Financial Protection for Canada’s Fresh Fruit and Vegetable Industry

Background

Agriculture is the largest or the second largest industry for Ontario. Historically, Canadian and Ontario agriculture businesses have been protected under a long standing preferential access to the U.S. Perishable Agricultural Commodities Act (PACA) guaranteeing protection in case of bankruptcies and when payment issues arise. This preferential access was revoked by the U.S. Department of Agriculture on October 1, 2014. The newly created situation puts Canadian and Ontario agriculture companies at a disadvantage.

Canada had been the only country granted the same access as U.S. entities to the protections offered by PACA to recover payments both during bankruptcies and to recover unpaid bills outside of bankruptcy.

In order to address the gaps in protections between the two countries, the Canada-U.S. Regulatory Cooperation Council (RCC) mandate agreed to by President Obama and Prime Minister Harper in 2011 included a commitment to establishing a comparable Canadian approach for protecting Canadian and U.S. fruit and vegetable suppliers from buyers that default on their payment obligations.

Due to a lack of progress in fulfilling this commitment, on October 1st 2014, the U.S. Department of Agriculture (USDA) revoked Canada’s preferential access to the PACA.

This will have significant consequences for the fresh produce industry in Canada, putting jobs, Canadian farms and other parts of the supply chain at risk. Unpaid bills (such as those due to a bankruptcy) will increase for Canadian companies exporting to the U.S., who will have lost their previously strong leverage over their buyers. The only protection that is viable is posting of bond of double the value (200%) of their claim. Seventy-five percent of Canada’s 10,000 fruit and vegetable producers are small businesses with average sales of less than $85,000 per year. Many cannot afford this and will simply have to walk away.

According to the Canadian Produce Marketing Association the changes to PACA rules will result in a permanent loss in Canada’s GDP of at least $12.7 million annually. The lost production results in a permanent loss of 154 jobs and $5.9 million in labour income. Our upper bound assumptions result in losses to GDP of $38.4 million, along with the permanent loss of 464 jobs and $17.7 million in labour income.

Creating of a limited statutory deemed trust that provides financial protection for produce sellers in Canada in the event of bankruptcies will meet the U.S. requirements for a comparable Canadian system in order to reinstate our preferential access to PACA.

Recommendation

That the federal government create and implement a limited statutory deemed trust in the first legislative session after the 2015 election that provides financial protection for produce sellers in Canada in the event of bankruptcies. The assets available to trust creditors would be limited specifically to produce accounts receivable, and any cash and inventory from the sale of the produce.