

Presentation to the
House of Commons Standing Committee on Agriculture and Agri-Food

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Study: Canada's Preferential Status under the United States Perishable Agricultural Commodities Act (PACA)

Mr. Chairman and Committee members, thank you for the opportunity to appear before you to speak within the context of your study on **Canada's Preferential Status under the *United States Perishable Agricultural Commodities Act (PACA)***.

The Canadian Horticultural Council is no stranger to this Committee and, as always, we appreciate the chance to come before you to raise matters of concern to our sector and, equally important, to thank you when are where thanks are due. In the past we have presented to you on research and innovation and the importance of the AAFC **AgriInnovation Program**, which enables the Science Clusters, **Bill C-18 *Agricultural Growth Act***, specifically provisions respecting Plant Breeders' Rights, as well as on a wide range of competitiveness matters.

ABOUT US: THE CANADIAN HORTICULTURAL COUNCIL (CHC)

We represent growers, shippers and packers from across Canada primarily involved in the production and packing of over 100 fruit and vegetable crops from apples to zucchini. Our active mission statement focuses on four key words: innovative, profitable, sustainable and generations.

THE HORTICULTURAL SECTOR

With a primary production value of over \$5 billion and after-packing or processing value of \$10 billion, horticulture is one of Canada's largest, and certainly most diverse, agricultural production sectors. Horticulture has been an engine for economic growth and can be a foundation for continuing job growth and the overall economic contribution of horticultural production in Canada has doubled in the last 25 years.

Horticulture is one of Canada's Largest Agri-food Industries

An overall objective is to ensure further growth of a five billion dollar sector which has already doubled since 2000. Today, farm gate sales, with additional processing, supply chain, and induced impacts create an economic footprint of \$11.4 billion in real GDP. Horticulture is a key contributor to Canada's overall economic well-being and to the health and wellness of Canadians. I also draw your attention to the previously referenced Conference Board of Canada report.

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Managing and mitigating risk is critical, and the objective of today's discussion is to address the lack of payment protection for produce sellers during bankruptcies in Canada which results in disproportionate financial risk for growers, shippers and produce companies. It is important to recognize and acknowledge that first and foremost, the issue, and its resolution, are about and for Canadian farmers, packers, shippers and sellers. The unique characteristics and highly perishable nature of horticulture crops warrant innovative, creative and perhaps non-traditional risk management tools. For us, horticulture, repossession is not an option.

AN INDUSTRY UNITED

The sector is aligned and united and not without vision; the subject at hand today is a good example. Through the mid-1990's, this industry formalized a long term vision for the sector that included multiple and complementing pieces to achieve an end goal related to financial payment protection: dispute resolution, destination inspection, single entity licensing and finally, the development and implementation of a payment protection mechanism to provide comparable protections and outcomes as those found within the federally United States *Perishable Agricultural Commodities Act*.

Opportunity under article 707 of NAFTA relative to dispute resolution gave rise to the establishment of the Fresh Fruit and Vegetable Dispute Resolution Corporation. The Government of Canada provided leadership and in so doing contributed to a success for which we remain grateful.

Industry-CFIA collaboration and strategic planning resulted in the Destination Inspection Service. A single entity licensing is well on its way through the *Safe Food for Canadians Act*. The remaining component of the vision, and industry need, is the development and implementation of a payment protection mechanism.

The lack of a comparable system in Canada has been a trade irritant to our US colleagues and competitors. Canadians engaging in fruit and vegetable commerce in the US were deemed to have a comparable system to the US and as such were provided full access to the provisions of the *Perishable Agricultural Commodities Act*. We do not, and the trade irritant aspect gave rise to the issue being included among the Action Items for the Regulatory Cooperation Council. This is also a trade issue and a priority for the produce industry in both Canada and the United States.

Our lack of reciprocity in providing a comparable system has cost Canadian companies selling in the United States our longstanding preferential access to the protections under their *Perishable Agricultural Commodities Act* (PACA), which ensures that growers and sellers are paid should a buyer go bankrupt or simply refuse to pay for the product they receive.

Over time, many studies have been undertaken. The produce industry is united in its request for the creation of a limited statutory deemed trust. This will not only bring resolution to Canadian farmers, it will also lead to re-establishing Canada's preferential access to U.S. PACA protections. Any other options would result in high cost to both sellers and government, while still providing ineffective protection.

I must again stress that the issue and resolution begin at home and the proposed industry solution is also a non-traditional, innovative and viable business risk management tool that would provide our sector with a fair risk management tool that fits our sectors unique needs, similar to other sectors which have their own fit to purpose tools. The proposed solution is an excellent candidate for consideration within GF3.

On this issue, we enjoy broad and unanimous value chain support which begins with the producer community and extends far beyond. For example, in December 2015 the Canadian Chamber of Commerce adopted a supporting resolution: "that the federal government create and implement a limited

statutory deemed trust in the first legislative session after the 2015 election that provides financial protection for produce sellers in Canada in the event of bankruptcies. The assets available to trust creditors would be limited specifically to produce accounts receivable, and any cash and inventory from the sale of the produce.”

The Canadian Federation of Independent Business has also publicly stated a similar position related to payment protection for SMEs and the case of fruit and vegetables producers in particular. SME owners who produce fresh fruit and vegetables are a very tangible example of suppliers who do not have enough protection in the event of client bankruptcy. A majority of Canada’s fruit and vegetable producers are small businesses with average sales of less than \$85,000 per year.¹ These SMEs are hit particularly hard when a buyer declares bankruptcy because the perishability of the product means that repossession of shipments is typically impossible. The Canadian Federation of Independent Business agrees with the Fresh Produce Alliance, which is comprised of CHC, CPMA and the Dispute Resolution Corporation, that a deemed trust mechanism will be an effective tool to help small businesses recover payments when a buyer declares bankruptcy and will also provide much needed security to fruit and vegetable producers.

In closing, the horticulture sector is looking for support to be enabled rather than a financial commitment. There is much to learn from the US PACA’s solid history which can contribute to establishing a made-in and for Canada model.

When the AAFC Pest Management Centre (PMC) was created it was, in large part, due to the industry’s need to replicate and implement in Canada a similar infrastructure to that of the US Inter Regional Project Number 4 (IR4) in Canada. Today, the Pest Management Centre is the envy of our competitors in many countries.

The Pest Management Centre and the Dispute Resolution Corporation are two important and highly successful legacies of leadership and collaboration.

An April 12, 2016 USDA/AMS press release noted that: “in the past three years through the provisions of the *Perishable Agricultural Commodities Act*, approximately 3,700 PACA claims involving more than \$66 million have been resolved. Assistance was also provided to more than 7,100 callers with issues valued at approximately \$100 million.” We are often challenged to provide data. Given the lack of tools in Canada, it is difficult to impossible to do so. I suggest that in light of the solid and verifiable data available from the US PACA and the similarities of the fresh produce industry in the US and Canada that one may readily prorate against the size of the Canadian industry to draw conclusions as to the potential impact in Canada if similar tools were available.

Thank you, and as always, we appreciate the opportunity to appear before Committee. We look forward to working with you and assure you of our full commitment to developing a way forward on financial payment protection for produce sellers.