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**Regulatory modernization
Treasury Board Secretariat Consultation**

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Canadian Horticultural Council

The Canadian Horticultural Council (CHC) is an Ottawa-based voluntary, not-for-profit, national association that represents fruit and vegetable growers across Canada involved in the production of over 120 different types of crops, with farm cash receipts of \$5.4 billion in 2017. Since 1922, CHC has advocated on important issues that impact Canada's horticultural sector, promoting healthy, safe and sustainable food, and ensuring the continued success and growth of our industry.

Introduction

CHC is generally supportive of the Government of Canada's regulatory modernization initiatives, as lead by the Treasury Board of Canada Secretariat and has responded to past consultations on the Canada-United States Regulatory Cooperation Council (RCC), the Federal/Provincial/Territorial Regulatory Reconciliation and Cooperation Table (RCT) and the Canada-European Union Regulatory Cooperation Forum (RCF). We look forward to continued participation in the on-going work to renew and reduce regulatory misalignment and barriers to trade.

Regulatory burden on farmers is a significant concern to the modernization of the agri-food sector. As competitors in a global market, it is essential that Canadian farmers' voice is heard, understood and acted upon throughout the regulatory cycle. The constant layering of government policy initiatives/regulations and related costs facing our farmers, adds to the challenge of navigating an unstable/unpredictable/unsupportive business investment climate and the lack of harmonized government policy and regulations across federal departments and FTP jurisdictions, as compared to international competitors.

Feedback required on Federal Government's Regulatory Review

CHC has identified the following key areas where regulatory review could identify new approaches, help address irritants and issues that limit innovation and competitiveness, and identify potential opportunities for regulatory design and management.

1. Regulatory issues & barriers impacting sector, including design and management of regulations, including irritants and issues that limit innovation and competitiveness:

Carbon Pricing

- Federal leadership is needed to ensure carbon pricing regulations and any necessary amendments to the Budget Implementation Act reflect the AGFO recommendations in their Twelfth Report to minimize competitiveness impacts. The agricultural definitions and

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exemptions provided for farmers in Part 5 (Greenhouse Gas Pollution Act) of the Budget Implementation Act I need to follow the same technical guidance document that the Canada Revenue Agency already uses (Income Tax Folio S4-F11-C1). The definition of *Qualifying Farming Fuel* needs to add “natural gas and propane”, and the definition of *Eligible Farming Machinery* needs to add “heating and cooling of a building for agricultural production, including greenhouse vegetable production” to ensure the agricultural exemptions provided are consistently extended to the full range of Canadian farmers and their on-farm fuels. Such an approach would better reflect modern agricultural practices across Canada and the innovative potential of the greenhouse sector, support increased food security and sovereignty, and minimize competitiveness impacts.

Crop Protection

- Pest Management Regulatory Agency (PMRA) decisions directly impact the tools farmers have to protect their growing crops from pest damage, manage invasive pest species, minimize food waste, and maintain quality standards required by the market. The PMRA’s mandate is to regulate pesticides under the authority of the Pest Control Products Act, and CHC is calling on the PMRA mission¹ and regulatory decision-making process to reflect that beyond the human and environmental health objectives, they are accountable to Canadian farmers and the impacts their decisions have on Canadian agriculture’s ability to be good stewards, manage pests, and compete in a global market.
- Appropriate, effective, and adequate pest management and mitigation measures need be developed in partnership and accessible to farmers so as to offer safe, high quality Canadian produce to Canadian consumers and export markets, while maintaining a thriving industry.
- The lack of regulations (under the Pest Control Products Act) requiring PMRA to conduct a cost-benefit analysis for regulatory decisions has severe negative impacts on the competitiveness of Canadian growers. Regulatory decisions are made solely based on an assessment of risk to human health and the environment with no consideration of how such decisions effect the ability of growers to produce food in a cost efficient and productive system, if at all. Specifically, Canadian growers are at a competitive disadvantage to US growers given that the USEPA conducts a cost-benefit analysis subject to public consultation before final regulatory decisions are made.
- The regulatory requirement (under the Pest Control Products Act) for the PMRA to initiate a Special Review if an active ingredient is discontinued in an OECD country requires extensive PMRA resources that result in very rare regulatory change in Canada. Such reviews result in the delay of new product uses/amendments until the Special Review is completed, impacting the competitiveness of Canadian growers.
- CHC supports the continued work on joint registrations between the Environmental Protection Agency (EPA) and the Pesticide Management Regulatory Agency (PMRA).

¹ The PMRA Mission: *To protect the health and environment of Canadians by using modern evidence-based scientific approaches to pesticide regulation, in an open and transparent manner.*

Harmonized reviews and decisions of crop protection products, particularly with the US could be improved where EPA and PMRA are more aligned in terms of timing, process, thereby realizing mutual benefits to industry and government such regulatory harmonization, reduced costs, and quicker results.

- Currently US growers have access to many products not approved for use in Canada; traditional chemistries, but also organic or “soft” chemistries, biopesticides, biological controls, etc. If PMRA would be able to fast-track certain approvals, both conventional and organic farmers could have additional tools that are effective and regulated.
- CHC strongly urges the federal government to ensure PMRA is provided additional resources to fulfill their mandate, and make sound, scientific decisions regarding pesticide re-evaluations, and to clearly communicate out their decisions to stakeholders. A lack of available scientific data is a problem for PMRA who then must rely on modelling or assumptions that are unrealistic or incomplete. Equally challenging is the difficulty in collecting actual grower-use data for farmers/associations to provide to PMRA in response to the PMRA decisions.

Labour

- CHC recommends the Government of Canada work to ensure that all agricultural operations have access to the SAWP and TFWP Ag Stream, by expanding the definition of *primary agriculture*. Access to farm labour means the difference between fresh produce being grown and harvested vs. food waste and financial loss. There are approximately 45,000 temporary foreign workers each year (35,000 through SAWP and 10,000 through Ag Stream) who work in the primary agriculture industry, filling positions unable to be filled by Canadians.
- IRCC requirements for biometrics for work visas as of January 1, 2019. The government is not adequately set up to process the over 25,000 workers that come annually from Mexico. The regulation should be modified to allow workers currently in Canada to provide biometric information, a higher number of application centres should be opened, and/or a transition time be implemented.
- Federal budgetary allocation to increase Temporary Foreign Worker inspections focuses solely on compliance and rights but ignores community and on-farm supports that function to increase social inclusion and acceptance. Both sides of this equation are required to ensure a sense of well-being and belonging in all populations, be they resident or non-resident.

Small Business Deductions

- The current capital asset limits to qualify for the small business deductions (SBD) were established in 1994 and have not changed in the past 14 years. Small businesses are eligible for the SBD their capital assets are below \$15 million with a straight line deduction

beginning at \$10 million. The SBD is applicable on the first \$500,000 which has not been increased since 2009.

- Critical to farmers' tax regulations are changes needed to the SBD for affiliated corporations: the first \$500,000 for qualifying businesses must be divided pro rata amongst the shareholders of the affiliated corporation as well as the affiliated corporation itself. For many of these corporations in the produce industry, this will increase their shareholders' cumulative taxes in the hundreds of thousands or millions of dollars annually. With such significant increase in taxes, many businesses will have to forego much of their planned growth or reinvestment. Furthermore, this is a major disincentive for growers to get together to create the critical mass of product required to remain competitive and supply major retailers by pooling marketing and sales resources.

2. Areas where emerging technologies and innovations will challenge current regulatory approaches / new regulatory approaches that will be needed:

Plant Breeding Innovation

- Advancement in agricultural biotechnology pose challenges that will be amplified with gene-editing systems and tools for plants. Canada needs access to utilize these tools to stay competitive globally.
- Canada needs to exempt agricultural innovations that are the products of plant genome editing from being regulated. As the US has adopted this approach, Canada should follow suit to maintain competitiveness so that such products can enter the Canadian market at the same time as they are available in the US.

Resources for Canadian Regulatory Agencies

- The PRMA's re-evaluation process has resulted in the loss of many important crop protection products to fruit and vegetable growers (13 possible in the last year alone), and the costly and lengthy registration process cannot keep up. The Minor Use Program is an excellent program for front-end registration, but it needs more resources, and this process is not consulted or considered during re-evaluation. In addition, AAFC is aware of the needs of modern fruit and vegetable farms, and their input should be used in re-evaluations. Harmonization with the EPA, coordination and consultation with growers and stakeholders, including AAFC, and increasing the power of the minor use program could all be beneficial.
- Increased funding for the Canadian Food Inspection Agency (CFIA) to protect Canada's plant resources, gain access to new markets, help eliminate non-tariff barriers, and absolve growers from paying additional CFIA fees. Climate change demands that CFIA's ability to manage plant health programs, predict, prevent, prepare for, and respond to pest incursions is essential to Canada's growth agenda. At a time when international trade of agricultural commodities is increasing, CFIA's ability to develop and regulate plant health is vital to both domestic and international markets. For example, Canada stands to dramatically increase its

export of fruits and vegetables if it enters into free trade agreements such as China, CPTPP, ASEAN, etc.

- The legalization of cannabis: the resources currently dedicated to agri-food regulatory system are in many instances already strained. The Government of Canada will need to address the current and new demand on the regulatory systems and programs (e.g. PMRA, CFIA, etc.); current capacity WILL NOT be adequate to include also addressing the expected cannabis industry requirements.

3. Identify potential areas for regulatory experimentation AND trends (scientific, technological, international) that the GoC should consider:

- Canada (CFIA) is developing a new Plant Health Strategy which is a positive step in protecting our plant resources. Design and implementation of a grower compensation system for invasive pests should be explored to encourage early detection and disclosure similar to the Australian model where governments (all levels), growers and industry cooperate in such a system.
- A whole of government approach wherein the multiple stakeholders involved in or affected by PMRA decisions can determine the end objective and the best pathway to reach it – a revision of the processes currently used in PMRA is needed.
- A new federal approach to building public trust in Canadian Agri-Food should be a top priority for the government and will require significant and long-term collaborative efforts. A consistent message delivered by sector and government alike will build confidence among Canadian consumers who are often bombarded with pseudo-science and misleading facts and figures.

4. Identify areas for greater alignment across jurisdictions (tariffs and non-tariff barriers):

- For technical trade barriers, consider harmonization. Specifically, for maximum residue limits, consider using Codex. This will ensure growers on both sides of the border have access to the same pest management materials and will enable to Canada to maintain their markets domestically and grow exports around the world.
- Canada needs to harmonize regulatory decisions for crop protection products with the US to maintain Canadian grower competitiveness. Such alignment will allow equal access to crop protection products at the same time. Particularly for products under re-evaluation, decisions in Canada to discontinue use are most times completely contrary to decisions in the US to maintain use.
- When free trade agreements are negotiated, consideration of market access plan or schedule should be negotiated for specific commodities. Frequently tariff levels are set or exempt, but Canadian growers are unable to utilize as there is not phytosanitary agreement in place for a specific commodity.

- Canada and US phytosanitary standards are frequently highly aligned, but the US has access to many international markets that Canada does not (e.g. potatoes). Consideration should be given to easier market access to such countries for Canadian growers where the commodity is already heavily aligned with the US.

5. Identify concrete actions (short and longer-term) to ensure businesses remain competitive and to promote innovation:

- Carbon pricing exemption for the full range of farmers, farm fuels and farming activities/machinery that reflects and explicitly references the Canada Revenue Agency's technical guidance document (Income Tax Folio S4-F11-C1).
- Whole of government approach to consult with stakeholders on agricultural definitions developed and used in any Canadian regulations, with reliance on Agriculture and Agri-Food Canada where further evaluation and/or interpretation is required.
- Data and statistics: many government consultations and decisions require quantifying data to show the impacts to industry. CHC often relies on government data including Statistics Canada. In order to show true impacts, these stats need to be detailed, accurate and updated to reflect changes as industry innovates.
- Immediately amend the Pest Control Products Act to include the requirement for cost-benefit analysis to ensure that competitiveness is part of all regulatory decisions. Ensure farmers have input into the cost aspect of the analysis.
- Harmonize regulatory decisions for crop protection products (especially re-evaluation) with decisions in the US to establish competitiveness of Canadian growers with those in the US by equal access to crop protection products.
- Improve on the logistics of IRCC biometrics implementation for maximum efficiency in the access to international farm workers.
- Support programming needs to parallel regulatory reform process to ensure growers are supported in making fundamental and long-term business investments that support sector growth, export market development and a strong social licence.
- Support for export market development should be long-term and recognize the complexities and trust required to develop relationships in foreign markets.

Specifically, on Small Business Deductions:

- In the short term, we would request that a **moratorium** on this year's tax filings for affected affiliated corporations be initiated. As there is much confusion for industry and tax professionals alike, a moratorium would allow more time to better understand these changes and how to apply them to their tax returns.
- To this end, a **comprehensive guidance document** by CRA is necessary to facilitate this process. There is significant risk for industry in filing an incomplete or inaccurate tax return

due to the extreme complexity of the new rules and little guidance from government thus far.

- We also encourage the Government to commit to **retroactively forgiving omissions or mistakes** in corporate income tax returns related to the SBD as a result of these rule changes for the 2018 tax filing year.
- Long term, we are seeking an **exemption for agricultural affiliated corporations** whose operating structure is similar to that of cooperatives, the difference being the shareholder structure. Agricultural affiliated corporations which pool revenue in a similar fashion to cooperatives and pay-out shareholders in a similar way to cooperative members should be exempt from the SBD changes.
- Both the federal business limit of \$500,000 and the capital assets limit of \$15 million should be increased based on the current reality of small business, and then subsequently indexed to inflation so as to reflect modern operating costs and business operations.

6. Lessons that can be learned from other jurisdictions, regulators, sectors, or industries:

- CHC continues to strongly recommend the Government of Canada establish financial risk mitigation tools, similar to the U.S.'s Perishable Agricultural Commodities Act (PACA). The U.S. has communicated to Canada exactly what would constitute a comparable system with an emphasis on the creation of a deemed like trust, which would allow for comparable outcomes to the PACA Trust for all produce dealers. Action is now required from Canada to see these tools through.
- The Australian grower compensation system for invasive pests should be used to implement a similar program in Canada.

Conclusion

CHC supports the Government of Canada's efforts to consult and apply the Cabinet Directive on Regulation guiding principles of federal regulatory policy² to this stage of the modernization agenda, as it applies to Canadian fruit and vegetable farmers.

CHC and its members would emphasize that both policy development, and regulatory design, implementation and review would benefit greatly by increased collaboration amongst government departments. While the role of Agriculture and Agri-Food Canada is inherently important to developing solid, impactful regulatory mechanisms, additional departments such as Health, Global Affairs, Environment, Innovation and others often may have the authority to draft, implement, and/or enforce legislation/regulations. Collaboration between departments would increase an understanding of the compounded regulatory burden that their individual objectives have on farmers, which should lead to actions that would alleviate said burden.

² Cabinet Directive on Regulation. <https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulation.html> Accessed: September 10, 2018.

CHC encourages the Government of Canada to stay accountable to all stakeholders, and set achievable, tangible goals and deadlines.

We would be pleased to provide the Treasury Board Secretariat any further information on our suggestions and comments.

Sincerely,



Brian Gilroy
President



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Executive Director