

Report to the Turkey Marketing Board

Response to the December 31, 2018 Decision of the BC Farm Industry Review Board

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Caveat/Disclaimer

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Report to the Turkey Marketing Board (TMB)

Response to the December 31, 2018 Decision of the BC Farm Industry Review Board (BCFIRB)

Introduction

On December 31, 2018 BCFIRB issued a Decision on an appeal from K&M Farms with respect to a decision from the TMB refusing to direct further processing of K&M turkeys. In addition to ordering the TMB to assist K&M Farms to address processing of their 2018 and 2019 turkey production, BCFIRB ordered the TMB to “undertake an industry assessment of grower-vendor direct marketing and establish a workplan”. FIRB directed that the workplan is to address any outstanding needs of the grower-vendor sector identified in the industry assessment.

The TMB undertook the industry assessment by meeting with 18 direct marketers, six processors, six conventional producers and five retailers. The meetings sought opinions on:

- preserving a long term, mutually beneficial relationship between the self-marketer and the processor,
- the importance of growing and developing the self-marketer sector, and
- ensuring that processor issues are dealt with so that they are willing to play their critical role in growing and developing the self-marketing sector.

This report includes: an overview of directives from the BCFIRB Specialty Review and the Ministry Plan, decisions from the BCFIRB and TMB hearings, a summary of the views and opinions shared during the stakeholder meetings, an assessment of these views and opinions, and options for the TMB to consider to fulfill the BCFIRB order in their Dec. 31, 2018 decision.

BCFIRB Specialty Review

BCFIRB issued a report on Specialty Markets and New Entrants on September 1, 2005. In the report they state that “one role of the regulated marketing system is to ensure that British Columbia industries serve the developing demand for organic and other specialty products”. This report was endorsed by the then Minister of Agriculture and encouraged the industry to “prepare plans that would better

accommodate pursuit of specialty markets by specialty producers from within the supply management system”.

A Specialty Markets Advisory Committee was formed to assist the TMB to develop policies and programs to implement the specialty review directives.

Ministry Agricultural Service Plan

The 2019/20 – 2021/22 Service Plan states that under the Buy BC umbrella the Ministry will strive to build consumer awareness and demand and help local producers market their products to grow their businesses. Making the choice to buy BC food and beverages directly supports local farmers, producers and processors, strengthens communities and ensures that future generations of British Columbians can depend on a safe, secure supply of local food.

Summary of BCFIRB Findings and Directives

Following are some of the findings and directives made in the December 31, 2018 BCFIRB Decision on the K&M Farms appeal:

- “the TMB is authorized to direct an agency to receive product from a producer,
- the common law right to trade freely has been taken away by clear language in the Scheme,
- the Scheme confers a jurisdiction to regulate a chain of activities that extend beyond the farm gate at least to the relationship between producers and processors,
- this regulation does not suggest that parties can contract out of the regulatory scheme,
- a direction to provide custom processing services to promote access to a niche market is grounded in orderly marketing as opposed to regulating the minutiae of relationships between producers and processors,
- the TMB should be consistent in its support of direct marketing by ensuring the availability of custom processing services to provide their niche products,
- if turkey grower-vendors are to be successful they must be able to access the processing services they require to be market responsive,
- it is the TMB’s responsibility to engage in problem solving processes and take appropriate action as the first instance regulator,

- it would not be unreasonable for a grower-vendor to expect assistance from the TMB in getting its product processed for the market and
- it is the responsibility of the TMB to make an order to achieve a result which works for this niche market”.

Under the Order (section 108 c.), BCFIRB instructed the TMB to “Establish a process to assess the broader needs of the grower-vendor sector and develop a plan for dealing with any outstanding needs”.

The BCFIRB Specialty Review, the Ministry of Agriculture Service Plan and the recent BCFIRB decision clearly state that specialty production is an important part of, in this case, the turkey sector and that the TMB must place a priority on helping this sector to grow and develop.

TMB Decisions Pursuant to BCFIRB Decision

The Turkey Board’s April 26 and May 30, 2019 Decisions are:

1. A processor cannot cancel or terminate a “kill and chill” relationship with a self-marketer unless another viable option for the self-marketer exists.
2. A processor must provide 2 full years notice to self-marketers if a “primal cut” service arrangement is to be terminated.
3. Where the self-marketer and processor cannot reach agreement on pricing, the two parties are to hire an arbitrator to resolve the dispute. The arbitrator’s decision should remain in effect for a minimum of two years. In addition, the arbitrator should be empowered to make decisions on scheduling, packaging, transportation and other issues if the parties are unable to solve these issues.

Consultation Process

Framework of Each Consultation Session

Industry Consultation with existing self-marketers, processors, other producers and retailers focused on the following topics and questions:

- Please provide us with a brief overview of the history of your operation, the challenges and opportunities that you face and your hopes for the future of your business, the self-marketing sector and the industry as a whole.
- Based on the guidance and direction from BCFIRB, do the April 26 and May 30 decisions of the TMB meet the needs of self-marketers?

-
- Should the TMB decision be modified? If so, what should be added to or deleted from the decision?
 - Additional Issues considered included:
 - preserving a long term, mutually beneficial relationship between the self-marketer and the processor,
 - the importance of growing and developing the self-marketer sector, and
 - ensuring that processor issues are dealt with so that they are willing to play their critical role in growing and developing the self-marketing sector.
 - Do you see a larger role for the TB to play in furthering the growth and development of the self-marketing sector? If so, what do you envision the key elements of this larger role to be?

Summary of Consultation Feedback

Importance of TMB Playing an Active Role in Growing and Development the Self-Marketer Sector

There were differing views on this question. Some indicated that all markets for all types of turkey products are being met. Further that existing self-marketers fully understand and are in touch with the markets and are positioned to rapidly respond to market changes and market growth. That there is no role, or a limited role at best, for the TMB to play, over and above their current role, in assisting with market development.

Others indicated that there is unmet demand for differentiated and niche turkey products and that some of the barriers to meeting this demand are not being adequately addressed by the TMB and that the TMB needs to do more. One of the key limitations is not being able to access a full range of processing services during critical times of the year and obtaining services for dealing with some unique situation such as killing and cutting up large birds.

Some raised concerns about the TMB New Entrant Program. It was their view that the TMB pushes new entrants into the self-marketing sector. The market does not need more self-marketers and the amount of quota allocated is not sufficient to make a new entrant commercially viable. Other commodities allow new entrants to enter the commercial sector and the TMB should consider doing the same and should reconsider the amount of quota allocated to new entrants.

Preserving Long Term Relationships Between Self-Marketers and Processors

In the opinion of a number of self-marketers they need secure access to timely processing services to have a sustainable business. They further made the case that in a supply managed industry, where government policy protects domestic markets thereby providing price stability, there is a 'social licence' between the industry and the public. Therefore, the industry, including producers, processors and the TMB, have roles to play in ensuring that the public has access to the turkey products they want. Where changes in the relationship between a self-marketer and a processor jeopardize the ability of the public to access desired products then this should not be acceptable to the industry. Processors need to be equally concerned with providing the public with differentiated and niche products as are the self-marketers. If the processing sector as a whole accepts their responsibility under the regulated marketing system to provide orderly supply of differentiated, direct market products, it is the view of some self-marketers that a long term solution can be found.

Processors were of the view that they needed to be able to grow, develop and modify their businesses in ways that accord with their long term business plans and what makes sense financially. These plans could include downsizing or even terminating services to self-marketers. They were very much opposed to the TMB intervening in their relationships with self-marketers and requiring them to provide services that they were no longer interested in providing. In fact the K&M decisions by BCFIRB and the TMB have been a surprise to the processing sector and there is a risk that few if any processors will now provide new services to the self-marketing sector in addition to what they are now contracted to provide.

There was also the view that self-marketers needed to be prepared for changes in their relationships with their processors. That no business arrangement could be expected to last forever. Alternative arrangement for 'kill and chill' and cut-up need to be part of the business planning of the self-marketing sector. This being said, the number of custom kill operations has declined from a number to only a few today.

Ensuring Processor Issues Are Dealt With

Terminating or significantly reducing processing services to self-marketers cannot be compatible with Ministry, BCFIRB and industry goals to satisfy and grow specialty and niche markets. Processor concerns identified during the consultation sessions included:

- A lack of processing space during the peak holiday seasons of Thanksgiving and Christmas. To provide whole, specialty birds during these times of the year processing must take place when there is a high demand for processing all types of birds. Displacing a processor's own birds or birds from other customers places a significant financial burden on the processor.
- Specialty birds must be segregated on the line, in the chilling room and during cut up. All segregation requirements are a burden on the processor and can result in higher costs that may not be recoverable.
- There were concerns with the precedent set by the K&M decision. The processing sector fears that they may be required to provide services that they do not wish to provide to the point where some plan to downsize or terminate their custom services. They fear that other producers may say "if this intervention was done for K&M why not for me?".
- One of the niche products demanded by some consumers is large, specialty birds. Most if not all processors do not want large birds because their facilities are not set up to handle these birds. Processing these birds can result in significant damage and down time for their processing lines.
- Paper work and Canadian Food Inspection Agency regulations make custom processing less and less attractive.

Processors were adamant that the TMB not force any processor to provide custom services. The services that a processor provides must be in accord with the business plans of the processor. If a processor chooses to terminate any type of custom service that should be solely the decision of the processor.

Retailer Requirements for Differentiated Product

Retailers consulted stressed the importance of specialty turkeys to their businesses, especially during the holiday season. When customers come into the retail outlet to pick up their fresh, specialty bird they purchase many other items as part of their preparations for Christmas, Thanksgiving and, to a less extent, Easter. On Vancouver Island, those consulted with indicated that the demand for Island grown specialty birds is greater than the supply. The main limitation to meeting this demand is secure availability of processing services.

Conclusions

The expertise for identifying markets for niche and specialty products and for developing production and processing systems to satisfy these markets resides with producers and processors currently in the industry.

Satisfying niche and specialty markets often requires custom processing services that may be difficult for some processors to provide.

Custom processing services are on the decline to the point where some of the markets for niche and specialty products may not be able to be satisfied in the future.

To meet the social license that is a cornerstone of a supply managed system, it is important for the industry - producers, processors and the TMB - to provide the public with the products they desire.

Proposed TMB Considerations to Support the Self-Marketing Sector

It is important to recognize that specialty birds grown by self-marketers constitute a small component of the overall turkey production in British Columbia. Conventional, commercial turkeys make up approximately 92% of the turkeys grown in the province. This report focuses on the needs of the self-marketing sector (based on the order from BCFIRB) and the issues that need to be addressed to sustain and, where possible, grow this sector. However, even if the most optimistic goals for this sector were to be achieved it will remain only a small fraction the size of the conventional industry.

Further, it is important to acknowledge that the BCFIRB and TMB decisions, lack of processing time during the holiday seasons, the desire to reduce the size of birds at the processing facilities, and increasing costs of processing have all resulted in apprehension among the various components of the value chain. The TMB needs to take care to ensure that any future actions on their part do not add to the apprehension and stress within the sector and do not impact contracts and relationships between producers and processors. The number of processors interested in doing custom processing has declined in recent years and it is important that any future TMB actions not contribute to this decline.

Options

Return to the Historic Role of the TMB

Although this option probably does not comply with the BCFIRB order, it is the option preferred by many of those consulted with during the process of preparing this report. It was stressed during a number of the sessions that the issue was a disagreement between a small self-marketer and a processor and that there has never, heretofore, been a situation where a producer and a processor have not been able to work out disagreements between themselves. The disagreement between K&M and Rosstown should not have resulted in the historic role of the TMB being changed in any significant way. To sum up the views of a number of those consulted with, there was no point in making a “mountain out of a molehill”.

As stated previously, concerns were expressed about the TMB new entrant program. Mainly that the TMB pushes new entrants into the specialty market sector. New entrants should be allocated sufficient quota to be viable in the commercial sector.

It is difficult to support this view of the new entrant program. The commercial turkey market is on the decline. Should the TMB be encouraging new entrants to make significant investments in barns and other infrastructure to enter a shrinking market where their annual allocation will be decreasing for the foreseeable future? If, however, a prospective producer has identified a specialty niche market and has a sound business plan, allocating new entrant quota may be justified.

Augment the Current Role of the TMB (in addition to items noted under the historic role)

A number of the consultation participants envisioned a limited role for the TMB to play in growing and developing the specialty/self-marketing sectors of the industry. They saw the primary function of the TMB to be issuing and managing quota and permit allocations. Once a producer has been issued quota or a permit it is the producers responsibility to identify markets and then secure arrangements with processors to meet these markets. Clearly, based on their Dec. 31 decision, BCFIRB finds this level of TMB involvement to be inadequate and expects the TMB to play a larger role in growing and developing this sector. While recognizing the wish of some participants for a limited role of the TMB, the K&M decision requires, as a minimum, for the TMB to be prepared to deal with issues between producers and processors and to find solutions, to the extent possible, that result in turkeys

being processed to the satisfaction of producers and for these specialty and niche markets to be satisfied and grown where possible.

- Elements of an Augmented Role for the TMB

Processing Large Specialty Turkeys

The number one issue communicated during the consultation meetings was the processing of large (greater than 10kg), specialty turkeys, especially during the holiday seasons. All commercial processors, for a variety of reasons, do not want to process these birds. However, according to many self-marketers and retailers there is a strong demand for these birds and the market could be grown. Although some self-marketers have constructed or are considering constructing on-farm processing facilities, others must rely on custom processing and will have to cease operation if they can no longer access these services. Under a supply managed system it is important to provide consumers with the products that they want.

There is no simple answer to this issue. Neither forcing processors to handle large birds, against their will, nor requiring self-marketers, who do not have their own processing facilities, to grow smaller birds are satisfactory solutions. It will be a significant challenge for the TMB, working with the processing and self-marketing sectors, to find solutions that are acceptable to both sectors. The elements listed and elaborated on below should contribute to finding long term solutions.

Contracts between new producers and processors

As previously stated, one of the key limitations to growth and development of the self-marketing sector is secure access to affordable processing services. The TMB may want to review their involvement in overseeing contractual arrangements between new producers and processors. Some aspects of contracts to consider include:

- ensuring the length is of sufficient duration to provide security to the producer,
- requiring that each contract contain clauses for termination and renewal of the contract,
- requiring a dispute resolution mechanism (such as final offer arbitration),
- containing a pricing formula for adjusting the cost of the services being provided by the processor, and

- ensuring the processors can evolve their businesses which could include terminating a relationship with a self-marketer.

Grandfathering Existing Relationships between Self-Marketer and Processor

Some producers of specialty birds have developed and grown their businesses based on secure access to affordable custom processing facilities. Pursuant to the BCFIRB decision regarding K&M and Rosstown, the TMB made the following decision:

- A processor cannot cancel or terminate a “kill and chill” relationship with a self-marketer unless another viable option for the self-marketer exists.
- A processor must provide 2 full years notice to self-marketers if a “primal cut” service arrangement is to be terminated.

This decision effectively grandfathers existing relationships between self-marketers and their processors. Is this a one off decision and does not apply to any other producer – processor relationships? Or does this apply to all current relationships between a self-marketer and a processor? Grandfathering would be highly desirable to some self-marketers. In fact some producers face going out of business if they don't have long term, secure access to custom processing. This is, however, of grave concern to some processors. The TMB needs to clarify this to the industry.

On-Farm Processing

The availability of processing services for some specialty products, especially large birds for Thanksgiving and Christmas, is currently limited and all indications are that these services will not increase in the future and may in fact decrease. Some producers are dealing with this issue by developing on-farm processing capability. Although this is a viable option for some there are significant hurdles that make it a difficult option for others. Some of the issues include:

- availability of labour
- cost
- licensing of slaughter facilities
- inspections services from regulatory agencies
- on-site water quality and quantity

The TMB could play a role in helping to address some of these barriers and in developing non-conventional processing such as mobile slaughter operations,

cooperatives among small producers to develop shared processing facilities and changing the rules pertaining to Category C and D facilities.

Producing Other Specialty Products and Extending the Slaughter Timeframe

Although growing large specialty birds for the holiday season is an important component of the business of many self-marketers, a number of those consulted with for this report indicated that they have or are considering producing other products and not relying completely on the holiday season fresh market. Other products include: turkey parts, ground turkey, sausages, turkey in special seasonings and marinates and others. In addition, some producers are exploring ways to extend the time around the holiday seasons so that their turkeys can be processed outside of the holiday crunch. These include: freezing turkeys and cutting them up at a later day, freezing then thawing for cut up and then freezing again, and installing more sophisticated cooling systems that allow for a longer time between slaughter and delivery to retailers. Although the TMB currently provides information to producers on these other options, there may be potential the TMB to provide a greater level of assistance.

Processor of Last Resort

The Milk Marketing Board has a policy that one of the milk processors provide the services of a “processor of last resort”. This ensures that any excess milk, milk that exceeds the capacity of processors to deal with it, can be processed eliminating any need to dump milk. The TMB may want to consider a similar arrangement for turkeys. The milk processor of last resort is paid by a producer levy to maintain some unused capacity. For turkeys, the TMB may want to ensure that the processor of last resort is rarely used and is truly a last resort. It could establish the last resort price as the TMB price. This is clearly not the price desired by the self-marketer but it does provide processing services when there are no other options, so that the birds are killed in a timely manner.

Representatives of the Milk Marketing Board are open to discuss their system with TMB officials.

Enhanced Role for the TMB (in addition to the Augmented Role described above)

The FIRB decision clearly envisions a more active role for the TMB to play in ensuring that the self-marketing sector has ready access to the processing services needed to grow and develop this sector.

This more active role was not seen as a priority by any of the stakeholders during the consultation meetings. Market identification and development were seen as being the responsibility of the self-marketing sector. As long as processing services are available, producers are fully capable of meeting the demand for niche and specialty products.

- Elements of an Enhanced Role for the TMB

Some of the elements could include:

- researching new markets for specialty and niche products,
- identifying new products,
- communicating new opportunities to the industry and working with existing or new producers to produce these new and innovative products and with the processors to provide the services needed to meet these new markets, and
- regulating producer processor agreements.

This enhanced role would require that TMB to hire more staff with market research and development expertise. This would likely overlap with the expertise that already exists in the producer, processor and retail sectors.

Recommendation to the TMB

The second option outlined above best accords with the responses received during the consultation process and the directives from BCFIRB. It recognizes that the expertise for market identification and development resides with individual self-marketers and processors. It also emphasizes the need for the TMB to ensure, to the extent possible, that contractual arrangements between producers and processors provide security to producers while at the same time allowing processors to evolve their businesses. It also recognizes that the availability of custom processing for specialty turkeys is on the decline and may become less and less available in the future. One of the options that all self-marketers must consider is non-conventional processing such as constructing on-site facilities, working with local butcher shops and mobile processing. Finally, the TMB needs to support current relationships between self-marketers and their processors and consider grandfathering those relationships for a period of time or until another viable option can be found.

Appendix A: Consultation Participants

| Name | Organization | Position |
|-------------------|---|-----------------|
| Trevor Allen | Skyehi Farms | Owner |
| Miles Andres | Andrew Farms | Owner |
| Jillian Azanza | K&M Farms | Owner |
| Cathy Beaton | Stonecroft Farms | Owner |
| Glen Beaton | Stonecroft Farms | Owner |
| Casey Beaton | Stonecroft Farms | Owner |
| Alexa Boulton | Somerset Farm | Owner |
| Eric Boulton | Somerset Farm | Owner |
| Sue Boulton | Somerset Farm | Owner |
| Morgan L. Camley* | Primary Poultry Processors Assoc. of BC | Counsel |
| Etienne Cote | Hillcrest Farms | Owner |
| Joe Falk* | Fraser Valley Specialty Poultry | General Manager |
| Ken Falk* | Fraser Valley Specialty Poultry | President |
| Jason Froese | J&D Farms | Owner |
| Steve Froese | Mosaic Farms | Owner |
| Steve Heppell | Rock Ridge Farms | Owner |
| Dale Herbert | Davis Meats | Proprietor |
| Murray Hull | Kildonan Farm | Owner |
| Ken Huttema | Farm Fed | Owner |
| Henry Klassen | Clover Hill Farms | Owner |
| James Krahn | Krahn Brothers | Owner |
| Doug Mitchell | Sunrise Farms | |
| Josh Penner | Meridian Farm Market | Owner |
| Kevin Penner | Meridian Farm Market | Owner |
| Caroline Phillips | Nature's Pickens | Owner |
| Doug Phillips | Nature's Pickin's | Owner |
| Dave Quist | Westholme Farms Ltd. | Owner |
| Mark Robbins | K&M Farms | Owner |
| Werner Schwan | Stonebridge Farm | Owner |
| Woody Siemens | Milk Marketing Board | Manager |
| Stan Thiessen | Rosstown Farms | Shareholder |
| Dave Todd | Victorian Acres | Owner |
| Sandy Todd | Victorian Acres | Owner |
| Rob Vane | Farm Fed | Owner |
| Dion Wiebe | Rosstown Farms | Shareholder |

* input taken from final submission to October 16 and 17 BCFIRB hearing

