



July 14, 2015

The Registrar
Farm Products Council of Canada
Central Experimental Farm
960 Carling Avenue
Building 59
OTTAWA ON K1A 0C6

Dear Registrar:

Please accept this formal complaint pursuant to clause 7(1)(f) of the *Farm Products Agencies Act* (FPAA) and clause 5(b) of the Farm Products Council of Canada's (FPCC) Interim Complaint Guidelines from the Agri-Food Council of Saskatchewan (AFC) regarding the A-133 allocation decision made by the Chicken Farmers of Canada (CFC). AFC complains about the following issues:

- (1) That CFC used a new growth quota distribution mechanism (GQD mechanism) to distribute growth quota to the provinces without support from all twenty signatories to the Operating Agreement (OA), and that by setting allocation using this new mechanism, if that allocation is approved by FPCC, would result in economic loss to Saskatchewan in the form of lost chicken production and an undersupplied processing sector; and
- (2) That CFC does not appear to have established any written formal allocation protocols for setting national allocations. The lack of formal written protocols raises serious concerns with the transparency and legitimacy of the entire allocation setting process. It has created confusion around the CFC table with its members and raises serious questions about the overall governance and leadership of the organization. The absence of formal protocols has resulted in unequal treatment and has not allowed provinces to fully participate in the allocation process.

AFC is affected by these issues because, as outlined below, they raise serious concerns regarding the validity and applicability of the Federal-Provincial Agreements (FPA) and other subsequent agreements in the actual operation of the

supply management system. CFC's decision to move forward with the application of a proposed GQD mechanism with the full knowledge that more than one signatory is unable to support such a mechanism at this time raises serious concerns about the ability of provinces, in this case Saskatchewan in particular, to be heard within the supply management system. It 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 the long-term stability of the national system.

Regarding the second issue, the CFC's failure to follow a transparent decision-making process in accordance with its own by-laws has serious implications for the ability of a participant at the CFC table to adequately and appropriately prepare for CFC allocation meetings. AFC was unable to discuss any proposed changes with our provincial commodity board or to provide advice on how to proceed. This impacted the ability of AFC to fulfill its role as a supervisory board.

Issue #1: Use of the Proposed Amended OA and GQD Mechanism

The supply management system is based upon mutual cooperation and agreement between all signatories to the OA. This is the only way that the system can be maintained long-term, as it is the only way to ensure that the unique needs of each member province are being considered and addressed. The OA is the critical document to ensure this occurs. If the importance of negotiation and consultation with the provinces or the OA itself is diminished, the system as a whole is diminished, and inevitably will fall apart.

Recently, CFC proposed an amended OA that incorporated a new GQD mechanism. This new mechanism would impact the industry in every province and the provincial policies that govern those industries. Initially, CFC sought the participation of the provinces, and there was some initial success as the amended OA received the tentative support of the ten provincial marketing boards. At this point, it is our understanding that two provincial marketing boards have yet to agree to sign the amended OA which includes this proposed new mechanism.

However, since A-127 and including A-133, CFC has been using a new GQD mechanism to determine provincial quota. This is contrary to the practice in place since approximately 2005 of distributing new growth quota *pro rata*. In using this new proposed GQD mechanism without first obtaining the approval of the twenty

OA signatures, CFC has bypassed meaningful negotiations with the provinces, and thereby has diminished the system as a whole.

AFC has stated formally on two occasions that it is not in agreement with the proposed amended OA and the use of the proposed new GQD mechanism in its current form¹ as it does not address the needs of the chicken industry in Saskatchewan, nor those of Canada's chicken industry overall. The British Columbia Farm Industry Review Board also has stated that it is not in a position to approve the proposed amended OA². There is an ongoing appeal in British Columbia regarding the use and appropriateness of the proposed amended OA and new GQD mechanism. This appeal has been put on hold while the industry in the West – producers and processors – work to find solutions to processor-raised issues with the agreement. From our understanding, producers and processors have made significant progress in their efforts.

Additionally, given the difficulty CFC has experienced in determining a method for measuring the proposed further processing component of the GQD mechanism, it has become clear that the use of that variable is not possible as intended.

Nevertheless, CFC has continued to use and FPCC has continued to approve the proposed new GQD mechanism to set allocations. In the FPCC's June letter to Mr. David Janzen regarding the approval of the A-132 allocation, FPCC stated that it believes the proposed new GQD mechanism is consistent with article 1.01 of the FPA which states:

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.

¹ Council letter to Mr. David Janzen, dated April 28, 2015: "Council has decided not to approve any proposed amendment to the Operating Agreement that includes the parameters set out in the November 2014 MOU." This statement was reiterated in a letter to Mr. Janzen dated June 4, 2015.

² British Columbia Farm Industry Review Board letter to Mr. Mike Dungate dated June 19, 2015.

However, it is the position of AFC that the use of the proposed new mechanism without the agreement of and meaningful negotiations with all signatories harms the industry in Saskatchewan, is contrary to the OA and harms the system as a whole. The use of the proposed new GQD mechanism without proper negotiations with and agreement of all signatories actually fosters the avoidance of the consideration of the questions that relate to the objectives posed in article 1.01 of the FPA and that work to prepare the industry for the future, while encouraging proactive solutions to strengthen the industry today. This is contrary to section 21 of the FPAA:

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.

In the FPCC's June letter to Mr. David Janzen regarding the approval of the A-132 allocation, FPCC conveyed its position that the use of the proposed new GQD mechanism was "part of an ongoing process to arrive at a provincial distribution methodology which is more reflective of section 23(2) of the FPAA".

While AFC understands that any new GQD mechanism agreed to by all signatories will likely contain a different approach to comparative advantage, it is not appropriate for CFC or FPCC to bypass critical negotiations and consultations to impose, in CFC's view, a better application of comparative advantage. This is especially so when opposition to the proposed comparative advantage mechanism has been clearly expressed.

Even if using the best GQD mechanism was required by the FPAA, CFC is not in the position to single-handedly determine what that mechanism is. This decision can only be made through cooperative negotiations and consultations between CFC (including downstream parties) and all provincial signatories. It is not appropriate, nor is it in accordance with the purposes of the FPA or FPAA, for CFC to impose its view of comparative advantage on the group as a whole. Saskatchewan is committed to continuing cooperative negotiations and consultations with all signatories and CFC to come to an agreement that considers the needs of each province and the system as a whole.

The continued use of the proposed new GQD mechanism raises concerns with all FPAs and their associated OAs and the willingness of national agencies to honour the commitments made in those agreements. CFC's unilateral imposition of the proposed new GQD mechanism should raise concerns for all signatories and for FPCC.

Relief Sought Regarding Issue #1

Clause 7(1)(d) of the FPAA requires FPCC to review all orders and regulations that are proposed to be made by agencies that are necessary for the implementation of the plan. Clause 7(1)(f) of the FPAA grants FPCC the power to make inquiries and to take such actions within its powers as it deems appropriate in relation to any complaints received.

AFC requests the following relief in regards to the use of the proposed new GQD mechanism by CFC:

1. That FPCC not approve allocation A-133, as the use of the proposed new GQD mechanism is not supported by all signatories, as has been communicated on more than one occasion, and that FPCC direct that the allocated growth quota be distributed *pro rata*, as was the agreed-upon process prior to the use of the proposed new GQD mechanism.
2. That FPCC direct CFC that all future growth quota be distributed *pro rata*, as was the agreed-upon process prior to the use of the proposed new GQD mechanism, until such time as an alternative, mutually acceptable mechanism is derived.
3. As an alternative to 1 and 2, that FPCC directs 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. CFC has stated in a formal letter to Saskatchewan that the use of the proposed new GQD mechanism is "non-binding"³, and therefore it would not be appropriate for Saskatchewan to incur any penalties resulting from declining to use the proposed new GQD

³ Letter to Council from Mr. David Janzen dated January 28, 2015: "we are proceeding on the clear understanding that the MOU is not binding on CFC and on provincial boards" (page 2).

mechanism.

4. That FPCC direct CFC to resume meaningful negotiations with all signatories and work towards mutual agreement among all signatories on a new GQD mechanism and a new direction forward.

Issue #2: Change in Allocation Setting Procedures

Until the A-133 allocation meeting, there has been a three-step process to conclude the process of setting allocation. First, a straw vote confirming a supportable national allocation motion is passed. Second, CFC staff generates provincial allocation numbers based on the straw vote. Representatives from each provincial marketing board would then confirm that the CFC-generated provincial allocation numbers are accurate given the proposed national allocation. This confirmation must be provided by each of the provinces before moving forward. Lastly, a formal vote to support or reject the proposed national allocation is held.

At the A-133 CFC allocation meeting, CFC staff or executive unilaterally altered this process. Instead of three distinct steps, the second step was omitted. This is a fundamental change to the nature of allocation setting. In the three-step process, without consensus regarding the proposed provincial allocation numbers an allocation can not be set because the proposed allocation would not proceed to the formal vote. This means a province cannot not be forced into an allocation that would be detrimental to its provincial industry. The three-step process promotes cooperation between the provinces and CFC and works to foster stability within the system.

However, in the process unilaterally determined by CFC staff or executive for the setting of A-133, the second step was omitted and the matter proceeded directly to the formal national allocation vote, which can pass by a double majority vote (section 3.09 of the OA) resulting in a signatory province that is not in agreement with the allocation being forced to be subject to that allocation despite potential detriment to its provincial industry.

Such a fundamental process change should be a policy decision. CFC's General

By-laws (section 37)⁴ states:

Where appropriate, the Executive or any other committee of CFC shall make recommendations concerning policy options presented by the 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 procedure was not followed.

Through a comprehensive exploration of CFC's policies posted on its Online Business Initiative website, AFC staff was unable to locate a formal, written procedure for setting allocation at the allocation meeting. In the absence of formality, adhering to the previously agreed to convention takes on additional importance. Given the critical nature of the allocation process to the industry as a whole and to the practical operation of the OA, CFC, in consultation with the provinces and downstream parties, should develop clear, formal, written procedures for determining allocation.

Relief Sought Regarding Issue #2

Clause 7(1)(f) of the FPAA grants FPCC the power to make inquiries and to take such actions within its powers as it deems appropriate in relation to any complaints received.

AFC requests the following relief in regards to the unilateral alteration of the allocation process at A-133:

1. That FPCC not approve CFC's proposed allocation for A-133 as the standard three-step process to conclude allocation setting was changed unilaterally.
2. That FPCC direct CFC to comply with its existing protocol for revising its policy with respect to the process for setting allocations and that the revised process be written down and available to all CFC board members and OA signatories. That is, that the CFC policy committee review the existing policy

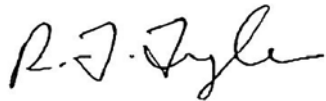
⁴ Accessed through the CFC's Online Business Initiative on July 9, 2015.

and provide proposed changes to the CFC board prior to the CFC meeting at which the proposed changes are to be implemented. The CFC board will discuss the proposed policy changes and either adopt the proposed changes or send the proposal back to the policy committee with recommendations and suggestions. This process continues until a new policy can be set through a majority vote of all CFC board members. The resultant approved written policy would then be made available to all CFC members and OA signatories. This process should be followed in the amendment of any CFC policy.

We have copied the CFC chairman, Mr. David Janzen, and Executive Director, Mr. Mike Dungate, on this complaint, along with all other signatories to the FPA and other Saskatchewan industry parties.

Should you require more information regarding this complaint, please contact Corey Ruud, General Manager of the Council, at 306-787-5978 or corey.ruud@gov.sk.ca.

Sincerely,



R.T. Tyler
Chair, Agri-Food Council

cc: The Honourable Gerry Ritz, Minister of Agriculture and Agri-Food Canada
Honourable Lyle Stewart, Minister of Saskatchewan Agriculture
Honourable Norm Letnick, Minister of British Columbia Agriculture
Honourable Rachel Notley, Minister of Alberta International and
Intergovernmental Relations
Honourable Oneil Carlier, Minister of Alberta Agriculture and Forestry
Honourable Ron Kostyshyn, Minister of Manitoba Agriculture, Food and Rural
Development
Honourable Jeff Leal, Minister of Ontario Agriculture, Food and Rural Affairs
Honourable Pierre Paradis, Ministre of Québec Agriculture, Pêcheries et
Alimentation

Honourable Jean-Marc Fournier, Ministre délégué aux Affaires
intergouvernementales canadiennes du Québec
Honourable Rick Doucet, Minister of New Brunswick Agriculture, Aquaculture
and Fisheries
Honourable Keith Colwell, Minister of Nova Scotia Agriculture
Honourable J. Alan McIsaac, Minister of Prince Edward Island Agriculture and
Forestry
Honourable Derrick Dalley, Minister of Newfoundland and Labrador Natural
Resources
Honourable Keith Hutchings, Minister of Newfoundland and Labrador
Municipal and Intergovernmental Affairs
Ms. Alanna Koch, Deputy Minister, Saskatchewan Ministry of Agriculture
Mr. Laurent Pellerin, Chairman, Farm Products Council of Canada
Mr. John Les, Chairman, British Columbia Farm Industry Review Board
Mr. Bruce Beattie, Chairman, Alberta Agricultural Products Marketing 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
Ms. Diane Pastoor, Chairperson, Chicken Farmers of Saskatchewan
Mr. David Janzen, Chairman, Chicken Farmers of Canada
Mr. Robin Smith, Chairman, British Columbia Chicken Board
Ms. Erna Ference, Chairperson, Alberta Chicken Producers
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
Mrs. Ruth Noseworthy, Chairperson, Chicken Farmers of Newfoundland and
Labrador
Mr. Jeff McDowell, Vice President of Poultry Operations, Sofina Foods Inc.
Mr. Ron Patterson, CEO, Prairie Pride Natural Foods Ltd.

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Mr. Clinton Monchuk, CEO, Chicken Farmers of Saskatchewan
Mr. Mike Dungate, Executive Director, Chicken Farmers of Canada
Mr. Corey Ruud, General Manager, Agri-Food Council