

CONWAY

Litigation/Litige

David K. Wilson

Direct Line: 613.780.2019

Email: dwilson@conway.pro

Assistant: Michelle Thibert

Direct Line: 613.691.0374

Email: mthibert@conway.pro

October 9, 2015

VIA EMAIL & REGULAR MAIL

Ms. Nathalie Vanasse, Registrar
Farm Products Council of Canada
Central Experimental Farm
Ottawa, ON K1A 0C6

Dear Ms. Vanasse:

**RE: OBHECC COMPLAINT TO FPCC
OUR MATTER ID: 1382-004**

The following are additional submissions made by the Canadian Hatching Egg Producers (CHEP) in response to the reply comments of Ontario Broiler Hatching Egg & Chick Commission (OBHECC) and of various interveners.

In respect of the interveners, the OBHECC complaint has generated considerable interest from provincial boards, producer organisations, provincial governments and industry stakeholders. It is not CHEP's intention to respond at this time to every argument that has been raised. CHEP will have more to say on these points when the parties and interveners participate in the informal meeting later, assuming that the meeting goes ahead as scheduled.

The Three Pillars of Supply Management and the Need for Flexibility

OBHECC and a number of interveners have underscored the importance of the three pillars of supply management: effective production controls, import measures and regulated pricing to enable producers to recover their cost of production. Numerous interveners have also stressed the need for the orderly marketing system to be flexible, although it is not clear that everyone has the same idea of what flexibility ought to mean in practice.

CHEP strongly agrees that the orderly marketing system for broiler hatching eggs has to respect the three pillars of supply management. The various efforts CHEP has made to come up with

Conway Baxter Wilson LLP/s.r.l.

401 - 1111 Prince of Wales Drive, Ottawa ON K2C 3T2

Tel: 613.288.0149 Fax: 613.688.0271

www.conway.pro

solutions by working with provincial and industry partners reflect that priority. At the same time, CHEP supports having a degree of flexibility in the operation of the system. To date, related flexibility measures have included the liquidated damages assessment (LDA) sleeve and the LDA exception for *force majeure* and other factors. In addition, being geared to the demand of broiler chicken meat, the broiler hatching egg industry necessarily reflects the differential growth opportunities in the chicken industry under the new approach adopted in that industry sector. The Quota Lease Pool (QLP) was also designed to provide for flexibility but, as CHEP's July 30, 2015 response explained, serious concerns have arisen in terms of the legal compatibility of the 2012 QLP Policy with orderly marketing commitments and requirements.

LDA Issues

To touch on a related point, CHEP agrees with the submissions by certain interveners expressing concern over OBHECC's refusal to consent to the amendment of the Liquidated Damages Assessment Agreement (LDAA). A provincial board signatory to the Federal Provincial Agreement for Broiler Hatching Eggs (FPA) should not lightly refuse to endorse the LDAA, since to do so is not consistent with preserving the three pillars of supply management.

Fortunately, LDA disciplines are still in place through the LDA Resolution predating the LDAA, but a new LDAA should be finalized as soon as possible. CHEP can also confirm its intention to submit the new LDAA to FPCC for approval, as contemplated by s. 12(3)(a) of the FPA.

Underproduction and Past Quota Lease Arrangements Approved by OBHECC

OBHECC understandably and quite appropriately emphasizes the need for provincial boards to avoid overproduction. However, OBHECC is silent in both its complaint and reply submissions on the need for provincial boards to avoid underproduction. From CHEP's perspective, both are important. OBHECC seems to have come around to this perspective by allotting all of its provincial quota allocation to Ontario producers beginning in 2014, rather than hold back part of the allocation as OBHECC had done in previous years.

The bottom line, however, is that past underproduction in Ontario has been a complicating factor that cannot be ignored. Producers across Canada should be permitted to fill their provincial quota allocations, and to the extent OBHECC previously failed to allow its producers to do this, OBHECC should accept some degree of responsibility for the concerns it has raised through its complaint. This is not about assigning blame, but about understanding the context the industry is dealing with.

It is also important for FPCC to recall that OBHECC approved quota lease arrangements for a number of years, and endorsed the various iterations of the QLP Policy, including the most recent iteration, of 2012. Indeed, it was not until 2014 that OBHECC requested a review of the QLP Policy, at which time CHEP promptly moved to address the problems OBHECC raised with respect to the QLP Policy. Thus, to suggest the current situation of overproduction is "simple" and "not complex", and should have been solved long ago by CHEP, is neither warranted nor helpful.

Status of the QLP Policy

The Syndicat des producteurs d'œufs d'incubation du Québec (SPOIQ), and similarly Les Couvoiriers du Québec (LCQ) go to some length to assert that the QLP Policy is still valid and in force. As indicated by the Chair of CHEP at the July 2015 meeting of Directors, having not reached agreement on a modified QLP for 2015, and taking into account the legal concerns that have been raised, CHEP considers that the QLP Policy is no longer in force.

Any measures to replace the QLP Policy should provide for flexibility in the orderly marketing system for broiler hatching eggs while at the same time ensuring that the three pillars of supply management are respected. In particular, any new arrangements must be designed to be compatible with, and not take precedence over, provincial board commitments under the FPA to avoid overmarketing and respect allocation limits. Legal problems with the 2012 QLP Policy cannot be disregarded, as SPOIQ seems to suggest. The inconsistencies of the QLP Policy with the FPA must be addressed for the industry to move forward, and for CHEP to fulfill its mandate and objects.

Addressing Hatchery Needs

CHEP acknowledges that various stakeholder interests, including those of hatcheries, must be balanced for the good management of the broiler hatching egg industry. The importance of the hatchery perspective is reflected by the participation of hatchery representatives appointed by the Canadian Hatchery Federation (CHF) on CHEP's Board of Directors. CHEP also recognizes the positive contribution CHF representatives have made in discussions involving CHEP and provincial boards concerning the issues raised in particular by Ontario and Quebec.

At the same time, to address a point raised in the interventions by SPOIQ and LCQ (but not in the CHF request for intervener status), hatchery throughput and interprovincial movement of chicks cannot be used to determine provincial quota allocations or to justify planned overproduction. To do so would introduce distortions into the marketplace and would be contrary to the interests of a strong, efficient and competitive broiler hatching egg industry that takes into account the interests of producers and consumers.

Solutions Will Be Forged Through Negotiations, Not Litigation

CHEP recognizes that there is work to be done to forge practical consensus-based solutions to address the challenges facing the broiler hatching egg industry, including the challenges identified by OBHECC. CHEP also recognizes that OBHECC has been an active and constructive player in related discussions and has put forth some useful suggestions. Indeed, the gap between OBHECC's priorities and CHEP's priorities is narrower than might appear at first glance.

From CHEP's perspective, the best prospect lies in facilitated negotiations, outside the complaint process. Considerable progress has already been made in clarifying and narrowing the issues. Solutions will be forged by negotiating, not litigating.

Yours very truly,



David K. Wilson

- c. Jack Greydanus, CHEP
- Giuseppe Caminiti, CHEP
- Scott Snider, Turkstra Mazza
- Bob Guy, OBHECC
- William Bearss, OBHECC
- Geri Kamenz, OFPMC
- Pierre Brosseau, Belanger Longtin
- Madeleine Lemieux, Paradis Lemieux Francis
- John Kapteyn, OBCHEPA
- K. Robin Horel, CPEPC, CHF
- Susan Mallet, CPEPC
- John Les, BCFIRB
- Casey Langbroek, BCBHEC
- Geoff Spurr, Wilson Spurr
- Henk van Steenbergen, SBHEPMB
- Jake Wiebe, MCP
- Ashley Rietveld, AHEP
- Laurent Pellerin, FPCC