IPR fresh
FRESHNESS DELIVERED
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Mr. Paul Halucha
Director-General, Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor, East Tower
Ottawa, Ontario K1A 0H5
By email: insolvency-insolvabilite@ic.gc.ca

Dear Mr. Halucha,

IPR Fresh 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 company working in the dynamic fresh produce industry, we believe that the results of the Minister for Industry's report will have important effects for us as a company and for ensuring the financial health of the industry overall.

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 key to ensuring export markets for Canadian producers and a year-round supply of affordable fresh produce for Canadian consumers. Canada sells approximately 40 percent 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 company also operates within this integrated market, exporting $2.5 MM in produce from the US in the last 5 years.

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 producers, normally between 3 and 5 percent of sales, and many rely on a single buyer to purchase their entire crop.

Furthermore, the perishable nature of the product contributes to vulnerability. 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 producers are hit particularly hard when a buyer declares bankruptcy because repossession of shipments is impossible. A single bankruptcy can devastate not only the producer, 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 trust helps suppliers of perishable products ensure prompt payment by buyers by making suppliers' interests in a debtor's assets derived directly from the sale of produce superior to those of other creditors, including secured creditors ("super priority"). Those assets available to trust creditors would be limited specifically to produce accounts receivable, and any cash and inventory from the sale of the produce.

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. Further, some U.S. suppliers, have signaled their intention to reduce or eliminate their shipments to Canada. This creates higher prices, and lower selection and quality for Canadian fruit and vegetable consumers.

Our company believes that the most effective way to provide protection to produce sellers is through the creation of a statutory deemed trust to ensure that bankruptcy assets are secure and accessible. Our experience with PACA and with bankruptcies in our sector in Canada has convinced us of this.

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 agrifood 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.

Thank you for your consideration.

Sincerely,

Jose Luis Obregon
President
IPR Fresh