

# CANADA'S FRUIT AND VEGETABLE INDUSTRY IS AT RISK

## Payment Protection for Produce Sellers

### THE RISK

**Fresh fruit and vegetable growers and sellers across Canada are at risk of financial ruin due to Canadian policies that severely limit the ability to collect payment when sellers declare bankruptcy.**

If a buyer in the US goes bankrupt, or refuses to pay, a produce seller can rely on the Trust provision within the *Perishable Agricultural Commodities Act* (PACA) to ensure they will receive their money. Canada, however, has no similar remedy for bankruptcy or insolvency leaving all produce sellers (Canadian and international) vulnerable. Outside of bankruptcy, in order to try and receive the money for their produce, sellers have to put up a bond double the value of their produce. The cost of putting up such sums of money prevents many sellers from being able to fight to reclaim its value. This leaves Canada's fruit and vegetable produce sellers at risk of losing more than just their produce.

### THE NEED

**The Government of Canada needs to implement a limited deemed trust to provide effective payment protection for Canada's fruit and vegetable sector.**

### THE BACKGROUND

**Canada had been the only country the United States had granted the same protections offered by the USDA as US growers. On October 1, 2014, due to Canada's lack of progress in offering a deemed trust to US growers, the USDA revoked Canada's preferential access to USDA PACA tools.**

With preferential PACA access, Canadian companies could threaten the licence to operate of any buyer who was delinquent with their bills. This big stick resulted in a prosperous and mostly smooth trading relationship. Now, Canadian companies trying to recover unpaid bills will have to post a bond of double the value of their claim. Many cannot afford this and will simply have to walk away. Situations like this can devastate not only the producer, but all the businesses connected to them and hits rural communities particularly hard.

### THE NUMBERS

**Canadian and US firms operating in Canada lose an average of \$19 million per year through Canadian buyer insolvency.**

- Nearly **40%** of Canadian production is sold to the US, who buys about **85%** of Canada's fresh fruit and vegetable exports.
- **75%** of Canada's **10,000 fruit and vegetable producers** are small businesses with average sales of less than \$85,000 per year.
- In 2013, the fresh fruit and vegetable sector directly supported **76,700 jobs** and contributed **\$11.4 billion to GDP**.
- **\$1.6 billion in produce exports** to the US are at higher risk of payment default.



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# Financial Risk Mitigation is everyone's business

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## THE ACTION

**To create, as soon as possible, a limited statutory deemed trust that provides financial protection for produce sellers in Canada in the event of insolvencies.**

The good news is that a solution is at hand. Dr. R.C.C. Cumming of University of Saskatchewan College of Law has drafted a turnkey legislative proposal based on the concept of a "Deemed Trust". Most of the work is already done. It is under review by Industry Canada and Agriculture and Agri-food Canada. A trust does not require any government funding or administration. This solution would also meet the US requirements for a comparable Canadian system in order to reinstate our preferential access to PACA.

## THE BENEFITS

**Doing so will significantly reduce supply chain disruptions and the vulnerability of small businesses and of rural communities; it will lower costs for consumers and will improve trade relations with our largest and most important trading partner.**

The benefits will be felt by all Canadians.  
The risk to Canada's fruit and vegetable industry is too great and has gone on too long.

**The time for change is now.**

## THE IMPACT: CANADIAN STORIES

**Below are four examples of the impact that the loss of preferential PACA access has had on Canadian produce sellers. These cases took place between October 2014 and February 2015, a time when winter meant few shipments from Canada. Every day across Canada, sellers are unprotected and facing financial peril.**

**A Langley, BC producer lost \$67,632.53** on a shipment of blueberries to Michigan worth \$128,180. The buyer did not follow agreed terms and did not supply documentation to support their claim they deserved a lower price.

**An Etobicoke - Lakeshore, ON seller lost \$27,000** on a shipment to the US worth \$60,000. The buyer had no inspections or other support of his claim he should only pay \$33,000.

**A Haldimand - Norfolk, ON producer has a buyer refusing to pay for a \$10,000 order of watermelon.** The buyer has said they will not pay under an informal complaint under PACA. The ON producer has decided to file an informal complaint to have the problem on the record.

**A York - Simcoe, ON farm lost \$38,302** on a load of produce to the US. They did not have the funds to post a double bond and had to accept the loss. Despite no payment, their informal PACA complaint was marked 'resolved' automatically by virtue of no formal complaint being filed.

While these four companies have been willing to share their experience, in many cases, companies prefer to keep their losses confidential and try to move on and recover from the loss quietly.

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