

Grocery Industry Code of Practice Steering Committee Update on Canadian Code Development Process

Communiqué – April 2022

Dear Grocery Industry Stakeholders:

Background:

In July 2021, federal, provincial, and territorial (FPT) Ministers of Agriculture called for an industry led process to develop broad consensus around a concrete proposal to improve transparency, predictability, and respect for the principles of fair dealing.

As was announced at a public meeting in September 2021, a design team of ten multi-stakeholder industry representatives was convened to address the Ministerial request and has been engaging in an intensive program of weekly meetings to develop Terms of Reference and a Work Plan for development of a Grocery Code of Practice, a dispute resolution mechanism, and an implementation framework.

Update:

We recognize it has been some time since the last open forum in September 2021 and we are past due to formally update you on the process we have been undertaking to develop the Code of Practice for the grocery industry. In September, the facilitator outlined a multi-phased process, the essence of which was to:

- Phase 1: Launch the project and identify a design team
- Phase 2: Work with the design team to develop the terms of reference and develop a draft workplan
- Phase 3: Identify core working group members to confirm/adjust the terms of reference and to develop the code

Many of you may be aware of the progress report presented to the FPT Ministers in December 2021. The essence of the report focused on phases 1, 2 and 3 below.

Phase 1 of the approach was completed at the end of September and a design team of ten multi-stakeholder industry representatives held a first meeting at the end of September to begin phase 2 of the work.

Phase 2: The design team engaged in an intensive program of weekly meetings to develop the Terms of Reference, a Work Plan to develop the code, and a confidentiality agreement. As a result of this process, the Design Team aligned on the goal to develop a mandatory code that:

1. Defines the scope of products to be included in the code
2. Spells out the business principles (trade rules)
 - to ensure contractual certainty and transparency;
 - to enable and promote fair and ethical dealings in commercial transactions;
 - to address the disparity in negotiating power between small, mid-sized and large entities.
3. Has an enforcement mechanism appropriate to the Canadian context, and


4. Has a fair, accessible, effective, confidential, and enforceable dispute resolution mechanism.

In addition to the Code, the Design Team has also aligned on the need to develop a strategic implementation plan.

Phase 3: With Phase 2 completed, the Design Team has taken on the role of Steering Committee (with the same individuals and associations represented). Following a presentation from the Competition Bureau, industry representatives on the Design Team arrived at two conclusions.

Firstly, they felt it most prudent to proceed with association representatives and a Steering Committee structure for the Code development phase to avoid discussions that may be perceived to be anticompetitive in nature. Steering Committee members have also chosen Diane Brisebois and Michael Graydon as Co-Chairs of the Steering Committee.

Secondly, following a briefing by the Competition Bureau, the Steering Committee determined that the presence of a competition lawyer during meetings is important. Not having this has the potential to slow progress and prevent important discussions from occurring and can limit the willingness of people with the right background/expertise to participate in those conversations.

Since the December 2021 report to FPT Ministers, the Steering Committee has continued to shape the architecture of a code, identify key issues and to frame the Working Group discussion topics. A copy of the most recent report to the FPT Ministers describing progress to date can be accessed at  [2022 March Report to Ministers Eng.pdf](#).

The Steering Committee is now moving into the phase where industry experts will be engaged in a Working Group structure to work through the issues and discussion topics and provide recommendations to the Steering Committee for inclusion in a draft code. The Steering Committee has undertaken a process to identify and confirm Working Group members based on the background/knowledge and expertise required to

- have informed discussions,
- within reason, ensure broad supply chain representation – from primary producers to manufacturers/processors to retail,
- ensure sector impact is reflected in the number of representatives in the Working Group, and
- keep the number of representatives to a manageable level to ensure efficiency.

The Working Group discussions will begin meeting in mid-April with an anticipated schedule of weekly meetings each focused on a distinct topic.

Once a draft code has been developed, we will then engage in a broader industry wide consultation process, the purpose of which will be to share the draft, explain the background and rationale for the Code content, solicit your feedback, and consider adjusting the code if the Steering Committee deems it appropriate and necessary.

We recognize our ambitious timelines have shifted somewhat. The issues we are trying to resolve through the development of the code are complex.

The Steering Committee is committed to the development of a Mandatory and Enforceable Code of Practice. As Stakeholders, you will be updated as required and we will be sharing our final draft Code with you and seeking your input through the consultation process.

Should you have any questions we invite you to reach out to any of the Steering Committee members copied here.