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November 15, 2021

Via Email To: BCVMC.Chair@bcveg.com
BC Vegetable Marketing Commission
#207 15252 – 32nd Avenue
Surrey BC V3Z 0R7
Attention: Debbie Etsell, BCVMC Chair

Dear Chair Etsell,

Thank you for forwarding the industry stakeholder comments regarding MPL British Columbia Distributors Inc.'s ("**MPL BC**") Agency Class I License application (the "**Application**"). We appreciate the opportunity to review and respond to the issues and concerns raised, and to weigh them against the mandate of the Commission and the requirements to approve an Agency application.

The Commission's overall responsibility is "to provide a framework for Producer economic stability and to satisfy other related public interests. It is intended to benefit Producers, the sector's value chain, and the public."¹ Within that framework, BC Vegetable Marketing Commission Amending Order #54 ("**Amending Order #54**") sets out the procedure for designation of agencies, including the criteria for considering an agency application after receipt of input from industry stakeholders.

The comments from industry stakeholders provided as attachments to the Commission's email dated November 5, 2021, demonstrate a fundamental misunderstanding of the business of MPL BC and its parent, Mastronardi Produce Limited ("**Mastronardi**"). (For ease of reference, this response will use the acronym "**MPL**" to refer to MPL BC, Mastronardi, and/or the Mastronardi group of companies generally as the context may require.) For the reasons explained below, granting an agency license to MPL will bring economic stability and benefits to British Columbia, as well as open up supply chain opportunities to BC Producers. As a general comment on the responses received and the concern that MPL will bring unwanted competition to the vegetable market in BC and will drive down prices to the detriment of BC Producers, those concerns are without any factual basis and without reference to the actual business of MPL.

It is MPL's goal to bring to the BC market its unique varieties, long established sales and marketing relationships, fixed-pricing programs, and robust grower network support for the benefit of Producers in BC. MPL has supply arrangements, some of them exclusive, with large national retail and foodservice customers in both Canada and the United States for which BC Producers will have the real opportunity to supply domestically and displace imported products in BC. MPL often contracts the supply of its products on an annual basis based on pre-arranged pricing. This benefits MPL, its network of producers and the customers as it brings certainty, stability, and predictability throughout the supply chain.

¹ BC Vegetable Marketing Commission, "Orderly Marketing of BC Vegetables", online: <https://www.bcveg.com/>



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In specific response to the submissions made, we have organized our comments around the factors in section 2(6) of Amending Order #54, following each in turn. As many of the comments received are reflected in the submissions of Village Farms, Windset Farms, and Greenhouse Grown Foods Inc. (“GGFI”) (the latter two of which are virtually identical and were both submitted by Steven Newell), we have referred chiefly to the submissions from those entities in our response. Furthermore, as the majority of the feedback received relates to subsections (a) and (b) of section 2(6) of Amending Order #54, we have devoted the majority of our response to those criteria.

a) There is a market requirement for the proposed Agency, and the designation of that Agency would benefit the industry as a whole having regard to the interests of all Producers, including those marketing through other Agencies;

MPL has demonstrated a market requirement and a benefit to the industry as a whole, having regard to the interests of all Producers, through the following key initiatives and strengths outlined in its Application. In overview:

- MPL’s focus is on providing BC Producers with improved and strategic access to the western United States. MPL’s goal is for BC Producers to produce MPL’s proprietary varieties through expansion of existing operations, displacement of imports, and serving new export markets in the United States and elsewhere for customers not currently being afforded BC-grown product;
- MPL will also focus domestically to meet customer demand for local BC product to supply MPL’s increased sales in the west for which local Producers have not had the opportunity under the existing framework.
- MPL can provide BC Producers with the same exceptional Producer support it has provided to growers in Ontario, including through:
 - Availability of Sunset® branded, finest quality varieties in the global market;
 - Access to research and development results;
 - Access to MPL’s network of lenders to facilitate expansion;
 - State-of-the-art packaging, product lines and marketing programs;
 - National retailer fixed-price programs, which provides market stability and allows Producers to focus on farming operations without concern over poor returns and flooded markets; and
 - A liaison between Producers and procurement support that builds and maintains relationships with Producers across North America to provide real-time support, guidance and feedback.



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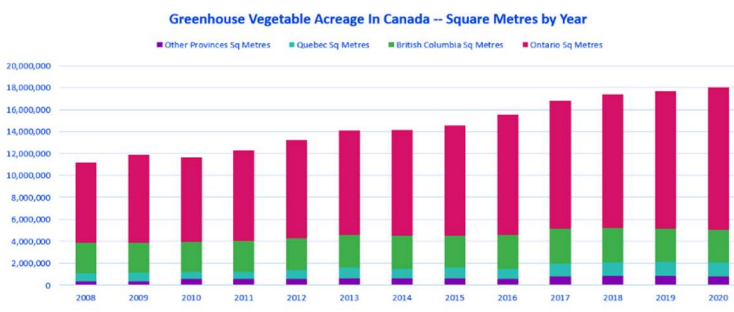
MPL’s Application demonstrates that Producers will benefit by having an Agency that will allow significant expansion of production area more in line with growing demand. Retailers will benefit with the increased and ever-growing supply of BC-grown product. Consumers will benefit from more fresh fruits and vegetables produced close to home. And lastly, the industry growth and growth of consumption of fresh fruits and vegetables will benefit all Agencies.

Comparisons Between Ontario and BC

Certain industry stakeholders allege that the BC greenhouse sector is not stagnating in terms of growth, innovation, and financial health compared to Ontario and other provinces.² In support of this position Windset Farms proffers only a list of Producers it claims have expanded BC acreage.³ There is absolutely no support or empirical data proffered by Windset Farms or any other stakeholder. MPL’s assertion that the BC greenhouse produce market has been stagnant for many years is based on independent data from Statistics Canada. The fact that some Producers may have taken a step forward in increasing acreage while others have taken a step back or even exited the market is readily admitted by Windset Farms, Village Farms and others.⁴

Below, MPL includes updated data for 2019 and 2020 from the data originally submitted in Section 5.9 of its Application, which further substantiates its original conclusions that Ontario continues to rapidly increase in new acreage while BC continues to decrease. The updated data evidences Ontario’s growth of over 800,000 square meters of vegetable production acreage and a contraction of 142,000 square meters of production acreage in BC. The end result is an increase of more than 6.8MM square meters of growth during the 13 year period with 84% coming from Ontario and only 3% coming from BC.

Updated Figure 5.9-A: Comparison of Vegetable Acreage in Canada 2008 to 2020



More than +6.8MM sq metres of Greenhouse Vegetable production added since 2008; with 84% of growth coming from Ontario & only 3% coming from BC

Source: Statistics Canada; Table: 32-10-0456-01; Released 2021-04-26; <https://www150.statcan.gc.ca/t1/Ab1/en/fr/action?pid=3210045601>

- An additional +655K sq metres of Greenhouse Vegetable production in Canada added since 2018
- Ontario has added +800K sq metres since 2018, while BC has lost -142K.
- % of Growth coming from Ontario has increased since original application, while % from BC has gone down.

² Letter from Windset Farms dated November 3, 2021 (“Windset Letter”), at pg. 4.

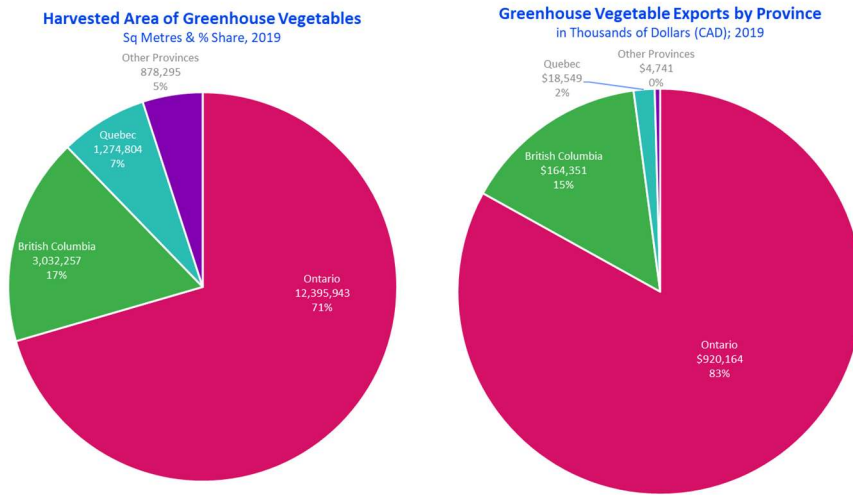
³ Windset Letter at pg. 4.

⁴ Windset Letter at pg. 9; letter from Village Farms dated November 3, 2021 (“VF Letter”) at pg. 7.



Further evidence of BC’s stagnation as compared to Ontario is reflected in updated Figure 5.9-B, evidencing a percentage decline of harvest area reduced to 17% from 18% for BC in 2019, and updated Figure 5.9-C evidencing nominal stagnation in BC in acreage growth and significant export discrepancies with Ontario at 41% growth and BC in a -2% decline.

Updated Figure 5.9-B: Greenhouse Harvested Area and Exports by Province

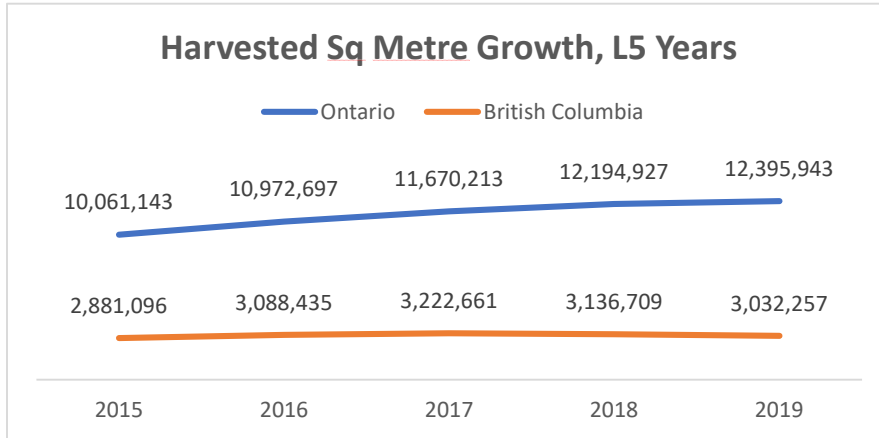


- In 2019, share of BC harvested area reduced to 17% (from 18%)
- Exports in BC increased \$10MM from 2018, while Ontario exports increased over \$100MM

Source: Government of Canada; Statistical Overview of the Canadian Greenhouse Vegetable Industry, 2019; Table 1.2 & Table 3.2.3
<https://agriculture.canada.ca/en/canadas-agriculture-sectors/horticulture/horticulture-sector-reports/statistical-overview-canadian-greenhouse-vegetable-industry-2019>



Updated Figure 5.9-C: Greenhouse Harvested Sq. Metre and Exports – Last 5 Years Growth Trends



+23%
Growth in Ontario

+5%
Growth in BC



+41%
Growth in Ontario

-2%
Growth in BC

Source: Government of Canada; Statistical Overview of the Canadian Greenhouse Vegetable Industry, 2019; Table 1.2 & Table 3.2.3
<https://agriculture.canada.ca/en/canadas-agriculture-sectors/horticulture/horticulture-sector-reports/statistical-overview-canadian-greenhouse-vegetable-industry-2019>



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Updated information from the Government of Canada for permanent specialized greenhouse operation jobs, as set forth in updated Figure 5.9-D below, depicts the same observations made in the Application, with Ontario creating 1,113 permanent jobs and BC losing 60 permanent jobs between 2015 and 2019.

Updated Figure 5.9-D: Ontario & British Columbia – Employees in Specialized Greenhouse Operations



+1,113
Permanent Jobs Created in Ontario over the 5 Years



-60
Permanent Jobs lost in BC over the 5 Years

Source: Government of Canada; Statistical Overview of the Canadian Greenhouse Vegetable Industry, 2019; Table 2.1
<https://agriculture.canada.ca/en/canadas-agriculture-sectors/horticulture/horticulture-sector-reports/statistical-overview-canadian-greenhouse-vegetable-industry-2019>

BC’s clearly stagnant growth is particularly concerning given that the greenhouse vegetable sector is both the largest and fastest growing area of Canadian horticulture, and the Canadian vegetable greenhouse industry overall has experienced annual upwards trends in growth since 2011.⁵ In the August 2021 edition of *Agronomy*, a peer-reviewed scientific journal, the authors of a study into Canadian greenhouse operations noted that the province of Ontario had an increase of 30% in total harvested area between 2011 and 2016, and that this growth was largely attributed to trends in local food demand by consumers and influences of international markets.⁶ The authors noted that Ontario continues to lead the Canadian

⁵ LaPlante, G.; Andrekovic, S.; Young, R.G.; Kelly, J.M.; Bennett, N.; Currie, E.J.; Hanner, R.H. Canadian Greenhouse Operations and Their Potential to Enhance Domestic Food Security. *Agronomy* 2021, 11, 1229, at pg. 2, online: <https://doi.org/10.3390/agronomy11061229>

⁶ LaPlante, G.; Andrekovic, S.; Young, R.G.; Kelly, J.M.; Bennett, N.; Currie, E.J.; Hanner, R.H. Canadian Greenhouse Operations and Their Potential to Enhance Domestic Food Security. *Agronomy* 2021, 11, 1229, at pg. 2, online: <https://doi.org/10.3390/agronomy11061229>



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greenhouse vegetable sector, and that the continued expansion of the Canadian vegetable greenhouse industry provides an opportunity for Canada to increase its domestic food supply, especially in times of unforeseen border closures.⁷ The study observed that the Canadian approach to international food trade, specifically horticultural products, has been criticized for its inefficient reliance on imports that could be supplied domestically, and that while some disparity can be attributed to the seasonal nature of vegetable and fruit production, more of Canada's food could be supplied domestically if it were better encouraged by agricultural and economic policy.⁸ In short, the "explosive growth" in Ontario (to use Windset Farms' description) as compared to BC is not recent, nor can it be solely attributed to private equity, an unregulated market, or attractive electricity rates, as Windset Farms baldly asserts without support.⁹

On November 9, 2021, MPL received written confirmation from the Ontario Greenhouse Vegetable Growers that there are in fact 31 active marketing licenses for greenhouse product in Ontario for 3,627 acres of greenhouse produce, not 13 as suggested by Windset Farms¹⁰ and Village Farms.¹¹ Regardless of the number of Agencies per acre, the fact remains that there is tremendous growth in Ontario while British Columbia has stagnated under the current number of licensed Agencies. It is not the number of Agencies that should matter, but the ability of an Agency to provide quality produce, know-how, and added value by opening new market opportunities and displacing imports. This is what MPL will bring to BC. That is why there is a market requirement that will benefit the BC industry as a whole.

Growth of the Cannabis Industry

Several of the industry stakeholders have pointed to the emergence of the cannabis industry, and growers transitioning into that industry, as the reason for the contraction of BC's greenhouse acreage, rather than stagnation in marketing or distribution capabilities.¹² This observation fails to recognize Ontario's continued growth in both vegetable production acreage and export market share despite the same transitions that have resulted in significant growth of the cannabis industry in Ontario.

Figure I from December 2020 shows that Ontario has the highest number of businesses dedicated to growing cannabis under cover of any region in Canada, with 112 establishments as of December 2020, nearly double the amount of cannabis-growing businesses relative to BC.

⁷ LaPlante, G.; Andrekovic, S.; Young, R.G.; Kelly, J.M.; Bennett, N.; Currie, E.J.; Hanner, R.H. Canadian Greenhouse Operations and Their Potential to Enhance Domestic Food Security. *Agronomy* 2021, *11*, 1229, at pg. 2, online: <https://doi.org/10.3390/agronomy11061229>

⁸ LaPlante, G.; Andrekovic, S.; Young, R.G.; Kelly, J.M.; Bennett, N.; Currie, E.J.; Hanner, R.H. Canadian Greenhouse Operations and Their Potential to Enhance Domestic Food Security. *Agronomy* 2021, *11*, 1229, at pg. 3, online: <https://doi.org/10.3390/agronomy11061229>

⁹ Windset Letter at pg. 3.

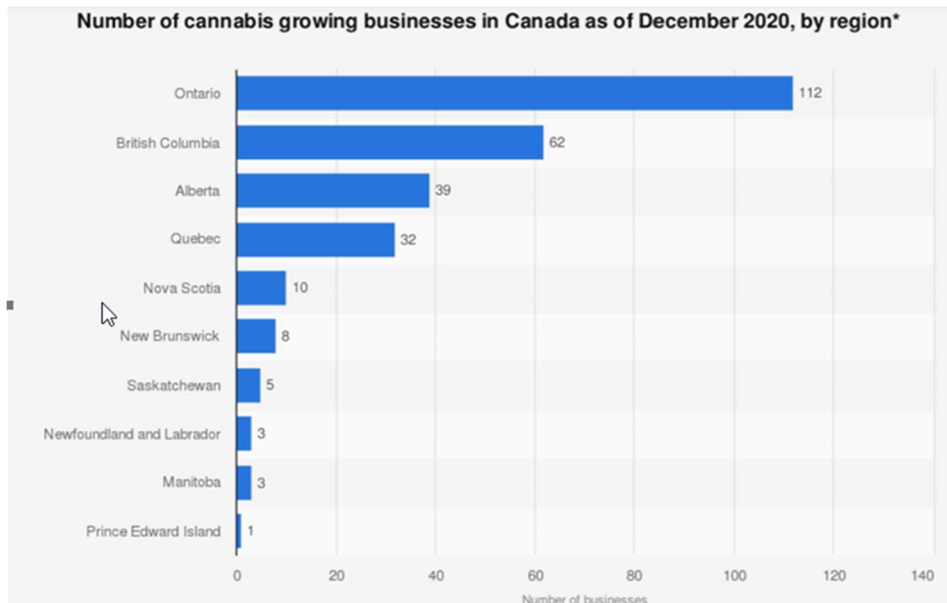
¹⁰ Windset Letter at pg. 3.

¹¹ VF Letter at pg. 8.

¹² Windset Letter at pgs. 5-6; VF Letter at pgs. 6-7.



Figure I: Number of Cannabis Growing Businesses in Canada December 2020, By Region



Source: StatCan ; ©Statista <https://www.statista.com/statistics/1035912/number-of-cannabis-growing-business-by-region-canada/>

Imports from Mexico

Several industry stakeholders raised concerns about the displacement of BC-grown greenhouse vegetables with product imported from Mexico by MPL. Windset Farms claims that MPL’s participation in the BC market has already demonstrated price erosion through the import of Mexican produce, but it has not provided any evidence to substantiate this claim.¹³ Similarly, Village Farms provides no support for its assertion that the large supply of Mexican product has created “pressure” on Agencies and growers.¹⁴ Other speculative assertions with no basis in fact include the argument that MPL *could* use its “say” on quota applications to protect Mexican share and sales were it to be granted an agency license.¹⁵ These are baseless claims from a direct competitor divorced from any factual support or air of reality, and must be recognized as such by the Commission.

As is clear from the industry stakeholder responses, MPL does not need an Agency license to import product from Mexico. Approving MPL’s Agency license will not somehow increase the number of truckloads of tomatoes heading to BC from Mexico as Windset Farms asserts, again without support.¹⁶ Rather, MPL’s Application has focused on the opportunity to *displace* imports, including imported produce

¹³ Windset Letter, pg. 4.

¹⁴ VF Letter, pg. 12.

¹⁵ Windset Letter, pg. 5.

¹⁶ Windset Letter, pg. 7.



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from the United States, Latin America, and Ontario, through BC-grown produce, as well as to fulfill new domestic demand from MPL’s increased sales in the west for which customers have indicated a preference for locally grown BC product. Not only are concerns with respect to imported produce baldly asserted without support beyond conjecture, they are disingenuous. Importing product from Mexico (and elsewhere) is a common practice amongst Agencies and other marketers in BC. Attached as Appendix I are photographs taken on November 9, 2021 from a sample of five national retailers in BC that depicts Mexican origin product on shelf in BC from Windset Farms and other marketers, and US imported product, including Windset Farms.¹⁷ Moreover, Windset Farms and its affiliate Agency, GGFI, readily contracts with Mexican producers to supply produce in the off-season.¹⁸ It is simply egregious that Windset Farms affiliate GGFI has voiced opposition to the Application and criticized MPL’s import of Mexican produce,¹⁹ when GGFI itself is among the top three largest importers of Mexican origin products into BC in 2019, as evidenced by Figure II below.

Figure II: Major British Columbia Importers in 2019 from Mexico

By countries

Countries		Major Canadian importers in 2019 from: Mexico		
		Market concentration		
		Number of importers	Value of imports (\$CDN)	Cumulative % of imports
<input type="button" value="Argentina"/> 1		3	115,025,000	40.77%
<input type="button" value="Chile"/> 1		6	161,403,000	57.20%
<input type="button" value="Dominican Republic"/> 1		10	191,121,000	67.73%
<input type="button" value="Guatemala"/> 1		15	214,687,000	76.09%
<input type="button" value="Mexico"/>		18	225,352,000	79.87%
<input type="button" value="New Zealand"/> 1		All	282,160,000	100.00%
<input type="button" value="Re-Imports (Canada)"/> 1		Total imports <input type="button" value="2"/>	281,649,651	
<input type="button" value="Spain"/> 1		Source: Trade Data Online		
<input type="button" value="United States"/>		Display companies with addresses in:		
		<input type="text" value="British Columbia"/> <input type="button" value="Display"/>		
		Filter items <input type="text"/> Showing 1 to 3 of 3 entries Show <input type="text" value="10"/> entries		
		Major Canadian importers <input type="button" value="3"/> in 2019 from Mexico		
		Company name (alphabetical order) <input type="button" value="↑↓"/>	City <input type="button" value="↑↓"/>	Province <input type="button" value="↑↓"/>
		FRESH START FOODS	Richmond	British Columbia
		FRESHPOINT VANCOUVER LTD	Vancouver	British Columbia
		GREENHOUSE GROWN FOODS INC.	Delta	British Columbia
				Postal code <input type="button" value="↑↓"/>
				V7A 4X6
				V6A 3S9
				V4K 3N2

Source: <https://www.ic.gc.ca/app/scr/ic/sbms/cid/exportingCountries.html?dy=2019&province=159&hsCode=070200&countryCode=874>

¹⁷ Photographs in Appendix I were taken on November 9, 2021 from the following retail locations in Vancouver, BC: Costco Canada, Walmart Canada, Safeway, Loblaws and Save On Foods.

¹⁸ Asoka Charles Nissanka Mendis at page 105, “The Greenhouse Tomato Industry in Delta, British Columbia (December 2007), online: https://central.bac-lac.gc.ca/.item?id=TC-BVAU-257&op=pdf&app=Library&oclc_number=1033017278

¹⁹ Letter from GGFI dated November 3, 2021, at pg. 4; Windset Letter at pg. 4.



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Notably, BC imported approximately \$90 million worth of product from Mexico in 2020, the largest amount in the last five years.²⁰

Benefits to Industry Sustainability

Windset Farms suggests that more loads shipping with less production increases costs and defeats industry sustainability goals.²² For decades, MPL has focused on sustainability, including through its Green Grass Project, the key elements of which include new and improved boxes using bleach-free recycled paper, clamshells made from recycled materials and renewable resources, use of organic/biodegradable waste coconut husks, and recycled water/fertilizer. In 2015, MPL was awarded the Sysco Sustainability Award for emphasizing the importance of a responsible supply chain to enhance Sysco's corporate social responsibility goals.²³ Furthermore, with over 1.3MM square feet of cooled distribution capabilities throughout Canada and the United States as set forth in Section 2.2 of the Application, including its Surrey, BC operations, no other Agency is poised with the infrastructure and framework to maximize truck capacity to reduce food miles, while at the same time offer farm to customer traceability.

Profitability and Benefits to Producers

Contrary to the statement from Village Farms that the Application does not discuss whether Producers are profitable and sustainable, numerous letters of support from Ontario growers, in addition to the Ontario Greenhouse Vegetable Growers Association, were included with the Application.²⁴ Those letters of support speak to the critical role that MPL has played in maximizing revenue for growers,²⁵ being strong partners in the communities in which they serve by providing jobs, community benefits and leadership, and by playing a leadership role in sustainability and environmental stewardship.²⁶ Each of MPL's letters of support from Ontario growers speak to the significant expansion of farming operations growers have

²⁰ Government of Canada, "Report – Trade Data Online" (November 14, 2021), online: https://www.ic.gc.ca/app/scr/tdst/tdo/crtr.html?grouped=GROUPED&searchType=KS_CS&naArea=P59&countryList=DET&toFromCountry=CDN&reportType=TI&timePeriod=5%7CComplete+Years¤cy=CDN&productType=HS6&hSelectedCodes=%7C702%7C707%7C70960&runReport=true

²¹ Application, Schedule 3.7.

²² Windset Letter at pg. 4.

²³ "Sysco Corporation Lauds the Excellent of its Top 2015 Suppliers" (October 1, 2015), online: <https://investors.sysco.com/annual-reports-and-sec-filings/news-releases/2015/10-01-2015-172537954>

²⁴ See in particular Schedules 1.1, 3.5, and 3.6 to the Application.

²⁵ Letter of Support from N Sawatzky Farms; Letter of Support from Jake Harms of Albuna Express Ltd. (Schedule 3.5 of Application.)

²⁶ Letter of Support from Ontario Greenhouse Vegetable Growers dated May 25, 2021 (Schedule 1.1 of Application.)



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experienced through their partnership with MPL.²⁷ To suggest that such expansion has occurred in a vacuum and is entirely independent of profitability is illogical.

MPL suggests that the Commission put substantial weight and reliance on the input from Ontario growers who have actual and substantial experience with MPL, the market requirement it addresses, and the substantial benefits MPL brings to the industry. Furthermore, traditional banking institutions are competing among themselves to finance new greenhouse construction projects in Ontario with favorable borrower terms, none of which would occur without proven profitability and stability among the Ontario greenhouse industry. Simply put, MPL would not have thrived in the greenhouse industry it pioneered for over 70 years, and its network of independent growers would not be continuing to expand their operations, if growers in partnership with MPL were dissatisfied with their returns and growth.

MPL's Agency Application, and the response to industry stakeholders set out above, demonstrate a market requirement and that MPL's participation as an Agency will benefit the industry as a whole.

b) It would not be in the interests of the industry for the proposed regulated product to be marketed by an existing Agency;

As noted in its Application, MPL will fill market needs that are not currently filled by existing Agencies through the export market and import replacement. None of the Agencies opposed to MPL's admission as an Agency have demonstrated the capacity to bring to the market what MPL brings. In particular, none of the existing Agencies have adequately addressed how they are currently able to:

- provide meaningful access to national retailers in the United States market for BC producers;
- foster growth in pace with the rest of the industry; and
- demonstrate to Producers that they are focused on the expansion of greenhouse vegetable production, rather than cannabis production. Village Farms, for example, has converted vegetable production to cannabis crops. Local government has in turn expressed concern that a shift to cannabis could make the region more dependent on food imports.²⁸

Both Windset Farms and Village Farms cite prior instances of Producers successfully switching Agencies as evidence that Producers "have ample choice amongst equally qualified and competent licensed agencies."²⁹ It does not logically follow that the ability of Producers to switch Agencies in BC must mean that no other Agency has anything to offer the BC greenhouse market, or that Producers are satisfied with their available options. In its email of support, for example, Fresh4U Farms Ltd. noted that it has tried

²⁷ Letter of Support from Luis Chibante of Golden Acres Farms; Letter of Support from Andrew Koop of Pinnacle Acres dated August 19, 2020; Letter of Support from N. Sawatzky Farms; Letter of Support from Jake Harms of Albuna Express Ltd.; Letter of Support from Charles Stockwell of Hazel Farms (Schedule 3.5 of the Application).

²⁸ Lindeman, T. (January 2018) Vegetable growers convert to cannabis to help boost margins. *The Globe and Mail*, online: <https://www.theglobeandmail.com/report-on-business/small-business/sb-growth/vegetable-growers-convert-to-cannabis-to-help-boost-margins/article37677955/>

²⁹ VF Letter at pg. 12; Windset Letter at pg. 4.



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many times in the past to expand its business, “but always with much hesitancy from our agencies.”³⁰ Creekside Hothouses Ltd. states that MPL has national contracts with a number of large grocery chains, which existing Agencies in BC do not appear to have.³¹

The above observations underscore a key message in the Application and in the letters of support from Ontario growers, namely that MPL is dedicated to significant growth and acreage expansion for Producer partners, and has key relationships with some of the largest retailers in the world.

None of the entities that provided industry submissions have demonstrated the ability of an existing Agency to expand the growth of regulated product from BC Producers in the way that MPL is able to do for the benefit of BC Producers.

c) The presence of the proposed Agency will not be disruptive to orderly marketing and will not result in increased competition among Agencies on price, which may have a detrimental effect on producer returns;

MPL intends to work alongside BC Producers to expand facilities and production capacity, helping BC produce fill existing market needs and meet MPL’s expanded sales in the west and future growth. MPL does not intend to disrupt existing Producer/Agency relationships or to solicit Producers away from their respective Agencies. While some Producers may shift between Agencies, as both Windset Farms and Village Farms have acknowledged,³² MPL is focused on growth and displacement of imports. As noted in Figure 6.2.2 of MPL’s Application,³³ the majority of projected growth from years two to five is expected to be new production acreage in BC.

Village Farms alleges, without facts or logic, that expansion to markets such as the United States will be disruptive and result in risk of an improper balance to the orderly markets in BC by displacing local production.³⁴ The reality is that local production is already being displaced and there is an opportunity to correct that. Whether it is by cannabis for acreage, or imported produce on grocery store shelves, the products of BC producers are not being marketed to their fullest extent. MPL intends to not only provide greater opportunities for access to the United States market, but also to displace imported product already found in BC grocery stores, with product from BC Producers.

Village Farms further notes that collaboration between Agencies is essential to orderly marketing and that it does not feel it can cooperate with MPL.³⁵ That is an issue that the Commission may wish to address

³⁰ Email of support from Gurinder Cheema, Executive Director of Fresh4U Farms Ltd., to Debbie Etsell dated October 22, 2021.

³¹ Email of support from Ravi Cheema, CEO of Creekside Hothouses Ltd., to Debbie Etsell dated October 18, 2021.

³² Windset Letter at pg. 4; VF Letter at pg. 12.

³³ Application, pg. 44.

³⁴ VF Letter at pg. 13.

³⁵ VF Letter at pg. 13.



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directly with Village Farms; it refused to engage in dialogue with MPL when it was invited to do so.³⁶ MPL has been in the greenhouse vegetable marketing industry for decades and understands the importance of collaboration and partnership with all industry participants. MPL has worked with many Agencies over the years in buy/sell relationships and in collaboration with customers where more than one Agency may be supplying them. It is because of MPL's longstanding and effective cooperation with various stakeholders that it has been provided numerous letters of support from industry participants in Ontario. Further evidence of MPL's cooperative approach to business is that it continues to purchase product from Windset Farms.

While cooperation for the sake of industry advancement, community improvement and Producer support is paramount to MPL, it must be acknowledged that Agencies are still competitors. This fact was clearly underscored by Agency representatives in BC during their consultation with the British Columbia Farm Industry Review Board ("**BCFIRB**") in its 2019-2020 vegetable review.³⁷ The Commission must consider whether the assertions made by industry stakeholders, the vast majority of which have been made without data, are truly supported by objective evidence or are protectionist in nature. A prime example of the self-serving nature of some of the submissions are the two identical letters of opposition, one sent on Windset Farms letterhead and the other sent on GGFI letterhead, both of which were signed by Steven Newell and both of which were presumably sent with the intent of making opposition to the Application appear greater than it is.

As a further demonstration of the fundamental misunderstanding of MPL's business model, Windset Farms raises a concern that MPL's presence will result in a "plethora of 'quote sheets' being sent to buyers of regulated produce."³⁸ This is not how MPL operates, nor is it how it will operate within the BC market. MPL's approach is to structure its business with customers in advance and in collaboration with its Producer network, often using fixed-term contracts, resulting in consistent pricing, favorable returns to Producers, and as a result orderly marketing without increased competition among Agencies. Such programs are appreciated by Producers as this allows them to better forecast their finances, and gives them confidence to expand their acreage and operate their businesses without the fear of uncertainty that can come from Agencies that use "quote sheets", which is common in the current marketing scheme.

³⁶ See Schedule 5.12.1 to the Application containing a letter from MPL to BC agencies requesting a meeting to discuss ongoing cooperation efforts. The letter was addressed to, among others, Village Farms Operations Canada Inc. MPL received no response from Village Farms.

³⁷ British Columbia Farm Industry Review Board, *In the Matter of the Natural Products Marketing (BC) Act and the 2019-20 Vegetable Review* (December 22, 2020), at pg. 36, para. 134, online: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/supervisory-reviews/2019-vegetable-supervisory-review/2020_dec_22_vegetable_review_decision_final.pdf

³⁸ Windset Letter at pg. 6.



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Lastly, Windset Farms incorrectly suggests that the only way that MPL and the Sunset® brand can grow market share in the West is through price competition.³⁹ Windset Farms is wrong. Throughout its history, MPL has developed market share not on price competition, but through innovation and development of products that customers and the public demand, which typically command higher, not lower, prices (see Figure III, below). MPL is a category creator and intends to continue this growth through its BC growing partners as a designated Agency. Furthermore, Sunset® products are consistently the most expensive in the market prized for quality and flavour. As described by MPL in its Application, Sunset® branded products demand +43% higher retail pricing over primary BC brands, and Sunset® branded products sold nearly seven times more than current BC marketers.⁴⁰

Figure III: Examples of Sunset Innovation and Category Creation



 Breakthrough innovation from SUNSET® has generated more than **\$1 Billion** to incremental segments within the category



Windset Farms asserts that rapid expansion in east coast production due to a lack of regulation has resulted in pricing pressures and instability in the market.⁴¹ Again, there is no independent support for the assertion. Moreover, the entire industry is well aware of some increased 2020 pricing directly related to COVID-19. Neither of these unsupported assertions by Windset Farms deviates from the advantageous pricing and MPL's price brand lift as more fully detailed in the Application. BC's stagnant Producer growth for many years under the current Agency regime speaks for itself.

³⁹ Windset Letter at pg. 5.

⁴⁰ Application, pgs. 30-33.

⁴¹ Windset Letter at pg. 7.



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d) The proposed Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations;

MPL is a proven operator of distribution facilities and one of the most capable suppliers of fresh fruits and vegetables to the top retailers and food service operators in North America, servicing Canadians and Americans for over five decades. As part of a network that has successfully entered new markets over many decades in the industry, MPL fully understands and supports the need to be compliant with all respective local regulations. Furthermore, and as noted in its Application, MPL plans to appoint one of its staff as Commission Liaison with knowledge and understanding of the regulatory requirements and limitations imposed on Agencies under the Commission's General Orders.⁴²

While MPL acknowledges that its affiliates have been the subject of prior isolated complaints over the course of its decades-long participation in the greenhouse business, this is not a basis to suggest that MPL does not intend to abide by regulations. It is worth noting that both Village Farms and Windset Farms have themselves been the subject of lawsuits and regulatory complaints over COVID-19 protections and workplace safety violations.⁴³ MPL is confident both Village Farms and Windset Farms would take the position such complaints are not representative of their respective companies' commitments to their regulatory obligations. The same is true for MPL.

MPL makes every effort to train and provide clear guidelines for its thousands of employees to operate within. In response to the submissions of both Windset Farms and Village Farms, MPL would like to address the following isolated incidents.

i. Backyard Farms US Department of Labour

MPL experienced certain technical compliance issues at its Backyard Farms facility in Maine in 2019. The details of these activities and the terms of the settlement were detailed in a United States Department of Labor ("USDOL") press release on March 31, 2021. MPL is always motivated to take care of the well-being of its workers. There were two issues at the Backyard Farms Maine affiliate facility, a facility that MPL had at the time only recently acquired in 2017. One issue arose whereby the payroll system missed a small

⁴² Application at pgs. 8 and 9.

⁴³ A class action lawsuit was launched against Windset Farms (California) Inc., Windset Farms (California) Labor Management Inc., Pacheco Brothers Inc., and Pacheco Brothers Services Inc. for alleged violations of the California Labor Code. Windset Farms and Pacheco Labor Services Inc. were also named defendants in a sexual harassment lawsuit. See Camillia Lanham, "Lawsuits line up against Santa Maria's Windset Farms", Santa Maria Sun, Vol. 14, Issue 22 (August 7, 2013), online: <http://www.santamariasun.com/news/10184/lawsuits-line-up-against-santa-marias-windset-farms/>. On November 20, 2020, Village Farms L.P. was sued for failing to take measures to protect the health and safety of its workforce during the COVID-19 pandemic. See Ana Popovich, "Migrant Farm Worker Wins Increased Covid-19 Protections for Workplace Following Lawsuit" (January 26, 2021), online: <https://whistleblowersblog.org/whistleblower-news/migrant-farm-worker-wins-increased-covid-19-protections-for-workplace-following-lawsuit/>



← INSPIRED BY FLAVOR

amount of wages for a single week of operations. Once MPL learned of this error, every affected employee was made whole. The payroll system error was addressed and the problem never arose again.

The other matter pertinent to the USDOL issue in Maine arose as a result of certain terminations and a misunderstanding of the H-2A Temporary Agricultural Worker visa process. It is also noted that resolution of the matter included having to pay workers for a harvest season even though they did not actually perform any work. Since settling this matter, MPL has replaced the responsible staff in the human resources department for Backyard Farms and has implemented a vigorous training program and processes to avoid any such issues in the future. As evidence of the effectiveness of that training program, the USDOL recently completed an exhaustive H-2A audit of the MPL Colorado affiliate facility resulting in a 100% score from the USDOL for compliance.

ii. COVID-19 Outbreak at Green Empire Farms

The second issue raised by Windset Farms is in relation to a COVID-19 outbreak at Green Empire Farms in Oneida, New York in March of 2020. Like many businesses, MPL had to globally react and adapt quickly when COVID-19 appeared in North American communities and workplaces in early 2020. At the start of the pandemic, a small subset of workers were found to have COVID-19-like symptoms. Out of an abundance of caution, without any legal requirement and despite the small percentage of workers that exhibited symptoms, MPL insisted on testing the entire Green Empire Farms workforce. Approximately one third of workers tested positive; almost all were asymptomatic.

Immediately upon discovering the number of positive results, Green Empire Farms partnered with the Madison County Health Department in developing a plan to respond and involved the Madison County Health Department at every step towards resolution, which partnership continues to the present date. Madison County Health Department's contact tracing system effectively identified the source of the outbreak. In consultation with it, MPL took steps to address the cause and to ensure it did not recur.

Like virtually all other businesses, MPL has learned many lessons from the initial onset of the COVID-19 pandemic, and now runs active vaccine clinics at all of its farms and other facilities. There are also economic and other incentives provided for its farm and other workers to get vaccinated.

BCFIRB Supervisory Review

Lastly, MPL wishes to address the current ongoing supervisory review by BCFIRB.

As the Commission is aware, BCFIRB is currently undertaking a supervisory review of allegations of bad faith and unlawful activity raised in court filings alleging misfeasance in public office by certain members of the Commission (the "**Supervisory Review**"). Village Farms has suggested that no decision can be made on the Application until the Supervisory Review is complete.⁴⁴

⁴⁴ VF Letter, pg. 17.



← INSPIRED BY FLAVOR

Aside from the fact that the Supervisory Review is entirely irrelevant to the criteria outlined in Amending Order #54, all of the concerns raised by Village Farms were thoroughly addressed and disposed of by BCFIRB in its Interim Order on BC Vegetable Marketing Commission Panels dated August 20, 2021 (the “**August Interim Order**”).⁴⁵

The August Interim Order was issued by BCFIRB after submissions were heard from a number of parties engaged in the Supervisory Review, including the Commission, as to the proposed panels to consider matters related to MPL during the Supervisory Review period. In issuing the Interim Order, BCFIRB made the following key findings:

- There are a very limited number of commissioners available to sit on each panel;⁴⁶
- The panels necessarily involve some same-sector commissioners and commissioners who are facing allegations in civil claims. Without such commissioners sitting on the panels, quorum could not be reached and no decisions could be taken with respect to the applications;⁴⁷
- Commissioners have a statutory duty to sit on panels and decide matters assigned to them;⁴⁸
- The mere presence of allegations is not generally considered to be a basis for a tribunal member to refuse to carry out their duties;⁴⁹
- Allegations against specific commissioners do not taint the entire Commission;⁵⁰
- The interim order is being issued on the principle of necessity, and thus there is no proper basis for any other industry stakeholders to raise issues of bias with respect to the decision-making of these panels, including the administrative participation of Mr. Solymosi;⁵¹ and
- The Commission and its members must perform their statutory duties by deciding the requests and applications brought by, among others MPL, using the panels set out by BCFIRB. To act otherwise would paralyze the Commission, with significant repercussions for the industry.⁵²

⁴⁵ British Columbia Farm Industry Review Board, *In the Matter of the Natural Products Marketing (BC) Act and Allegations of Bad Faith and Unlawful Activity: Interim Orders on BC Vegetable Marketing Commission Panels* (August 20, 2021) (the “**August Interim Order**”), online: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/supervisory-reviews/current-supervisory-reviews/bad-faith-and-unlawful-activities/2021_aug_20_interim_orders_vmc_panels.pdf

⁴⁶ August Interim Order at para. 10.

⁴⁷ August Interim Order at para. 10.

⁴⁸ August Interim Order at para. 11.

⁴⁹ August Interim Order at para. 16.

⁵⁰ August Interim Order at para. 16.

⁵¹ August Interim Order at para. 20.

⁵² August Interim Order at para. 21.



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On that basis, BCFIRB has directed consideration of the within Application.

As to Village Farms' concern with four commissioners determining the Application rather than five, this issue has also been considered and determined by BCFIRB. By Order dated September 24, 2021, BCFIRB ordered as follows:

“Section 2(1) of the Commission’s Amending Order 54 is varied such that any requirement for agency applications to be decided by a five-member panel is inapplicable to requests and applications made by CFP and MPL for the duration of this supervisory review.”⁵³

All of the issues raised by Village Farms in relation to the Supervisory Review have already been adjudicated by BCFIRB and must be accordingly disregarded by the Commission.

e) There is evidence-based demand for the specific product(s), grouped by end use customer, that are to be marketed by the proposed Agency, which demand is not already satisfied by existing Agencies;

Retail consumption of Sunset® branded tomatoes, peppers and cucumbers has consistently outpaced the market, with a +15% compound annual growth rate since 2014 vs. commodity growth of 1 to 3%.⁵⁴ Currently, MPL is experiencing growth of 15-20% increases in sales in each fiscal year. MPL is seeking access to BC producers with a Class 1 Agency License to help meet this continually growing demand from increased sales in the west.

MPL disagrees with the assertion by Village Farms, again made without any supporting evidence, that all superior varieties in greenhouse production are already harvested in BC.⁵⁵ MPL’s Sunset® brand is prized for its wide assortment of specialties not available anywhere else. As noted in the letters of support from Fresh4U Farms Ltd. and Creekside Hothouse Ltd., MPL has exclusivity agreements with some of the best varieties in the greenhouse industry, which varieties have not been previously available to them.⁵⁶

f) There is evidence-based support from multiple licensed Commercial Producers, who are at arms-length from each other, and who intend to market regulated product through the proposed Agency;

MPL has met this requirement by introducing letters from three commercial producers, Creekside Hothouse Ltd., Fresh4U Farms Ltd., and Millennium Pacific Greenhouses Partnership, all of whom have

⁵³ BC Farm Industry Review Board Letter re: Interim Order Regarding Amending Order 54: Vegetable Commission Allegations of Bad Faith and Unlawful Activity Review (September 24, 2021), online: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/supervisory-reviews/current-supervisory-reviews/bad-faith-and-unlawful-activities/2021_sept_24_interim_order_amending_order_54.pdf

⁵⁴ Application, pg. 32.

⁵⁵ VF Letter at pg. 6.

⁵⁶ Schedule 3.6 of Application.



← INSPIRED BY FLAVOR

stated their intention to market regulated product through MPL BC.⁵⁷ MPL has also received support for its Application from a licensed Agency in BC, Country Fresh Produce Inc.⁵⁸

g) The primary responsibility for marketing regulated product will rest with the proposed Agency, rather than wholesalers who may market regulated product on behalf of the proposed Agency;

Mastronardi Produce British Columbia Inc. is already a licensed wholesaler in BC. As described in item (a) above, MPL's Application is entirely premised on the numerous benefits it can provide to Producers by working directly with them to support growth and expansion of the BC greenhouse vegetable industry, rather than being one step removed as a wholesaler.

h) The proposed Agency will comply with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province;

MPL believes it has adequately demonstrated its commitment to compliance with Commission orders. Mastronardi Produce British Columbia Inc. has already operated within the BC regulatory scheme as a licensed wholesaler over the course of the last year without incident.

i) The proposed Agency will not have a detrimental effect on the delivery allocation and production allocation of existing Producers not represented by the proposed Agency; and

For the reasons noted above, and given its primary goals of displacing existing imported product while promoting and expanding capacity for its BC grower partners, MPL will have no detrimental effect of existing delivery and production allocation. MPL is focused on continued growth in the greenhouse produce space. MPL has continued to increase sales in the west and work towards increased BC grower capacity to meet the demand of its customers for BC-grown product and opportunities that have not been available under the existing Agency framework. Demonstrative of this fact is the current expansion by Fresh4U Farms Ltd.⁵⁹

j) The proposed Agency has the knowledge, capacity and ability to operate effectively as an Agency.

MPL's knowledge, capacity and ability to operate effectively as an Agency is well-documented. The Ontario Greenhouse Vegetable Growers has described MPL as having played a "significant role in the foundation and continued growth of the greenhouse sector in Ontario," a leader "in all segments of the greenhouse vegetable category," and a successful grower/marketer.⁶⁰ MPL and its leadership are regularly called on to speak as experts on behalf of the industry as a whole throughout Canada and the United States, as well as participate in industry and governmental boards and advisory committees, which include engagements and positions with the Canadian Produce Marketing Association, the Ontario Greenhouse

⁵⁷ See Schedule 3.6 of Application and letter from Millennium Pacific Greenhouses dated October 7, 2021.

⁵⁸ Schedule 5.12.2 of Application.

⁵⁹ Email of support from Gurinder Cheema, Executive Director of Fresh4U Farms Ltd., to Debbie Etsell dated October 22, 2021

⁶⁰ Schedule 1.1 to Application.



Vegetable Growers, the Produce Marketing Association, the United Fresh Produce Association, the United States Food and Drug Administration, and the United States Department of Agriculture.

MPL has also been the recipient of numerous industry awards recognizing its significant contributions to the greenhouse industry, including the United Fresh Innovation Awards from 2012 through 2018, the Impact Awards in 2010 and 2016, the Best in Show Award in 2019, the Innovation Award in 2018 through 2020, the Gateway to Innovation Award in 2018, the Global Packaging Innovation Award from 2013 to 2020, the Marketing Excellence Award in 2020, the 50 Best Managed Companies Award from 2009 to 2020, the Qualicom Annual Food Safety Award in 2020, the NON GMO Project Verification Award in 2009, and International Taste Institute Awards from 2010 to 2021.

MPL thanks the Commission again for the opportunity to have presented its submissions on its Application and to provide a response to the industry stakeholders. MPL believes it has adequately demonstrated to the Commission that there is great opportunity for BC producers by the Commission designating MPL as an Agency, and that doing so will serve as a catalyst of growth and financial stability to not only the Producers, but the indirect BC economy as a whole.

Should you have any further questions about any aspect of the Application, we would be pleased to provide further information.

MPL British Columbia Distributors Inc.

Per: _____

Name: Paul Mastronardi

Title: Chief Executive Officer



APPENDIX I
Product of Mexican Origin in British Columbia National Retailers

Product of Mexico in BC Market – 9 November, 2021



Product of Mexico in BC Market – 9 November, 2021





Product of USA in BC Market – 9 November, 2021

