



Farm Products Council  
of Canada

Conseil des produits agricoles  
du Canada

## *Complaint Committee Report:*

# Canadian Poultry and Egg Processors Council Against Turkey Farmers of Canada

NOVEMBER 2021

FARM PRODUCTS COUNCIL OF CANADA



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## Part 1: Introduction

1. A complaint was brought forward to the Farm Products Council of Canada (FPCC or Council) on July 13, 2021 by the turkey primary processing sector of the Canadian Poultry and Egg Processors Council (CPEPC or Complainant), against the July 8, 2021, decision of the Turkey Farmers of Canada (TFC or Respondent Agency). The Respondent Agency's decision increased the commercial allocation by 5.0 million kg<sup>1</sup>, from 134.0 million kg to 139.0 million kg for the 2021-22 control period, which runs from April 25, 2021, to April 30, 2022. The FPCC Advisory Personnel reviewed the complaint and prepared a summary of issues report for the Council Chairperson. Following the reception of this report on September 10, 2021, the Council Chairperson directed that a pre-hearing conference be held, pursuant to section 17 of the *By-Law Governing the Administration of the Complaints Received by the Farm Products Council of Canada* (Complaint By-Law). The Council Chairperson designated Council Vice-Chairperson Ron Bonnett to preside at the pre-hearing conference, which was held on September 29, 2021, by videoconference.
2. Following the pre-hearing conference, the Complaint Committee (Committee) was established pursuant to paragraph 7(1) (f) of the *Farm Products Agencies Act* (FPAA) and was instructed to proceed with a hearing. In accordance with the Complaint By-Law, FPCC member Maryse Dubé was appointed to Chair the Committee charged with hearing the complaint. With the consent of all parties, the hearing was held on November 3, 2021, by videoconference. Observer status was granted to the Turkey Farmers of Ontario and the British Columbia Farm Industry Review Board pursuant to section 22 of the Complaint By-Law.

## Part 2: Background – Turkey Farmers of Canada's Commercial Allocation

3. TFC's commercial allocation consists of two components – a whole bird (WB) allocation and a further processing (FP) allocation. The commercial allocation has decreased in each control period between 2015-16 and 2020-21. The commercial allocation was 156.6 million kg in 2015-16, 151.3 million kg in 2016-17, 149.9 million kg in 2017-18, 149.2 million kg in 2018-19, 146.6 million kg in 2019-20 and 126.0 million kg in 2020-21.

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<sup>1</sup> All weights presented throughout the report are on an eviscerated basis.

4. TFC's Board of Directors<sup>2</sup> (BoD) voted to increase the commercial allocation by 8.0 million kg at its January 28, 2021, meeting, from 126.0 million kg to 134.0 million kg. This was supported by the eight producer members, as well as the further processor member, whereas the two primary processor members, who are representatives of CPEPC, voted against the increase.
5. At its July 8, 2021, meeting, TFC's BoD voted to further increase the commercial allocation by 5.0 million kg, after discussing the Turkey Market Advisory Committee (TMAC) recommendation of increasing the commercial allocation by 8.6 million kg to 142.6 million kg. This vote was supported by seven producer members. Both primary processor members as well as the producer member representing Manitoba voted against the motion.
6. The motions made at both meetings passed with the necessary majority<sup>3</sup> as per sections 9.4 (a) and (b) in TFC's By-Law No. 1.

### **Part 3: Summary of the Canadian Poultry and Egg Processors Council's Turkey Primary Processors' Position – Complainant**

7. The members of the CPEPC turkey primary processing sector process more than 95% of the turkeys produced in Canada.
8. CPEPC's complaint, dated July 13, 2021, contends that the increase in the commercial allocation in July 2021 to 139.0 million kg risks collapsing the market prices at which primary processors sell their products. At the time, TFC's BoD voted to increase the commercial allocation, whereas the primary processors wanted the commercial allocation to remain unchanged at 134.0 million kg, which had been established at the January 28, 2021, TFC meeting.

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<sup>2</sup> The Board of Directors is composed of one member from each province in the regulated area and three members from industry organizations. Of the three industry members, the Canadian Poultry and Egg Processors Council (CPEPC) is represented by two members from the primary processing industry whereas the Further Poultry Processors Association of Canada (FPPAC), which is part of CPEPC, is represented by one member from the further processing industry.

<sup>3</sup> A majority of seven members consisting of not fewer than six producers that are authorized to market at least 50% of the number of pounds of turkey meat authorized to be marketed, not including conditional allocations made, shall be required to pass motions to establish the global quota for a control period.

9. Primary processors buy live turkeys based on the minimum live price established in the different provinces and sell whole turkeys and turkey products on the free market. The price on the free market is directly related to the level of supply. While other value chain partners, including producers, stand to gain from greater production volumes, CPEPC's turkey primary processors assert that they carry the risk of seeing these greater volumes lead to a collapse in the market prices at which they sell processed products.
10. When the allocation has been set, primary processors have to sell all the turkey produced. The Complainant mentioned that primary processors cannot refuse to purchase from producers. When there is too much production for the market, wholesale prices are driven downwards in certain circumstances. Yet, as primary processors are supplied by producers in a supply-managed environment, they are obliged to pay the live price which is set by each province and producers are guaranteed this price which covers the cost of production and a fair return. In the Complainant's view, disappearance is not calculated in a way that takes into account processors' risks. There are potential oversupply issues resulting in increased costs to the primary processors that must store excess turkeys and turkey meat.
11. Storage stock level information is in the public domain, which means that all Canadian buyers have access to this information, and thus buyers of turkeys and turkey products can use this information in negotiating purchase prices that can negatively impact primary processors.
12. The additional turkeys that will be produced from the July 8, 2021, allocation decision will be ready for processing approximately from January 2022 to May 2022. This will provide processors with more supply than they require as sales are lower during that time of year.
13. The Complainant has had studies undertaken by PricewaterhouseCoopers (PwC) on processor profitability and the health of the turkey market. The results of these studies have been shared with the TFC BoD. At the July 8, 2021, meeting, the most recent edition of the PwC study was presented to the TFC BoD during a closed session. The Complainant argues that the study shows net losses for primary turkey processors for the last four years.
14. During its presentations and during the question and answer periods at TFC's BoD meeting, the Complainant expressed that it believes that its concerns are understood but are not taken into consideration when allocations are set.

15. The Complainant sees the FPCC complaint process as the only recourse open to them when they disagree with an allocation. The Complainant is not aware of any formal review process for TFC BoD decisions.
16. The Complainant believes it is the FPCC's role to ensure that TFC respects the objects of an agency described under section 21<sup>4</sup> of the FPAA. The Complainant believes it is part of the marketing industry and, therefore, the market information presented by the Complainant needs to be considered.
17. The Complainant questions aspects of the key assumptions on breast meat domestic disappearance and breast meat storage stocks forecasts made by the TMAC that were used by TFC to support the proposed allocation amendment.
18. Regarding breast meat disappearance, the Complainant's view is that the forecasted disappearance level of 28.1 million kg for the 2021-22 control period is optimistic as it ignores the relationship between wholesale price and demand. TFC is forecasting that per capita consumption will be 0.73 kg at any price level.
19. The Complainant asserted that the growth in breast meat disappearance to date, and thus per capita consumption, was attained at wholesale prices that are unsustainable for the turkey primary processors.
20. The Complainant asserted that TFC should be aware of this relationship as the report on wholesale prices and volume sold for a number of cuts is shared with the TFC BoD on a monthly basis.
21. The Complainant stated that the reason behind the recent increase in wholesale price is the increase in the live price of turkeys set by the provincial commodity boards, which is a result of higher feed costs. While the Complainant emphasized that they have no issues with producers recovering their

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<sup>4</sup> 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.

costs, they contend that the TFC BoD refuses to acknowledge that, as the wholesale price increases in response to the higher live price, demand will decrease.

22. The Complainant presents actual wholesale price data collected from its membership to the TMAC but not forecasts, as they fear forecasting primary processors selling price, or the wholesale price, might contravene the *Competition Act*.
23. As an example, the Complainant states that a \$0.25 per kg price increase for live turkey represents an increase in the wholesale price of \$0.30 per kg, which would lead to an increase in the wholesale breast meat price by \$1.20 per kg.
24. With respect to breast meat storage stocks, the Complainant acknowledges that primary processors and further processors do not agree on an acceptable target level for breast meat storage stocks. According to the Complainant, the further processors believe 2.0 million kg of breast meat stocks is appropriate whereas the primary processors believe around 1.0 million kg is sufficient.
25. The TMAC report that was prepared for the July 8, 2021, TFC meeting indicated that, with the 5.0 million kg increase in the commercial allocation, the breast meat stock level would be 2.2 million kg at the end of the 2021-22 control period, 0.2 million kg higher than what the further processors were recommending. The Complainant states that for every additional kilogram of turkey production, approximately 0.25 kg of boneless skinless breast meat is produced and that it is the primary processors who pay the cost of storing product in excess of market requirements.
26. The Complainant also expressed concern that tariff rate quota (TRQ) utilization was 36% behind pro-rata at the time of TFC's July 8, 2021 allocation increase decision. This meant that a significant quantity of turkey was expected to enter Canada under TRQ in the second half of the year. The Complainant acknowledged that Global Affairs Canada (GAC) revised the TRQ data at the end of July 2021 after the complaint was filed with FPCC.
27. The allocation was made on July 8, 2021 and the hearing date was November 3, 2021. The Complainant informed the Committee that during this period, a number of the provincial boards had allotted the increase in the commercial allocation, even though the allocation had not been approved by FPCC.

### Part 3.1: Canadian Poultry and Egg Processors Council Recommendation to the Complaint Committee

28. The Complainant is asking the Committee to recommend to the Council to not approve the proposed amendment to the 2021-22 commercial allocation that was approved by the TFC BoD on July 8, 2021, which would result in a commercial allocation of 139.0 million kg.
29. After being asked by the Committee Chair what the effect would be on primary processors if Council were to not approve the quota allocation increase of 5.0 million kg, the Complainant responded that the market will continue to be supplied with a commercial allocation of 134.0 million kg but that it will be oversupplied with a commercial allocation of 139.0 million kg. The Complainant also acknowledged that turkey production would be impacted due to provincial boards allotting quota to producers without an allocation approved by Council but that this should not have an impact on the Committee's decision.

### Part 4: Summary of Turkey Farmers of Canada's Position – Respondent Agency

30. The Respondent Agency presented some context from the FPAA and the *Canadian Turkey Marketing Agency Proclamation* (Proclamation). FPCC provides oversight of TFC's decisions to ensure that TFC's processes and decisions respect the FPAA and the Proclamation.
31. As per section 23(2)<sup>5</sup> of the FPAA, TFC's overbase allocations are for "anticipated growth of market demand". However, the Proclamation does not specify how to determine the anticipated growth of market demand and provides TFC with the discretion to determine this.
32. The Proclamation grants TFC wide discretionary authority to determine how to satisfy the market for turkey as long as TFC considers six criteria listed in the Proclamation when making overbase allocations. The Proclamation does not preclude TFC considering additional factors when making overbase allocations.
33. At TFC's July 8, 2021, meeting, under the agenda item 2: Quota System: Market, Supply, Policy, the following documents were reviewed: Turkey Market Review, TMAC Report and the CPEPC

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<sup>5</sup> FPAA section 23(2): "In allocating additional quotas for anticipated growth of market demand, an agency shall consider the principle of comparative advantage of production."



PricewaterhouseCoopers Turkey Processing Financial Information Report. After reviewing the information presented, the TFC BoD discussed a number of topics including wholesale breast meat prices, breast meat storage stocks, the live price of turkeys and feed prices. Many members expressed that they were not comfortable with increasing the commercial allocation to 142.6 million kg, as TMAC had recommended. After this discussion, TFC's BoD voted to increase the commercial allocation to 139.0 million kg, which received the necessary majority. The vote was supported by eight members and opposed by three members.

34. Sections 9.12 and 9.16 of TFC's By-Law No. 1 provide TFC members with the opportunity to amend or rescind a decision made at a previous meeting. The Complainant did not avail itself of these options.
35. The July 8, 2021, proposed quota amendment was made after two successive commercial allocation reductions totaling 20.6 million kg for the 2020-21 control period. The first reduction of 10.6 million kg was in response to a declining turkey market and the second reduction of 10.0 million kg was in response to the potential impact of the COVID-19 pandemic on the market.
36. It is TFC's view that the Complainant makes a number of unsupported assertions:
- The risk of collapse in market prices;
  - TMAC's recommendation is based on two incorrect assumptions (breast meat disappearance and breast meat storage stock levels); and
  - The proposed allocation might collapse market prices.
37. The Respondent Agency provided data, which is summarized below, in support of its claim that the Complainant's assertions were not valid:
- Retail sales of breast meat in the 2020-21 control period, in terms of volume and dollars, as reported by A.C. Nielsen have increased by 59% and 58%, respectively, since the 2016-17 control period.
  - The increase in sales from \$49.3 million in 2019-20 to \$62.1 million in 2020-21 coincides with the start of TFC's national marketing campaign in 2019.
  - The TMAC forecasted per capita consumption of breast meat is 0.73 kg for the 2021-22 control period, which is similar to the per capita consumption observed from 2014-15 to 2016-17 and coincides with the strengthening wholesale prices of breast meat.

- The average closing stock-to-use ratio for the control periods 2013-14 to 2015-16 was 6.4%. For 2021-22, the stock-to-use ratio is forecasted at 4.7%.
- Imports of breast meat for 2021-22 are forecasted at 1.6 million kg, similar to what was observed in the 2014-15 and 2015-16 control periods.
- The closing stocks for turkey and turkey products for the 2020-21 control period were 15.0 million kg, the lowest since May 1, 1999.

38. The Respondent Agency refers to the TMAC report, which was available in the meeting material for the July 8, 2021, meeting. The TFC BoD adopted a motion to set the commercial allocation at 139.0 million kg which was 3.6 million kg below TMAC's recommendation of 142.6 million kg. TMAC was of the view that it is unreasonable to suggest that the domestic disappearance for 2021-22 would be lower or at the same level as that for 2020-21 given the current opening up of the economy, the anticipated growth in gross domestic product and the lower unemployment rate.

39. A breast meat / further processor scenario was presented to TFC during the July 8, 2021, meeting. TFC is of the view that if the commercial allocation had remained at 134.0 million kg, closing breast meat stocks would have been 40,000 kg and that the domestic disappearance would have been impacted negatively or turkey would have to be imported in excess of the TRQ to account of the lack of domestic turkey. This scenario also forecasted that an increase of 5.0 million kg in the commercial allocation would result in the additional production of 1.28 million kg of breast meat and the resulting closing breast meat stocks would be 1.3 million kg.

40. The Respondent Agency addressed the live price to feed price relationship and agrees with the Complainant that the live price has risen due to feed costs. However, the Respondent Agency states that the Complainant neglects to mention that breast meat wholesale prices and prices for other cuts that contribute to the breakeven price have more than offset the increase in the live price.

41. The Respondent Agency refers to the PwC report dated June 29, 2020, as well as a PwC report for all of 2020. Quoting from the June 2020, report, TFC stated that since 2016-17, the total supply of turkey has been reduced from 213.8 million kg to 178.2 million kg, a difference of 35.6 million kg, or a reduction of 16.7%, while total production for the same time period declined by 27.6 million kg, a 15.5% reduction. These reductions in production were in response to changes to consumer demand and the COVID-19 pandemic. TFC noted that the PwC reports do not capture data prior to 2017.

42. The Respondent Agency also criticizes the Complainant's claim that "using previous years as a starting point will only prolong the harm", with respect to market information. TFC's view is that, without considering all the market factors leading to specific outcomes, whether desirable and undesirable in nature, it is almost impossible to make appropriate decisions for the future.
43. With respect to the Complainant's claim that the producer members of the TFC BoD did not listen to the concerns of the primary processor members when increasing the allocation in July 2021, TFC referenced the minutes of the July 8, 2021, meeting where there were several questions asked to the primary processor representatives by producer members as well as discussion on the magnitude of the proposed quota amendment.
44. The Complainant asserts that the July 8, 2021, allocation amendment was incorrect, but the FPAA and the Proclamation do not establish any methodology to demonstrate or measure correct quota allocations.
45. In response to the Complainant stating that a number of provincial boards have already allotted to producers the increase in the commercial allocation, the Respondent Agency stated that, in this exercise of cooperative federalism between TFC and the provincial boards, each has a scope of authority. While the national quota is set at the TFC table, subject to the FPCC's prior approval, steps may be taken within provinces before the allocation is approved by FPCC and enacted by the TFC BoD. These steps taken by the provincial boards are not something that Parliament, nor the FPAA, nor the Proclamation, nor the Federal-Provincial Agreement in turkey gives TFC any authority to control.
46. TFC does not have a target breast meat storage stock level. TFC focuses on a breast meat stocks-to-use ratio, which measures the storage stocks of turkey in relation to its disappearance.
47. The Respondent Agency contends that the Complainant fails to provide any suggestion to its BoD or to the Committee as to the correct quota allocation amount or demonstrate objectively that any new data sets could be relied on to determine the correct allocation.

## Part 4.1: Turkey Farmers of Canada Recommendation to the Complaint Committee

48. The Respondent Agency has requested that FPCC respect the quota allocation amendment set by its BoD on July 8, 2021, for the 2021-22 control period and that the Complaint be dismissed. After being asked by the Committee Chair what the effect of Council not approving the quota allocation increase of 5.0 million kg would be on turkey producers, the Respondent Agency replied that not approving the quota allocation increase would set back production plans, processing plans as well as hatchery plans. The market would potentially end up with a similar number of birds but at lighter weights, which is not necessarily what the market requires.

## Part 5: The Complaint Committee's Findings

49. Taking into account all of the documents, submissions, evidence and information provided by the parties, the Committee clearly understood the issues of the complaint and the positions of both parties.

50. In the Committee's review of TFC's By-Law No 1, section 9.4(a) outlines that the requirements for a successful motion that effects the quota system are "a majority of 7 members consisting of not fewer than six producer members who represent producers that are authorized to market at least 50 percent of the number of pounds of turkey meat authorized to be marketed...". These requirements were met as, of the eight votes in favour of the motion, seven votes were from provincial members and the market share requirement of 50 percent was met.

51. Although it does not preclude CPEPC turkey primary processors from filing a complaint with FPCC, concerning TFC's July 8, 2021, decision on increasing the commercial allocation by 5.0 million kg, it is the Committee's view that CPEPC, through its two primary processor members on TFC's BoD, should have availed themselves of the internal review process outlined in TFC's By-Law No.1.

52. The Committee was made aware that the allocation that was voted at TFC's July 8, 2021, meeting has already been allotted by some provincial boards to its turkey producers. FPCC has not approved the proposed amendment nor has TFC's BoD enacted the proposed amendment to its quota system and, as such, the amendment has no legal force. The proposed allocation increase is simply a proposed amendment. To proceed with the increase in the allocation prior to FPCC's approval and before the completion of the regulatory process is counter to paragraphs 7(1)(d) and 22(1)(f) of the FPAA, section



2(1) of the Proclamation and goes against the spirit of orderly marketing. The Committee strongly encourages the TFC BoD to inform the provincial boards that production cannot start until the regulatory process is completed.

53. Regarding breast meat disappearance, the Committee agrees with the Complainant that all production will eventually disappear. This is a matter of the price at which the product is sold and the storage costs to the primary processors. However, TFC needs a metric for measuring consumption and growth in the turkey market. The Committee encourages the TFC BoD to collaborate with the Complainant on exploring options to better assess how increases in the live price of turkey are transmitted into the wholesale and retail prices, and the impact of the retail prices on consumption.
54. With regard to the breast meat disappearance forecast by TMAC for the 2021-22 control period, the Committee is of the view that using the per capita consumption for breast meat as a basis of disappearance is adequate, given the retail information TFC provided in its July 28, 2021, response to the complaint and which the Complainant did not question during the November 3, 2021, hearing.
55. With respect to breast meat storage, the Committee strongly encourages the TFC BoD to collaborate with the Complainant on a stock level target for breast meat. Having such a target would help facilitate future allocation discussions.
56. In the complaint letter dated July 13, 2021, the Complainant stated they had shared with the TFC BoD the analysis of the financial information collected by PwC from its membership's primary processors. At the TFC closed<sup>6</sup> meeting on July 7, 2021, representatives from PwC presented the report based on the 2020 financial results. The Complainant contends that the report demonstrates clearly that the last four years have been financially unsustainable for primary processors.
57. The Complainant argued on several occasions that turkey processors made significant losses over the last few years. However, other than making reference to the PwC report, which was not submitted into the record of documents, no evidence was presented to support these statements. As the Committee was not privy to the PwC report, all reference to the report and arguments made concerning the findings

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<sup>6</sup> TFC's closed meetings are open to Directors, Alternate Directors, Provincial Board Managers and select TFC staff

of the PwC report did not enter into the Committee's deliberations. The Complainant could have submitted the PwC report as part of the Complaint on a confidential basis.

58. The Complainant mentioned that, at the time of TFC's July 8, 2021, allocation increase decision, TRQ utilization was 36% below pro-rata. GAC has since revised the TRQ data and, based on this revision, at the time of TFC's July 8, 2021, allocation increase decision, TRQ was above pro-rata. The Committee accepts that the Complainant was not aware of the discrepancy in the TRQ utilization data at the time of the allocation decision and at the time the complaint was filed.

## **Part 6: The Complaint Committee's Recommendation to FPCC**

59. Based on the evidence presented and the Committee's findings, the Committee is of the opinion that:

- a. TFC respected the allocation setting process at the July 8, 2021, meeting; and
- b. the Complainant's views and information on the issue were amply discussed and considered by TFC's BoD.

60. As such, the Committee recommends that Council dismiss the complaint.

61. The Committee recommends that FPCC encourage TFC and CPEPC turkey primary processors to continue working cooperatively to find a viable solution to the disagreements on the appropriate target level for breast meat and a metric to measure and forecast the consumption and market growth in turkey meat.

62. The Committee recommends that FPCC encourage TFC and CPEPC turkey primary processors to explore options to better assess how increases in the turkey live price are transmitted to the wholesale and retail prices, and the impact of retail prices on consumption.

63. Finally, the Committee recommends that FPCC ask TFC to inform the provincial boards that production increases cannot be allotted to producers until the regulatory process is completed.