

## AFC Complaint Hearing Comments

### **PREAMBLE**

Thank you for hearing this complaint and allowing us to participate via video conference.

I will begin my remarks by identifying the two issues that form the basis of Council's submission to FPCC.

From there I will provide an overview of the impacts of CFC's actions and then provide more details on our key arguments.

Our complaint is with respect to two areas:

1. The inappropriate use of the proposed growth quota distribution mechanism without the support of all 20 signatories to the Operating Agreement; and
2. It appears as though CFC has not established any formal, written allocation protocol for setting national allocations. There are policies for the processes that occur prior to and following the allocation meeting, but there is no transparent process for what happens during the allocation meeting. This needs to be addressed.

How does this affect Saskatchewan?

- The inappropriate use of the growth quota distribution mechanism without the support of all 20 signatories raises serious concerns regarding the validity and applicability of the FPA and other subsequent agreements in the operation of the supply management system for chicken. As well, it raises serious concerns about the ability of provinces to be heard within the supply management system.
- The mechanism's use also raises concerns about the ability of the system to function as a whole, about CFC's willingness to negotiate and consult in good faith, and about the long-term sustainability of the national system.
- Our Council stands by its comments that through the application of the proposed MOU, Saskatchewan's opportunity to produce chicken has been diminished and the processing sector continues to be undersupplied. This situation will compound over time as the proposed growth distribution quota mechanism continues to be applied.

- Regarding allocation meeting polices and procedures, the lack of transparent decision-making in accordance with CFC's own by-laws has serious implications for the ability of a participant to adequately prepare for allocation meetings.
- As a result of the change in process at the last allocation meeting, despite meeting with the CFS prior to the CFC allocation meeting, we were unable to discuss the changes to the allocation procedure with the CFS or to provide advice on how to proceed in light of those changes. The recommendations we provided to the CFS prior to the CFC meeting were hampered by the unilateral change in the allocation process.
- This limits our ability to fulfill our role as a supervisory board.

**ISSUE #1:** *The use of the proposed growth quota distribution mechanism*

**COOPERATION NECESSARY**

- I think everyone present would agree that the system of supply management is based upon mutual cooperation and agreement between all signatories.
- This cooperation and agreement is necessary for the system's long-term success as it is the only way to ensure that the unique needs of each member are considered and addressed.
- The Federal-Provincial Agreement and the Operating Agreement are critical to ensuring this occurs.
- In the case of amending how key processes are performed, processes that are empowered by the FPA and the Operating Agreement, negotiation and consultation are necessary.
- Any diminishment of the negotiation or consultation process among signatories diminishes the entire system and, in our mind, will inevitably lead to the system's demise.

**CFC UNILATERAL CHANGE**

- As we are all aware, in November 2014, chicken producers signed a Memorandum of Understanding regarding the use of the proposed growth quota distribution mechanism.
- In the past few months, CFC proposed an amended Operating Agreement that would incorporate the proposed growth distribution mechanism that was formalized in that MOU.
- We can all agree that this mechanism affects the chicken sector in every province.

- Despite knowing and understanding the impact this would have on provinces and its stakeholders, CFC unilaterally implemented the mechanism's use in July 2014 to set allocation A-127. CFC did so without any consultation with or assurances from supervisory boards. Our understanding is that processors also were excluded from this decision. In taking this step, CFC assumed there would be unanimous support for the proposed mechanism. This was not the case.

#### LACK OF SUPPORT - APPEALS

- Since that time, CFC has become aware that an appeal has been filed by BC processors regarding the 'correctness' of the BC chicken board in agreeing to the mechanism. That appeal is currently on hold while the industry, producers and processors, in the West work through the development of a potential regional allocation approach.
- It is also worth noting that Western processors filed similar appeals in Saskatchewan and Manitoba. The appeal was dropped in Manitoba. In Saskatchewan, processors withdrew their appeal because our Council clearly stated that we did not support the mechanism or any amendments to the Operating Agreement that reflected the proposed mechanism.

#### ABSENT SIGNATURES

- As a result of the appeal in British Columbia, the BC Chicken Board cannot sign the amended Operating Agreement, nor can the BC supervisory board.
- This represents two of the 20 signatures required for the Operating Agreement to be changed.
- In Saskatchewan, on April 28, 2015 and again on June 4, 2015, Council sent letters to CFC communicating that the Agri-Food Council would not sign an amended Operating Agreement that incorporated the growth mechanism contained in the November 2014 MOU.
- In July of this year, the Chicken Farmers of Saskatchewan informed us that the CFS would not sign the amended Operating Agreement without Council's signature being provided first.
- In total, as of today, at least four of the 20 signatures required for the proposed amended Operating Agreement have not been provided.
- Yet even with at least 20% of the required signatories not supporting the proposed growth distribution mechanism, CFC continues to use it to set allocations and FPCC continues to approve those allocations.

## PRO RATA DISTRIBUTION

- Since June 16, 2004, the process for distributing growth quota has been *pro rata*. We concede that this approach is not consistent with subsection 23(2) of the *Farm Products Agencies Act*; however, in the nearly 43 year history of that Act, none of the four agencies that are subject to subsection 23(2) have ever applied it.
- Why is there a hurry to do so now?
- Why not wait for all 20 signatories to agree?
- The only opposition to *pro rata* quota distribution that we are aware of is that *pro rata* is not comparative advantage, another matter that we can't agree on anyway.
- Is not establishing a mechanism that is acceptable to all signatories a priority?
- Why jeopardize the cooperative backbone on which the system depends for its long-term success by applying a mechanism that not all parties support?
- By moving forward without the support of all 20 signatories, CFC has overstepped its authority and bypassed meaningful negotiations with all signatories. As a result, CFC has diminished the process that began back in 2009 and has potentially put the system in jeopardy.
- Clause 4.01(a) of the FPA states that one of CFC's commitments is "to take all reasonable steps to promote a high degree of cooperation between itself, FPCC, provincial supervisory boards and provincial commodity boards." CFC's inappropriate use of the proposed mechanism without the support of, and without effective consultation with, all parties is an example of CFC's failure to meet this tenet.
- As a result, this process has raised serious concerns regarding the validity and applicability of FPAs and other subsequent agreements in the operation of the supply management system.
- On the matter of *pro rata* distribution, I want to make it clear to everyone that we are not advocating the use of a *pro rata* mechanism for the distribution of growth quota on a long-term basis.
- As I am sure everyone here is aware, Saskatchewan has been a proponent of the application of subsection 23(2) for years.
- What we are advocating is the use of a growth quota distribution mechanism that is acceptable to all signatories. Until that acceptable mechanism can be derived, distributing growth quota on a *pro rata* basis is the appropriate path to take. Having already been applied for ten years, using a *pro rata* mechanism while signatories negotiate an acceptable long-term method should be

acceptable to all. In the spirit of cooperation, reverting to *pro rata* distribution in the short term should be acceptable.

## CONSULTATIONS

Regarding consultations...

- CFC has stated on a number of occasions, and it did so again in its rebuttal to Council's complaint, that it consulted throughout the process with all signatories and stakeholders. Council respectfully disagrees.
- When the process started in 2009, yes, CFC is correct in that all Operating Agreement signatories had representatives in attendance who participated in a joint meeting. We also agree with CFC that without a base point to work from, negotiating further with that many parties and opinions present was not going to work.
- This being said, Council was under the impression, as were other supervisory agencies, that we would be consulted after the producers had identified one or more viable options. Contrary to CFC's assertions, this additional consultation did not occur.
- In CFC's counter-submission, it is argued that they engaged in "a lengthy and intensive consultation with producer boards, as well as with provincial supervisory boards and industry stakeholders." Speaking on behalf of one provincial supervisory board, again I respectfully disagree.
- The CFC submission notes that CFC presented to NAASA – not a decision-making body – in October of 2011 and 2012, September of 2014 and March of 2015. Note the gap in the sharing of information between October 2012 and September 2014. CFC worked through a number of varied proposals during that time period. Also note that the growth distribution mechanism that CFC is currently and inappropriately using was devised and implemented during that period of time.
- CFC's argument is problematic for a number of reasons:
  - First, presenting to NAASA is not consulting. It is disseminating information.
  - Second, it appears that just at the time when consultation should have been occurring, there were no presentations by CFC. In fact, our records indicate that the only communications from CFC to supervisory boards over that period of time related solely to Alberta's departure from the national system. Nothing about the mechanism's negotiation or application.

- Further, in CFC's list of engagements, they note that Jeff McDowell is the alternate CPEPC representative at CFC and that Mr. McDowell has ties to Saskatchewan. This is irrelevant.
- The alternate CPEPC representative is responsible for representing the position of CPEPC which encompasses many more opinions than those of Saskatchewan. As well, as this representative, Mr. McDowell has no responsibility to report to or take forth the position of Saskatchewan. He is responsible to Sofina Foods. Furthermore, the differential growth discussions began in 2009. Mr. McDowell became the CPEPC alternate within the last two years. CFC stopped negotiating over a year ago.  
CPEPC made comments to this effect in their July 29, 2015 letter to Ms. Vanasse.
- None of the CFC's 'record of engagement' constitutes consultation outside of the producer boards.
- Last year the producer boards came up with a potential solution - the first one that all producer boards could agree upon. What was CFC's reaction? 'Since this is the only agreement we have reached it must be the best agreement, problem solved'. If one can get past CFC's fundamentally flawed argument that 'the only agreement is the best agreement', what is even more troubling is CFC's assumption that all 10 supervisory agencies would agree and that processors would have no issues either.
- At this point, it became clear to Council that the second phase of the process – consulting with supervisory boards and other affected stakeholders - had been abandoned.

#### CFC 'CONSULTATION' AFTER MECHANISM IMPLEMENTED

- Page 3 of CFC's rebuttal states: "There is no doubt that an amended OA approved by all signatories is necessary to ensure the long-term sustainability of the system." This statement is very interesting.
- When *marketing* the amended Operating Agreement to the supervisory boards, the verbal message was 'this is the best agreement because this is the only agreement that we have reached.' The message sent was 'CFC has taken undesirable shortcuts to reach this option and this is the first option that all of the producer members of CFC could agree on'.
- Clause 21(a) of the *Farm Products Agencies Act* states that the "objects of an agency are to promote a strong, efficient and competitive production and marketing industry for..." in this case, chicken.

- To be marketing the proposed growth distribution mechanism as 'this will save supply management', CFC is blatantly saying that the objects of the agency are not the utmost priority.
- CFC should be looking for the best solution for the industry in the long-term.
- Achieving a 'strong, efficient and competitive production and marketing industry' is not the intent of CFC's inappropriate use of this mechanism.
- If the objects of the agency were actually a priority, the negotiations would continue until the best solution, or a solution that more closely approximated the best solution, could be reached, not the 'only agreement that has been reached'.
- The approach being taken essentially allows CFC to singlehandedly move forward without the approval of all signatories. And from their counter to our complaint, it is clear that **CFC believes that it can singlehandedly do whatever it wants**. It appears that CFC has forgotten that it is established by public policy and its membership is tied together by a Federal-Provincial Agreement and an Operating Agreement that empower CFC to operate. These agreements require cooperation with the signatories. FPCC can remind CFC of this requirement by granting the relief being sought by Council.

#### PROCESSOR UNDERALLOCATED

- As stated earlier, AFC stands by its comment that Saskatchewan will lose future production as a result of the inappropriate use of the proposed mechanism.
- We have provided data comparing Saskatchewan's allocation since A-126, including CFC's proposed allocation for A-133.
- This information shows that, unquestionably, Saskatchewan would produce more chicken if the *pro rata* approach were used to allocate growth until an agreement on a new allocation approach is reached by all 20 signatories.
- If FPCC approves the A-133 allocation, this data clearly shows that over these seven CFC allocations, Saskatchewan would have produced an additional 253,720 kilograms of eviscerated chicken. This is lost opportunity for Saskatchewan that will compound over time given the design of CFC's allocation system. This lost opportunity is directly attributable to CFC's inappropriate use of the growth quota distribution mechanism.
- CFC is correct that since A-127 the growth allocated to Saskatchewan has exceeded the growth requested by Saskatchewan processors.
- However, there are three counters to this position:

- (1) Saskatchewan processors would have received more product under a *pro rata* distribution than was the case with the use of this inappropriate mechanism.
- (2) Until recently, the allocation requests provided to CFC from CPEPC have not necessarily represented the needs of Western processors but rather of all CPEPC members.
- (3) For their forecasts to assess the 10-year impact of the proposed mechanism, CFC was using a growth rate of 1.5%, which they admitted was high. From A-127 through A-132, the average allocation was 3.7%. This is not sustainable.
- The MOU proposes a 10-year agreement – one cannot in good faith argue that the current favourable market conditions will persist for the life of the agreement. Therefore, the true loss to Saskatchewan processors cannot be quantified at this time, nor can the losses to the producers and the province as a whole for that matter.
- What Council can say is that Saskatchewan processors have been historically undersupplied using the *pro rata* approach. This reality would be escalated once allocations return to the historical norms and CFC is allowed to continue with the inappropriate use of the mechanism

#### COUNCIL ATTENDANCE

- Lastly, with respect to CFC's A-133 allocation meeting, CFC's letter states that "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." That Council did not have representatives in attendance is irrelevant.
- Council did not decline to participate. Like all organizations, we have resource constraints, budgetary and otherwise. We supervise and monitor 20 agri-food agencies, one of which is chicken. Attending meetings associated with all 20 of these agencies is infeasible. When the need presents itself, we meet with our provincial agencies to prepare for national agency meetings and develop provincial strategies. In the case of the July CFC meeting, we did just that as I will detail shortly.
- There have been times when we have been able to send representatives to national meetings. The A-133 allocation meeting was not one of those times. If CFC were concerned with more signatory participation, teleconferencing or video conferencing could be provided as an option.
- That other supervisory boards have decided to attend is their decision. Our attendance record does not diminish our responsibilities with respect to the national supply management system, or the seriousness with which we accept and act on those responsibilities.



### Relief Being Sought

What we want is for the A-133 allocation not to be approved as proposed because it inappropriately applies a growth distribution mechanism which is not supported by all signatories. We have no problem with the national allocation number itself. We do have a problem with how that allocation is distributed amongst the provinces.

We also do not want to hinder the ability of chicken producers to produce the 5% above base allocation that CFC proposes. To address our concerns, we see three viable options available to FPCC in this case.

1. Refuse to approve the proposed A-133 allocation. When providing feedback to CFC, strongly recommend that the proposed allocation be resubmitted with the 5% above base national allocation being distributed *pro rata* to the provinces, with the *pro rata* rates used being those that were in place at A-126, before the applied mechanism began to impact production trends. By using the quota distribution rates from A-126, the distribution of quota will not have been affected by CFC's inappropriate use of the mechanism.
2. Refuse to approve the proposed A-133 allocation. When providing feedback to CFC, strongly recommend that the proposed allocation be resubmitted with the 5% above base national allocation being distributed using the model that is currently used in the table egg sector. That is, allocate Saskatchewan 3.6%, or our *pro rata* share of national production as of A-126, and distribute the remaining 96.4% of national allocation amongst the provinces using the mechanism.
3. Refuse to approve the proposed A-133 allocation for the reasons we have outlined. Send the proposal back to CFC and have them sort it out.

I do want to re-emphasize that we are not advocating for *pro rata* to be the growth distribution approach for the future. We are advocating that the distribution of growth quota return to an approach that had been applied for the ten years prior to CFC's unilateral decision to change direction until all signatories can fully agree on an appropriate growth distribution mechanism for the future.

We feel that the approval of the A-133 allocation if the growth quota were distributed *pro rata* would be the most expedient path forward. Should FPCC make it known that this position will be taken with each

allocation until a growth distribution mechanism is agreed to by all signatories, CFC can set allocations accordingly and efforts can be devoted to meaningful negotiations moving forward.

Speaking of negotiations, in our complaint we called for CFC to resume meaningful negotiations with all signatories with the aim of finding a workable solution that is agreeable to all signatories. We are more than willing to work towards this outcome. Given the priority CFC is placing on this matter, and recognizing that this complaint needs to be addressed prior to moving forward, perhaps the first meeting could be arranged for September or October given the many schedules that will need to be considered. An alternative option would perhaps expedite the process. One idea may be to have all signatories submit comments regarding what is acceptable and unacceptable about the current inappropriately applied mechanism, as well as a list of questions and priorities that need to be addressed. These submissions could be shared amongst all signatories and compiled by a third party. Based on the submissions, the third party could recommend a path forward.

As I am sure everyone is aware, negotiations are in progress in the West regarding an approach to establishing a growth distribution mechanism. These negotiations have been led by Western producers and processors, and are directed at developing an alternative to the mechanism currently being inappropriately applied by CFC. Of course, such negotiations would have to be broadened to all signatories.

#### Issue #2: Creation of a Complete Allocation Setting Policy

- Based on the comments made in CFC's counter-submission, there appears to be some confusion regarding our second complaint.
- We are fully aware that there is a written process for the setting of allocation until the actual allocation meeting starts. We are aware of the pre-allocation consultation meetings and the submission of provincial allocation figures prior to the allocation meeting. We are aware that it takes a double majority for an allocation vote to pass – that is in the Operating Agreement, section 3.09 to be precise. We are aware that CFC staff circulates to all provinces the provincial allocation numbers after the national allocation meeting.

- To be more precise, if one looks at the CFC policy manual for the setting of allocation policy, the first six steps of the process detail what is to happen and the timelines for that process prior to the allocation meeting. The seventh step begins with “After the allocation has been set...”.
- There is no policy for how that allocation is set at the meeting. There is a black hole in the “setting of allocation” policy regarding what actually happens during the meeting in which the allocation is set.
- We know from the Operating Agreement that setting allocation is a bottom-up approach (clause 3.08(a)). This is what the first six steps of the ‘setting of allocation’ policy addresses.
- Clauses 3.08(b) and (c) of the Operating Agreement address how provincial boards may consult and how those boards submit their individual allocation requests.
- Section 3.09 outlines the double majority vote requirement for setting allocation.
- There is no policy for how the allocation meeting operates.
- It is crucial that a written, transparent policy be in place to allow for provinces and downstream parties to effectively prepare for allocation meetings, which we can all agree is an integral part of the operation of this system.
- In our case, we met at length with the Chicken Farmers of Saskatchewan on June 19, 2015 regarding specifically the July CFC allocation meeting. We have provided you with the agenda for that meeting. We had an in-depth discussion on how the July CFC meeting would transpire, including how the voting procedure worked. Agri-Food Council staff and members had previously attended CFC meetings and could confirm that the CFC meeting process described was accurate.
- Through these discussions we were able to prepare a Saskatchewan strategy.
- On the day after the CFC allocation meeting, we participated in a Western Supervisory Board meeting. One of the first comments made with respect to the CFC meeting was that the allocation procedures were changed and no one knew why.
- We spoke with Clinton Monchuk, CEO of the CFS, who confirmed that the allocation procedures had changed. He has no idea what the process is now or what to expect in the future. He admitted that when he started with the CFS back in 2007, it took at least a year before he fully understood how the allocation meetings operated.
- The A-133 allocation meeting is a perfect example of why a comprehensive policy for the setting of allocation needs to be prepared. Our strategy was side-lined because the allocation meeting procedures were changed. The Chicken Farmers of Saskatchewan were able to move forward with the strategy in a limited way because of the revised meeting procedures. This hindered Saskatchewan’s ability to participate in the meeting. Essentially, the change in meeting procedures

impinged upon our ability to fully cooperate with the CFC as intended in the FPA and the Operating Agreement.

- There needs to be a policy in place that allows signatories to effectively prepare for the allocation meeting.
- Interestingly, in the first paragraph of the CFC's counter to our complaint they write "Council's complaint ... reflect[s] **a misunderstanding of how the orderly marketing system for chicken operates.**"
- Beyond being untrue in that we do understand the policies as written, this is essentially the point.
- There is a lack of transparency that needs to be addressed.
- Writing an allocation meeting policy should not be difficult. How many allocation meetings has CFC held?
- Have the CFC policy committee draft it. It should not take much work.
- Take that policy to the CFC board and have the board review it. The board has three options: (1) ask that the policy be amended, (2) send it back to the policy committee for further consideration, or (3) approve it.
- CFC does have a policy for how the policy committee works. I've just outlined the process and I've been able to do so because that policy is indeed written down and available.
- Once the CFC board approves an allocation meeting policy, add it to the CFC policy manual and allow all signatories to have access to the policy. Encourage the signatories to do so. Transparency is necessary for the cooperative basis on which this system is founded.
- One more comment on this matter: The CFC's own by-laws (section 37) state that:

Where appropriate, the Executive or any other committee of CFC shall make recommendations concerning policy options presented by the [policy] committee. Any recommendations shall be forwarded to each member of CFC in sufficient time prior to a meeting of CFC in order to allow a member of CFC to consult, as appropriate, with their Provincial Commodity Boards...
- This allowance for sufficient time to consult and evaluate the proposed policies is essential to not only good governance but also good decision making and cooperation, the essential component in the case of federal-provincial agreements.
- This is not a difficult issue.
- This is a complaint that is geared towards enhancing the operation of CFC.
- This is a complaint geared towards improving the good governance of CFC.

- This is a complaint intended to encourage CFC to enhance the quality of its decision making by putting in policy the tools necessary to do so.

Relief Being Sought

1. CFC agrees to write a policy and adhere to its own policy bylaws to have that policy enacted, and then share the policy amongst the Operating Agreement signatories.

**[CONCLUDING REMARKS]**

Note: CFS did not vote in favour of A-133