GOVERNMENT RESPONSE TO THE REPORT OF THE STANDING COMMITTEE ON AGRICULTURE AND AGRI-FOOD, ENTITLED: FACING THE UNEXPECTED: ENHANCING BUSINESS RISK MANAGEMENT PROGRAMS FOR AGRICULTURE AND AGRI-FOOD BUSINESSES

The Government of Canada is pleased to respond to the Report of the Standing Committee on Agriculture and Agri-Food entitled: *Facing the Unexpected: Enhancing Business Risk Management Programs for Agriculture and Agri-Food Business*.

The Government commends the members of the Committee, and the witnesses who appeared before it, for their insight and commitment toward improving Business Risk Management (BRM) programs for agriculture and agri-food businesses. The Government appreciates the comprehensive recommendations developed by the Committee, and is working collaboratively with Provincial and Territorial (PT) governments, and stakeholders to help address the opportunities and challenges highlighted throughout the Report. Details are provided below regarding the Government's Response to the specific recommendations of the Committee in this regard.

The Response is the product of a collaborative effort among implicated federal departments, and agencies including: Agriculture and Agri-Food Canada (AAFC); Canadian Food Inspection Agency; Finance Canada; and Innovation, Science and Economic Development Canada (ISED).

In the wake of the COVID-19 pandemic, Canada's priority remains to support farmers and ensure food security for Canadians. The Government recognizes just how essential the women and men who work on farms, in processing plants, and throughout the food supply chain are to our collective well-being and is committed to supporting producers and businesses so that they can continue to provide for Canadians in what remains a challenging period. While the pandemic has had a significant impact on the agriculture and agri-food sector, the food system has proven to be resilient and has been adapting to meet these new circumstances.

Recommendation 1:

The Committee recommends that the Government of Canada establish an industry-government technical working group for Business Risk Management programs and improve public transparency around program data.

The Government acknowledges this recommendation. Industry consultation is a critical and valuable mechanism for feedback on Business Risk Management (BRM) programs, and as a result, the department regularly convenes groups to discuss changes to BRM programs. As part of the Canadian Agricultural Partnership (CAP), Federal-Provincial-Territorial (FPT) Governments agreed to undertake a Review of BRM programs. An external panel of producers, academics, and experts provided input throughout the Review, and presented its recommendations to FPT Ministers in July 2018. FPT Ministers valued this input and endorsed a work plan for FPT Governments to address the findings of the Review.

In addition, FPT officials meet regularly with the National Program Advisory Committee (NPAC), outlined as a requirement under the CAP. NPAC includes FPT representatives and producers from a range of sectors and regions. Through consultation with NPAC, officials are able to receive ongoing feedback on BRM program design, performance and potential changes to the BRM suite.

At this time, there are no immediate plans to create a new working group to discuss BRM programs. Officials are still analyzing recommendations from successive BRM Reviews, NPAC consultations, ongoing stakeholder feedback, and regular meetings of provincial and territorial counterparts. As work progresses in these areas, officials will continue to engage with the sector through existing forums and ad hoc consultations.

In addition, FPT officials continue to explore options to share and publish BRM program data, including results of official evaluations and service standards. At this time, some data for BRM programs is available through Statistics Canada and officials continue to explore ways to make available data more accessible to the public while still respecting privacy laws.

Recommendation 2

The Committee recommends that the Government of Canada immediately improve AgriStability by adjusting the program to cover losses below 85% of the historical reference margin, in order to return this margin to its pre-2013 level, and that it work to bring long-term enhancements to make the program more effective, agile, timely and equitable, recognizing that different sectors have different needs, by taking the following measures:

a. Removing the reference margin limit;

b. Working with the provinces and territories to increase the trigger level for program payments;

c. Removing or increasing the payment cap;

The Government supports these recommendation, in principle. At the Annual Conference of Canada's Federal-Provincial-Territorial (FPT) Ministers of Agriculture in November 2020, important discussions were held on short-term improvements to AgriStability. Notably, Canada tabled a proposal that is currently being considered in more detail by provinces and territories. Specifically, Canada is looking to remove the Reference Margin Limit (RML) and is prepared to make additional immediate enhancements to AgriStability such as increasing the compensation rate from 70% to 80%. Canada continues to work with provinces and territories to make changes to AgriStability that will benefit producers both in the short and long term. Ministers' agreed to build on the discussions held at the 2020 Conference by continuing to consider making immediate changes, as well as to address long-term issues on behalf of the agriculture and agri-food sector as they lead up to their next Annual Conference in Guelph, in Summer/Fall 2021.

d. Increasing amounts of advances available, allowing interim payments before the end of the season;

The Government supports this recommendation. For the 2020 program year, Canada has approved requests from provincial Governments, including Manitoba, Saskatchewan, Ontario, Quebec, Nova Scotia, and New Brunswick, to increase the interim payment rate from 50% to 75% of estimated final benefits. This understanding can serve as a template for the rapid processing of any future requests to increase the size of interim payments, in order to ensure program support is available quickly to farmers facing exceptional losses.

e. Reducing administrative burden to farmers through simplification of the application process;

The Government supports this recommendation. While Canada does not have direct oversight over the application process in the provinces that deliver AgriStability themselves, a group of federal/provincial administrators meet regularly to share best practices and discuss ways to make the program simpler and more accessible. To that end, in recent years, administrators have taken significant steps to reduce administrative burden, including a simplified application process for producers rejoining the program and by launching a pilot program in some jurisdictions to allow producers to file using tax data in the accounting method of their choice. Administrators also report on performance metrics and use these results to confirm that desired outcomes are being achieved or if further changes are required.

f. Adapting the program to improve access to small businesses; and

The Government supports this recommendation. While participation in the program varies by region and farm type, benefits to producers are intended to be equitable regardless of farm size, location, or commodity mix. Officials continue to work to improve program equity and simplify program requirements so that small or new farms find the program more accessible. Suggested changes to AgriStability may increase the likelihood of small and medium enterprises to qualify for larger payments under the revised program.

g. Ensuring that the program does not pay into profitability.

The Government supports this recommendation. Business Risk Management (BRM) programs, and specifically AgriStability, were designed to provide support to producers in situations where they face large declines in farming income for reasons such as production loss, increase costs or severe market conditions. With enhancements as proposed by the Government in November 2020, to remove the Reference Margin Limit (RML) and potentially increasing the compensation rate from 70% to 80%, the program would continue to pay only in situations where a producer faces large declines, and provide additional support to those producers in difficult times, who need it most. The concept of not paying into profitability will continue to be a guiding principle in discussions for the design and development of the next agricultural policy framework (NPF), to follow the Canadian Agricultural Partnership (CAP), which will come into force on April 1, 2023.

Recommendation 3

The Committee recommends that the Government of Canada improve and enhance AgriInvest to make it more effective, agile, timely and equitable, with the following measures:

a. **Increasing the percentage of Allowable Net Sales;**

b. **Increasing the matching government contributions; and**

c. **Increasing the maximum account balance limit.**

The Government acknowledges this recommendation. AgriInvest allows producers to save a portion of the proceeds from their annual net sales, along with a matching government contribution up to a maximum of $10,000 annually, and is meant to help producers manage smaller income declines in times of need. The Government acknowledges that Business Risk Management (BRM) programs including AgriInvest, need to work in concert to better target emerging risks that threaten the viability farms, and should be simple, predictable, and respond quickly to producers.

As of the end of December 2020, there was over $2.4 billion held by producers in AgriInvest accounts, which is the highest amount there has ever been. The total and average account balances continue to climb steadily, including increases in 2020.

As part of the upcoming Next Policy Framework (NPF) development, Federal-Provincial-Territorial (FPT) governments will be listening to producers, industry groups and stakeholder associations who have been asking for meaningful changes to BRM programs. FPT Governments have requested that analysis on alternative BRM designs be completed to inform discussions on longer-term risk management reform at their next meeting in Summer/Fall 2021. The percentage of AgriInvest allowable net sales, matching government contributions and maximum account balance will form part of these discussions.

Recommendation 4

a. **The Committee recommends enhancing access to Business Risk Management programs designed specifically for commodities or regions, such as a livestock price insurance program, that provides national coverage, with the following measures:Making the Western Livestock Price Insurance Program a permanent Business Risk Management program not dependent on renewal under each agricultural policy framework:**

The Government acknowledges this recommendation. The Western Livestock Price Insurance (WLPIP) was introduced under Growing Forward 2, allowing producers to purchase price protection on cattle and hogs. Producers pay a premium to receive forward price coverage; if the market falls below the coverage price, in the time frame selected, the producer receives a payment. The funding of WLPIP is provided through the AgriRisk program, and as with all other non-statutory programs, concludes at the end of the policy framework (e.g., Canadian Agricultural Partnership). These programs can be renewed in successive frameworks. Canada continues to work with provinces and territories to consider challenges and opportunities with this program by assessing its effectiveness and long-term sustainability.

b. **Supporting a pilot program for beef producers in the Maritime provinces coherent with the Western Livestock Price Insurance Program:**

The Government acknowledges this recommendation. WLPIP is a risk management tool that provides producers with protection against an unexpected drop in prices on cattle and hogs over a defined period of time. An expansion of this program to include Maritime provinces has been repeatedly requested by the cattle sector. A national expansion of this program would require commitment of additional support from Atlantic provinces as insurance offerings fall under provincial jurisdiction, and must be agreed upon and delivered by the provinces (or their representatives). The Government continues to undertake discussions with industry and provincial partners to explore the feasibility of providing the program in other jurisdictions.

c. **Identifying and addressing gaps in access to AgriInsurance by sector or region to mitigate the financial impact of production losses:**

The Government acknowledges this recommendation. The AgriInsurance program is managed and delivered by the provinces under a framework of federal regulations and authorities. Provinces are responsible for engaging with industry groups to identify program gaps and then propose program adjustments to improve sector and regional coverage. Before provinces can implement any AgriInsurance program changes, they must seek federal approval to ensure the changes are consistent with policy objectives and insurance principles and are actuarially sound. The Government works with the provinces during the plan approval process to ensure the proposed changes could address targeted sector or regional gaps under the program.

Recommendation 5

a. **The Committee recommends that the Government of Canada enhance AgriInsurance with the following measures: Extend production insurance for horticultural and other crops currently not covered by AgriInsurance; and;**

The Government acknowledges this recommendation. Horticulture production is already eligible under the AgriInsurance program. Provinces are responsible for developing regionally appropriate and sector specific insurance plans in response to industry needs. Insurance offerings continue to evolve and new crops can be added under AgriInsurance. Canada will consider any proposal submitted by the provinces on insurance coverage for horticulture or any other crop sectors.

In addition, FPT governments will continue to encourage the development and use of private sector risk management tools that complement the current suite of BRM programs, including private insurance offerings that provide producers with greater overall coverage.

b. Work with provincial and territorial governments to modernize the rating methodology for AgriInsurance premiums.

The Government supports this recommendation. Canada works with provinces, as they are responsible for the design and administration of the program, to reassess premium methodologies and rates under the program. For example, the Government is considering the impacts of new production practices, technologies and climate change on crop yields to determine what changes may be needed to the premium rate methodologies.

Recommendation 6

The Committee recommends that the Government of Canada review the definition of extraordinary costs under AgriRecovery so the framework can respond to impacts producers face as a result of events such as COVID-19 or animal diseases like African Swine Fever.

The Government acknowledges this recommendation and agrees it is important to ensure producers are supported when diseases such as the African Swine Fever occur and the viability of the industry is protected. The AgriRecovery framework is part of the suite of Federal-Provincial-Territorial (FPT) Business Risk Management (BRM) programs under the Canadian Agricultural Partnership. AgriRecovery is an FPT disaster relief framework intended to work together with the core BRM programs to help agricultural producers recover from natural disasters.

The core BRM programs are, in part, designed to help producers deal with the income and production losses they experience when disasters occur including animal diseases. These programs include AgriStability, a margin-based program designed to help producers manage large income declines for reasons such as production loss or increased costs. AgriStability can help Canadian livestock producers impacted by disaster events, including disease outbreaks. Participating producers heavily impacted by COVID-19 or animal diseases may receive significant support through AgriStability.

AgriRecovery cannot duplicate or replace the assistance provided by existing BRM programs for the value of lost production or income related to disaster events or animal diseases. For that reason, the focus of AgriRecovery is the extraordinary costs producers must take on to recover from disasters. Extraordinary costs are those which producers would not incur under normal circumstances and for the producer are not limited in scope to ensure the program can capture all extraordinary expenses that are necessary to:

- mitigate the impacts of the disaster; and/or
- resume farming operations as quickly as possible following a disaster.

In response to COVID-19, extraordinary costs included costs to manage livestock beyond the animal's standard lifecycle, and/or to humanely euthanize and dispose of any surplus livestock which cannot be processed due to COVID-19 outbreaks or disease control measures.

Recommendation 7

The Committee recommends that the Government of Canada enhance the Advance Payments Program (APP) to better address cash flow risk in agricultural businesses, with the following measures:

a. **Increasing the interest-free portion;**

b. **Increasing the overall cash advance limit;**

c. **Providing access to APP to all commodities.**

The Government acknowledges this recommendation. The Advance Payments Program (APP) is a federal loan guarantee program administered under the *Agricultural Marketing Programs Act* (AMPA). The Program is an important tool to increase producer access to cash flow and provide marketing flexibility, especially when facing adversity. To better assist the sector, the Government made amendments to the *Agricultural Marketing Programs Regulations* in 2019 to increase loan limits under the program. The overall loan limit was increased from $400,000 to $1 million on a permanent basis, and the interest-free limit was also increased from $100,000 to $500,000 on canola advances for the 2019 program year only. Given that the APP loan limits were last revised in 2007, the 2019 increases were made to help producers manage increased operating costs and other expenses, especially those resulting from an increasingly volatile international marketplace. The 2019 overall loan limit increase allowed an additional $713 million in total advances to be issued for the 2019 program year in comparison to the 2018 program year. Producers received just over $3 billion in total advances for 2019.

The Program provides advances on the vast majority of non-supply managed agricultural commodities produced in Canada, including field crops, fruits and vegetable, livestock, honey and maple syrup. The Program is administered on the Government's behalf by 32 third-party organizations across Canada (typically producer organizations). APP administrators have the flexibility to introduce new agricultural products under the program. The APP administrators and AAFC will collaborate to meet the demands and needs of the sector.

The *Agricultural Marketing Programs Act* includes clauses that require the provisions and operations of the Act to be reviewed every five years, in consultation with the Minister of Finance. During the upcoming review of the Act, the Government will examine if the APP provisions, including the current overall loan limit and interest-free limit, are still meeting the needs of the sector. It is expected that the review will be tabled to parliament in the fall of 2021.

<u>Recommendation 8</u>

The Committee recommends that the Government of Canada work with farm organizations to conduct a comprehensive review of the Livestock Tax Deferral Provision with the goal of ensuring that all producers in need of tax deferral due to drought or excessive moisture have access to the program irrespective of administrative boundaries, that decisions regarding deferral eligibility are timely and in sync with the production season, that the latest technologies are being used during the assessment process, and that an appeal mechanism is available to producers when they are excluded from a designation.

The Government acknowledges this recommendation and agrees that Livestock Tax Deferral is important to help producers faced with the tough decision to sell breeding livestock as a result of forage shortages due to drought or excess moisture. It is imperative that these designated regions are announced in a timely fashion so that producers have this tool to help make difficult herd management decisions.

Livestock Tax Deferral is designed to respond to drought and excess moisture events based on specific criteria which is triggered when forage yields are less than 50% of the long term average yield. As there is a tax benefit, it is important that the designation criteria be clearly defined and applied consistently among all livestock producers.

Drought or excessive moisture and flood regions are designated on the advice of the Minister of Agriculture and Agri-Food to the Minister of Finance. To be designated, the affected areas must have recognized geo-political boundaries (for example municipalities or counties) for administrative purposes.

The federal government works closely with producers, provinces and industry throughout the growing season to identify regions for designation. By partnering with regional experts, a thorough review is done to ensure that all regions meeting the criteria for Livestock Tax Deferral are designated in a timely manner.

The designation process uses a number of tools and information sources to designate regions for drought or excess moisture, including actual crop insurance yield data, and climate data such as rainfall and temperature, soil moisture levels, satellite imagery and other drought indicators. AAFC supplements these sources with producer-level intelligence through surveys conducted throughout the growing season. In addition to these extensive data, the department works closely with provinces and industry throughout the growing season to identify regions for designation. By partnering with regional experts, AAFC works to ensure that all regions meeting the criteria for Livestock Tax Deferral are designated in a timely manner.

Recommendation 9

The Committee recommends that the federal, provincial and territorial governments maintain their cost-sharing agreement for the Business Risk Management programs under the Canadian Agricultural Partnership: 60% for the federal government and 40% for the provincial and territorial governments.

The Government supports this recommendation. The 60:40 (60% for the federal government and 40% for the provincial and territorial governments) cost-share agreement has been a longstanding component of successive federal, provinces and territories multilateral framework agreements since the launch of the first Agricultural Policy Framework in 2003, leading up to the current Canadian Agricultural Partnership (CAP), and included Business Risk Management programming.

Canadian agriculture multilateral frameworks are unique in the sense that they have provided transparency and consistency to agricultural policy over last two decades. Sharing costs on a F:PT - 60:40 basis is a key part of our collaborative partnership in supporting our producers, and ensures that Federal, Provincial and Territorial (FPT) governments invest to help producers manage business risks, and secure success for the future of the sector.

Recommendation 10

The Committee recommends that the Government of Canada look at ways to facilitate access to Business Risk Management suite of programs to under-represented groups such as young farmers, women, Indigenous peoples, visible minorities and people with disabilities.

The Government supports this recommendation. Advancing diversity and inclusion in the agricultural sector remains a priority, and the Government continues to explore ways to enhance diversity by supporting underrepresented groups' participation across the agricultural value chain. To do so, the Government is working to better understand the participation, barriers, and opportunities that underrepresented groups face in the sector. For example, Business Risk Management (BRM) program guidelines contain provisions to facilitate access for new and young farmers who may not have sufficient capital or access to agricultural business knowledge, or Indigenous peoples who would not have filed the necessary tax returns under programs on which payments are based. AAFC will continue to explore ways to facilitate access to BRM programs, recognizing the importance of creating more avenues for underrepresented groups to participate in the sector.

Recommendation 11

The Committee recommends that the Government of Canada work to simplify its Business Risk Management programs with the goal of making them more user friendly, timely, bankable and predictable while ensuring the programs meet the needs of farmers with diversified operations and to improve and enhance access for small businesses.

The Government supports this recommendation. Under the Canadian Agricultural Partnership (CAP), Federal, Provincial and Territorial (FPT) governments have explored ways to make the BRM suite, and especially AgriStability, easier to use and more predictable. To that end, federal administrators adopted a simplified application process for producers who wish to rejoin the program and collaborated with select jurisdictions to launch a pilot program allowing producers to apply for the program with the accounting method they use for their taxes. Based on producer feedback, an online estimator was also launched to help producers better understand if they would be in a payment position under AgriStability. These initiatives are part of a broader commitment to improve the Business Risk Management(BRM) suite, which will continue as work begins on the next agricultural framework.

FPT governments are listening to farmers and stakeholder groups, who have been asking for meaningful changes and alternatives to the current risk management approach. FPT governments agree that programs need to improve to better target emerging risks that threaten the viability of farms, including diversified and smaller operations. Moreover, the Government agrees programs should be simple, predictable, and respond as quickly as possible for producers, while treating them fairly and equitably. FPT governments requested that analysis on alternative designs be completed to inform discussions on longer-term BRM reform at their next meeting in Summer/Fall 2021.

Recommendation 12

The Committee recommends that the Government of Canada invest in research aimed at reducing business risks in agriculture and promoting innovation amongst Canadian agriculture producers as an integral component of the suite of BRM programming.

The Government supports this recommendation. Agriculture and Agri-Food Canada is both funding and undertaking research to reduce business risk, limit losses and provide innovative solutions for producers to mitigate their risks. Research and innovation has been a cornerstone of Federal, Provincial and Territorial agricultural policy frameworks, and governments will continue to support innovation and adoption of measures that strengthens sector competitiveness and resilience, and also creates market opportunities.

Risk management programs have been a key component of multilateral frameworks, and complement investments made in research and innovation. Business Risk Management programs are not intended to impede adaptation and competitiveness, but provide support to producers as they seek to innovate. Coupled with effective BRM programs, they provide producers the confidence to invest in their farms and their futures.

AAFC administers the AgriRisk Initiatives (ARI) a five-year, $55 million program under the Canadian Agricultural Partnership supporting the development of new risk management tools. ARI has three program components: (i) ARI Research and Development (R&D) stream (ii) ARI Micrograpts and (iii) ARI Administration Capacity Building (ACB) stream. The R&D and

Micrograants components support industry and academic research and development efforts into new risk management tools, while the ACB stream funds the implementation of new risk management tools by the sector. To date the program has supported projects from sectors including pork, beef, poultry, grains and horticultural.

__**Recommendation 13**__

The Committee recommends that the Government of Canada, in collaboration with the provinces and territories, promote training of producers on risk management and available tools, including agronomic planning and financial tools such as the suite of Business Risk Management programs and private insurances.

The Government supports this recommendation. Risk Management education and training is one of the guiding principles of the Canadian Agricultural Partnership (CAP), and will continue to be a key consideration for Federal, Provincial and Territorial (FPT) governments.

Under CAP, AAFC promotes the training of producers by providing funding through contribution programs to organizations that help producers increase their knowledge of risk management. For instance, Farm Management Canada (FMC) is a not-for-profit national organization that received funding to provide leading edge training and resources to enable Canadian farmers to make sound management decisions.

AAFC recently invested $3.7 million to support two FMC projects that will give farmers and industry professionals the opportunities to share their knowledge and expertise with others, including young farmers. It will also give them access to important training to help them better manage the many risks they face. The first project, with an investment of over $1.8 million through the AgriCompetitiveness program, will help farmers build their business management skills and practices by facilitating the sharing and expansion of skills, knowledge and best practices throughout the sector. The second project, funded for an additional $1.8 million through the AgriRisk Initiative's Research and Development Stream, will use an online risk management platform to provide farmers and professionals with training to identify, assess, prioritize and create comprehensive risk management plans.

These projects are intended to enhance producers' education on risk management in the sector, enable them to better develop risk management plans and help them manage the wide range of risks they face every day. The educational projects build on this year's Agriculture Excellence Conference theme, *Prosperity with Purpose*, which focuses on taking a proactive approach to farm business management to build the confidence and underlying capacity to weather storms, seize opportunities, and be well-positioned for continued success. Canada aims to help the agricultural sector to: leverage, coordinate and build on existing capacity; enhance safety; adapt to changing commercial and regulatory environments; seize new opportunities; share best practices, and provide mentorship opportunities.

Recommendation 14

The Committee recommends that the Government of Canada support young farmers and new entrants with the following measures:

a. Looking at reducing AgriInsurance premiums;

The Government supports this recommendation. AgriInsurance is exclusively delivered by provinces. The federal government pays 36% of premium costs and 60% of administration costs. Provinces pay 24% of the premium costs and 40% of the administration costs and producers pay 40% of the premium costs, and none of the administration costs. Since provinces are responsible for the design and administration of their programs, they are also accountable for the financial management. Canada is currently working with provinces to reduce the provincial AgriInsurance reserve funds. This will be achieved through discounts on the AgriInsurance premium producers pay. In addition, longer-term changes to the premium rate methodologies could result in lower premiums for some producers, and any changes would be considered under the next agricultural policy framework.

b. Waiving AgriStability fees;

The Government acknowledges this recommendation. To ensure the AgriStability fees are fair and equitable, the fees paid by producers are based on their Reference Margin, and scaled to their coverage level. In general, producers pay a reasonable fee, calculated at $3.15 for every $1,000 of program coverage, along with an ($55) administration fee. Charging a fee for this program is stipulated in the governing rules laid out in the *Farm Income Protection Act*.

c. Providing educational support to bolster a better understanding of Business Risk Management programs and best practices; and

The Government supports this recommendation. Canada is committed in investing in Business Risk Management education to support farmers in managing risks by adopting best practices. As outlined in the response to Recommendation 13, the Government has made significant investments of $ 3.7 million to support projects that are intended to enhance producers' education on risk management in the sector, enable them to better develop risk management plans and help them manage the wide range of risks they face every day.

d. Making the AgriInvest program more accessible to young farmers.

The Government supports this recommendation. Business Risk Management (BRM) program guidelines contain provisions to facilitate access for young and beginning farmers who may not have sufficient capital or access to agricultural business knowledge, and the Government will continue to explore ways to facilitate access to BRM programs, including AgriInvest.

As part of discussions for the next agricultural policy framework, Federal, Provincial and Territorial representatives will be reviewing the effectiveness and accessibility of the all BRM programs, including AgriInvest. Ensuring that young and new farmers have greater access to BRM programs will form a key consideration.

<u>Recommendation 15:</u>

The Committee recommends that the Government of Canada implement a statutory deemed trust to provide financial protection for produce farmers and sellers in the event of buyer insolvency or bankruptcies.

The Government acknowledges this recommendation, and is well aware of the concerns of fresh produce farmers and sellers with respect to financial protection in the event of buyer insolvency or bankruptcies. The issue of the establishment of a statutory deemed trust has to be considered in the context of objectives and purposes of Canada's insolvency laws -- the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA) – which fall under the authority of the Minister of Innovation, Science and Industry.

Canada's insolvency laws aim to strike the appropriate balance between the competing interests of debtors and creditors. Canada's insolvency laws enhance the ability of Canadian businesses, including in the agriculture and agri-food sector, to access credit, invest and create jobs, while ensuring that creditors and other stakeholders are treated equitably. Accordingly, any changes to insolvency and restructuring law must be evidence-based and consistent with domestic and international policy objectives and commitments.

The BIA provides for the orderly liquidation of insolvent debtors, where a restructuring is not viable, through an equitable distribution of the debtor's assets by a pro rata sharing of losses by creditors of equal rank. The BIA provides special treatment to Canadian farmers, fishers, and aquaculturists through a limited super-priority (i.e. amounts owed to these producers for farm and fish products delivered within 15 days of a bankruptcy are paid ahead of secured creditors out of the proceeds of inventory). The BIA also permits unpaid suppliers of goods (including fresh produce sellers) to recover unsold, identifiable goods from a bankrupt purchaser within 30 days of delivery.

With a deemed trust, an unpaid fresh produce seller would have very significant advantages over most other creditors of an insolvent fresh produce buyer. In addition to fresh produce sellers being paid ahead of secured creditors, the proposed deemed trust would also subordinate super-priorities that were put in place for compelling public interests, including deemed trusts for employee withholdings and limited super-priorities for unpaid wages and unpaid regular pension contributions.

A deemed trust would have significant impacts on credit markets and the recovery of third-party creditors. The proposed deemed trust would reduce lender collateral in favour of fresh produce sellers, which would generally result in reduced credit availability and/or higher credit cost for the fresh produce sector. Lenders of fresh produce sellers would likely reduce the amount of credit available to satisfy other creditor claims and would also likely result in more onerous business terms and conditions from lenders and suppliers on future transactions with the fresh produce sector.

Effective insolvency policy strives to limit super-priorities to situations with compelling public policy objectives. Super-priorities are extraordinary remedies that can have a significant effect on credit cost and availability and shift losses to other creditors. Accordingly, special insolvency treatment must be supported by evidence that justifies the special circumstances of the creditor and demonstrates that market-based measures to reduce the creditor's insolvency risks would be ineffective.

To date, there has been insufficient evidence provided to support changes to the insolvency legislative framework. Insolvency losses within the Canadian fresh produce sector are small, with total losses to all creditors in fresh produce insolvencies making up less than 0.1% of total sales in recent years. Also, greater insolvency protections would not protect sellers against losses outside of insolvency due to fraud, disputes over quality, or slow payment.

Officials from Innovation, Science and Economic Development (ISED) and AAFC have had extensive dialogue with representatives of the Canadian Horticultural Council (CHC) and the Canadian Produce Marketing Association (CPMA) to examine concrete ways to address these concerns. During these various meetings, AAFC and ISED officials re-iterated the policy implications the creation of a deemed trust would have on the BIA and ensured that the Canadian fresh produce industry understood that any future policy consideration would require compelling and significant evidence of widespread harm. The fresh produce industry was also invited to identify other potential options that might help to address financial protection for produce sellers. The produce industry has yet to fully demonstrate significant or widespread harm to the sector, or present alternative, feasible options that could address financial protection for produce sellers.

The Government has nevertheless taken steps to address this issue. Under the *Safe Food for Canadians Regulations*, fresh produce sellers and buyers who trade inter-provincially and internationally are required to be members of a single dispute resolution body, the Fruit and Vegetable Dispute Resolution Corporation. This in itself provides additional protection for our fresh produce farmers and sellers. The Government is ready to continue the exploration of additional ways to address the concerns of the sector and to continue to engage with industry stakeholders.