



Farm Products Council
of Canada

Conseil des produits agricoles
du Canada

COMPLAINT COMMITTEE'S COMPILED SUMMARY OF EVIDENCE

SEPTEMBER 2014

FARM PRODUCTS COUNCIL OF CANADA

Canada

COMPLAINT COMMITTEE'S COMPILED SUMMARY OF EVIDENCE

IN THE MATTER OF THE INQUIRY INTO THE COMPLAINT BY THE CANADIAN POULTRY AND EGG PROCESSORS COUNCIL, THE FURTHER POULTRY PROCESSORS ASSOCIATION OF CANADA AND RESTAURANTS CANADA AGAINST THE CHICKEN FARMERS OF CANADA CONCERNING THE QUOTA ALLOCATION SET FOR PERIOD A-127

Introduction

An informal meeting was held in Ottawa on September 3, 2014, by the Complaint Committee established by the Farm Products Council of Canada (Council) in response to a joint complaint received on August 5, 2014, from the Canadian Poultry and Egg Processors Council (CPEPC) and the Further Poultry Processors Association of Canada (FPPAC) and another on August 6, 2014, from Restaurants Canada (RC). Both complaints concerned the allocation decision, specifically the domestic allocation¹, made by Chicken Farmers of Canada (CFC) at its July 29, 2014, Board of Directors meeting for the allocation period A-127 that runs from November 2 to December 27, 2014.

Paragraph 7(1)(f) of the *Farm Products Agencies Act* (FPAA) requires that the Council inquire into complaints received from any person who is directly affected by the operation of an agency. Council's Chairman determined that the complaints met the requirements of paragraph 7(1)(f) of the FPAA. Following discussions with all parties, Council agreed that both complaints be treated as one. On August 13, 2014, in accordance with section 7. h. of the Farm Products Council of Canada's (FPCC) *Interim Complaints Guidelines*, dated March 9, 2011, a Complaint Committee was established consisting of Council Members Brent Montgomery as Chair and Tim O'Connor as a member.

Chicken Farmers of Canada responded to the Complaint in a letter to Council's Chair dated August 14, 2014.

¹ The complaints were silent on the market development and specialty allocations.

FPCC issued a notice, via e-mail, to provincial supervisory boards and provincial chicken boards on August 18, 2014, requesting comments with respect to the letters from the Complainants. Responses were received from the following organizations:

- The Chicken Farmers of Ontario (CFO);
- Les Éleveurs de volailles du Québec (EVQ);
- British Columbia Farm Industry Review Board (BCFIRB);
- British Columbia Chicken Marketing Board (BC Board), and
- Manitoba Chicken Producers (MCP).

These comments were shared with all parties involved in the dispute – CPEPC, FPPAC, RC and CFC.

FPCC also contacted provincial supervisory boards and provincial chicken boards asking which organizations would be requesting intervener status. Requests to intervene were received from the Chicken Farmers of Ontario and les Éleveurs de volailles du Québec. At its August 25, 2014, teleconference, the Complaint Committee selected an informal meeting process to inquire into the Complaint and granted intervener status to CFO and EVQ. All documents pertaining to the complaint were shared with the interveners. Annex 1 includes a summary of the comments received from the parties that chose not to be interveners in this complaint.

At the informal meeting held on September 3, 2014, the Complaint Committee met separately with CFC, CFO and EVQ and then with the Complainants (CPEPC, FPPAC, RC), as a group.

Background

At its July 29, 2014, Board of Directors meeting, CFC set the domestic allocation for period A-127 (November 2 to December 27, 2014) at base plus 4.25%, which resulted in an allocation of 210,952,185 kilograms live weight. The Agency employed a new allocation methodology for distributing the domestic quota to provinces. The new methodology was agreed to by the CFC Board during a July 10, 2014, conference call. Separate allocations were set for the market development quota at 9,080,856 kilograms live weight and the specialty quota at 1,404,034 kilograms live weight.

If fully utilized, the domestic allocation would result in the production of 155.4 million kilograms (eviscerated) of chicken, which represents an increase of 2.8% from the same time period in 2013.

At the meeting, the directors from Newfoundland and Labrador as well as Nova Scotia together with the two directors representing CPEPC and those representing FPPAC and RC voted against the allocation. None of the signatories to the Federal-Provincial Agreement (FPA) for Chicken from Newfoundland and Labrador and Nova Scotia have filed a complaint nor have they submitted any comments concerning the complaint on A-127.

The following table lists the domestic, market development and specialty allocations for A-127 by province.

CFC Period A-127 Allocation in Live Weight (November 2 to December 27, 2014)

	Domestic	Market Development	Specialty	Total
BC	29,968,103	2,330,000	1,041,076	33,339,179
AB	19,960,479	100,000	0	20,060,479
SK	7,528,929	1,054,050	0	8,582,979
MN	8,766,238	382,500	0	9,148,738
ON	70,380,977	1,650,000	362,958	72,393,935
QC	57,086,613	3,564,306	0	60,650,919
NB	6,002,079	0	0	6,002,079
NS	7,496,503	0	0	7,496,503
PE	815,737	0	0	815,737
NF	2,946,527	0	0	2,946,527
Canada	210,952,185	9,080,856	1,404,034	221,437,075

Source: CFC

Note: Although Alberta is not a member of the Agency it is included in Table 1, as a Memorandum of Understanding had been signed by Alberta Chicken Producers and CFC indicating that Alberta would respect the allocation allotted to it by CFC for A-127.

Position of the CPEPC, FPPAC AND RC

In the letters from the Complainants and during the informal meeting on September 3, 2014, CPEPC, FPPAC and RC stated the following with respect to their concerns on the domestic allocation set for A-127².

² See Annex 2 for the handout that the Complainants presented to the Complaint Committee on September 3, 2014.

CPEPC noted that all primary processors they represent were of the view that an allocation of base plus 4.25% was too high and not based on market requirements and that no processor had submitted a requirement higher than base plus 3.0% to its local provincial chicken board.

The Complainants were concerned that the allocation would cause disruption in the market for 2015. They foresaw a repeat of what occurred in early 2014: given the good market conditions in mid-2013 (i.e. high wholesale prices and low storage stocks) CFC over allocated, causing wholesale prices to decrease. Consequently, the allocations had to be lowered in 2014, including early summer, to aid in increasing the wholesale price.

CPEPC stated that wholesale price adjustments take a much longer time to materialize than correcting for an oversupply problem. Both CPEPC and FPPAC fear moving into a boom and bust cycle. CPEPC was forecasting a decline in wholesale prices under a reasonable allocation of 20 cent per kg; they believe the decrease will be greater given the A-127 allocation decision.

The Complainants also were of the view that setting A-127 allocation at base plus 4.25% was inconsistent with the 2.5% medium growth rate set during CFC's July 10, 2014 conference call for the year starting November 2, 2014 and ending October 3, 2015, which contains A-127. They questioned what had changed between July 10 and July 29, 2014. The production projections for the competing proteins (beef and pork), as reported by the United States Department of Agriculture, had only changed in a minor way between that period, as had Statistics Canada's estimate for the Canadian consumer price index for beef, pork and chicken as well as data for retail sales of fresh chicken provided by the Nielsen Company.

FPPAC believes that the A-127 allocation was too aggressive and was not substantiated factually. Much of the decision was based on CFC's report during the July 2014 Directors meeting that domestic disappearance of chicken for the 2014 January to June period was up by 24.6 million kg, a 4.8% increase versus the first six months of 2013.

The Complainants had a number of concerns on the sources of data used by CFC to calculate domestic disappearance, such as the quality of the export data, the timing differences between imports and the subsequent exports the Import for Re-Export programs as well as the Duty Deferral Program. They contended that depending on the assumptions made with respect to export data and import data, domestic disappearance for the 2014 January to June period could be estimated to grow by 2.7% to 3.2%, when compared with the same period in 2013. The CPEPC and FPPAC agreed to and forwarded to the Committee its calculation on domestic disappearance, these are included in Annex 3.

Concern was expressed on the sharp increase for the A-127 allocation and how the allocation is not consistent with past years. Historically, allocations that include the month of December have been much lower than the allocation set by CFC for A-127. They also pointed out that the A-127 allocation also ran counter to historical data on the seasonality of production, where in previous years the allocations, including the month of December, were the lowest production allocations of the year.

The Complainants also mentioned the existence of a tight supply of hatching eggs and chicks in North America, resulting in a potential increase in the average weight of the bird grown if the kilograms allocated are to be reached. RC indicated their concern for the foodservice and restaurant sector, which requires not only the correct number of chickens, but also the specified weights of these chickens, so that any heavy birds produced may be unsuitable for many establishments.

RC also stated that its members would not benefit from major production increases that take place in only a few short months, their preference being for growth on an orderly basis. Another issue noted by RC was that their members, who purchase large volumes of chicken on contract on a cost plus basis, which is tied to the live price, would be negatively impacted. They would face increased competition from retailers who will be able to purchase chicken at discounted prices caused by the oversupply of chicken during the A-127 allocation period. RC also stated that consumers will move to in-store meal substitutes because retailers will be able to purchase chicken at a lower price than RC members. RC promised to send evidence to the Committee to support this statement. RC did not provide this evidence.

The Complainants do not believe that the A-127 allocation achieves the objects of the Agency as set out in s. 21 of the FPAA:

“s. 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.”

They stressed that they need stability and predictability to be able to operate as value chain participants and effectively plan their business. They feel A-127 undermines the stability of the chicken market.

During the September 3, 2014 meeting, the Complainants listed two systemic issues that they believe needs to be addressed:

- Farmers, who have a guaranteed margin, ignore the advice and input of directors representing downstream stakeholders. This is not keeping to the objects of the Agency.
- The timelines that have been established by FPCC in dealing with complaints regarding chicken allocations are not reasonable and makes meaningful redress virtually impossible.

Also at the September 3, 2014 informal meeting, the Complainants requested that the CFC's governance be amended to require a triple majority for setting quota allocations.

All three organizations request that Council do not approve CFC's allocation request for the A-127 period.

Chicken Farmers of Canada's Response

CFC's initial response to the Complaint was dated August 14, 2014, and CFC also provided further comments at the September 3, 2014 informal meeting with the Complaint Committee.³

CFC noted that CPEPC compared the market conditions during mid-2013 with those of mid-2014 when stating that the A-127 allocation was too high.

CFC is of the view that the market conditions in mid-2013 and mid-2014 are not comparable. They made the following points:

- In mid-2014, the wholesale composite price was \$3.82/kg and climbing; during the same weeks in 2013, this price was reported at \$3.62/kg and was decreasing;
- Storage stocks were trending upwards in 2013, whereas they are now trending downwards in 2014;
- For both 2014 and 2013, the Tariff Rate Quota (TRQ) is below the pro rata volume, but in 2014, TRQ imports are 1.8 million kg closer to the pro rata volume than last year;
- The gross processor margin was near record levels at \$1.47/kg in mid-2014, whereas during mid-2013 this margin averaged \$1.15/kg;

³ Annex 4 contains the handout that CFC presented to the Complaint Committee on September 3, 2014.

- With respect to competing proteins, CFC indicated the competitive position of chicken was better in mid-2014 than in mid-2013. The consumer price indices (CPI) for beef had risen 12.8% (June 2014 versus 2013), 16.6% for pork and 2.0% for chicken. Also, when July 2014 is compared to July 2013, the increase in the CPI for beef was 12.9%, pork 15.5% and chicken 0.7%;
- For the 52 weeks ending June 28, 2014, CFC reported that Nielsen data on retail sales volume of chicken were up 3.2%, while beef and pork sales decreased 2.0% and 4.9%, respectively, and;
- CFC indicated that live chicken prices were expected to decrease from current levels (in Ontario the A-126 live price was \$1.60 per kg) due to the expected reduction in feed prices caused by large corn and soybean crops in North America this year.

In summary, CFC believes that the strong market conditions will continue through 2014. CFC directors also believed they should take advantage of supply issues the competing proteins (beef and pork) are currently experiencing and increase production to increase market share of the protein market as beef and pork supply difficulties are expected to continue through 2015.

RC, in their complaint, expressed concern that the A-127 allocation will make its members uncompetitive versus retail if the wholesale price declines as a result of the A-127 allocation. In their view, CFC stressed that the allocation system is designed to meet all market needs, not to adjust supply to favour one market segment sector over another.

CFC indicated that, although the vote was not unanimous, the double majority voting result fulfilled the requirements under subsection 25(2) of the CFC Bylaws, with respect to requiring 50 percent of the members, representing 50 percent of chicken production market share for the previous year, to vote in favour.

CFC requests that Council approve the A-127 allocation.

Comments from the Interveners

CFO and EVQ requested and were granted intervener status during this complaint process. The following is a summary of each commodity board's comments, as received by mail as well as during the September 3, 2014 informal meeting.

Chicken Farmers of Ontario

As with CFC, CFO's market analysis indicated a strong chicken market leading up to and during the A-127 period. The year-to-date volume of fresh chicken purchased through the retail sector (as reported by Nielsen) had grown by 5.5%. With the competing proteins (beef and pork) facing long-term supply issues throughout 2015, CFO believes that this is a unique situation in the Canadian marketplace and the chicken industry should take advantage of the beef and pork sector's difficulties and increase chicken's share of the market.

CFO believes that the Complainants are incorrect in focusing on the market dynamics that existed in 2013 when making their recommendations for A-127. An additional concern of CFO was CPEPC's concentration on wholesale price levels in order to achieve their targeted gross processor margins. CFO indicates that CPEPC also advocated low domestic production levels since this would allow integrated chicken processors to optimize supply arrangements via domestic production, imported chicken and chicken substitutes.

CFO believes that RC's concern on the impact of the A-127 allocation on creating pricing differences between the retail and restaurant sectors would in fact result in market shortages. CFO stressed that setting production levels to address differences in pricing models amongst competing channels is not within CFC's governance.

CFO's view is that all parties in the supply management system have a shared responsibility to meet market requirements within a balanced best interest public policy framework. The aim is to meet market needs not supply containment.

Les Éleveurs de volailles du Québec⁴

EVQ noted that in setting the allocation for A-127, CFC followed the procedure as set out in paragraph 3.09 of Schedule B of the FPA. They were also of the view that the complaint filed by RC was not a proper complaint. Also noted by EVQ was that Council's regulatory powers are limited and that it cannot set CFC's allocation.

EVQ's view is that the allocation decision for A-127 was based on the needs of the Canadian chicken market, and should not be based on the availability of broiler chicks. EVQ's estimates begin with assessing consumption targets and then determining production needs.

EVQ disagrees with CPEPC and FPPAC that the current market conditions are similar to those seen in 2013. With the allocation of 4.25% over the adjusted base, EVQ estimated that domestic consumption would be 2.4% higher and per capita consumption 1.3% higher

⁴ Annex 5 contains the handout presented to the Complaint Committee on September 3, 2014.

than for the same weeks in 2013. They argued that this estimate growth in consumption is consistent with ACNielsen data that indicated retail sales at the national level had increased by 3.4% for the 52 weeks ending June 26, 2014 compared to the same period a year earlier.

EVQ also commented that the wholesale price, as measured by the composite index, is significantly higher in 2014 than in 2013 and since the beginning of 2014 has increased by 14%. They concurred with other parties that due to the large harvests of corn and soy in the US, the prices will drop, resulting in lower producer prices for live chicken. They predict that the wholesale price will be slightly decreasing; and that given the drop in producer price and the normal seasonal trend, that the processor margin will remain at an adequate level.

Additionally, EVQ stated that the retail prices of beef and pork have increased by 11% and 14%, respectively since January 2014, while during the same period chicken retail prices rose by 1%. They consider that with the expected decrease in the price of grain, the continuation of high retail prices for competing meats during the targeted period, and strength in the domestic consumption of chicken, chicken should stay in an advantageous competitive position.

EVQ also commented that inventory levels were below the CFC target range on January 1, 2014 and have been trending downwards since the beginning of the year. Inventory levels on August 1, 2014 were down by 8.9% from a year earlier. EVQ consider in its projection model that there would be no inventory increase. If it was the case, EVQ believes that any production during the A-127 period that is not immediately consumed will be able to be placed in inventory and with current low levels; this should not result in the storage stocks to increase outside the healthy range.

With respect to the tariff rate quota in 2014, EVQ noted that it is behind pro rata levels, but ahead of last year. EVQ noted that the processors, further processors and restaurateurs are the main holders on the tariff rate quota permits and determine when they are utilized.

With regard to the lower allocations made by CFC for late 2013, EVQ believes that it was not the reduction in supply, but the influx of tariff rate quota imports that caused the wholesale price to decrease during late 2013. EVQ does not believe this will re-occur this year, because of the strong competitive market.

Also noted by EVQ was that CPEPC, on many occasions, filed very low growth percentages versus the adjusted base.

EVQ requests that the Council rejects the complaint.

Annex 1

Comments Received from Other Parties

The British Columbia Chicken Marketing Board and the Manitoba Chicken Producers submitted comments in relation to the complaint. The British Columbia Farm Industry Review Board submitted a copy of an April 11, 2013, letter addressed to the Chairs of FPCC and CFC regarding the strategic position of the domestic chicken industry.

British Columbia Chicken Marketing Board

In making the allocation decision for A-127, CFC followed the principles outlined in Schedule B of its FPA.

The BC Board's recommendation for A-127 was a fact-based decision. A variety of market intelligence was consulted and reviewed prior to making the BC Board's recommendation of 5% over the adjusted base which was forwarded to CFC. This analysis included the submissions of CPEPC, FPPAC and RC as well as data from Nielsen, the George Morris Centre, Statistics Canada, USDA and the National Chicken Council (an American trade association). Additionally, historical and current market data was also reviewed.

The BC Board also requested input from poultry processors in British Columbia prior to submitting its recommendation to CFC. However, as has been the case for the last five years, no input was received from them.

The BC Board makes many of the same points as CFO and EVQ with respect to TRQ imports, the tight supply of broiler hatching eggs and chicks in North America and as well as on pricing in the retail, restaurants and the foodservice sectors.

Manitoba Chicken Producers

MCP reviewed the process it undertook prior to submitting its volume request to CFC. Approximately three weeks prior to allocation setting, MCP asks from its federal processors (both of whom are CPEPC members) their volume request for the period to be allocated. MCP takes this information into account when determining the volume number it submits to CFC.

For A-127, the processors requested 3% over the Manitoba adjusted base. Given the allocation agreement in place (as of July 10, 2014, for A-127) MCP indicated to the processors that in order to deliver the required kilograms, Manitoba would need an allocation of base plus 4.24% nationally.

British Columbia Farm Industry Review Board

BCFIRB did not have any comments on the volume allocated by CFC for period A-127; rather it expressed concerns regarding the strategic position of the domestic chicken industry. With regard to allocation, BCFIRB believes that the comparative advantage model used by CFC should be decoupled from the provincial allocation requests. It also questioned what steps need to be taken by CFC and FPCC to ensure that the national allocation reflects consumer demand.