

October 17, 2022

The Registrar
Farm Products Council of Canada
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Madam Registrar:

RE: 09-26-22 Complaint by Turkey Farmers of Ontario (“TFO”) regarding Turkey Farmers of Canada 08-25-22 quota allocation decision for the 2022-23 Control Period

This is the Agency’s Complaint Response under section 12 of FPCC Complaint By-Law, as amended February 10, 2021, and is further to the Registrar’s First Notice direction of October 7, 2022, that the Agency deliver its Complaint Response by 4:00 pm on October 17, 2022.

The Agency’s Response Position

The Agency’s decision of August 25, 2022, regarding the 2022-23 Control Period global allocation and provincial distribution was made in a context informed by events spanning many months. As outlined in this Response, and more fulsomely animated by the documents referred to in the Agency’s List of Response Documents, the Agency’s 2022-23 allocation and supporting reasoning demonstrate that the Agency carefully and meaningfully considered the Proclamation criteria and relevant market factors and developed an allocation according to its statutory objects.

The Agency asks FPCC to summarily dismiss TFO’s Complaint, and that the Quota Regulation amendment be approved by the FPCC expeditiously.

If the Complaint process continues, that the Quota Regulation amendment still receive prior approval so the interlocking Federal-Provincial regulatory regime necessary for the orderly marketing of turkey remains in place.

The Impugned Allocation

The Agency’s global quota allocation comprises four (4) parts: the commercial allocation, the conditional primary breeder, multiplier breeder, and export allocations.

On August 25, 2022, the Agency approved motions setting the global 2022-23 Control Period quota at 181,410,931 kilograms comprising (*denoting conditional allocations under the respective Agency Policies):

- Commercial quota – 146,000,000 kg

- Multiplier Breeder quota – 2,810,043 kg *
- Primary Breeder quota – 2,098,080 kg *
- Expert quota – 30,502,808 kg *

Also approved in the August 25th motions was the distribution of that Commercial quota allocation among the provinces.

- Nova Scotia – 4,247,715 kg
- New Brunswick – 3,388,138 kg
- Quebec – 32,852,397 kg
- Ontario – 58,102,386 kg
- Manitoba – 9,170,501 kg
- Saskatchewan – 5,015,198 kg
- Alberta – 13,920,916 kg
- British Columbia – 19,302,749 kg

On September 15, 2022, the Agency approved the text and content of the Agency's submission to FPCC for prior-approval of that allocation as the 2022-23 Control Period Quota Regulation (the "Impugned Allocation").

TFO Complaint Issues

The TFO Complaint raises five issues:

- A. The Directors' general assent of the Criteria Memorandum does not equate to meaningful consideration of the Proclamation criteria.
- B. The Agency's new formula approach produces a result nearly identical to a *pro-rata* distribution.
- C. The Quota Regulation submission reasoning does not reflect the Agency's evaluation of the Proclamation criteria.
- D. The Agency's allocation of the 7 Mkg of growth is contrary to the Agency's statutory objects.
- E. The Agency ignored the "Conditional over 9 kgs Proposal"

The 2022-23 Control Period

The Agency's allocation process for the last three control periods, including 2022-23, is unique in the Agency's recent history dating to its 2006-07 Control Period, as it was not informed by a Commercial Allocation Policy. In June 2020, at the Agency's 262nd meeting, in a unanimous vote, the Agency Directors agreed to suspend the Agency's Commercial Allocation Policy and develop a new Commercial Allocation Policy.

The process of setting the 2022-23 Allocation began in November 2021 and continued during 2022, including until the Agency's meeting of August 25, 2022, and continuing through follow-up Agency meetings in September 2022.

The impugned allocation decision was made at the Agency's August 25th meeting, where the Agency Directors approved a commercial quota allocation of 146 Mkg of turkey meat for the 2022-23 Control Period.

1. The Agency's 268th Meeting November 24-25, 2021

The TMAC is a committee of the Agency established with a mandate to:

- assess market information and identify opportunities and risks important to determine the national quota for the whole bird and further processing segments of the market.
- advise to the Agency regarding the annual national production volume for the whole bird and further processing segments of the market for turkey.

TMAC conducts research and analysis of market data to inform its reporting, forecasting and recommendations to the Agency Directors. TMAC's membership includes processor member representation, producer membership representation, Agency staff and an external agri-economic advisor. TMAC meets quarterly and at the direction of the Agency Directors to maintain an ongoing assessment of the market.

At that 268th meeting, the Agency Directors considered a report from TMAC containing forecasted commercial allocation needs of 144.8 Mkg.

The decision-making authority and accountability for establishing a national quota allocation remains with the Agency under its regulatory mandate in the Proclamation.

The TMAC report forecasted 2022/23 closing whole bird stocks of 8.5 Mkg, representing a 14.8% stock to use ratio¹ and closing breast meat stocks were forecast at 1.5 Mkg, representing a 5.2% stock to use ratio.

After determining the global quota, the Agency Directors deferred distribution to the provinces to Agency meetings that were continuing into February and March 2022.

2. Web Conferences of February 14 and 22, 2022

During their Web Conference of February 14, 2022, the Agency Directors agreed to the distribution of the Commercial Allocation of 143,000,000 kg among the 8 member provinces. At the Web Conference of February 22, 2022, the Agency Directors approved the global quota for 2022-23, consisting of conditional allocations, at 176,696,089 kg comprised of (in approximate numbers):

Commercial	- 143 Mkg
Primary Breeder	- 2.10 Mkg
Multiplier Breeder	- 2.84 Mkg
Export	- 28.8 Mkg

¹ Stock to use ratio – the level of carryover stock of turkey meat as a percentage of the total use of turkey. The ratio is used as a predictor of future price movements and to forecast future inventory (supply) and use (demand).

On its web conference of March 15, 2022, the Agency directors approved the submission of the Agency's proposed 2022/23 Quota Allocation and the submission to FPCC for prior approval.

3. The Agency's 269th Meeting March 23-24, 2022

At the 269th meeting, TMAC provided its February 2022 forecast report there was no change to 2022/23 total commercial allocation of 143 Mkg established by Agency Directors and that any changes to be made would be assessed after May 1st inventories. TMAC noted the market environment for 2022-23 was uncertain due to the conflict in Ukraine, grain markets, inflation, interest rates and competing meat protein pricing. TMAC had made minor changes (lower) to breast meat production and (lower) disappearance for the rest of 2021-22, and higher whole bird production and higher ending stocks for WB and breast meat.

TMAC reported they would be able to better assess the market after the May 1st availability of supply and disappearance data, however they believed the market was not far off from 143 Mkg.

In addition, at that meeting, the Agency discussed by way of follow-up to the CPEPC Complaint Panel Report and FPCC Decision, dated November 13, 2021, retaining an independent third party to study and recommend a stock-to-use ratio for frozen breast meat using historic wholesale pricing, import data and stock to use ratios supplemented with qualitative data from industry participants.

As noted above, the Agency's proposed 2022-23 quota allocation decision was approved and submitted to FPCC for prior-approval. That quota allocation became the subject of a Complaint to FPCC by TFO.

4. The Agency's 270th Meeting June 22-23, 2022

TMAC in its June 6, 2022 report forecasted supply and dispositions based on the allocation of 143 Mkg, reflecting the decisions by the Agency from November 2021 to February 2022.

The TMAC report forecast 2022-23 closing whole bird stocks of 8.8 Mkg, equal to a 15.6% stock to use ratio and closing breast meat stocks were forecast at 1.0 Mkg, equal to a 3.3% stock to use ratio.

Positive market indicators included:

- full employment affecting available disposable income
- less featuring of beef
- Food service and Hotel recovery
- continued demographic shift to further processing at festive and non festive times, increased demand for breast meat products
- low forecast ending stocks for 2022/23
- to date cost increases being passed through, and
- low import volumes for the remainder of 2022.

Concern was noted about potential further feed price increases (which would affect all livestock commodities) potentially leading to decreased meat demand and imports potentially being higher from January to April 2023.

At that 270th meeting, the Agency Directors discussed the market situation and specifically potential for shortage in breast meat. Some in the further processing sector reported an inability to source breast meat.

The Agency Directors' discussions and considerations included the market implications of avian influenza ("AI") and its implications on supply of turkey meat.

While no final quota allocation decision was made at the meeting, the Agency Directors considered commercial allocation increases from 143Mkg to 145 Mkg, 146 Mkg and 147 Mkg to ensure enough breast meat supply to satisfy market demand.

5. June 29, 2022, FPCC Complaint Report

On June 29, 2022, FPCC published its Complaint Committee's Report into the Turkey Farmers of Ontario ("TFO") Complaint into the Agency's March 15, 2022, quota allocation decision.

Based on the Complaint Committee Report recommendation, FPCC determined not to prior approve the Agency's proposed Quota Regulation to implement the Commercial quota allocation decision of February 15, 2022 and the global allocation decision of February 22, 2022.

The Complaint Committee Report's four recommendations are summarized:

- The Agency continue working to develop a new commercial allocation policy.
- The Agency membership comprehensively discuss the most appropriate way to consider the Proclamation criteria carefully and meaningfully.
- The Agency include FPCC in relevant quota allocation discussions.
- The Agency include in its meeting minutes which members vote in favour of and against allocation motion decisions.

6. Mid-Summer 2022 Meetings

The Agency continued to work throughout the summer to find a resolution to the absence of a prior approved Quota Regulation, which included developing a process to consider the Proclamation criteria carefully and meaningfully, specifically regarding the distribution of allocation to the provinces, as directed by the June 29th FPCC Complaint Committee Report while continuing the process toward a new commercial policy.

To develop processes to address those June 2022 Complaint Report recommendations and the allocation policy renewal process, these meetings occurred:

- Allocation Policy Review Committee² (“APRC”) meetings on June 21, July 19, August 2, August 16
- July 4 meeting with legal counsel to review FPCC Complaint recommendations
- Producer Director only meetings on July 27, August 3, August 5
- Agency Director only meetings on July 7, August 24
- Agency Chair and staff meeting with CPEPC-FPPAC on August 15
- DAM meetings on August 25, September 15
- Agency staff meeting with FPCC staff on August 11

Any reports or recommendations from those meetings flowed to the Agency Directors’ meeting of August 25th for consideration and decision-making.

In addition, the August 11th meeting of Agency staff and FPCC staff was in response to an FPCC overture to review some of the process directions flowing from the June 29, 2022 Complaint Panel Report and assist with their views regarding how to consider the Proclamation criteria carefully and meaningfully, and to receive FPCC staff’s feedback.

FPCC staff suggestions included taking the Proclamation criteria one by one to determine if, in this allocation the criteria were relevant, why the criterion was relevant, the data used, and the reasoning for using the criterion and, that it may not be feasible to have a round table discussion for each criteria and by each individual Director so it would be appropriate to have the analysis work presented to the Directors for consideration, discussion and determination.

7. The Agency’s Meeting of August 25, 2022

The Agency Directors met by videoconference on August 25, 2022, to discuss the 2022-23 quota allocation. That discussion comprised two distinct parts:

- i) Consideration of the Proclamation criteria and distribution option of the commercial allocation; and,
- ii) Consideration of the breast meat supply situation.

To further one of the June 2022 Complaint Report recommendations, FPCC members and staff attended the relevant discussions relating to the proposed 2022-23 quota allocation.

Informing the Agency Directors’ meeting of August 25th was a meeting kit of materials assembled by Agency staff and distributed to the Agency Directors on August 18th.

Relevant context about the meeting kit materials is they were developed internally at the direction of the Executive Committee and as a result of the discussions informed by the:

- ongoing work of the Allocation Policy Review Committee from several meetings including bi-weekly meetings throughout the summer,
- discussions between FPCC and Agency staff,
- discussions with legal counsel,

² The Committee membership comprises 9 of 11 Agency Directors and a 10th sits on the Committee as a non-member observer

- all the other mid-summer 2022 meetings and
- previous approaches used by the Agency in regard to the concept of conditional pools.

It was noted in the summer meetings and the meeting materials that any options provided were for the consideration of the TFC Directors and any final outcomes were a decision of the TFC Directors.

The meeting kit included:

- Memo from Agency staff to Directors informed in part by its discussions with FPCC staff and summarizing “Consideration of Proclamation Criteria” in relevant parts of:
 - the *FPAA*
 - the *Turkey Proclamation*
 - the June 2022 FPCC Complaint Report
 - directions from legal counsel
- “Consideration of Proclamation Criteria Template”
- Memo from Agency staff to Directors regarding “2022/23 Commercial Allocation – Distribution of 143.0 mkg (i.e., 4.0 mkg increase)” that included 2 attachment table regarding a proposed allocation distribution to Nova Scotia and a proposed national allocation distribution using a formula of:
 - 30% of provincial allocation based on 139 Mkg commercial allocation
 - 30% based on provincial population
 - 20% based on Nielsen retail sales data
 - 20% based on Farm Input Price Index (“FIPI”)
- Memo from Agency staff to Directors regarding “Conditional Over 9 kg Eviscerated Allocation Proposal”

The discussion among Agency Directors at the August 25th meeting extended the continuing discussion about market conditions, forecasts, the global allocation, and distribution among provinces that had been ongoing since the 268th Agency meeting in November 2021.

8. The Agency’s 271st September of 15, 2022 Meeting

To further one of the June 2022 Complaint Report recommendations, FPCC staff attended the continued discussions relating to the proposed 2022-23 quota allocation and the draft submission to FPCC for prior-approval.

The Agency Response to the Specifics of the TFO Complaint

- A. The Directors’ general assent of the Criteria Memorandum does not equate to meaningful consideration of the Proclamation criteria.
 - August 25th web conference Minutes Criteria Memorandum
 - reflected months of discussions by Agency Directors
 - summarized for Directors Proclamation Criteria that must be considered
 - robust discussion of Proclamation Criteria

- Directors' views about criteria not unanimous

B. The Agency's new formula approach produces a result nearly identical to a *pro-rata* distribution.

- A *pro-rata* distribution is acceptable provided it is justified in the Agency's consideration of the Proclamation Criteria or other relevant criteria
- Agency Directors considered other distribution options
- The distribution approach was not "nearly identical" to *pro-rata* (see below table)

Allocation Increase Comparison
Pro-Rata Shares of 139 mkg vs. Actual
(excludes Nova Scotia adjustment)

Province	6,547,095 kg Increase Allocated on the Basis of...		Actual Allocation		Difference	
	Pro-Rata Share of 139 kg <i>a</i>	% Share <i>b = % of a</i>	kg <i>c</i>	% Share <i>d = % of c</i>	Actual - Pro-Rata kg <i>e = c - a</i>	% Difference <i>f = c / a - 1</i>
BC	867,060	13.2%	894,387	13.7%	27,327	3.2%
AB	621,754	9.5%	720,579	11.0%	98,825	15.9%
SK	225,847	3.4%	220,294	3.4%	- 5,553	-2.5%
MB	416,603	6.4%	325,695	5.0%	- 90,908	-21.8%
ON	2,611,806	39.9%	2,651,688	40.5%	39,882	1.5%
QC	1,482,484	22.6%	1,378,079	21.0%	- 104,405	-7.0%
NB	151,951	2.3%	162,102	2.5%	10,151	6.7%
NS	169,590	2.6%	194,271	3.0%	24,681	14.6%
Total	6,547,095	100.0%	6,547,095	100.0%	0	0.0%

C. The Quota Regulation submission rationale does not reflect the Agency's evaluation of the Proclamation criteria.

- Compare the Agency's quota regulation rational submission with
 - August 25th web conference Minutes
 - September 15th web conference Minutes

D. The Agency's allocation of the 7 Mkg of growth is contrary to the Agency's statutory objects.

- Market indicators tracked from November 2021 through to August 25th meeting show an increase of 7 Mkg was needed
- Distribution based on Agency Directors' considering Proclamation Criteria, and other relevant criteria
- Strong, efficient, competitive industry
- Due regard for interests of producers and consumers

E. The Agency ignored the "Conditional over 9 kgs Proposal".

- August 25th meeting Minutes demonstrate the Proposal was not "ignored"
 - Proposal was part of Meeting kit materials
 - Proposal was discussed at length
 - Agency Directors decided not to incorporate Proposal concept in the distribution

Preliminary List of Response Documents

The Agency reserves its rights to rely on the documents referred to in the TFO Complaint, or filed subsequently by TFO, or filed by any Intervenor(s).

The following list of Response documents is preliminary, due to the expedited nature of processing the TFO Complaint and the abridgement of times set out in FPCC's Complaint By-Law, and the Agency reserves its rights to submit and rely on additional documents, as such documents become available.

- 268th Meeting Kit excerpts
- 268th Meeting Minutes
- 269th Meeting Kit excerpts
- 269th Meeting Minutes
- 270th Meeting Kit excerpts
- 270th Meeting Minutes
- June 2022 FPCC Complaint Report
- August 25, 2022, Meeting Kit
- August 25, 2022, Meeting Minutes
- 271st Meeting Minutes (draft)
- September 21, 2022, Agency letter to TFO
- September 2022 QR Submission

Yours truly,


John L. O'Kane

Encls.

cc. Turkey Farmers of Canada
cc. Wilson Spurr LLP, Geoffrey Spurr