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Sent by Email: aafc.fpcccomplaints-plaintescpac.aac@agr.gc.ca

Registrar
Farm Products Council of Canada
960 Carling Avenue
Ottawa, ON K1A 0C6

Dear Registrar:

Re: Complaint pursuant to subsection 7(1)(f) of the *Farm Products Agencies Act* against Turkey Farmers of Canada's allocation decision for the 2022-23 Control Period

Turkey Farmers of Ontario ("TFO") hereby submits this complaint to the Farm Products Council of Canada ("Council") in accordance with Council's By-Law Governing the Administration of Complaints, and in respect of the decision of Turkey Farmers of Canada ("TFC") concerning the allocation for the 2022-23 Control Period (the "**2022 Allocation**").

TFO is the provincial commodity board representing Ontario, with authority under provincial legislation (the *Farm Products Marketing Act*, R.S.O. 1990, c. F.9) to control and regulate the producing and marketing of turkey within Ontario. TFO is also a member of TFC by virtue of the *Canadian Turkey Marketing Agency Proclamation* (C.R.C., c. 647) and as well is a signatory of 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, 1973*.

The TFC Board's decision made on February 14, 2022 was to set the 2022 Allocation at 143.0 Mkg, an increase of 4.0Mkg from the 2021-22 Control Period.

TFO has no objection with the quantum of allocation recommended by TFC in the 2022 Allocation. Rather, TFO's objection is concentrated on the **manner** pursuant to which the 2022 Allocation was established. It is TFO's view that TFC has failed to meaningfully position the 2022 Allocation within the ambit of the Proclamation Criteria and has instead paid only notional regard to them, contrary to both the legal and substantive requirements required by an Agency such as TFC to establish an allocation that falls properly within the parameters of the legislation.

TFC has adopted an overwhelmingly *pro rata* approach to distribution of the over base portion of the 2022 Allocation (79,654,357 Mkgs). It is TFO's contention that *pro rata* allocation methodologies by their very nature are the antithesis of the Proclamation Criteria and that the result of the application of a *pro rata* formula is tantamount to an abdication by TFC of its objects as an Agency under the *Farm Products Agencies Act*, R.S.C. 1985, c. F-4 (the "**Act**") which are to promote a strong, efficient and competitive

production and marketing industry for turkeys and to have due regard to the interests of producers and consumers of turkey. Moreover, the effect of the 2022 Allocation is harmful to TFO and its provincial stakeholders.

Grounds and Rationale for the Complaint

In describing its rationale in its correspondence to Council of March 16, 2022, TFC has again noted the continued suspension of the National Commercial Allocation Policy (“**NCAP**”) and the continued absence of a viable replacement. With respect, this circumstance can no longer be advanced as an excuse for an allocation that departs from the legislative criteria. TFC concedes that the COVID pandemic as well as the severe market contraction that preceded COVID’s arrival were events of such significance that allocation setting could be premised on different considerations.

It has now been two years since the previous NCAP was suspended and six years since TFC first commenced its review of the NCAP. Over this timeframe, the Committee charged with the review of the NCAP and the development of a viable and improved replacement of the NCAP has, on a conservative estimate, met over 40 times, however no new allocation policy has been approved and implemented. It is well past a point in time where it is incumbent on TFC to develop a meaningful replacement for the NCAP that incorporates the means for advancing request-based allocations for new and innovative products. TFC’s failure to do so means that its assurance to Council that it has nonetheless considered and satisfied the criteria rings hollow.

The stagnation that characterizes TFC’s allocation setting generally is not just a view exclusive to TFO but in fact is one of the central observations of consultants retained by TFC to assist in strategic planning for the industry.

In 2021, these consultants produced a White Paper which accurately describes the dynamics facing the industry: declining traditional whole bird demand and increasing demand for further processing; flat overall consumption and instances of over supply; provincial variation in terms of available infrastructure to participate in further processing; a failure to adapt to “market evolution”; allocation setting without a longer-term vision “locked into cycles of battles for market share, lacking a specific strategy to adapt to the marketplace”.

Rather than acting to “triage” the challenges facing the industry as urged by the consultants, in June 2021 TFC decided to effectively suspend the strategic planning process. The failure to develop a suitable replacement to the Commercial Allocation Policy therefore is both a symptom of the lack of meaningful direction and a contributing factor to the allocation inertia.

As early as June 25, 2021, TFO made it clear that it considered a new NCAP to be a prerequisite to allocation setting for the 2022-23 Control Period. TFO’s position in that regard has simply been ignored. TFO warned that not having implemented a substitute for the suspended NCAP would severely diminish TFC’s ability to justify an allocation based on the criteria, which concerns have now crystalized.

Moreover, TFC has again failed to follow through on a motion passed in November 2019 that it complete and implement a new allocation policy in time for the 2021-22 Control Period.

Additionally, TFC is well aware of the significance of having in place a request-based policy, as it has stated in previous quota regulation submissions to Council that the request process functioned as the

most practical means to take into account and apply the principle of comparative advantage of production, a proposition with which TFO agreed and continues to agree.

Although the previous Commercial Allocation Policy had room for improvement in certain areas, the fact is that it provided a forum for a province with differential further processing demand to obtain the specific allocation necessary to underwrite company-specific innovation. As a result, Ontario processors have been successful in developing and sustaining new further processed value-added product lines utilizing differential supplies obtained through the Commercial Allocation Policy. These avenues are choked off when there is no Commercial Allocation Policy and similar initiatives as those witnessed over the last five years are simply not now sustainable when allocation is distributed on a provincial *pro rata* basis without regard to differential provincial requirements.

TFC is purporting to distribute over base quota in accordance with a formula primarily based on provincial market shares. Council has, as long ago as 2004, expressed the view that a formula utilizing a distribution methodology based on *pro rata* market shares is effectively incompatible with a genuine and meaningful application of the criteria.

The effect of the 2022 Allocation on Ontario is amplified by the manner in which prior allocations were distributed. For the 2020-21 allocation, made in the context of the COVID-19 pandemic, Ontario accepted a disproportionate reduction, only after having accepted member representations that the decision was a “once off” and “not to be considered precedent setting”. However, rather than abide by that agreement, TFC members appear to have seized on Ontario’s previous good faith actions and are now attempting to retain that 2020-21 allocation as the basis for the market shares informing the 2022-23 allocation. TFC’s assertion that the 2020-21 market shares capture the capacity of provinces to raise and process additional production growth is a mischaracterization.

TFC’s premise for the 2022-23 allocation has additional deficiencies. The formula for the allocation is 60% *pro rata* based on 2020-21 market shares, 30% based on provincial production and 10% based on Nielsen retail scan data.

In the case of the 2022 Allocation, the particular *pro rata* shares being used by TFC are derived from TFC’s April 13, 2020 decision to set the 2020-21 allocations. The Minutes of that meeting make it clear that members viewed the decision as a “once off” and “not to be considered precedent setting”. In fact, TFO only supported the April 13, 2020 decision based on members’ representations that indeed the decision was not to be precedent-setting: had TFO voted against it, the motion would have failed.

TFC is now using the market shares for the third consecutive time: the notion that the decision was not precedent-setting has now been openly confirmed.

TFC appears receptive to population as a basis for allocation distribution only because it effectively replicates the outcome if *pro rata* market shares based on the 2020-21 allocation were utilized. If the *pro rata* approach of 60% is combined with the population approach for 30%, for all intents and purposes 90% of the allocation will be distributed as if it was solely done on a *pro rata* basis.

Lastly, the 10% distribution utilizing Nielsen retail scan data raises concerns as TFC itself has previously advised that this scan data fails to measure two significant markets for turkey, namely, retail deli sales and all foodservice sales. Both of these markets are of significant importance to the Canadian turkey industry, and particularly the Ontario turkey industry.

Documentation Relied Upon

TFO intends to rely upon the documentation described on Appendix "A" as well as such additional documents it may deem advisable.

TFO is aware that some of the documentation may be viewed as confidential by TFC. Accordingly, TFO will be marking all documents as "Confidential" at this time, in order to afford TFC an opportunity to address any disclosure issues. TFO will be submitting this documentation in conjunction with our complaint correspondence under separate cover.

Recommendation Being Sought

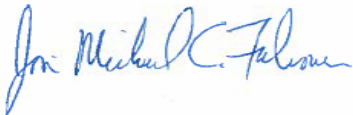
TFO recommends that Council not approve the 2022-23 TFC allocation until:

1. TFC designs and implements a new Commercial Allocation Policy; and
2. TFC establishes the allocation for the 2022-23 Control Period by properly incorporating a genuine application of the Criteria and the applicable new Commercial Allocation Policy provisions.

TFO requests an expedited hearing process so that stakeholders will have in place an allocation for the 2022-23 Control Period.

Lastly, and in view of the importance of this matter, we would respectfully suggest that an informal discussion with the parties on an early basis would be appropriate.

Yours truly,



Jon-Michael Falconer
General Manager, TFO

c.c. Phil Boyd, Turkey Farmers of Canada
Geoff Spurr, Wilson Spurr LLP

Appendix “A”

Quota Regulation Submissions

- C-1 2019-20 TFC Quota Regulation Submission - Feb 19 2019
- C-2 2020-21 TFC Quota Regulation Submission - Apr 16 2020
- C-3 2021-22 TFC Quota Regulation Submission - Jan 8 2021

2022-23 Allocation Proposals, Tables

- C-4 (For Discussion Purposes Only) 2022-23 Allocation Options (for 143 mkg) - Feb 7 2022
- C-5 60-30-10 Proposal – Feb 15 2022
- C-6 2022-2023 Allocation Table – Feb 22 2022

TFC Minutes

- C-7 TFC Minutes – Nov 27-28 2019
- C-8 TFC Web Conference Minutes – Feb 7 2020
- C-9 TFC Web Conference Minutes – March 13 2020
- C-10 TFC Minutes – March 25-26 2020
- C-11 TFC Web Conference Minutes – April 7 2020
- C-12 TFC Directors Only Web Conference Minutes – April 13 2020
- C-13 TFC Web Conference Minutes – Jan 8 2021
- C-14 TFC Web Conference Minutes – Feb 3 2022
- C-15 TFC Web Conference Minutes – Feb 14 2022

TFO Correspondence

- C-16 TFO letter to TFC APRC – Aug 20 2020
- C-17 TFO letter to TFC – June 25 2021
- C-18 TFO letter to TFC – Nov 3 2021
- C-19 TFO letter to APRC – Nov 19 2021
- C-20 TFO letter to TFC – Feb 1 2022

Allocation Tables

- C-21 September 26, 2019 Allocation Table
- C-22 April 13, 2020 Allocation Table

TMAC Reports

- C-23 TFC TMAC Report dated May 26, 2020 – Overview of 2019/20 Control Period and Adequacy of 2020/21 Allocation
- C-24 TFC TMAC Report based on May 1, 2021 Inventories: 2021/2022 Control Period Commercial Allocation
- C-25 TFC TMAC Report dated February 9, 2022 - 2022/23 Control Period Commercial Allocation

Policies

C-26 TFC National Commercial Allocation Policy (suspended)

Strategic Planning Documents

C-27 Canadian Turkey Industry White Paper, Winter 2021, prepared by Monty Doyle and
Jeremy Latta

C-28 TFO Memo dated April 7, 2021 Re Strategic Planning

C-29 TFC Memo dated June 22, 2021 Re Strategic Planning Process