

## **BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

### **Supervisory Review Re:**

### **Chicken Operating Agreement Amendments**

#### **APRIL 27, 2016 FURTHER SUBMISSIONS OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD**

1. The British Columbia Chicken Marketing Board (“BCCMB” or “Chicken Board”) makes these further submissions in response to the April 12, 2016 letter from the British Columbia Farm Industry Review Board (“FIRB”) which requested that the parties address the following issue through a demonstrated, substantiated SAFETI analysis:

*Is a differentiated regional growth mechanism required in the proposed Operating Agreement in order to address concerns raised by the Primary Poultry Processors Association of BC (PPPABC) that the proposed Operating Agreement, including the Chicken Farmers of Canada (CFC) decision-making structure, leaves them at a competitive disadvantage?*

2. FIRB indicated in that correspondence that “a substantiated answer to the potential ramifications of TRQ (and other imports), as well as the initial questions outlined in BCFIRB’s February 9, 2016 letter” should be included in the SAFETI analysis.
3. The submissions that follow address these specific concerns as a supplement to the previous SAFETI analysis and submissions made by the Chicken Board on the issues before FIRB in this supervisory review. As requested in FIRB’s recent correspondence, the facts referenced in this submission (as well as the documents relied on in the Chicken Board’s March 31, 2016 submission) are supported by an affidavit of Bill Vanderspek affirmed April 26, 2016.

#### **Additional Factual Context re: TRQs and other imports**

4. In its March 31, 2016 submission, the Chicken Board adopted the submissions of the CFC in respect of the impact of international trade issues and noted that it was not anticipated that the implementation of the Trans-Pacific Partnership trade agreement (“TPP”), if ratified, would have an impact on the methodology of the domestic allocation, which is the subject of the proposed amendments to the operating agreement. In light of FIRB’s comments, some additional factual context may be helpful in understanding this submission.
5. The Chicken Board’s position is that, while imports are properly considered in setting national domestic allocations, no system of provincial or regional allocation could

properly take into account TRQs (or other imports) in the absence of clear information about how much TRQ each processor/ holder of TRQ has, where imported product is being used and where any further processed chicken from British Columbia is being sold. This information is held by the processors, has not been made available to the Chicken Board in the course of negotiating the amendments to the operating agreement (or at all), and has not to date been provided to FIRB in this supervisory review. Without this information, as set out further below, there is no principled basis on which TRQ or other imports could be properly considered in setting provincial allocations.

6. In PPPABC's submissions, there is a suggestion that British Columbia processors (or perhaps Western processors, as these labels are used somewhat interchangeably in the submission) have less access to TRQs and imported spent fowl and that this circumstance should be taken into account in respect of either provincial or regional allocations. It seems to be implied in this submission that adoption of the Differential Regional Allocation ("DRA") proposal favoured by the processors (and, as set out in the March 31, 2016 submission, supported by the BCCMB during the negotiation) would address this inequality.
7. Certain of the factual assumptions built into this submission are demonstrably false. Others cannot be evaluated by the BCCMB—or by FIRB—without additional data about the use of TRQs which is held by the processors and which the processors, to date have not been prepared to share with the BCCMB. The Chicken Board continues to be of the view that when properly understood in the context of what data is presently available in respect of TRQs and other imports, a further consideration of these factors does not detract from the Chicken Board's view that adoption of the amendments to the operating agreement as proposed is in the best interests of the chicken industry.

### *Spent Fowl*

8. The BC processors suggest they are disadvantaged in respect of their ability to import spent fowl. This submission suggests there is some sort of external restriction on their ability to import spent fowl that does not exist elsewhere in the country. This is simply not the case. There are no import restrictions on spent fowl and BC processors are in the same position as other processors throughout the country with respect to their ability to seek to import it.<sup>1</sup>
9. Processors do not make information available to the Chicken Board with respect to the amount of spent fowl imported, in which province any imported spent fowl is used and/or sent for further processing.<sup>2</sup> Without this information, there is no way for imports of spent fowl to be taken into account in setting provincial allocations or accounting for regional growth.
10. Spent fowl imports are taken into account when setting the national allocation as this information is available to CFC. Each quarter, CFC staff provides a spent fowl report

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<sup>1</sup> Affidavit of William P. Vanderspek made March 26, 2016 ("Vanderspek Aff.") at para. 7-8

<sup>2</sup> *Ibid.*

that is compiled by Agriculture Canada that shows the amount of fowl processed domestically and imported on a year to date basis and as it compares to the same time period in the previous year. This report is provided to all CFC directors and circulated widely in the industry as well as discussed at CFC allocation meetings.

### ***TRQ***

11. The situation with respect to TRQ requires some further elaboration. In accordance with its commitments under the North American Free Trade Agreement and the World Trade Organization, Canada has in place a Tariff Rate Quota (“TRQ”) for imports of chicken and chicken products, which permit a predetermined quantity of chicken to be imported into Canada at a lower rate of duty.<sup>3</sup>
12. The total amount of TRQ available in any given year is the greater of 7.5% of the previous year’s national domestic allocation or 39,900,000 kg.<sup>4</sup> At present, the total amount of TRQ available is equal to 7.5% of the previous year’s national domestic allocation.<sup>5</sup>
13. TRQ is allocated to three groups: (a) the traditional group, (b) the processor, distributor and food-service group; and (c) processors of chicken products not on the *Import Control List* (“non-ICL”).<sup>6</sup>
14. Allocation to the traditional group is equal to the quantity allocated to this group in the previous year, adjusted for under-utilization. Allocation to processors in the processor, distributor and food-service group constitutes 62.5% of that group of TRQ and is available to all processors who process at least 250,000 kg per year. To the extent allocation is made based on processor market-share, the market-share is calculated based on products that have been processed in Canada owned and operated by the processor.<sup>7</sup> Accordingly, where a processing plant located in British Columbia is owned and operated by a company based in another province, the processor’s entire TRQ allocation is made to the province in which the company head office is located. Processors are eligible for only one allocation of TRQ except for those who are eligible for a non-ICL allocation may qualify for an allocation under that category as well as the processor category.

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<sup>3</sup> *Notice to Importers*, “Chicken and Chicken Products”, Serial No. 869, 12 November 2015, available at <http://www.international.gc.ca/controls-controles/prod/agri/chicken-poulet/notices-avis/869.aspx?lang=eng#4> (“*Notice to Importers*”)

<sup>4</sup> *Ibid.*, at section 2.2

<sup>5</sup> *Vanderspek Aff.* at para. 10

<sup>6</sup> *Notice to Importers*, at section 4.1

<sup>7</sup> *Ibid.*, section 6

15. Transfer of TRQs is permitted between allocation holders with the approval of the Minister.<sup>8</sup> BCCMB is not formally made aware of such transfers. In practice, the BCCMB is aware anecdotally that certain British Columbia processors may sell their TRQs to processors in eastern Canada in part because transportation costs from major areas of American production make it more economical for TRQs to be used in eastern Canada.<sup>9</sup>
16. TRQ is a national program and usage of TRQ has always been, and it is anticipated by the BCCMB will continue under the proposed amendments to the operating agreement to be, taken into account in setting the national allocation. In order to permit usage of TRQ to be used in setting the national domestic allocation, Chicken Farmers of Canada compiles and circulates information each week about national year-to-date import permit issuance.<sup>10</sup> At the CFC allocation meeting, all directors are fully aware of the amount of TRQ that has been imported as compared to a pro rata rate of import of the total TRQ allocated. If the amount of TRQ is very high or very low as compared to the pro rata rate of imports, CFC will know that more or less than expected will come in each week for the balance of the year. This factor is then taken into account when settling allocation and is part of a full market update that is provided to the CFC directors by CFC staff.
17. No information is available to the Chicken Board as to the amount of TRQ held and/or used by each BC processor. While the BC processors indicated from time to time during the negotiations of the proposed amendments to the operating agreement that provincial allocations should be based on total supply, the Chicken Board's understanding is that processors consider this information to be proprietary.<sup>11</sup>
18. To the extent information about national TRQ allocations to processors and/or information about imports by province might be available, this information is not of assistance in setting provincial allocations for a number of reasons:
  - (a) TRQ may be transferred from one processor to another with federal government approval but information about any transfers by BC processors are not made available to the BCCMB. In practical terms, the BCCMB understands anecdotally that there may be sales of TRQ from BC processors, food service and distributors to other parts of Canada;
  - (b) Some significant BC processors have operations and/or head offices in other provinces. The TRQ may accordingly be attributed to another province depending on the corporate structure of a particular processor, regardless of whether the TRQ is in fact used in British Columbia, another western province, or elsewhere in Canada;

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<sup>8</sup> *Ibid.*, at section 12.

<sup>9</sup> Vanderspek Aff. at para. 12.

<sup>10</sup> See e.g. Vanderspek Aff. at Ex. 20.

<sup>11</sup> Vanderspek Aff. at para. 15.

- (c) TRQ imports by province indicate only the point of entry into Canada, not where the product is actually processed, sent for further processing or sold.
19. Notwithstanding the length of the negotiations leading to the current proposed amendments to the operating agreement and the numerous discussions between BC (and other western) processors and the Chicken Board,<sup>12</sup> at no time have the processors made available any data about TRQs (or other imports) to substantiate their claims that they are disadvantaged vis-a-vis other provinces in respect to imports or provided meaningful data about usage of such imports that would permit the Chicken Board (or any stakeholder) to consider how TRQs or other imports might be taken into account in setting provincial allocations.<sup>13</sup> Moreover, BC processors have never revealed how much TRQ they own or in which province they utilize their TRQ.

### **Differentiated Regional Growth – SAFETI Analysis**

20. In the context of its broader decision to support the proposed amendments to the operating agreement, the Chicken Board has considered the question of whether “a differentiated regional growth mechanism [is] required in the proposed Operating Agreement in order to address concerns raised by the Primary Poultry Processors Association of BC (PPPABC) that the proposed Operating Agreement, including the Chicken Farmers of Canada (CFC) decision-making structure, leaves them at a competitive disadvantage”.
21. While the Chicken Board appreciates that the BC processors have repeatedly asserted that the proposed amendments to the operating agreement leave them at a competitive disadvantage, the expert report obtained by the Chicken Board comparing the anticipated allocations under the proposed amendments to the present system of allocations does not support that there is in fact such a competitive disadvantage in the proposed model of allocations over the present model.<sup>14</sup> Moreover, the proposed amendments unlike the current model, expressly permit consideration of comparative advantage factors, which the Chicken Board considers to be in the interests of the British Columbia industry as a whole and BC processors in particular.
22. While the Chicken Board, accordingly, does not accept the assumption made by the BC processors that the proposed amendments put them or the British Columbia industry as a whole at any competitive disadvantage—and submits that the BC processors have to date put no evidence before FIRB that would support their position that they do—the Chicken Board does appreciate that the BC processors have articulated and raised concerns about a potential for competitive disadvantage and that, whether or not such concern is based in reality, speculation or paranoia, the Chicken Board as part of its consultative process and particularly in ensuring that their decision-making comported with FIRB’s SAFETI accountability framework, was required to consider in its decision-making process

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<sup>12</sup> See e.g. Vanderspek Aff. at Exhibits. 2 – 15

<sup>13</sup> Vanderspek Aff. at para15-19.

<sup>14</sup> “Ference & Company report”, Vanderspek Aff. at Ex. 16.

whether not only any actual competitive disadvantage had been addressed but also whether the *concerns* about potential competitive disadvantage had been addressed in the process leading up to the decision to support the proposed amendments to the operating agreement.

23. As part of its efforts to ensure that the processors concerns were addressed, notwithstanding the BCCMB's disagreement with the assumption that there was any actual competitive disadvantage would be caused by the adoption of the proposed amendments, the BCCMB assisted the processors in developing and supported at the CFC table, the adoption of the DRA model which continues to be favoured by the processors.<sup>15</sup>
24. While the BCCMB was of the view that adoption of the DRA model would have been consistent with BC's overall interests, particularly if its adoption would have led BC processors to endorse adoption of the overall amendments, in the face of an inability to achieve consensus around the DRA model, the BCCMB was required to consider whether BC's interests—including the interests of BC processors—was better served by supporting the proposed amendments around which a consensus had developed or by refusing to participate in any amended operating agreement that did not incorporate the DRA model.
25. The conclusion of the BCCMB that supporting adoption of the proposed amendments to the operating agreement without inclusion of the DRA model was made taking into account the concerns expressed by the BC processors (including about potential for competitive disadvantage), the BCCMB's conclusions about the factual validity of those concerns, the views and interests of all BC stakeholders expressed during the extensive consultative process, the BCCMB's determinations as to the interests of the BC chicken industry as a whole, and the efforts made during the lengthy negotiating process leading up to the proposal of the amendments to the operating agreement to reach good faith consensus.
26. Upon a full consideration of these various interests, including the concerns expressed by BC processors, the BCCMB determined that it was in the interests of the BC industry as a whole to enter into the amended operating agreement, as proposed, without the incorporation of the DRA model favoured by the processors. In these circumstances, the Board's position remains that a SAFETI analysis supports adoption of the amended operating agreement without the inclusion of the DRA model.
27. The below description of the relevant SAFETI consideration should be considered supplemental to the summary of the Chicken Board's SAFETI analysis set out in its January 6, 2016 Schedule 15 in support of its request to FIRB for leave to sign the CFC operating agreement (the "January 6 SAFETI").

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<sup>15</sup> See Chicken Board's March 31, 2016 submission at para. 39 – 47 and Vanderspek Aff. at para. 32 - 35.

*Strategic*

28. As set out in the January 6 SAFETI, the starting point for the BCCMB in considering whether entering into the amendments to the CFC operating agreement was the consideration of whether BC would be better off as a whole as a party to an amended agreement in the form proposed that would include all provinces, including Alberta, or whether it would be better off in a continuing under the current operating agreement, without Alberta.
29. Whether or not inclusion of the DRA model might have been preferable from BC's perspective was not a consideration for the Chicken Board under the strategic part of the analysis (although as set out below, it is, in the Board's submission, properly considered under other aspects of the analytical framework) because at the conclusion of the negotiations there was no consensus option available that would have incorporated the DRA model.
30. From the outset of the negotiations, the BCCMB has been of the view, supported by all stakeholders including the BC processors, that all else being equal it is in BC's interests to have a national framework that includes Alberta, rather than a system in which Alberta competes with BC outside the national allocation system. This consideration is an important overarching strategic consideration in the Chicken Board's request to FIRB for leave to sign the amended operating agreement. Given geography, from a competitive advantage standpoint, having Alberta as part of the national allocation system is of particular significance to the British Columbia industry as compared to eastern provinces.
31. A second strategic consideration is whether the method of provincial allocation in the proposed amendments is to BC's advantage.
32. As set out in the in the Chicken Board's March 31, 2016 submission an important consideration in supporting the amendments to the operating agreement is the fact that the current operating agreement is not operating effectively, due in part to the BC processors refusal to provide information about BC market needs to the BCCMB.<sup>16</sup>
33. The Chicken Board retained Ference & Company to assist in analyzing the impact of the proposed differential growth model on British Columbia's allocation. The Ference & Company analysis concludes that the differential growth model does not significantly impact estimated volumes of growth when compared to the current system.<sup>17</sup>
34. Moreover, the proposed amendments expressly permit consideration of comparative advantage factors, which brings it into compliance with applicable legislation and in the Chicken Board's view is to the benefit of British Columbia.

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<sup>16</sup> See March 31, 2016 submission at para. 32 – 38; Vanderspek Affidavit at para. 23 - 24 and Ex. 17.

<sup>17</sup> Vanderspek Aff. at Ex. 16.

35. Overall, the Chicken Board determined that signing the proposed amended agreement is in British Columbia's strategic interest whether or not it incorporates the DRA model that had been proposed by the BC processors and BCCMB.

***Accountable***

36. The decision to support the proposed amendments in the absence of incorporation of the DRA model is accountable in that the Chicken Board has considered and taken into account the perspectives of all industry stakeholders in coming to the decision in the interests of the industry as a whole.
37. The Chicken Board's efforts to be accountable to BC processors in its decision-making are illustrated by its efforts to find a solution that would address the concerns of the BC processors, notwithstanding that the Chicken Board disagrees with the underlying assumption of the processors that the proposed amendments put BC at a competitive disadvantage. The BCCMB's efforts to develop, support and promote the DRA model in the negotiations when the processors themselves failed to even send representatives to speak in favour of the proposal when it was considered at CFC demonstrates the BCCMB's commitment to a process that would take account of the concerns expressed by BC processors.
38. It is not a necessary feature of an accountable decision that the wishes of all stakeholders in a marketing board's decision are fulfilled. To impose such a requirement would paralyze decision-making anytime stakeholders disagree.
39. Here, in addition to BC processors, the Chicken Board was required to be accountable to other stakeholders including growers and other participants in the industry as a whole. As set out in the submission of the BC Chicken Growers' Association, growers support the decision to request leave to sign the amended operating agreement, notwithstanding that their interest aligns with the processors (and for that matter with the Chicken Board) in seeking to obtain the largest possible portion of the national domestic allocation for British Columbia.

***Fair***

40. The Chicken Board's decision to support the amended operating agreement in the absence of the inclusion of the DRA model is fair. As set out in the January 6 SAFETI, it complies with the principles of supply management. It also follows a lengthy and extensive negotiation in which the views of all stakeholders were taken into account.
41. Having participated in a lengthy, hard fought, negotiation in which stakeholders with disparate interests from across the country negotiated in good faith and in which all BC stakeholders were consulted and kept informed by the Chicken Board, it would not be now fair for British Columbia to withhold its consent from the consensus proposal developed in this process.

*Effective*

42. As previously noted, the present operating agreement is not effective in large part because of the failure of the BC processors to provide necessary information about market needs to the Chicken Board to feed into the present allocation system. The Chicken Board is of the view that the proposed amendments to the operating agreement will simplify the provincial allocation process such that it will not be so easily disrupted if a particular stakeholder such as BC processors chooses to withhold necessary information or participation.
43. One concern expressed by the BC processors is that the special vote provisions of the proposed amendments have the effect of making key sections vulnerable to amendment by special vote that do not require all the provincial boards to be present.<sup>18</sup> While the Chicken Board notes that the definition “special vote” in the proposed amendments is the same as the definition in the current operating agreement,<sup>19</sup> the Chicken Board agrees that requiring attendance of all provincial chicken boards for a special vote to be valid would increase the effectiveness of the proposed amendments. This concern has now been addressed in that at the March CFC meeting the provincial boards agreed that under the amended operating agreement, if adopted, there will not be a special vote held unless all ten provincial boards are present.<sup>20</sup>
44. The adoption of the proposed amendments to the operating agreement, even without the inclusion of the processors’ preferred DRA model, will be to British Columbia’s competitive advantage because it will bring Alberta back into the national operating agreement.
45. From BC’s perspective, that continued participation in the national allocation plan is to BC’s advantage is demonstrated by BC’s success in obtaining significant allocation advantages in specialty production. While the BC processors state that BC’s specialty allocation is “simply a recognition that BC miscalculated its specialty production when the original 2001 FPA was implemented, resulting in specialty production being grown within mainstream production limits for many years”<sup>21</sup> this mischaracterization is at best a failure of historical recollection on the part of the processors.
46. In fact, the genesis of BC’s use of allocation for specialty arose after the FIRB 2005 Specialty Review when specialty production previously produced under permit was brought into the quota system. When this occurred, specialty production was made as

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<sup>18</sup> PPPABC April 4, 2016 Submission at para. 13

<sup>19</sup> See definition (q) “special vote” in Schedule B to Federal-Provincial Agreement for Chicken: “a CFC vote having the support of all Provincial Commodity Board members present for the vote” (Chicken Farmers of Canada Background Documents, Tab 1) and definition (t) “special vote” in the proposed amendments “a CFC vote having the support of all Provincial Commodity Board members present for the vote” (Chicken Farmers of Canada Background Documents, Tab 2).

<sup>20</sup> Vanderspek Aff. at para. 37.

<sup>21</sup> PPPABC April 4 Submission at para. 56.

part of BC's ordinary allocation as that was the only allocation available to British Columbia at that time. To account for the addition of the specialty production to its quota base, BC received a special adjustment to its base so at that time there was no impact on the mainstream domestic allocation. Over the ensuing ten year period the specialty production grew (essentially doubled) without any adjustment to base, the effect of which was to cannibalize BC's mainstream allocation to accommodate the growth in the specialty sector.

47. In 2013/2014, the BCCMB approached CFC to request that a separate specialty allocation be provided to British Columbia. The result of CFC's approval of this request was to remove the specialty production from mainstream, providing British Columbia with a separate specialty allocation in addition to its mainstream allocation. This had the effect of immediately returning approximately two million kilograms of allocation per year to mainstream growers and processors and will permit the BC specialty chicken sector to grow beyond current levels without further impact to the mainstream growers and processors.<sup>22</sup>
48. This agreement with respect to specialty allocation is maintained in the proposed amendments to the operating agreement. BC's continued good faith participation in the national allocation system and in the negotiations to amend the operating agreement in a manner that all provinces could agree to surely has improved its position with CFC and the other provincial boards in a manner that facilitated this significant improvement in BC's position in respect of specialty production.
49. Adoption of the proposed amendments to the operating agreement is effective in implementing BC's strategic objectives as set out above, in ensuring that the operating agreement can be effectively implemented in the future and maintaining good relations with CFC and other provincial boards to protect BC's position in national allocations going forward.
50. Finally, as noted in the January 6 SAFETI, the proposed amendments provide for a model of allocations for 10 years following which its effectiveness will be evaluated.

### ***Transparent and Inclusive***

51. As set out in the January 6 SAFETI and the Chicken Board's March 31, 2016 submission, the request to FIRB for leave to sign the amended operating agreement follows a lengthy process of consultation and discussion with all stakeholders including growers and processors. The record of consultation demonstrates the transparency and inclusiveness of the process followed by the Chicken Board.<sup>23</sup>
52. Notwithstanding that the Chicken Board does not consider the current allocation and growth models set out in the amendments to the operating agreement to put BC in general, or its processors in particular, at a competitive disadvantage, the development of

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<sup>22</sup> Vanderspek Aff. Ex. 21

<sup>23</sup> See in particular Vanderspek Aff. Ex. 2 – 15.

the DRA model was responsive to expressed concerns of BC and other western processors and resulted in a collaborative effort between the BCCMB and processors. The Chicken Board was transparent about the negotiating process, including the process for presentation and promotion of the DRA model.

53. Transparency and inclusiveness in decision-making in general considers whether the board has been transparent with stakeholders about its process and reasons for decision making. As set out in these and previous submissions, it has been. However, in some circumstances, to serve their purpose, transparency and inclusiveness in decision-making requires that stakeholders provide appropriate inputs, including information in support of their positions expressed, in order to facilitate the decision-maker's full consideration of their position.
54. As set out in the Chicken Board's submissions to date, including in this submission, the BC processors' failure to provide appropriate levels of information about their business (including in respect of market needs, TRQs and other imports, and the relationship between their BC operations processors in other parts of the country) have forced the BCCMB to make decisions in respect to the interests of the BC industry in the absence of this information.
55. This same pattern of lack of information is repeated in respect of further processing operations. The processors claim that there was no consultation concerning the further processing component of the formula but this is simply untrue. The Chair of the Chicken Board spoke more than once to Mr. Blair Shier, CEO of JD Sweid and chair of the Further Poultry Processors Association of Canada (FPPAC) during the development of a further processing component of the proposed amendment. The Chicken Board sought Mr. Shier's opinion on: whether inclusion of a further processing component would benefit BC, what percent of Canadian further processed products came from BC, what products should be included/excluded from this calculation, and whether an independent survey of further processors might yield reliable volume information. Some information was provided including an estimate that 12-14% of further processed products came from British Columbia. The BCCMB Chair had similar conversations with other industry executives and staff of FPPAC.<sup>24</sup>
56. In order to provide time for an independent consultant to conduct an industry survey a temporary methodology for A-127 to A-132 was implemented. It was agreed to allocate the further processing component as follows: 50 percent by the number of further processing plants in a province based on CFIA data and 50 percent by the 24 month average of further processing storage stocks. This temporary methodology did not work to the advantage of BC.<sup>25</sup>
57. An independent consultant was retained to conduct a survey of processors to determine provincial production volumes. The Chicken Board was as critical of the methodology as

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<sup>24</sup> Vanderspek Aff. at para. 27

<sup>25</sup> Vanderspek Aff. at para. 28

were the processors. This study was cancelled due to lack of cooperation from processors across Canada.<sup>26</sup>

58. On December 3, 2015 the directors of CFC unanimously agreed to allocate the further processing component among provinces according to an agreed percentage. BC received 14.069 percent of the national volume. This percentage is very similar to the estimate by Mr. Shier in his discussions with the Chair of the Chicken Board. Although BC processors have claimed that a large proportion of further processed product sold in BC through both retail and food service originates from outside of BC, they have never documented where they sell their further processed products. As there are no barriers to product flow BCCMB assumes that BC products are also sold in other provinces.<sup>27</sup>
59. Moreover, while the BCCMB has made every effort to be transparent and inclusive with the processors in respect of the development and promotion of the DRA model, the processors—when it came time to speak in favour of the proposal at the CFC table—failed to attend to speak to the proposal, leaving it to the BCCMB. The BCCMB nevertheless continued to support the DRA model and to advocate for its adoption, clear evidence of its efforts to be inclusive of the processors' stated interests during the negotiation. Without the active support of BC or other western processors, however, this proposal failed to achieve consensus. In no respect can that failure be properly placed at the feet of the BCCMB.
60. Having completely abdicated their role in the negotiations in respect to the promotion of the DRA model on the heels of having failed to provide the BCCMB with information about BC production needs or the role of other supply side factors such as TRQs and spent fowl, notwithstanding their stated concerns with respect to competitive advantage, it does not now lie in the mouths of the BC processors to complain about the decision-making process of the Chicken Board to recommend adoption of the consensus proposed amendments to the CFC operating agreement.

### **Conclusion**

61. The Chicken Board accepts that the BC processors have expressed concerns that the proposed amendments to the CFC operating agreement places BC at a competitive disadvantage. They have provided no evidence to support this position, however, during the lengthy negotiations leading up to the proposed amendments or during this supervisory process thus far. The Chicken Board does not agree, as a matter of fact, that adoption of the proposed amended operating agreement would place BC at a competitive disadvantage, particularly in light of the significant advantages to BC of having Alberta return to the national allocation.
62. In light of the expressed concerns by the processor, the Chicken Board was required to include consideration of those concerns in its decision-making process. The Chicken Board's prominent role in the development and support for the DRA model makes clear

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<sup>26</sup> Vanderspek Aff. at para. 29

<sup>27</sup> Vanderspek Aff. at para. 30

that it did so. The Chicken Board could not consider the role of factors about which the processors did not provide full and accurate information, such as the provincial usage of TRQs or imported spent fowl, but were required to do their best with available information to negotiate in favour of the most advantageous position for British Columbia. The Chicken Board fulfilled this mandate and did so in a manner that complied with principles of procedural fairness to all stakeholders, including the BC processors.

63. That the processors expressed concerns does not require as a matter of principle-based decision making that the Chicken Board abandon any decision that the processors do not support. Here, in light of the failure of the DRA model to achieve consensus, the decision for the Chicken Board was between the two available options at the conclusion of the negotiations: a recommendation to adopt or to reject the consensus amendments.
64. The Chicken Board continues to be of the view that between these two options, adoption of the proposed amendments is in the best interests of the chicken industry in British Columbia.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Dated: April 27, 2016

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John J.L. Hunter, Q.C.