and 2015. Representatives of federal and provincial supervisory bodies frequently attend CFC Board meetings. The CFC Board

² AFC Complaint, pages 2, 3 and 6.

³ As noted in the Regulatory Impact Analysis Statement associated with Proclamation amendments accompanying the FPA overhaul in 2001, Canada Gazette Part II, SOR/2002-1: "These amendments will provide the necessary legal framework for a bottom-up approach to quota allocation and will introduce a degree of flexibility to allow the CFC to respond to changing market conditions while at the same time establishing safeguards to ensure changes in production levels are implemented in an orderly manner".

⁴ Letter from Laurent Pellerin to David Janzen, March 14, 2013.

⁵ Letter from Laurent Pellerin to David Janzen, June 28, 2013.



also includes representation from the Canadian Poultry and Egg Processors Council. At this time, Jeff McDowell, whose background lies in the Saskatchewan processing industry, acts as the alternate director for CPEPC.

- A signatories meeting in September 2010.
- Presentations to NAASA⁶ in October 2011, October 2012, September 2014 and March 2015.
- Disseminating three CFC proposals throughout 2011 and 2012.
- Engaging a professional mediator in late 2013 to facilitate negotiations.

As FPCC is aware, these efforts resulted in an interim agreement regarding Periods A-121 to 126 in September 2013, an agreement in principle in July 2014, and a memorandum of understanding (MOU) in November 2014. The agreement in principle and MOU incorporated elements designed to reflect due consideration of comparative advantage, while also balancing various competing factors at stake and building in a degree of flexibility to respond to market dynamics. As AFC acknowledges in its complaint,⁷ the proposed amendments to the Operating Agreement are consistent with the MOU and received the support of all provincial commodity boards - including Chicken Farmers of Saskatchewan (CFS) - before being circulated to Supervisory Boards. Indeed, CFS voted in favour of allocations for Periods A-127 to A-132, allocations made using a methodology consistent with the agreement in principle and the MOU.

CFC has continued to engage with and listen to the views of various stakeholders, including a meeting with AFC on March 10, 2015 in Saskatoon. CFC considers this dialogue to be important, and is disappointed that AFC decided not to attend the CFC meeting at which the A-133 allocation was determined. There is no doubt that an amended Operating Agreement approved by all signatories is necessary to ensure the long-term sustainability of the system, and CFC continues to work toward that end. In the interim, CFC has a responsibility to exercise its discretion to set allocations appropriately, taking into account the needs of the market and the views of stakeholders, particularly as expressed in the agreement in principle and the MOU.

To respond to a related comment in the complaint by AFC,⁸ although technical work continues to be done to refine the further processing component of the differential growth mechanism, this work reflects the collaborative and adaptive nature of the process followed by CFC, and should not be viewed by FPCC as a cause of concern.

AFC also suggests that the methodology contained in the MOU is inconsistent with the Federal Provincial Agreement (FPA). This is not correct. Section 1.2 of the MOU makes clear that the MOU

⁶ National Association of Agricultural Supervisory Agencies.

⁷ AFC Complaint, page 3

⁸ AFC Complaint, page 4



is intended to complement the FPA and Operating Agreement, to be interpreted in accordance with those instruments, and to preserve the statutory oversight of federal and provincial supervisory boards.

In addition, AFC claims that approval of the allocation for A-133 “would result in economic loss to Saskatchewan in the form of lost chicken production and an undersupplied processing sector”.⁹ This too is plainly incorrect. As explained in CFC’s rationale letter respecting A-133, the allocation for Saskatchewan for Period A-133 represents a volume which is 4.6% above the base allocation of the province. However, the processing sector in Saskatchewan sought an allocation for Period A-133 which was 4% above the base allocation.¹⁰ Indeed, Saskatchewan has received more volume than requested by its processors in each allocation beginning with A-127:

Period	Growth requested by SK processors (% above base allocation)	Growth allocated to SK (% above base allocation)
A-127	3%	4.1%
A-128	3%	3.2%
A-129	3%	3.2%
A-130	3%	3.7%
A-131	3%	3.1%
A-132	3%	3.1%
A-133	4%	4.6%

This pattern undercuts the suggestion by AFC that an allocation set consistently with the MOU would lead to an “undersupplied processing sector”.

Finally, contrary to AFC’s claims, no signatory has directly opposed the proposed amendments to the Operating Agreement. To clarify, the British Columbia Farm Industry Review Board has

⁹ AFC Complaint, page 1

¹⁰ According to the CFS letter respecting Period A-133, “Our processors have indicated that they support an allocation of 4% ... over adjusted base for the A-133 ... production cycles”.



indicated only that it is not in a position at this time to sign the amendments in view of a pending appeal by BC processors,¹¹ and CFC is in the process of responding to an issue raised by the Régie des marchés agricoles et alimentaires du Québec. Moreover, although AFC implies that it is a signatory to the 2001 FPA,¹² AFC did not formally become a signatory when the FPA was amended in 2001, and did not sign the Operating Agreement amendments in 2006.¹³

AFC Claims Regarding CFC Process and Governance Without Merit

AFC's claims regarding the internal procedures and governance practices followed by CFC in connection with the A-133 allocation are also without merit.

AFC incorrectly claims that CFC has failed to establish any written formal allocation protocols for setting national allocations.¹⁴ In fact, CFC does have a policy for setting quota allocations and followed this policy in setting the allocation for A-133.¹⁵ All provincial boards had a full opportunity to participate in the decision respecting A-133. CFC's governance does not, however, require unanimity on allocation decisions, as AFC implies. The Operating Agreement provides for a double majority vote on quota allocations,¹⁶ meaning a vote having the support of more than 50 percent of the members representing more than 50 percent of chicken production market share, present for the vote.¹⁷

Furthermore, contrary to AFC's claims, there is no requirement or set practice that CFC directors hold a straw poll. Straw polls are sometimes held where the Chair feels it may be helpful in moving the decision-making process forward. However, straw polls are not a standard practice in arriving at allocation decisions. Straw polling is one of many examples illustrating the discretion accorded to CFC Directors in the allocation process.

CFC also fundamentally disagrees with AFC's contention that CFC's processes generally, or in relation to Period A-133 specifically, lack transparency and legitimacy. The decision respecting A-133 was taken at a CFC Directors "Allocation" meeting, which is open "to anyone who presents him/herself to the Chair and whose conduct is not disruptive to the meeting".¹⁸ The A-133 decision followed extensive input provided by provincial commodity boards and the industry organisations represented on CFC's Board. AFC could have participated in the discussions, but declined to do so even though representatives from a number of other supervisory boards were in attendance.

¹¹ Letter from Jim Collins to Mike Dungeate, June 19, 2015.

¹² AFC Complaint, pages 1, 2

¹³ See the Memorandum of Understanding dated July 16, 2001 respecting the Saskatchewan Agri-Food Council.

¹⁴ AFC Complaint, page 1

¹⁵ Setting of Allocation, Chicken Farmers of Canada.

¹⁶ Operating Agreement section 3.09

¹⁷ Operating Agreement, section 2.01(d)

¹⁸ CFC By-laws, section 23(1)



Likewise, there is no basis to AFC's contention¹⁹ that CFC failed to adhere to section 37 of its Bylaws in connection with A-133. CFC applied the appropriate procedure to set A-133, and did not make any policy change. No participant suggested that section 37 of the Bylaws was engaged during the setting of the allocation for period A-133 or, for that matter, the setting of allocations for periods A-127 to A-132.

Relief Sought by AFC Not Within FPCC's Jurisdiction to Grant

AFC requests that FPCC "direct that the allocated growth quota be distributed *pro-rata*"; and that "all future growth quota be distributed *pro rata* ...until such time as an alternative, mutually acceptable mechanism is derived."

Misconstruing CFC's previous statement as suggesting that the MOU does not bind CFC member organizations when CFC enacts quota allocations, AFC further asks FPCC to direct "that Saskatchewan is not bound by any allocation based on the proposed new GQD mechanism and may continue to adhere to the pro rata GQD mechanism, and shall not incur any penalties associated with any difference in production between the two mechanisms, including any overproduction penalties".

The relief sought goes well beyond the limits of FPCC's authority. FPCC has no authority to grant relief respecting *pro-rata* growth in Period A-133, or as to how future allocations are to be arrived at. Under the regulatory scheme, CFC has the authority and mandate to establish quota allocations through appropriate amendments to the *Quota Regulations*, subject to prior approval by FPCC. FPCC has general supervisory authority in respect of CFC. FPCC, however, has no authority to direct that the allocated growth quota be distributed *pro-rata*, either for allocation A-133 or in the future.

Likewise, FPCC has no authority to make a declaration that AFC is not bound by the quota allocation. Nothing in the Act or the FPA allows FPCC to direct that one signatory is not bound by the allocation duly established by CFC and approved by FPCC. Indeed, even a non-signatory, the Alberta Chicken Producers, has signed a Service Agreement with CFC to conform to the allocation agreement in the MOU. The relief sought is also tantamount to exempting one signatory from complying with the regulatory framework and the FPA. This is contrary to the intent of the cooperative scheme designed to ensure orderly marketing of chicken.

The relief sought by AFC is also inconsistent with the discretion accorded to CFC in matters of quota allocation. The breadth and flexibility associated with CFC's powers are reflected in s. 21 of the Act. In addition, s. 22(1)(f) of the Act authorizes CFC to "make such orders and regulations *as it considers necessary* in connection" with the marketing plan it is empowered to implement. The Federal Court has recognized, in the context of over-base allocation in the egg industry, that given the composition of the agency and the working knowledge of its members of the industry, the agency is in a better position to assess how those objects are best met when making (over-base)

¹⁹ AFC Complaint, pages 7-8

quota allocation decisions.²⁰ This discretion associated with quota allocations is further reinforced in the language of the FPA and the Operating Agreement.

Moreover, the relief sought by AFC is practically unworkable. For one thing, a strict, *pro rata* allocation would not be responsive to the longstanding concern of FPCC, a concern shared by its counterparts in NAASA, that allocations properly take into account the principle of comparative advantage. In addition, no other stakeholder is advocating the *pro-rata* approach sought by AFC. Given the thrust of its complaint, it is surprising that AFC advocates imposing an allocation without the support of any other stakeholder.

Process and Timing Issues

The process selected by FPCC to address this complaint should have the following characteristics.

Timeliness: Period A-133 will begin on October 4, 2015. CFC and the industry require a decision by Council with sufficient notice such that provincial boards can make the necessary quota allotments to producers, and producers can order the day-old chicks that they require to produce their allotment. It is therefore important that the complaint be disposed of within the timeframe contemplated by FPCC's Interim Complaint Guidelines.

Transparency and Procedural Fairness: Procedural fairness requires that all parties be present at any meetings between parties and the Complaint Committee or other Council representatives. This ensures transparency and avoids additional delays.

CFC therefore recommends that FPCC address this complaint through an informal meeting process pursuant to the Interim Complaint Guidelines of FPCC, and suggests the following steps:

1. A Complaint Committee be established and a preliminary case conference be held by July 24, 2015 to address process issues.
2. The parties provide any documentary evidence to be relied upon in the Complaint no later than July 31, 2015.
3. An informal meeting be held no later than August 7, 2015 with the Complaint Committee and all of the parties to enable the parties to present their views with respect to the Complaint.
4. The preliminary report of the Complaint Committee be distributed to the parties no later than August 21, 2015.
5. Parties will provide comments on the interim report no later than August 26, 2015.

²⁰ *Saskatchewan (Agriculture, Food and Rural Revitalization) v. Canada (Attorney General)*, 2006 FC 345 at paras 47 and 51; see also *Dunn-Rite Food Products Ltd. v. Canada (Attorney General)*, 2007 FC 218 at para 20.



6. Council will decide the complaint and advise the parties no later than August 31, 2015.

The process should be designed to ensure that CFC and AFC are able to respond to any points brought forward in the complaint process either by parties or interveners, if any.

Conclusion

CFC asks that Council dismiss the complaint by AFC and prior approve the Period A-133 allocation without delay.

Please do not hesitate to contact CFC's Executive Director, Mike Dungate, or our legal counsel, David Wilson, if you have any questions.

Yours sincerely,



David Janzen
Chair

Cc: Mr. John Les, Chairman, British Columbia Farm Industry Review Board
Mr. Bruce Beattie, Chairman, Alberta Agricultural Products Marketing Council
Mr. R.T. Tyler, Chair, Saskatchewan Agri-Food Council
Mr. Ken Caldwell, Chairman, Manitoba Farm Products Marketing Council
Mr. Gerald Kamenz, Chairman, Ontario Farm Products Marketing Commission
Ms. Françoise Gauthier, president, Régie des marchés agricoles et alimentaires du Québec
Mr. Robert Shannon, Chairman, New Brunswick Farm Products Commission
Mr. Ken Peacock, Chairman, Nova Scotia Natural Products Marketing Council
Mr. Michael Carmichael, Chairman, Prince Edward Island Marketing Council
Ms. Rita Legge, Chairman, Newfoundland Farm Industry Review Board
Mr. Robin Smith, Chairman, British Columbia Chicken Board
Ms. Erna Ference, Chairperson, Alberta Chicken Producers
Ms. Diane Pastoor, Chairperson, Chicken Farmers of Saskatchewan
Mr. Jake Wiebe, Chairman, Manitoba Chicken Producers
Mr. Henry Zantingh, Chairman, Chicken Farmers of Ontario
Mr. Pierre-Luc Leblanc, Chairman, Fédération des producteurs de volailles du Québec
Mr. Marc Cormier, Chairman, Chicken Farmers of New Brunswick
Mr. Paul Cook, Chairman, Chicken Farmers of Nova Scotia



Mr. Dean Good, Chairman, Chicken Farmers of Prince Edward Island
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