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VIA FACSIMILE
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Farm Products Council of Canada
 Central Experimental Farm
 960 Carling Avenue
 Building 59
 Ottawa, ON K1A 0C6

Attention: Complaints Department

Dear Sirs:

RE: COMPLAINT PURSUANT TO PARAGRAPH 7(1)(f) OF THE FARM PRODUCTS AGENCIES ACT WITH REGARD TO TURKEY FARMERS OF CANADA'S DECISION MADE ON JUNE 11, 2015 & WITH REGARD TO THE TFC MULTIPLIER BREEDER POLICY AND TURKEY FARMERS OF ONTARIO

In accordance with the Interim Complaint Guidelines made by Farm Products Council of Canada ("Council"), Turkey Farmers of Ontario ("TFO"), makes this Complaint with regard to a decision made by Turkey Farmers of Canada ("TFC") on June 11, 2015 and in relation to the TFC Multiplier Breeder Policy and marketings made by Ontario under the Multiplier Breeder Policy.

It is the duty of Council to review the operations of agencies with a view to ensuring that they carry on their operations in accordance with their objects. Further, in the context of a Complaint, Council is authorized to inquire into and direct an Agency to correct errors it has made in its operational decisions. This is part of the relief being sought by virtue of this Complaint.

In addition, TFC has made a decision that invokes a consideration of section 4 of the Canadian Turkey Marketing Agency Proclamation. It is TFO's position that the Decision failed to duly take into account the section 4(1) criteria and therefore, should not be prior approved by Council.

In this matter, TFO has undertaken to ask TFC for reconsideration of aspects of the June 11, 2015 Decision and it is anticipated that TFC will shortly communicate this fact to Council. Therefore, TFO is asking that Council not take any additional steps regarding responding to this Complaint, until TFO and TFC indicate that the process of reconsideration by TFC has been completed.

The June 11, 2015 Decision of TFC has significant consequences for TFO, which has prompted its decision to seek reconsideration on aspects of it by TFC. TFO has also filed this Complaint in

July 10, 2015

FPCC / CPAC	
File No.	<u>1215-9</u>
Registry <input type="checkbox"/>	Corporate <input type="checkbox"/>
JUL 10 2015	
TO	<u>Nathalie, Céline, Marc</u>
CC	<u>Helene, Bill</u>
ACTION BY / DUE DATE	

order to preserve its' rights while the reconsideration process is undertaken. TFO recognizes that the administration of the Multiplier Breeder Policy has both a provincial (TFO) and national (TFC) components, and the facts in relation to this matter revolve around actions and decisions made by both TFO and TFC over several years. TFO is aware of the importance of national agencies being able to sort out their differences internally through non-adversarial means. Accordingly, TFO hopes that its' request for reconsideration will form the basis for the parties to reach some middle ground in this dispute.

The TFC Decision is concerned with the administration of the TFC Multiplier Breeder Policy ("MBP"), the TFC Commercial Allocation Policy and the TFC Promotion Agreement, and includes the following elements:

- Under the TFC Promotion Agreement, TFC has determined that Ontario exceeded its authorized marketing, and TFC has calculated a liquidated damages amount payable by TFO to TFC of \$1,696,555.08.
- Under the Promotion Agreement, TFC has determined that Ontario's authorized turkey marketing shall be reduced by 2,571,703 kilograms, in a subsequent control period(s).
- TFC has decided that, subject to the approval of the Farm Products Council of Canada, under Section 4 of the Proclamation, there will be an allocation of 2,571,703 kilograms to the other provinces in appropriate measure so the national market supply is not interrupted through the application of the kilogram reduction to Ontario.
- TFC has decided that an amendment will also be made to the 2004/05 and 2005/06 reference point figures in the TFC National Commercial Allocation Policy, to account for the estimated national impact misreporting by TFO had on young commercial turkey marketings during those reference periods.

The TFC Decision is contrary to the legal scheme and legislation under which TFC operates and the fundamental public law principles that govern the exercise of TFC's authority. The Decision is also unsupported by evidence, is arbitrary and discriminatory, excessive in its scope and impact, and unwarranted in the circumstances. The Decision also purports to apply the provisions of the MBP in a manner that cannot be supported by the wording of the MBP at the operative time.

As well, the TFC Decision imposes a consequence on Ontario producers that is unwarranted in the circumstances and which fails to take into account the interests of producers and consumers as mandated by the *Farm Products Agencies Act*.

Accordingly, TFO asks that FPCC direct TFC to vary the TFC Decision, so that it is in conformity with both the evidence found by the TFC and the principles of law.

The TFC MBP is a national policy that enables breeder operators to market mature turkeys for meat purposes provided certain criteria are met. Qualifying turkeys marketed under the program must be designated as "mature" by Agriculture and Agri-Food Canada ("AAFC") must have reached an age of 28 weeks and must have produced eggs or semen. Each provincial board administers the TFC Multiplier Breeder Policy in its province. In TFO's case, it receives

marketing information from processors and TFC uses Agriculture and Agri-Food Canada slaughter information and statistics to determine the amount of kilograms to be applied to the multiplier breeder program in Ontario.

TFC undertook an investigation of the MBP in relation to reported marketings made by TFO, and that report was provided to TFO on May 22, 2015 (the "TFC Report").

Neither the TFC Report nor the language of the Multiplier Breeder Policy provides any guidance by TFC precisely how a breeder operator is supposed to confirm whether turkeys are producing semen or eggs. In its' Report that followed its' investigation, TFC noted that in any event, "this information was not required to be submitted by breeder operators to TFO and is not required under the TFC Multiplier Breeder Policy".

In the TFC Report, TFC separated its findings with respect to Criteria 1 and Criteria 2 birds, with Criteria 1 birds being turkeys marketed at ages less than 28 weeks (TFO had used the same age-at-marketing distinction in its earlier review of marketings reported by it under the TFC MBP). Of these Criteria 1 birds identified by TFC, some were clearly outside the qualification requirements of the MBP. Therefore, TFO accepts the findings in TFC's Report in terms of that portion of the Criteria 1 birds that TFC said it was "confident with age", meaning that they were clearly less than 28 weeks old. This means that 703,160 kilograms (eviscerated) should have been marketed under the National Commercial Allocation Policy. TFO also accepts an adjustment of Ontario's marketings over the two year period: 2012/13 and 2013/14, so that these Criteria 1 kilograms are included in Ontario's commercial marketings. Lastly, TFO accepts the imposition of over marketing levies of 0.22 cents per kilo in relation to the two years "confident with age", which produces an amount owing and outstanding of \$154,695.20.

However, TFO does not accept the third year of over marketing levies tacked on by TFC in the TFC Decision. The third year of levies relates to a year when the Promotion Agreement was not in force, making the imposition of such levies improper and unlawful.

TFO also does not accept any of the findings made by TFC in relation to the Criteria 2 birds, or the imposition of levies, or the imposition of a quota reduction, or the decision to adjust provincial market shares in that regard.

With respect to the TFC Decision, TFO will ask FPCC to do the following, if the reconsideration process described above fails to resolve the underlying dispute:

- a) Direct TFC to correct its over marketing levy assessment against TFO, in particular by removing any assessment of levies for periods when the Promotion Agreement was not in signed;
- b) Direct TFC not to pay over any over marketing levies from TFO to other provinces;
- c) Direct TFC to modify the amendments to the 2004/05 and 2005/06 reference point figures in TFC's National Commercial Allocation Policy by leaving those reference point figures un-amended;
- d) Refuse to prior approve any order or regulation which purports to
 - Reduce Ontario's authorized turkey marketings by 2,571,703 kgs, or

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- Shift an allocation of 2,571,703 kgs to other provinces.

The relief requested has been expressed in terms of TFO's current understanding regarding the elements of the TFC Decision and the impact it will have. As this matter progresses TFO may identify further aspects warranting relief and will supplement this Complaint in that respect with leave of Council.

Thank you for your consideration of this matter.

Yours truly,

WILSON, SPURR LLP



Geoffrey P. Spurr
GPS/cc

cc: Client
TFC

TRANSACTION REPORT

JUL/10/2015/FRI 01:54 PM

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