

Farm Products Council of Canada

Complaint Committee Report

*Canadian Poultry and Egg Processors Council
Against
Turkey Farmers of Canada*

February 2023



Contents

Part 1: Introduction	3
1.1 – Overview of the Complaint	3
1.2 – Agreed Facts	4
1.2.1 – History of the Commercial Allocation	4
1.2.2 – 2022-23 Control Period (May 1, 2022, to April 29, 2023).....	4
Part 2: The Complaint	7
2.1 – The Complainant: Canadian Poultry and Egg Processors Council	7
2.2 – Summary of the Complaint	7
2.2.1 – Summer 2022 Meetings.....	8
2.2.2 – Proclamation Criteria	9
2.2.3 – Turkey Market Conditions.....	11
2.3 – The Complainant’s Recommendation	12
Part 3: The Response	13
3.1 – The Respondent Agency: Turkey Farmers of Canada	13
3.2 – Summary of the Response	13
3.2.1 – Summer 2022 Meetings.....	14
3.2.2 – TFC’s Discretionary Authority	15
3.2.3 – Turkey Market Conditions.....	16
3.3 – The Respondent Agency’s Recommendation	19
Part 4: The Committee’s Analysis and Recommendations.....	19
4.1 – Legal Framework.....	19
4.1.1 – Council’s Role	19
4.1.2 – Council’s Oversight	21
4.1.3 – TFC’s Role.....	21
4.1.4 – TFC’s Consideration of the Proclamation Criteria	22
4.2 – The Committee’s Analysis	26
4.2.1 – Summer 2022 Meetings.....	26
4.2.2 – Proclamation Criteria	27
4.2.3 – Turkey Market Conditions.....	28
4.3 – The Committee’s Recommendation to Council.....	30
4.4 – The Committee’s Recommendations to the Respondent Agency.....	31

Part 1: Introduction

1.1 – Overview of the Complaint

1. On September 22, 2022, pursuant to paragraph 7(1)(f) of the *Farm Products Agencies Act* (hereinafter “FPAA”), the turkey primary sector of the Canadian Poultry and Egg Processors Council (hereinafter “CPEPC” or “Complainant”) filed a Complaint against the Turkey Farmers of Canada (hereinafter “TFC” or “Respondent Agency”) regarding the manner in which the commercial allocation for the 2022-23 control period, which runs from May 1, 2022, to April 29, 2023, was established. TFC responded to the Complaint on October 7, 2022.
2. The Farm Products Council of Canada (hereinafter “FPCC” or “Council”) Advisory Personnel reviewed the Complaint and prepared a summary of issues report to the Council Chairperson. Following the reception of the summary of issues report, the Council Chairperson directed that a pre-hearing conference be held, as per section 17 of the *By-Law Governing the Administration of the Complaints Received by the Farm Products Council of Canada* (hereinafter “Complaint By-Law”). The FPCC Chairperson designated Council Vice-Chairperson Ron Bonnett to preside at the pre-hearing conference, which was held on October 28, 2022, by videoconference.
3. Following the pre-hearing conference, a Complaint Committee (hereinafter “Committee”) was formed pursuant to paragraph 7(1)(f) of the FPAA. In accordance with section 18 of the Complaint By-Law, the Council Chairperson appointed Council member Maryse Dubé as the Committee Chair. The Committee was instructed to proceed with a Hearing, which was held on December 20, 2022, by videoconference, with the consent of all parties. Observer status was granted to the Turkey Farmers of Ontario (hereinafter “TFO”) and the Manitoba Turkey Producers.

1.2 – Agreed Facts

4. The following facts were agreed to by the Complainant and the Respondent Agency prior to the Hearing held on December 20, 2022.

1.2.1 – History of the Commercial Allocation

5. At the TFC 260th meeting (November 27-28, 2019), a motion was unanimously carried by the TFC Board of Directors mandating the Allocation Policy Review Committee (hereinafter “APRC”) to find a new allocation policy for implementation for the 2021-22 control period, which ran from April 25, 2021, to April 30, 2022.
6. TFC’s National Commercial Allocation Policy (hereinafter “NCAP”), which was implemented on December 19, 2006, was suspended at the TFC 262nd meeting (June 25-26, 2020). The vote to suspend the NCAP was unanimously supported by the TFC Board of Directors.
7. As of the date of the Complaint being filed by CPEPC, September 22, 2022, a new commercial allocation policy had not been approved by the TFC Board of Directors for implementation.

1.2.2 – 2022-23 Control Period (May 1, 2022, to April 29, 2023)

8. The commercial allocation for the 2022-23 control period was established at 143.0 million kg by the TFC Board of Directors at the TFC 268th meeting (November 24-25, 2021). The vote was unanimously supported by the TFC Board of Directors.
9. The 143.0 million kg commercial allocation represented a 4.0 million kg increase relative to the previous commercial allocation of 139.0 million kg that had been established for the 2021-22 control period.
10. The TFC Board of Directors met on February 3 and 14, 2022, to discuss how to allocate the 4.0 million kg to the provinces.
11. At the February 14, 2022, meeting, the TFC Board of Directors voted and approved to allocate the 4.0 million kg increase in the manner described below. The vote was supported by the directors of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia. The director of Ontario voted against the

motion and both CPEPC directors and the Further Poultry Processors Association of Canada (hereinafter “FPPAC”) director abstained.

- a. 452,905 kg was attributed to Nova Scotia; and
- b. 3,547,095 kg was allocated according to the following components and weightings:
 - i. 60% by pro rata market shares of the 2021-22 commercial allocation of 139.0 million kg;
 - ii. 30% by provincial population; and
 - iii. 10% by 2021 Nielsen retail sales.

12. On March 16, 2022, TFC submitted the Initial 2022-23 Quota Regulation for Council's approval.

13. On March 22, 2022, TFO filed a Complaint against TFC regarding the commercial allocation decision made at the February 14, 2022, meeting.

14. At the TFC 270th meeting (June 21-23, 2022), a motion to establish the commercial allocation for the 2022-23 control period at 146.0 million kg was defeated. The vote was supported by the directors of Ontario and FPPAC. The directors of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and both CPEPC directors voted against the motion.

15. On June 29, 2022, Council voted to not approve the Initial 2022-23 Quota Regulation, based on the recommendation of the Complaint Committee¹.

16. At the August 25, 2022, directors', alternates' and managers' (hereinafter “DAM”) meeting, the TFC Board of Directors voted and agreed that the allocation methodology for any increase in the commercial allocation for the 2022-23 control period, above the 2021-22 commercial allocation of 139 million kg, be allocated using the following component weightings: 15% provincial shares of Nielsen retail turkey sales, 15% Farm Input Price Index for commercial feed, 35% provincial shares of provincial population, and, 35% provincial market shares of the 2021-22 commercial allocation; and, that Nova Scotia receive an allocation adjustment of 452,905 kg. The vote was supported by the directors of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New

¹ *Farm Products Council of Canada Complaint Committee Report – Turkey Farmers of Ontario Against Turkey Farmers of Canada – June 2022* (hereinafter “TFO vs. TFC Complaint Report – June 2022”).

Brunswick, Nova Scotia, FPPAC and both CPEPC directors. The director of Ontario voted against the motion.

17. At the August 25, 2022, DAM meeting, the TFC Board of Directors voted and agreed that the commercial allocation for the 2022-23 control period be set at 146.0 million kg. The vote was supported by the directors of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and FPPAC. The directors of Ontario and the two CPEPC directors voted against the motion.

18. The 146.0 million kg commercial allocation established by the TFC Board of Directors at the August 25, 2022, DAM meeting represents an increase of 7.0 million kg relative to the 2021-22 control period commercial allocation of 139.0 million kg.

19. At the August 25, 2022, DAM meeting, the TFC Board of Directors voted and approved to distribute the commercial allocation of 146.0 million kg agreed to at the August 25, 2022, DAM meeting for the 2022-23 control period as follows:

- a. Nova Scotia: 4,247,715 kg;
- b. New Brunswick: 3,388,138 kg;
- c. Quebec: 32,852,397 kg;
- d. Ontario: 58,102,386 kg;
- e. Manitoba: 9,170,501 kg;
- f. Saskatchewan: 5,015,198 kg;
- g. Alberta: 13,920,916 kg; and
- h. British Columbia: 19,302,749 kg.

The vote was supported by the directors of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and FPPAC. The director of Ontario and the two CPEPC directors voted against the motion.

20. At the TFC 271st meeting (September 15, 2022), a motion presented by CPEPC to reconsider the decision to establish the commercial allocation for the 2022-23 control period at 146.0 million kg was defeated. The directors of Ontario and the two CPEPC directors voted in favour of the motion. The directors of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and FPPAC voted against the motion.

21. At the TFC 271st meeting (September 15, 2022), the TFC Board of Directors voted and approved to submit the Second 2022-23 Quota Regulation to Council for approval. The vote was supported by the directors of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and FPPAC. The director of Ontario and the two CPEPC directors voted against the motion.
22. Regarding the 2022-23 allocation, the Turkey Market Advisory Committee (hereinafter “TMAC”) met on November 19, 2021, January 27, 2022, March 21, 2022, May 30, 2022, October 6, 2022, and November 22, 2022.

Part 2: The Complaint

2.1 – The Complainant: Canadian Poultry and Egg Processors Council

23. The members of the CPEPC turkey primary processing sector are turkey primary processors who collectively process more than 95% of the turkeys produced in Canada. CPEPC is also a member of TFC by virtue of the *Canadian Turkey Marketing Agency Proclamation* (hereinafter “Proclamation”) and is represented by two directors on TFC’s Board of Directors. Currently, one director represents Western Canada and the other represents Eastern Canada.

2.2 – Summary of the Complaint

24. CPEPC claims that it is directly impacted by TFC’s decision to increase the 2022-23 commercial allocation by 7.0 million kg to 146.0 million kg since primary processors buy live turkeys based on the minimum live price established in different provinces and sell whole turkeys and turkey products on the free market. CPEPC submits that the process TFC followed was flawed and lacked transparency.
25. CPEPC asserts that the Respondent Agency has failed to comply with the requirements of section 21 of the FPAA, which states TFC’s objects and the means to achieve them. CPEPC submits that a strong, efficient and competitive production and marketing industry is one that is predictable. CPEPC further argues that processors, who receive regulated products from producers, are included in the definition of consumers found in section 21 of the FPAA.

26. CPEPC submits that TFC also failed to take into account the over base criteria found in the Proclamation (hereinafter “Proclamation Criteria”) which require careful and meaningful consideration every time an allocation is established. More specifically, CPEPC’s challenge is with respect to paragraphs 4(1) d), e) and f) and section 4(2) of Part II of the Proclamation.

2.2.1 – Summer 2022 Meetings

27. CPEPC claims that, over the summer of 2022, there were discussions between provincial representatives regarding the provincial distribution of the commercial allocation and that CPEPC was not part of these discussions. CPEPC submits that, in the documents provided for the August 25, 2022, DAM meeting, it was evident that provincial representatives had discussed not only the provincial distribution of the commercial allocation but also an increase of the commercial allocation. CPEPC asserts that the failure to include CPEPC in the summer 2022 meetings is an overarching issue regarding transparency and creates an appearance of unfair process.

28. CPEPC submits that little information is available about the summer 2022 meetings. CPEPC asserts that only a few references are made to these meetings and that the clearest information is found in TFC’s submission of the Second 2022-23 Quota Regulation, dated September 20, 2022, as well as TFC’s Response.

29. In the submission of the Second 2022-23 Quota Regulation, CPEPC draws attention to the following sentences: “The decisions made by the TFC Directors at their Web Conference of August 25, 2022, were the culmination of an extensive consultation process undertaken by the TFC Executive Committee over the summer...”, “Since the TFC 270th June meeting, the TFC Executive Committee has facilitated a number of meetings amongst the members through July and August to find a path forward...” and “...the TFC Executive believes the process undertaken this summer was comprehensive and provided the opportunity for fulsome consideration of the Proclamation Criteria as there was ample opportunity for TFC members to express their positions or delve deeply into any relevant matters or positions.” CPEPC claims that the submission of the Second 2022-23 Quota Regulation indicates that the summer 2022 meetings were important to the 2022-23 commercial allocation but it fails to mention that CPEPC was not involved in these meetings.

30. CPEPC asserts that the submission of the Second 2022-23 Quota Regulation that was approved by the TFC Board of Directors at the TFC 271st meeting (September 15, 2022), clearly demonstrates that TFC focused on the provincial distribution of the commercial allocation, while the quantity of the commercial allocation was not duly discussed before increasing it to 146.0 million kg.
31. With respect to TFC's Response, CPEPC draws attention to the following sentence: "The Agency kept the processor members up to date with a report from the Chair and staff via an August 15th Zoom meeting." CPEPC submits that TFC informing CPEPC just over a week before the August 25, 2022, DAM meeting about the summer 2022 meetings does not constitute keeping CPEPC up to date.
32. CPEPC claims that what also makes the summer 2022 meetings concerning is that the information to support the 2022-23 commercial allocation did not change from June 2022 to August 2022. CPEPC submits that, at the August 25, 2022, DAM meeting, there was no substantial discussion on market conditions and no updated report from TMAC. The TMAC report that was prepared for the TFC 270th meeting (June 22-23, 2022) recommended a commercial allocation of 143.0 million kg and by the August 25, 2022, DAM meeting and the TFC 271st meeting (September 15, 2022), an updated TMAC report had not been produced.
33. CPEPC argues that the provincial distribution of the commercial allocation had to be reconsidered during the summer as per the recommendations of the TFO vs. TFC Complaint Report – June 2022. CPEPC asserts that the focus of the TFO vs. TFC Complaint Report – June 2022 was on provincial distribution and that it seems TFC amended the commercial allocation volume in order to get an agreement on the provincial distribution. However, without information about the summer 2022 meetings, CPEPC submits that what really happened is unknown to the Complainant.

2.2.2 – Proclamation Criteria

34. CPEPC asserts that the onus is on TFC to demonstrate that it has carefully and meaningfully taken into account the Proclamation Criteria and that the market has changed significantly.

35. CPEPC refers to the TFO vs. TFC Complaint Report – June 2022 for the interpretation of “taken into account” and asserts that TFC is required to give careful and meaningful consideration when determining how and the extent to which each criterion should be applied. CPEPC submits that whether or not TFC has carefully and meaningfully taken into account the Proclamation Criteria is to be determined based on the minutes from the August 25, 2022, DAM meeting and TFC 271st meeting (September 15, 2022), as well as the submission of the Second 2022-23 Quota Regulation.
36. CPEPC draws attention to the August 25, 2022, DAM meeting kit that was distributed to the TFC Board of Directors prior to the meeting, which included three memos. The first memo was titled “Consideration of Proclamation Criteria”, the second memo was titled “2022/23 Commercial Allocation – Distribution of 143.0 mkg (ie., 4.0 mkg increase)” and the third memo was titled “Conditional Over 9 kg Eviscerated Allocation Proposal”. CPEPC asserts that the focus of the first and second memos is on the provincial distribution of the commercial allocation and there is no mention of allocation amounts.
37. CPEPC states that in the August 25, 2022, DAM meeting minutes, the TFC Board of Directors discussed the provincial distribution of the commercial allocation first and then briefly debated the commercial allocation amount. CPEPC submits that, while one can argue that the Proclamation Criteria were carefully and meaningfully considered with respect to the provincial distribution of the commercial allocation, this did not occur regarding the commercial allocation amount. Furthermore, CPEPC claims that the minutes from the TFC 271st meeting (September 15, 2022) do not demonstrate any substantive discussion regarding the commercial allocation amount.
38. CPEPC also contends that little information is provided in the submission of the Second 2022-23 Quota Regulation to justify the increase in commercial allocation. Furthermore, there is no mention of how the Proclamation Criteria were carefully and meaningfully considered with respect to the commercial allocation amount. In addition, CPEPC refers to the following sentence: “The national commercial allocation of 146,000,000 kg, a 7,000,000 kg increase from the final commercial allocation in 2021/2022, is in response to market conditions evident from June to August of 2022.” CPEPC contends that it is not apparent what market conditions TFC is specifically referring to as the TMAC report from June 2022 and the Turkey Market Review (hereinafter “TMR”) from May 2022 were written before the June to August 2022 period. CPEPC argues that there is no

support for this statement regarding market changes over the summer. CPEPC maintains that TFC did not demonstrate a significant change in the market.

39. In addition to CPEPC's claim that the Proclamation Criteria were not carefully and meaningfully considered with respect to the commercial allocation amount, CPEPC states that the inability of provinces to produce their respective commercial allocations should have been addressed, which is particularly relevant to paragraphs 4(1) d) and f) of Part II of the Proclamation.
40. CPEPC asserts that production in the 2021-22 control period was lower than the commercial allocation of 139.0 million kg and, as such, the 2022-23 commercial allocation of 146.0 million kg actually represents an increase closer to 10.0 million kg. CPEPC claims that the TFC Board of Directors was aware about issues of the feasibility to market increased production because quota leasing was discussed during the TFC 271st meeting (September 15, 2022). CPEPC submits that this discussion happened after the submission of the Second 2022-23 Quota Regulation was approved by the TFC Board of Directors.

2.2.3 – Turkey Market Conditions

41. CPEPC asserts that, as the Canadian industry is currently facing one of the worst recent outbreaks of avian influenza (hereinafter "AI"), with several turkey flocks euthanized as a result, this has reduced the supply at the beginning of the 2022-23 control period.
42. With reference to the minutes from the TFC 271st meeting (September 15, 2022), CPEPC claims that the market condition concerns of primary processors at the time were related to AI.
43. CPEPC submits that AI was not considered in much detail when the 2022-23 commercial allocation was established at 146.0 million kg. CPEPC maintains that AI makes it more likely that producers won't be able to produce their respective allocations.
44. CPEPC uses a historical example from 2015 of how AI was addressed by TFC in the past. CPEPC claims that AI posed a serious problem for the turkey industry in 2015 and the TFC Board of Directors responded with an increase of 2.0 million kg to the commercial allocation in September 2015. CPEPC maintains that there were significantly more details and consideration about the increase and concerns about the size of the market caused by AI in the documentation supporting this decision.

45. CPEPC argues that the commercial allocation increase represents a particularly high risk because it will be concentrated in the last few months of the 2022-23 control period. CPEPC claims that it takes roughly six months from the time the commercial allocation is established by TFC to when the turkeys are ready to be marketed. By that logic, a commercial allocation increase in August results in the additional turkeys being marketed towards the end of the control period, which CPEPC states undermines predictability and creates uncertainty.
46. CPEPC argues that the August 2022 Canadian Turkey Industry report published by Agriculture and Agri-Food Canada (hereinafter “AAFC”) indicates that live turkey prices increased significantly in November 2022 relative to the same month of the previous year and the five-year range.
47. CPEPC submits that the general downturn in the economy was not considered in TFC’s decision to increase the commercial allocation. CPEPC claims that economic conditions were less favourable in the summer 2022 than they were in November 2021, when the commercial allocation for the 2022-23 control period was established at 143.0 million kg by the TFC Board of Directors.

2.3 – The Complainant’s Recommendation

48. The Complainant seeks a recommendation from the Complaint Committee that FPCC does not approve the 2022-23 commercial allocation of 146.0 million kg that was voted by the TFC Board of Directors at the August 25, 2022, DAM meeting.
49. In addition, CPEPC seeks a recommendation from the Complaint Committee that FPCC direct the TFC Board of Directors to carefully and meaningfully consider market conditions and forecasts, including but not limited to, a report from the TMAC based on the most recent data available before amending the commercial allocation. Further, the TFC Board of Directors must ensure that it is satisfied that the size of the market for turkeys has changed significantly before increasing the commercial allocation.

Part 3: The Response

3.1 – The Respondent Agency: Turkey Farmers of Canada

50. TFC is the farm products marketing agency that was created under Part II of the FPAA to regulate the marketing of turkey in interprovincial and export trade in Canada. As per the Proclamation, TFC is represented by eight provincial turkey board directors, two directors from the CPEPC representing turkey primary processors and one director from FPPAC representing turkey further processors.

3.2 – Summary of the Response

51. TFC states that the Proclamation Criteria were considered at the August 25, 2022, DAM meeting when the commercial allocation was established at 146.0 million kg. TFC submits that it worked throughout the summer to find a resolution to the absence of a prior-approved quota regulation for the 2022-23 control period, which included developing a process to carefully and meaningfully consider the Proclamation Criteria.

52. TFC argues that, based on its analysis of the market, supported by elements of the turkey processing sector, it is satisfied that the market has changed significantly. Regarding its decision to increase the commercial allocation above what was recommended in the June 2022 TMAC report, TFC claims that its decisions can be informed, but not fettered, by TMAC reporting, estimates and recommendations.

53. In addition, TFC claims that the Complaint fails to consider that the Respondent Agency's responsibility are to consider the interests of other stakeholders in the supply chain which include producers, consumers, foodservice, hotel and institutional establishments, distributors and independent further processors. TFC asserts that, following the August 25, 2022, DAM meeting, TFC staff attended the FPPAC meeting in the fall of 2022 where FPPAC directors provided a perspective of the current and prospective turkey market that confirmed the Respondent Agency's commercial allocation decision of 146.0 million kg was correct.

54. TFC also states that to address one of the recommendations from the TFO vs. TFC Complaint Report – June 2022, Council members and staff attended the Respondent Agency’s relevant discussions regarding the Second 2022-23 Quota Regulation.
55. TFC maintains that the onus is on CPEPC to demonstrate that the Respondent Agency has not carefully and meaningfully considered the market conditions, forecasts and Proclamation Criteria.

3.2.1 – Summer 2022 Meetings

56. TFC states that on July 4, 2022, the Respondent Agency held a meeting between its legal counsel and ten TFC directors, with the exclusion of TFO, to discuss the TFO vs. TFC Complaint Report – June 2022. On July 7, 2022, the Respondent Agency claims it held a similar meeting between its legal counsel and all TFC directors to review the report. The details of the discussions from both of these meetings are subject to lawyer-client privilege and TFC states that CPEPC was involved in both meetings.
57. The Respondent Agency submits that on August 11, 2022, TFC and FPCC staff met to discuss how the Proclamation Criteria could be carefully and meaningfully considered by the Respondent Agency.
58. TFC claims that a number of producer meetings were also held throughout the summer of 2022. The Respondent Agency’s understanding from the downstream stakeholders was that, as the APRC was getting into the minutiae of how the Proclamation Criteria could be carefully and meaningfully considered, the various elements of any particular formula were not going to necessarily involve a high volume and they were within the purview of the producers to sort out amongst themselves.
59. Although the Respondent Agency admits that the producer meetings were not typical meetings, TFC asserts that these meetings through the summer were not decision-making meetings to finalize either the global allocation or the distribution among provinces. The Respondent Agency maintains that any reports or recommendations from the producer meetings flowed to the August 25, 2022, DAM meeting for consideration and decision-making by the entire TFC Board of Directors. TFC believes it kept the processor directors updated with a report from the TFC Chair and TFC staff via an August 15, 2022, virtual meeting. In addition, the Respondent Agency submits that the minutes of the producer meetings were not developed as these meetings were not TFC meetings.

3.2.2 – TFC’s Discretionary Authority

60. TFC argues that the FPAA, the Proclamation and the *Federal-Provincial Agreement in respect of the establishment of a Comprehensive Marketing Plan for the purpose of regulating the marketing of Turkeys in Canada* grant the Respondent Agency wide discretionary authority to implement the marketing plan for turkey. TFC asserts that none of these documents dictate a particular outcome with respect to allocation decisions.
61. The Respondent Agency uses a majority voting system as set out in TFC’s By-Law No. 1. TFC draws attention to a previous Complaint Committee² report validating the Respondent Agency’s voting process as an example of the wide discretionary authority TFC has.
62. TFC submits that, despite Council’s oversight power as defined in the FPAA, FPCC is not authorized to establish a levy rate or a quota allocation on behalf of an agency. In addition, TFC asserts that Council is not authorized to direct an agency to establish a specific levy rate or quota allocation. Finally, TFC claims Council is not authorized to direct an agency to develop a new or amend an existing policy.
63. The Respondent Agency also maintains that its use of committees, such as TMAC, to assemble relevant market data to inform its decision-making is another example of TFC’s discretionary authority. TMAC is a committee established with a mandate to assess market information and identify opportunities and risks important to the determination of the national quota for the whole bird and further processing segments of the market. TMAC conducts research and analysis of market data to inform its reporting, forecasting and recommendations to TFC’s Board of Directors. TMAC meets quarterly and at the direction of TFC’s Board of Directors to maintain an ongoing assessment of the market. Irrespective of TMAC’s role, the decision-making authority and accountability for establishing a national quota allocation remains with the Respondent Agency under its regulatory mandate in the Proclamation, and that fact is reflected in TMAC’s Terms of Reference.

² *Complaint Committee Report: Canadian Poultry and Egg Processors Council Against Turkey Farmers of Canada – November 2021* (hereinafter “CPEPC vs. TFC Complaint Report – November 2021”).

64. In addition to TMAC and the TMR, the Respondent Agency claims that TFC directors have their own expertise to inform their decisions as well as a continuous flow of data from TFC with respect to storage stocks, disappearance and pricing.

3.2.3 – Turkey Market Conditions

65. TFC claims that CPEPC spoke against the proposed increase in the commercial allocation to 146.0 million kg at the August 25, 2022, DAM meeting, but did not present any quantitative analysis, rationale or data supporting its opposition to the increase and why the 146.0 million kg commercial allocation was incorrect.

66. TFC acknowledges that the allocation process for the 2022-23 control period is unique, due to the absence of a commercial allocation policy, but claims that the Respondent Agency's market analysis was rigorous in determining the 2022-23 commercial allocation. TFC argues that the process commenced in 2021 and continued during 2022, which included the August 25, 2022, DAM meeting and follow-up Respondent Agency meetings in September 2022.

67. TFC asserts that at the 268th meeting (November 24-25, 2021), TFC directors considered a TMAC report containing a forecasted commercial allocation requirement of 144.8 million kg. At that meeting, TFC's Board of Directors determined the appropriate global quota for the 2022-23 control period was 143.0 million kg, approximately 2.0 million kg lower than the TMAC forecasted requirement.

68. TFC submits that at the 269th meeting (March 22-23, 2022), TMAC provided an updated report to the TFC Board of Directors that recommended no change to the 2022-23 commercial allocation of 143.0 million kg. TMAC reported that the market conditions for 2022-23 were uncertain and would be reassessed after the release of May 1, 2022, turkey inventories. In addition, TFC asserts that at the 269th meeting (March 22-23, 2022), TFC directors discussed retaining an independent third party to study and recommend an appropriate stocks-to-use ratio for frozen breast meat using historic wholesale pricing, import data and stocks-to-use ratios supplemented with qualitative data from industry participants.

69. TFC claims that at the 270th meeting (June 22-23, 2022), TMAC forecasted supply and dispositions based on a total commercial allocation requirement of 143.0 million kg. The

TMAC report cited both positive market indicators and market concerns. TFC argues that at that meeting, TFC's Board of Directors also discussed the market situation and specifically the potential for a breast meat shortage. Some in the processing sector reported an inability to source breast meat. TFC asserts that, although no final quota allocation decision was made at that meeting, TFC directors considered commercial allocation increases ranging from 143.0 million kg to 147.0 million kg to ensure there was sufficient breast meat supply to satisfy market demand.

70. TFC claims that the discussion among the TFC Board of Directors at the August 25, 2022, DAM meeting extended the continuing discussion about market conditions, forecasts, the global allocation, and distribution among provinces that had been ongoing from the 268th meeting (November 24-25, 2021), 269th meeting (March 22-23, 2022) and 270th meeting (June 22-23, 2022). TFC also submits that a memo was circulated to TFC directors regarding a conditional allocation for turkeys weighing over 9 kg (eviscerated) to ensure discussions occurred on the adequacy of breast meat supply across provinces.
71. TFC states that the distribution of the commercial allocation and the breast meat supply situation were both considered at the August 25, 2022, DAM meeting. At that meeting, a market analysis was presented to TFC's Board of Directors in the form of the TMR, which informed them of import utilizations, TMAC forecasts based on May 1, 2022, inventories and control period to-date production. TFC admits that the TMR presented at the August 25, 2022, DAM meeting was an abbreviated version of what is normally presented at TFC meetings, but the Respondent Agency claims that this was because the market conditions had not changed significantly since the previous TMR that was presented at the 270th meeting (June 22-23, 2022).
72. TFC maintains that it has considered the market conditions and forecasts carefully and meaningfully by referencing: (1) the November 2021, March 2022 and June 2022 TMAC reports, (2) the August 2022 TMR, (3) wholesale pricing data and (4) requests from provincial turkey boards and FPPAC to increase the commercial allocation. In addition, TFC asserts that the TMR from October 2022 confirms that the turkey market is in a good position and the Respondent Agency's decision to increase the commercial allocation is sound.

73. TFC claims that other TFC directors noted concerns with the breast meat ending stocks-to-use ratio, the potential for higher foodservice sales and reduced import availability, matters all previously discussed at the TFC 270th meeting (June 22-23, 2022).
74. Furthermore, TFC submits that the August 2022 Canadian Turkey Industry report published by AAFC also justifies the Respondent Agency's commercial allocation increase. Specifically, TFC highlights four factors from the report. Firstly, the disappearance of turkey increased by 2.5% year-to-date and by 2.8% for the control period. Secondly, year-over-year storage stocks of boneless skinless breast meat decreased by 20.9% on September 1, 2022. Thirdly, since the end of 2020, storage stocks of total turkey have been trending along the bottom of the five-year range. Finally, recent wholesale prices for whole birds have been trending above the five-year average, while wholesale prices for cuts have been setting new five-year monthly highs.
75. TFC draws attention to a letter that the Respondent Agency received on October 4, 2022, from FPPAC on the state of the turkey market. In the letter, FPPAC informs TFC that a lack of reliable turkey supply is causing difficulties for further processors. TFC asserts that, with respect to the FPAA, CPEPC is considered a consumer, but so is FPPAC and the Respondent Agency should not disregard the interests of that segment of the industry.
76. TFC asserts that the TFC Board of Directors discussed the implications of AI on the supply of turkey meat at the TFC 270th meeting (June 22-23, 2022).
77. Regarding CPEPC's claim that the commercial allocation increase will be concentrated in the last few months of the 2022-23 control period, TFC argues that this possibility does not detract from the Respondent Agency's decision that 146.0 million kg is the appropriate commercial allocation for the 2022-23 control period. In addition, TFC submits that there is flexibility in the timing turkeys are marketed, but effectively, these decisions are made between producers and processors.
78. TFC's submits there is natural tension between producers and processors and the Respondent Agency's mandate is to balance the competing interests between them. TFC further argues that just because there is a dissenting minority on a decision does not mean that the majority did not understand the concerns presented by the dissenting minority.
79. To address one of the recommendations of a previous Complaint Committee², the Respondent Agency approved issuing a request for proposal from an independent third

party to develop an analysis of an appropriate stocks-to-use ratio for turkey breast meat to inform and assist TFC with measuring and forecasting consumption and market growth in turkey meat.

3.3 – The Respondent Agency’s Recommendation

80. As per TFC’s Response of October 7, 2022, the Respondent Agency asks Council to summarily dismiss CPEPC’s Complaint and to expeditiously approve the Second 2022-23 Quota Regulation. However, if the Complaint process continues, TFC joins CPEPC in requesting an expedited Complaint Hearing process and the Respondent Agency asserts the Second 2022-23 Quota Regulation should receive prior approval to ensure continued orderly marketing of turkey in Canada.

Part 4: The Committee’s Analysis and Recommendations

4.1 – Legal Framework

81. Taking into account all of the documents, submissions, evidence and information provided by the parties, the Committee clearly understood the issues of the Complaint and the positions of both parties.

4.1.1 – Council’s Role

82. Council’s role and its statutory authorities are listed in the FPAA:

Duties of Council

6 (1) *The duties of the Council are*

- (a) *to advise the Minister on all matters relating to the establishment and operation of agencies under this Act with a view to maintaining and promoting an efficient and competitive agriculture industry;*

- (b) to review the operations of agencies with a view to ensuring that they carry on their operations in accordance with their objects set out in section 21 or 41, as the case may be; and*
 - (c) to work with agencies in promoting more effective marketing of farm products in interprovincial and export trade and, in the case of a promotion-research agency, in promoting such marketing in import trade and in connection with research and promotion activities relating to farm products.*
- [...]*

Powers of Council

7 (1) In order to fulfil its duties, the Council

- [...]*
- (d) shall review all orders and regulations that are proposed to be made by agencies and that are of a class of orders or regulations to which the Council, by order, provides that this paragraph is applicable and, where it is satisfied that the orders and regulations are necessary for the implementation of the marketing plan or promotion and research plan that the agency proposing to make the orders or regulations is authorized to implement, the Council shall approve the orders and regulations;*
- [...]*
- (f) shall make such inquiries and take such action within its powers as it deems appropriate in relation to any complaints received by it from any person who is directly affected by the operations of an agency and that relate to the operations of the agency;*
- [...]*

Therefore, Council, in fulfilling its duties, can either approve an agency's orders and regulations or disapprove them where it is not satisfied that the orders and regulations are necessary for the administration of the agency's marketing plan. Council cannot order an agency to adopt an allocation policy; that discretion lies with the agency.

4.1.2 – Council’s Oversight

83. Even if Council’s past decisions are not binding, they offer important insight on future disputes.

84. As stated in a previous Complaint Committee report³, the resulting question for Council when reviewing TFC’s submission of the Second 2022-23 Quota Regulation, is as follows: “is Council satisfied with TFC’s 2022-23 allocation proposal?”.

4.1.3 – TFC’s Role

85. The TFC is a marketing agency responsible for the orderly production and marketing of turkeys and turkey meat in Canada. The FPAA states its missions and the means to achieve them as follows:

Objects

21 The objects of an agency are

- a) to promote a strong, efficient and competitive production and marketing industry for the regulated product or products in relation to which it may exercise its powers; and*
- b) to have due regard to the interests of producers and consumers of the regulated product or products.*

Powers

22 (1) Subject to the proclamation by which it is established and to any subsequent proclamation altering its powers, an agency may

[...]

- b) implement a marketing plan the terms of which are set out in the proclamation establishing it or in any subsequent proclamation issued under subsection 17(2) in respect of it;*

³ Report of the Committee established to inquire into the complaint by the Manitoba and Saskatchewan signatories to the federal-provincial agreement respecting the comprehensive marketing program for eggs in Canada against the Canadian Egg Marketing Agency (CEMA) (2000) (hereinafter “MB/SK vs. CEMA Complaint Report – May 2000”).

- c) *prepare and submit to the Council (i) a marketing plan, if it is not empowered to implement a marketing plan, or (ii) any amendments to the marketing plan that the agency is empowered to implement, that it considers appropriate for the attainment of its objects;*

[...]

Where Marketing Plan Makes Allocation

23 (1) *A marketing plan, to the extent that it allocates any production or marketing quota to any area of Canada, shall allocate that quota on the basis of the production from that area in relation to the total production of Canada over a period of five years immediately preceding the effective date of the marketing plan.*

(2) *In allocating additional quotas for anticipated growth of market demand, an agency shall consider the principle of comparative advantage of production.*

4.1.4 – TFC’s Consideration of the Proclamation Criteria

86. In addition to the requirements under the FPAA, TFC must consider the Proclamation Criteria when making an order or regulation such as the one before the consideration of the Committee:

4 (1) *No order or regulation shall be made where the effect thereof would be to increase the aggregate of*

- a) the number of pounds of turkey meat produced in a province and authorized by quotas assigned by the Agency and by the appropriate Board or Commodity Board to be marketed in intraprovincial, interprovincial and export trade, and*
- b) the number of pounds of turkey meat produced in a province and anticipated to be marketed in intraprovincial, interprovincial and export trade other than as authorized by quotas assigned by the Agency and by the appropriate Board or Commodity Board*

to a number that exceeds, on a yearly basis, the number of pounds of turkey meat set out in section 3 of this Plan for the province unless the Agency has taken into account

- c) *the principle of comparative advantage of production;*
- d) *any variation in the size of the market for turkeys;*
- e) *any failures by turkey producers in any province or provinces to market the number of pounds of turkey meat authorized to be marketed;*
- f) *the feasibility of increased production in each province available to be marketed;*
- g) *the existing production and storage facilities in each province; and*
- h) *the comparative transportation costs to market areas from alternative sources of production.*

(2) No order or regulation shall be made pursuant to subsection (1) unless the Agency is satisfied that the size of the market for turkeys has changed significantly.

87. In a 1994 decision, Council⁴ has previously provided its position on the burden of proof resting with the Complainant during a Complaint process stating:

Given the discretionary authority conferred on the agency, Council considers that the burden of proof lies with a complainant to prove that an agency decision is contrary to the parameters within which it is to operate.

88. In another decision in 1997⁵, Council mentioned:

The burden of proof rests with the complainant to demonstrate the unreasonableness of an agency decision or that an agency decision is contrary to the parameters within which it operates.

89. The discretion of an agency and Council's oversight role was previously described in the MB/SK vs. CEMA Complaint Report – May 2000:

⁴ *National Farm Products Council Inquiry Into The Complaint by La Fédération Des Producteurs De Volailles Du Québec, The Nova Scotia Chicken Producers Board And The Newfoundland Chicken Marketing Board Against The Decision Of The Canadian Chicken Marketing Agency Respecting The Third Period 1994 Quota Allocations – April 1994* (hereinafter "QC/NS/NL vs. CCMA Complaint Report – April 1994").

⁵ *National Farm Products Council Inquiry Into The Complaint By The Canadian Poultry And Egg Processors Council Against The Decision Of The Canadian Turkey Marketing Agency Respecting The 1997/98 Quota Allocation – March 20, 1997.*

Past Council decisions have afforded a wide discretion to an agency in applying criteria contained in a marketing plan. These decisions can therefore be said to have, over time, established rules of practice for the exercise of agency discretion in the making of quota orders which suggest that the requirement for the Council to ‘satisfy itself’ under the Act will occur where the Council had concluded that a given threshold appropriate to the criteria in the plan has been achieved in the contents of the proposed order or regulation. In other words, Council has not required in the past that agencies demonstrate their proposed orders are the best possible orders to regulate the industry but only that they fall within a range which comply with the marketing plan and the Act.

[...]

In every instance it must be viewed as circumscribed by the objects circumscribed in Section 21 of the Act. When criteria are developed by an agency which differ from those in the plan or where criteria in the plan are applied in a manner which have an effect contrary to the objects in Section 21, then the actions of an agency may fall into a classification of being unreasonable.

[...]

Ultimately though, it is the Council which determines the source, nature and level of evidence or proof which it requires in order to satisfy itself that the proposed order or regulation has achieved the necessary threshold to gain approval.

90. Furthermore, the Courts have consistently shown deference to the expertise of internal administrative bodies such as the TFC. For instance, in a 2006 Federal Court decision⁶, the Court recognized the expertise of the Egg Farmers of Canada, formerly known as Canadian Egg Marketing Agency (hereinafter “CEMA”) in a case involving eggs. Given the similarities in how these bodies function, the same legal reasoning can be applied to TFC in the case at hand:

⁶ 2006 FC 345 (CanLII) | Saskatchewan (Agriculture, Food and Rural Revitalization) v. Canada (Attorney General). See also Yee v Chartered Professional Accountants of Alberta, 2020 ABCA 98 (CanLII).

Owing to its composition and its familiarity with the particular matter of making quota allocation decisions and its relative expertise generated by application of the statutory objects of the Agency as set out in section 21 of the Act to the facts relevant to the making of new quota allocation decisions each year, it is submitted that CEMA's expertise in making quota allocation decisions is a specialized area of knowledge.

The Court went on to note Parliament's intention that deference be accorded to national marketing agencies, like CEMA, in the review of quota allocation decision and support review on a standard of patent unreasonableness.

91. In making orders or regulations, agencies must not only comply with the requirements of section 21 of the FPAA, they must also “take into account” the Proclamation Criteria. Both the Council⁷ as well as the Federal Court⁸ have provided its views on the notion of “take into account”, indicating that this consideration must be careful and meaningful every time the allocation is established even if, in the end, the agency decides to give no weight to one or more criteria in its marketing plan.
92. Moreover, a good summary of the legal considerations of the criteria was provided in the BC vs. CTMA Complaint Report – December 2004:

In other words, the six listed criteria must play an important role in the allocation deliberations of the Agency. As to how the Agency defines and applies each of the criteria, the Committee is of the opinion that such determinations must be in accord with the objects of an agency as prescribed under section 21 of the Act [FPAA].

[...]

Past Council decisions have afforded a wide discretion to an agency in applying criteria contained in a marketing plan (or indeed any other criteria), albeit this

⁷ QC/NS/NL vs. CCMA Complaint Report – April 1994;
Report of the Committee established to inquire into the complaint By The British Columbia Signatories to the Federal-Provincial Agreement Respecting the Comprehensive Marketing Program for Turkeys in Canada Against The Canadian Turkey Marketing Agency Concerning the Canadian Turkey Marketing Agency's Proposed Quota Allocations for the 2004/2005 Control Period (hereinafter “BC vs. CTMA Complaint Report – December 2004”).

⁸ *Saskatchewan (Agriculture, Food and Rural Revitalization) v. Canada (Attorney General)*, 2006 FC 345.

discretion cannot be said to be unlimited. Given that the context in which the obligation to take into account the six listed criteria involves the making of a quota order, the CTMA is required to give careful and meaningful consideration when determining how and the extent to which each criterion should be applied.

[...]

This is a legal requirement which is not to be taken lightly.

(our emphasis)

The Scope of Council's Jurisdiction

93. In accordance with the powers conferred to Council by the FPAA, the Committee is of the view that Council has the statutory mandate to review an agency's orders and regulations in their whole and not only the elements that the parties bring to its attention. Council has a statutory mandate to approve or not approve an allocation irrespective of the specific issues raised by parties and all aspects of the quota regulation are considered.

4.2 – The Committee's Analysis

4.2.1 – Summer 2022 Meetings

94. The Committee notes that the Complainant and the Respondent Agency disagree on the nature and objectives of the producer meetings that occurred throughout the summer of 2022. Although TFC admits that producer meetings are not typical of the Respondent Agency's operations, the Committee is not satisfied that the Complainant provided enough evidence that the CPEPC was suspiciously excluded from these meetings.

95. The Committee recognizes CPEPC's concerns with being excluded from these meetings. However, the Committee also accepts TFC's assertion that these meetings were not decision-making meetings and the information that resulted from them were presented to the TFC Board of Directors in the form of memos at the August 25, 2022, DAM meeting. Nevertheless, the Committee believes it would have been prudent to invite CPEPC to these meetings as excluding directors from discussions about allocation leaves

TFC vulnerable to complaints being filed and would like to draw attention to a previous Complaint Committee⁹ report:

The Council will not comment in detail on the exclusion of one or more directors during recessed consultations. However, the Council emphasizes that the perception of judicial fairness in the decision-making process must be maintained at all times by the Agency. Failure to do so could well result in increased frequency of appeals to the Council.

4.2.2 – Proclamation Criteria

96. The Proclamation Criteria must be carefully and meaningfully taken into account when establishing an allocation over the base allocation found in the Proclamation, not the Respondent Agency's previous allocation in accordance with section 4(1) Part II of the Proclamation: "[...] to a number that exceeds, on a yearly basis, the number of pounds of turkey meat **set out in section 3 of this Plan** for the province unless [...]" (our emphasis). Section 4(2) of the Proclamation refers to the base allocation found in the prior section. The next passage from the BC vs. CTMA Complaint Report – December 2004 provides a past interpretation of section 4(2) of the Proclamation:

Except for the year 1973, the CTMA marketing plan does not contain terms which actually allocate quota. The plan does require, however, that the CTMA must establish a quota system subject to and in accordance with the rules set out in the plan. Paragraphs 2 and 3 of the plan provide the foundation on which CTMA is to operate in making allocations for the 1973 production year while the table in paragraph 3 establishes what are often referred to as the base quota numbers. Paragraph 4(1) of the plan subsequently specifies that if an annual allocation to any province is to exceed the volume in the table for the province, then the Agency must have "taken into account" the six criteria listed in the same paragraph (one of which is comparative advantage of production).

⁹ *National Farm Products Marketing Council Inquiry Into The Complaints Of The New Brunswick Signatories To The Federal-Provincial Agreement For A Comprehensive Turkey Marketing Program Against The Canadian Turkey Marketing Agency Respecting The 1988 Global Quota Allocation Procedure And New Brunswick's Share Arising Therefrom – June 1987.*

[...]

The Committee re-emphasizes the findings contained in Council's May 2004 Report that “each quota order is a stand alone instrument, it is independent from those coming into force before or indeed following it. Each time an order is made by the Agency, the criteria in the marketing plan must be taken into account when allocations are made above base levels set out in the Proclamation. In this way, the previous year's allocation does not establish a new base for the current year”.
(our emphasis)

97. Although the Committee acknowledges the Complainant's assertion that the provincial distribution of the commercial allocation was discussed in greater detail than the quantity, the Committee views CPEPC's claim that the quantity of the commercial allocation was not duly discussed before increasing it to 146.0 million kg as unconvincing. Given the TFO vs. TFC Complaint Report – June 2022, it is understandable that the TFC Board of Directors paid particular attention to the provincial distribution of the commercial allocation. That said, the Committee recognizes that the TFC Board of Directors held a discussion regarding establishing the commercial allocation between 143.0 million kg and 147.0 million kg during the August 25, 2022, DAM meeting, with the majority of, but not all, TFC directors agreeing to and voting on 146.0 million kg. Although a lack of consensus in itself does not necessarily indicate that a meaningful discussion occurred, the Committee is of the opinion that the TFC Board of Directors voting on a commercial allocation of 146.0 million kg, given the range that was being discussed, is not unreasonable.

4.2.3 – Turkey Market Conditions

98. With respect to CPEPC's challenge to paragraphs 4(1) d), e) and f) and section 4(2) of Part II of the Proclamation, the Committee acknowledges that TMAC provides recommendations to TFC and that the decision-making authority and accountability for establishing a national quota allocation remains with the TFC Board of Directors. The Committee understands that, in addition to TMAC reports and recommendations, the Respondent Agency uses a number of sources of information when voting on a commercial allocation, such as the TMR, storage stocks, disappearance and pricing.

99. The Committee understands that, in addition to the TMAC report from June 2022, other sources of information were used when the commercial allocation was established at 146.0 million kg at the August 25, 2022, DAM meeting, which included an abbreviated TMR.
100. The Committee recognizes CPEPC's frustration with the fact that an updated TMAC report was not produced for the August 25, 2022, DAM meeting, but TFC has discretionary authority in setting allocations which includes analyzing market conditions. As per the TMAC Terms of Reference, TMAC meetings are generally held in September/October, November (post-Thanksgiving), February (post-Christmas) and June (post-Easter). While the Committee understands that TFC has the ability to hold additional TMAC meetings as required, the Respondent Agency is under no obligation to do so and Council does not have the authority to direct TFC to hold TMAC meetings.
101. The Committee recognizes that some turkey processors have reported an inability to source breast meat. The Committee realizes that discussions surrounding the appropriate levels of supply of turkey meat, and more specifically breast meat, have been ongoing amongst the TFC Board of Directors for many years. While the Committee acknowledges that many factors are weighed by the TFC Board of Directors when establishing the commercial allocation, the Committee believes storage stocks are a pivotal source of information regarding these discussions. The Committee commends the TFC for its decision to seek an independent analyst to provide a recommendation on an appropriate stocks-to-use ratio for turkey breast meat and believes a third-party could provide a neutral perspective on this contentious issue.
102. The Committee understands that live prices of turkey impact the profitability of turkey primary processors. The Committee also acknowledges that, although the wholesale price of turkey has increased recently, so have live prices. As such, the Committee would like to reiterate a recommendation made to Council in the CPEPC vs. TFC Complaint Report – November 2021:

The Committee recommends that FPCC encourage TFC and CPEPC turkey primary processors to explore options to better assess how increases in the turkey live price are transmitted to the wholesale price and retail prices, and the impact of retail prices on consumption.

103. The Committee acknowledges the significant impact AI has had recently on turkey producers and realizes that this disease will likely impact turkey producers for the foreseeable future. Nevertheless, the Committee believes that TFC's role with respect to the commercial allocation is to determine the appropriate volume of turkey meat required to satisfy domestic demand. The Committee recognizes that the inability of provinces to produce their respective allocations is a legitimate concern raised by CPEPC, but forecasting the locations and severity of AI outbreaks in the future is a near-impossible task. The Committee believes that interprovincial leasing of quota is useful mechanism for navigating through uncertain market conditions such as the one caused by AI. The Committee understands that some provinces may not be impacted as severely by AI as others. As such, this mechanism provides TFC with the flexibility to produce, at a national level, as close to the commercial allocation as possible.
104. The Committee recognizes CPEPC's claim that the commercial allocation increase will be concentrated in the last few months of the control period. However, it is the Committee's understanding that the market requirements of various turkey sizes are determined collaboratively by provincial turkey boards and turkey processors. The Committee is of the opinion that the timing of turkeys to the market does not diminish the Respondent Agency's responsibility to supply the domestic market with the volume of turkey meat it believes is the most appropriate.

4.3 – The Committee's Recommendation to Council

105. Based on the evidence that was presented and the Committee's conclusions, the Committee is of the opinion that CPEPC did not provide sufficient evidence that TFC did not carefully and meaningfully take into account the Proclamation Criteria when it established the 2022-23 commercial allocation at the August 25, 2022, DAM meeting. As such, the Committee recommends that Council dismiss CPEPC's Complaint.

4.4 – The Committee’s Recommendations to the Respondent Agency

106. The Committee would like to reiterate a recommendation made to TFC in the TFO vs. TFC Complaint Report – June 2022:

The Committee notes the Respondent Agency’s decision to suspend the NCAP prior to a new commercial allocation policy being developed and implemented. Although the Committee acknowledges TFC’s ongoing efforts in developing a new allocation policy, suspending the NCAP and operating without one has left the Respondent Agency’s allocation determination vulnerable. The Committee strongly recommends that TFC continues to work towards developing a new commercial allocation policy.

107. In addition to this reiteration, the Committee recommends that TFC commit to completing and implementing the new commercial allocation policy by a given date. Furthermore, the Committee recommends that the Respondent Agency provide more frequent and comprehensive progress updates on this issue at TFC meetings and to Council.

108. Furthermore, operating without a commercial allocation policy can leave TFC’s allocation proposal more exposed to formal contestations, the system is operating without an approved quota and, as stated in the BC vs. CTMA Complaint Report – December 2004 report, “the lack of any legal foundation to support its principal functions creates a jeopardy that could have a deleterious effect on the national marketing plan”. The Committee is of the opinion that TFC’s work toward the establishment of a policy is a timely investment considering the multiple complaints that TFC faced for the 2022-23 control period. Meanwhile, in order to mitigate the consequences of the absence of a policy, the Committee recommends that TFC establish the commercial allocation in advance of the beginning of a control period, which would provide more stability to industry and protect the Respondent Agency against operating without a prior-approved commercial allocation. As the market conditions evolve throughout the control period, TFC can adjust the commercial allocation accordingly.

109. The Committee would like to restate another recommendation made to the Respondent Agency in the TFO vs. TFC Complaint Report – June 2022:

In TFC's meeting minutes, it is unclear which members are voting in favour of the motion and which members are opposed. The Committee recommends that the votes at the Respondent Agency's meeting are recorded more clearly to indicate which members voted in favour of and against motions related to allocations.

110. The Committee is disappointed that TFC has not followed this recommendation. At the beginning of the Hearing there was confusion regarding a vote that occurred during the TFC 270th meeting (June 22-23, 2022). The Committee is of the opinion that this confusion was in large part due to the way in which the Respondent Agency records voting results in its meeting minutes. In addition, it was discovered that the vote had been recorded incorrectly in the minutes of the TFC 270th meeting (June 22-23, 2022), which had since then been approved by the TFC Board of Directors. At the Hearing, the Respondent Agency indicated that the minutes of the TFC 270th meeting (June 22-23, 2022) will need to be corrected under TFC's governance processes.

111. The Committee encourages TFC to follow the recommendation of the TFO vs. TFC Complaint Report – June 2022 and begin recording voting results more clearly in its meeting minutes to indicate which members voted in favour of and against motions related to allocations. Additionally, the Committee strongly recommends that the TFC Board of Directors carefully review the Respondent Agency's meeting minutes before formally approving them to help avoid this type of confusion in the future.

112. The Committee is of the opinion that the minutes from the TFC meetings provide a summary of the discussions that the TFC Board of Directors engage in but are not a fulsome representation of the depth of discussion that occurs at these meetings. Due to TFC operating without a commercial allocation policy, the Committee recommends that TFC take a more rigorous approach to recording the discussions and decisions that occur during the TFC meetings.

113. The Committee recommends that the Respondent Agency invite all TFC members to meetings where allocation may be discussed, regardless of whether or not the meetings are decision-making in nature and despite the minutiae of the meetings. The Committee

believes TFC should tread carefully with respect to holding discussions about allocation without all TFC members present. In the event TFC members decide to voluntarily not participate in meetings, the Committee recommends TFC keep written documentation of such interactions to avoid the appearance of a lack of transparency vis-a-vis particular members.

114. The Committee believes the Respondent Agency shall lead the industry and recommends that TFC continue to encourage open and transparent dialogue between all its members.