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Chair

Mr. Pat Finnigan

Standing Committee on Agriculture and Agri-Food

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• (1530)

[Translation]

The Chair (Mr. Pat Finnigan (Miramichi—Grand Lake, Lib.)): Order, please.

[English]

Welcome, everyone, to our meeting of the Standing Committee on Agriculture and Agri-Food.

Go ahead, Mr. Vaughan.

Mr. Adam Vaughan (Spadina—Fort York, Lib.): I'd like to move and table the motion of colleague Alaina Lockhart, the MP for Fundy Royal, that the committee recommend to the House the following:

That the House recognizes that the government strongly supports supply management, dairy producers, and the Canadian dairy industry; and, consequently, the House urges the government to:

(a) recognize the magnitude of the economic losses to Canadian dairy producers from the importation of diafiltered milk, which has increased significantly over the last few years;

(b) recognize that the industry call for the problem to be resolved rapidly;

(c) to meet with dairy producers and Canadian dairy industry, within the next 30 days, in order to address the immediate impact of the economic losses cause by the importation of diafiltered milk, and to propose a sustainable solution toward modernizing the dairy industry,

AND THAT the Chair report this to the House of Commons at the earliest opportunity.

The Chair: Thank you, Mr. Vaughan.

[Translation]

Ms. Brosseau, do you have a comment on this?

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

I want to thank Mr. Vaughan for finally having introduced Ms. Lockhart's motion. I don't know if you know this, Mr. Chair, but I too submitted a similar motion. Is the member ready to accept an amendment?

A few days ago, the minister announced that he would be voting against the NDP motion, and a certain number of days have passed since then.

[English]

The minister went down to the lobby and said that he was going to be voting against the NDP motion, announcing that there would be consultation for the next 30 days. We've gone through quite a few days, and there are 18 days left for consultation. Would you be open to amending the motion? Time has passed since the

government announced consultations, and there are only 18 days left. We all acknowledge the urgency of action on diafiltered milk.

Mr. Adam Vaughan: We are ready to accept the amendment.

The Chair: Can you repeat the exact amendment, Madam Brosseau?

Ms. Ruth Ellen Brosseau: It's just in order to solve the problem within the next 18 days. It is:

That the motion be amended by replacing the word “ thirty (30) ” with the word “eighteen (18)”.

Mr. Adam Vaughan: We accept it.

Ms. Ruth Ellen Brosseau: We're getting along.

The Chair: You've heard the amendment. Is everybody in favour?

Mr. Warkentin.

Mr. Chris Warkentin (Grande Prairie—Mackenzie, CPC): I wonder if the government could explain what they expect the outcome to be, what they are committing the minister to do. They are responding to calls from the NDP motion on their opposition day to resolve this issue. There was some stronger language from the NDP in the type of solution that would come forward.

There is a commitment to meet. I think we would like to include in the motion that the minister come to our committee to explain the outcome of those hearings and what he intends to do in 18 days.

That would be the action item. Otherwise, I'm not sure why our committee's getting involved.

The Chair: Are there any other comments?

Mr. Chris Warkentin: I would like to ask if the government would be willing to include an amendment that the minister would come to the committee to explain his findings and to tell the committee what he intends to do.

Otherwise, I'm not sure why the committee is involving itself in something that is completely in the minister's bailiwick. There really is no reason that we would be telling the minister what to do unless this committee intends to do something, namely, to involve ourselves in the process.

The Chair: Do we support the amendment to the amendment? That is the question.

Are there any questions?

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Did you say within 18 days?

The Chair: Mr. Warkentin.

•(1535)

Mr. Chris Warkentin: I don't want to be unreasonable about the time frame, but it would be important for our committee to close the circle on this. This matter is completely within the minister's mandate and is outside the committee's mandate. I'm not sure why we, as a committee, are doing anything on this unless we are going to ask that the minister come to the committee to explain the findings and make a commitment with respect to what he's going to do to resolve this issue. Otherwise, this is simply window dressing, and this committee has no need to be involved. The minister could go out and announce that he is going to do this without the committee's involvement. The only reason we would move a motion would be if we intended to do something on this issue.

I'm simply suggesting that we invite the minister to the committee, after the hearings, to explain what he heard and tell us what he intends to do.

The Chair: Thank you, Mr. Warkentin.

Madame Brosseau.

Ms. Ruth Ellen Brosseau: Thank you.

I think it's really important that the minister does come before committee to talk about what he's heard from the industry, from dairy producers. We did have that debate in the House, and sadly, the motion did not pass. I just want to make sure that the government and the minister really do understand the situation and that he is able to resolve it. We thought the solution was fairly simple, to just apply the rules already in place, but through questioning and whatnot in the House, it seems to be a little bit more complicated.

He doesn't seem to get how to resolve it. I think it is really important that he come before committee and explain the action that is being taken after the 18 days.

The Chair: Mr. Shipley.

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

I appreciate the government taking the position to help out here.

Following on what both my colleagues have said, if we don't have the minister here, it's an announcement, really. It's saying that the House recognizes the industry, the call for the problem to get resolved and to meet with the producers. I have a sense from the discussions the minister has had—and I appreciate the fact that he has been out talking, too—that he's been briefed on the whole issue of diafiltered milk and has met with a number of the dairy producers, so I'm convinced by his actions that the 18 days is not the issue. I think the issue would be not having come to this committee. That would be an issue, I think.

If it just became an announcement to meet and not do anything, we're going to break before we would hear it as an announcement, rather than coming as something from this committee. We've all agreed on the significance that it has to this industry, not only to the producers but also on the processing side, so I would support that.

I'm seeing some nods, so I think you could request it and it would happen. I think everyone, not just in this committee but on the dairy and the processing side, really needs to hear from the minister, and

I'm almost convinced that he's prepared to do that because he's had some ongoing consultations.

The Chair: Mr. Vaughan.

Mr. Adam Vaughan: We're prepared to entertain the amendment insofar as it states “at his earliest convenience”. It's hard to put an exact timetable to it just because of his schedule, so we'll accept that amendment that the minister be invited to appear “at his earliest convenience” to update the committee if we can call the question now.

The Chair: I guess the amendment is “that the minister appear in front of the committee at his earliest convenience”.

Mr. Shipley.

Mr. Bev Shipley: I'm just wondering, with that, which is pretty open-ended, if the committee would be able to come back on Wednesday and inform us of what that “earliest convenience” might be, just so that we know. This is the time of the year when some committees get interrupted by votes.

Mr. Adam Vaughan: We understand the urgency. We'll try to get you a date as quickly as possible, but I can't commit the minister's office or the minister to a timetable without speaking to them first. We'll endeavour to get you the timetable, but I think we all understand the urgency, and that's why we should get on with the vote and move forward.

•(1540)

The Chair: Are we ready to vote on the amendment?

All in favour of the amendment, please indicate.

It's unanimous.

(Amendment agreed to)

The Chair: Thank you, everyone.

Now we'll have to vote on the main motion, as amended by Madame Brosseau and Mr. Warkentin.

You have it in front of you, the original motion, and then we have the amendments, with a date, “18 days” as of today, instead of “30 days”, and the other amendment by Mr. Warkentin, “That the minister appear in front of the committee at his earliest convenience”.

Those in favour of the motion, please indicate.

It looks like we have unanimous consent. Thank you, everyone.

(Motion as amended agreed to [See *Minutes of Proceedings*])

The Chair: The other thing we have to do very quickly before we move on to our guest is the approval of the budget for the study. The total amount requested is \$6,900.

If it's the pleasure of the committee, we need a motion to adopt the —

Mr. Chris Warkentin: So moved.

The Chair: That is moved by Mr. Warkentin.

All in favour of the motion, please indicate.

(Motion agreed to)

The Chair: Sorry to our witnesses for the little bit of a delay, and thank you very much for being here with us today.

We shall now get into the business of PACA, the United States Perishable Agricultural Commodities Act.

With us today by video conference, from Vegpro International Inc., we have Monsieur Jocelyn St-Denis, executive director of finance and business strategies. Welcome, Monsieur St-Denis.

From the Fruit and Vegetable Dispute Resolution Corporation, we have Mr. Fred Webber, president and chief executive officer. Welcome, Mr. Webber.

From the Ontario Fruit and Vegetable Growers' Association, we have Mr. Jason Verkaik, chair. Again, welcome to you all.

I'll allow 10 minutes. We will start with Mr. St-Denis, as he is on video conference, and we never know how that will go.

[Translation]

Mr. Jocelyn St-Denis (Executive Director, Finance and Business Strategies, Vegpro International Inc.): Thank you, Mr. Chair.

Good afternoon and thank you for the opportunity for Vegpro International Inc. to appear before this committee studying PACA, the Perishable Agricultural Commodities Act.

My name is Jocelyn St-Denis and I am the director of Finance at Vegpro International. Our company is located in Sherrington, south of Montreal, in Quebec. The shareholders of our company are five family farms that decided to coordinate their production and pool their marketing. As the employee of an agricultural producer, my main objective will be to acquaint you with our reality as farmers.

Whether we are talking about a small family farm, a co-op or a larger enterprise, the challenges are many in 2016. We must grow a quality product, sell it at a good price and receive payment for it. This allows us to live from our work, invest in maintaining our production capacity and comply with all of the increasingly numerous regulations, be it in the area of health and food safety, or the environment and sustainable production, in addition to a phenomenon we cannot control, the weather.

Vegpro produces iceberg head lettuce, and romaine, young shoots of the spring mix type, and baby spinach. We also produce onions, carrots and several other vegetables on a smaller scale. We also package and market these products for other small farms in our area who do not have warehouses or packing equipment.

Most of these fruits and vegetables are highly perishable and when they are ready for harvest, they must be sold. All of that can be organized, but we all know that the weather has the last word. All you need is a warmer period, a rainstorm, and suddenly you have twice the anticipated crop.

Every day, every producer has to sell his or her produce because if they do not do so, they run the risk of losing it. So, early in the morning, we assess the quantities of produce to be harvested and we do our sales work. Everything has to be sold before noon, because our produce has to be shipped that very evening. Sometimes we have

to sell to clients we do not know, and our decisions have to be made quickly or otherwise we lose the product.

Since the product is perishable, we are at the mercy of the market, and at Vegpro International Inc., we deal with that reality. I will give you a few examples.

A client may refuse to pay if he feels that the quality was not satisfactory, and we will realize that 21 or 30 days later when the invoice remains unpaid.

It happens that market prices drop suddenly below the agreed-upon price, and the client will refuse to pay without concluding a new agreement.

A client may refuse the product at his door, five hours away from us. Then we must find another client for that product rather quickly, because the carrier has another client to serve when he returns and he has to empty his trailer. We accept the first client who wants to buy the product, and we assume the risks. It also happens sometimes that a client simply refuses to pay for no reason, or he may have gone out of business or gone bankrupt.

Vegpro, its shareholder farms and other producers in Quebec have suffered losses following several bankruptcies over the years, such as Michel Desjardins Ltée, Les Produits Golden Touch, Fruits Atlas International Ltée, The S. Baizer company, Fruits Botner Ltée, Gérard Viau Inc., National Fruits Inc., who were all distributors. For some time now, fruit growers in Quebec have been seeking bankruptcy protection, the most recent ones being Les marchés 4 saisons, La Fruiterie de l'Outaouais, the Groupe Épicia and Les Jardins Valmont. When a client of the industry refuses to pay or goes bankrupt, more than one producer suffers, because that client usually had several suppliers.

The industry has put in place a dispute settlement organization, the Fruit and Vegetable Dispute Resolution Corporation, whose representatives are here today. When there is a conflict, both parties must agree to use its services. Even if it is shown that the client is in the wrong and that he must pay, we have no legal way of obliging him to do so, and we cannot recover or seize our product, as opposed to a manufacturer who makes tables or chairs.

● (1545)

In the United States, there is the PACA. I will not do a presentation on how that legislation works, but on its results.

The American government and the industry put it in place because they recognized the financial risks the farmers faced as well as their high losses. An American farmer who sells his product in the United States is automatically protected against bad practices or his clients' bankruptcies, because under the law he has rights and he can recover the money that is owed him. In addition, those who purchase agricultural products have obligations under the PACA. The consequences of bad practices are considerable and can even lead to their losing the right to continue to do business.

In Canada, the farmer has no protection and has even less than those who work in other sectors of activity, because his or her product is perishable and is consumed quickly. When someone goes bankrupt, even though the law is the same for everyone, we no longer have access to our product.

Moreover, aside from bankruptcy, some people refuse to pay. An average-sized farm—usually a family farm—does not have many clients and is at the mercy of blackmail. What happens when there are financial losses? The producer cannot pay his suppliers and cannot reimburse his credit line. It is harder for him to maintain his infrastructures and equipment. The banks should view protection for farmers favourably, because this will make loans more secure.

In addition to the financial losses incurred by farms, the fact of not having a PACA in Canada has led some Canadian producers to prefer to sell their product in the United States, because it is less risky for them. Moreover, some American producers are refusing to sell in Canada, or, when they do so, they won't necessarily sell us their best product. In certain cases, this forces Canada to source produce in other countries where the food safety risks are higher.

Our situation got worse in 2015 when the United States abolished protection for Canadian farmers that was equivalent to what American producers have. Before that, when we sold our produce to the United States, we had the same rights and the same protection under the PACA as American producers had. They took away that privilege because Americans who sell to Canada do not enjoy equivalent protection.

In order to benefit from the protections afforded by the PACA, we have to deposit twice the value of our claim with our complaint. A truckload of fruit or vegetables may be worth between \$10,000 and \$50,000. Given the funds they must find and immobilize for a certain period of time, a lot of small farmers give up and take the losses, because they are unable to deposit the required sums. As of now, we are even beginning to see Canadians who choose to invest and settle in the United States rather than in Canada.

In Canada we have never had any protection, and we have for a long time been asking for a system comparable to the American one. The PACA allowed Vegpro to recover more than \$100,000 when a single American client went bankrupt, but we saved much more than that. We were protected from losses due to unfair practices on the part of American clients because we had rights and they had obligations. Henceforth, those rights are much more difficult to access and many farmers consider them inaccessible.

Canada has to protect its food sovereignty, and in order to do so it must ensure that farms of all sizes that feed the Canadian population continue to be in business and to produce quality fruit and vegetables that can be consumed safely.

• (1550)

I thank you for your attention, and for your interest in our situation.

The Chair: Thank you, Mr. St-Denis.

[English]

Mr. Verkaik, you have the floor for 10 minutes, if you wish.

Mr. Jason Verkaik (Chair, Ontario Fruit and Vegetable Growers' Association): Thank you, Mr. Chairman and members of the committee.

I appreciate the opportunity to discuss with you the importance of a Canadian-made deemed trust in relation to fruits and vegetables. This Canadian-made legislation would protect fruit and vegetable

farmers and sellers within Canada. The creation of this tool would also reinstate Canadian fruit and vegetable farmers and sellers to preferred status, which was recently revoked with our largest trading partner, the United States.

My name is Jason Verkaik. I am a fourth-generation family vegetable farmer in the Holland Marsh in Bradford, Ontario. I also chair the Ontario Fruit and Vegetable Growers' Association. I'm here to share some stories about how farmers in the growing area where I farm have been impacted negatively due to the lack of this important tool.

I was able to listen to the standing committee last Monday in regard to the deemed trust. A few themes caught my attention, one being that some people do not think this is a big enough problem to warrant a no-cost-to-government, industry-accepted, highly effective tool that was once promised to our largest trading partner.

I strongly disagree, so I decided to talk with farmers in our area. This is what I found out.

In 2008, a company called Top of the Hill Produce was forced into receivership. There was over \$3 million left owing to vegetable farmers for carrots, onions, beets, cabbage, and potatoes. I was able to talk with 14 farmers who were affected by that. Not one of the farmers was able to collect anything for these outstanding receivables. The range in what was owed was as high as half a million dollars to as low as \$15,000, with an average of \$80,000 to \$100,000 per farm.

I know the larger farms had more money left owing; however, if you take a percentage of their total sales, it represents 10% to 40%. On average, farms run a profit of 3% to 4%. These numbers would not be captured in the data that gets presented. This does not make it any less real.

What is also important to note is that there was no dispute on the quality of the vegetables, and this buyer was paid for what he used the farmers' vegetables for. Some of the farmers had to remortgage to stay in business near the end of their career.

In 2011, a vegetable packing facility went into receivership. They were called Holancin Farms. I was able to find 12 farmers with a total of over half a million dollars uncollected, ranging from \$5,000 to \$200,000. This does not even represent the total owing to farmers, just the ones I could catch up with.

Unfortunately for some farmers, they were involved in both of these insolvencies.

In 2014 there was another bankruptcy. Not only did they owe farmers money, but the farmers were also victims of a trickle-down effect of slow and no pay.

These examples are of Canadian losses due to insolvency.

I'll briefly tell you my experience. I had done business with one company for about 10 years. It was very good business. We had a strong relationship. We were doing close to \$1 million of business between the months of October and May in any given year. Slowly, one-month regular payment turned to slow pay, which eventually turned to no pay. I was out about \$143,000.

I continued to try to collect the debt and was assured I would get it. Remember, I had had a good business relationship for 10 years. After more time had passed, I lost my patience and said I would need to take stronger action. His words to me were that if I took legal action, I would force him into bankruptcy, and then I wouldn't see a dime. Shortly after that I received a cheque for \$20,000 and a commitment to slowly pay what he owes. I'm still waiting to collect more, as are a bunch of other farmers, for a total of close to three-quarters of a million dollars.

Now I'm going to cite an example of having lost our preferred status with PACA. There's a farmer-packer in our area who had sold \$78,000 worth of vegetables to a customer in the United States. He went through the proper process through PACA to collect what was not being paid. There was no dispute on the quality of the vegetables. During the process, our preferred status under PACA was revoked due to the Canadian government's not being able to come up with a Canadian-made deemed trust.

He was still able to access PACA; however, he was told that to be able to continue, he'd have to post double bond, which was \$156,000. He was unable to come up with that money in the 90-day time frame. The case was considered resolved. Obviously that's a bad choice of words, but that's what comes across on the data sheet.

The buyer who purchased the produce was a broker, and he had no company assets outside of a couple of telephones and a desk.

• (1555)

When farmers fail to get paid due to insolvency, some need to remortgage to keep going. They also lose the ability to reinvest back into their farms. They lose out on being able to tap into government programs for innovation and infrastructure, such as Growing Forward, and environmental farm plans.

We do over \$10 billion in fruit and vegetable trade between Canada and the United States. This Canadian-made deemed trust, along with single licensing, is protecting our food security through protecting our domestic supply and our needed trade. History teaches us that nations that take care of their food supply flourish. If a nation does not take the necessary measures to protect the very ones with the knowledge and the ability to grow food, it does not bode well for long-term sustainability.

Farmers have many risks. Weather is number one. They accept this risk and respect the challenge it brings. However, there is another kind of weather they should not have to endure, and that is whether or not they get paid. I strongly and respectfully encourage this committee to brief the minister on this need in a timely fashion and on the urgency that comes with it.

Only one solution works for the industry, our United States trading partner, and the uniqueness of Canadian law: a Canadian-developed deemed trust. This file has been on the table for half a

generation. It has been studied and reviewed for decades. Over the past five years it has been brought to the forefront.

There has been thoughtful, respectful, and accurate development of a Canadian-made deemed trust by our industry through Professor Cuming. We have unanimous support within the industry to move this legislative framework forward, and we are looking for your support.

Thank you.

The Chair: Thank you, Mr. Verkaik.

Mr. Webber, you are our final witness. You have the floor for 10 minutes.

Mr. Fred Webber (President and Chief Executive Officer, Fruit and Vegetable Dispute Resolution Corporation): Thank you.

Mr. Chairman and members of the committee, thank you for this opportunity to speak to you regarding the Perishable Agricultural Commodities Act, or the PACA, as it is more commonly known.

My name is Fred Webber. I am the president and CEO of the Fruit and Vegetable Dispute Resolution Corporation. Before moving to Canada, I was formerly a United States Department of Agriculture civil servant working in the PACA branch regarding the trust and dispute resolution under PACA. I am a dual citizen. I have been a proud Canadian citizen for 10 years.

I'm here to talk to you about, one, the framework of the PACA and our loss of reciprocity; and two, why the U.S. deemed trust provisions have been so successful and how that model could be recreated here in Canada.

First, PACA comprises two distinct components: an administrative division responsible for licensing, bonding, and dispute resolution, which is similar to the functions of the organization I represent, the DRC; and a deemed trust. For over 50 years, reciprocity of access to dispute resolution services existed between Canada and the U.S. Canadians had access to PACA dispute resolution and Americans had equally unencumbered access to Canada's Board of Arbitration.

Unfortunately, two events occurred that challenged this unique relationship. The first was that in the seventies, the Supreme Court of Canada ruled that the Board of Arbitration did not have the authority to rule on matters of contract law, disabling dispute resolution services we had up until that point. The second was that in the eighties, the USDA amended the PACA to include a deemed trust.

Although Canadian legislation has since remedied the dispute resolution component, the DRC, we are still missing a deemed trust provision, which is ultimately why the USDA removed Canada's preferred access to their dispute resolution services. I repeat, it was the lack of a deemed trust that caused them to remove the preferred access to the dispute resolution piece. That is a very confusing piece that has confused people for a couple of years.

This brings me to my second point, a deemed trust. The trust is a tool used by sellers of produce to recover the moneys made from the sale of their produce. Simply put, the farmer and other sellers retain an ownership interest in the product until they are paid.

The product, the account receivable pending from the resale of their product, or the cash on hand from selling that product remain the property of the seller. It is restricted to those assets. The produce seller's claim does not extend to other assets, and if these specific assets do not satisfy the seller's claim, the seller will receive only a partial payment. The trade understands this and is okay with it. They are not looking for 100% guarantee. A 100% guarantee encourages moral hazard. Why would you be careful who you sell to if you're going to have a guarantee? One thing the trust does very well is encourage people to do their due diligence and sell to people with a track record or else know that they're selling to a new person and do it carefully.

Contrary to what some may think, the trust does not cost the government any money. There is no pot to pay into. There is no pool of money. There is no cost to taxpayers. This system is doable in Canada, and in fact Professor Ron Cuming has drafted suggested legislation wording on how a deemed trust could be implemented in Canada.

Professor Cuming is a well-known law professor at the University of Saskatchewan, respected for his expertise in the relationship of provincial and federal laws related to bankruptcy. You have a short version of his biography, and I apologize for the shortness; we didn't have time to have it translated. If you look him up on the Internet or at the law school, you will see a very long list of the bankruptcy files he has worked on. He is definitely what I would call one of the smartest people in the room on this particular issue. Furthermore, Professor Cuming has advised numerous provincial governments on drafting of their respective bankruptcy and insolvency legislation.

We believe this document, which has been circulated to you, represents the foundation for the preferred solution of the industry. First and foremost, it protects Canadian farmers, packers, shippers, and others in the produce industry in the Canadian marketplace, and it will restore the preferred rights under PACA that were lost in October of 2014.

I'm looking forward to taking your questions, but before I do, I would like to make three specific clarifications on issues raised at last Monday's meeting. You may recall that several of the presenters deferred questions to me; that is only because I was the one who worked directly with Professor Cuming on some of these other files.

●(1605)

First, on the federal-provincial division of power, this issue has been unclear.

In the last couple of years in particular, working with government officials, both elected and in the public service, we worked through a lot of that. It is unfortunate that several years ago industry and the government could not have communicated better to understand exactly what was in the Canadian Constitution that was stopping a harder look at the PACA trust. Industry simply did not understand the insolvency-solvency piece. The federal government, we now all understand, cannot step in until the buyer is insolvent.

The United States is able to use the PACA trust before there is bankruptcy. We are not asking for that. The dispute portion of this has been resolved. That is why the DRC was created. A buyer has to have a DRC membership or a CFIA licence. Assuming that the amendments to the Safe Food for Canadians Act go through as intended, a DRC membership will be a condition of doing business. The part about the industry's need for getting paid by a solvent firm has been addressed. We would argue that Professor Cuming's most recent draft removes any ambiguities and clearly focuses on the buyers after they are insolvent, which we believe places the issue solely within federal jurisdiction.

Second, the concern was brought forward that banks would be reluctant to extend credit to those in the produce industry as a result of any trust. In my experience working for the USDA, produce buyers were no less likely to be extended credit. Furthermore, I respectfully tabled to the committee an opinion letter written by Rachel Spiegel, an attorney and economist. Based on Ms. Spiegel's interview with banks in the U.S., she claims banks see the trust as a net gain for agricultural lenders lending to agricultural clients. She further reports there's been no decrease in loans following the implementation of the trust in the U.S.

I would also add that the main banks here in Canada are also operating in the U.S. and are already subject to the PACA trust. I have heard nothing from any bank specifically referencing losses because of the PACA trust. The trust is not new to them. They've been operating in the U.S. marketplace subject to the PACA trust.

If you look at Ms. Spiegel's bio when that report comes around, you will see her law firm represents food and banks in both countries. I would highly encourage you to look at it.

Finally, the statistics presented to you last Monday suggest the problem is small. I respectfully disagree. Unfortunately, numbers quoted were understated. Instead, I would refer you to the Conference Board report discussed on Monday. The results of the Regulatory Cooperation Council stakeholder meetings and the Aon report all state the losses in the produce industry from insolvency average between \$18 million and \$25 million per year. I would be happy to provide those reports to you.

Thank you. I would be pleased to field your questions.

The Chair: Thank you, Mr. Webber.

That concludes our presentations. Now we'll move into the questions.

We'll start with Mr. Warkentin for six minutes.

Mr. Chris Warkentin: Thank you very much, and I appreciate the testimony this afternoon.

Mr. Webber, I'm trying to wrap my head around what is being proposed and the pieces that are missing in comparison to the United States. It seems as though the provision of the deemed trust is a problem.

Has the issue of bankruptcy been dealt with, or is the deemed trust necessary so the bankruptcy provisions will address the concerns you have?

Mr. Fred Webber: The bankruptcy work, such as what Professor Cuming has done, needs to be addressed.

Mr. Chris Warkentin: People have referred to his suggestions, but nobody has told us exactly what he's suggesting. What is he suggesting would resolve that issue?

Mr. Fred Webber: We asked Professor Cuming to take a look at the PACA as it exists in the United States without any bias. We then asked him to take his experience as a lawyer, a law professor, a constitutional expert, a bankruptcy expert—

Mr. Chris Warkentin: We only have six minutes. I believe he's a great guy, the smartest guy in the room. We don't have him, unfortunately, so tell us what he is suggesting.

Mr. Fred Webber: He is suggesting that if you are the company that went bankrupt, you took my product, you have my product, you have the cash from selling my product, or you have an account receivable pending from the sale of my product. I want one of them.

• (1610)

Mr. Chris Warkentin: Okay. What about the case of...? Basically, then, the farmer gets brought up higher in the bankruptcy proceedings. Do they eclipse the banks as first recipient?

Mr. Fred Webber: On those specific assets.

Mr. Chris Warkentin: Okay.

Mr. Fred Webber: I would throw in one other thing about that. In my interviews with the banks—in talking with the specific managers, not the Bankers Association—I noted that when they're making a loan on accounts receivable, they already discount the account receivable by 25%. They then back out 30 days' worth of accounts payable. They're already taking this into consideration.

Mr. Chris Warkentin: Does what is being suggested resolve the issue if the person who has gone bankrupt in fact has no assets?

Mr. Fred Webber: If they have no assets, then one of two things has happened: either the creditor has done business with somebody who is truly in a lot of trouble and they've waited too long, or the person has simply taken the money, bought a house by a golf course in Florida, and escaped.

Mr. Chris Warkentin: Or the product spoiled.

Mr. Fred Webber: That's true. If it sat for very long, it would spoil.

Mr. Chris Warkentin: It doesn't resolve that situation, I guess.

Mr. Fred Webber: When there's a bankruptcy of a produce firm.... I hate to put this out there like this, but the produce is usually their travelling money. No one leaves produce to sit when they close the doors. They sell it out at fire sale prices. They do something with it. There's never produce there.

Mr. Chris Warkentin: Okay, but I guess what I'm trying to establish is that this provision only works if there's some asset left—that after the process of bankruptcy, there's something left, some asset.

Mr. Fred Webber: Somewhere there is an account receivable, I would argue, unless the person just didn't bother to collect the account receivable.

Mr. Chris Warkentin: Okay. I just wanted to establish that. I wanted to ensure that this was in fact the case.

Now, in terms of a deemed trust versus an actual trust, many industry groups have check-offs, either for research and development or for this type of provision. Has there been any suggestion that an actual trust through a checkoff would be another alternative that could be undertaken?

Mr. Fred Webber: There have been many studies over the years on these kinds of things.

The uniqueness of the produce isn't just that it's so perishable; it's that a strawberry was picked on Monday morning and you can put it on your breakfast food on Friday. It may have shipped directly from the farmer's field to the chain store, but it's gone through four or five different hands to get there. It has been consolidated and reconsolidated. Who's the checkoff program going to go to?

Mr. Chris Warkentin: That's a good question.

Mr. Fred Webber: That's part of the reason. The answer to your question is that it has been studied. In the industry's view—and I believe, quite frankly, following the RCC analysis—it's just not viable in this industry.

Mr. Chris Warkentin: So the only thing we're asking the Government of Canada to do is to simply change the priority, I guess, by which the assets of a bankrupt company are paid out, so that in the case of a produce farmer, they are the priority, the first person on the list. Is that correct?

Mr. Fred Webber: If I might adjust that just a bit, the produce assets themselves—if it's similar to what's in the U.S.—never actually become part of the bankruptcy estate. The receiver or the trustee would look at it and say, "This belongs to the farmer, so I'll set it over here." If the receiver has claims worth \$200,000 and accounts receivable worth \$100,000, those farmers get 50 cents on the dollar. That's it. That's as simple as it works.

Mr. Chris Warkentin: I can see how that would work, but if there's somebody who is a slow payer, as Jason talked about, which means that this asset was sold years or months ago, how does that work into this?

Mr. Fred Webber: It really doesn't. Currently, buyers all must have either a CFIA licence or a DRC membership. By this time next year, hopefully, it'll be a DRC membership.

We have prompt payment as 10 days. Thirty days is about as long as it gets. People would have filed a dispute long ago. In fact, under the DRC rules, to help push the due diligence, if a seller doesn't bring his claim forward within nine months, he loses his rights to that money. Between the time the buyer is still solvent and the time the seller comes to the DRC, there are nine months to bring the claim forward. As soon as the account goes past due, he has a right to come to us. If they do not abide by a decision or our opinion, his membership is removed, and he can no longer bring product in from outside the country or the province.

The Chair: Thank you, Mr. Webber.

Thank you, Mr. Warkentin.

Go ahead, Mr. Peschisolido, for six minutes.

Mr. Joe Peschisolido (Steveston—Richmond East, Lib.): I too would like to thank the witnesses.

•(1615)

[*Translation*]

Mr. St-Denis, you spoke with passion and clarity.

[*English*]

Mr. Verkaik, thank you as well for your thoughts. Mr. Webber, I was actually also very struck by the clarity in your comments, because just like Mr. Warkentin, I was trying to wrap my head around this. It brought me back to law school days, of secure creditors and all of that.

That being said about the complexity, I think we'll agree at the committee that this is a problem and that we all want to help you fix the problem.

You've been at it for a while. What do you think is holding this back? Why haven't we created a deemed trust? Why haven't we created a mechanism that would resolve the problem?

Mr. Fred Webber: I believe there are two very easy answers. It is a very complicated issue, as you've just heard. Trying to get one's arms around it is very difficult. Even in the days when we started in the regulatory co-operation council, there were still people who believed there was a pool of money and that somehow the Canadian government was being asked to write a cheque. It took a long time to get that out of the system and explain to people that it wasn't the case, that there were no cheques being written.

Also, the Americans in particular do what I'll call fist-pounding, asking to have this fixed. You guys can do this in the U.S. We have nothing in Canada. They continually were asking for what they called a temporary restraining order. Part of that is because they themselves don't fully understand the tool they have. The request for a temporary restraining order, quite frankly, when we were talking to Industry Canada, now Innovation, is where they stuck. They said that in Canada, you can't do that. That's the use of a trust before the company becomes insolvent, so you can't do that.

We've stepped back and said, "Oh, wait a minute, here's the sticking point that a lot of people don't understand." Prior to the election—and I promise I won't get into politics here—I believe, in working with the civil servants, we had agreement that this, in fact, could be done.

We went back to Professor Cuming and said, "Look, this is what we've learned." In the U.S. and Canada—two countries separated by a common language, as they say—with the industry trying to explain something it truly didn't understand themselves, there was a huge amount of confusion. It has only been very recently, since we went back to Professor Cuming and said, "Fix this; straighten this out", that we all understand what's happening.

I have to confess that years have probably been wasted over misunderstandings.

Mr. Joe Peschisolido: Mr. Verkaik, your situation in the Holland Marsh area is similar to the situation in B.C. in the Okanagan Valley and in my neck of the woods, in Steveston—Richmond East, because we're dealing with the Americans. A lot of the crop growers sell to the American market, but there's also a huge amount of trade going on within the Lower Mainland.

Are there suggestions other than the deemed trust that you believe will satisfy the Americans?

Mr. Jason Verkaik: I do not believe that.

Mr. Joe Peschisolido: Okay.

What seems to strike me is that this is an ongoing issue. It strikes to the very core of the viability of the whole industry. Are there other things that can be done, other than the deemed trust, or do you believe that is the only option we have?

Mr. Jason Verkaik: Respectfully, I truly believe this has been studied for a long time, and thoroughly. It keeps coming back to the deemed trust.

There are other options that were looked at, and they are just not viable.

Mr. Joe Peschisolido: Mr. Chair, that's it.

The Chair: Okay.

Thank you, Mr. Peschisolido.

[*Translation*]

Ms. Brosseau, you have the floor for six minutes.

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

I thank the witnesses for being here today.

I am going to give the floor to my colleague Tracey Ramsey. She has done some good work on the American Perishable Agricultural Commodities Act, or PACA. She is going to question the witnesses.

[*English*]

Ms. Tracey Ramsey (Essex, NDP): Thank you, Ruth Ellen.

Thank you for your wonderful presentations.

Jason and I could probably have a conversation about which has richer farmland, my riding of Essex in southwestern Ontario or the Holland Marsh. We have the Hillman Marsh, actually, down in my riding.

With my being from a riding that represents agriculture very heavily, I know how important PACA is to the fruit and vegetable growers in my region. The lack of action by the Conservative government over the past two years has cost family farms tremendously. I might even go so far as to say we've lost family farms, which is something we simply can't afford anymore. We see many family farms disappearing from our landscape, unfortunately, and PACA is one reason that's been happening in southwestern Ontario.

I think we all can agree that sellers aren't protected, that this puts farmers at peril, that this is a threat to the family farm. I'm going to give you an example. In York—Simcoe, there was a farm that lost \$38,302 on a load of produce to the U.S. because they didn't have the funds to post a double bond. I think a lot of people don't understand the double bond. I wonder if you can speak a bit about that, and the impacts on family farms when they have to consider being able to post a double bond, and if you think farms are losing out and potentially even being eradicated because of their inability to put up those funds.

• (1620)

Mr. Jason Verkaik: Is that to me?

It is a challenge. If I have to post a double bond, the tight cash flow on farms does make it a challenge. It would depend on every situation and it would depend on the amount of money. The double bonding process, compared to what we used to have, is absolutely a challenge. Maybe Fred can speak to it a little better.

Mr. Fred Webber: The double bond is an interesting phenomenon. One of the questions that came up last week was “Why?”

It was originally put in to guard against frivolous complaints. The guy might file a claim, but he would in fact owe the buyer for freight or other things. However, double does seem a bit high.

The problem with it, in the context of your question, is to look at what's happening. The farmer has harvested his crop. He has sold his crop and can't have his money. He's already out of pocket \$50,000.

Now he has to go and find an organization in the United States that's recognized by the USDA, and this isn't a bail bond kind of thing. This is a cash bond. You have to find somebody who will give you essentially a cash bond equal to twice that. He's out of pocket \$50,000, and now he has to find an asset of \$100,000 that isn't already pledged to somebody else to get that cash. It just doesn't happen.

If you look at some of the statistics, and I won't go into the weeds here today, less than 1% of the claims filed with PACA from outside of the U.S. and Canada go formal.

It's not because, as the record says, they're resolved. Resolved just means a formal document was never filed. It means they couldn't afford to move forward.

Ms. Tracey Ramsey: Yes. I think it's of concern that 75% of the fruit and vegetable producers are small businesses. Their average sales are \$85,000 or less a year.

We're talking about people who are going to be unable to put that up or who are going to lose everything they have, essentially, in trying to do that. That's a huge risk, because when you put up this

double bond, what ends up happening if you can't recover those funds is that the money is gone. You're unable to invest in your farm, as Mr. Verkaik was saying.

Mr. Fred Webber: You're talking about family farms, and I want to be a little bit of an opportunist here. This is all about family farms.

A number of you have asked, “Aren't there other things? Isn't there factoring? Isn't there insurance? Why don't the other traditional tools work?” It's because we're talking about family farms.

One of the last reports that was done by Aon Insurance talked about the fact that 20% of the buyers are actually not insurable. These buyers buy at three or four times what their net worth is. Family farms are at a distinct disadvantage. Yes, insurance is a great viable option between two healthy, large firms, business to business, but to look at insurance as a farm-to-fork solution.... A number of reports that I'm more than happy to provide point to the fact that, yes, insurance works for large, successful, well-financed operations; it's the small and family farms that can't do it.

Ms. Tracey Ramsey: If we look back to 2011, we had the Canada-United States Regulatory Cooperation Council making a commitment saying that something has to happen here. The Conservatives did nothing. Many Liberals that I know of actually have this as a campaign promise up on their website. Some of them still do, and I've had conversations with them. It is an easy fix.

This is something that's coming prepackaged. You've already done the work. All of the bureaucrats behind the scenes have done the work. This is ready to go. It doesn't need any further investigation or thought. What it needs is for people to vote on it and put it into action so that farmers can be protected and enjoy access to the American market. I'm from southwestern Ontario, so I know the U.S. is our largest trading partner. We're right next door to them. We see the impacts of this dramatically.

Have you been in discussions with the Minister of Agriculture on this issue? Where does it sit with the current Liberal government?

• (1625)

Mr. Fred Webber: The minister is engaged. He is aware of it. We're aware that there are a number of other priorities on his plate, but to answer your question, yes, he is aware of it, and we're waiting our turn.

The Chair: Thank you, Mr. Webber, and thank you, Ms. Ramsey.

We'll go to Mr. Drouin.

I would ask you to specify who you want to address your question to, especially for the video conference.

Mr. Francis Drouin: Thank you, Mr. Chair.

[Translation]

I want to thank the witnesses for appearing before us today.

My question is addressed to Mr. St-Denis.

You mentioned that when there was a problem getting paid, one of the parties has to agree to join the Fruit and Vegetable Dispute Resolution Corporation. What is happening currently?

Mr. Jocelyn St-Denis: It is voluntary.

As Mr. Webber was saying earlier, in the context of the renewal of the Canadian Food Inspection Agency, CFIA, membership in the Fruit and Vegetable Dispute Resolution Corporation, or DRC, may be made obligatory in order to do business and to obtain a licence to sell fruit and vegetables. Currently, if one of our clients is a member of the DRC, he or she has access to support and assistance for mediation or arbitration. However, if a client is at fault, he has no obligation to pay us anything. We have no way of forcing anyone to pay us the amounts we are owed.

In the recasting of the CFIA, which could take place later this year or the next, making membership in the DRC mandatory in order to be able to do business in the fruit and vegetable sector was one of our demands.

Mr. Francis Drouin: Thank you very much.

[English]

Mr. Webber, I want to make sure I understand the double bond and the 90 days to respond. How long does a double bond have to be in the U.S.? Is it until the issue is resolved?

Mr. Fred Webber: When someone approached PACA in years past, when the big stick was still alive and well, most of the ones that went forward that were informal quickly went formal. You have to post the double bond before you can move into the formal process. That money is held until a decision is reached. Once the decision is reached, if there is no counterclaim, the money is returned. That money is held in case the buyer has a counterclaim for unpaid freight or some sort of recall, whatever the case may be, because PACA obviously has jurisdiction over only its own buyers, so in order to be fair, they want to hold some cash in case there is a counterclaim.

Mr. Francis Drouin: How long does it usually take on average for PACA to come up with a resolution on a matter? Does it depend?

Mr. Fred Webber: It depends on the complexity of it. You can look at my own statistics. Some of them come and go in as little as 90 days, and some of them drag on a little bit longer. It has to do with the complexity of the case and whether there has to be a hearing, perhaps whether somebody has to come from another country, but I would say it's somewhere between three and twelve months.

Mr. Francis Drouin: Thanks.

With regard to the deemed trust and the confusion within the industry, if Canada were to move forward with passing a law and deemed trusts were part of it, are you confident that the U.S. would accept that solution?

Mr. Fred Webber: I absolutely am. I have to confess that in addition to the fact that I used to work there, I think you can see my age and recognize that I keep in touch with a number of people who have risen to positions of some knowledge within USDA. I can assure you that if something resembling their deemed trust is put forward, there will be reciprocity.

Mr. Francis Drouin: Speaking of age, I heard this issue of us not responding with a similar process has been going on for more than 50 years now.

Mr. Fred Webber: I wouldn't say that's true. We had reciprocity for many years. In all honesty, before the DRC was created in 2000, we were at this doorstep once before when the Canadian Supreme Court ruled that a federal agency couldn't rule on private contracts with low-pay, no-pay. There was a break there then too. You had a situation in which the PACA and the U.S. could deal with private contracts and no pay, and the Canadians couldn't. It was through the creation of the DRC under NAFTA that we headed this off once before.

Mr. Francis Drouin: Thanks.

I know some of the other committee members have asked already and I don't want to confuse the issue, but other than the deemed trust, are there issues you believe we should incorporate if a law were presented before Parliament?

• (1630)

Mr. Fred Webber: Let's just talk about reciprocity.

The first goal is to help Canadian producers—farmers, shippers, whatever. In terms of just the U.S., there need to be a lot of things for the two countries to have this kind of a reciprocal relationship.

One is federally sponsored inspection. Produce is an industry that regularly has problems. How red should a strawberry be? How soft is too soft? Is the banana yellow enough? There has to be somebody to resolve those kinds of disputes, so we both have federally sponsored inspection services.

We both have now, with the PACA and DRC, a way to resolve disputes. There's a licensing regime that helps vet out the bad characters. You have to post a bond if you've had a problem in your past and you want to be in.

The third part of that is the deemed trust. It is the part that is missing. Is there room for other things? Absolutely. As the industry moves forward and you put a deemed trust under it as a foundation so that everybody can participate.... The industry has been very good at policing itself, and if somebody wants to use some of the other tools, they'll do that business to business.

If your question is whether there is something else that should be in the law that would approach this industry from farm to fork, I would have to say no. I would say this would totally close the issue.

Mr. Francis Drouin: If I have time for a last question—sorry, you won't have time to respond.

[Translation]

The Chair: Thank you, Mr. Drouin.

[English]

We'll go to the second round. Mr. Longfield, you have six minutes.

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

Would you like to finish your question, Francis?

Mr. Francis Drouin: Sure. Thank you, Lloyd.

With regard to your conversations with the banks, in Quebec I know that the Mouvement des caisses Desjardins is a big lender to the industry. Have you had dialogue with them to tell them not to worry about this, and that our neighbours south of the border agree with this solution? Have you had this conversation? Are you feeling any blowback from that particular sector?

Mr. Fred Webber: That's a difficult question. We have not talked to the Bankers Association in some time. I can't speak for my other colleagues and what they have done. To be perfectly honest, at one point there was a BIA consultation, and people were looking for that.

What we have done is approach the Bankers Association. We've talked to individual banks and tried to explain some of this. The document, the white paper I referred to earlier, is a step in that direction. However, until the thing is moving, to be perfectly honest, if you think about it, as a group—I'm probably going to get myself into trouble here—the banks have first come...they have that priority. Why in the world would they publicly state that they're willing to take any sort of second position? They have said in so many words that if this is a policy and if you have an industry that is unique, keep it narrow.

We need to do more work with the banks. I will concede that, but they're asking us first whether it's good policy and if we can keep it narrow.

Mr. Lloyd Longfield: Thank you, and thank you all for your presentations.

It seems we have two different numbers that we're talking about.

Last meeting we had a number presented from the department of a total of \$479,337 on 10 claims. The claims were down from 13 to 10. We were increasing exports, but our claims were going down. That was one piece of information.

Today we're talking about \$18 million to \$25 million. Is that because we're looking at two different things? Is one thing all of Canada and the States, and one is only the Americans? Do you know how those numbers would be so different?

Mr. Fred Webber: The first set of numbers you were talking about, I believe, have to do with disputes. Some time ago there was a discussion to the effect that the worst-case scenario over five years was only a \$7 million problem. There were some statements like that made.

That has to do with the disputes. That has to do with the ones between solvent companies. There might have been a company that was slow pay. There might have been an inspection problem. There might have been a legitimate dispute.

The number I quoted is from insolvency. The company has closed its doors and is no longer operating.

There's a problem with statistics in this, and those of us who were involved in the Regulatory Cooperation Council hearings beat our heads against the wall trying to gather information. The statistics simply do not get far enough down to the granular level to be able to pull this kind of information out. In the early days, we had people come in from the Office of the Superintendent of Bankruptcy trying to figure it out, and it was all about coding. Is this a produce business, or is this a pallet and trucking business?

•(1635)

Mr. Lloyd Longfield: Thank you, and thank you for being brief on the answer.

I have a follow-up question. I come from a manufacturing background, exporting manufactured products. That's very different from fruits that are going bad on the shelf. In my world, we would have a line of credit set up if we were working with a bank with an unknown creditor who would be maybe paying us, or maybe not.

Who covers the \$18 million to \$25 million? It's a deemed trust, but who physically covers that money? If you don't get paid, there's \$25 million that goes down the toilet because the place has gone out of business. Who covers that money?

Mr. Fred Webber: Currently? The farmer does.

Mr. Lloyd Longfield: Yes, I know, but under this new system you said it won't cost anybody anything, but the money has to come from somewhere.

Mr. Fred Webber: The money will come from the gentleman who filed for bankruptcy. I will go back to my previous example, because I think it helps. The gentleman who took my product either has my product, he has the cash from selling my product, or he has my account receivable. I want whichever of those is left.

Mr. Lloyd Longfield: If he has gone out of business...my history wasn't great on people who went out of business and getting paid.

Mr. Fred Webber: Okay, but where did my account receivable go? It's gone somewhere else.

Mr. Lloyd Longfield: It's off the creditor list, and that's what we've been talking about—just moving them off the creditor list.

Mr. Fred Webber: Yes, he's dissipated the trust, and therefore that money comes back to the farmer.

Mr. Lloyd Longfield: That's a viable solution. I'm not going to argue, because we don't have any time, but that sounds like—

Mr. Fred Webber: Well, it's been working in the U.S. since 1984.

Mr. Lloyd Longfield: So why haven't we done it? I don't get it. Why hasn't Canada just done it?

Mr. Fred Webber: I'll have to add myself to the line of people asking that question.

Mr. Lloyd Longfield: There were previous Conservative governments, previous Liberal governments. We have 50 years of governments that haven't done this.

Mr. Fred Webber: If I might be so bold, I truly think it was confusion. It has only been in the last year that most people understood that we know the difference between solvency and insolvency, that we're not asking to copy what's in the U.S., that we understand the Canadian solution will be different.

Mr. Lloyd Longfield: Thank you for clarifying.

The Chair: Thank you, Mr. Longfield.

Mr. Shipley is next.

Mr. Bev Shipley: Thank you, Mr. Chair. I also want to thank Mr. Webber, Mr. Verkaik, and Mr. St-Denis for being with us today.

I didn't quite understand why the NDP member from Essex would come out and say what she did and undermine the competence of the players in the industry, the players in governments, and our public service.

Quite honestly, I think you said it right. I've been with various organizations, including the Canadian Horticultural Council, the Greenhouse Vegetable Growers, the fruit and vegetable growers, all of them. From those meetings and from personal conversations, I can tell you it was all about how we get there. How can we make this happen and yet meet the requirements under the law, the dispute resolutions, and the financial requirements of the growers?

Communications can be a big struggle in our businesses and even at home. There are large complexities out there. We talked about other options. I'm involved in different agricultural and commodity groups, and we've looked at checkoffs, insurance, and other things. We had to boil them down to see how they worked, especially for the horticultural group.

I appreciate that Professor Cuming has brought forward a draft that may be workable for both the industry and the government. I have colleagues on the government side, and if there's something there, I'm not going to take shots at you. As Lloyd said, we've had 50 years of PACA with the United States. We had preferential treatment—we get that—but we're going to work with you to make sure that this comes to fruition.

Mr. Verkaik, you may have reflected on this when you had a claim under PACA. Mr. Webber, you said it could take three to 12 months to get paid, depending on the complexity of the claim. What happened with your financial institution? Were they willing to extend your credit beyond 30 days? You have your input costs coming in, and you have your transportation. You have all that to deal with. Could going through a resolution process and putting in a request for payment through PACA take away the concern for finances that comes from not being paid?

● (1640)

Mr. Jason Verkaik: I would say it all depends on the individual farmer's position with the bank. If you're a new farmer and have bought a \$3-million farm and you're sitting on a heavy mortgage, you can have a great business idea that would make you lots of money outside of a claim, and the bank might not lend you anything even though you're pretty confident that it's going to work.

When it comes to a resolution, that's a grey area for getting credit or for extending credit that you already have. It really depends on the individual farm. Some of the farmers who have the knowledge to farm might not have the ability to extend beyond that.

Mr. Bev Shipley: I understand all that. When you talk about the small farmers, the average is \$85,000, which is not a lot of money nowadays in terms of farming. So how do they get...?

They've had someone not pay them. Under preferential treatment, they could make their application through PACA, right?

Mr. Jason Verkaik: Yes. I think it's \$100.

Mr. Bev Shipley: It could take three months to a year to resolve, but they have bills to pay within that 30 days. Who would carry them? If they didn't have PACA, they would have to make up the money, or they would have to get—

Mr. Jason Verkaik: Yes.

Mr. Bev Shipley: Okay. So how does that work in terms of their being able to survive that long without getting funds?

Mr. Jason Verkaik: It depends. The claim could be 10% of their receivables or it could be 40% of their receivables. Really, how they'll be able to survive depends on the size of the claim. Some don't.

Mr. Bev Shipley: I have a quick question for Fred and then I'll be done.

You mentioned that you're confident that the U.S. will accept the terminology that is somewhat like theirs—I forget your word—but there have been times, dealing with our friends to the south, when near likeness didn't cut it. You're giving some assurance that you've had a number of conversations that the near likeness—because it won't be word for word, I can almost guarantee that—will be satisfactory not only to the U.S.A. but also to your organization.

The Chair: Mr. Shipley, we're already past the time. I'll need a quick answer, please.

Mr. Fred Webber: Okay.

Absolutely. In fact, the gentleman who wrote the letter withdrawing reciprocity has laid out the point several times publicly about what it would take, and it is essentially the deemed trust.

Mr. Bev Shipley: Thank you very much.

I'm sorry, Mr. Chair.

The Chair: Thank you, Mr. Shipley.

We will now go to Monsieur Breton.

[*Translation*]

You have the floor for six minutes.

Mr. Pierre Breton (Shefford, Lib.): I have six minutes?

The Chair: Yes.

Mr. Pierre Breton: Thank you, M. Chair.

I thank all of the witnesses for the valuable information they have given us today.

I am going to give Mr. Webber a little break and speak to you, Mr. St-Denis.

In Quebec, we are all very proud of your enterprise. I congratulate you and your team on your success. Your company, Vegpro, has facilities in the United States, correct?

Mr. Jocelyn St-Denis: Yes we do. We have an agricultural farm—

Mr. Pierre Breton: I apologize, but I can't hear the answer.

● (1645)

Mr. Jocelyn St-Denis: We have an agricultural farm in Florida, in the Belle Glade area.

Mr. Pierre Breton: Excellent. Thank you.

Even though you are a Canadian company, you have facilities in the United States. Are your facilities there subject to the PACA regulations?

Mr. Jocelyn St-Denis: When we make a sale directly from our facility in Florida, we have protection under PACA. We are Canadian businesses who do business in Florida. In 95% of cases, our sales are invoiced by a Canadian company, even if the majority of the product comes from Florida during part of the year.

Mr. Pierre Breton: You are a large enterprise. Earlier we were talking about smaller farmers. We may consider that you are a medium or a large enterprise, and that is positive.

Despite the fact that you are a large enterprise, how does the non-reciprocity of these guarantee standards affect your business, both in the U.S. and in Canada? What financial risks have you incurred over the past years as compared to what occurs in a good year?

Mr. Jocelyn St-Denis: A large enterprise has bigger problems, and a small enterprise has smaller ones.

For us, a client's debt may reach \$150,000, \$200,000 or \$300,000. For a business doing sales of \$80,000 a year, that amount would be smaller. We also deal with bigger clients and they also run the risk of bankruptcy.

Let's take Steinberg as an example; they were a grocery retailer in Quebec. They were a big client. Everyone in the agricultural milieu wants to sell to retailers like that. Steinberg went bankrupt and as a consequence a large number of farmers lost large amounts of money. I can't tell you how much we lost, but it was considerable.

The higher the volume of sales, the greater the risk. A large business may have small receivables as well, but its general risk is high. Quite often, these days, bankruptcies happen suddenly.

One of the important concerns currently is food safety. Ready-to-eat products are high-risk for consumers. They could contain Listeria or E. coli, for example. So clients are careful about that. Losses can happen quickly. Our product is sold to other processors who incorporate it into their products. If those processors have problems, there is sure to be a domino effect and it will affect us in turn.

Mr. Pierre Breton: If you have disputes with clients, you have to give a security deposit that is twice the value of the claim. What has happened over the past year? Did you file any claims?

Mr. Jocelyn St-Denis: Over the past year, we did not have to make any claims under PACA. However, we did make some in previous years. We did not have to make any deposit. All we had to do was follow the rules and the procedure.

Our farm is a large one, and our enterprise purchases products from a lot of small farms. Our business packages and markets products from a lot of small farms that operate close to our facilities. These people generally do not have access to the markets we have access to. Even if we sell their products, they are assuming a risk because if we are not paid, they are not paid either.

Over the last year, fortunately, we were lucky. Our business is fortunate in that we sell to retailers and large enterprises, which is not the case for the majority of agricultural producers.

Mr. Pierre Breton: In a few seconds, can you tell us what you think of the trust proposal we have been discussing?

Mr. Jocelyn St-Denis: We are entirely favourable to this measure, not only for reciprocity with the United States, but also to protect farmers in transactions between clients in Canada. There has not

been any protection and there is none here, whereas there is in the United States. I have taken part in many discussions over the past three or four years. I have also been involved in this exercise. We have looked at several solutions. As Mr. Webber was saying, certain solutions are not good ones for 85% of agricultural producers. We want a solution that will suit all of the producers.

• (1650)

Mr. Pierre Breton: Thank you very much.

The Chair: Thank you, Mr. St-Denis and Mr. Breton.

Mr. Gourde, you have the floor and you have five minutes.

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

My question is also addressed to Mr. St-Denis.

In bankruptcy cases, do you see history repeat itself? Do you notice after a few months that the facilities are the same but the distributors and purchasers have changed names? Do you see that you're delivering to the same locations, but that the name of the enterprise is different? You have to play the game and you don't have a choice. The owner is a new person. You start proceedings and there is a certain frustration.

Are American producers guilty of abuses with regard to the products you sell?

Mr. Jocelyn St-Denis: When I spoke earlier about the PACA, I said that we had some rights, but that the American purchaser had responsibilities, and if a complaint is submitted under PACA and is not settled, those people can lose their permit to do business. It takes quite a long time before they can start up in business again. Mr. Webber would be able to give you a more detailed answer on how that works. In the U.S., under PACA you cannot declare bankruptcy or close the business today and start up again next door the next day. If there are complaints, these people are found and penalized.

Mr. Jacques Gourde: Mr. Webber, during your career, have you seen businesses that abused Canadian producers, that declared bankruptcy or found stratagems to get around paying Canadian producers?

[English]

Mr. Fred Webber: Unfortunately, that's true on both sides of the border. What Jocelyn was trying to explain is that the rules we have at DRC are very similar to PACA. If you go bankrupt, close down your business, and just walk away, you can't come back and get another licence or another membership for—depending on what the person did—between three and five years. If you want to come back before that, there's a very significant bond that has to be posted. Those bonds and the people who have posted them are actually posted on the USDA website. A number of people do post them.

In terms of bankruptcies and people who abuse, yes, they go after them, and they actually investigate those cases of alter ego, case of the guy shutting down and trying to open another business in his wife's name or his uncle's name or his son's name. They go and check, because again, under their rules and under ours, he can't even be on the premises as an independent contractor, sweeping the floors or anything else, or they'll have to post an employee bond.

In the produce business, because it is so unique and because it is so easy to pick a farmer's pocket, there are very stringent rules in place for who can have a licence under PACA.

[Translation]

Mr. Jacques Gourde: In your experience, what percentage of purchases remain unpaid to producers? Would you say under 5%, or is it higher than that?

[English]

Mr. Fred Webber: I think we should probably make a separation between those disputes that involve a legitimate inspection—for example, the strawberries weren't as red as they should be, so what we really are looking for is an adjustment service—as opposed to cases of somebody who just doesn't want to pay.

I would hate to put a percentage on it. I will tell you the percentage is low and currently has been, but that's because of what you hear us call the “big stick”.

When I was at PACA, when I'm at the DRC, most of our work is done on the telephone. The person wants to know what they should do and whether they are going to win or lose, because both PACA and DRC provide default rules.

When there's a problem over payment, there is a maximum time to pay. There is a way to handle claims. What normally happens is they know they are going to lose. They call me. They want an opinion. They open a dispute file. Once they see they're going to lose under the rules, they pay the bill. It's the same in PACA.

That's actually one of the big concerns about having lost reciprocity. The U.S. buyers will now have learned that when Jocelyn makes a call to PACA, they can say, “You know what? I think we're going to wait and see if Jocelyn can come up with that \$100,000 to file this \$50,000 complaint.” It's no skin off his teeth. Then if Jocelyn comes up with the \$100,000, he says, “Oh, you know what? I made a mistake. I do owe that”, and he writes a cheque.

One of the big fears of the reciprocity isn't about the number of complaints filed today; it's about the fact that as the buyers learn there is no more big stick, that's going to change. Without an easy

way to file a PACA complaint, it's really easy to clip a dollar or two. Jocelyn's a busy guy. He can't chase some guy down in Louisiana over a dollar or two per package.

I hope that answers the question.

• (1655)

[Translation]

Mr. Jacques Gourde: My last question is for Mr. St-Denis.

Are you always the one who assumes the transport-related risks, or do you deal with certain brokers who can transport the products to distribution centres? Is it always the producer who is on the hook both for the cost of the produce and for the transportation when there is a problem?

The Chair: I would ask you to be brief, Mr. St-Denis.

Mr. Jocelyn St-Denis: Most of the products we sell are delivered. We are responsible for transport and import. We are the importer of record, and we deliver directly to the client. If there is a bankruptcy or non-payment, we are responsible for our produce and related transportation costs.

Mr. Jacques Gourde: Thank you.

The Chair: Thank you, Mr. St-Denis. Thank you, Mr. Gourde.

I now yield the floor to Ms. Brosseau, who has three minutes.

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

I want to thank all of the witnesses who are here with us today. I am really pleased that our committee has been able to do this study, even though it was brief.

I believe that all of those who appeared before the committee have testified to the importance of acting on this. Everyone agrees that the PACA, the Perishable Agricultural Commodities Act, and the motion submitted to the previous government, were worthwhile.

If I understand correctly, amendments have been made to that bill.

[English]

Mr. Webber, from what I understand there was a piece of legislation that was made by Mr. Cuming, and it has been changed or is in the process of being changed.

Can you talk about the modifications?

Mr. Fred Webber: In the beginning, the original document, particularly his background at the beginning of the document, spent a lot of time talking about how a trust could be used before the firm became bankrupt. He had even gotten into a little bit about how the provinces could play a role in that. That would be parallel to or running along the same lines as PACA in the United States.

After having these meetings over the last couple of years and learning from the public servants and the government folks, we now do understand that we can have a complete system in Canada by allowing DRC to do what PACA does in the States with solvent firms that are operating.

Recognizing that, Professor Cuming went back, and the change that was made is that everything about the draft legislation now is only about what happens after the buyer becomes insolvent. The change was to remove any ambiguities about whether or not we had a problem here with federal-provincial division of power.

That was the change that was made.

Ms. Ruth Ellen Brosseau: That was something that was brought up in the 41st Parliament. It was before committee a few times.

Towards the end and especially during the campaign, a lot of parties and a lot of members came out in full support of having a PACA-like system here in Canada.

My colleague, Tracey, talked about having put that promise up on our website. The reason I invited Tracey to committee is that she tabled a motion a few months ago in the House of Commons asking the Government of Canada to bring forward a piece of legislation. I think it would be a very important piece of legislation because it would solve a problem that we've talked about for a long time and that has been studied quite a bit, and it doesn't cost anything.

It's important to do studies, it's important to talk, it's important to consult, but when everybody is singing the same song, talk needs to turn into action. If the legislation was brought through Parliament, sent to the Senate, and got royal assent, how long would it take to get things going correctly in the United States?

Mr. Webber, I know you said that there shouldn't be any concern.

The Chair: Very quickly. We're out of time. Could we have a very short answer from Mr. Webber, please?

Mr. Fred Webber: Within the United States, the process of removing reciprocity is an administrative function. The act of PACA sets out who can and can't have it.

Once it had royal assent, I can't speak for the USDA, but I can tell you, having visited with a number of them, that if it provides the same kinds of protections—not guarantees, but protections—it would be returned very quickly.

• (1700)

The Chair: Thank you, Mr. Webber.

Thank you, Madame Brosseau.

Mr. Warkentin, we'll start another round, since we have considerable time left. You have six minutes.

Mr. Chris Warkentin: Thank you.

I'm not sure that I need six minutes. I think that my colleagues have summed up the understanding that there's a necessity to move forward.

Mr. Chair, what we probably need from this committee is to have a conversation with Mr. Cuming. It seems we've spent a fair bit of time talking to people who say that we should talk to Mr. Cuming. I would suggest that we either have a written submission from the professor or actually have him before committee. I'll leave that to some future discussion about future business. Before we conclude our study and write a report, I think it would be important to hear from him.

That said, I don't know if there's anything in addition. Obviously we've noted today that even if a PACA-like system was set up in Canada, it wouldn't resolve all of the issues that might face produce growers in the country. There's been some additional confusion in this whole discussion because sometimes produce growers in Canada think this might be the end of all the challenges they face. I think we got some additional clarity today as to what it would help and what it wouldn't help.

I'll turn it over to our witnesses and ask if there is anything else that they feel is necessary for us to hear before we complete today's hearing, if there is any point of clarification that they think has been missed. I think you sense that there is a general sense of support for moving forward to ensure as level a playing field for farmers on this side of the border as exists south of the border. We certainly want to resolve this situation.

Is there anything we haven't covered or haven't touched on that you think needs to be?

Mr. Fred Webber: Building on your last comment, this is about levelling the playing field between the U.S. and Canada. PACA in the U.S. is not perfect. This industry has been very clear that they're not looking for perfect; they just want the playing field levelled.

The other thing I would throw out is that Professor Cuming would be available. When we did what I'll call version one of Professor Cuming's report, we went before what is now Innovation, Science and Economic Development Canada, and there were representatives of the agriculture department as well. He was on the phone with them. He is someone who is accessible. He is a law professor, so I'm not sure whether the best choice is for you guys to interview him or for someone from the justice department to interview him, because I will tell you that I felt like I was in a law school lecture when he was talking.

Mr. Chris Warkentin: The difficulty with House of Commons committees is that although we can all acknowledge that there's a problem, the question is if there's a solution at hand. If there's one person in the country who seems to be articulating the solution that everyone keeps pointing to, I think it's important that we do hear from him. Hopefully he can get the folks around this table who aren't lawyers to understand what he is proposing. I'll be the first to admit that I might get lost in the details, but I think it's important that it be on the record so that we can then encourage our ministers to be involved in that conversation and take it up from there.

We obviously won't be the ones responsible for drafting the legislation that we hope might resolve this situation, but we do know that we will be the ones who will hopefully push the minister to propose some legislation that we hope to review some day when the minister refers it to this committee.

If there's nothing further, I'll move on.

Thank you.

The Chair: Thank you, Mr. Warkentin.

Go ahead, Mr. Peschisolido.

Mr. Joe Peschisolido: Thanks, Mr. Chair.

[Translation]

Mr. St-Denis, this afternoon we have talked about the PACA, which belongs to the legal domain, but our farmers also have practical problems on a daily basis.

Are there changes we could make in order to help them? Mr. Gourde spoke about transport. Are there other aspects we could change in Quebec, in the context of our relationship with the United States, to get around the problem related to PACA?

Mr. Jocelyn St-Denis: I will go back to what I said previously.

The difficulties are not just about our trading relationship with the United States. The deemed trust we have been discussing for some time is a matter which affects our business relationship with other Canadians, in this country. I think it is important to note that. It is not only because we are losing our privileged access right to the American remedies that we are here discussing this, but because there are other needs related to trade within Canada.

As a commercial activity, agriculture is challenging. I mentioned a few of those challenges at the beginning of my presentation, such as sustainable production, the environment, and healthy and safe food. I think that all of these aspects are dealt with well for the moment, on both sides of the border. We have some common concerns.

I would like to talk about herbicides and pesticides, which are not subject to PACA, but are a good illustration of the relationship between two countries whose borders are often defined by a river or by a simple line drawn on the ground. Products that are authorized in the U.S. are used close to the border, but are prohibited in Canada. This weakens Canadians' capacity to compete with American producers.

A produce merchant or an input supplier has a larger market in the United States. The approval process is much more important and he obtains a better return on his investment than if he supplies a smaller market like Canada. This is a very important topic right now as regards organic products.

●(1705)

[English]

Mr. Joe Peschisolido: Mr. Webber, Mr. Verkaik, I'd like to ask you the same question. Are there any practical changes we can make on how we do agriculture so that we come to a point where you don't have to deal with people who don't pay you or you don't have to deal with Americans who are either not willing to pay or are unable to pay?

Mr. Jason Verkaik: Well, I would echo what my colleague said. It's not just about selling to the United States. You have to remember the trade between our two countries is \$10 billion. You have to remember that our country does not produce food 365 days a year, and we need that trade for all of our society to eat.

In order to have good, balanced trade and to be able to bring in the products we need to sustain ourselves in a food-secure way, we need to have that trade. Therefore, we need to be selling to them so that they can sell to us. That whole development of how our countries work together is really our food security. We need a United States–Canada–Mexico kind of perimeter for our food security. That trade is

imperative, as well as interprovincial trade, as well as trade within a province. It really speaks to all of that.

I'd say the system itself and how we do that is probably a very good system. From this aspect, we're looking for another tool in the tool box to be able to make that work and facilitate it better.

Mr. Joe Peschisolido: We probably won't be able to get a food security system in place quickly among Canada, the U.S., and Mexico, but we may be able to do it within our own regions. We can define a region to be as small or as broad as we like.

In response to a question by Mr. Shipley on ticking off what has to get done—I think it was the distinction between a deemed trust or a double trust—you talked about the various layers of moving the food.

I have the same question. Are there any practical things that can be done, or is it structural? Is it that it is what it is, and we need to have us involved to make sure that if there is a dispute, we'd deal with the dispute?

Mr. Fred Webber: If I may be so bold, you would have to re-engineer an entire system. With all due respect, you have a situation here where a raspberry can be picked on Monday morning and be on your table by Friday. It is that dynamic that makes it impossible to have futures contracts. It is that dynamic that makes it impossible to check every single person you sell to.

Jason just had a situation on his farm. He has seeding out, and the ground froze last night. Is he going to have to replant it and put himself a week behind? Will it take Mother Nature a week to catch up? There is no real way to know. Mother Nature dictates how big it's going to be. Mother Nature dictates when it comes out, and in some ways he doesn't know whether he's going to have three loads out this morning or five, until it's very close.

That is really what drives this industry and makes it so different.

●(1710)

The Chair: Thank you, Mr. Webber, and thank you, Mr. Peschisolido.

[Translation]

Ms. Brosseau, you have six minutes at your disposal.

Ms. Ruth Ellen Brosseau: I have a more technical question, Mr. Chair.

When the committee discussed doing a study on the PACA, it was supposed to last two days. After that, we were to do a study on bees, then one on the Growing Forward program, and we were to hold consultations in connection with that.

I would like you or the clerk of the committee to confirm whether or not we are going to prepare a report containing recommendations. I want to ensure that all of the testimony we hear at the committee will be submitted to the House in the form of recommendations. I think it is very relevant for the committee to table a report with recommendations in the House.

The Chair: It is up to the members of the committee to decide whether they want to submit a report to the House.

Ms. Ruth Ellen Brosseau: Is a motion necessary?

The Chair: Mr. Clerk, do we need a motion to proceed in that way?

The Clerk of the Committee (Mr. David Chandonnet): Yes.

Ms. Ruth Ellen Brosseau: May I move a motion that, following the study on the PACA, which will conclude at 5:30 p.m. today, we will work on preparing a report of a few pages, with recommendations, to be submitted to the Minister of Agriculture and Agri-Food?

Mr. Francis Drouin: I agree with Ms. Brosseau. It was the committee's objective to present a report. We did not want to do a study just for the sake of doing a study. However, we have not yet heard Mr. Cuming's testimony. His name has been mentioned several times in committee. It would be worthwhile to know his opinion before we present a report.

I agree that it is essential that we prepare a report to be tabled in the House.

Ms. Ruth Ellen Brosseau: Mr. Chair, are we going to hold another meeting on PACA? Will the next meeting of the committee still be on PACA? When will Mr. Cuming be available to meet with us by videoconference?

The Chair: We can organize a meeting. We have two meetings set aside for the bees. Afterwards, we could invite Mr. Cuming to appear before the committee.

Mr. Longfield, you have the floor.

[*English*]

Mr. Lloyd Longfield: As was suggested in one part of the conversation, maybe we could just accept a written submission if it's going to take us a while to read and understand it anyway.

Professor Cuming has already worked out a proposal for the government, and he's updated it. Maybe we could just receive that as a report.

Ms. Ruth Ellen Brosseau: How would we incorporate his report? Would the analyst be able to...?

[*Translation*]

The Chair: In short, there will not be a motion. If I understand correctly, we will incorporate Mr. Cuming's report into our final report.

Ms. Ruth Ellen Brosseau: I don't see that as a problem.

[*English*]

The Chair: We would incorporate Professor Cuming's report and maybe adjust it.

Mr. Francis Drouin: Would you all mind if we invite him?

A voice: Well, I want to invite him, but I don't think it's appropriate to invite him before we—

Mr. Francis Drouin: Option A is to invite him and option B is to have a written submission. Would you agree?

A voice: Yes.

Mr. Bev Shipley: Option B would be a summarized cover with the report. I don't know how long the report is, Fred, but sometimes those documents do get pretty detailed and pretty complex.

I agree with Francis, but if he can't come—and teleconference obviously would be the best—and if there were something that he could give us as a quick overview with the report, we could attach it.

The Chair: We have 15 minutes left. You're the last one on the list. We can deal with your motion for sure. Do you want...?

Ms. Ruth Ellen Brosseau: Just to confirm, we will be having a report with recommendations for this report and also for the BIA when we're done.

• (1715)

The Chair: You still have a minute and a half. You can finish, and then we can deal with the business, if you want.

Ms. Ruth Ellen Brosseau: I'm okay. I think we had a great meeting.

I'd like to thank our witnesses.

Do you guys have any comments on anything? I'll give my one minute to the witnesses.

The Chair: Mr. Webber.

Mr. Fred Webber: If I might, the report the clerk circulated to you is Professor Cuming's report. We did not touch it. Volumes went into this. As you might imagine, the constitutional research and the bankruptcy research is all there. You have the 11 pages, and that includes the four pages that are the actual draft act.

The Chair: I'd like to thank our witnesses today for the very informative comments and testimony you've given us. We might need your advice in the future. We'll see you next time, whenever that is.

We'll finish the business side. If we bring Mr. Cuming in, June 1 would be the first available date. I'll leave it to you to discuss what you want to do.

Mr. Bev Shipley: Sure.

Mr. Chris Warkentin: Why don't you try to find what...? We'll leave the scheduling to you.

The Chair: Okay.

We just heard from the whip that the next meeting will start at four o'clock instead of 3:30 on Wednesday.

A voice: Why?

The Chair: Because of the apologies for the *Komagata Maru*.

We're all good. It will be four o'clock.

[*Translation*]

The next meeting will take place Wednesday at 4:00 p.m.

Thank you.

The meeting is adjourned.

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