

February 7, 2014

John Les
Chair
British Columbia Farm Industry Review Board
PO Box 9129 Stn Prov Gov't
Victoria, BC V8W 9B5

Dear John:

USE OF REGULATORY AUTHORITY IN DISEASE INSURANCE – JURISDICTION AND SOUND MARKETING POLICY CONSIDERATIONS

In accordance with your predecessor's letter of June 19, 2013, the four poultry marketing boards have completed the joint submission and have attached it for your review and consideration. The boards retained the services of Harvey Sasaki, Agri-Saki Consulting Inc. to prepare the joint submission and assist with the engagement of key stakeholders in the process. As well, the boards have taken into consideration the plebiscites undertaken by the four poultry associations on the mandatory insurance.

The supervisory review set out to assess the jurisdiction and sound marketing policy considerations of the use of regulatory authority in disease insurance. The four boards retained the services of David Wilson and Anna Turinov of Cavanagh LLP to provide an opinion on the authority of the four boards to require producers to carry mandatory poultry insurance against losses from Avian Influenza (AI) and establish a levy to fund these insurance requirements. In summary, their opinion was "the authority vested in the Boards pursuant to the *Natural Products Marketing (BC) Act* can be used to require BC producers to carry AI insurance as a condition of production within the province and to fund that insurance through levies." While the opinion acknowledges that an argument could be made that mandatory insurance is beyond the statutory authority of the boards, "on balance, taking into account the breadth of the legislative scheme, established statutory interpretation principles and the jurisprudence, the better view is that such quota and levy requirements are within the authority of the Boards". The opinion cites case law to support the opinion. The full opinion is included in the joint submission.

With respect to sound marketing policy, the boards have applied good governance practice and assessed the mandatory insurance requirement against the SAFETI principles. Insurance protection against AI is an important strategic consideration for the entire poultry industry given the dramatic impact and effect the 2004 outbreak had on the province.

The insurance is one component of a four-part industry risk mitigation strategy, which includes mandatory biosecurity to minimize the risk of disease; emergency preparedness to dovetail with government systems to quickly respond, contain and eradicate any discovery of Notifiable AI; enhanced surveillance to provide proactive measures to detect the presence of AI to enable control, containment and eradication measures; and finally insurance to adequately compensate for losses resulting from detections through enhanced surveillance measures and to facilitate timely recovery and return to a system of orderly marketing.

The BC poultry industry strategy is also consistent with federal and provincial government agricultural policy direction for business risk management. The poultry industry was encouraged by the provincial Ministry of Agriculture to explore and develop an insurance-based risk management tool. The poultry industry associations demonstrated leadership in taking on greater responsibility for managing risks of the sector. The requirement for mandatory insurance will contribute to program savings to government for future losses associated with AI discoveries.

The boards are satisfied that the proposal contains the requisite accountability measures to ensure that the insurance is based on actuarially sound models, is sustainable and does not adversely affect other risk mitigation measures, such as biosecurity. Concern was expressed that having insurance would reduce the diligence applied by producers in maintaining high levels of biosecurity. Adding mandatory insurance will further reinforce the discipline and rigour required to demonstrate good biosecurity practices. The associations remain committed to evaluate and continue to improve the standards to reduce disease risk.

The industry-owned BC Poultry Captive Insurance Company (BCPCIC) enables the poultry industry in British Columbia to set the terms of insurance based on the needs of British Columbia producers, not needs driven by insurance company shareholder profit motivated interests or poultry producers in other jurisdictions. The BCPCIC will retain any profits for the sole benefit of BC poultry producers.

The boards also consider the proposed mandatory insurance to be fair as the BCPCIC must insure all registered poultry producers. Private sector insurance can be selective and refuse coverage to any producer. Discussions with Hub International Insurance on their poultry disease insurance revealed that it would only cover highly pathogenic AI and not incidents of low pathogenicity AI (LPAI). The inability to cover LPAI is not consistent with the overall risk mitigation strategy and would not facilitate a move to increase the level of disease surveillance in the poultry industry. As well, Hub International representatives and their underwriters would not entertain providing coverage for the entire poultry industry in British Columbia based on not wanting to concentrate their risk in a single geographic location. Their ability to provide disease insurance at a competitive rate would be compromised with having all registered poultry producers in British Columbia holding insurance policies. The presence of Hub

International's product does however provide producers with an option to coverage through the BCPCIC.

The boards also consider the mandatory insurance fair and effective as coverage and cost is directly related to the production costs and lost economic value of production for each sector. Premiums and capitalization costs are based on each sector's share of risk determined by models that simulate expected losses. Lessons learned from the 2004 AI occurrence indicate the need to have plans and funding in place to deal with the challenges to repopulation and recovery in the shortest time possible. In 2004 industry was challenged with 42 infected premises required to meet the Canadian Food Inspection Agency's cleaning and disinfection standards in order to enable the rest of the industry to repopulate. Any one of the 42 premises not proceeding with timely cleaning and disinfection would have resulted in delays in the repopulation and recommencement of production by the entire sector. The cleaning and disinfection coverage provided through the mandatory insurance will alleviate any cost concerns of individuals faced with the higher standards that must be met. This measure facilitates the return to a system of sound marketing in as short of time possible.

The boards also deem the mandatory insurance to be effective in addressing a specific problem, future AI discovery. While some may argue that the boards could hold the funds in reserve to pay for the costs associated with a future AI discovery as being more effective, not all boards have sufficient reserves to meet the potential costs. An insurance-based approach requires the BCPCIC to have sufficient capital available to settle claims and can be achieved through the purchase of reinsurance policies as opposed to tying up capital. As well, reserves are subject to decisions of the directors of the day and do not have the same rigour or discipline as a dedicated insurance fund for the purpose of AI disease loss coverage.

While arguments have been presented in favour of voluntary as opposed to mandatory insurance, the industry has satisfactorily demonstrated the shortcomings and deficiencies of a voluntary approach. While some producers may feel mandatory insurance limits their option and right to freedom of choice, at the same time they enjoy the benefit of a regulated market system that eliminates competition in the production of poultry products. As stated previously, the coverage provided through mandatory insurance, especially for the added costs of cleaning and disinfection to the CFIA standards serves to significantly reduce the potential for one producer to unduly delay the return to a system of orderly marketing.

The administrative costs of the BCPCIC will be in line with industry standards for administration. The BCPCIC will establish performance measures that include administration to premium ratios that are consistent with industry standards. As pointed out through stakeholder engagement, the initial cost of administration in year 1 is higher in any business start-up, however, once the BCPCIC has been operational, Aon Risk Solutions, the captive manager for the BCPCIC has reported that typical administration costs for captives are much lower than for standard insurance companies.

The boards feel that the industry associations and the BCPCIC have demonstrated the utmost in transparency throughout the evaluation and development process for mandatory insurance. There have been numerous written industry updates that have been distributed to producers and allied trades over the past three years (details provided in the joint submission). Additionally, the associations have conducted two separate plebiscites to foster producer awareness and understanding of the insurance as well as provide producers with a voice on the matter. The participation rate in the second plebiscite was unprecedented for an industry vote, 68% for the overall industry, with no sector having less than 60%. The sector support level ranged from 54.1% to 90.2%. The associations used the results of both plebiscites to address producer issues and concerns. The boards do not expect that the results mean that there will not be opposition to the imposition of mandatory insurance, however, it does expect that the BCPCIC and industry associations have a full understanding of the issues, concerns and where the opposition to mandatory insurance is based. It is also expected that the associations will be able to manage such opposition in a manner similar to that experienced with the imposition of mandatory biosecurity standards in 2008.

The boards have considered the inclusiveness of the mandatory insurance; industry associations have done their utmost to be inclusive as demonstrated by their commitment to a transparent process outlined previously. Through stakeholder engagement processors indicated that mandatory insurance will not address their costs and losses, however they also indicated that they would not oppose the proposal as it does have merit from the perspective of facilitating return to production in as short of time possible. Mandatory insurance does not impact consumers directly. There have been no discussions with respect to inclusion of insurance premiums within the cost of production (COP) models.

From an administrative fairness perspective, the boards posted the joint submission on their web sites, notified producers and allied trades in early December and requested feedback and comment by early January. Two written responses were received and are included in the joint submission. The boards have considered the comments that were in opposition to mandatory insurance and are of the opinion that the considerations as described above under the SAFETI principles can serve to mitigate these concerns. In addition, the opinion provided by Cavanagh LLP provides the legal basis that would further address the concerns. The boards will continue to be open to receipt of any further comments or feedback from the industry and duly consider such comments. It is the boards' understanding that FIRB, through the supervisory review process will entertain further comment and that the boards will be required to consider and respond accordingly.

The boards have also endorsed Agri-Saki Consulting Inc.'s efforts to proactively engage the allied trades to seek out any further issues or concerns. The results will be filed with FIRB separately at a later date.

John Les
January 30, 2014

The boards believe that the supervisory review process and joint submission is directed at managing risks associated with implementing mandatory insurance. The predominant risk with any decision by the boards to implement mandatory insurance for avian influenza is a challenge to the decision through an appeal of the legal authority of the boards. The boards view the opinion provided by Cavanagh LLP as providing the basis for a successful defense of such a challenge given the citation of case law in support of the authority being inherent in the legislation. A further risk considered by the boards is the ability of the four associations to be able to work collectively and collaboratively together to establish the captive. The four sector associations and the BC Poultry Association have provided the required leadership and maintained the resolve to work together recognizing the interdependence of all poultry sectors. It has been accepted by the industry that an AI discovery on a hatching egg operation will impact the other three sectors owing to not only the linkage between sectors but also the close proximity of the various types of poultry enterprises.

The supervisory review has been a positive exercise and has also resulted in the accumulation and consolidation of all relevant information, data and documents. The boards are open to further questions on the joint submission and also encourage your staff to work with Harvey Sasaki in their review. Mr. Sasaki has the knowledge and experience, not only from the preparation of the joint submission, but also first-hand experience in managing each of the three avian influenza occurrences in British Columbia in his past capacity as Assistant Deputy Minister in the Ministry of Agriculture. Mr. Sasaki has also been instrumental in supporting the industry in facilitating the development of the insurance product.

The boards appreciate the action taken by FIRB and look forward to an expeditious decision despite the volume of information generated.

Yours truly, (signed in counterpart)

Casey Langbroek
Chair
BC Broiler Hatching Egg Commission

Robin Smith
Chair
BC Chicken Marketing Board

Richard King
Chair
BC Egg Marketing Board

Ralph Payne 
Chair
BC Turkey Marketing Board

c.c. Harvey Sasaki, Agri-Saki Consulting Inc.
Garnet Etsell, Chair, BC Poultry Captive Insurance Company Inc.
Derek Sturko, Deputy Minister, Ministry of Agriculture