

BC Broiler Hatching Egg
Commission Recommendation
to the BC Farm Industry Review
Board Regarding the Asian
Breeder Sector

Supervisory Review

June 28, 2017

1. Introduction

Under the British Columbia Broiler Hatching Egg Scheme (“Scheme”), the BC Broiler Hatching Egg Commission (“Commission”) has the general power to “promote, regulate and control in any and all respects, the production, transportation, packing, storing and marketing, or any of them, of a regulated product...” Included in the specific powers provided to the Commission in s. 8(1) of the Scheme are the powers to issue quotas to persons marketing the regulated product and to exempt from determinations or orders a person or class of persons marketing the regulated product. The Commission understands that its authority ranges from issuing quota to the Asian Breeder producers to exempting them from regulation.

Government and the BC Farm Industry Review Board (“BCFIRB”) have also provided a policy framework for the regulated marketing sector, including: the B.C. Agrifood and Seafood Strategic Growth Plan (2015); the Regulated Marketing Economic Policy (2004) (“RMEP”); the Specialty Market and New Entrant Submissions: Policy, Analysis, Principles and Directions (September 1, 2005); and, subsequent policy advice and direction provided by BCFIRB to the regulated marketing sector and to the Commission specifically. The Commission accepts and agrees with the overarching policy objectives for the B.C. supply managed sector that are outlined in these documents. Along with other objectives, diversity, innovation and flexibility, and accommodating specialty production are important principles for the B.C. supply managed sector.

Given the legal and policy frameworks outlined above, the issue for the Commission in making its recommendation to BCFIRB is what sound marketing policy is for the regulation of Asian Breeder production in 2017. Asian Breeder producers and their production have not been subject to specialized orders and rules developed by the Commission, nor has the Commission taken active steps to enforce the general terms of the Consolidated Order against them. BCFIRB has directed that Biosecurity, Food Safety and Premise ID programs (Schedule 5 of the Commission’s Consolidated Order to which Animal Care program provisions are being added) do apply, however.

In this, its latest review of this issue, the Commission wiped the slate clean, stepped back, took a fresh look by considering a range of options, consulted further with stakeholders about the industry and used SAFETI to inform its recommendation to BCFIRB.

Review / Consultation Process

The attached Work Action Plan outlines the process. The following stakeholders were consulted during this process (the BC Egg Hatchery Association was included in the request for submissions but did not respond):

- Asian Breeder producers;
- BC Broiler Hatching Egg Producers' Association;
- BC Chicken Growers' Association;
- BC specialty processors;
- BC Chicken Marketing Board;
- Ontario Broiler Hatching Egg and Chick Commission; and
- Canadian Hatching Egg Producers.

A record of the Commission's process documentation, website information, correspondence to and from stakeholders and other supporting material is appended to this report.

Context Overview

Regulatory questions pertaining to this sector started in 2005 as part of BCFIRB's Specialty Review. BCFIRB said that "[t]he Commission's belief that a specialty production and marketing management program is not required seems reasonable", and noted that "[t]he Commission may wish to provide, if it has not already done so, a specific exemption for Asian specialty breeders".

In 2009, an Avian Influenza event at a non-registered Silkie farm in the Fraser Valley highlighted a supply chain gap and risk to the B.C. poultry sector. BCFIRB instructed the Commission to address this gap by implementing and enforcing Schedule 5 requirements for Asian Breeder producers. BCFIRB also referred the Commission back to the 2005 Specialty Review and whether the sector should be further regulated.

Initially, the Commission intended to exempt Asian Breeder producers from regulation except for Schedule 5 requirements. This had support from some Asian Breeder producers. Subsequently, the Commission reconsidered, announcing its intent to issue quota in support of orderly marketing, thereby enhancing its capacity to enforce

Schedule 5 and other regulations through its powers to issue, suspend and rescind quota¹. The Commission undertook further consultation with stakeholders.

Some Asian Breeder producers favoured this approach and others did not. The matter became adversarial and difficult within the Asian Breeder producer sector and for the Commission. It was an ongoing challenge for the Commission to acquire pertinent information.

In 2015, the Commission announced a chick-based quota system. The system was driven by the Chicken Farmers of Canada allocation which drives the Canadian Hatching Egg Producers national allocation system. Two Asian Breeder producers appealed the Commission's decision to BCFIRB. Concerns were expressed about inherent limitations to production under a quota system, including the cut-off date for determining quota allocations based on production as this would affect more recent entrants and those wishing to gain greater market share through competitive pricing or chick differentiation (specifically, genetics).

BCFIRB's March 29, 2016 decision overturned the Commission's decision:

"The panel finds that regulating a return to fewer producers of Asian chicks than now exist is not consistent with sound marketing policy. In the current market, chicken growers have more choice of chick producers and there is increased opportunity for the development of variety within hatching egg breeds. We heard compelling arguments that diversity of producers in the Asian hatching egg sector provides for a more resilient marketplace, increased production efficiencies within the sector overall and protection in the event of outbreaks of disease or other disasters. In our view, the Commission's orders fail to give sufficient weight to the importance of diversity amongst producers in the further development of this sector." (para. 117)

In light of BCFIRB's decision, the Commission began to review ways to allow for that innovation and diversity and contemplated achieving these important goals through exemption permitting. Exemption permits would allow Asian Breeder producers the flexibility to achieve market demands, the ability to manage their own production and

¹ As noted later in this document, recent changes to the *Natural Products Marketing (BC) Act* that provide for an administrative penalties system will, when those provisions are brought into force, establish another enforcement mechanism.

minimize their regulatory obligations. This would maintain the historical status of the sector.

On August 19, 2016, the Commission submitted a request to BCFIRB for prior approval to exclude Asian Breeder producers from regulation apart from Schedule 5 of the Commission's Consolidated Order.

Certain Asian Breeder producers objected (through new appeals) and BCFIRB deferred its decision pending further review in its supervisory capacity. The Commission was instructed to further consult and review the matter and report back to BCFIRB with its recommendations.

Stakeholder Positions²

Trevor Allen of Skye Hi Farms Inc., Casey van Ginkel of V3 Farms, Bill Friesen, Lillian Fehr of Friesen Enterprises, Kelly Boonstra of Coastline Chicks and Rob Donaldson of Bradner Farms (Asian Breeder producers)

These producers, or their representatives, met with the Commission as a group. There were concerns that their April 6, 2016 letter was not included in the suite of options developed as it was viewed by the Asian Breeder producers as a good fit. They stated that their hatching eggs were largely interchangeable and transfer between hatcheries to meet supply was possible despite concerns raised by processors and others about genetics and diversity. A TC is a TC is a TC (Taiwanese Chicken) and they are completely interchangeable. They also are concerned about competition from Ontario, which could become worse for B.C. if Ontario establishes a federally licensed plant. Current producers will go out of business if new, integrated producers enter into B.C. Asian Breeder production. This will undercut current pricing. They anticipate that regulation will be easier than the Commission believes.

In closing submissions, counsel also pointed to the letter received by the Commission on April 6, 2016 which discussed a "general agreement" between these five of the six current Asian Breeder producers on how to best regulate the sector. This included the division of quota, a request of the Commission to perform a cost of production analysis, the continued right for the use of "virtual hatcheries" and the start of the calculation date for LIFO and 10/10/10.

² See appended written submissions and meeting notes.

They also identified what they saw as key risks faced by an unregulated Asian Breeder sector and the benefits of regulation. Risks include: disruption and instability because of supply, competition and consumer issues; the inability of the small sector to recover from disease; being responsible for all of the risk of supply and demand; potential entry of new integrated competitors; and, possible market instability from inter-provincial production and trade.

Benefits include: stabilized supply and demand; production predictability; cooperation between producers to determine better efficiencies (which would also help B.C. compete nationally and internationally and draw new consumers of B.C. product); income stability that would incentivize investment in infrastructure and genetic diversity; greater transparency and stability to the specialty chicken value chain; certainty to allow an existing producer to retire; and incentivize diversification.

The submissions also point to the success of specialty production under quota in other B.C. supply managed commodities.

Ken Huttema and Rob Vane of Farm Fed (sixth Asian Breeder producer and specialty processor)

This sixth producer had a different view of regulation. The Commission should implement bio security standards and premise identification requirements for the specialty industry. These two areas are of common concern for the whole poultry industry and as such the Commission has the mandate and duty to ensure proper compliance. The exposure to the potential outbreak of AI is well known in the industry and by enacting these two areas it will only help in the event of another outbreak.

The diversity and flexibility of the industry will be compromised. Over-production which is part of the reality today will be avoided at all costs. Prices will rise as COP's are developed which will cause animosity between hatching egg producer and broiler grower. The contention that with further regulation hatcheries will not be able to undercut one another and so drive them out of business is a false statement. If there is that much protection for the existing producers then the industry should be very concerned that a small group can dictate where they have to buy their chicks from. In a similar way you hear, from time to time, mainstream growers complain that they have no options as to where they purchase their chicks.

Their key points have remained consistent throughout this entire process. "Full regulation is a mine field for the Commission." Farm Fed is a small player in a diverse sector with very different self-interests. They insisted that the sector is thriving and the evidence of that is the "fighting" that is happening. The main area of concern for Farm Fed is the genetics. The Asian chicken consumer is incredibly picky and can taste the difference from one type of bird to another. Flexibility to meet market demand is key in this sector. Export is important for future growth. Supply management has a scale and this sector is far from it.

Dion Wiebe of Rosstown Farms (Specialty chicken processor)

Rosstown had a similar position to Farm Fed. Rosstown is also shipping to markets outside B.C. and exporting. Ontario's ramp up has impacted the market. The genetic selection is vital to the industry and producers are very protective of their genetic component. Genetics can be interchangeable in the short term for the domestic market but not at all for the export market. The system is a bottom up approach and the processor commits to the volume which makes quota unnecessary. Things are working the way it is.

Ken Falk and Joe Falk of Fraser Valley Specialty Poultry (formerly Fraser Valley Duck and Goose) (Specialty chicken grower, processor, prospective Asian Breeder producer)

Fraser Valley Specialty Poultry shared with the Commission their concerns about the implementation of full regulations. One of their concerns was the ability to remain competitive with Ontario. Ontario currently does not have a quota system in place for this sector and this allows them to remain lean. Ontario is developing its production and marketing aggressively and quickly and B.C. needs to position themselves to be as competitive as possible. Ontario does not have a federal processing licence so does not directly ship out of province. These external markets are important to B.C. and processors have to be concerned about Ontario.

There are differences in Asian Breeder producers' cost of production and efficiencies which make it difficult for effective, consistent regulation. They have concerns about regulation resulting in more inflexibility and leaving them less competitive moving forward.

Fraser Valley Specialty Poultry is also in discussion with an existing producer regarding the sale of Asian Breeder production.

Richard Bell of Farmcrest Foods Ltd. (Regional chicken grower, hatchery, processor)

Farmcrest Foods Ltd. is not currently involved in the Asian Breeder sector but Richard Bell was in the past. His view is that the domestic market is stagnant and that the only potential for substantive growth is the export market. He supports the objectives of the Specialty Review (and Farmcrest has benefitted from it) but the key obligation for supply managed boards is making space for specialty production. Accommodate it but do not over-regulate it, including by issuing quota.

Bryan Brandsma and Sharmain Bennie of BC Broiler Hatching Egg Producers' Association ("BCBHEPA")

The BCBHEPA has concerns regarding full regulation. Their concerns revolved around cost to the mainstream sector and the "manipulation of LIFO and 10/10/10". The representatives felt that the Asian Breeder sector was "not broken so why are we fixing it?" Additionally, the administrative costs to resolve issues in a small sector would not be fair to mainstream producers. They felt that the processors may buy out the quota anyway and the Asian Breeder producers would cash out.

Brad Driediger of BC Chicken Growers' Association ("BCCGA")

The BCCGA stressed the small, unique needs of the sector (sometimes only 100 birds grown at a time) and the importance of the genetics. These are market driven by processors and cannot be interchanged. There are many regulations in place on the chicken side that trickle back to the hatching egg side. Pricing is a good example of this. The growers have a COP in place that immediately captures chick costs. When the BCCGA representative was asked if a quota system would work in this sector, they responded with an adamant no. Flexibility and innovation are not functions of supply management, both of which are necessary in this marketplace.

BC Chicken Marketing Board (“BCCMB”)

The BCCMB did not comment specifically on potential regulations but expressed this overriding concern:

“I would reiterate that it is critical that this relatively new and evolving sector maintain the ability to react to changes in the market place that can be drastic and occur with little notice. Until this point, the Asian hatching egg producers have been willing to take risks and have worked closely with the processors to develop and supply a market that is constantly evolving. The BCCMB would not want to see regulations that would unduly hamper the ability of the Asian Chicken Sector to respond to changes in the marketplace that could result in lower allocations to our growers and processors or provide for our competitors in other provinces.”

Ontario Broiler Hatching Egg and Chick Commission (“OBHECC”)

The OBHECC advised that in Ontario, Asian Breeder producers “have breeders, hatcheries and in most cases broiler flocks”. OBHECC expects the same level of reporting and compliance to its programs as for mainstream production.

Ontario Asian Breeder producers must maintain compliance with biosecurity, CHEQ (Canadian Hatching Egg Quality) and animal care programs. They are also required to report production and hatch data. In its December 1, 2016 email, OBHECC advised that license fees are split between the producer and hatchery portions of the integrated operations. Subsequently, in a June 16, 2017 email in response to a Commission query, OBHECC advised that “we do not charge a license fee to operate to the Hatching Egg Producers providing eggs to the Specialty Chicken Program. They pay the standard levy...of 0.345 cents per saleable chick”.

Asian Breeders and hatching eggs do not require quota except if they sell to backyard operations, in which case there is a separate Non-White Rock quota.

OBHECC sets a minimum chick price based on the COP for the mainstream producer.

Canadian Hatching Egg Producers (“CHEP”)

CHEP advised that it allocates broiler hatching eggs to provinces based on the chicken production reported in each province (by Chicken Farmers of Canada). CHEP requested that if the Commission does collect data concerning Asian Breeder hatching egg production, it be reported to CHEP as part of the Commission’s regular reporting.

2. Analysis

Diversity

The hatching egg sector is distinct from the other supply managed commodities. It is a sector that supplies another sector in a symbiotic relationship rather than consumers directly; it requires significant operational management resources and the nature of the industry requires that it plan well into the future.

In many cases, the other supply managed and regulated sectors have the flexibility to move product from one category to another. For example, free range eggs can become mainstream eggs with the switch of a container (and price). Broadly speaking, milk is milk and an egg is an egg.

Another example of the difference is that while specialty egg production continues to increase in the layer sector, it essentially still serves the same domestic market. Eggs are in almost every Canadian household. That is not the case for Asian specialty chicken.

While acknowledging the regulation of specialty chicken by Chicken Farmers of Canada (CFC) and the BCCMB, the Asian Breeder sector is small in the first instance, then divided into two categories (eggs for Taiwanese Chicken and Silkie) and then further divided by genetics and types (CFC regulates up to 10 classes of specialty chicken, nine of which are grown in B.C.) flowing from those two categories. Processors (marketers) and the BCCGA were very emphatic that this diversity is critical, that it is driven by market demand and that regulation would negatively impact the sector’s flexibility to offer market driven diversity in the future.

Submissions from counsel for five of the Asian Breeder producers acknowledged that diversity was important and that regulation would assist the industry in that regard by providing stability and security. However, the five producers have also dismissed processor and BCCGA concerns about regulating what those two groups say is a diverse sector by advising that currently their hatching egg production is largely interchangeable. The sixth Asian Breeder producer (also a processor) agreed with the processors and the BCCGA.

With the small size of the Asian Breeder sector, the categories and sub-categories, the individual operations/pricing structures of the producers, and the views of the growers and marketers of specialty chicken, it is not clear to the Commission how it could implement any significant degree of regulation of such diversity without putting that diversity at risk.

Regulation

In addition to its obligations under the *Natural Products Marketing (BC) Act* and the Scheme, the Commission must operate under the provisions of the federal-provincial agreement for hatching eggs and is responsible to CHEP for its share of the national allocation and for national levies.

Mainstream producers do not pick their genetics, to which hatchery they ship, the utilization of their quota, their placement dates or their production cycle. These are managed by the Commission through the fulfilment of the Official Flock Schedule. With their modified regulation proposal, the five producers are saying they will manage their own scheduling and share domestic growth (quota) on a pro rata basis with export being managed by permit. They agreed with other stakeholders that an Official Flock Schedule would be non-viable and that many other mainstream hatching egg regulations would be a challenge to innovation and flexibility that are key to their sector.

Conversely, the Commission views the Official Flock Schedule as a key element to the effective regulation of hatching eggs, without one there is no "quota". Instead there is a permit to produce. Questions arise about how domestic growth will be managed and divided by Asian Breeder producers when they all are also competing hatcheries. It is also unclear how export permit production will be managed in terms of production planning and its potential impact on overall supply.

The Commission agrees with BCFIRB's observation at para. 111 of its March 2016 decision that its Small Lot Innovative Self-Marketer Program – the self-marketing of “chicken grown under quota from a strain of chicks not available from a BC hatchery” is distinguishable from the regulation of specialty breeders and their hatching egg production. The program is, however, an example of the Commission responding to the overarching policy objectives of the RMEP and the Specialty Review.

Four of the six Asian Breeder producers are specialty chicken growers and therefore hold specialty quota from, and are subject to, the regulations of the BCCMB. All the Asian Breeder producers are also hatcheries – including “virtual” – and therefore subject to certain licencing and regulatory requirements of the Commission and the BCCMB.

As hatcheries, they manage their own egg flows and sets. Current regulation under the Commission's Consolidated Order requires hatcheries to report their numbers to the Commission. This enables the Commission to collect national levies and allows the Commission to monitor production numbers.

The BCCMB also regulates the flow of domestic product through both quota and its allocation system. This is verified using the BC101 form which links to the Commission's Consolidated Order hatchery regulation that requires reporting of chick placements. The BC101 form requires sign off by the chicken grower, their hatchery and their processor confirming the amount of production that is to be produced and shipped in a chicken production cycle.

We also note Rosstown's comments about a bottom up approach and an obligation on processors to commit to volume.

In combination – again noting that the industry is already considerably integrated with Asian Breeder producers also being hatcheries (as seems to be the case in Ontario) – and perhaps fine-tuned through further discussion with the BCCMB, the Commission is satisfied that many of the concerns about production planning and stability can be addressed. The two regulatory bodies can respond if substantive issues arise. We are not sure that issuing quota – at the cost of increased regulation – to “producers” that want to be able to grow that quota through market share developed by those producers as “hatcheries” would bring stability in and of itself.

Pricing

The Commission acknowledges the importance of pricing and the ability of producers to have a fair return. We note, however, the BCCGA's comments that the BCCMB COP for specialty chicken immediately captures the chick cost. That chick cost is set by the hatcheries who hatch the eggs they produce as Asian Breeder producers. The formal COP being requested would establish the price Asian Breeder producers would pay themselves in the first instance. The Commission was provided with information about one current pricing issue affecting one producer in his hatchery capacity but has not seen any evidence to this point that pricing is an ongoing or systemic issue for Asian Breeder producers and that a minimum specialty price is required for this production.

The Commission notes that in Ontario, all production is subject to the minimum price set by the Ontario Broiler Hatching Egg and Chick Commission. This also accords with Specialty Review pricing policy. The Commission supports this approach and given the potential for future competition, the Ontario regulatory model should be taken into consideration if and when B.C. develops its own pricing regime.

Specialty Marketing Advisory Committee (SMAC) / New Entrants

Although the Commission supports ongoing dialogue between itself and all stakeholders, it does not support the proposed SMAC. There is already a BCCMB Pricing and Production Advisory Committee (PPAC), a BCCMB SMAC and a Commission PPAC. Perhaps it is time to look at exactly how many pricing and production advisory committees are required in the chicken sector.

The Commission has no objection to specialty hatching egg producers being part of the BCBHEPA but that is a matter for the BCBHEPA and its bylaws.

The Commission also has concerns about the suggestion that all six Asian Breeder producers serve on the SMAC. While admittedly that would ensure hatchery and processor representation (given the integrated nature of the industry), it could be perceived as a closed shop. Particularly if any new entrant program was limited to the mainstream sector, which has been suggested until market growth allows for new entrants in the Asian Breeder sector.

Cost / Burden of Regulation / Levies

The BCBHEPA has expressed concerns about the cost of regulating the Asian Breeder sector, generally, but also in terms of specific issues such as funding the cost of a COP study for the benefit of Asian Breeder producers.

The Commission understands that other boards have incorporated such costs into their general administration budget. The Commission also understands from anecdotal evidence that the budget cost and administrative burden to these boards in administering specialty can be very significant.

This is also a two-way street, as excessive regulation and cost can also negatively impact specialty producers, including potential specialty producers in the future who would face increased capital cost in acquiring quota to enter the industry – something which existing producers were not required to do.

There will be a cost and administrative burden to the Commission, mainstream producers, the Asian Breeder producers and, potentially, other stakeholders. There will at the very least be national levies and levies to support the administration and enforcement of Schedule 5 requirements.

Specialty production must be accommodated by B.C. supply managed boards but the level of regulation appropriate to a specialty sector is a critical decision for regulators.

Compliance and Enforcement

In BCFIRB's March 2016 decision, clear instructions were given to the Commission to ensure that the Asian Breeder sector's Biosecurity, Food Safety and Premise ID programs were audited on farm for all six Asian Breeder producers. To date, only half are compliant with the requirements of the Commission's Consolidated Order. The other three objected to Commission staff coming on their premises, one going so far as to threaten to call the police should Commission staff arrive on site.

This gives the Commission pause. If there are regulatory issues related to the enforcement of Schedule 5 – matters which potentially affect the entire B.C. poultry sector – what would be the “cost” of enforcing other regulation?

One of the considerations in the Commission's earlier recommendation to institute chick-based quota was the ability to enforce through quota-related/licensing measures. Marketing boards and commissions should soon have the authority to implement an administrative penalties system and this will provide an effective enforcement tool for the Commission, regardless of whether quota is issued or not.

A regulated hatching egg sector is both a privilege and a responsibility and the Commission is concerned about the response of some producers to the efforts of the Commission to respond to BCFIRB's direction concerning Schedule 5.

Harm

Concerns have been raised by Asian Breeder producers about potential harm to their business in a non-regulated sector, including from other producers entering the industry. This could impact on existing producers being unable to continue operating at current levels of production and losing the investment they have already made. A supply managed system protects all industry participants and without it, all industry participants – but particularly smaller and non-vertically integrated operations – are at risk.

Currently five Asian Breeder producers are cooperating under an April 6, 2016 agreement. This has provided a certain stability but if an unregulated sector continues, counsel advises that "it is unclear whether that stability will persist and there are concerns about competition".

When the existing Asian Breeder producers entered the sector, there were no special rules in place concerning Asian Breeders, and the Commission took no steps to enforce the general terms of the Consolidated Order in relation to Asian Breeders. Later entrants have used the opportunity to grow their production and markets at the expense of earlier entrants. All have survived to date and the majority now seek to extend their current agreement in a regulatory environment that closes the door to further competition.

The Commission does not argue that there will be no further competition but it is not convinced that the sector and individuals are at significant risk from that competition given their overall success and/or longevity to date. They have found ways to sustain themselves in meeting the needs of the specialty chicken sector. During the September

2015 hearing, all stakeholders agreed that quota was not the goal. The goal was a stable, thriving marketplace that could meet the needs of the consumer of this product in an effective way. As also described by BCFIRB in its March 29, 2016 decision:

"...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. It is not, as depicted by the Commission, Bradner and Coastline, a story of self-interest, market chaos and something to be condemned." (para. 116)

We are aware of negotiations currently taking place between an existing producer and a potential entrant producer about the former selling his business to the latter. This may be a difficult negotiation but the decision to regulate or not to regulate should be made for other reasons.

Although the Commission supports the goal of a stable, thriving marketplace, it believes this and increased accountability can be achieved without a significantly increased regulatory framework and a restrictive quota system.

The Market: External Competition and Opportunities

There is consensus that the domestic market for specialty chicken is relatively stable at this point. Past markets have disappeared as Ontario has entered into its own market in a big and aggressive fashion, including Chicken Farmers of Ontario expending significant market development funds. That production is not currently being marketed in B.C. as specialty processors in Ontario only have provincial licensing. That may change and result in competition in the attractive B.C. market for Asian chicken; something of concern to all B.C. stakeholders.

In B.C., the domestic market is largely satisfied. It is unclear to what extent new immigrants, second and third generation immigrants and others will continue to support the market other than for certain special occasions. The BCCMB is currently undertaking a study of its own to assess future market and growth opportunities for B.C. specialty chicken.

Export may be a possibility with some specialty chicken currently being exported to the U.S. and further abroad. Other B.C. processors are also examining export options. Although expanding export opportunities for the B.C. agrifood sector is an objective of the B.C. Agrifood and Seafood Strategic Growth Plan (2015), exporting is where Asian specialty chicken and its supporting Asian breeder production can be distinguished from some of the current specialty production in other supply managed boards.

It seems that the B.C. specialty chicken sector, including Asian Breeders, will need to respond to some significant market challenges and opportunities. This means ongoing dialogue with, and support for, specialty stakeholders. Here again the Commission is reluctant to significantly increase regulatory restrictions on a sector which continues to evolve. It would be premature to 'lock in' the Asian Breeder sector given its success to date, including having already faced internal competition challenges, and pending further information about the future markets it will need to serve and compete in. After talking to all stakeholders, the Commission is not convinced that the future structure of this distinct part of the hatching egg sector will be influenced substantively by the presence or absence of quota should further integration in fact occur.

Also of specific concern to the Commission is the emergence of Ontario into the specialty chicken marketplace. It is no secret that Ontario is aggressively pursuing expansion of its supply managed sectors, including chicken. This has already had a significant impact on the mainstream marketplace in B.C. and it may be inevitable that we see this also in our Asian chicken market. That will require all B.C. stakeholders to respond if we wish to maintain and expand the market for B.C. specialty chicken which is another reason to find ways to support B.C. stakeholders while being cautious about significantly increasing regulation in the B.C. Asian Breeder sector – regulation that Ontario as a potential marketplace competitor does not have.

The market-driven specialty chicken sector that in turn drives the Asian Breeder sector (as mainstream chicken drives mainstream hatching eggs) is still evolving in very fluid domestic and export markets that value branding, innovation, diversity and flexibility. There must be an appropriate regulatory regime in which the Asian Breeder sector can wholly respond in these challenging circumstances.

As this was also a stated concern of the BCCMB, it is incumbent upon the two regulatory agencies to consult further about the future of the Asian chicken market and the type of regulation necessary for both boards to support that market.

3. Conclusion

This issue has been the subject of years of review and legal challenges. Stakeholders have changed and reversed their positions over time. At different points they have opposed exemptions and opposed regulation (the Commission's Amending Order 11). The Commission itself has taken different positions over time. Perhaps only BCFIRB has taken a consistent position by remaining agnostic about an outcome other than directing that Asian Breeder producers and their production must be subject to Schedule 5 of the Commission's Consolidated Order in the best interests of the poultry sector and the public.

This convoluted history is why the Commission "wiped the slate clean, stepped back, took a fresh look by considering a range of options, consulted further with stakeholders about the industry and used SAFETI to inform its recommendation to BCFIRB". It is in the best interests of all concerned that some certainty be brought to this matter so that the Commission and industry can make necessary regulatory and business decisions going forward.

The Commission has examined the overarching policy objectives of the RMEP and the Specialty Review and their application in the hatching egg sector in 2017. The Commission has assessed its Strategic Plan and what it means for the Asian Breeder sector. The Commission is now in possession of better information about the status and growth of the Asian Breeder sector and the sector's regulatory and business relationship with related stakeholders. It has assessed the regulatory framework in Ontario and the implications that has for B.C. in the future. The concerns of Asian Breeder producers with respect to potential production and market instability have been a significant factor in the Commission's deliberations. Although it reviewed its past positions, including its August 19, 2016 recommendation to BCFIRB, the Commission also challenged itself to bring fresh thinking in determining appropriate, effective and meaningful regulation. The Commission has used SAFETI as a tool to determine what is sound marketing policy for the regulation of its Asian Breeder sector (see checklist).

The Commission continues to support the overarching policy objectives of the RMEP and the Specialty Review. We strongly disagree with the BCCGA position that "flexibility and innovation are not functions of supply management". For the reasons outlined in this document, however, we do agree that it is "necessary" for the Asian Breeder sector at this stage in its development to be in a regulatory environment that supports diversity

and further encourages flexibility and innovation. The sector can be held accountable and orderly marketing maintained using authorities and enforcement measures available to both the Commission and the BCCMB while allowing for its natural evolution.

Given the existing regulatory interface and the potential for two-way regulatory impact, it is the Commission's view that it and the BCCMB should further examine if and how the BCCMB SMAC, the BC101 process and other Commission and BCCMB regulatory requirements can be better employed in support of both the Asian specialty chicken and breeder sectors.

Further, enhanced reporting from the Asian Breeder sector will allow the Commission to monitor developments as the sector evolves. Ongoing communication with all stakeholders will further ensure that the Commission is able to respond to that evolution when necessary and appropriate.

The Commission's recommendation relates only to the Asian Breeder sector. This review will, however, inform our approach to the management of future "specialty" and other regulation in the hatching egg sector. This will be through the delivery of sound marketing policy in the interests of the public and the industry in support of an accountable, stable and diverse industry capable of meeting current and future marketing challenges.

4. Recommendation

That the Commission be authorized in principle to amend its Consolidated Order to state that the Consolidated Order does not apply to the production, transportation, packing, storage and marketing of Asian Breeders, broiler hatching eggs derived from Asian Breeders and chicks hatched from broiler hatching eggs derived from Asian Breeders, by a person who has been issued a permit to engage in such production, transportation, packing, storage or marketing, except for:

- Section 1 of the Consolidated Order;
- Schedule 5 to the Consolidated Order and the definitions related thereto;

- The requirement to pay fees or charges imposed by the Commission from time to time in order to recover costs associated with the administration and enforcement of Schedule 5 to the Consolidated Order with respect to Asian Breeders, Broiler Hatching Eggs derived from Asian Breeders, and Chicks hatched from Broiler Hatching Eggs derived from Asian Breeders; and
- The requirement to pay federal levies.

At a future time, the Commission might wish to consider imposing orders and rules establishing a minimum price for broiler hatching eggs derived from Asian Breeders, and/or chicks hatched from broiler hatching eggs derived from Asian Breeders. However, the Commission does not propose to do so at this time.

The Commission has not had opportunity to finalize a draft of the proposed Amending Order for review by BCFIRB and stakeholders. As referenced in this decision, the Commission also intends further consultation with the BCCMB regarding potential improvements to the effectiveness and accountability (e.g., the BC101, SMAC) of the regulation of Specialty Chicken and Asian Breeders by the two boards.

All hatcheries will remain subject to all applicable provisions of the Consolidated Order.

5. SAFETI Checklist

The Commission used SAFETI as a tool in making its determination of sound marketing policy. That checklist includes the following:

Strategic: Examined and responded to identified needs of the marketplace, sector and stakeholders. Recognized and responded to initiatives being undertaken by a competing jurisdiction that may impact on the B.C. marketplace. The Commission's Strategic Plan Mission is to "regulate" the marketing of hatching eggs and the issues and perspectives in the Asian Breeder sector have informed the Commission on the type of fresh thinking needed in determining potential future regulation in support of that mission.

Accountable: Accountable to governing legislation, regulation and the overarching policy objectives of the RMEP and the Specialty Review. Accountable to the Commission's Strategic Plan. Accountable to all stakeholders by recognizing and

balancing their interests. Accountable by proposing streamlined regulation and minimizing cost of regulation for current and future stakeholders while improving regulatory oversight. Accountable by ensuring effective regulation and enforcement of Schedule 5 requirements.

Fair: Engaged with all stakeholders in an open process. The Commission challenged itself to wipe the slate clean, step back and take a fresh look at the issues and options. In developing recommendations, considered and balanced the needs of all stakeholders.

Effective: Positioned the B.C. sector to better respond to market opportunities, challenges and competition. Using existing regulatory measures and supporting good business relationships to minimize regulatory burden and cost. Positioned the Commission to have better information and knowledge going forward to respond to emerging issues. Supported closer liaison with the BCCMB regarding the joint regulation of the Asian specialty chicken sector.

Transparent: Conducted an open process with information posted on the Commission website. Updates and clarification questions communicated to all stakeholders as required. The Commission will produce a complete record for BCFIRB and stakeholders.

Inclusive: Consulted with impacted stakeholders and considered and balanced all interests.