

**B.C. FARM INDUSTRY REVIEW BOARD
SUPERVISORY REVIEW OF B.C. TURKEY MARKETING BOARD
TURKEY ALLOCATION TO B.C. PROCESSORS**

JANUARY 26, 2006

INTRODUCTION

1. In May and October 2005, the British Columbia Farm Industry Review Board (BCFIRB) received two appeals concerning the allocation of turkey production to B.C. turkey processors and turkey brokers (processors). One appeal was from Lilydale Co-operative Ltd. (Lilydale) and the other from Rosstown Farms Ltd. (Rosstown). Lilydale was concerned about the reallocation of existing production to new turkey processors. Rosstown intends to become a new processor. Other B.C. processors also expressed concerns regarding the availability of turkey production for their operations. A third appeal, by J.D. Farms Ltd. (JD Farms) was directly tied to this matter as its quota transfer was frozen by the British Columbia Turkey Marketing Board (Turkey Board) pending the outcome of the Rosstown and Lilydale appeals.
2. In accordance with s. 8(8) of the *Natural Products Marketing (BC) Act (Act)* and with the agreement of Lilydale, Rosstown and the Turkey Board, BCFIRB deferred considering the appeals and instead undertook a supervisory process which was deemed more appropriate in the circumstances. It was the intention of all parties to use this process to see if it might be possible to reach agreement on an allocation decision.

SUPERVISORY REVIEW PROCESS AND THE POSITION OF INTERESTED PARTIES

3. The supervisory review was undertaken by a panel of three BCFIRB members. In a letter sent to the interested parties on November 30, 2005 by fax or e-mail, BCFIRB stated, in part:

The supervisory process will be conducted as follows:

1. The meeting has been scheduled for 9:30 a.m. to 4:00 p.m. on Tuesday, December 6, 2005, in the Fitzgerald Room, Hilton Vancouver Airport Hotel, 5911 Minoru Boulevard, Richmond. A breakout room will also be available.
 2. The meeting will not be a “mediation”, however, the discussions will be held “without prejudice” to the rights or positions of any party or intervenor in respect of the appeals. If the appeals proceed, they will be heard by a panel of the Provincial board consisting of a member or members not involved in the supervisory review. The discussions in the supervisory process will not be “without prejudice” as it relates to the supervisory process itself and any order that the Provincial board may ultimately make in that regard...
4. This letter was sent to Ron Charles, Chair, Turkey Marketing Board; K&R Poultry Ltd. (Farm Fed); Lilydale; Rosstown; Sunrise Poultry Processors Ltd. (Sunrise);

B.C. FARM INDUSTRY REVIEW BOARD

Supervisory Review of Turkey Marketing Board Allocation to B.C. Processors

Superior Poultry Processors Ltd. (Superior); Ireland Farms; Island Farmhouse Poultry Ltd.; JD Farms; Julia Nieson; Somerset Farms; South Peace Colony; Van Diemen Turkey Farm Ltd.; Wingtat Game Bird Packers Inc.; and Garnet Etsell, President, British Columbia Turkey Association (BCTA). The BCTA is the provincial turkey producer association.

5. A general meeting was held on December 6, 2005 with the BCFIRB panel, the Turkey Board, turkey processors both existing and new, and with representatives of the BCTA present as observers. The purpose of the meeting was for BCFIRB to attempt to facilitate an agreement between the Turkey Board and the processors on how product was to be allocated to processors. Two side issues were also discussed: the Rosstown request to process their own turkey production, and the freeze on quota transfers as it affects JD Farms and others.
6. The Turkey Board gave a review of the current and projected B.C. turkey allocation. The processors and the BCTA gave brief presentations on their issues and positions. The recurring theme throughout the presentations was that every processor wanted more product allocated to them. Lilydale, who has historically processed between 92-98% of B.C. turkey supported assurance of supply to processors. Most others did not. It was clear that there was no agreement on how product was to be allocated. All parties present at the meeting were given the opportunity to submit further written briefs to the Turkey Board and the BCFIRB panel giving any further information they wished to convey¹. It was decided at this time to have another opportunity to reach an industry-generated agreement and a further meeting was scheduled for January 4, 2006.
7. During the December 6, 2005 meeting, the Turkey Board withdrew to discuss extending the deadline for submission of grower programs to February 28, 2006 for the five farms involved in the Rosstown and JD Farms appeals tied to the supervisory process: Rosstown, Wiebe Holdings Ltd., JD Farms, Coppertone Farms Ltd. (Coppertone) and V&H Holdings. Extensions were granted for these farms.
8. The BCFIRB panel met with the Turkey Board on December 20, 2005 to further discuss the issues and written submissions they had received and attempt to reach an agreement.
9. BCFIRB, by way of a letter dated December 21, 2005 to Ron Charles, Chair of the Turkey Board, instructed the Turkey Board to ensure that stakeholders and other interested persons in the B.C. turkey industry were advised of the status, timelines and implications of this review by BCFIRB. The Turkey Board was directed to ensure that the letter was posted on its website and, in addition, communicated by

¹ Submissions were received from Superior (December 11), Lilydale and Sunrise (December 12), and Rosstown and Farm Fed (December 13).

B.C. FARM INDUSTRY REVIEW BOARD

Supervisory Review of Turkey Marketing Board Allocation to B.C. Processors

e-mail or fax to all processors, brokers, producers and specialty producers by the end of the day on Friday, December 23, 2005. The BCFIRB letter stated in part:

1. Review of Allocations to BC Turkey Processors. BCFIRB commenced this supervisory review in response to appeals filed by Lilydale Co-operative Ltd. ("Lilydale") and Rosstown Farms Ltd. ("Rosstown") concerning allocations of production to BC turkey processors. A third appeal by J.D. Farms Ltd. ("JD Farms") and others is also being addressed via this process as a result of a quota transfer impacted by the Turkey Board's freeze on such transfers pending the outcome of the Lilydale and Rosstown appeals.

BCFIRB is reviewing the allocation issue via a process of consultation with the Turkey Board, turkey processors and the BC Turkey Association. BCFIRB is attempting to facilitate an agreement between the Turkey Board and the processors. However, should an agreement not be possible BCFIRB will issue a supervisory decision not later than January 15, 2006, providing a directed outcome with respect to the allocation of turkey to BC processors...

10. All parties reconvened on January 4, 2006. It was clear from the outset that it would be difficult for the participants to come to an agreement as there was considerable entrenchment of positions. In the absence of a general agreement, it became obvious that decisions would have to be made by BCFIRB. All parties were given the opportunity to meet individually and privately with the BCFIRB panel members and reiterate their positions and communicate any further information that they may have felt constrained mentioning in an open meeting as well as to suggest any possible solutions.
11. While the individual meetings were taking place with the Panel, the Turkey Board came up with a proposed solution to the allocation of supply which they subsequently proposed to the meeting as a whole. This proposal consisted of a historical base allocation to processors with producers able to transfer 10% of their production to another processor each year, so that at the end of 10 years, their entire allocation would be processed by the new processor. Some objections and many questions were raised regarding this proposal, so the Turkey Board agreed to e-mail it to everyone present after the meeting and allow them to make written submissions on their reaction to it.
12. This process was confirmed in a letter from BCFIRB sent to the parties January 6, 2006, and indicating that the parties would have until January 9, 2006 to provide comments on the Turkey Board proposal. The parties were also invited to provide their own proposals or submissions on the issue in general².
13. The BCFIRB panel met with the Turkey Board on January 5, 2006 to further discuss possible solutions to the issues.

² Submissions were received from Rosstown (January 6) and Lilydale, Superior, Sunrise and Farm Fed (January 9).

DECISION

14. As noted in BCFIRB's February 21, 2005 decision in Lilydale et. al. v. the British Columbia Chicken Marketing Board.
88. ...Where every processor has access to all the production it can sell to its markets at an appropriate price point, it is difficult to envision complaints about relative market share per se. The real impact ... on processors arises where BC's allocation does not provide all the production that processors can sell.
99. ...it is one thing for companies to procure production when there is no monopoly on production. When supply is regulated as here, and especially when supply is short, competition to procure supply can easily become an industry preoccupation at the very time that processors should be focusing their efforts on serving and maintaining markets.
15. These passages apply with equal force to the circumstances at hand.
16. In this review, the positions of the parties were diametrically opposed. All of the parties stated their cases strongly. The Panel is well aware that no solution proposed will suit all parties, and in fact, may suit no one. It was our wish that the industry could come to some mutual agreement on processor allocation. However, as this has yet to be achieved, a policy choice must be made between difficult options. We have made this policy decision according to our best assessment of what will best serve the interests of the turkey industry as it stands today. That may well change in time.
17. The first issue to be discussed is assurance of supply. A common theme during the meetings held for this supervisory review was the shortage of turkey available to B.C. processors. It was noted that B.C. does not produce anywhere near its consumption amount and there is a chronic lack of supply for processors, resulting in competition for supply. Potential resolutions range between two options: an assurance of supply to processors based on historical production, and a free-for-all where processors sign up producers and make the most of the supply which they receive. Both options have pros and cons.
18. The Panel has decided on a combination of the two options. Our supervisory order and directions³ are as follows:
- Commencing quota year 2006/07 and for each quota year thereafter, each processor will receive a base share⁴ of the supply of live turkey in that respective quota year based on 2005/06 production:

³ These were provided in draft to the parties on January 13 and response submissions were received from Sunrise and Rosstown (January 16), the Turkey Board (January 17), Lilydale (January 18) and Superior (January 19).

⁴ This base share is fixed and is not to be interpreted as an entitlement to a certain percentage of future provincial allocation.

B.C. FARM INDUSTRY REVIEW BOARD

Supervisory Review of Turkey Marketing Board Allocation to B.C. Processors

JD Farms	624,019 kilos live weight
Lilydale	17,152,150 “ “ “
Sunrise	679,098 “ “ “
Rosstown	679,097 “ “ “
Superior	1,816,408 “ “ “
Farm Fed	50,000 “ “ “
Sundry others	249,228 “ “ “
Total	<u>21,250,000 “ “ “</u>
Converted at 82.547% to eviscerated	<u>17,541,237 kilos evis weight</u>

19. Other quota, such as export re-grow quota, multiplier breeder quota and breeder by-product quota are not included in the establishment of the base supply.
20. We note s. 5.4 in our September 1, 2005 Specialty Review directions as they apply to the allocation of B.C. turkey production. These directions require the Turkey Board to establish principles and procedures for distributing to producers the provincial allocation received from the Canadian Turkey Marketing Agency (CTMA) in support of the different quota classes (i.e., specialty and mainstream) based on differential market growth. Future allocation to quota classes will be prior approved by BCFIRB with “approval based on the (Turkey Board) demonstrating how the decision meets the allocation criteria or principles”. Allocation of growth to producers within those classes will be on a pro rata basis.
21. Subject to paragraphs 20 and 25, future increases in supply to existing and prospective processors over the base numbers listed in this decision will be available based on signed grower programs submitted to the Turkey Board by December 31 of the year preceding the start of the new quota year. The Panel expects the Turkey Board, producers and processors to work together to ensure that B.C. processors are receiving the type of production needed to meet their market requirements.
22. Any redistribution in supply as a result of the downsizing or exiting of an existing processor will be based firstly, on differential market needs established by the Turkey Board’s allocation criteria developed in accordance with BCFIRB’s September 1, 2005 directions; and secondly, by the requirement to address any outstanding amount of base allocation to Sunrise and Rosstown in accordance with paragraph 25. Once these considerations are satisfied, available supply will be redistributed in accordance with paragraph 21.
23. It is understood that from time to time processors, as appropriate within the above parameters and in accordance with Turkey Board orders, may enter into contractual relationships with each other in order to conduct their business.
24. We do not consider it necessary to make a supervisory order regarding the means of dealing with any potential decrease in provincial allocation as we do not consider

B.C. FARM INDUSTRY REVIEW BOARD

Supervisory Review of Turkey Marketing Board Allocation to B.C. Processors

this to be a live issue on this review or likely to become an issue in practice. In the unlikely event a decrease was to occur, it would be open to the Turkey Board to address.

25. There are two further issues to be determined by this supervisory review. The first is the existing Rosstown application to process its own turkey supply and the impact on the current purchaser of its product, Sunrise. It is our decision that the Sunrise and Rosstown base allocations in paragraph 18 will each increase by 676,100 kgs live weight subject to paragraph 28. The increase in their base allocations will commence in the 2007-08 quota year at which time each will be eligible for 25% of the kgs live weight growth in supply available (in accordance with the criteria established in paragraph 20) to B.C. turkey processors in a quota year until each has received their increase of 676,100 kgs.
26. This decision with respect to the Rosstown and Sunrise allocations referred to in paragraph 25 is subject to:
 - a. Rosstown having a processing plant completed prior to the 2007-08 quota year; and
 - b. Rosstown receiving a processor licence from the Turkey Board prior to the 2007-08 quota year.
27. Rosstown requested in its submissions that BCFIRB order the Turkey Board to issue Rosstown a processor licence at this time. The Panel does not consider it necessary to make such an order at this point but does direct the Turkey Board to complete its consideration of Rosstown's application within 21 days. This decision must be made having regard to the matters addressed in this supervisory order. If Rosstown is not provided a processor licence at that time, it will have the right to again pursue that issue as an appeal before BCFIRB.
28. If Rosstown does not meet the requirements referred to in paragraph 26 by the times noted, Rosstown's 2006-07 base allocation of 679,097 kgs live weight reverts back to Sunrise effective the 2007-08 quota year. Thereafter should Rosstown enter the industry as a processor, it will be governed by paragraph 21.
29. The second issue under review is that of the quota transfer of JD Farms, Coppertone, and V&H Holdings. The Panel is of the view that these transfers should have gone ahead regardless. It does not seem fair that they should have suffered from the appeals of Lilydale and Rosstown given that the amount of quota in question was small and did not have a significant impact on the industry as a whole. This transfer also results in Farm Fed's base allocation of 50,000 kgs commencing the 2006-07 quota year.

B.C. FARM INDUSTRY REVIEW BOARD

Supervisory Review of Turkey Marketing Board Allocation to B.C. Processors

30. On a further note, the topic which was raised repeatedly, and indeed, which precipitated this supervisory review, is the fact that B.C. processors do not have all the turkey that they need to fill their market requirements. B.C. only produces a fraction of the turkey that it consumes. The Turkey Board has been attempting for some time to obtain increases to B.C.'s allocation. The Ministry of Agriculture and Lands and BCFIRB have supported the Turkey Board in these efforts but, by and large, B.C. processors have been mostly notable by their absence.
31. We recommend that the processors get onside with the Turkey Board and join them at the national negotiations to increase B.C.'s share of allocation. It is in the interests of all concerned in the industry that B.C. produce and process more turkey. Negotiations reflecting a united position and addressing specific marketing requirements are more likely to be successful.
32. In its January 17, 2006 submission, the Turkey Board questioned whether BCFIRB "could be committing the (Turkey Board) to a course of action that it may not be able to follow through on when the CTMA gets their approval of a quota order." Nothing in this order commits the Turkey Board to a course of action that would be inconsistent with any CTMA allocation policies applicable to it under the *Natural Products Marketing (BC) Act* and the *British Columbia Turkey Marketing Scheme*. If we are wrong in that conclusion, then the *Act* and *Scheme* would of course take precedence over this decision.
33. We feel compelled to reiterate that the issues leading to this BCFIRB review would not exist if B.C. was receiving the allocation from CTMA necessary to meet its processors' marketing requirements. The Panel considers that the 17.5 M/kgs used for the base allocation in paragraph 18 to be a bare minimum which still does not adequately serve the needs of the processors, further processors and specialty markets of the province. If future allocations from CTMA do not meet the requirements for existing and growth markets in the B.C. turkey industry, we strongly suggest the Turkey Board and other industry stakeholders discuss pursuing other options available to the province.
34. We would like to acknowledge that this is a more detailed decision than may be customary in terms of making specific allocation decisions that would normally be made by an individual marketing board. While we have considered it necessary to provide this direction in the context of this case, having dealt with the issues in this dispute, we expect that in future, these particular matters will be dealt with by the Turkey Board after full discussion with all industry players.
35. In summary, these supervisory directions:
 - a. are consistent with our September 1, 2005 directions to all B.C. supply managed boards regarding the requirement for them to develop principles and criteria for the allocation of production in the province;

B.C. FARM INDUSTRY REVIEW BOARD

Supervisory Review of Turkey Marketing Board Allocation to B.C. Processors

- b. provide each existing processor with a set base calculated from their 2005/06 actual production;
- c. address the unique circumstances presented by the entry of Rosstown as a processor;
- d. encourage the B.C. turkey industry to work together in securing increased national allocation for the province; and
- e. provide opportunity for future growth for existing and prospective B.C. processors.

OUTSTANDING APPEALS

36. Given the decision above, it appears that some of the underlying issues which lead to these appeals have been addressed. BCFIRB would invite the parties to the appeals to advise within 15 days if they believe there are any other outstanding issues that may still warrant consideration by way of appeal.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



Richard Bullock,
Chair