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MEMORANDUM

TO:	Fred Webber, Fruit and Vegetable Dispute Resolution Corporation
FROM:	Rachael Dettmann Spiegel, JD, MS
DATE:	December 16, 2015
RE:	Summary of U.S. Lender Reactions to PACA Implementation

If enacted, Canada's Fresh Fruit and Vegetable Products Protection Act (FFVPPA) will offer additional payment protection for fresh produce growers, as well as provide lending assurances to the Canadian banking sector. In order to understand potential benefits FFVPPA will have on the lending community, it is important to understand lending perspectives on FFVPPA's parallel regulation in the United States: the Perishable Agricultural Commodities Act (PACA).

In drafting this memorandum, multiple bankers lending to the fresh produce industry were surveyed. One lender in particular provided valuable insight: Ed Nishio. Mr. Nishio is a recently retired Vice President and Relationship Manager at CoBank, a U.S. Farm Credit Bank, with over 40 years' experience in lending to the fresh produce sector in the Western United States and well versed on PACA's impacts on lending practices within the U.S. This memorandum is intended to provide a brief overview of U.S. banking sector sentiment regarding PACA's impacts on lending practices to fresh produce markets in the United States.

Since implementation, PACA has been a net positive for both growers and packers in the fresh produce industry, as well as bankers financing these sectors. Growers, and lenders with portfolios focused on production lending greatly benefit from PACA. Prior to PACA implementation, it was challenging for banks to finance growers, compared to processors. Growers tend to generally be sole proprietors, and they can lack resources necessary to negotiate favorable supply contracts or to collect for unpaid produce. PACA provided extra security to banks focused on production lending in that it allowed growers priority in recovering on unpaid accounts from buyers—therefore strengthening grower balance sheets.

PACA's trust provision has compelled banks lending to produce packers, wholesalers and distributors to conduct necessary due diligence on entities purchasing fresh produce. The regulation has driven lenders to ensure that banks do not attach security interests to collateral that is subject to the PACA trust—i.e. ensuring security interests were not tied to produce inventories. Because lenders should not take a security interest in inventories under PACA, this has required packers and processors to secure additional working capital to firm up balance sheets. At times, this could pose a problem for smaller packers and processors with tight capital, but based on our inquiries, lenders work with smaller entities in figuring out ways to secure additional capital. From a U.S. lender's perspective, they have not seen a decrease in loan volumes after PACA implementation.

PACA also compels lenders to conduct due diligence regarding whether produce buyers are current on grower payments. Because PACA comes into play in situations of non-payment or bankruptcy, lenders quickly learned to inquire whether produce buyers were current on grower accounts. If a customer is not paying their outstanding balances to growers, it was the first sign that a customer is signaling financial distress, increasing the likelihood of triggering PACA's trust provisions. In a sense, PACA increased efficiencies in produce markets by "weeding out" bad players that were not living up to their financial commitments of timely paying for received produce. Such banking customers posed a higher risk of default and in the end, PACA offers lenders an additional reason to conduct necessary due diligence on customers purchasing fresh produce—due diligence that some lenders feel should have already been conducted before the regulation was implemented.

Most U.S. lenders do not feel PACA significantly increased lending costs. Overall, there were initial start-up costs for bankers in understanding the regulation and how it impacted their business, but such costs were short-lived. In current markets, the regulation is well integrated in agricultural financing models within the United States. Overall, PACA weeded out "bad players" in the market, forced banks to conduct valuable due diligence reviews of their customers, and ultimately has led to better lending practices within the United States. If enacted, FFVPPA is expected to have similar positive impacts on the Canadian produce industry and Canadian lending practices.

About the Author:

Rachael Dettmann Spiegel is a food and agriculture attorney at Faegre Baker Daniels, an international law firm serving the world's leading food retailers, distributors, manufactures and banking institutions financing the food supply chain. Rachael's practice focuses on advising clients with regulatory compliance issues, including PACA compliance, as well as litigation matters. Apart from being a lawyer, Rachael is also an economist. She holds a Master's in Applied Economics from the University of Minnesota. She was an agricultural economist for the USDA and CoBank, a banking institution part of the United States Farm Credit System serving cooperatives in the food and agricultural sector. As an agricultural economist, Rachael published multiple articles providing economic analysis of fruit and vegetable markets. Her comprehensive understanding of industry business practices, and commodity markets, as well as an in-depth understanding of the food supply chains helps her provide practical and regulatory counsel to food industry clients.