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Ms. Nathalie Vanasse, Registrar
Farm Products Council of Canada
Central Experimental Farm
Ottawa, Ontario K1A 0C6

Attention: Ms. Nathalie Vanasse, Registrar

Re: OBHECC Request for Intervener Status in respect of the SPOIQ
Complaint pursuant to s. 7(1)(f) of the *Farm Products Agencies Act*,
R.S.C., 1985, c. F-4
Our File No. 13044

We are counsel to the Ontario Broiler Hatching Egg & Chick Commission ("OBHECC"). We are writing further to the October 2, 2015 Farm Products Council of Canada ("Council") Notice regarding the *Syndicat des producteurs d'oeufs d'incubation du Quebec* ("SPOIQ") complaint against the Canadian Hatching Egg Producers ("CHEP" or the "Agency"). OBHECC is seeking intervener status in respect of the SPOIQ complaint. In this correspondence, we are also providing a preliminary response to the SPOIQ complaint. OBHECC reserves the right to provide further comments should it be granted intervener status.

OBHECC is a provincial commodity board, a signatory to the Federal Provincial Agreement for Broiler Hatching Eggs and Chicks ("FPA") and a member of CHEP. OBHECC exercises delegated authority under the Ontario *Farm Products Marketing Act*, R.S.O. 1990, c. F. 9 regarding the control and regulation of broiler hatching eggs and chicks in the Province through the supply management system. OBHECC submitted its own complaint to Council on

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TURKSTRA MAZZA ASSOCIATES, LAWYERS

October 16, 2015

FPCC / CPAC	
File No.	1203-3
Registry <input type="checkbox"/>	Corporate <input type="checkbox"/>
OCT 19 2015	
TO Marc, Nathalie, Helene	
cc Celine, Peg	
ACTION BY / DUE DATE	

July 8, 2015 regarding the ongoing problems in the current hatching egg marketing system that allow for the overproduction of hatching eggs, particularly in Quebec, which is contrary to the Canadian Hatching Egg Producers Proclamation (“Proclamation”) and the FPA. This overproduction has been permitted by CHEP through at least two mechanisms: the production overmarketings “sleeve” and the quota exchange lease pool. The informal meeting date for the OBHECC complaint has been set for October 26-27, 2015. SPOIQ has been granted intervener status in the OBHECC complaint.

OBHECC’s Interest in the SPOIQ Complaint and How it is Affected by the Complaint

OBHECC’s interest in the SPOIQ complaint is patently obvious. SPOIQ seeks to fundamentally change the basis for the determination of provincial hatching egg quota allocation: from one based on the overall chicken meat production in each province to one based on hatchery throughput. Such a change would have profound impacts on hatching egg producers in Canada and particularly in Ontario. The contrasting positions of OBHECC and SPOIQ could not be clearer. In OBHECC’s complaint, OBHECC seeks to uphold all three pillars of supply management by eliminating mechanisms that permit one province to persistently exceed its production allocation to the detriment of another province. The SPOIQ seeks to fundamentally change the basis for determining provincial allocations as a means of entrenching that overproduction. SPOIQ’s position effectively abandons one of the three pillars of supply management: adherence to production limits. It would do so by ceding decision-making over provincial allocations to the unregulated hatchery industry. This would effectively turn back the clock to pre-supply management conditions, subjecting the hatching egg industry to the vagaries of decisions made by hatcheries over which neither hatching egg producers, nor any agency, has any control.

The SPOIQ proposal would contribute nothing to the promotion of a strong, efficient and competitive production and marketing industry for broiler hatching eggs in Canada. The SPOIQ proposal would merely enrich Quebec hatcheries (who according to CHEP own and control the vast majority of hatching egg operations in Quebec) to the detriment of independent hatching egg producers in Ontario. Indeed, if the methodology for allocating provincial hatching eggs is to be changed to promote economic efficiency and competitiveness, it would logically favour jurisdictions where the cost of production is lower. Such a model would direct additional allocation to Ontario over Quebec since the cost of production of broiler hatching eggs is lower in Ontario than in Quebec.

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OBHECC has a direct interest in the SPOIQ complaint where it requests changes to Schedule "B" that would entrench Quebec's current overproduction. In addition, SPOIQ has asked in its request for relief that Council make specific declarations regarding the validity of the interprovincial quota lease pool which is directly before Council in the OBHECC complaint. Finally, the scope of the authority of Council to address Schedule "B" as well as the potential implications of any adjustments in respect of how allocations are determined will have a direct impact on OBHECC members. OBHECC disputes the ability of Council or CHEP to address the SPOIQ proposed fundamental changes to the FPA without the unanimous consent of the parties to the Agreement, which includes OBHECC.

OBHECC's Unique Perspective and Information

OBHECC is in a unique position to provide relevant information and an important perspective to Council on the impact that the proposed SPOIQ interpretation of Schedule "B" and its suggested changes will have on OBHECC members. This is particularly germane where SPOIQ has referred to OBHECC's prior positions with respect to Schedule "B" as well as the previous use of "artificial" methods to address quota allocation issues. SPOIQ has proposed a number of "mandatory" factors that it suggests must be taken into account until Schedule "B" is adjusted. Aside from the fact such factors are not proper comparative advantage considerations in accordance with the legally imposed statutory consideration, OBHECC can respond directly to the appropriateness of these claims as the representative of the broiler hatching egg producers in Ontario who are impacted by these very factors. The factors proposed by SPOIQ are designed to justify a particular outcome- entrenching Quebec's current overproduction of hatching eggs- while ignoring the broader implications. In any event, there is no justification for referring to such factors as "mandatory" considerations. OBHECC can help illustrate why the proposed factors will not promote a strong, efficient and competitive marketing industry for broiler hatching eggs in Canada and are counter to the basic allocation principle as set out in the FPA.

CHEP Response to the SPOIQ Complaint

OBHECC has reviewed the CHEP response to the SPOIQ Complaint (dated October 9, 2015) and generally supports it. In our submission, CHEP has accurately captured the danger to the broiler hatching egg industry presented by the SPOIQ proposal to fundamentally change the basis for provincial allocations. Having said that, OBHECC does have concerns with certain comments from CHEP, including the following:

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1. CHEP identifies the overmarketings “sleeve” as providing for flexibility to respond “to the variations inherent in the production of a live product...” (at para 15). While OBHECC agrees that this was the intent of the sleeve, in practice the sleeve has been used to support persistent, planned overproduction.
2. CHEP refers to Ontario under-producing its allocation (at para 37). Indeed, as part of the Ontario complaint, CHEP is highly critical of OBHECC’s decision not to allot all of its provincial quota allocation to hatching egg producers. This was “corrected” in 2014. In fact, it should not be at all surprising that OBHECC did not allot 100% of its allocation over several years given the overproduction of hatching eggs in Quebec that was used to displace Ontario’s market. Quebec hatcheries elected to source hatching eggs from Quebec hatching egg producers (in effect, from themselves) to supply the chicks that were marketed into Ontario unregulated. Had Quebec respected the provincial allocations and its obligation to limit production to those allocations, there would have been a market for 100% of Ontario’s allocation- including hatching eggs purchased by Quebec hatcheries to supply a portion of the Ontario chick market. Unfortunately, that was not the case.

As set out in CHEP’s Response to the SPOIQ Complaint, provincial requirements are reduced by 17.43% to account for Canada’s treaty obligations (at para. 10). This is generally referred to as the “80/20 Rule”: meaning that provincial requirements for hatching eggs are comprised of 80% domestic eggs and 20% imported from the United States. These imported eggs are secured by hatcheries through Tariff Rate Quota (“TRQ”). OBHECC endeavoured to respect the 80/20 Rule despite overproduction in Quebec rather than flood the Ontario market with hatching eggs above the 80% level and requesting that Ontario hatcheries forego the use of their TRQ or demand that CHEP implement a surplus removal programme.

In 2014, OBHECC began to allot 100% of its provincial allocation. This was possible because of market conditions that allow Ontario hatcheries to sell the TRQ rather than utilize it for Ontario chick requirements. This is simply not sustainable and is in any event highly disruptive. If overproduction persists in Quebec, OBHECC fully expects that it will once again be unable to allot 100% of its allocation in future years- either through eggs or TRQ. This has nothing to do with Ontario production capacity (which is more than capable of accommodating 100% of Ontario’s allocation) or willingness-it has everything to do with overproduction in Quebec.

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Conclusion

OBHECC is fundamentally opposed to the proposals in the SPOIQ complaint. They are fundamentally aimed at supporting a system where hatcheries control where and how much production occurs.

Hatcheries in Quebec are sophisticated companies who are active in international trade fulfilling a percentage of their throughput with imported TRQ from the United States. In the face of these transactions, concerns about "ease of communication" are simply unfounded. The fundamental premise being put forward by SPOIQ is not in support of the pillars of supply management, is inconsistent with the marketing program for broiler hatching eggs and does not meet the objects of the Agency.

Thank you for your consideration. We look forward to hearing from Council regarding OBHECC's request for intervener status. If you have any questions, please do not hesitate to contact us.

Yours truly



Scott Snider

cc. Pierre Brousseau
David Wilson
Geoff Spur
Bob Guy

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