



Farm Products Council  
of Canada

Conseil des produits agricoles  
du Canada

# COMPLAINT COMMITTEE'S FINAL REPORT AND RECOMMENDATIONS

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FARM PRODUCTS COUNCIL OF CANADA

Canada

# COMPLAINT COMMITTEE'S FINAL REPORT AND RECOMMENDATION

## IN THE MATTER OF THE INQUIRY INTO THE COMPLAINT BY THE AGRI-FOOD COUNCIL OF SASKATCHEWAN AGAINST CHICKEN FARMERS OF CANADA CONCERNING THE QUOTA ALLOCATION SET FOR PERIOD A-133

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The Complaint Committee was established pursuant to paragraph 7(1)(f) of the *Farms Products Agencies Act* (FPAA) and was mandated to investigate the complaint brought forward by the Saskatchewan Agri-Food Council (AFC) against the methodology employed by the Chicken Farmers of Canada (CFC) in setting the allocation for the A-133 period.

The role of the Complaint Committee was to collect evidence from both Parties to determine what recommendation, if any, with respect to the complaint brought forward by AFC on CFC's proposed A-133 allocation, may be made to the Farm Products Council of Canada (FPCC).

The Committee held an informal meeting on August 4, 2015, where in addition to previously received written material from the Parties, the Committee heard supplementary evidence presented by the Parties.

### **Summary of AFC's Position**

In setting the allocation for A-133, CFC used a new growth quota distribution (GQD) mechanism to distribute growth quota to provinces without the support from all twenty signatories to Schedule B of the Federal-Provincial Agreement (FPA) for Chicken. Schedule B is also referred as the Operating Agreement (OA). AFC claims that if the proposed allocation for A-133 is approved by the FPCC, Saskatchewan would incur economic loss in the form of lost chicken production and an undersupplied processing sector.

Additionally, CFC did not appear to have in place any written formal allocation protocols for setting national allocations. The lack of formal written protocols raises serious concerns with Saskatchewan with respect to the transparency and legitimacy of the allocation process.

AFC requests that FPCC not approve the allocation for A-133 and directs CFC to distribute future growth on a *pro rata* method. As an alternative, AFC requests that FPCC directs that Saskatchewan not be bound by any allocation that is based on the new GQD mechanism and that Saskatchewan be allocated its *pro rata* share of any allocation.

The Committee noted that the allocation methodology documented in the OA is a "bottom-up" methodology. The provincial boards consult with processors in their province to determine the market requirements for the province and submit these market requirements to CFC. CFC will determine the quota allocation having regard to the market requirements submitted by each province. This approach allows for provinces to be allocated quota at different growth rates but since 2005, the Agency has allocated quota based on a *pro rata* methodology.

AFC is also requesting that FPCC directs CFC to comply with its existing protocols with respect to the process in setting an allocation. Any change in this process should be first reviewed by CFC's Policy Committee and introduced to the Board at a later meeting.

### **Summary of CFC's Position**

CFC views the allocation setting decision for A-133 as a considered, consensus-driven approach. CFC does not agree with AFC that the OA mandates the setting of the allocation on a *pro rata* basis. Alberta signatories withdrew from the FPA due to allocations being set on a *pro rata* basis rather than based on differential growth.

A memorandum of understanding (MOU) was agreed to by all ten provincial chicken boards and CFC in November 2014, which incorporated an allocation methodology including elements designed to reflect comparative advantage of production. The MOU is now being drafted as an amendment to the OA. The intent is to have support of the OA amendments from all ten provincial commodity boards before circulating the OA amendments to the supervisory boards. CFC agrees that an amended OA, approved by all signatories, is necessary to ensure the long-term sustainability of the supply management system for chicken. Until this agreement is reached, CFC believes it has the responsibility to set allocations to take into account market requirements as well as the views of the stakeholders.

CFC disagrees that the approval of A-133 would result in economic loss to Saskatchewan and an undersupplied processing sector. CFC provided data indicating that for allocations A-127 to A-133, Saskatchewan chicken producers received for each period an allocation that exceeded the volume requested by Saskatchewan chicken processors.

CFC disagrees with AFC's claim that the process followed by CFC lacked transparency and legitimacy as the process followed is not in a policy. CFC states that they do have a policy for setting allocation and this policy was followed when A-133 was set. In addition, this policy affords all provincial boards the opportunity to participate. Prior to setting the A-133 allocation, there was extensive input from all provincial commodity boards as well as industry organizations.

With respect to the relief sought by AFC, CFC's view is that all but one (for FPCC to not approve the A-133 allocation) request goes beyond FPCC's authority. The FPCC cannot dictate to CFC that the Agency must allocate using a *pro rata* methodology. Nor can FPCC relieve Saskatchewan of its responsibilities of respecting the quota set by CFC.

### **The Complaint Committee's Findings**

The Committee concurs with the AFC that not all twenty signatories have indicated their support for the new QGD mechanism. However, the Committee rejects the notion that certain signatories' silence may be construed as opposition to the QGD mechanism.

The Committee is of the view that CFC and the provincial chicken boards have invested a significant amount of time and resources into investigating alternative distribution schemes that incorporate, in some fashion, comparative advantage of production. CFC did not single-handedly arrive at the methodology used in allotting quota to provincial boards; all provincial boards were in agreement as can be shown by the signatures of the ten provincial chairs on the MOU signed in November 2014.

Prior to the A-127 period, for the six periods starting with period A-121, CFC had already ceased setting the allocation of 100 percent of quota on a *pro rata* basis. While, prior to period A-121, allocations had been set on a *pro rata* basis, in the Committee's view, this approach was not consistent with the intent of the redrafted 2001 FPA and associated schedules, which allowed for differential growth amongst provinces to be considered in allocation setting.

In the view of the Committee, allocating solely on a *pro rata* basis is not in conformity to subsection 23(2) of the FPAA:

23.(2) In allocating additional quotas for anticipated growth of market demand, an agency shall consider the principle of comparative advantage of production.

*Pro rata* distribution of CFC's allocation, in the Committee's view, is not consistent with CFC's objects as outlined in section 21 of the FPAA:

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.

It is the Committee's view that CFC is obligated to distribute the volume of chicken allocated above the base shares in consideration of the principle of comparative advantage of production. The *Chicken Farmers of Canada Proclamation* constitutes subordinate legislation as the authorities for this document are derived from the FPAA and the OA is incorporated by reference in CFC's Proclamation. The Committee further believes that CFC has the discretion with setting allocation to the extent that subsection 23(2) is respected.

With respect to the claim that Saskatchewan chicken producers will incur an economic loss and that chicken processors in Saskatchewan will be under-supplied, the Committee is of the view that the AFC did not successfully demonstrate that the processing sector will be undersupplied. For allocations A-127 through A-133, processors in Saskatchewan requested from Chicken Farmers of Saskatchewan 40.250 million kg eviscerated. CFC accordingly allocated Saskatchewan 40.412 million kg eviscerated, 0.162 million kg eviscerated above the amount requested by processors.

Therefore, in the Committee's view, the AFC did not demonstrate the economic impact of the loss of chicken production in Saskatchewan as a result of the new QGD mechanism for allocation period A-133.

With regard to the second issue brought by the AFC, the Committee disagrees with the AFC's claim that, because CFC does not follow any written formal allocation protocols, provinces are not able to participate fully in the allocation process and supervisory boards are not able to fulfill their roles.

FPCC staff, as well as Council members attending CFC meetings where allocations are discussed, have repeatedly reported that during CFC meetings, the Chair offers ample time for discussion on allocation. They also report that all provinces and downstream stakeholders are actively encouraged to participate in discussions at CFC's allocation meetings.

### **Relief Sought by AFC**

Other than the request by the AFC that FPCC not approve the A-133 allocation, the relief sought by AFC exceeds the powers of the FPCC's as detailed in section 7 of the FPAA.

It is the Committee's understanding is that FPCC does not have the authority to direct CFC on how to distribute allocation.

### **AFC as a Signatory to the FPA for Chicken**

Although not directly linked to the complaint, during the Informal Meeting of August 4, 2015, CFC queried whether the AFC had the authority to enter into the FPA, which contains the OA. AFC indicated such authority exists and after a request by the Committee, AFC provided in its letter of August 11, 2015, to the Chair of the Complaint Committee, as evidence of its legal authority to enter into an FPA, copies of the provincial act, *The Agri-Food Act, 2004* and a regulation, *The Agri-Food Regulations, 2004*. CFC reviewed the documentation and, in a letter dated August 12, 2015, stated that, pursuant to the MOU dated July 16, 2001, once the AFC notifies the other FPA signatories, it will automatically become a signatory to the FPA.

### **The Complaint Committee's Recommendation to FPCC**

Based on the evidence and the findings, the Complaint Committee believes there is insufficient merit in the Complaint to warrant the Committee providing specific comments to FPCC regarding their upcoming consideration of the A-133 allocation.

The Committee is of the view that supply management is a successful public policy that is based on cooperation between numerous parties with various interests. Having a Member province not in agreement to a major policy is not ideal for the long-term stability of the sector. The Committee recommends to FPCC that they encourage CFC and AFC to continue discussions to find an acceptable solution to this issue.