



## COMMISSION RECOMMENDATION REPORT ON ASIAN BREEDER PRODUCERS June 24, 2016

### **Purpose:**

To undertake the requisite due diligence incumbent on the Commission to ensure fair and orderly marketing in the hatching egg sector and to meet BC FIRB's direction to provide a recommendation report as per the March 2016 decision.

Stakeholders are now invited to provide feedback on the Commission's recommendation by July 24, 2016 in written form via email.

### **Outcomes:**

To determine the extent to which, if at all, the Asian Breeder Hatching Egg Producers ought to be subject to the existing regulations or to alternative regulations (other than Biosecurity, Food Safety and Premise ID).

### **Scope:**

This undertaking will identify and assess the BC FIRB's decision in the Skye Hi/V3 appeal in regards to regularization of Asian Breeder Hatching Egg Producers.

This undertaking will identify and assess the considerations material to the determination of the extent to which, if at all, the Asian Breeder Hatching Egg Producers ought to be subject to the existing regulations or to alternative regulations (other than Biosecurity, Food Safety and Premise ID).

This undertaking will identify and assess the risk to the Industry in terms of Biosecurity, Food Safety and Premise identification.

Would the risk be minimized if they were regulated?

### **Background:**

In September 2015, the BC Hatching Egg Commission was the respondent in an appeal process regarding Amending Order 11. In March 2016, a decision was made by BC FIRB and the BC Hatching Egg Commission was given a list of orders and a timeline for completion. This work action plan was developed to ensure that both of those directives were completed.

## **Phase 1: Food Safety, Biosecurity and Premise ID**

1. The consolidated orders were updated to reflect the appeal decision to remove Amending Order 11 on April 14, 2016. Staff circulated this update to both the Hatching Egg Producers and Asian Breeder Producers on April 25, 2016
2. The orders were reviewed, in particular Schedule 5 which speaks to Biosecurity, Food Safety and Premise ID programs. The Commission found that Schedule 5 was sufficient to enforce the Food Safety, Biosecurity and Premise ID programs as instructed by BC FIRB in the March 2016 decision, and ensure that the Asian Breeder Producers were compliant. This was addressed to producers in the memo emailed to Asian Breeder Producers on April 25, 2016.
3. Commission staff has worked toward scheduling, conducting and following up on all Asian Breeder facilities that are engaged in hatching egg production by the BC FIRB's ordered deadline of April 29, 2016. The Asian Breeder Producers have not shown any promptness to comply with the programs.
4. Asian Breeder Hatching Egg Producers must be compliant under the consolidated orders in terms of Biosecurity, Food Safety and Premise Identification Programs as per the BC FIRB's March 2016 instruction.

## **Phase 2: Review of Decision to determine course of action on regulating the Asian Breeder Hatching Egg sector or on developing an exemption permit program.**

1. Commission staff was instructed to review the BC FIRB's Skye Hi/V3 decision and create a list of considerations for the Commission to work through as a part of the decision making process,
2. The Commission reviewed the list of considerations and in accordance with the SAFETI principals of good governance rationale regarding the Commission's decision and the Considerations of the Decision Order written by BC FIRB.

134:

Before enacting any other regulation in regards to persons engaged in the production of Silkie or TC broiler hatching breeders, eggs, or chicks, the Commission is to consider the full scope of potential regulation, develop options and determine which best meet its objectives for the industry. At a minimum, the Commission must determine if production controls are necessary and whether or not the Commission should be setting chick price. As part of its consideration, we would expect the Commission to consider the role the Chicken Board currently plays in regulating the production of specialty chicken and the impact of its pricing orders which include a pricing component for Asian specialty chicks. To put it another way, should the Commission directly regulate the amount of production of Asian breeders, eggs or chicks and their price

or should the Chicken Board indirectly regulate these components of Asian production through its regulation of specialty chicken?

3. In BC FIRB's March 2016 decision it describes the Asian Breeder Producer market place as "a type of niche production that formed the basis for the 2005 Specialty review" (paragraph 113). The Commission must use the lens of the BCFIRB's decision in making its considerations and although very different from the Commission's original position (paragraph 100).
4. In fact the BC FIRB directly disagrees with that position (paragraph 109) that the Asian Breeder Producers were always subject to the Commission's regulation the BCFIRB has made it clear to the Commission that it must consider this production unique and "special".
5. The Commission must also use the same BC FIRB decision lens to analyze the request letter dated April 6<sup>th</sup> sent by 5 of the Asian Breeder Producers.

There are concerns regarding setting chick price that include: differences between the types of chicks being sold, the unique market demands, integrated components and exported production versus domestic production.

Asian breeders are not an exclusive BC market and are a seasonal market. Each grower could require a separate COP based on all aspects of their unique production and business model an example of this is many may own their own parent stock.

6. Asian breeder producers are substantially different grower to grower in their business models and there is no overlap between Asian breeder producers and "Mainstream" Hatching Egg Producers, that is to say there is no disruption to the "mainstream" market due to any Asian Breeder Producer production issues. The two types of production share similar risk in terms of biosecurity, food safety and premise identification.

The Commission cannot find common threads in terms of regulation outside of the 3 programs.

135. The Commission must decide if further regulation is needed to achieve sound marketing objectives including industry stability, innovation and diversification based on the application of the outcome based principles of a SAFETI analysis.

7. The commission is unaware of any issues in that sector that require further regulation. In the BC FIRB's March Decision, paragraph 116, it describes the entry of new producers into the sector,

*Part of this ongoing change was the entry of Skye Hi and V3 into an unregulated (or not actively regulated) hatching egg industry in 2010. In the view of the panel, this is part of the industry's overall success story and is an indication of the growing strength of this small but important sector*

There seems to be industry stability and diversity and there are no concerns regarding Asian breeder producer's production supply, with the exception of industry pricing. Pricing is the result of supply and demand.

8. Pricing seems to self-resolve, under the current conditions a chick purchaser/broiler grower can move to another supplier if the quality does not suit the price. An example of this is one Asian broiler grower's ability to (paragraph 96) change suppliers when a new and innovative less expensive chick of better quality was offered to him. As per the testimony in the appeal, Skye Hi and V3 could provide different qualities and the grower was more interested in their specific product, which differed in that Grower's opinion than the other suppliers.

During the Appeal several Asian Breeder Producers testified that their strains were very different from the other suppliers (paragraph 38).

9. Regulation would suppress Innovation and diversification because each grower's business models differ and lack of regulation may have contributed to that diversity. Regulation could negatively impact the newer growers. Examples of diversity and innovation include: new entrants to the marketplace once occupied by only a few long term Producers, virtual hatcheries which have streamlined costs without having to build a brick and mortar facility and specific lineages of duo purpose birds that each producer has testified to have cultivated.

Regulation at this point may doom this innovation.

10. The Commission cannot see a positive side to regulation so it will examine exemption from regulation with the exception of the minimum standards of regulation including Biosecurity, Food Safety and Premise ID as instructed by BC FIRB.

## **Analysis**

### **1. How is exempting Asian Breeder Producers from Regulation Fair?**

Asian Breeder Producers have professed to have earned their market share. In the BC FIRB's March 2016 decision, paragraph 117, the BC FIRB states that "diversity of Producers in the Asian hatching egg sector provides for a more resilient marketplace" and the Asian breeder producers have expressed passionately that they "Just want to farm" therefore regulation may be an excessive disruption to the orderly marketing of this unique and innovative market. Unlike a "mainstream" Producer who requires regulation in order to achieve industry fairness, the Asian Breeder Producer requires the maximum flexibility to respond to their very unique marketplace demand.

### **2. How is exempting Asian Breeder Producers from Regulation Inclusive?**

By ensuring that the minimum regulations standards as described by BC FIRB in the appeal decision are upheld. An example of the inclusivity of the Commission in this regard, the Asian Breeder Producers were included in the Commission's updates and conference calls during Avian Influenza Outbreak of 2014. Asian Breeder Producers exist outside of the Commission's regulation with only the minimum standards to ensure that their risks are mitigated with Biosecurity, Food Safety and Premise ID as BC FIRB instructed.

*136. No later than 90 calendar days from the date of this decision, the Commission is to provide a report to its stakeholders and BCFIRB with its recommendation(s) with respect to paragraphs 134 and 135 above, fully supported by a process consistent with SAFETI principles. This report will determine whether or not the Commission intends to exempt persons engaged in the production of Silkie or TC broiler hatching breeders.*

eggs or chicks, from regulation except with respect to any provisions regarding biosecurity, including identification and registration of premises, and food safety referred to in paragraph 133 above. If the Commission's choice is for exemption, the report must include draft changes to the existing regulatory scheme to support the exemption.

### **3. How is exempting the Asian Breeder Producers from Regulation Effective?**

The Commission would be effectively preserving the market place already in existence, as per BC FIRB's March 16 decision, and ensuring that it continues to develop in terms of innovation and diversity while effectively managing the inherent risks of long term birds through Biosecurity, Food Safety and Premises ID as instructed by BCFIRB in the March 2016 decision.

### **4. How is exempting the Asian breeder Producers from Regulation Strategic?**

Often the best strategy is to not over regulate something that is not in need of regulation. As described above currently the only strategic need in the Asian Breeder Producer marketplace is that of risk mitigation for both the Asian Breeder Producers and the mainstream Producers and that can be accomplished with Schedule 5 of the Consolidated Orders.

### **5. How is exempting the Asian Breeder Producers from Regulation Transparent?**

The BC FIRB's decision is on the BC Hatching Egg Commission website. Post June 2<sup>nd</sup> Board meeting the Work Action Plan and the notes associated with the Asian breeder Meetings were also be posted and distributed to the stakeholders. The Commission will meet the BC FIRB instructed deadline for a recommendation report and will conduct consultation on that report.

### **6. How is exempting the Asian Breeder Producers from Regulation Accountable?**

The Commission is accountable to the supply chain. Permitting is an accountable way to ensure that a small and unique market continues to be innovative and diverse. BC FIRB makes that clear in the March 2016 decision that sufficient weight must be given in the importance of diversity in the further development of this sector (paragraph 117).

### **7. How is exempting the Asian Breeder Producers from Regulation Sustainable?**

Exemption with the minimum standards of Biosecurity, Food Safety and Premise ID provides a small, unique marketplace the freedom and flexibility to meet seasonal and producer specific business models. Regulation may not be sustainable to this small sector as often regulation does not allow for flexibility.

Asian Breeder Producers have written the Commission a letter.

The Commission has received and reviewed the request for quota allotment as part of the phase 2 considerations of the work action plan.

A secondary request was made to develop an Industry Advisory Committee.

The Commission discussed a recommendation that the Asian Breeder Producers use the specialty market advisory committee (SMAC) already in place at the BC Chicken Marketing Board. BC FIRB points out in the March 2016 decision (paragraph 74) that more consultation should have been conducted using the already established committee as it is fully aware of the history of this sector. The Commission may recommend to the Asian Breeder Producers to use the SMAC for further recommendation as the sector evolves as it is comprised of some of this unique market place's most knowledgeable stakeholders and may be able to provide insight as well as a layer of governance as some are not directly impacted by the Commission's decision and could act independently toward making recommendations.

### **Addressing the Scheme Changes:**

1. Notwithstanding the questionable applicability of the Consolidated Order to persons engaged in the marketing of Silkie or Taiwanese broiler breeders, broiler hatching eggs or chicks, it would be prudent to clarify the nature and scope of any "exemption" that might be necessary in the following terms:

*Except as otherwise determined by the BCFIRB in its March 29, 2016 decision in *Skye Hi Farms Inc. et al. v BCBHEC et al.*, persons engaged in the marketing of Silkie or Taiwanese broiler breeders, broiler hatching eggs or chicks are not bound by the provisions of the Consolidated Order, save for Schedule 5 and the definitions related thereto.*

### **Consultation:**

As per BC FIRB's instruction this recommendation report was to be circulated to the Industry stakeholders by June 27, 2016.

In accordance with those instructions, the Commission is circulating both the recommendation report and the drafted Amending Order that will be required for the addition to the Consolidated Orders. The Commission welcomes the feedback of the stakeholders in writing via email by July 24, 2016. The Commission will consider the submitted views of the stakeholders on the recommendation report as well as the draft Amending Order at their next Scheduled meeting at which time the Commission expects to make a decision as to whether Asian Breeder Producers will be exempted from regulation except for Food safety, Biosecurity and Premise ID. Once the Commission has made its decision it may seek BC FIRB prior approval as was done for the other supply managed commodity boards as required by the 2005 Special Review.

### **Reference documents:**

1. BC FIRB's March 2016 decision
2. The BC Hatching Egg Asian Breeder Producer Work Action Plan
3. Letter to the Asian Breeder Producers regarding the Schedule 5 of the consolidated orders
4. The list of Considerations prepared by Commission staff
5. The Asian Breeder Producer April 6, 2016 letter to the BC Hatching Egg Commission
6. Draft Amending Order