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Standing Committee on Agriculture and Agri-Food

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• (1830)

[English]

The Vice-Chair (Mr. John Barlow (Foothills, CPC)): I call this meeting to order.

Good afternoon, colleagues. I apologize for the delay.

We're having some sound issues with Mr. Turnbull. We're going to try to figure them out, but we'll get started. From what I understand, Mr. Turnbull is not up for questions in this first hour, so I think we can proceed to keep us on schedule. Hopefully, before we go to the second hour of discussion on the environmental agriculture report, we can get Mr. Turnbull back online.

We'll proceed with what we have for this meeting.

Colleagues, welcome to meeting number 69 of the House of Commons Standing Committee on Agriculture and Agri-Food.

Today's meeting is happening in a hybrid format. The proceedings will be available via the House of Commons website. So that our guests are aware, the webcast will always show the person speaking, rather than the entirety of the committee.

I know, Brad, your kids are watching, but no screenshots of how well dad is doing today are allowed, if you don't mind.

Members and witnesses may speak in the official language of their choice. Interpretation services are available for this meeting. If interpretation is lost, please inform me as quickly as possible, and we'll try to get that squared away before we proceed.

To our guests, before speaking, please wait until I recognize you by name. You'll see the red light on your microphone turn on, and then you'll be ready to go. When speaking, for the interpreters, speak as slowly and succinctly as you can.

To my colleagues, I remind you that all comments must be made through the chair.

Pursuant to the order of reference of Wednesday, May 17, the committee will resume consideration of Bill C-280, an act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act (deemed trust – perishable fruits and vegetables).

I would like now to welcome our witnesses. With us today we have, from the Canadian Produce Marketing Association, Ron Lemaire, president. From EarthFresh Farms Inc., we have Brad Wiseman, chief financial officer.

You'll each be given up to five minutes for your opening remarks. I will give you a signal when you have one minute left to

wrap up your comments, and then we will begin our questions from the members of this committee.

Moving forward, we'll start with Mr. Wiseman from EarthFresh Farms. You have five minutes, please.

Mr. Brad Wiseman (Chief Financial Officer, EarthFresh Farms Inc.):

Thank you very much.

EarthFresh Farms Inc. is a Canadian produce company based in Burlington, Ontario, that specializes in growing, packing and distributing potatoes, especially organic potatoes and exclusive premium varieties, to retailers and food service companies in Canada and the U.S.

With over 15,000 acres of its own varieties of potatoes, the company produces the largest stock of exclusive potatoes in North America. Overall, we ship 450 million pounds of potatoes to Canadians from coast to coast. As well, we have four packing facilities. We have one in P.E.I., which is the largest fresh packing facility for potatoes. We have our head office in Burlington, Ontario. In Millgrove, Ontario, we have a growing, packing and storage facility. We have a new Atlanta, Georgia, operation, where we're also a member of PACA.

I'd like to thank AAFC for the ongoing support, the National Research Council and IRAP for helping us drive growth, innovation and the significant benefits of Canada's support for all the projects that they have funded. We'd like to thank Innovation Canada for the accelerated growth service program that we're very proud to be part of.

Thank you for allowing me to be a witness with respect to Bill C-280. It is exciting how close we are, but there's still further work to be done. I'm here to represent the Canadian processor and highlight the financial challenges the bill will have throughout the entire value chain. The value chain is the producer, the processor, wholesaler, retailer, food service and then eventually the product gets to the end consumer. The end result will be an increase in prices for the end consumer due to the increased cost of borrowing for working capital requirements at each stage of the value chain.

The key summary points are as follows.

Ensuring Canadian producers are protected under the bill in its current state will cause processors like EarthFresh to have priority payables with the producers. Priority payables, like payroll, taxes and pension costs, are deducted under all operating, banking and borrowing base calculations. This will cause processors not to have the ability to utilize any portion of their operating facilities with lenders.

Companies throughout the value chain will be forced to invest significant reserves in the business or find alternative sources of high interest financing because nothing will be secured against those facilities. This will create significant challenges for businesses throughout the value chain to grow and have innovation.

Potentially, prices for the end consumer could increase by a minimum of 5% in order to find alternative financing solutions, such as the factoring of AR or AR insurance.

As members of the CPMA, which we're very proud of and involved with, we have discussed the challenges from the processor perspective. Unfortunately, the current Bill C-280 does not have the correct solution. In addition, further investigation has to be done to understand the material financial challenges it will cause throughout the value chain.

The overview of key concerns has been discussed, but right now there's still insufficient analysis of the financial effect throughout the entire value chain. We need to take our time. We need to work with the lending industry, the banks, to see how they will interpret Bill C-280 right now. We cannot do it after the fact because it will have a significant financial burden on the entire value chain if it moves forward in this state.

Now we have the chance to get it right before we move forward. I have looked at the analysis that we currently have. Right now, it dates back to 2015, so there's further work to be done.

As well, current U.S. banks deduct the priority payables from the borrowing base. This is confirmed by my own direct financing experience with U.S. national and regional banking institutions.

To summarize, I look forward to further discussions of the issues and solutions. As well, I have the following suggestions.

Quantify the impact to processors and other agri-food businesses. This can be done by engaging in direct conversation—this is, for me, the most important—with Canadian banking institutions, with Farm Credit Canada and EDC, noting that the majority of FCC businesses are with term loans that only have collateral on assets outside of working capital; with more businesses in the value chain;

and finally, with corporate lawyers who have a key understanding of Canadian and U.S. financing.

Thank you.

• (1835)

The Vice-Chair (Mr. John Barlow): Thank you very much, Mr. Wiseman. I appreciate your testimony.

Before I move on to Mr. Lemaire, I was remiss in not welcoming Ms. Damoff and Ms. Dabrusin, who are filling in for Ms. Taylor Roy and Mr. Louis today. Welcome and thanks for coming.

We'll now go to Mr. Lemaire for five minutes, please.

Mr. Ron Lemaire (President, Canadian Produce Marketing Association): Good evening, Mr. Chair and committee members.

On behalf of the Canadian Produce Marketing Association, I want to thank the committee for the opportunity to speak to Bill C-280, the financial protection for fresh fruit and vegetable farmers act.

CPMA represents over 830 companies growing, packing, shipping and selling fresh fruits and vegetables in Canada. We support Bill C-280, as it is a critical fit-for-purpose tool for an industry that is unique and currently unprotected. CPMA also concurs with witness testimonies of June 12 which frame rationale and support for the bill.

It's from this perspective of a diverse membership that CPMA would like to emphasize the importance of maintaining the existing provisions of Bill C-280 that provide financial protection to all suppliers of fresh produce. I'd also like to table, in both official languages, a letter sent earlier this spring to all members of Parliament from 35 national and regional organizations from across the country voicing their support for this important legislation across the entire supply chain.

As noted by previous witnesses, all suppliers across the fresh fruit and vegetable supply chain are vital to the stability of the market. Packers, wholesalers, brokers and others act as a critical intermediary between growers, retailers and food service, and it is essential that they receive the necessary protection to ensure that payments are able to flow down the chain and ultimately to the grower. What happens when those suppliers go bankrupt and can't pay the farmer or simply walk away because they cannot turn a profit? The farmer doesn't get paid, and the Bankruptcy and Insolvency Act does not provide effective protection for fresh produce sellers in Canada due to the high perishability of their products and the industry's longer payment terms.

During the committee's June 12 meeting, there were questions around the definition of "fruit and vegetable supplier" and whether Bill C-280 might benefit retailers. It's true that retailers often operate in closed ecosystems where produce is bought and distributed by centres and sold to corporate stores, franchises or through other commercial relationships, in effect, operating as a wholesaler. At the same time, we must recognize that this business relationship still ultimately results in fresh fruit and vegetable growers requiring payment for their product, payments that could be jeopardized if the deemed trust protection is limited to the first level of sale.

As an example, in the 2015 bankruptcy of Target Canada, Sobeys Wholesale, which was contracted to supply produce and other foods, was left in a position to self-insure \$3 million in debt. Had they not done this, we would have seen a ripple effect in the Canadian produce industry that would have been significant.

Under the provisions of Bill C-280 as written, all suppliers would benefit equally. This definition of "supplier" is key to providing the equivalent protection we see in the U.S. Perishable Agricultural Commodities Act, PACA, which covers all suppliers along the chain. Bill C-280 would therefore enable Canada to obtain and reinstate the reciprocal protection for Canadian sellers that was lost under PACA in 2014.

A letter of commitment was sent on May 12, 2016, from the USDA to then AAFC assistant deputy minister Gorrell, confirming the steps required for reciprocity and comparable systems. These include: mandatory licensing of fresh produce dealers on a federal level; the availability, comparability and effectiveness of dispute resolution systems; investigative and enforcement authority; and a deemed like trust system, which would allow for comparable outcomes to the PACA system in the United States. We have three of the four steps.

In closing, I will note that this has been a long road. There is now political will and unanimous support at second reading. This is a clear sign of the importance of Bill C-280 and the need to move this legislation forward. In doing so, you will provide a vital tool that will stabilize a fragile system. I would encourage the government to move forward as quickly as possible.

We'd like to thank Scot Davidson and all of you in this room for your support to move this important issue forward.

I look forward to the opportunity for any questions.

• (1840)

The Vice-Chair (Mr. John Barlow): Thank you, Mr. Lemaire. I appreciate that.

Welcome to Mr. Bains as well. I apologize. I didn't see you submitting in for Mr. Turnbull. Thank you very much for jumping in when we have technical problems. Hopefully, we'll get that fixed.

Now to our questions from our colleagues, we'll start with the Conservatives and Ms. Rood for six minutes, please.

Ms. Lianne Rood (Lambton—Kent—Middlesex, CPC): Thank you, Chair.

Thank you, witnesses, for being here today and for your testimony.

Mr. Wiseman, I have a question for you to start off with.

In this legislation, Bill C-280, the provision would not come into effect until after 30 days of not being paid, and 35 to 40 days is when most banks would say that the debt is bad and will refuse to finance against such debt. Payments in arrears are often strung out and made partially for much longer than that. Do you believe this legislation would affect the financing of receivables?

Mr. Brad Wiseman: There's a lot of uncertainty around this legislation. We have to get clear guidance from the banks on how they will interpret it. The reality is that it's a priority payable and it will go ahead of the bank. With that, just like anything else with a priority payable, since it goes ahead of the bank, it comes off as a deduction.

If a business is paying its payables on time, that's great. Good businesses like EarthFresh do. If they interpret it as not being a priority payable before those terms, we'd be fine, but there's a lot of uncertainty.

In the past, and based on experience, if there's a priority payable and they're ahead of the bank, it comes off as a deduction, so we need to have clarity right now from the banks to see how they will interpret this bill. We do not have clear guidance yet. That's why we need to take our time and see how they will interpret it.

I understand your point, and that would be great, but we still do not know how they will interpret it.

• (1845)

Ms. Lianne Rood: Mr. Wiseman, nobody goes from being 30 days in arrears to bankruptcy. It just doesn't happen that way. There's a process to declare bankruptcy. Even according to the Chartered Professional Accountants of Canada, the process will take about 45 days. That's coming from accountants.

Where is the disconnect between how the banks interpret and how your organization interprets how this bill works? We have heard testimony from other witnesses and we have not had this issue brought up. In fact, I haven't heard from anybody in industry who has this issue or who believes that the banks would interpret this....

If you look at the U.S., it's not a problem in the U.S., and they operate with the same kind of legislation as what we have here.

I haven't seen any comments from the banks on this at all. It's just coming from you. If it does not make sense that a bank would no longer finance your receivables with only a five-day crossover, unless too much money has been borrowed and there are no assets....

Is this a unique situation, maybe specifically with your bank? Why are you the only business that seems to have this concern? Even organizations have not brought up this concern, including the CPMA here today.

Mr. Brad Wiseman: I'm bringing up the concern because I have a clear understanding of what the technical issues are. It becomes a priority payable. I have direct experience with U.S. financing and PACA. With it becoming a priority payable, there is the risk that it will come off the borrowing days, and right now there is no clear guidance from lenders.

I'm taking this opportunity of bringing it to the committee to say, "Let's take our time. Let's see. How will the banking industry decide how it interprets Bill C-280?" We do not want to be in a situation where we have a borrowing base calculation, but then packers, wholesalers and retailers that have focused just on produce get it all ground down due to the large payables that they would have.

We still do not have a clear understanding. We still need to take that time. We still need to do that analysis.

Ms. Lianne Rood: Thank you, Mr. Wiseman.

Mr. Lemaire, I'll turn to you for a comment on this.

Have you heard from anybody else in industry that this could be a problem?

Mr. Ron Lemaire: No, at this point we have not.

We've conducted a survey with wholesalers across the country. In that work, everyone concluded that lending relationships are unique to each company's own situation.

We understand that this may impact unique organizations, and the risk for some organizations may exist. However, in speaking with senior ag portfolio lenders in the banking industry, they could see how this would provide stability in the market as has been discussed by previous witnesses.

Further, we recognize that the Canada and U.S. systems, while different, have many similarities. With the borrowing mechanism in the U.S., as an example, while they recognize the priority payable, they will also strike that out of lending programs and it's a wash in the borrowing scheme.

Ms. Lianne Rood: Right.

You mentioned a letter, and there are, from my understanding, four different things that Canada must meet in order to be able to have reciprocity with the U.S. I believe having this legislation is one of them. This is one of the most important pieces in order for us to get back reciprocity with the U.S. for PACA.

Can you explain that a bit further, please?

Mr. Ron Lemaire: Certainly. In 2016, Charles Parrott, who was the administrator at the time, sent a letter to the assistant deputy minister at Agriculture Canada outlining the key pillars that are necessary. I noted that in my testimony.

The specific one was comparability under a deemed trust. Without the entire supply chain as they deliver in the U.S., it's unlikely that we would access reciprocity with the U.S., because we wouldn't be providing a similar or like system in bankruptcy protection.

• (1850)

Ms. Lianne Rood: Without this piece of legislation, it would have a greater impact than the potential that may or may not exist, according to the issue that Mr. Wiseman has brought up.

The Vice-Chair (Mr. John Barlow): I'm sorry, but the time is up.

I'll ask you if you can answer that as succinctly and as quickly as you can.

Mr. Ron Lemaire: It's a simple answer. Yes, there's greater risk.

Ms. Lianne Rood: Thank you.

The Vice-Chair (Mr. John Barlow): Thank you.

Ms. Damoff, you have six minutes, please.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you, Chair.

Thank you to you both for being here.

For full disclosure, EarthFresh Farms is in my riding. I'm very proud to have toured there many times.

Mr. Lemaire, we met several years ago when you were advocating for your association.

Mr. Wiseman, I'm wondering if we could talk a little bit about banking.

Is this something that's unique to EarthFresh, or is it because EarthFresh is the only one that's come forward? I'm just following up on Ms. Rood's comments. I wonder if you can clarify the uncertainty you're feeling.

Mr. Brad Wiseman: Absolutely, and I appreciate the question.

This is not unique to EarthFresh Farms Inc.. When you have an operating facility for working capital purposes, a bank will lend and allow you to margin against your receivables, but they take security over your receivables. With that, when you do your calculation, they say, "Okay, back out your priority payables." As I noted before, priority payables are payroll, withholding tax and pension costs, really minor costs that get deducted because businesses pay weekly or biweekly. This would create a situation that all the payables become a priority payable. It would fully get deducted off their operating base calculation and, for a lot of the businesses that focus on fresh fruits and vegetables, they would get ground down to zero.

As I mentioned, there are other sources of financing, unsecured sources of financing, but that's at a higher interest cost. We need to get full clarity from the banking industry as to how they would interpret it. It would be the situation throughout the entire value chain, the processor, the wholesaler, and potentially the retailer and food service. That's why we need full clarity on how they would calculate it and how they would interpret it from a borrowing base calculation.

It is such a material issue that we just need to bring it out in the open. I'm taking the time here to say let's get it right. It's a great opportunity. This bill can offer a lot of security and make the industry stronger, but let's just do it right and take our time.

Ms. Pam Damoff: If the bill was to move forward, would it be of any benefit if this was phased in over a period of time, say over five years?

Mr. Brad Wiseman: Being phased in over five years would definitely be a solution. What would happen is it would give time for the banking industry to decide how they are going to interpret it. What amendments would they have to make to their entire lending process? It's not just having a relationship and saying, "Okay, let's just waive this exclusion".

This is going to become legislation. It's not going to be based on a relationship. It's going to be based on how they need to follow it. There are regulations in place for lenders, and they will have to follow them, just like how they deal with the calculations of their borrowing base where they deduct payroll, taxes and pension costs. It's clear legislation, and it's all part of the borrowing base calculations.

Ms. Pam Damoff: Mr. Lemaire, I want to turn to you for a moment.

Have you done consultations with the banks? I don't think the banks have ever appeared on this bill.

Mr. Ron Lemaire: The banks have been silent. We've spoken to the Bankers Association. The Bankers Association has a standing policy that no one is a superpriority, bottom line. That was years and years ago. We've been working at this since the early 2000s. In those conversations, it's just a standing order.

Ms. Pam Damoff: Have you consulted with any other associations, like the Chamber of Commerce? Do you have any other organizations?

Mr. Ron Lemaire: I'm going to go back a few years. There was a resolution in support from the Chamber of Commerce that was put forward from the Leamington office to the Ontario chamber and

brought forward to the Canadian chamber. That resolution has since lapsed over time.

We as an organization as well others across the country have been supportive and pushing this agenda forward, specifically around the entire supply chain approach. When we look at not only the support moving through the system.... I think the key thing we have to look at here is perceived risk, and it is perceived risk at this point in time. Based on what we've seen in the U.S., based on experience from other companies that have borrowed in the U.S., and based on conversations with some retired financial executives, everyone is saying the same thing. There's not a clear understanding from the ag lending portfolio, and the voice from the ag lenders isn't strong within the banking framework.

• (1855)

Ms. Pam Damoff: If Brad's concerns are valid, my concern is making sure that we're dealing with that.

As you know, EarthFresh is a member of your association. I think this is the only processor that we've actually had come to the committee on this bill. I want to make sure that we're not doing something good but at the same time harming a company like EarthFresh because we haven't received all the information that we need.

Mr. Ron Lemaire: I totally agree. We've been studying this for many years. I started in the produce industry with the association in 1998. I was involved when we launched the Dispute Resolution Corporation. We weren't able to put the bankruptcy protection in place at that point in time under Minister Vanclief and the Liberal government. We've been pushing very hard for many years as an entire supply chain. That includes retail and wholesale and/or packer-shippers.

There's a diversity of businesses across our industry. That's our biggest challenge at CPMA in working with an entire supply chain. Every business operates differently. Every lending model is slightly different. Relationships with banks are different. What we've been told through our survey work is that the lending relationship is first and foremost. The stability of the company on how they borrow and the experience for those who also, similar to EarthFresh who have operations in the U.S., is they have had the challenge of priority payable struck from the borrowing arrangement because the banks recognized that the PACA-like trust is a stability tool that enables the flow of dollars through the system to reduce the potential bankruptcy.

We also have to remember—

The Vice-Chair (Mr. John Barlow): Thanks.

Sorry, Mr. Lemaire. I gave as much time to answer the question as I could there.

[Translation]

Mr. Perron, you have the floor for six minutes.

Mr. Yves Perron (Berthier—Maskinongé, BQ): Thank you very much, Mr. Chair.

I would like to thank the witnesses for joining us today. We are grateful to them for sharing their time with us.

Mr. Wiseman, I want to make sure I understand your concerns.

You say that we don't know how the banks will react. This isn't the first time we've heard that the banks were somewhat worried about having to ultimately move down a notch in the priority of claims, to put it simply.

But since this is not a problem in the United States, why would it be a problem in Canada? What's the difference?

[English]

Mr. Brad Wiseman: It is an issue in the United States. From the financing models that they have in place, they will deduct the priority payables. It does relate to growers. Within the U.S. they will then look at what is the risk amount that they can take into consideration.

While you can work it out if you have an exclusion, if the risk is low and the payable is low, we would be in a situation that if all of your payables for the most part are growers, your risk level goes up. The question is going to be how the Canadian banking institutions will interpret this if that risk level goes up based on the security that they have in place. We do not know. That's why we need to do further investigation with direct conversations with the banking institutions.

[Translation]

Mr. Yves Perron: I understand your point of view. However, insofar as vegetable growers have a greater probability of being paid because they have been given this protection, do you really consider that they represent a greater risk? Or do they represent a lower risk, given their ability to repay?

[English]

Mr. Brad Wiseman: I absolutely agree with that comment.

The risk would be lower because you're making a stronger business model for the entire industry. That's what's great about Bill C-280. The challenge is that the banks are losing the security because the growers are going ahead of the banks. That is the challenge. That is the uncertainty.

We have a great opportunity to get it right and we still need to do further investigations with the banking institutions.

• (1900)

[Translation]

Mr. Yves Perron: That's fine. Thank you very much.

Mr. Lemaire, you sent us a letter in which you insist on defining the term "supplier". It's important to talk about this, because we may be proposing amendments to the bill. You say that it is essential to keep the current text. Could you quickly explain why?

[English]

Mr. Ron Lemaire: We need to leave the text as is for the primary purpose to ensure reciprocity is reinstated. We have exporters, and that is not only growers. We have repackers and wholesalers who trade with the U.S. who don't own a U.S. business that can leverage the dispute resolution mechanism in the U.S. That is what

we lost in 2014 because we did not have a Bankruptcy and Insolvency Act that protected the fruit and vegetable supply chain in the same way PACA does.

We have companies selling and in the event of a dispute they must post double the value of a bond to be able to lay a claim. No one has access to that form of cash. This was laid out by one of the previous witnesses.

[Translation]

Mr. Yves Perron: So you think we absolutely need to have the same text, don't you?

In fact, we know that. We were given four points, that is, four things to do. We absolutely must have the same text for it to be recognized.

Did I understand you correctly?

Mr. Ron Lemaire: Yes.

Mr. Yves Perron: In your opinion, would it be useful to clarify other points?

Other witnesses have told us that they were particularly concerned about the fact that, if a wholesaler benefited from trust protection to recover the monies, it could decide, depending on its financial situation and the extent of the bankruptcy and the monies reserved, not to pay the monies to upstream vegetable growers.

Do you think it would be a good idea to clarify this obligation?

[English]

Mr. Ron Lemaire: We do have the benefit of the Fruit and Vegetable Dispute Resolution Corporation, and these are all of the tools within the DRC. What would happen if there was a bankruptcy with Bill C-280 protecting the supply chain? Let's say a packer was then able to generate some funds out of the bankruptcy. If they did not pay their grower, the grower could then leverage the Dispute Resolution Corporation to bring them to a dispute to access the monies owed. That's what the DRC is there for. What the DRC does not do is provide the protection of bankruptcy.

[Translation]

Mr. Yves Perron: This demonstrates the importance of clarifying this obligation in the bill.

Mr. Ron Lemaire: Yes.

[English]

We need each piece.

[Translation]

Mr. Yves Perron: Okay.

I don't know if you can enlighten us on the subject of areas of jurisdiction. A few people have told us that the line is thin and that there seems to be an overlap of provincial jurisdictions.

I think the bill is well drafted, but could you reassure us on that point? You have about 15 seconds to do that.

[English]

Mr. Ron Lemaire: In 15 seconds I will not have time to answer that clearly.

Jurisdictional challenges are a key factor we need to look at. The federal approach is essential.

The Vice-Chair (Mr. John Barlow): Thank you, Mr. Lemaire.

We'll now go to Mr. MacGregor for six minutes, please.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you very much, Mr. Chair.

Mr. Wiseman and Mr. Lemaire, thank you both for being here and helping guide our committee through its study of Bill C-280.

I also have some questions on the credit issue. It's not the first time I've heard this brought up. I think it's the first time it's come up from a witness, Mr. Wiseman.

I've heard from the government, through conversations we've had in advance of this bill, that there were some concerns about that. I've also had conversations with the staff of the CPMA. I believe in one of those conversations there was a lot of talk about the United States and how, in fact, having this trust actually adds more stability, which might encourage lenders to look more favourably on the person who's needing access to that credit.

I think there was reference to industry having provided a white paper by a lawyer or an economist whose firm had worked with banks on both sides of the border in support of this.

Mr. Lemaire, are you aware of that? Is that document something that could be produced and tabled with this committee so that all members could have access to it?

• (1905)

Mr. Ron Lemaire: I'd be happy to share that.

As I mentioned, we've been doing this work for some time. That document is one of the earlier ones that we use to counter some of the discussions that we are having with ISED and Agriculture Canada, where they were looking at a similar approach on the risk of access to capital. I'm going to use the term "risk", because I think that's exactly where we're looking. What is the risk?

As we look at what's happening in the U.S. and at what we've seen through our survey work and in conversations with industry, we see that the risk is minimized back to the stability model that's created through the trust. If the trust were on its own, without the Fruit and Vegetable Dispute Resolution Corporation, it would be a different discussion, but we have all the pieces of the puzzle.

Mr. Alistair MacGregor: Mr. Wiseman, I don't think you necessarily disagree with that. Your key point before our committee is that you want to have a little more time to study or understand the unintended consequences.

Am I understanding you correctly?

Mr. Brad Wiseman: I do understand the memorandum on the summary of the U.S. reactions to PACA. The issue is we have to get a clear guidance from the banking industry on how they will interpret Bill C-280. That's what we need to do.

The memo and the analysis did not take into consideration the priority payables, and it's going ahead of the bank when you had secure facilities for working capital purposes. We need full clarity, and we don't want to do it after the fact. Now's the time to get it right, to have clear interaction, in present day, with the banking institutions.

Mr. Alistair MacGregor: Thank you for that.

I'll move on to another point that's been raised, Mr. Lemaire, with regard to this bill, that there's been insufficient evidence that it is in fact even necessary. We heard at our June 12 meeting that there's a dearth of reliable statistical information out there. For a lot of people, when an insolvency happens somewhere along the chain, the grower may just walk away from that and not talk about it.

Can you comment a little bit about that? Perhaps you could talk in a bit more detail about the journey that the payment has to take in reverse, all the way down the supply chain. In some cases, it can be quite some time since the grower released the product.

Mr. Ron Lemaire: Yes. It's the complexity of it. It could be a dealer model or a packer model. It could be coming from the retailer. Backing up from the retailer, if the retailer buys it from a dealer, that dealer then is paying back their growers. There could be three and sometimes even four steps, depending on whether it's major retail or independent retail or the location in the country. The complexity and flow of product is not a straight line. It's more like a web.

I think the bigger piece that comes into play here is your comment on how we'll actually address and solve what we heard at the beginning from the government and where we go forward. I think a big part, and Mr. Wiseman brings up a very good point, is that there is an education process. The challenge we have, though, is time. If we lag on delivery of the bill, we will not be able to experience access to a reciprocal nature of PACA going back into the U.S. That's detrimental to many exporters.

In an ideal world, in any bill moving forward, there is a one- to two-year window before anything happens. We have a runway to work with and an appropriate timeline to work with the banks to ensure that they understand what it is and what it isn't and to be able to position and move it forward in order to protect the industry and the entire supply chain.

Mr. Alistair MacGregor: I have a final 30 seconds here. You did issue that letter where you referenced our June 12 meeting and the concerns that this bill would benefit large retailers—I think that was the term—suppliers. Of course, large retailers were the subject of our recent study on food price inflation. Do you have any additional comments you want to make on that point?

Mr. Ron Lemaire: It's a downward flow. It's not a retail benefit. It's a supply chain benefit. It depends, as I mentioned. Sobey's sells to Target. Target declares bankruptcy. Sobey's had to self-insure to ensure that their growers got paid, or else they were going to have a hole in their own system. This would have been a solution to that, protecting that flow of product and cash.

Mr. Alistair MacGregor: Thank you.

• (1910)

The Vice-Chair (Mr. John Barlow): Thanks very much, Mr. MacGregor and Mr. Lemaire.

We'll now return to the Conservatives.

Ms. Rood, you may be sharing your time. You have five minutes, please.

Ms. Lianne Rood: Thank you, Chair.

Mr. Wiseman, I have a couple of quick questions for clarity.

Are you speaking here today as a packer or a grower?

Mr. Brad Wiseman: I'm speaking here as a processor and not a producer. That's correct.

Ms. Lianne Rood: Has your bank given you guidance on this, or is this just strictly your opinion?

Mr. Brad Wiseman: This is my opinion based on my past finance experience with EarthFresh Farms Inc. and based on general dialogue on our current banking facility. The banks—

Ms. Lianne Rood: Thank you.

Mr. Brad Wiseman: —do not have a copy of this legislation. It's not even legislation yet. It's up to us as industry to bring this to them to help them do the analysis.

Ms. Lianne Rood: I'm sorry, Mr. Wiseman. I have only a very short time here. As I said, they're very quick questions.

Does the rest of your company support this opinion today, or is this just your opinion? Are you speaking on behalf of your entire company?

Mr. Brad Wiseman: I'm here speaking on behalf of EarthFresh Farms Inc.

Ms. Lianne Rood: Wonderful.

I have one quick question for Mr. Lemaire.

Your organization represents a thousand or so companies who fully support this bill. Does any other company not support this bill, other than what we've heard today from EarthFresh?

Mr. Ron Lemaire: We have not heard from any other company.

Ms. Lianne Rood: Great. Thank you.

I'll cede my time to Mr. Lehoux.

Thank you very much.

[*Translation*]

Mr. Richard Lehoux (Beauce, CPC): Thank you, Ms. Rood.

I have a question for Mr. Lemaire.

What would be the consequences if, instead of taking place quickly, the implementation of the current bill were spread out over a period of five years, for example, as Mr. Wiseman recommends? I find that a bit peculiar. There's been a lot of talk about the banks, but the vast majority of people who have contacted us are producers or they work in the processing industry.

In your opinion, what would be the consequences of staggering the implementation of this bill?

[*English*]

Mr. Ron Lemaire: The consequences would be ongoing impacts in the U.S. with our trading relationship and payments.

We're receiving anecdotal statements from exporters on disputes over the quality or grade of a product and the payment process. They are taking 50¢ or 75¢ on a dollar and sometimes less, because they're not able to leverage the dispute resolution mechanism in the same way that they did when we had reciprocal arrangements with PACA.

That's a significant burden to the market. It does not provide stability. It does not provide the opportunity for a lot of these organizations to look at capital investments or innovation. It creates some doubt, from what individual companies have told me.

[*Translation*]

Mr. Richard Lehoux: Thank you.

Mr. Wiseman, I'm a little surprised to hear your comments today. It has to be said that we haven't heard this kind of thing very often here in this committee, and this isn't the first time we've looked at the issue of insolvency and the consequences for our producers.

What brings you here today to make this last-minute plea, if I may put it that way? The banks have to be on board, but I think they'll be able to adjust to the bill that's on the table. I don't know if I'm making myself clear, but I find that a bit peculiar.

Mr. Wiseman, why are you so concerned about this important issue for the banks?

[*English*]

Mr. Brad Wiseman: I'm sorry. Could you repeat that?

The Vice-Chair (Mr. John Barlow): Mr. Lehoux, the translation had a little problem with some of your comments. I'll stop the clock.

Do you want to try to succinctly ask your question for Mr. Wiseman again?

[Translation]

Mr. Richard Lehoux: Okay.

I'm sorry, Mr. Wiseman, but I'm surprised to see the reaction you and your company are having today with regard to the banks and the major consequences that the adoption of this bill could have on them. I'd like you to tell us a bit more about that. To be honest, you're the first person to tell us that this is such an important issue.

[English]

Mr. Brad Wiseman: I appreciate the question.

For the last few months we have had direct dialogue with the CPMA. We're very involved with the CPMA. We're on the board of the CPMA.

To move forward with an agenda.... You have a majority and then you still have less than a majority. I don't know what the exact percentage would be that this could affect. I have had direct dialogue with the members of the CPMA and the ones who have been involved with this. We've brought them direct evidence of what the issues are.

We're at the stage now where it has passed second reading, but we're at committee. We need to get it right. We need to have the analysis done by the banking institutions to ensure how they will interpret it. That is the risk.

We do not want to create a risk throughout the entire value chain where the cost of capital will affect every single level. That's the concern I have. I support the industry. We want to get it right. Let's make sure we do the analysis and get it right.

• (1915)

The Vice-Chair (Mr. John Barlow): Thank you, Mr. Wiseman.

Thank you, Mr. Lehoux.

Now it's Ms. Damoff for five minutes, please.

Ms. Pam Damoff: Thank you, Chair.

Just for context, Mr. Wiseman, could you give members of the committee a sense of EarthFresh Farms how many sales you do, what you sell and who you sell to?

They may not realize that when they're buying potatoes they're actually buying your potatoes.

Mr. Brad Wiseman: Thank you for the question.

EarthFresh Farms Inc. is a Canadian produce company based in Burlington, Ontario. We are a grower, packer and distributor of potatoes, especially organic potatoes and exclusive premium varieties, to retailers and food services across Canada and the U.S. With over 15,000 acres of our own varieties of potatoes, the company produces the largest stock of exclusive potatoes in North America.

ca. Overall, we pack and ship 450 million pounds of potatoes each year from coast to coast to feed Canadians.

We have four packing facilities, with one in P.E.I. under East Point close to Surrey, P.E.I. It's the largest fresh packing facility on the island.

Our head office is in Burlington. In Millgrove, where we grow, we have a packing facility and storage. Then we have a new facility in Atlanta, Georgia, to service throughout the east coast of the United States and the central U.S.

Ms. Pam Damoff: How long have you been CFO at EarthFresh?

Mr. Brad Wiseman: It's been over 16 years.

Ms. Pam Damoff: You do financing in the United States as well, so you do have experience with the type of financing we're looking at doing here in Canada.

Mr. Brad Wiseman: Absolutely. We have very strong relationships with Farm Credit Canada, with the Canadian banks and with U.S. institutions. We are a member of PACA. We have U.S. finance facilities to help us grow in the U.S. We make sure that our roots are in Canada, but we have direct experience and financing arrangements in the U.S. and very strong relationships, which have been based on our long-term success with banking institutions for the past 16 years that I've been there.

Ms. Pam Damoff: Just for context for members who were asking about your coming last minute, you and I met several months ago about this bill, and you did want to come so that you could express to other parties and other members your concerns with the bill.

I did ask Mr. Wiseman, but I didn't ask you, Mr. Lemaire, for your thoughts on phasing it in over a period of time to be able to do what Mr. Wiseman was talking about.

Mr. Ron Lemaire: This is the first time the concept has been proposed. Legislation doesn't happen overnight. There's the introduction, and if we move through the process, it comes out from the Senate. The runway to deliver will be approximately two years anyway. As we move through that process and introduce it, as with many pieces of legislation when coming into effect, we will have the ability leading up to that to work with all the stakeholders to educate. As an association, that's what we do.

Ms. Pam Damoff: Would two years coming into effect be okay with you, then, if that's what you're thinking it would be anyway?

Mr. Ron Lemaire: Looking at the introduction of the legislation within this Parliament and government and then the delivery of that, by the time we move, it will be the end of 2024, almost 2025, if all the ducks line up.

Ms. Pam Damoff: Okay, thank you very much.

Francis, I'll turn it over to you.

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Mr. Wiseman, Ms. Damoff has been a polite pesterer in my ear on this particular issue, and this is why you and I have met in the past few weeks. I do want to assure you that she is surely representing you and EarthFresh. I certainly appreciate Ms. Damoff. We sit close to each other. We've always sat close to each other for the past seven years, and she's never torn off my ear about a certain agricultural issue except for this one.

Mr. Lemaire, I have 50 seconds. Obviously, the purpose of this bill.... I've sat on this committee for the last seven years, and PACA, I would be a hypocrite to say I've never heard about this particular issue. On the importance of the reciprocity in the U.S. for our Canadian exporters, what does that mean to our Canadian exporters and to the U.S.?

• (1920)

Mr. Ron Lemaire: It is significant, because it provides them with the leverage. When they're negotiating on a dispute over quality and price, they are able to leverage in a way that they get access to the dispute resolution mechanism without having to post double the value in the form of a bond.

Mr. Francis Drouin: Mr. Chair, I think I'm at five minutes, and I'm good.

The Vice-Chair (Mr. John Barlow): Yes, you had six seconds, but I don't think you were going to get anything in there.

Mr. Perron, you have two and a half minutes, please.

[*Translation*]

Mr. Yves Perron: Thank you, Mr. Chair.

Mr. Lemaire, we'll be able to pick up where we left off. We were talking about areas of jurisdiction. I fail to see what the problem is. The laws of the provinces and Quebec regulate relations between merchants to a greater extent. What this bill is about is something else: the federal government would create a trust to provide financial security, and that doesn't seem problematic to me.

Where does the problem lie in terms of jurisdiction?

[*English*]

Mr. Ron Lemaire: Within the jurisdiction, if we're talking about the bankruptcy and insolvency framework, the organization must be declaring bankruptcy. Because of the jurisdiction being federal and provincial bankruptcy rules, we have to make sure that the organization is insolvent. This is why we need this tool at the federal level, to have a harmonized approach across all provinces to protect the company selling across the country.

[*Translation*]

Mr. Yves Perron: In that case, there's no problem. Some people tell us that there is a problem in terms of areas of jurisdiction, but in reality there is not.

[*English*]

Mr. Ron Lemaire: If we implement the PACA-like trust in the way it is being presented in Bill C-280, no.

[*Translation*]

Mr. Yves Perron: That's perfect. Thank you very much.

You spoke earlier about the complexity of the entire chain, which includes sellers, packers and so on, and about the importance of not changing the terminology. In addition, the bill should specify that the producer must absolutely be paid at the outset.

Do you have any other recommendations? In your opinion, do we need to make other amendments to the bill or should we adopt it as it stands? Do you have any other comments for the committee?

[*English*]

Mr. Ron Lemaire: Adopt it as is relative to the way we position the supplier. Why that's important is it will protect the first level of sale to the final level of sale. That's key in support of the entire supply chain and stability.

I will say concerning the comments made around potential food inflation, again, we've reviewed this very aggressively to make sure we are reviewing all risk. In the U.S. model, we have not seen a food inflation impact because of borrowing relative to factoring and all the other tools that the industry uses. There are tools that are used at a very limited level because of how we operate, but those tools are used today, depending on the way the company borrows and the way the company is structured, which is what I mentioned earlier around the complexity of the CPMA membership and the diversity of companies across our supply chain.

The Vice-Chair (Mr. John Barlow): Thank you very much, Mr. Perron and Mr. Lemaire.

To wrap it up, we have Mr. MacGregor for two and a half minutes, please.

Mr. Alistair MacGregor: Thank you, Chair.

Mr. Lemaire, I was glad to hear Ms. Damoff raise the topic of an economic impact. When we had Mr. Davidson here presenting on his bill, he was talking about a farmer in his riding and how economic impacts are linked to certainty. The farmer was always having questions as to whether to plant a crop because of the uncertainty of whether he would get paid.

We also had Keith Currie here, president of the Canadian Federal of Agriculture. I want to read from his testimony. He said:

Not only would this bill ensure that financial protection, but let's not lose sight of the confidence that it gives growers to go forward, not only to grow for the year, but to look at growing my business, expanding my business. The economic input that has, not only from the immediate rural area with further employment, but all the communities it's going to support and grow down the road, as well as the food security issue, both domestically and internationally.

Is there anything you want to add to Mr. Currie's comments about that link between certainty and economic impact? Have you done any kind of analysis of what this could mean, allowing local Canadian businesses to expand their operations?

• (1925)

Mr. Ron Lemaire: There's no formal analysis that has been done just because of the volume and numbers of growers and the diversity of the supply chain, but I concur with Mr. Currie's testimony, as I mentioned earlier, and that of the witnesses on June 12.

I do feel, as I mentioned earlier, that this is focused on bankruptcy protection, but it is a stability model. Delivered in the right way, looking at the risk and supporting the whole supply chain, it will enable companies to continue to invest in innovation, labour, growth, and in the event of a bankruptcy, which we've been fortunate—well, unfortunately, there's been one with Lakeside recently and a few small independent retailers. In the event of a bankruptcy, that grower, that packer, that shipper would be protected, which they currently are not.

Mr. Alistair MacGregor: Thank you.

I'll end it there, Mr. Chair.

The Vice-Chair (Mr. John Barlow): Thank you very much, Mr. MacGregor.

If you don't mind indulging me as the chair, I have one quick question for each of you.

Mr. Wiseman, you mentioned that EarthFresh operates in the United States and you operate under PACA in the United States, and all American companies operate under PACA.

Why would it be more of a risk to have this system in place in Canada than what you're already operating under in the United States?

Mr. Brad Wiseman: In Canada, EarthFresh Farms Inc. is a Canadian company. We've just set up new operations in the U.S.

Our core operations are in Canada. Our major financing model comes from Canada. With that, our U.S. operations are just in their starting stage. When we look at the banks, the priority payables are more of a concern in Canada because we've been here for decades and have been very successful.

The Vice-Chair (Mr. John Barlow): I appreciate that. Thank you.

Mr. Lemaire, you talked about the timing of this, but you obviously have a member who has raised some concerns.

Could these concerns be addressed in the regulations as it goes to the Canada Gazette? All of us have talked about how many years we've dealt with this type of legislation to get it so close to moving on. Can some of those concerns raised by Mr. Wiseman be addressed in the regulation and the further framework of the bill itself rather than delaying this any further?

Mr. Ron Lemaire: I think that's an excellent point. That was my point relative to the timing and landing strip that we have. It's not one year. Looking at legislation and regulation, we do have time. We don't have five years, but there is a window, like I said, of two years or maybe a bit longer.

The key we have to remember is, yes, potentially within regulation, we can address it, but we need to ensure that we do not handicap ourselves and remove the potential reciprocity with the U.S. In doing so, it would be a detriment to the entire supply chain that exports.

The Vice-Chair (Mr. John Barlow): Thank you very much.

Thank you to both of our witnesses for your testimony today. I appreciate your coming.

We will now suspend the meeting for about five or six minutes as we transition to in camera.

[Proceedings continue in camera]

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