



## Payment Protection for Canada's Fresh Fruit and Vegetable Industry

### Goal

The establishment of a limited statutory deemed trust that protects produce growers and sellers during bankruptcy in Canada and the re-establishment of Canada's preferential access to the protections under the United States' Perishable Agricultural Commodities Act (PACA) lost in October 2014. The trust would cover only accounts receivable, cash, and inventory of the buyer stemming from the sale of produce on short term transactions with payment terms not exceeding 30 days.

### Action Needed

- Federal government adoption of the draft Fresh Fruit and Vegetable Products Protection Act, written by Dr. R.C.C. Cuming, an expert in Canada's bankruptcy laws.
- Upon introduction of the legislation, a request for the restitution of Canadian preferential access to PACA by the U.S. Department of Agriculture.

### Impact

- Implementation of a trust will significantly reduce supply chain disruptions and the vulnerability of small businesses and of rural communities. It will also improve trade relations with our largest and most important trading partner.

### Background

- The produce industry is united in its request for the creation of a limited statutory deemed trust - a no-cost solution and the only viable solution to ensure fair protection for produce growers and sellers during bankruptcy.
- The House of Commons Standing Committee on Agriculture and Agri-Food studied this issue before the summer and unanimously urged the Minister of Agriculture to study the industry's preferred model with a view of implementing a payment protection program as soon as possible.
- Current rules severely limit the ability for produce growers and sellers to collect payment in the event their buyer declares bankruptcy. While products like electronics can be reclaimed, highly perishable produce is lost. This cost Canadian and U.S. firms operating in Canada on average \$19 M per year.
- Seventy-five percent of Canada's 20,000 fruit and vegetable producers are small businesses. One bankruptcy can have devastating effects throughout the supply chain and the often small communities where many are located.
- In the U.S., if a produce buyer goes bankrupt, a grower or seller can rely on the deemed trust provision under PACA to ensure they receive payment.
- PACA also offers a critical arbitration mechanism in case of disputes over payments owed, equivalent to what is offered in Canada under the Fruit and Vegetable Dispute Resolution Corporation (DRC).
- On October 1, 2014 the U.S. withdrew Canada's preferred access to that PACA payment dispute arbitration mechanism due to Canada's lack of protection during bankruptcies. This means that instead of a small fee, companies must now post a double bond to access that protection.
- A deemed trust would also meet US requirements for a comparable Canadian system and would restore Canada's preferred access to PACA programs.
- The need for a PACA-like trust in Canada has been endorsed by the Canadian Chamber of Commerce, the Canadian Federation of Independent Business, the Canadian Federation of Agriculture, the Association of Municipalities of Ontario and the Food Processors of Canada.

For further information, please contact Ron Lemaire at [rlemaire@cpma.ca](mailto:rlemaire@cpma.ca) or 613-226-4187, ext. 209.