



Fresh Produce Alliance (FPA) is a joint initiative of the Canadian Produce Marketing Association (CPMA), the Canadian Horticultural Council (CHC) and the Fruit and Vegetable Dispute Resolution Corporation (DRC)
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**Fresh Produce Alliance
Pre-Budget Submission to the House of Commons Standing Committee on Finance
August 6, 2014**

Executive Summary

The 2015 budget is an opportunity for the federal government to provide payment protection for Canada's fresh fruit and vegetable sector, after years of delays and unmet commitments. **Improvements to the regulatory regime** through amendments to the *Bankruptcy and Insolvency Act* to create a limited statutory deemed trust will help **ensure fiscal sustainability and economic growth** in the produce industry **maximize the number and type of jobs for Canadians**.

Canada's integrated supply chains with the United States are key to ensuring export markets for Canadian producers and a year-round supply of affordable fresh fruit and vegetables for Canadian consumers. But the unique characteristics of the fresh fruit and vegetable sector also make it vulnerable to payments disruption.

Producers operate with low profit margins, three quarters of Canada's 10,000 fruit and vegetable producers are small businesses, and the highly perishable nature of the product makes it impossible to repossess unpaid shipments.

There is a solid consensus among members of Canada's \$5 billion fresh fruit and vegetable industry that the Government of Canada needs to act now to reform the *Bankruptcy and Insolvency Act* (BIA) in order to create a deemed trust that would provide effective payment protection for fruit and vegetable suppliers in the event of buyer insolvency.

In the United States, shippers are protected by the statutory deemed trust established under the *Perishable Agricultural Commodities Act* (PACA). When shipping to the United States, Canadian firms receive the same PACA trust benefits that U.S. entities do. The lack of reciprocity for U.S. suppliers selling into Canada has resulted in a growing trade irritant, threatening Canada's special access to PACA and creating increased costs and complexity that Canadian firms can't afford.

The creation of a deemed trust, similar to the trust currently in place in the United States, would provide effective and inclusive protection to businesses in the fresh fruit and vegetable sector – a sector with a large number of small businesses already operating at the margin – and protect cross-border supply chains.

Background

The Fresh Produce Alliance (FPA), led by the Fruit and Vegetable Dispute Resolution Corporation (DRC), the Canadian Horticultural Council (CHC), and the Canadian Produce Marketing Association (CPMA), represents more than 15,000 growers, suppliers, dealers, wholesalers, distributors, retailers, and food service operators.

Through the Canada-U.S. Regulatory Cooperation Council, the FPA worked to find solutions that would enhance the comparability between the Canadian and U.S. systems of financial risk mitigation in the fresh fruit and vegetable industry in the event of insolvency. While market-based options such as bonding and insurance were explored, analysis by government and industry specialists showed that these options would be expensive and would risk excluding small businesses from coverage. The most viable options are legislated amendments to the *Bankruptcy and Insolvency Act*.

The establishment of a limited statutory deemed trust, modeled on what currently exists in the United States, would provide effective and inclusive protection that takes into account the unique characteristics of trade in perishable products.

While government would create the legal mechanisms for industry, a limited statutory deemed trust for the fresh fruit and vegetable sector would require **no government funding of any kind**.

Overview of the Fresh Fruit and Vegetable Industry

Canada's fresh fruit and vegetable sector makes an important contribution to national economic output and employment. In 2013, the fresh fruit and vegetable sector supported 147,900 jobs and created \$11.4 billion in real GDP.

Moreover, Canada's integrated supply chains with the United States are key to ensuring export markets for Canadian producers and a year-round supply of affordable, fresh fruit and vegetables for Canadian consumers. This high level of integration is due to geographic proximity, complementary growing seasons, and strong cross-border cooperation.

Seventy-five percent of Canada's fresh fruit and vegetable producers are small businesses. The sector as a whole makes an important contribution to output and employment, especially in rural Canada, but the high number of small businesses also contributes to the sector's vulnerability to buyer insolvency. Indeed, many characteristics of the fresh fruit and vegetable sector (e.g. perishability of the product and regional concentration) also make it vulnerable to payments disruption.

The sector has already taken proactive steps to mitigate risk and improve transparency by adopting, for example, using a single authority for rules, standards, and trading practices through membership in the Fruit and Vegetable Dispute Resolution Corporation (DRC).

The Canada-U.S. Supply Chain and the Need for Payments Protection Alignment

Approximately 40 percent of total Canadian production of fruits and vegetables is sold to the United States. In 2012, Canada imported nearly \$3.5 billion in produce from the U.S.

When shipping to the United States, Canadian firms receive the same PACA trust benefits as U.S. entities. This makes the U.S. a market of choice (over Canada) for both Canadian and American suppliers of fresh fruit and vegetables. The perception of Canada as an inferior market has implications for the price and quality of fresh produce available to Canadian consumers. US frustration with the lack of reciprocity in protection for fruit and vegetable dealers could lead to the removal of Canada's preferred access to PACA, adding costs and complexity to Canadian firms selling to the US.

Options

Although the current BIA includes intended protections for suppliers of perishable products, these measures are too limited to provide effective protection for fruit and vegetable suppliers and are unworkable in practice.

Other options have been considered but legal advice and experience in other jurisdictions has shown that the best mechanism to provide effective and reciprocal payment protection to Canada's fresh fruit and vegetable sellers is through the establishment of a limited statutory deemed trust.

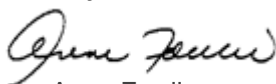
Growers, shippers and suppliers see obvious benefits to a more secure payments system. Retailers and fresh fruit and vegetable marketers also support reforms to the BIA because they help prevent supply disruptions and provide predictability to sales and marketing decisions. Furthermore, there is agreement among Canadian and U.S. stakeholders that a level playing field in payments protection is a strong contributor to an integrated, competitive North American fresh fruit and vegetable market.

Having thoroughly evaluated all other options, it is clear that federal government leadership is required to reform the BIA and bring about the long-awaited protections for the fruit and vegetable sector promised since 1992.

Action is urgently required. Continued delays will result in supply chain disruptions, higher costs for consumers, heightened vulnerability of small businesses and of rural communities, loss of priority status for Canadian exporters to the United States, and U.S. opposition to future cooperation within the Regulatory Cooperation Council and other international trade fora.

We welcome the opportunity to present this issue in person before the House of Commons Standing Committee on Finance. More detail on this issue is available from the July 2014 Fresh Produce Alliance submission to Industry Canada regarding amendments to the *Bankruptcy and Insolvency Act*. [https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/vwapj/Fresh Produce Alliance July 15 2014.pdf/\\$FILE/Fresh Produce Alliance July 15 2014.pdf](https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/vwapj/Fresh_Produce_Alliance_July_15_2014.pdf/$FILE/Fresh_Produce_Alliance_July_15_2014.pdf)

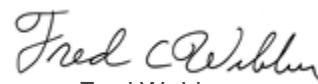
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