

CANADA NEEDS FINANCIAL PROTECTION FOR FRESH PRODUCE SELLERS

Bill C-280, the Financial Protection for Fresh Fruit and Vegetable Farmers Act, would establish a critical support for Canada's fresh fruit and vegetable industry, at no cost to the government. This important legislation was passed with almost unanimous support in the House of Commons.

Now it is time to ensure its swift passage in the Senate.



QUESTION

Doesn't the *Bankruptcy and Insolvency Act* already include a farmer super-priority and the right of repossession when buyers go bankrupt? Why don't these work for fresh produce?

ANSWER

Unfortunately, while the intent is admirable, the current Act does not provide a workable mechanism for cases in which buyers of fresh produce become insolvent. Given how quickly produce moves through the system and is consumed or spoils, it is generally very rare that fresh fruits and vegetables would be available for repossession.

The "super priority" provision for farmers in the Act is also not effective for fruit and vegetable suppliers because it states that the product must have been delivered within 15 days of a bankruptcy or the appointment of a receiver. This 15-day period is too short for our sector, as payment terms for fresh fruits and vegetables are typically 30 days or longer.

Numerous studies, including those by the Library of Parliament, have found these provisions do not work in the case of fresh produce.

QUESTION

Won't Bill C-280 favour sellers of fresh produce over sellers of other perishable products, such as meat, egg and milk producers?

ANSWER

As noted above, while other commodities may already be effectively protected under the farmer super-priority provisions in the *Bankruptcy and Insolvency Act*, these provisions do not offer a workable mechanism for the fresh produce sellers. **The fresh produce sector is not asking to be given special treatment; we are**

seeking to realize the benefits already intended to be granted under the Act.

It is also important to recognize that other commodities have enabled further protections for their sectors. For example, Canadian supply management systems indirectly provide forms of financial protection to sellers of those commodities.

In addition, the Canadian Grain Commission holds roughly \$1 billion of financial security from individual grain licence holders (based on complicated formulas) to pay grain sellers in case a grain buyer becomes insolvent.

QUESTION

Is the absence of a deemed trust for fresh produce really causing harm for the industry? How often do these bankruptcies happen?

ANSWER

Growing, harvesting, packing, and marketing fruits and vegetables comes with a number of risks and additional costs that are unique to the production of perishable goods and returns on these investments are delayed until the product is sold and payment is collected down the supply chain.

As noted by Professor Ronald Cuming, there is an inherent harm associated with producing and selling fresh fruits and vegetables because sellers immediately become unsecured creditors. This leaves

them in a highly vulnerable position that is made worse by supply chain pressures squeezing already tight profit margins.

Recent bankruptcies have had major impacts to the Canadian fresh produce sector. In January 2023, Lakeside Produce in Leamington, Ontario, filed for bankruptcy, with creditors owed nearly \$188 million. Among those creditors are 17 Canadian produce companies with more than \$1.6 million in unsecured claims, and another 45 produce companies across North America owed more than \$4.8 million.

In October 2021, a New Brunswick-based produce retailer declared bankruptcy with more than \$3 million left owing to creditors, including farms and produce wholesalers. **The significant ripple effects of these examples clearly demonstrate why a financial protection tool is needed to protect our highly integrated sector and food security in Canada.**

QUESTION

Could a deemed trust negatively impact access to credit within the fresh produce industry?

ANSWER

The deemed trust mechanism that would be established under Bill C-280 would be operate similarly to the U.S. *Perishable Agricultural Commodities Act*, which has been a successful market stability tool for many years. **The U.S. experience demonstrates that sellers protected by**

the trust have more access to credit (not less), as lenders recognize the security the trust provides.

In discussions with Canadian agricultural lenders, there was a sentiment that it would be similar in Canada and that having a deemed trust in place would strengthen

the security of their overall agriculture portfolios related to fresh produce, knowing that their clients (as suppliers) were protected.

QUESTION

How much of this is about trade with the U.S.?

ANSWER

The lack of a financial protection mechanism for fresh produce sellers in Canada also means that Canadian sellers remain unable to utilize the preferential treatment they previously enjoyed, until 2014, under the United States *Perishable Agricultural Commodities Act (PACA)*. Instead, Canadians selling fresh produce to our biggest trading partner are treated like

all others and must pay double the bond on the shipment to access the PACA dispute resolution mechanism - a cost that is simply untenable for many Canadian businesses.

The focus of Bill C-280 is to provide critical protection to fresh produce sellers in Canada. As an added benefit, having a financial protection tool in place in Canada would also pave the way for the United

States Department of Agriculture to restore Canadian produce sellers' preferential access to the U.S. dispute resolution mechanism for fresh fruit and vegetables.