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# **Standing Committee on Agriculture and Agri- Food**

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**EVIDENCE**

**Monday, May 9, 2016**

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**Chair**

**Mr. Pat Finnigan**



## Standing Committee on Agriculture and Agri-Food

Monday, May 9, 2016

• (1530)

[English]

**The Chair (Mr. Pat Finnigan (Miramichi—Grand Lake, Lib.)):** Welcome, everyone, to our Standing Committee on Agriculture and Agri-Food.

[Translation]

I would like to thank the witnesses for being with us here today.

[English]

With us this afternoon we have from the Department of Agriculture and Agri-Food, Mr. Fred Gorrell, assistant deputy minister, market and industry services branch.

From Innovation, Science and Economic Development Canada, we have Mark Schaan, director general, marketplace framework policy branch, strategic policy sector, and also have Mr. Paul Morrison, senior policy analyst in the corporate, insolvency, and competition policy directorate, strategic policy sector—that was a long one.

They are here to tell us what PACA, the Perishable Agricultural Commodities Act, is and to answer our questions.

We will start with a 10-minute opening statement, if you wish.

The floor is yours. Thank you.

**Mr. Fred Gorrell (Assistant Deputy Minister, Market and Industry Services Branch, Department of Agriculture and Agri-Food):** Thank you very much, Chair. I'm very happy to be here.

[Translation]

Thank you for the opportunity to discuss financial protection measures for Canada's fresh produce sector.

The Canadian fresh produce sector is an integral component of our agriculture and agri-food sector. In 2014, the Canadian fresh produce industry produced \$4.4 billion of fresh fruits and vegetables. In the same year, Canadian global exports of fresh fruits and vegetables were \$1.6 billion, of which almost 95%, or \$1.5 billion, went to the United States.

Canada's primary vegetable exports to the U.S. are greenhouse tomatoes, peppers and cucumbers, as well as mushrooms. Canada's primary fruit exports to the U.S. are predominantly blueberries, followed by cranberries and apples. Canada also imported \$6.6 billion of fresh fruits and vegetables, 55% or \$3.6 billion of which was from the United States. The horticulture industry benefits from access to numerous federal and cost-shared programs.

Since 2007, federal-provincial-territorial governments have provided \$1.3 billion in support through business risk management programs to producers of fruits, vegetables and potatoes. In 2014, horticultural producers were advanced \$131 million through the advance payments program. Additionally, the horticulture industry has received \$37 million from our department for innovation and marketing initiatives.

Finally, the sector also has access to the AgriRisk initiatives program which supports industry in its efforts to research, develop and implement new agricultural risk management tools.

[English]

The U.S. Perishable Agricultural Commodities Act, also known as PACA, is a legislative mechanism for the fresh produce industry to resolve non-payment and is administered by the U.S. Department of Agriculture.

It requires licensing of all buyers, it can suspend or revoke buyer licences for non-payment, and it provides mitigation and arbitration services between buyers and sellers. It also includes a deemed trust, which requires buyers' property to be held in trust to secure payment of any amount owed to a seller ahead of all other creditors. PACA addresses non-payment by both solvent and insolvent buyers.

Under the Canada-U.S. regulatory co-operation council initiative, Agriculture and Agri-Food Canada and the U.S. Department of Agriculture committed to establish comparable approaches to achieve the common goal of protecting Canadian and U.S. fresh produce sellers and buyers that default on their payment obligations.

As part of our commitment, between 2012 and 2014, the Government of Canada amended the Canadian Food Inspection Agency's Safe Food for Canadians Act to provide authority for regulations that will require membership in a third-party single-dispute body for fresh produce sellers who trade interprovincially and internationally.

Currently the Canadian Food Inspection Agency's licensing and arbitration regulations require buyers of fresh produce who sell interprovincially or internationally to be members of the dispute resolution corporation, or be licensed by the Canadian Food Inspection Agency. Both entities provide dispute resolution services and can require the posting of financial security by buyers as a risk mitigating measure. Unfortunately certain buyers have used the dual entities to evade seller payment and posting of financial security.

Exemptions within the current licensing and arbitration regulations have also permitted fraudulent activities. For example, buyers who buy produce from sellers located within their province are able to trade internationally and interprovincially without a DRC membership or a CFI licence, and therefore, they do not adhere to the trading rules pertaining to payment.

The Government of Canada is committed to the continued financial viability of the fresh produce sector. The government's priority is to implement the Safe Food for Canadians Act regulations. The regulations will require sellers and buyers of fresh produce, who trade interprovincially or internationally, to be members of a single-dispute resolution body, likely the DRC.

These regulations will ensure the adherence of fresh fruit and vegetable buyers to a unified set of trading rules that govern against slow, partial, or no payment by buyers, with strict penalties for buyer non-payment. This approach should address the majority of non-payment issues faced by sellers of fresh produce.

• (1535)

Non-payment also occurs between fresh produce sellers and buyers at the interprovincial level, but interprovincial trade does not fall within the federal government's jurisdiction. The Government of Canada will work with the provinces to create a comprehensive national framework that will help to ensure all Canadian buyers of fresh produce adhere to fair and ethical trading practices.

[Translation]

As of October 1, 2014, the U.S. no longer permitted Canadian fresh produce sellers free access to the formal dispute resolution process of PACA because they did not consider the Government of Canada's financial protection approach as comparable to theirs. Canadian companies trying to recover unpaid bills that are not resolved at the informal dispute resolution stage now need to post a bond to move forward with a formal claim.

Canadian sellers of fresh produce still have access to PACA and its dispute resolution services as well as the deemed trust. No interruption in trade or increased incidences of non-payment has been found subsequent to the October 1 announcement.

Regarding Canada's fresh produce sector's ability to recover any non-payments from U.S. buyers, statistics provided by the U.S. Department of Agriculture reveal that 90% of non-payments are resolved at the informal dispute resolution stage at no cost to the Canadian industry to initiate the process.

Further, the trade of fresh produce between Canada and the U.S. has continued to rise over the last four years, by 55% for fresh fruits and 26% for fresh vegetables, showing that the U.S. remains an important market for Canadian fresh produce.

The Government of Canada continues to explore approaches that will enhance financial protection for sellers of fresh produce and any decisions will be evidence-based.

Thank you.

[English]

**The Chair:** Thank you.

Mr. Schaan.

• (1540)

**Mr. Mark Schaan (Director General, Marketplace Framework Policy Branch, Strategic Policy Sector, Innovation, Science and Economic Development Canada):** Mr. Chair, we're splitting our time, if that's okay.

**The Chair:** Sure. Go ahead.

**Mr. Mark Schaan:** Excellent.

Honourable members, I also appreciate this opportunity to build on the remarks of my colleague from Agriculture and Agri-Food Canada and to talk a little bit about the marketplace framework supports in place for all sectors, but particularly from a fresh produce perspective.

To start, it should be noted that our marketplace frameworks are, for the most part, laws of general application working to support an efficient and effective marketplace, with predictability and stability for business, and sufficient transparency and protections for consumers. While Canada's insolvency regimes contain strong protections for creditors, including fresh produce sellers, some stakeholders have advocated for a perishable agricultural commodities act, or PACA-like system. Here it's worth elaborating how our insolvency regime works and why the adoption of a PACA-like system could pose some challenges.

The insolvency regime provides an orderly, transparent set of rules for distributing assets of an insolvent business amongst creditors. Because it deals with the rights of creditors, the integrity of the insolvency regime is crucial for well-functioning credit markets, a growing economy, and an innovative business environment. To this end, the insolvency regime seeks to balance competing interests amongst creditors while being mindful of the economy as a whole.

[Translation]

In addition to the cost sharing programs and regulatory protections discussed by my colleague at Agriculture Canada, insolvency law contains financial safeguards for suppliers and farmers.

[English]

The Bankruptcy and Insolvency Act gives suppliers of goods the right to repossess those goods under certain conditions. Canadian farmers, fishers, and aquaculturists have a deemed trust over the inventory of a bankrupt debtor for products delivered within 15 days of a bankruptcy or the appointment of a receiver.

[Translation]

As you can see, the system already attempts to look at all interests in its aim for balance and strong economic outputs. That said, we have continued to investigate whether additional innovations are required. The government has taken a considered, evidence-based approach to assessing financial protection options for all players in insolvency, including for produce suppliers.

[English]

For example, financial risk mitigation options were studied by federal-provincial working groups between 2007 and 2009. The industry's financial losses due to insolvency were found to be very small. It was reported that greater insolvency protections would not protect sellers against more significant sources of loss, such as fraud, disputes over quality, or slow payment. Financial protection for produce sellers was included in the agenda of the regulatory co-operation council, or RCC, in 2012.

In public consultations on insolvency legislation held in 2014, stakeholders were asked about increased protections for fresh produce sellers in insolvency. The adoption of a PACA-like regime was supported by the fresh produce industry. However, lenders, legal experts, and insolvency professionals urged caution due to potential negative economic implications. In particular, there were concerns that a PACA-like system could result in the shifting of losses amongst creditors. Lenders and creditor groups cautioned that altering priorities in insolvency could have a negative impact on the costs and availability of credit for business.

While there have been some studies and mixed views on pursuing a PACA-like system in Canada, particularly in insolvency, it is also important to note that PACA is a comprehensive regulatory regime that goes beyond insolvency. The U.S. PACA deemed trust applies in all cases of non-payment, such as for quality disputes, fraud, and slow payments. A deemed trust and insolvency would not protect against these losses. A PACA-like system such as this would fall outside of federal insolvency jurisdiction and require provincial legislation.

[Translation]

As my colleagues have already noted, we continue to engage with the fresh produce sector to understand their business and how best to ensure they achieve solid market outcomes.

With respect to any specific proposal for changes in insolvency, we will continue to consider evidence-based proposals that can further the goals of this important marketplace framework.

[English]

Thank you. We will certainly be pleased to take any questions you may have.

**The Chair:** Thank you, Mr. Schaan.

Mr. Morrison, did you want to add something?

**Mr. Paul Morrison (Senior Policy Analyst, Corporate, Insolvency and Competition Policy Directorate, Strategic Policy Sector, Innovation, Science and Economic Development Canada):** No, thank you, sir.

**The Chair:** Thank you.

We'll start our question period with Mr. Warkentin, for six minutes.

**Mr. Chris Warkentin (Grande Prairie—Mackenzie, CPC):** Thank you very much and we certainly appreciate your coming in this afternoon. It was late notice, but we appreciate the fact that you've come and they've given us some time to ask some questions.

We're going to have an opportunity to hear from the industry here shortly, so we'll probably get a different perspective in terms of the expectations and maybe their assessment as to the benefit of a PACA-like system and/or the challenges to implement one. There seems to be a significant demand. As a matter of fact, every time I've met with anybody who's involved in fresh produce, they bring up PACA. It seems to be something that is largely their number one concern. Obviously you've heard that and I think you've reflected on that somewhat.

I would turn to Mr. Schaan.

In your testimony, you've said that lenders and creditor groups caution that altering priorities in insolvency could lead to negative impacts on the constant availability of credit for businesses. That is often the case, as any time that you bring in creditors and the banks, they often say that if you change things, it will be more difficult for them to give money to those people who are looking for that.

You've talked about evidence-based decision-making. They've said this, but did they give you any assessment as to how much more difficult it would be for them to lend? Obviously, the American banks are lending to their produce farmers. Have they given you any indication as to what they would have to alter for a PACA-like system to be implemented?

• (1545)

**Mr. Mark Schaan:** I'll say a couple of things. With respect to the cost of credit, one of the tricky aspects of a marketplace framework like insolvency is that we're constantly balancing the interests of all creditors across an insolvency. As you can imagine, for an insolvent firm, it is often the worst time possible to be having to make determinations about how to divvy up assets because there's obviously no going concern for the firm. We're no longer able to allow for that firm to potentially enter out of a CBCA or CCAA process. They are insolvent.

Our statute essentially plays that balancing act of trying to ensure that we can look across the shifts across all creditors. The cost of credit is one issue among many. Super-priorities and deemed trusts that favour some creditors over others in insolvency can have significant negative economic impacts on credit costs, but they also shift losses among creditors. As such, they are exceptional remedies that are usually reserved for compelling policy objectives.

We actually did see, when we increased the overall amount of lost wages that were eligible under insolvency, that there was an actual rise in the cost of credit. There has been some evidence that increasing super-priorities or adding deemed trusts into the system does create additional risk for lenders and has, in some cases, resulted in additional costs to creditors.

**Mr. Chris Warkentin:** Yes, it'll be interesting to see what the dollar figure would look like. Obviously, that's important information when we talk to farmers that are looking for this protection. They'd like to know their cost of credit, how you're assessing the increase, the ability to get credit, and how that would change if, in fact, something like this were to be implemented.

Any time we're doing business with the United States, when we have freer trade as we look to freer trade, the challenge is that our farmers are expected to compete with American farmers and the American farmers have this PACA protection. They also seem to be able to get money from the lenders. I guess the question is, how could we better reflect the Canadian system to mirror that of the United States?

The challenge is that we expect our folks to be competitive with the United States, but we don't seem to be giving them all of the tools that the Americans seem to be giving their produce farmers.

Obviously, we have a different type of system. We have both provincial and federal jurisdictions that are incorporated. If there are provisions at the provincial level that need to be undertaken, what would you suggest we recommend to the minister responsible for interprovincial trade to encourage our provincial counterparts to undertake if, in fact, it does fall into provincial jurisdiction? Where do the hang-ups seem to be?

**Mr. Fred Gorrell:** First, you started off with a very good comment about managing our expectations among what we've been doing in industry. That's a very good part of the discussion and why we're here today.

Relative to the provinces, the one area where we've noticed a hole, if I may say, in our system is for interprovincial trade; that's within a province. One of the things we're looking at, especially with the large provinces, is whether there is a possibility that the provinces could reference, for example, that you would have to be licensed with the DRC, if that ends up being our single body.

That means if you're trading within a province, you still would have to be a member of the DRC and you would be obligated to follow the rules of trade as incorporated across Canada. It doesn't deal with the PACA thing, with the trust provisions; that's really on bankruptcy and insolvency. However, that is one of the areas we've identified where there is possibly a hole that we are trying to close.

• (1550)

**Mr. Mark Schaan:** I'll take a stab at that with respect to the insolvency portion. One of the comments I made at the close of my remarks was that PACA is not just about insolvency-related disputes. There's a significant amount of PACA that's actually about pre-insolvency-related disputes.

As my testimony indicated, insolvency-related costs associated with fresh produce are extremely low. They're a very small proportion of the overall amount of business. On the non-insolvency-related pieces, there are aspects that are very much within provincial jurisdiction.

**The Chair:** Thank you, Mr. Schaan and Mr. Warkentin.

Next is Mrs. Lockhart.

**Mrs. Alaina Lockhart (Fundy Royal, Lib.):** Mr. Gorrell and all of you, thank you very much for your testimony.

Mr. Gorrell, you mentioned in your testimony that Canadian companies trying to recover unpaid bills that are not the result of the informal resolution stage now need to post a bond. I understand that's double the value of the claim. Is this a viable option for producers?

**Mr. Fred Gorrell:** Yes, and with an explanation, if I may. One of the things we've lost now is that Canada is being treated like all other countries. All other countries, including Canada, have access to PACA, the informal process, and we have the ability to have complaints dealt with.

In the United States, there is a regulatory requirement for the people who are licensed under PACA to pay their bills. However, there are always going to be some times when there are problems or things that we can't understand. Right now, for example, if you have a complaint for \$10,000, you do have to post a bond for \$20,000. If you're found to be in the right, that money of course is returned to you. Is it the best type of thing? No, but it is levelling the playing field with all the other countries such as Mexico and that.

We've been looking at it and we've been following up with PACA every month. We call them. My office has been talking to them, very much because we're trying to get what is the impact of us no longer having free access to the formal process. The number of complaints registered is very low. We're looking at three to seven. The total numbers are about \$160,000 in total. Right now, we are tracking this.

I understand for some small companies that double the bond could be a significant amount, but in the context of the entire fresh fruit and vegetable industry and what we're trading between Canada and the United States, it is a very small amount of money. But I'm not belittling the fact that it can be a significant impact to a producer.

**Mrs. Alaina Lockhart:** Yes, I would think that it would have a particular impact on smaller producers, obviously.

You said that it takes us onto a level playing field with all the other countries, but isn't it true that we were in a preferential position before? That doesn't sound advantageous to me.

**Mr. Fred Gorrell:** If I may, one of the conditions.... Actually, this has been going on for a number of years. This hasn't just been starting. At the end of the day, our legislative base in the United States is different. They've always said that our system was close to theirs—close, but not the same—and at the end of the day we are being treated as all other countries that trade with the United States are being treated.

As one point you could say, at least from the point of view of the United States, it's very fair. I know we're not talking about the United States today, but they're making the same rules for all of us.

On what they took away from us, as they finally said, under the RCC, we agreed to comparable outcomes, and that's because we have limitations in our legislation, as my colleague said, from the bankruptcy and insolvency side. We talked about having comparable outcomes, and what that meant for us is looking at the Safe Food for Canadians Act regulations. We believe that with the implementation of that and the single dispute resolution body that's responsible for all licensing will greatly reduce the majority of all the no-pay, slow-pay, and partial payments, which is a big issue.

The real issue for the United States is the fact that we do not have comparable or similar bankruptcy and insolvency. That is the one area where the United States has deemed they would require to be a comparable system, and that is the area that we are at this time not able to respond to.

**Mrs. Alaina Lockhart:** What I think I hear you saying is that there's really nothing that we're pursuing from a regulatory standpoint that would take us back to having that.

•(1555)

**Mr. Fred Gorrell:** Correct, and right now we are doing everything we can, as I indicated to your colleague, to fill the hole from a provincial point of view.

Relative to getting deemed trust back, the United States and the USDA have been very clear that they would be looking for a deemed trust to allow us to have a conversation on whether they would give us back the treatment we had previously.

**Mrs. Alaina Lockhart:** Thank you.

**The Chair:** Madam Brosseau.

[Translation]

**Ms. Ruth Ellen Brosseau (Berthier—Maskinongé, NDP):** Thank you, Mr. Chair.

I would like to thank the witnesses for being here today. I think this is an important study.

[English]

I remember in the last session we talked a lot about PACA at the agriculture committee and the importance of moving forward and then, whenever we meet with farmers, it is something that comes up quite often.

I don't know if you'd be able to answer this question, but I know some farmers have lost money. Would you be able to tell us how much has been lost over the last two years by farmers? I've heard stories and I've met with a lot of people. There are some examples of people in British Columbia, and Driediger Farms—Blueridge

Produce was forced to accept only \$60,000; therefore, they lost \$67,632. In Ontario there are losses of \$27,000. Is that something you have access to?

**Mr. Mark Schaan:** I can't speak to the specifics of those instances that you've talked about as to whether or not they're insolvency related or potentially a function of non-payments, low payment, or fraudulent payments. What I can speak to is the produce insolvencies as a function of total liabilities in insolvencies.

For wholesalers, the net liabilities is a percentage of the total sales in 2014. That's all of the liabilities minus the assets on hand. That's all liabilities, including rent and any of the outgoing liabilities. If we take the full definition, and even if we assume all of those liabilities were potentially to farmers, which would not be the case because that would include all liabilities, as a percentage it represented 0.04% of 2014 sales in the wholesaler category.

In the supermarket category it represented 0.06% of that category, and for fruit and vegetable markets it was 0.61%. So as a total percentage of total sales, the net liabilities are a very small proportion, and in the federal-provincial-territorial working groups that looked at this issue, that's consistent with those findings that insolvency claims for fresh produce are extremely low. The more significant ones are slow payment, non-payment, or contested payment.

**Ms. Ruth Ellen Brosseau:** There's a great report that was done by the Conference Board of Canada called "Exports at Risk - Assessing the Impact on Canada's Produce Industry by the PACA Rule Changes". I encourage all members to read it and I could share a copy maybe. It really highlights the issue of PACA and some of the losses. It talks also about DRC and how it does not have authority in case of bankruptcy or insolvency, and producers in the U.S. and Canada have expressed frustration. There's a lack of reciprocity for payment for U.S. firms operating in Canada. There are some recommendations, and towards the end of the conclusion, it talks about the loss of exports and that it has serious implications for Canada's economy. The changes to PACA could result in GDP losses of up to \$38.4 million annually, along with the permanent loss of 464 jobs and \$17.7 million in labour income.

I've met with a lot of stakeholders and groups, and moving forward with a PACA-like system in Canada I don't think would require any government funding. Like you said, there are some obstacles working with the provinces. I know that there was a legislative framework that was presented by industry. Was that taken into account? Was that looked at?

**Mr. Mark Schaan:** I think I know the paper you're referring to, and we have certainly reviewed that paper and continue to consider it as part of the overall considerations as we look for evidence-based innovations to the insolvency regime in Canada. I wouldn't speak for my colleague from Agriculture, but I'd say evidence-based innovations in the agricultural sector are also something that they continue to review.

•(1600)

**Ms. Ruth Ellen Brosseau:** Has that been looked at also, Mr. Gorrell?

**Mr. Fred Gorrell:** It has been, and I've been told by the industry they've actually updated it and they will be presenting a new copy to both our colleagues and us. We'll be looking forward to that.

With reference to your questions about some of the farmers' losses, it is understood that the fruit and vegetable industry is a perishable industry. Obviously, it's unique in the sense that the produce is often eaten or disposed of before they get payment. It is very clear that it is unique.

In that context, there are people, and you made reference to them. Did they file formal complaints with PACA? These are things that would be useful for us to know. Were they between Canadians? Were they between Americans? We need the details.

In working with the industry, we're really trying to quantify the impact. We have lots of notional ideas, and the Conference Board of Canada projects it, but since 2014 when we did not have access to the formal dispute settlement mechanism, we've been tracking to see what the damages are. When you have information like that and other information, we're very much trying to look at that and work with the industry to actually determine whether there is an impact because of the changes in the PACA or are there other factors that have contributed to it as well.

Again, we really are trying to get to the essence of the challenge and determine what we might be able to do going forward.

**The Chair:** Thank you, Mr. Gorrell.

[Translation]

Thank you, Ms. Brosseau.

Mr. Breton, you have the floor.

**Mr. Pierre Breton (Shefford, Lib.):** Thank you, Mr. Chair.

I would like to thank the witnesses for being here today. Their input is very valuable for our study.

It was noted earlier that Canadian companies seeking to recover unpaid bills must post a bond equal to twice the value of the claim in order to access the protection provisions under the PACA. What is the reason for this? That is a lot of money for fruit and vegetable exporters.

Can you please give us an explanation for this?

**Mr. Fred Gorrell:** Thank you for your question.

This amount is set under the U.S. PACA.

[English]

If this amount is double, it is because of the United States.

[Translation]

**Mr. Pierre Breton:** I see.

Have any Canadian companies stopped exporting to the United States after the United States revoked access? What proportion of companies have done that? Can you tell us about this?

**Mr. Fred Gorrell:** I don't know, actually. That is a good question.

As I said, our exports to the United States continue growing.

[English]

We can verify that, but I don't know. Maybe the industry will identify it, but the United States continues to be our most important market, and our exports of both fruits and vegetables continue to increase.

[Translation]

**Mr. Pierre Breton:** In previous testimony before the House of Commons Standing Committee on Finance, the Fresh Produce Alliance advocated amendments to the Bankruptcy and Insolvency Act to establish a statutory trust modelled on the act.

Are there other options for Canada such as bonding and insurance? Can you talk to us about that please?

**Mr. Mark Schaen:** As you said, there could be other options that could be beneficial to the common products industry.

[English]

I think previous papers have looked at a number of these potential options, such as self-insurance models or whether there's a mechanism to potentially create some sort of industry fund that people could call upon in the case of some of these claims. I think not all of these have been well received by the industry association, but I do know that some consideration has been given as to whether or not they, too, may be able to fill some of these gaps.

From our perspective I think they are policy alternatives that are certainly worthy of consideration.

[Translation]

**Mr. Pierre Breton:** Okay.

I have one last question for you.

There are of course other import-export operating systems for fruit and vegetables around the world. Have you looked at the operating systems in other countries, such as in America, Europe or Asia? If so, can you tell us about them please?

• (1605)

**Mr. Fred Gorrell:** Thank you for the question.

The majority of Canadian exports go to the United States. We are looking at systems in the United States because it is our most important market.

[English]

We have not done a comparison with other countries. For example, if we look at NAFTA for Mexico, they do not have a PACA-type system, and they are a major exporter to the United States as well. They face the same issue of double the bond. The United States has a unique and special system, but we could look at other countries. Given our trading patterns, we have focused on the countries to which the majority of our produce goes.

[Translation]

**The Chair:** Thank you, Mr. Breton.

We will now go to the second round of questions.

Mr. Drouin, you have six minutes.

**Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.):** Thank you, Mr. Chair.

I would like to thank the witnesses for being here today.

[English]

Typically, if a business is creating something, they can enforce a lien through a lawyer. My brother has a construction business. If it doesn't pay, he puts a lien on the house. In the produce business it's a bit harder because the goods are perishable. Essentially, you can't put a lien on something that's perishable unless the lien doesn't last very long.

What other tools could the industry use—and it is a bit unique—with regard to recovering payment?

**Mr. Mark Schaan:** There are two issues we can speak to. There's recovering payment from an insolvent entity, and there's recovering payment from a solvent entity. Those are two different situations. Part of it would depend on whether the solvent entity that you're trying to reclaim the funds from is in your own province, in another province, or in another country. Each of those would have its own distinct aspect.

Within Canada, there is a deemed trust provision for aquaculturists, farmers, and fishers for the 15 days leading up to bankruptcy or the appointment of a trustee. We do have a deemed trust provision for that essential period leading up to bankruptcy. There is some mechanism by which that is a deemed trust, and essentially, you will get that money back in the case of an insolvency.

With respect to a solvent entity, my colleague may be better able to address that. There is currently an ability to oversee some of those disputes.

**Mr. Fred Gorrell:** You're very much correct. The produce industry is unique because you can't put a lien on something that's been eaten or thrown out. It's very clear.

On that subject—this is just a statement, not a criticism—it really is incumbent on all the sellers of fruits and vegetables to do their due diligence to make sure they know who they're selling to, what their history of payment is, and so forth. There are many avenues within the produce industry that help them with that.

One of the challenges is when some business is solvent and they're not paying. The government itself doesn't guarantee that they get payed, but there are mechanisms. For example, right now, under the licensing and arbitration regulations or the Fruit and Vegetable Dispute Resolution Corporation, there are mechanisms that allow informal arbitration in complaint solving to determine what the problem was, whether it was a quality problem, whether the product arrived, all of those types of things that you might look at.

Often, you'll have an arbitration that will end up with a reduced sum. If it was  $x$ , you're going to get  $x$  minus two for the payment. Often though, that starts a record against the person you sold the product to. If I'm the person who has been buying product and hasn't been paying the people who have been selling to me, I will get a record and a reputation slowly. That is reported on and it is very useful because it should help you make your business decisions about how you want to sell to them and how you want to get paid.

Often in the produce industry, you're helping the person behind you, not yourself. You'll be helping the person who is going to find out that Mr. Gorrell didn't pay on time and that they have to be careful with him. There are not a lot of mechanisms, except through the complaints process. Informal arbitration, arbitration through the DRC, and the licensing and arbitration regulations are the mechanisms that we use in Canada right now, but we can never guarantee payment.

**Mr. Francis Drouin:** Do U.S. producers have access to this? The issue is that the U.S. was obviously not satisfied with our system if they removed the special conditions on our producers. Are we speaking with the U.S. on this to ensure that whatever it is we're going to be proposing in the future is acceptable to them, so that we can get back to a preferred status? We did have a competitive advantage. Now we're just like every other country in the world.

• (1610)

**Mr. Fred Gorrell:** You've touched on a very important point, sir.

What we've been talking about often with PACA is Canadian produce exporting into the United States in terms of how we are going to make sure we're going to get payment from the United States.

The question you just asked, which I think is really important, relates to how the system we have in Canada assists the United States in making sure they get payment from Canadians, as well. The United States are members of the dispute resolution corporation, and they have the services under the licensing and arbitration regulations, as well.

They are pleased with what we're doing on the regulations and the Safe Food for Canadians Act. They're very pleased with that.

To be fair, and to the questions of some of your colleagues earlier, the real issue is on the insolvency aspect in the bankruptcy. That is the area where there seems to be an ongoing gap.

**Mr. Francis Drouin:** But the insolvency is very low in the industry. Right?

**Mr. Fred Gorrell:** Correct. Yes.

**Mr. Francis Drouin:** Who's pushing back on this, if it's very low in the industry?

**Mr. Mark Schaan:** That's a good question.

I have the enviable, or unenviable, job of looking after our bankruptcy and insolvency regime both under the BIA and under the CCAA.

If anyone ever tells you they have a simple fix to insolvency, I've now been in my job long enough to know that anyone who comes with a simple fix for my legislation, it's usually.... I'm opening up a bigger box than that.

Insolvency is about balancing competing interests amongst creditors. It's a big issue. It's important for achieving business certainty for lenders, investors, and creditors, which supports a healthy and innovative economy.

The super-priorities in deemed trusts, even if small, that favour some creditors over others in insolvency can have a significant negative economic impact, both on the monitoring and compliance costs, and the shifting of losses among creditors. It can increase credit costs. They're exceptional remedies.

When we look at these issues, while small, the compliance costs and the potential impacts on the cost of creditors are significant. There's also the issue of deemed trusts and super-priorities. The list of people who are interested in super-priorities and deemed trusts is a very long one. It's a regular crew of folks who come and ask for them. The problem is that we're constantly balancing against all of those competing interests to find an equitable solution.

In the case of fresh produce sellers, we have a deemed trust for those farmers, fishers, and aquaculturists who provide goods in the 15 days leading up to it. Then they move into the unsecured creditor zone.

It's worth noting that not every bankruptcy is a full and complete haircut for unsecured creditors, as well. The unsecured creditors—

**The Chair:** Mr. Schaan, thank you.

We're going to have to move to the next questioner.

**Mr. Francis Drouin:** Thank you.

**The Chair:** Mr. Shipley, you have six minutes.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you, Mr. Chair.

I want to thank the witnesses for coming out today.

I want to follow up on one of the questions asked by my colleague regarding the concern. We heard that one effect of the PACA cancellation, I think it was in October 2014, is that while some of the issues become the lenders', creditors', those people who... Once you start to tinker with some of their abilities to reclaim, what happens is then the funding is not available to the farmers in terms of the funds needed for their production, for their sales, and for their operations.

Has there been any discussion, though, with these organizations, and with the lenders particularly? It always seems that while the banks get in first and they get their cut out of it, the other creditors get left behind. They get to split up the very large sums that are sometimes left. By the time they are done, they basically get nothing, or very little.

Have you had any discussion with the round table of people involved? That would be the financial, the processors, and the sellers. Is there a balance that can be reached with the understanding, as mentioned before, that we don't have a product that you can take a lien on. The lien has gone away because of the perishability of the product. Have any of those discussions happened that you're aware of through the organization, through the horticulture group, or through the government agency?

•(1615)

**Mr. Mark Schaan:** In 2014 the then Department of Industry Canada, now the Department of Innovation, Science and Economic Development, led public consultations on the bankruptcy and insolvency regime. That public consultation put a number of key questions to folks, both on the general functioning of our statute but

also the specific questions that we thought would be of interest. One of those related to deemed trust provisions related to fresh produce.

We received submissions from a whole host of folks on those particular provisions, including the Canadian Bankers Association, the Canadian Bar Association, the insolvency professionals. There has been some consultation with them about this issue.

We have not yet convened a table that brought them and fresh produce together to talk about whether or not they could work out some sort of balance. That's not a traditional policy role for the department. That may be something that the industry association or the respective associations could have a dialogue about, but we have put the question to a broad range of folks in aiming to facilitate broader dialogue on the issue.

**Mr. Bev Shipley:** I know those discussions have happened. A report or a recommendation was coming, likely in September 2015. Obviously the election got in the way. Later on when we're talking with the produce groups maybe they can help us understand where that was going.

You raised a very interesting point, and I'll maybe talk with the commodity organizations also. The trade of fresh produce between Canada and the United States has risen over the last four years: 55% in fruit and vegetables and 26% in fresh vegetables. That's to the United States. Obviously, we recognize the issue in terms of perishable products.

I'm not sure what has driven that large increase. That's a significant increase in exports when we're talking about producers concerned with not having PACA protection in terms of the deemed trusts. Do you know what is driving those increases?

**Mr. Fred Gorrell:** I don't have a detailed analysis. I think the Canadian dollar has had an impact on our overall exports. At the same time, we grow very good produce. As I indicated, with our fruit and vegetables we've exported, we do have a comparative advantage and sometimes there are supply issues in the United States.

Our agricultural exports overall have increased worldwide. I think it is part of the trend and given the fact that the United States is our largest market, it's not a surprise to us.

I do not in any way see them related to the PACA situation. It did start four years ago, so it was well before any of these discussions. I think it's just strong demand for fruit and vegetables by health-conscious people and an increase in per capita consumption. That would be my assessment without really looking into it in detail at this time, sir.

**Mr. Bev Shipley:** Yes, and a credit to our producers.

**The Chair:** This will be a quick one of two or three seconds, Mr. Shipley. Go ahead.

**Mr. Bev Shipley:** Okay. I'll finish up with a comment. I never thought I would see Ontario tomatoes on a Florida shelf. The quality of food we produce has a lot to do with that, along with the dollar, I'm sure.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Shipley and Mr. Gorrell.

Mr. Longfield, you have six minutes.

**Mr. Lloyd Longfield (Guelph, Lib.):** Thank you, Mr. Chair.

Thanks for the presentations.

I didn't think I could get into this topic as deeply as you've drawn me in, so congratulations on that as well.

Looking at the numbers from October 2014 to November 2015, the total amount of non-payment claims by Canadians went from 13 claims to 10 claims and the total dollars involved were \$479,000, which is 0.03% of the shipments of those goods. It seems to me that's a very small number.

I come from international business where I did a lot of exporting. I always had an allowance for doubtful accounts. That allowance varied according to whether I'd been in the country before and whether I'd dealt with that client before. Do you have any sense, either from Industry Canada or Ag Canada, whether this number is unusual? Is it low? Is it normal against other markets, against other types of business going on internationally?

• (1620)

**Mr. Fred Gorrell:** I'll give you just notional ideas. Intuitively we all thought the number might be different because of what's happened since losing access to the free formal complaint process. The numbers themselves don't mean that there are not problems in the industry.

One of the things we've learned and we are talking about is that they have to register their informal complaint for it to actually show up on the grid. Many people will deal with exporters and importers amongst themselves. They may have trouble with late or no pay, but they've had long relationships and they're not reporting it. It may be part of what Madam Broseau said as well regarding some of the complaints. I think everybody, I must say, expected to see the number perhaps going in a different direction, but intuitively it's showing that the health of the industry, given the number of exports we've had with the United States and the due diligence that people are taking with their partners, is good. I do want to repeat—and I think the industry will provide you with some information—that this is only for the complaints that have been filed with PACA.

**Mr. Lloyd Longfield:** Sure. Thank you.

**Mr. Mark Schaan:** I would just say that for the number of years we've been studying insolvency, and fresh produce claims are a function of insolvency, these numbers have been relatively consistent. It remains a very small proportion of the overall total amount of sales, and vis-à-vis other aspects such as fraudulent claim payment, or late payment, or non-payment, those have always been much bigger issues than insolvency payments have been.

**Mr. Lloyd Longfield:** Thank you.

I want to stretch this towards a study we're going to do to look at the comprehensive agriculture policy going forward. Once Growing Forward 2 is finished, we'll have a new policy. You mentioned that the industry has received \$37 million from the department towards innovation and marketing activities, and that the centre also has access to the other agri-risk initiatives. You talked about whether this topic we're talking about today might be part of the overall comprehensive strategy going forward in terms of allowing for risk management concerning which clients you are going to be selling to and how you are going to manage the finances through normal

institutional work, or even on your balance sheet differently than you might do in dealing with Canadians to Canadians.

**Mr. Fred Gorrell:** We're starting the consultations now for the next policy framework with the provinces. This is a good time for issues to be identified. Obviously the current policy framework will be completed in 2018. So these are the types of things we are looking at with the provinces as well as the areas we want to study, and that was something we would support as well.

**Mr. Lloyd Longfield:** Rather than hitting it with the big hammer, it might be something that could be dealt with through policy. Otherwise, as you said, it could be very costly to handle it separately the way that is being suggested through PACA.

Thank you.

**The Chair:** This will complete this round.

If you would permit me, I will just say that the signing of CETA is imminent, as is, hopefully, the case for other agreements. I'm just curious as to whether there's any mechanism in those agreements regarding the sale of produce to our new trading partners, which should increase in the future.

**Mr. Fred Gorrell:** Actually there isn't. You need good business processes regarding who you're partnering with, and you need to do your due diligence and understand things. The United States is unique in having the PACA in its laws for bankruptcy, insolvency, and protection. I'll have to defer to my colleagues, but I do not believe there is anything in the CETA that would specifically deal with guaranteeing payment for fruits and vegetables.

**The Chair:** I want to thank the panel for their very informative answers to our questions. I'm sure there will be more questions as we move forward. Again thank you very much for appearing in front of the committee. Hopefully you have answered a lot of our questions.

Thank you very much.

We'll take time to switch panels and we'll be back with the second portion of our question period.

• (1625)

(Pause)

• (1630)

**The Chair:** We'll get the second portion of our two-hour committee going.

I would like to welcome the industry side of the Perishable Agricultural Commodities Act. Today with us from the Ontario Greenhouse Vegetable Growers, is Mr. George Gilvesy, chair. We also have Ms. Anne Fowlie, Canadian Horticultural Council, and Mr. Ron Lemaire, president, Canadian Produce Marketing Association.

I'll give you an opening statement if you wish.

**Mr. Ron Lemaire (President, Canadian Produce Marketing Association):** Good afternoon, Mr. Chair and members of the committee.

Each organization has a short statement that we would like to provide. We are a unified team in the produce industry. I would like to start things off. Thank you for the opportunity to speak today.

CPMA is a not-for-profit organization, based here in Ottawa, that is made up of every segment of the produce industry supply chain, representing over 90% of the fresh fruit and vegetables sold in Canada. We are very fortunate to represent a sector that both is a significant economic driver for communities and improves the health and productivity of Canadians.

In 2013, the fresh produce sector supported over 147,000 jobs and created \$11.4 billion in real GDP. CPMA, together with our partners in the Canadian fruit and vegetable industry, has been working for many years toward establishing a tool to protect fruit and vegetable growers and sellers in Canada during bankruptcy. In the United States, as you heard, if a produce buyer goes bankrupt, growers and sellers can rely on a trust provision under the Perishable Agricultural Commodities Act, PACA, to receive payment. In Canada, our growers and sellers have no such protection, and this lack of payment protection during bankruptcy in Canada results in disproportionate financial risk for our growers and sellers.

Fresh produce is not like other products, such as televisions and cars. Its highly perishable nature means that shipments cannot be reclaimed. This is key in this issue. Current rules managed by the federal government severely limit the ability of growers and sellers to collect payments for their products in the event their buyer declares bankruptcy. In practice, fresh produce suppliers have no protection.

Currently, Canadian and U.S. firms operating in Canada lose an average of \$19 million per year through Canadian buyer insolvency. This data was collected through a report that was conducted under the regulatory co-operation council a few years ago. Seventy-five per cent of Canada's 10,000 fruit and vegetable producers are small businesses with average sales of less than \$85,000 per year. One bankruptcy can have devastating ripple effects throughout the supply chain and the often small communities where farms and other parts of the supply chain are located. Canada's failure to provide protection has also created a trade irritant with our largest market and put our exporters at even further risk.

PACA protections are not limited to cases of bankruptcy. On October 1, 2014, the United States withdrew Canada's preferential access to the act's dispute resolution mechanism. Viewing the dispute and bankruptcy mechanisms as part of the same system, the U.S. made a decision that was a direct result of Canada's failure to provide a reciprocal and comparable system of insolvency protection. The U.S. dispute resolution mechanism offered critical protection for the 1.9 billion dollars' worth of produce that we send to the U.S. every year.

Payment disputes are a common occurrence in the complex world of fresh fruit and vegetables. Before October 2014, with a \$100 informal complaint under PACA, or a \$500 formal complaint, Canadian companies could threaten the licence to operate of any buyer who was delinquent with their bills, a big stick that often led to a quick resolution and payment. Now, Canadians must post a bond that is double the value of the outstanding bill to file a complaint or, more likely, walk away from their claim and take a fraction of what they are owed.

The real-life example of the B.C. farmer was noted in the previous testimony. I won't go into further detail, as the information was

provided correctly, but in short, this B.C. blueberry grower had to walk away from a \$128,000 sale and accept only \$60,000. Cases like that of the B.C. grower are why the produce industry is united in its request for the creation of a limited statutory deemed trust, which provides a no-cost solution and the most effective means to ensure fair protection for growers and sellers. It must be noted that a trust would cover only accounts receivable, cash, and inventory of the buyer stemming from the sale of produce on short-term transactions with payment terms not exceeding 30 days.

● (1635)

Dr. R.C.C. Cuming of the University of Saskatchewan is an expert in Canada's bankruptcy laws, and has drafted turnkey legislation that is ready to go. This turnkey tool addresses federal-provincial jurisdictional discussions by coming into effect only when there is an insolvency.

Creation of a deemed trust would also meet U.S. requirements for a comparable Canadian system that would restore Canada's preferential access to PACA programs, including the dispute resolution tool under PACA as well.

The need for a PACA-like trust in Canada for the fruit and vegetable sector has broad-based support, not only within our industry but also outside of it. In October 2015 the Canadian Chamber of Commerce passed a resolution calling for the creation and implementation of a limited statutory deemed trust that provides financial protection for produce sellers in Canada in the event of bankruptcy in the first legislative session after the 2015 election. The industry position has also been endorsed by the Canadian Federation of Agriculture, the Canadian Federation of Independent Business, the Association of Municipalities of Ontario, and the Food Processors of Canada.

Resolving this particular trade dispute would not be difficult. While the U.S. Department of Agriculture understandably felt it was no longer tenable to continue offering to Canadians benefits that were not extended to any other country and not reciprocated for U.S. growers in Canada, they have made it clear that they are ready and willing to reinstate Canada's privileges as soon as Canada develops a comparable mechanism. A PACA-like statutory deemed trust would be a solution of no cost to the government or to industry. Implementation of a trust will significantly reduce supply chain disruptions and the vulnerability of small businesses and rural communities, and it will improve trade relations with our largest and most important trading partner.

The research and due diligence has been done. The options have been studied. The fruit and vegetable sector hopes we can count on this committee to support the creation of a limited statutory deemed trust to protect our growers.

I'd like to thank you for allowing me the time to present and to provide our insights from the Canadian Produce Marketing Association.

**The Chair:** Thank you very much, Mr. Lemaire.

Ms. Fowlie.

**Ms. Anne Fowlie (Executive Vice-President, Canadian Horticultural Council):** Mr. Chairman and committee members, thank you for the opportunity to appear before you to speak within the context of your study of Canada's preferential status under the United States Perishable Agricultural Commodities Act.

The Canadian Horticultural Council is no stranger to this committee. As always, we appreciate the chance to come before you to raise matters of concern to our sector and, equally important, to thank you where and when thanks are due.

In the past we've presented to you on a wide range of issues, including research and innovation and the importance of the AAFC agri-innovation program, which enables the science clusters of which we have been a beneficiary, and Bill C-18, the Agricultural Growth Act, specifically the provisions representing plant breeders' rights. We thank you for those.

We represent growers, shippers, and packers from across Canada primarily involved in the production and packaging of more than 100 fruit and vegetable crops. Our active mission statement focuses on four keywords: innovative, profitable, sustainable, and generations. It's all about having our eye on that sightline for the future.

With primary production value of more than \$5 billion and after-packing or processing value of \$10 billion, horticulture is one of Canada's largest and certainly most diverse agricultural production sectors. Horticulture has been an economic engine and growth machine and can be a foundation for continuing job growth. An overall objective for the sector is to ensure further growth of a \$5-billion sector that has already doubled since 2000. I draw your attention to the previously referenced Conference Board of Canada report. There's a lot of good data there.

Managing and mitigating risk is critical, and the objective of today's discussion is to address the lack of payment protection for produce sellers during bankruptcies in Canada, which often result in disproportionate financial risk to growers, shippers, and produce companies.

It's important to recognize and acknowledge that first and foremost the issue and its resolution are about and for Canadian farmers, packers, shippers, and sellers. The unique characteristics of our crops and the fact that they are highly perishable warrant innovative, creative, and perhaps non-traditional risk management tools. Re-possession is not an option for us.

You heard Mr. Lemaire say that we are an industry united, and that's very true. It's a united industry, and one that has not been without vision. The subject at hand today is certainly a good example. Through the mid-1990s this industry formalized a long-term vision for the sector that included multiple and complementing pieces to achieve an end goal related to financial payment protection. Those included the dispute resolution corporation, destination inspection, single-entity licensing, and finally, the development

and implementation of a payment protection mechanism to provide comparable protections and outcomes to those found within the federal United States Perishable Agricultural Commodities Act.

As we embarked on that journey, there were a number of opportunities. The first one was under article 707 of NAFTA relative to dispute resolution, and that gave rise to the establishment of the Fruit and Vegetable Dispute Resolution Corporation. The Government of Canada provided leadership and in so doing contributed to a success for which we remain grateful.

Next, industry-CFIA collaboration and strategic planning resulted in the destination inspection service.

A single licensing entity is well on its way through the Safe Food for Canadians Act, as we've heard.

That's three of four.

The remaining component of the vision and industry need is the development of a payment protection mechanism. The lack of a comparable system in Canada has been a trade irritant to our U.S. colleagues and competitors.

Canadians engaging in fruit and vegetable commerce in the U.S. were deemed to have a comparable system to the U.S. and as such were provided full access to the provisions of the Perishable Agricultural Commodities Act. As you've heard, we do not in fact have the comparable system, and a trade irritant aspect of this gave rise to the issue's being included among the action items of the regulatory co-operation council. It's very much a trade issue and a priority for the produce industry in both Canada and the United States. The lack of reciprocity has cost Canadian companies selling in the United States our long-standing preferential access.

• (1640)

Over time many studies have been undertaken. Not only would the implementation and development of a limited statutory deemed trust bring resolution to Canadian farmers, but it would also lead to re-establishing Canada's preferential access to PACA. Any other options would result in high costs to both sellers and government, while still providing ineffective protection.

I must again stress that the issue and resolution begin at home, and the proposed industry solution is also a non-traditional, innovative, and viable risk management tool that would provide the sector with a fair risk management tool that fits our sector's unique needs, similar to other sectors that also have their own fit-to-purpose tools. I think this is an excellent candidate for consideration in Growing Forward 3.

We do enjoy broad and unanimous value chain support that begins with the producer community and extends far beyond. Mr. Lemaire referred to the Canadian Chamber of Commerce resolution supporting the position and the solution of the industry. The Canadian Federation of Independent Business has also publicly stated a similar position related to payment protection for small and medium-sized enterprises and the particular case of fruit and vegetable producers. We've heard that small and medium-sized enterprises are particularly needful of a solution. These are significant endorsements and are well thought out.

In closing, the horticulture sector is looking for support to be enabled rather than for a financial commitment. There's much to learn from the U.S. PACA and its solid history, which can contribute to establishing a model made in and for Canada.

I'd like to call your attention to a few other successes that in some ways parallel or mirror what we're looking for today.

When the Agriculture and Agri-Food Canada Pest Management Centre was created, it was in large part due to industry's need to replicate and implement in Canada an infrastructure similar to that of U.S. interregional project number 4, or IR-4. Today, thanks to support and collaboration, the Pest Management Centre is the envy of our competitors in many countries. The Pest Management Centre and the dispute resolution corporation are two highly successful legacies of leadership and collaboration.

In April 2016, the USDA press release noted that in the past three years, through the provisions of the Perishable Agricultural Commodities Act, approximately 3,700 PACA claims involving more than \$66 million have been resolved. Assistance was also provided to more than 7,100 callers with issues valued at approximately \$100 million.

I recognize that these are U.S. figures, and we've heard of data concerns here today, but we don't have tools here in Canada so it's very difficult to make comparisons. What I would suggest is that the industries themselves are quite similar, and that if we were to take those numbers and pro-rate them against the size of our own industry, perhaps there are some conclusions that could reasonably be drawn from those numbers.

Thank you. As always, we appreciate the opportunity. We look forward to working with you. I assure you of our full and complete support in finding a way forward for this issue.

• (1645)

**The Chair:** Thank you very much, Ms. Fowlie.

Now, for the Ontario Greenhouse Vegetable Growers, we have Mr. George Gilvesy.

**Mr. George Gilvesy (Chair, Ontario Greenhouse Vegetable Growers):** Thank you, Mr. Chair.

Good afternoon, members of the committee.

It's my pleasure to present to you our views on this subject today. The Ontario greenhouse vegetable sector is a significant part of the rural economy, accounting for over 12,000 jobs annually. The Ontario Greenhouse Vegetable Growers are headquartered in Leamington, Ontario, and is the grower organization for all tomato,

pepper, and cucumber greenhouse farmers in Ontario. Our mandate is to provide market access for producers and ensure opportunity for economic success. We account for 65% of the \$1.3 billion in farm cash receipts attributed to the Canadian greenhouse vegetable sector. Ontario possesses the largest concentration of hydroponic greenhouses in North America with over 200 farmers and over 2,700 acres in production.

Greenhouse vegetables are also produced on a significant scale in British Columbia, Alberta, Quebec, and the Maritimes. Our sector is one of the fastest-growing sectors in Canadian agriculture. In terms of farm gate sales our compound annualized growth rate over the past 15 years is 6.8%. Our growing area has expanded 5.5% year over year for at least the past decade and current projections do not see this expansion slowing.

Few people outside the fresh produce industry recognize Ontario's market dominant position across North America. This dominance extends from eastern Canada down through the southern U.S.A., principally east of the Mississippi, but Ontario greenhouse vegetable products can be found in all the lower 48 states. In 2015 our greenhouse vegetable farmers grew the equivalent of 500 million long English cucumbers, 920 million tomatoes—Mr. Shipley definitely found some in Florida—and 550 million bell peppers. These numbers are quite staggering.

Our American exports have been growing at a remarkable rate. In 2009 we exported 163 million kilograms of greenhouse vegetables totalling \$400 million. In 2015 we exported 247 million kilograms totalling \$652 million, a 63% increase in value. A big part of this increase took place in the U.S. with the protection of the PACA rules in that marketplace. By the way, that additional \$250 million in exports resulted in significant economic activity, primarily in one of the more economically depressed regions in Canada, which is the Windsor-Essex marketplace. We are a big exporter and we are a big part of domestic supply of Canadian-produced vegetables.

Regarding the need for financial protection, in Canada domestic sales remain completely vulnerable to non-payment by produce buyers. Our belief is that the fundamental principle of commerce is that the seller receive payment from the buyer for the product or service that has been sold. I think it's appropriate to be in this room. I see the two pictures on the wall, one representing agriculture and the other representing commerce. These are some pretty principal things I'm talking about, those principles about being paid for what you do.

The nature of produce marketing limited legislative support, and the perishable nature of vegetables has left farmers with no mechanism for recovery in the event of bankruptcy or refusal to pay. Previously the situation in the United States was much more favourable to produce sellers than in Canada where Canadian sellers received preferential access to the Perishable Agricultural Commodities Act, otherwise known as PACA. However as of October 1, 2014, Canada's failure to provide a reciprocal program resulted in the American government withdrawing that preferential access and, principally, that preferential access to our members.

Fresh retail vegetables are extremely perishable and their quality can change from perfect to unsellable in a very short period of time. PACA had also offered preferential access at minimal cost to dispute resolution provisions in the event of slow or no-pay transactions, a process that threatened the operating licence of a delinquent buyer and often led to quick resolutions of dispute. Fresh vegetable farmers and sellers are integral elements of the rural Canadian economy, and the impact of financial interruption is felt far beyond the industry itself.

• (1650)

American legislators have long recognized the unique nature of produce sales and provided legislative and financial protection to buyers, sellers, and ultimately the local rural economy. I would say that was probably done in the same framework or the same environment of which we've talked about, in terms of bankers and their perception of this thing as we see it today in Canada as well. I don't think the banks liked it when the PACA went in. At the end of the day they did go along with it. They've been the beneficiary of that added economic activity in the United States.

The greatest benefit will be a reduction in risk and improvement in market efficiency in our own Canadian marketplace. A secondary benefit, but also of vital importance to greenhouse farmers, is the reinstatement of PACA reciprocity in the U.S. market. This will allow for our growth patterns to continue in the greenhouse vegetable sector to assure that you're going to get paid for what you grow.

When buyers know that sellers have full recourse against them and regulatory authorities are monitoring them, buyers act ethically and in good faith. Enacting such protections would encourage orderly markets and minimize significant and damaging disruptions due to the bankruptcies and refusals to pay.

The retail industry is now highly consolidated, and it's operating under the tightest margins in history. It's not just a matter of if, but when those competitive pressures result in a significant Canadian retail or wholesale bankruptcy.

Ontario greenhouse vegetable farmers are totally reliant on access to American markets and strongly urge the Canadian government to fix this trade irritant once and for all.

On behalf of our members, we are asking for enabling legislation to allow our farmers to be paid for the produce they grow, both in our American export markets and right here at home.

Thank you, Mr. Chairman, for the opportunity to present our views.

**The Chair:** Thank you, Mr. Gilvesy.

Now we'll start our round of questions. We'll start with Monsieur Gourde for six minutes.

[*Translation*]

**Mr. Jacques Gourde (Lévis—Lotbinière, CPC):** Thank you, Mr. Chair.

I would like to thank the witnesses who are with us today.

I am happy to hear your comments on the protection of producers. I am very sensitive to these matters since I was an exporter myself,

of hay though, not fruit and vegetables. The dynamics are the same though: there is a buyer, a seller and a distributor. Transportation is a also a challenge, a significant one, especially for fruit and vegetables. Certain problems arise during transport. A shipment may be fine at the outset, but a problem can arise, for example, with a delivery from Canada to Florida, which takes between 27 and 30 hours. This can affect the quality of the fruit or vegetables transported. This can lead to lengthy negotiations with the buyer, who can argue that the quality has been affected. The producer then has a second choice: accept the offer or lose the entire shipment. It happens.

Are such cases considered losses? You mentioned a total of \$100 million. Unfortunately, producers sometimes do business with people starting out in the field or with fly-by-night companies. Trust can be built up over a few months with buyers, and then it very soon comes to light that the buyer has not paid any producers during that time. These people can purchase from \$1 million to \$2 million per week from producers. Then it turns out that they owe \$100,000 to one producer, \$150,000 to another and \$200,000 to someone else. These could be producers from all provinces in Canada or even from the United States. A number of producers fall victim to this and receive a letter from a creditor or trustee saying that they will never see the money again.

Ms. Fowlie, is this type of problem recorded or is it only the bankruptcies that are recorded? You mentioned \$100 million earlier. That is not a lot of money considering all the problems that can occur in this industry.

• (1655)

**Ms. Anne Fowlie:** The figures I mentioned are published in the United States pursuant to the PACA. Clearly, there is information with figures available to the public. In Canada, the Fruit and Vegetable Dispute Resolution Corporation does of course have information on the number of complaints relating to unacceptable products.

As you said, these products are highly perishable so the risk in this sector is very high.

**Mr. Jacques Gourde:** Do you have any further comments?

**Ms. Anne Fowlie:** On Wednesday, you will hear from another witness who represents the Fruit and Vegetable Dispute Resolution Corporation. He will be able to answer questions that are more technical and that require documentation to which we do not have access.

**Mr. Jacques Gourde:** You also said that producers have lost their power to deal with purchasers who do not want to pay. Even if legislation is put forward, what power does the producer have if the purchaser decides not to pay or is able to demonstrate that the product delivered is not what was expected? The issue is not insolvency, but rather that a shipment can be refused. A lot of money can be at risk.

**Ms. Anne Fowlie:** The situations in Canada and the United States are different. In the United States, the Perishable Agricultural Commodities Act includes provisions to resolve problems. We do not have these mechanisms in Canada. That is why we are here today. We want to tell you about our situation.

**Mr. Jacques Gourde:** Moreover, there will not be any more people on site in the United States to look into disputes.

For my part, I have taken a plane to resolve cases in Florida because I was losing all my shipments. Once I got there, I could see that the claim was exaggerated. The purchaser took advantage of the fact that I was Canadian and was 2,700 kilometres from Florida. They were very surprised when I arrived by plane to see what was going on. There was indeed a problem with 5% of the shipment, but the remaining 95% was in very good condition. The purchaser had claimed that 95% of the shipment was bad. The seller has to have some mobility to go see what is going on.

In short, will the service be offered or not?

• (1700)

[English]

**Ms. Anne Fowlie:** With the dispute resolution corporation in Canada, there are mechanisms to resolve those types of issues in Canada and also with the U.S.

As far as within the U.S. and any complaints that you would make, there are also those types of mechanisms within the PACA. Those resolutions are made.

**The Chair:** Thank you, Ms. Fowlie.

[Translation]

Thank you, Mr. Gourde.

[English]

Mr. Peschisolido, you have six minutes.

**Mr. Joe Peschisolido (Steveston—Richmond East, Lib.):** Thank you, Mr. Chair. Mr. Lemaire, Ms. Fowlie, and Mr. Gilvesy, thank you for coming out and presenting us with a very thoughtful and thorough talk.

I've been hearing much of what you've said for the past year or so, during the campaign and beforehand, and for the past six months. What struck me was that I got two things when I was speaking to the fruit and vegetable growers. As you may know, I'm from Steveston—Richmond East. It's basically Vancouver and then Surrey, Langley, Abbotsford, and Chilliwack.

There were two things, first, the precarious nature of the business, the boom and bust cycles. They were kind of envious of the marketing board system because, in our part of the world, the blueberry, the strawberry, the potato, and tomato farmers are near the dairy farmers, the chickens, and the turkeys. They compare their situation with the supply management system.

The second part was the intergenerational aspect, that they're all family farmers. Which is a wonderful thing, but it also concerned them because if the business went down, they went down because it wasn't a company. They could be structured in a corporate way or in a business way, but it was their family.

If you had to provide me and other members of the committee with an action plan, what we could do to help you to deal with some of the concerns or obstacles that the three previous witnesses had, what would be in it?

**Mr. Ron Lemaire:** I can begin by framing up a few things. This has now been over-researched.

**Mr. Joe Peschisolido:** We need some action then.

**Mr. Ron Lemaire:** That's right. We've spent many years looking at it and hearing questions like today, "Give us the data, what is the data on the impact of insolvency?" The reality is the data is very difficult to come by relative to how the data's collected by Stats Canada. When we go back and look at what the true impact here is, we're talking about a trade tool. When we look at one of the comments made earlier about the data looking at the United States, it was that our trade has increased and we haven't seen any dramatic shift within PACA.

Well, there are two things there. Mr. Gorrell from Agriculture Canada made a very good point. We're in a very strong position with where our Canadian dollar is currently. We're in a little bit of a rainbow right now as a fruit and vegetable sector being able to ship to the U.S. and being a preferred country of purchase because of our dollar position and the very strong growers we have who grow quality product. But that's not always going to be the situation. As Mr. Gilvesy has mentioned, there is a tipping point, and when a bankruptcy hits without protection here in Canada, growers will not get paid, and the family farm that you talked about will break down.

As I mentioned earlier, the series of how we sell in produce is a function of that in that many small farms are selling \$85,000 a year to a larger dealer who then sells to the retailer or exports. It's that mechanism of supply chain that, if one doesn't get paid, then the trickle effect through the entire system impacts the rural community and the family farm itself, the fabric of how we sell and market fruit and vegetables across Canada and how we export.

The big piece here is looking at where are we today. Today we are missing a trade tool that we used with the U.S. for many years, a privileged access to a fair and ethical trade tool in the U.S. and the big stick. A member asked the question about going down to the U.S. and having to meet the buyer and get payment protection. Well, we've already seen Canadian farmers not access that, such as the B. C. farmer who had to only take half the value of their product, because they don't have the big stick that they had with PACA to begin with.

Now there are two pieces here. It's that dispute resolution mechanism that we lost in the U.S. because in Canada we do not have the insolvency tool to protect sellers and farmers in the event of a bankruptcy. We heard earlier today the data around mentioning 81.1 and 81.2 under the Bankruptcy and Insolvency Act that protects aquaculturists and farmers. The challenge we have with that is that it doesn't work. The reality is that the 15 days prior to actually pick up your product and then the 15 days to claim after don't function within the fundamental tenet of how produce is sold and how the perishable nature of the product functions.

There's never an opportunity to collect, and then the time frame afterward is not within a feasible amount of time to actually then collect the product, if there is any at the front end, and then collect the payment afterwards. It doesn't work for a farmer, and it's only focused to people who have their hands in the dirt. The sellers in the market don't qualify either. We have that farmer who sold to the bigger farmer, who becomes a dealer who then sells to a wholesaler, who then sells to the U.S. Nobody beyond the person who had their hands in the dirt fits into that system, but all must be part of it to be functional, just like the U.S. has created.

So let's not over-research this anymore. We've found that bonding doesn't work. Insurance doesn't work, nor pooling of funds. All of these things were researched under the regulatory co-operation council.

As we heard earlier, we also have enabled a new legislative tool that will be available to the committee on Wednesday, and the dispute resolution corporation will present and answer questions on it. The tool is available and viable to actually put into play and move forward. It's all ready to go. We just need to have action.

• (1705)

**The Chair:** Thank you, Mr. Lemaire.

Thank you, Mr. Peschisolido.

[Translation]

Ms. Brosseau, you have six minutes.

**Ms. Ruth Ellen Brosseau:** Thank you, Mr. Chair.

I would like to thank the witnesses for being here today. We are pleased to see you before the committee again.

[English]

I know there has been broad support for restoring access to PACA. In the last legislature we had a Liberal member on committee. I think you will remember Mark Eyking who did work a lot on PACA. He was a strong advocate, and I think there was a lot of support, at least from opposition at that time to gently nudge. We were asking the government to restore PACA. More recently, I think it was on October 7, 2015. I'm just going to read this press release. It says:

Liberal Agriculture critic Mark Eyking stated that a Liberal government would defend Canadian fruit and vegetable producers by resolving the entirely avoidable dispute with the United States over [the] Perishable Agricultural Commodities Act ...

It goes on to say, "Canadian fruit & vegetable growers used to enjoy...PACA, a low-cost dispute resolution system", and now for the last little bit, over about "a year ago after the Conservatives failed to create a comparable system", we no longer have it.

It just goes on to say that:

In consultation with industry...including the Canadian Horticultural Council & the Canadian Produce Marketing Association (CPMA), [the] Liberal government would create a...mechanism in Canada and work with the United States to reinstate the access that our fruit and vegetable exporters had under PACA.

So it was a promise. It's great that we are studying this at committee. It's important. We have two meetings. We're not going to overstudy this. Hopefully we can get more action on it.

There was also a motion brought forward in this Parliament, the 42nd Parliament, by my amazing colleague Tracey Ramsey. She put forward a motion asking:

That, in the opinion of the House, the government should: (a) introduce a payment protection program for produce growers like the Perishable Agricultural Commodities Act (PACA) in the United States that will allow sellers to maintain an ownership trust until payment has been received; (b) implement this payment protection program for produce growers by September 30, 2016; (c) take immediate steps to negotiate with the United States to restore Canada's privileged access under PACA, with the aim of restoring access by December 31, 2016.

I imagine you guys support that motion, and maybe this could be an opportunity for the government, or this committee to recommend to the House to adopt this motion. I was wondering if I could maybe just get comments on the urgency, because before there was consensus on the urgency to restore access to PACA. It's something that does not cost anything, and you guys did amazing work. I want to thank you for the work you have done, and also the work that Mr. Cuming did with the bill that he brought forward on January 22, 2015.

I also understand there have been some modifications to the bill. If you could maybe speak briefly to those, I'll give you the floor. Thank you.

• (1710)

**Mr. Ron Lemaire:** I think it would be best that the technical aspects of the Cuming bill—we'll call it that for now—be left to the dispute resolution testimony on Wednesday. This is how unique produce operates. We have three organizations that are lockstepped—focused on not only this issue but many—sitting here providing testimony today. The DRC, as part of our partnership in the industry, is also lockstepped with where we're going. We rely heavily on the DRC to provide technical briefings and technical analysis specifically on PACA.

Fred Webber, who will be presenting on Wednesday, is the technical expert in Canada on this specific issue, and I think it would be best if you save your questions for Fred on Wednesday because he can definitely provide clear insight on everything around the proposed tool, and how it can address federal needs, and also how it has accounted for some of the questions that were posed earlier to the government.

**Ms. Anne Fowlie:** Perhaps I could add just very quickly a comment as to the urgency, and thank you for that, because it is urgent. It's important to understand around that context. You spoke to the small farms in the Lower Mainland. The context is everything in those small and medium-sized enterprises. There's no tool in Canada, so if someone makes a conscious decision to sell in the United States.... Previous to my life at CHC, I worked in New Brunswick in the potato industry, and I was on a sales desk. I made a very conscious decision not to sell in Canada because I had protection and I had recourse in the U.S.

For that carrot producer, whether in Ontario or Manitoba or the Lower Mainland, this is \$50,000. It's a lot of money. In big business, perhaps it's not, but in the context, it is a lot of money. There's no tool in Canada. If he had chosen to sell in the U.S., he would have had free and open access to all of the provisions of the U.S. PACA previously. He still has access now. However, if we want to chase that \$50,000, and this will respond to your question a bit as well, he has to come up with \$100,000 to chase it. We talk about bankers. They're probably not going to be too anxious to advance him that \$100,000 to go and chase the \$50,000.

So it's urgent, yes, and context is very important.

**Mr. George Gilvesy:** Perhaps I could add something from my perspective.

As you heard from some of the statistics I gave, the greenhouse vegetable sector is a real bright light for Canadian agriculture. Our members are investing anywhere from \$800,000 to \$1 million an acre to put up a greenhouse. We've seen in Ontario the equivalence of an automobile factory invested, over the last five years, into greenhouses in the province.

Now, there will not be a faster showstopper than not being paid. If American buyers get onto the system of not paying Canadian suppliers, that will be a showstopper.

**The Chair:** Thank you, Mr. Gilvesy. We'll have to move on.

[Translation]

Mr. Drouin, you have six minutes.

[English]

**Mr. Francis Drouin:** Thank you. Just let me know when I'm at two minutes, because I'll be sharing my time with Monsieur Breton.

Thank you for being here and discussing PACA. I have a few questions. First, how long had the industry taken advantage, prior to October 2014, of PACA in the States?

**Ms. Anne Fowlie:** [Inaudible—Editor] put in place, so it's been a good number of years. It has been many years since I was on the sales desk. There are lots of other people before me, but since the deemed trust was implemented—

**A voice:** In 1930 [Inaudible—Editor].

**Ms. Anne Fowlie:** It was 1930 for the PACA to start with, and then the deemed trust was added.

**Mr. Francis Drouin:** I'm a bit perplexed as to why previous governments—it's no partisan jazz, I'm assuming the Liberal governments were there too—haven't acted on putting a PACA-like system in Canada. I'm assuming you've had past conversations about this. What was the push-back, and do you have a sense of why we didn't?

**Mr. Ron Lemaire:** The payment protection issue is extremely complex. We've already heard from Innovation, Science and Economic Development on the complexity of the BIA and an unwillingness to open the BIA because of the complexity of the BIA unto itself. One issue is the challenge relative to the bankruptcy act in the past.

There has been a lot of movement in the last five years due to the work we've seen with the regulatory co-operation council and a greater understanding of the complexity of the issue and the division between the insolvency component, the dispute resolution component, and the destination inspection component. In the past, all three were mixed together. That tended to confuse similar systems. As we heard earlier, can you implement this all in Canada? Well, it's not quite the same as what we have in the U.S. Our bankruptcy rules are different and our models are different. There was always a challenge when we started to do identical programming.

Where we are today is very different from where we were in the past, relative to now having the DRC and the dispute resolution mechanism similar to the dispute mechanism under PACA in the U.S. We each have reciprocal DIS programs, as Ms. Fowlie mentioned. The stopgap here is insolvency. The key that you will see when DRC presents on Wednesday is that the insolvency tool that's being presented does not have to sit under the BIA. The insolvency tool will and can stand alone. It's a stand-alone piece of legislation, and it can talk to the insolvency component only. When a company becomes insolvent at a federal level, that takes away the provincial issue, and the DRC can then be involved.

• (1715)

**Mr. Francis Drouin:** So it does require a legislative change—

**The Chair:** That's two minutes.

**Mr. Francis Drouin:** Sorry. If it's two minutes, I'm up.

**Voices:** Oh, oh!

**The Chair:** Monsieur Breton.

[Translation]

**Mr. Pierre Breton:** Thank you very much, Mr. Chair.

I would like to thank the witnesses here today.

I agree with you. We are in the process of establishing mechanisms and solutions, especially since it is often the smallest companies that are suffer from the lack of protection mechanisms.

You made the following recommendation: “that the federal government create and implement a limited statutory deemed trust [...]”

Can you please give us some more information about this recommendation?

[English]

**Mr. Ron Lemaire:** I'll share a quick statement with Anne and George.

The recommendation will be framed in the Cuming bill that will be available on Wednesday and provided to the committee. The DRC will be able to walk through the details of the bill at that time and the technical aspects.

Just quickly, is it changes to the legislation? We're looking at a new piece of legislation, a different approach from what we've seen in the past, that is a viable solution.

**Ms. Anne Fowlie:** I agree. I think there will be a good discussion on Wednesday. I certainly plan to be here to listen to the discussion, because this is something very near and dear to me.

We're here in this room today in 2016, and we all have an opportunity to contribute to a way forward. I purposely alluded to Agriculture and Agri-Food Canada's Pest Management Centre. Some of you, certainly, have heard for many years about all the issues around pesticides and so on and so forth. We never thought that we would get the Pest Management Centre, but at that time, the time was right to do so. We are the beneficiaries of it and will be in perpetuity.

It's the same thing with the establishment of the dispute resolution corporation. That was the foundation for the destination inspection service, as well as other things.

Again, it's the moment in time when there really is an opportunity to do something on this.

**Mr. George Gilvesy:** I might make one additional comment.

That alludes to a question asked in the previous testimony about what options might work. You're looking at what is the path forward. I think we have to look at the narrowness of what options may be acceptable to our largest trading partner here, which is the United States of America. Albeit this is a made-in-Canada solution, it ultimately has to meet the test of what will meet that trading obligation.

• (1720)

[Translation]

**Mr. Pierre Breton:** Thank you.

**The Chair:** Thank you, Mr. Breton.

[English]

Mr. Warkentin, you have six minutes.

**Mr. Chris Warkentin:** Thank you so much.

I want to get to exactly that point. We've heard again and again that the United States has said that while they changed the provision in 2014, if we had a PACA-like system in Canada they would immediately work with us to rectify the preferential treatment. Who in the United States has promised this?

It seems almost impossible these days to get a promise from anybody in the U.S. that would be a guarantee that anything could be delivered there. I've always just taken it for granted that somebody has guaranteed us this. Who is it?

**Ms. Anne Fowlie:** The letter to the then-minister of agriculture advising of the change subsequent to the telephone notification does indicate that at such time as we are able to put something together, they will revisit it. It's administrative. They don't need to make any legislative changes. It was administrative to remove the preferred access, and it will be administrative to restore it.

**Mr. Chris Warkentin:** So no politician would be involved in this process.

**Ms. Anne Fowlie:** That's correct.

**Mr. Chris Warkentin:** It's simply a decision that's been made by an administrative body. That seems odd to me. I've not seen that. I don't think that in Canada we operate that way, and I certainly know that there are far more politics being played south of the border.

Could you circulate that letter to us? I think it would be helpful in terms of tracking down who we might speak to in the United States.

The second point on this is that they have to know that whatever we come up with, it might be similar to what they have, but it won't be identical, because obviously we have provisions of bankruptcy and insolvency that are different in terms of jurisdictional complications.

Did they specifically state what elements must be included in a change in the provisions to allow whoever needs to make the decision to change the decision back? Did they actually specify what elements needed to be included in that and what didn't need to be? Or have you sent them what you think should be the solution and they have approved it, such that, yes, in fact, if that were implemented, they would reverse the decision?

**Ms. Anne Fowlie:** I don't recall the exact text, but it does speak to comparability. Also, in the regulatory co-operation council, in the first iteration in the action items, the action plan, there is text that also speaks to a comparable mechanism.

**Mr. Chris Warkentin:** Earlier, you heard me questioning the officials. They didn't have an answer specifically with regard to what the cost might be for producers if these new provisions were included and what the impact would be of the changes that the banks might make. Obviously, the cost for financing might be going up.

Have you talked to the banks at all with regard to this? The people who are usually hardest hit when there's a change in the way the banks operate are the small guys. The most difficult time for any small business to get financing is when they're small, when they're getting started. It seems to me that any change that would negatively impact the ability to access capital would be felt, and it would be hardest felt by those people who are the smallest. They seem to be the ones who we are most interested in protecting in this case.

Has there been any assessment of or any discussion with regard to these changes and how they might impact the ability for small guys to get access to capital?

**Mr. George Gilvesy:** It's a good question. This is only my interpretation so it's quite anecdotal, but the banks have taken a position of principle on this and they aren't going to defer to anyone if they don't have to. Their position is one that's very simple to understand.

Who is the biggest beneficiary from having a stable sector to lend to? It's the banks. The U.S. process turned the wild west into a stable environment, and hence, one would assume you would have the same thing here and the cost to growers would not go up.

**Mr. Chris Warkentin:** I would assume the same, and that's why I am wondering if you couldn't get the banks or somebody within the banking sector to analyze the change in the landscape. Obviously that would satisfy some who are concerned about the impacts it might have on the ability to access capital.

•(1725)

**Ms. Anne Fowlie:** Mr. Gilvesy is correct. Certainly from our understanding of what we have here in the U.S., the Canadian Bankers Association has a standing policy from which they would not be prepared to deviate. Research that has been done in the U.S. over time shows—because again, they have a long history on this—that at the time PACA was created, the banks remained silent, which was deemed a positive, and over time, speaking with different groups, overall PACA has had a net positive effect for both growers and packers in the produce industry as well as for bankers financing the sectors.

**Mr. Chris Warkentin:** You're confirming my suspicion that this would be the case. We need to be able to supply that information to the officials, because they seem to be questioning those numbers. That seems to be the greatest area of reluctance as it relates to the interprovincial issue.

**Ms. Anne Fowlie:** PACA provided extra security to banks focused on production lending in that it allowed growers priority in recovering any unpaid accounts from buyers, therefore strengthening growers' balance sheets.

**Mr. Chris Warkentin:** Ron, you wanted to jump in there.

**Mr. Ron Lemaire:** I was going to continue to validate that, yes, in our discussion with financial institutions, their willingness to lend to our industry is not going to stop. We have had those conversations. They want to ensure we are a stable industry to lend to.

**Mr. Chris Warkentin:** Right, but they're going to say if they're not first on the collection side, they're going to charge higher interest. That has always been the argument, and we've seen that in every sector when there's a discussion of changing the insolvency

provisions to allow somebody else to get ahead of the banks. Obviously that has an impact on interest rates. Obviously higher interest rates mean that if it costs a million dollars an acre to build a greenhouse, it's going to be that much more to finance these things, which means that younger people, the smaller guys, aren't going to be able to get into the industry. Those guys are the ones we're most interested in protecting, because the big guys can come up with \$100,000 to protect their interest when they have a discussion with their counterparts in the United States.

**The Chair:** Mr. Warkentin, do you have a quick question?

**Mr. Chris Warkentin:** On that point, if we could get some kind of assurance from the banks that they see the provisions of PACA as being more advantageous than the change in the way you would undertake the insolvency, that would be important information for us, if such documents did exist.

**Mr. George Gilvesy:** I'm not sure we'll get an answer from the banks on that, but I think we have to bring it back to the principles of good commerce, and that's ensuring that growers get paid for what they do. If we're deferring to the banks in their position on the backs of the growers who aren't getting paid, I think that's not a good position.

**The Chair:** Thank you very much.

This will conclude this portion of the committee meeting. I thank the panel for being here. As a small greenhouse grower, I agree that you should get paid for your tomatoes.

We're looking forward to the next session next week. The meeting is adjourned.

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