



Financial protection for produce sellers

Growing, harvesting, packing, and marketing fruits and vegetables is risky: costs are high, capital is tied up in farm land, buildings, machinery, and overhead, and returns are delayed until the product is sold and payment is collected up the supply chain. Because fresh produce spoils quickly, sellers cannot recover product from incomplete sales. In the U.S., if a produce buyer goes bankrupt, a seller can rely on the Deemed Trust provisions under the *Perishable Agricultural Commodities Act (PACA)* to get paid for their sale. However, because there is no such insolvency tool for U.S. produce sellers to rely on when doing business in Canada, the U.S. has reciprocated by denying produce sellers from Canada preferential access to PACA dispute resolution mechanisms.

This lack of financial protection results in tremendously high risk for Canadians selling fruits and vegetables south of the border. This high risk negatively impacts the sector's sustainability, decreases investments in innovation, threatens job opportunities for the middle class, and limits Canada's export potential. Implementation of a statutory deemed trust would 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

- 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 costs Canadian and U.S. firms operating in Canada an average of \$19 M per year.
- 98% of Canada's fruit and vegetable producers are small businesses. One bankruptcy can have devastating effects throughout the supply chain and the often small communities where many of these businesses are located.
- On October 1, 2014, the U.S. withdrew Canada's preferred access to the PACA payment dispute resolution mechanism due to Canada's lack of protection during bankruptcies.
- 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.
- The Standing Committee on Agriculture & Agri-Food has written a letter to the Ministers of Agriculture and Innovation, Science and Economic Development and unanimously urged the Minister to implement a payment protection program as soon as possible.

Action required

Canada's fruit and vegetable industry urges the federal government to:

- Establish a limited statutory deemed trust that protects produce growers and sellers during bankruptcy in Canada.
- Adopt the draft *Fresh Fruit and Vegetable Products Protection Act*, written by Ronald C.C. Cuming, an expert in Canada's bankruptcy laws.
- Upon introduction of the legislation, request the restitution of Canadian preferential access to PACA by the U.S. Department of Agriculture.