



July 15, 2014



Mr. Paul Halucha
Director-General, Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor, East Tower
Ottawa, Ontario K1A 0H5



Dear Mr. Halucha:

The Holland Marsh Growers Association would like to thank Industry Canada for the opportunity to comment on the consultations for the statutory review of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. As a farmer-driven organization working in the dynamic fresh produce industry, we believe that the results of the Minister for Industry's report will have important effects for farmers and for ensuring the financial health of the industry overall. Our association represents more than 100 farmers in the Holland Marsh – which is north of Toronto, Ontario.



In addition to providing a diverse supply of healthy food for Canadian consumers, Canada's fresh fruit and vegetable sector makes an important contribution to national economic output and employment. According to a Conference Board of Canada report, in 2013, the fresh produce sector directly supported 76,700 jobs and contributed \$4.8-billion in direct GDP. And, the impact on the Canadian economy, especially in rural communities, is much larger. Once the indirect benefits of payments to suppliers and workers wages are factored in, the produce sector supports 147,900 jobs and creates \$11.4-billion in real GDP. The multiplier effect of Canada's produce sector output is that every \$1-million increase in sales generates \$2.4-million in real GDP.



Integrated supply chains with the United States are essential to ensuring export markets for Canadian farmers and a year-round supply of affordable fresh produce for Canadian consumers. Canada sells approximately 40 per cent of its fruit and vegetable production to the United States – about \$1.5-billion in sales in 2012 – while Canada imported nearly \$3.5-billion from the U.S. in the same year. Like so many others, our members operate within this integrated market, importing and exporting (maintaining the 7/24/365 day supply chain to Canadian retailers) to the tune of nearly \$500-million in produce over the past 5 years. That is more than \$100-million per year – of mixed vegetable production from Asian crops to New York to carrot and onions throughout the Eastern U.S. seaboard. For an area of concentrated farming, such as the Holland Marsh is, that is exceptionally remarkable – but what is more so is the ability to do more, so long as the impediments and barriers are removed or at least brought level with our competition.



Holland Marsh
Vegetables --
Treasure Them

The unique characteristics of the fresh produce sector also make it vulnerable to payments disruption. Produce sellers operate in a volatile financial environment. Low profit margins are the norm for farmers, normally between 3 and 5 percent of sales, and many rely on a single buyer to purchase their entire crop. That situation is not uncommon within the Holland Marsh, where a handful of grower/packer/shippers buy the thousands of acres of crop grown by the rest of the farming community. It is unique in many ways – but highlights the ever-growing danger that farmers are facing due to unscrupulous



Growers'
Association

12-16715 Yonge Street,
Suite 296
Newmarket, ON
L3X 1X4

Phone: 905-251-6786



middlemen whose only interest is how big their piece of the pie and damned the consequences of the actions.



Furthermore, the perishable nature of the product contributes to vulnerability – which again makes for the uniqueness about the sector. It is not grain or oilseed that can be kept in a silo for a few years and used for something else, such as ethanol or feed. Of the more than 65 different crops (and more than 200 varieties) grown in the Holland Marsh, the majority have a limited shelf life, with only the largest acreage of carrots and onions having any storability whatsoever. Fresh produce has a shelf life measured in hours and unpaid shipments cannot be repossessed and resold. Because of the distance between production and markets, and the short Canadian growing season, trade is fast moving and often results in expedited agreements and documentation. While we, like others in our industry, take due diligence seriously and reduce our risks wherever possible, it is not possible to eliminate them entirely.



Yet despite the volatile environment, the rate of business insolvencies in the fruit and vegetable sector is lower than the national average and much lower than sectors such as utilities, manufacturing and construction. However, compared to other suppliers, fruit and vegetable farmers are hit particularly hard when a buyer declares bankruptcy because repossession of shipments is impossible. A single bankruptcy can devastate not only the farmer, but all the businesses connected to them.



In the U.S., produce shippers are protected by a statutory deemed trust established through the *Perishable Agricultural Commodities Act* (PACA). The PACA limited deemed trust helps suppliers of perishable products ensure prompt payment by buyers by making suppliers' interests in a debtor's produce related assets superior to those of other creditors.



When shipping to the United States, Canadian firms receive the same PACA trust benefits as U.S. entities do. Yet there is no reciprocity from U.S. companies shipping to Canada, a key issue that U.S. suppliers, with their large Canadian market presence and concerned about the higher financial risks from operating in Canada, would like to see addressed. Failure to do so could result in Canada losing its preferred access under PACA, adding costs and complexity that Canadian firms can't afford when exporting to the U.S.



Our members believe that the most effective way to provide protection to farmers and produce sellers is through the creation of a statutory deemed trust to ensure that bankruptcy assets are secure and accessible. Our experience with PACA, in the United States, and with bankruptcies in our own sector in Canada has convinced us of this. Over the past two decades, the farming community in the Holland Marsh has experienced several significant bankruptcies (and closures) that has left more than \$28-million directly to farmers and those throughout the value chain – as they are not listed as creditors due to the very nature of the industry. In fact, it has been devastating, and while most do not talk about the “bad business” dealings, it is never forgotten. Yet, we have had a couple of our members actually succeed in the U.S. through the PACA Trust – at a time when they felt it would be virtually impossible to see any financial benefit or gain, and while, in Canada, there is always arbitration, it is not viable IF the individual or business in question suddenly goes bankrupt. What usually happens, in Canada, is that

Holland Marsh
Vegetables --
Treasure Them



Growers'
Association

12-16715 Yonge Street,
Suite 296
Newmarket, ON
L3X 1X4

Phone: 905-251-6786



the individual involved closes one numbered company and reopens under another name or numbered corporation within the next week – an experience that has been seen in the Holland Marsh for decades. It never seems to end, new farmers are roped into scenarios that others have already experienced but, as always, the line goes something like this: “but he seemed very nice and genuine, and he was able to move my product at a time when it wasn’t moving, and, frankly, I didn’t see it coming until it was too late. What do I do?”

That is why, at this time, we urge the Government of Canada to amend the Bankruptcy and Insolvency Act in order to establish a deemed trust mechanism in order to provide transparency and security to the buyers and sellers of fresh produce. It is the only option that guarantees access to all suppliers, and does not require government funding or administration. Secure payments in the fresh produce sector will:

1. Protect rural communities,
2. Support thousands of Canadian businesses of all sizes,
3. Ensure affordable, high-quality produce for Canadian consumers and
4. Prevent disruptions of domestic and cross-border agri-food supply chains.

We also understand that the Canadian Horticultural Council, the Fruit and Vegetable Dispute Resolution Corporation, and the Canadian Produce Marketing Association are preparing a larger submission on behalf of the industry and we support the principles of that submission. We would add more but why bother. Simply put, were this in legislative form over the past two decades, it would have been a different scenario for this farming community and so many others in Canada – putting us on the same level playing field as our brethren in the grain and oilseed and livestock sector, which have been accorded unprecedented levels of support from the Canadian government. We merely ask for the same consideration – as the nation’s growers of health care.

Thank you for your consideration.

Sincerely,

Alex Makarenko
Chair, Holland Marsh Growers’ Association

Holland Marsh
Vegetables --
Treasure Them



**Growers’
Association**

12-16715 Yonge Street,
Suite 296
Newmarket, ON
L3X 1X4

Phone: 905-251-6786