

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Supervisory Review Re: Chicken Operating Agreement Amendments

MAY 11, 2016 FINAL SUBMISSIONS OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD

1. The British Columbia Chicken Marketing Board (“Chicken Board”) makes these final submissions in response to the April 27, 2016 submissions.
2. While the voluminous materials submitted by the parties to this Supervisory Review covers a wide range of topics, three fundamental themes emerge from the evidence and submissions:
 - (a) First, no party contests that continued participation in the national operating agreement is in the interests of British Columbia’s chicken industry. It is from this fundamental premise that the Chicken Board’s approach to the negotiations and decision-making in connection with the proposed amendments has proceeded;
 - (b) Second, it cannot be seriously suggested on the record in this Supervisory Review that the Chicken Board in its conduct of the negotiations failed to properly take into account the interests of all industry stakeholders, including processors. To the contrary, the evidence discloses extensive consultation by the Chicken Board with both growers and processors and an ongoing search for solutions to address concerns raised;
 - (c) Finally, the best view of the evidence in this Supervisory Review is that adoption of the current proposed amendments is in the interests of British Columbia.

Participation in the national operating agreement is in the interests of the BC industry

3. It is not—and cannot be—contested by any party that British Columbia’s continued participation in Federal-Provincial Agreement on Chicken and the national operating agreement is in the interests of British Columbia.
4. An important example of the benefit to British Columbia of maintaining its participation in the national plan is the recent accommodations received by the BC industry in respect of specialty production.¹
5. More generally, the Chicken Board is of the view, and it does not appear from the submissions that there is any serious contrary view, that the participation of all provinces in the national plan, is in the interests of the chicken industry as a whole, including the BC industry. Alberta’s contemplated exit from the national plan if no amending agreement can be reached would particularly impact British Columbia due to geography

¹ See Affidavit of William Vanderspek at para. 20-21

but would negatively affect the effectiveness of the national plan for the national industry as a whole.

6. Maintaining a unified position nationally across the chicken industry is particularly important in an international environment, including the recent negotiation of the Trans-Pacific Partnership, in which the basic tenets of supply management may be at risk.

The negotiation process took into account the interests of all stakeholders

7. While the processors complain about the process followed by the Chicken Board in negotiating the proposed amendments, the evidence of the Chicken Board, including voluminous minutes of meetings with PPAC and other groups including processors disclose a high level of consultation with processors.² The growers acknowledge in their submission that the Chicken Board's consultation with them was adequate and that adoption of the resulting agreement is in the province's interests.
8. That one stakeholder ultimately was dissatisfied with aspects of the proposed amendments to the operating agreement does not undermine the fairness of the process followed by the Chicken Board in its consultation with stakeholders. The relevant inquiry is whether the stakeholders' perspectives were heard and taken into account in the Chicken Board's process and decision-making in the context of the lengthy negotiations. The record here is clear that they were.
9. While the process leading up to the signing of the memorandum of understanding was itself fair and took into account the interests of all industry stakeholders, including the processors, the record discloses that the Chicken Board continued to make efforts to negotiate accommodations at the CFC table that would address the processors' concerns and further strengthen the consensus emerging around the proposed amendments.
10. An important example of BCCMB's continued efforts to find an accommodation for the expressed concerns of the BC processors is its support for the formulation and adoption of the Differentiated Regional Allocation method. While there appears, from the processors' evidence to have been some misunderstanding on the part of the processors about the process for presentation of this proposal favoured by the processors at CFC,³ there is no question that this proposal was made and supported by the Chicken Board at

² See Affidavit of William Vanderspek at Ex. 2-15

³ Although we note that the affidavit evidence of the processors (including the affidavit of Jeff McDowell at para. 12 and the affidavit of Ron Kilmurry at para. 11-12) confirms that the processors were aware at least the evening prior to the September CFC meeting that the matter would be discussed at the CFC meeting and that they did not have a representative at the meeting due to travel difficulties. There is no suggestion that any effort was made to participate in the meeting by telephone, to provide input in writing or to otherwise ensure their support for the DRA proposal was put before CFC at or after the meeting.

Moreover, it is clear that the processors received minutes of the September CFC meeting that indicated "Feedback on the Western proposal were requested by September 18, to be sent to the Western provincial board managers" (see, e.g. Ex. B to affidavit of J. McDowell) but there is no indication that any of the western processors provided the requested feedback. They attempt instead to blame the Western boards for failing to follow up with them to solicit their feedback (see e.g. para. 13 of affidavit of J. McDowell).

CFC but that it did not gain traction around the CFC table and did not achieve the consensus that would be necessary to include it in the proposed amendments.

11. Another example of the Chicken Board's continued efforts to support potential modifications to the proposed amendments to respond to the processors' expressed concerns is the Chicken Board's successful support for the changes to the special vote provisions of the operating agreement.⁴
12. A final example of the Chicken Board's continued efforts to propose potential modifications of the amendments to address the processors concerns was a recent idea with respect to consideration of kosher chicken allocations⁵ that might address the concerns about Ontario's allocation. While the Chicken Board has floated this idea with certain relevant stakeholders, it is not aware of support for this idea that makes it a viable possible solution and would of course fully consult with relevant stakeholders if it appeared that such a proposal might have the prospect of support from other CFC members.
13. As a general matter, the Chicken Board's conduct throughout the very lengthy negotiations leading to the proposed amendments to the operating agreement disclose repeated consultation with stakeholders, that the Chicken Board maintained an open mind and has continued to look for solutions to address stakeholder concerns throughout and has, where appropriate, championed proposed solutions to address processor concerns. That these proposals were unsuccessful in achieving consensus does not render the Chicken Board's process and approach to the negotiations unfair. The evidence is clear that the Chicken Board and its representatives worked long and hard to attempt to achieve the best possible deal for British Columbia's chicken industry.

Adoption of the proposed amendments is in the interests of BC's industry

14. The Chicken Board remains of the view that adoption of the proposed amendments to the operating agreement is in the interests of British Columbia's chicken industry.
15. It is not seriously controverted that the prior operating agreement is not functioning effectively. Nor is it seriously controverted that at least some part of the responsibility for that fact lies with the BC processors who have failed to provide necessary information to the Chicken Board in order to permit it to effectively participate in a bottom up process.⁶ Moreover, it is not—and cannot be—denied that the continued participation of Alberta in the national plan is of great importance to British Columbia.

⁴ See Affidavit of William Vanderspek at para. 37

⁵ See letter of Jim Collins to parties dated May 6, 2016 and letter of John Hunter to Wendy Baker dated May 9, 2016.

⁶ We note in particular that Mr. Kilmury has sworn an affidavit in which he asserts that allocations since 2004 "have prevented the Western processors from receiving the supply they needed to maintain their market share and serve the growing Western consumer population. . ." (para. 6). (footnote ⁶ continues on next page)

16. The evidence discloses that the current operating agreement is good for British Columbia's chicken industry. As set out in the Chicken Board's previous submissions, its many advantages include the consideration of comparative advantage factors, that it will keep Alberta within the national scheme and that as set out in the expert report commissioned by the BCCMB, it will not adversely affect British Columbia's allocation when compared to the anticipated allocation under the current operating agreement as presently implemented.⁷
17. Most significantly, the current proposed amendments to the operating agreement represent the only proposal to have achieved consensus around the CFC table following a very lengthy and intensive negotiation. While discussion of potential refinements to the proposal may be of academic interest, the practical question before FIRB is whether British Columbia should participate in the national plan to which all other provinces have now agreed.
18. If British Columbia chooses not to adopt the current proposed amendments to the operating agreement, the options will be for British Columbia to leave the national plan or to attempt to re-open the negotiations, with no guarantee that the other provincial stakeholders will be prepared to engage in further discussions at this stage. Even if there were a national appetite to re-enter negotiations, there is no reason to believe on the evidence before FIRB in this Supervisory Review that British Columbia would be able to obtain any further concession that would satisfy the processors.
19. Failure to adopt the current proposal carries with it significant risk that British Columbia's chicken industry will be effectively left out of the national plan with little reason to believe the province's negotiating position will improve. The Chicken Board, following many years of consultation, negotiation and responsible SAFETI-based decision-making, has formed the view that the adoption of the current proposal is in British Columbia's interest. There is no reason from the record in this Supervisory Review based on which FIRB should properly disagree.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: May 10, 2016


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Mr. Kilmury, who was of course Chair of the Chicken Board from 2004 – 2010 and Chair of FIRB from 2010-2013 and accordingly familiar with the difficulties experienced in implementing the current operating agreement during that period, does not dispute that the BC processors failed to provide requested information to the Chicken Board necessary to the effective implementation of the current operating agreement.

⁷ It is also noteworthy that BC consumers are not now nor will they be short of chicken. Based on the 2015 per capita consumption of chicken in Canada the 2015 production of chicken in BC of 159,139,416 kg. exceeded the consumption of 147,698,920 kg. by 11,440,496 kg.