



# Financial Protection for Produce Sellers

Election 2019

**Our Ask:** That you create a PACA-like deemed trust in Canada and restore preferential access to the US' dispute resolution mechanism for fresh fruits and vegetables.

## BACKGROUND

- Prior to 2014, Canada enjoyed preferential access to the US' *Perishable Agricultural Commodities Act* (PACA) dispute resolution mechanism, which ensured that companies were treated in the same manner as US companies when filing a claim through PACA in cases of slow-pay or no-pay and were charged a maximum of \$500 USD to pursue a formal claim against a US buyer.
- Canada lost preferential access to PACA's dispute resolution mechanism in October 2014 as it does not have a reciprocal PACA-like deemed trust which provides bankruptcy protection for produce sellers in the event that a produce buyer becomes insolvent.
- Since the loss of Canadian preferential access to PACA, Canadian produce sellers pursuing a formal complaint under PACA must now post a bond equivalent to 200% of their claim against the buyer. Many Canadian produce companies do not have the financial means to post this bond and are forced to accept a reduced price for their product.
- As a result of this loss of preferential access, many US buyers have used the high cost of a double bond as leverage against Canadian produce companies as a way of reducing costs

and negotiating down the price of the product they have purchased.

## ACTION REQUIRED

- We propose the creation of a PACA-like trust
- The authority to create a PACA-like trust in Canada rests with the Minister of Innovation, Science and Economic Development, the Minister who is responsible for insolvency law.
- Fortunately, the loss of preferential access to PACA is an administrative decision and can be reversed by the US Department of Agriculture once the Government of Canada has proven that they have created a reciprocal PACA-like trust in Canada in cases of insolvency.
- Draft legislation of PACA-like deemed trust in Canada has been created by Prof. Ron Cuming, an expert in bankruptcy and insolvency law from the University of Saskatchewan, and has been shared with members of the House Standing Committee on Agriculture and Agri-Food as well as officials at Agriculture and Agri-Food Canada (AAFC) and Innovation, Science and Economic Development Canada (ISED).
- Additionally, the House Standing Committee on Agriculture and Agri-Food recommended the creation of a PACA-like deemed trust in Canada in 2016 as well as the House Standing Committee on Finance as part of the pre-Budget report to the Minister of Finance in both 2018 and 2019.