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*Regulatory Impact Assessment of Farm Income
in the Canadian Horticulture Sector*

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Executive Summary

The objective of this research project was to determine if regulations, or lack thereof, governing Canada's horticulture¹ sector, directly impact, positively or negatively, on farm income generation. While the primary focus is farm income, revenue generation at downstream junctions in the supply channel, including processed products, were also considered. Attention was given to trade amongst the parties of the North American Free Trade Agreement (NAFTA).

Three hypotheses were investigated:

- I. Regulations to which Canada's horticulture sector is subject, directly impact on farm income generation, either positively or negatively.
- II. Lack of regulations to which Canada's horticulture sector is subject, directly impact on farm income generation, either positively or negatively.
- III. Horticulture-specific legislation can have either a direct or indirect financial impact on downstream stakeholders in the supply channel.

The research methodology involved primary research to identify regulation-pertinent issues, achieved through in-depth telephone interviews with 14 stakeholders, spanning 19 hours of time.

Identified issues were then collated and compared, and assigned relative weight and importance based on frequency of mention. A total of 82 mentions were categorized into 29 issues. The dominant issue, mentioned 27 times, was Canada's parochial and trade-incompatible regulatory pesticide registration regime. The subsequent issues and their placement were:

Second: misbranding of imported foreign produce and product as Product of Canada (6 mentions);

Third: Ministerial Exemptions that allow bulk import of fresh fruits and vegetables (5 mentions);

Fourth: a disproportionately large and sophisticated regulatory pesticide regime (5 mentions);

Fifth: imported wine blended with Canadian wine and labelled as Canadian wine

Sixth: a pesticide regulatory regime designed for the domestic market, rather than the global market;

Seventh: lack of legal and financial support to mount international trade disputes, as per American competitors;

¹ For this project, 'horticulture' is defined as fruit and vegetable crops grown specifically to provide edible fruits and vegetables, or processed products thereof. Excluded are flowers, ornamentals and other plants used solely for landscaping purposes.

Eighth: lack of a Domestic Feeding Program such as that in place in the USA in which federal institutions provide American suppliers with right to first refusal in fulfillment of their food requirements.

Of the top eight issues, three relate to the inadequacy of Canada's pesticide regulatory regime to support horticulture-sector farm income and the restrictive force they play on competitiveness, both domestically and internationally. This point was abundantly clear to the Canadian International Trade Tribunal (CITT) as long ago as 1990 when a CITT Inquiry reviewed the competitiveness of Canada's horticulture sector. In their words "Canada's pesticide regulations do not make sense". The Tribunal seriously questioned the goal of Canada's pesticide regulatory regime since, as is still the case today, imported fruits and vegetables have been treated with pesticides not registered in Canada. While those same pesticides are not available to Canadian producers, Canadians eat the imported edible crops treated by those pesticides. Many of the other problems reported, reviewed and assessed by the Tribunal are operative today, verified through primary and secondary research conducted for this study. The Tribunal was very clear in its opinion that Canada's horticulture sector, at that time, had neither the tools nor resources to compete against the tariff removals coming into force with NAFTA. Their finding was prescient.

Several regulatory bodies, in addition to the CITT, have devoted analytical oversight to Canada's pesticide regulatory regime, from the 1980's to present day. Despite these efforts, Canada is currently without a 'pesticide act'. The *Pest Control Products Act*, (PCPA) designed to replace the former *Pest Management Act*, is dormant. The PCPA received Royal Assent in 2002, was revised in 2003, yet resides with the Department of Justice. The date upon which the Act will be brought into force has not been determined.

While the PCPA rests with the Department of Justice, the Pest Management Regulatory Agency (PMRA), under the jurisdiction of Health Canada, continues to carry out regulatory oversight using the only pertinent legal instrument, the outdated *Pest Management Act*.

The Canada-United States of America (USA) border is a major source of trade for both countries, and horticulture crops are no exception. It is reported that 95% of the pest control products submitted to the PMRA for regulatory approval have a history of use in the USA. An estimated 50% of the fruits and vegetables consumed in Canada are imported from the USA. The USA poses export potential for Canadian produce. Greater global export potential exists should Canadian producers have access to modern pesticides which render the zero-level of residue tolerance required for importation of produce into all industrialized nations, save Canada and New Zealand.

Hence, many stakeholders interviewed for this research paper call for harmonization or 'mutual recognition' of pesticide regulatory oversight between Canada and the US. In taking that proposition further, there appears to be fundamental philosophical differences between the pesticide regulatory approach in each country. In Canada,

since 1995, pesticide regulatory oversight has been provided by the PMRA, which operates under the jurisdiction of Health Canada. The dominant goal is to protect the health and safety of Canadians first, the environment, tied to first or a close second. To this end, the PMRA openly admits to conducting a 'value' assessment, evaluating efficacy data and weighing risk against societal and economic benefit. In contrast, in the US, the pertinent regulatory body is the Environmental Protection Agency (EPA), a standalone agency with an Administrator who reports directly to the US president. The goal of the EPA, since 1970, is to "protect human health and the environment." While the two agencies share similar goals, it appears that fundamentally different viewpoints need to be reconciled before harmonization or mutual recognition is negotiated.

Despite the foregoing, which illustrates the health orientation of pesticide regulatory oversight in Canada, a 2004 Agriculture and Agri-Food Canada overview of the horticulture sector referenced pesticides and their regulation under the caption of "Environment".

NAFTA regulations are in place to level the playing field in the agriculture sector. NAFTA Chapter Seven (Agriculture), Article 712 "Rights and Obligations" of Section B "Sanitary and Phytosanitary Measures" specifically states that parties to NAFTA must remove obstacles that hinder free trade. In this case, lack of Canadian effort to protect its rights and fulfill its obligations, is the factor.

It is reported that the USA is challenging Canada's Ministerial Exemptions, claiming that they are a trade irritant contrary to NAFTA. There was no mention of Canada acting in a similar fashion to deal with the trade irritant of pesticides and pesticide residues.

Regarding the labelling of imported product or produce as "Product of Canada", the *Consumer Packaging and Labelling Act* is designed to prevent this occurrence. It is suggested that violations of these regulations be brought to the attention of Industry Canada, the department responsible for enforcement.

One particular government program was reported as generating incredible value for horticultural farm income, that being the government of Ontario's Foodland Ontario™ program to brand and promote Ontario fresh fruits and vegetables. This program also benefits processors and retailers, serving as an example of a public sector intervention program supportive of not only farm income generation, but additional stakeholders in the supply value chain as well.

According to Ontario government sources, Ontario is home to the largest per capita consumption of fresh fruits and vegetables in North America. Yet, Canada's fresh fruit and vegetable market is serviced 70% by imported produce, 30% by domestic produce. In the words of one interviewee 'they have given our market to our foreign competitors'.

Objective

CABI (Canadian Agricultural Policy Institute) has acknowledged "the undisputed fact that at the national level, farm incomes have been decreasing in real terms, whether measured since 1970, 1960 or 1950, and whether measured as net cash income, or as net realized income after accounting for [depreciation] of assets."² In the desire and need to better understand and possibly reverse the situation, CABI has posed the overriding question "what is the nature of the farm income issue and what are the contributing factors?"

One potential contributing factor is the regulatory framework in which Canadian farms must operate. CABI took a pilot project approach to determine if regulations, or lack thereof, directly influence the generation or destruction of farm income. One sector of agriculture was chosen - the horticulture sector - to subject to regulatory impact review and thereby illustrate the financial impact a regulatory framework can exert on farm income.

The objective of this research project is to determine if regulations, or lack thereof, governing Canada's horticulture³ sector, directly impact, positively or negatively, on farm income generation. While the primary focus is farm income impact, revenue generation at downstream junctions in the supply channel, due to either direct or indirect regulatory influence, will also be considered. Thus, select processed products derived from horticulture crops are included in the assessment. Attention was extended to trade amongst parties to NAFTA.

Hypotheses Investigated

- I. Regulations to which Canada's horticulture sector is subject, directly impact on farm income generation, either positively or negatively.
- II. Lack of regulations to which Canada's horticulture sector is subject, directly impact on farm income generation, either positively or negatively.
- III. Horticulture-specific legislation can have either a direct or indirect financial impact on downstream stakeholders in the supply channel.

² Farm Income Prospects: Papers Commissioned by CABI - Revised, February 14, 2005.

³ For this project, 'horticulture' is defined as fruit and vegetable crops grown specifically to provide edible fruits and vegetables, or processed products thereof. Excluded are flowers, ornamentals and other plants used solely for landscaping purposes.

Methodology – Proposed and Actual

Proposed: Crop Specific

The proposed methodology was to:

- i. Pursue a crop-specific approach in which ten crops would be selected as a frame of reference to represent a cross-section of the horticulture sector;
- ii. Conduct a research review to secure an industry profile and render an economic and regulatory perspective to the research question;
- iii. Conduct a research review of previous regulatory farm income impact studies in the horticulture sector to form and build upon an information base;
- iv. Identify and analyze the pertinent regulations that either create or destroy value from a farm income perspective as per the selected ten crops.

Actual: Issue Specific

Steps ii. and iii., above, were completed, but not in the order specified above. Steps i. and iv. were modified in that an issue-specific, rather than crop-specific, approach was undertaken.

In the attempt to relate a crop to a pertinent regulation it was discovered that a change in methodology was required to answer the research question. While all crops, for example, are subject to the *Canadian Agricultural Products Act (CAPA)*, it became clear that CAPA may not be the most influential regulatory instrument with regard to farm income creation and/or destruction.

Rather than selecting ten or more crops through which to answer the research question, it was decided to identify regulation-based issues in the horticulture sector that directly effect farm income.

Steps i. and iv. above were modified, and steps ii. and iii. were re-aligned, resulting in the following methodology:

Horticulture Farm Income Regulatory Impact Methodology

- i. Pursue an issue-specific approach through primary research so as to identify farm income issues influenced by regulations;
- ii. Conduct a secondary research review to secure an industry profile which emphasizes data regarding sales volume, sales revenue and sector growth, and to render both an economic and regulatory perspective to the research question;
- iii. Conduct a secondary research review of previous regulatory horticulture farm income impact studies to secure an information base from which to verify the issues identified during the primary research, and to determine if regulatory reform to address farm income issues has been undertaken to date;

- iv. identify the pertinent regulations that create or destroy farm income; attempt to assess the farm income impact of the implied regulations.

Industry Profile

Secondary research conducted for this report sourced a Canadian Horticulture Action Plan (CHAP) written in 1993 by Agriculture Canada. The CHAP was the mandated response to a 1990 Canadian International Trade Tribunal (CITT) Inquiry into the Competitiveness of the Canadian Fresh and Processed Fruit and Vegetable Industry⁴. The CHAP was submitted to the Provincial Ministers and Federal Minister of Agriculture.

Within the CHAP is an industry profile, the highlights of which are summarized below. In some cases, the information was subjected to further analyses, identification of which is provided where applicable. Also referenced was a 2005 interim report of the Fresh Produce Alliance (FPA)⁵, which included an appendix cursory Industry Profile.

It is important to note that the primary research undertaken for this project resulted in the collection of marketplace and 'farm place' anecdotal information (See Annex 4). Much of that anecdotal information, coupled with specific information contained in the CHAP and FPA industry profiles, and analyses applied thereto, offers consistent and complementary data that serves to verify:

- the lucrative nature of the fresh fruit and vegetable market in Canada;
- the increasing and disproportionate allocation of imported produce to domestic produce in the marketplace;
- the increasing nature and number of operational impediments to domestic horticulture sector growth and competitiveness.

⁴ http://www.citt-tcce.gc.ca/doc/english/References/Reports/gc90001_e.pdf Reference No. GC-90-001

⁵ Facilitating Change in Support of Fair & Ethical Business Practices for Trading Fresh Produce in the North American Marketplace. Fresh Produce Alliance, 2005.

Summary of Horticulture Industry Profile⁶

1. In year 2004, Farm Cash Receipts from edible crops approximated C\$ 3 Billion, almost the same value as exports⁷. (See Table 1, below). While exports, which includes processed products, grew 267% in the 10-year period prior to 2004, farm cash receipts grew 53% during the same time frame. Meanwhile, the value of imports grew 207% to more than C\$ 6.5 Billion, approximately 4 times faster than farm cash receipts. The figures show:

- An Import/Export ratio of 2.24:1
- A high foreign content of the domestic fruit and vegetable market

Table 1
Horticulture Dollar Flow - Farm Cash Receipts, Imports and Exports:
1995 & 2004: C \$ Billion; Not Adjusted for Inflation⁸

	Farm Cash Receipts		Imports		Exports		Import/Export Ratio	
	2004/1995	2004	2004/1995	2004	2004/1995	2004	2004/1995	2004
Total Edible Crops ^{1,2}	53%	\$2.97	62%	\$6.64	207%	\$2.96	267%	2.24:1
¹ Horticulture, Ex: Floriculture, Honey & Maple Syrup								
² Includes fresh and processed.								

2. Horticultural production is present in all regions of Canada with concentration in Ontario, Quebec and BC. Type of commodity, soil and climatic factors, type of farm enterprise and size of farm vary from, and within, regions.
3. The processing component exists in all provinces. A vital component of the sector, it adds value to approximately 40% of the Canadian production of fruit and vegetables.

⁶ CHAP, 1993. Agriculture Canada; Fresh Produce Alliance (FPA) Interim Report. 2005

⁷ The top three exported items were greenhouse products, French fries and juice.

⁸ Source: Statistics Canada and Market Industry Services Branch of Agriculture and Agri-Food Canada

4. Approximately 150 countries traded with Canada in 2003, accounting for almost 66% of the fresh produce consumed in this country⁹. Total market value is increasing; the domestic producer has limited access to a proportional share of that growing market.
5. An estimated 400 different kinds of fresh produce are sold in the Canadian marketplace¹⁰. Consistency of supply and quality are constant challenges facing the Canadian produce value chain, due to high perishability, diversity of supply and a fragmented approach to marketing.
6. Canada's horticulture industry operates in a global market. Domestic production competes with imports from the USA, Europe and the Southern Hemisphere, and generally faces the same competition in export markets.
7. Canadian horticulture exports are limited compared to imports. However, changing marketing and production techniques will improve Canadian competitiveness.¹¹
8. Proximity to the USA, with its climatic advantage, larger-scale industry, and ability to exert downward pressure on prices just as the Canadian variety is entering the retail channel during late-summer and/or the autumnal harvest, makes it difficult for some Canadian crops to compete.
5. While some domestic commodities can effectively compete against imports in the domestic marketplace, others appear to have difficulty doing so.
6. Tariffs were gradually reduced throughout the 1990's under NAFTA; they remain in place for produce originating in other countries.
7. Under NAFTA, Most Favoured Nation tariffs on fresh fruit and vegetables may be reinstated or 'snapped back' during a crop year when certain conditions are met, a safeguard to stay in place until 2008.
8. Smaller farm size relative to USA counterparts prohibits economies of scale required for transportation costs and early adoption of technology.
9. Fruit consumption appeared to stabilize following peak levels in the 1980's. In 1991, consumers were increasing their demand for year-round available 'exotic' fruits such as kiwi and mangoes, in an attempt to add variety to the diet. Canned fruit consumption showed slow steady growth; frozen fruit demand fell; both were replaced by fresh imports. The increased ethnic diversity of the Canadian population also exerted pressure on the industry to meet demand for varied fruits and vegetables.

⁹ FPA Interim Report. 2005

¹⁰ FPA Interim Report

¹¹ CHAP report. Author's emphasis: this is what was written/anticipated/expected in 1993.

10. Consumption of fresh fruits and vegetables has continued to increase over the last 20 years. In 2001, Canadian per capita consumption of fruit was 125 kg; of vegetables 185 kg; 67% of both being fresh¹². In 2003, the sector is considered a growth industry, as consumers continue to improve dietary habits. When compared with other food products, fresh and processed fruits and vegetables account for more than 45% of the diets of Canadians¹³.
11. The dominant regulatory factor deemed to be restricting the domestic sector in 1993 was the need to harmonize on-farm inspection standards and processed product standards with those of foreign competitors. Changes were noted for product packaging, standards of quality and continuous supply so as to compete with foreign produce in the marketplace.¹⁴

¹² MISB 2002/2003 Horticulture Review

¹³ FPA Interim Report, 2005.

¹⁴ The following advice was reported in the CHAP industry profile: Growers are constantly reminded that buyers will purchase domestic produce if its quality, price and consistency of supply are equal or better than those of imported produce.

Federal Legislative Acts Pertinent to the Horticulture Sector

Documents reviewed for this project mention the complex and intricate regulatory network that governs the horticulture sector. Reference is made to the municipal, provincial and federal pieces of legislation which regulate horticulture plants from "the time they are planted to the time the finished product is consumed in fresh or processed form".

The findings of the primary research conducted for this project indicate that both the Canadian and American federal level of legislation most influence farm income generation in the horticulture sector. The pertinent Acts are:

Canadian

- *Pest Control Products Act* formerly the *Pest Management Act*, administered by the Pest Management Regulatory Agency¹⁵, under the authority of Health Canada
- *Plant Protection Act*
- *Canadian Agricultural Products Act (CAPA)*
- *Food & Drugs Act*
- *Consumer Product and Labelling Act*
- *Seeds Act*
- *Feeds Act*
- Other "Unspecified" Acts Governing International Trade

American

- *Perishable Agricultural Commodities Act (PACA)*
- *Fungicide, Insecticide, Rodenticide Act (FIRA)*
- *Environmental Protection Act*, administered by the Environmental Protection Agency, the Administrator of which directly reports to the US President
- *Food, Drugs and Cosmetics Act*
- *Bioterrorism Act*

Tri-lateral

- *North American Free Trade Agreement (NAFTA)*

Within each of these Acts are the Regulations which give rise to the issues identified as having a direct impact on farm income generation in the horticulture sector.

¹⁵ <http://www.pmra-arla.gc.ca/english/legis/pcca-e.html>

The Formation of the Pest Management Review Agency (PMRA)

PMRA was formed in 1995, under the jurisdiction of Health Canada, 'as part of an ongoing government effort to establish a reformed pest management regime in Canada'¹⁶. PMRA overlooks all matters related to pest management in Canada. Formerly, pest management regulations operated in separate sectors such as forestry, fisheries and agriculture, and were administered by sector-specific regulatory agencies.

The Pest Control Products Act

According to PMRA literature¹⁷, the legislative authority for the regulation of pesticides in Canada is the *Pest Control Products Act*. The use of pesticides is also subject to regulation under provincial/territorial legislation.

The purpose of the *Pest Control Products Act*, which currently resides with the Department of Justice, is "to protect human health and safety and the environment by regulating products used for the control of pests". The website for the Act indicates the following¹⁸:

The Pest Control Products Act received Royal Assent on December 12, 2002 and will come into force at a date yet to be determined.

One industry stakeholder offered a reason for this state of dormancy, stating that the ratification of four regulations is required before the *Pest Control Products Act* becomes operative, and the ratification process has been delayed. Until that time, horticulture is regulated under the 'old' regulations, meaning the *Pest Management Act*.

Despite the foregoing, PMRA literature states that the PMRA 'enforces compliance with the *Pest Control Products Act*..'

Regulation-based Issue Identification

Methodology

The methodology pursued to identify regulation-based, farm-income-pertinent issues in the horticulture sector involved primary research consisting of in-depth telephone interviews with knowledgeable, committed stakeholders in the Ontario horticulture sector. The identified issues were then compiled, compared, analyzed, categorized and assigned importance based on frequency of mention.

¹⁶ Fact Sheet on the Pest Management Regulatory Agency, November 2001.

¹⁷ Ibid.

¹⁸ As of May 4, 2005.

Implementation of Interview Process

The interviews were held between March 16 and April 28, 2005. A total of 14 stakeholders were consulted comprising approximately 19 hours' interview time. The introductory comments and opening question to all stakeholders was a brief recapitulation of the project purpose, followed by an invitation for the stakeholder to describe regulation-based, farm-income sensitive, issues as they saw them. Some interviewees listed two to five dominant issues; others much more. One pair of interviewees listed 29 issues, spaced over two separate telephone conversations. While the names of the interviewees are protected under federal market research policies, the function of the interviewees can be revealed, as follows:

Administrators of horticulture-based organizations :	8
Horticulture farmers, community:	4
AAFC employee (Director Level) :	1
CEO of produce processor :	1

In addition, two (2) related interviews were held:

- i. An interview with an accountant employed in Canada's apparel-manufacturing industry was conducted to gain insight into NAFTA regulations that impact the apparel industry in the same manner in which comparable regulations may operate in the horticulture sector.
- ii. An interview was conducted with an Ontario government employee (managerial level) responsible for the Foodland Ontario™ branding program, the purpose of which was to understand how this provincial government program has created value for Ontario producers.

Findings of Primary Research

Results of Interview Content

Marketplace and "Farm Place" Anecdotal Information

During the course of the primary research interviews, anecdotal data was collected which serves useful in assessing the regulatory impact of the pertinent regulations. This information, some of which has been verified by subsequent secondary research, is located in Annex 4.

Categorization and Relative Importance of Regulation-based Issues

The horticulture stakeholders interviewed for this project collectively identified eighty-two (82) issues. In their estimation, all but three (3) negatively effect horticulture farm income.

Classification of the 82 separately mentioned issues resulted in 29 categories, which were then assigned relative importance and strength based upon frequency of mention. The resulting issue identification, in order of weighted importance, is as follows:

- I. Lack of harmonization of pesticide regulations between Canada and the USA, although the Canadian produce marketplace operates in a relatively harmonized fashion.
 - 27 of 82 mentions (33%) places this at a statistically significant first
 - Applies to both pest control products and acceptable pesticide residue levels
 - Relates to different pre-market regulatory approval processes and to differing pesticide residue tolerance levels, between the two countries
 - References pesticides not registered in Canada, therefore inaccessible to Canadian producers, yet, imported fruits and vegetables treated by those same pesticides are consumed by Canadians on a regular basis;
 - Effects cost of production, access to advanced technology, timely entry to and access to the marketplace

- II. Processed product, or minimally processed product, prepared on a base of imported raw ingredient, being labelled 'Product of Canada' or 'Canada Choice #1'.
 - This was a distant second, at 6 mentions
 - Claims were made of fraudulent labelling passing off as high-quality of Canadian product

- III. Ministerial Exemptions (ME's)
 - Tied at third place at 5 mentions
 - ME's apply to bulk product; examples include cantaloupes for salad processors; iceberg lettuce for the foodservice sector; potatoes for the processing sector
 - Reportedly, some have been recurring on an annual basis for several years without being ratified into law

- IV. Regulatory structure which is disproportionate to the size of the domestic market and domestic market potential.
 - Tied at third place with 5 mentions
 - Effects foreign and domestic pest control product manufacturers, domestic producers and domestic processors

- V. a) Imported wine being labelled as Canadian wine; b) Regulations pertinent to only the domestic market rather than the global market; c) Lack of legal support to fund international disputes; d) Lack of Domestic Feeding Program (such as that in place in the USA)
- Each of a to d tied at fourth place at 3 mentions each
- VI. a) Health Claims prohibited on fresh fruits & vegetables; b) Differing levels of motivation/commitment between Canadian and American members of a NAFTA dispute resolution committee; c) Lack of harmonization of processed product regulations between Canada and the USA; d) Disproportionate agricultural subsidies among Canadian producers and their global competitors; e) Recent and ineffective changes to farm income protection programs; f) USA Hold & Test Program and documentation requirements on Canadian produce
- Each of a to f mentioned twice
- VII. a) Processed product prepared to USA Standards for export to the USA, objected to by CFIA; b) Disparity between number of Grades for fresh produce in the USA (n= 150) and in Canada (n=31); c) *New Pest Control Products Act* has neither Regulations nor Directives with which to activate it; d) Cost of Canadian labour disproportionately higher than that for global competitors e) Lack of research support for Canadian produce to allow it to compete effectively with imported produce in the domestic marketplace; f) 'Dumping' of packaged product (predominantly American apples) in the domestic market; g) Soon to be legislated On-Farm Food Safety Program; h) CFIA label registration costs; i) Annual Farm CFIA Inspection Procedures; j) Municipal Annual Health Inspection Procedures; k) Organic Certification Costs; l) Lack of Regulatory Oversight to Address the Unique Challenges in Horticulture Farming
- Each of a to l mentioned once
- VIII. Initiatives/Regulations which create value. Three were mentioned: a) Provincial Marketing Boards/Quebec Farm Syndicates; b) Dispute Resolution Corporation, as per Article 707 of NAFTA; c) Domestic Produce Branding Program such as Foodland Ontario
- Each of a to c mentioned once

Regulatory Impact Analysis

Issue Selection

The issues subjected to regulatory review were those most frequently mentioned during the primary research interviews. Higher frequency of mention provides a level of assurance that the issue affects a cross-section of horticulture stakeholders. Thus, focus was placed on the eight issues having three or more mentions among the interviewees.

Those eight issues are profiled and summarized in tables, beginning on page 26. Issues 1, 4 and 6 are combined into one table, as all three relate to pesticide regulations. The last table profiles the Foodland Ontario™ program, described as a government intervention that creates value for producers, processors and retailers. Below, an evaluation and analysis of each of the eight issues is provided, including an explanation as to why the issue was deemed to create or destroy farm income or supply chain value.

Issue Evaluation and Analysis

1. First Issue: Lack of harmonization of pesticide regulations between Canada and the USA;

This issue was placed first due to:

- Its relatively very high frequency of mention among interviewees (27/82 = 33%);
- This issue, and its manifestations, were the subject matter of a CITT Inquiry in 1990. Despite the foregoing, many of the problems for which the CITT proposed fundamental corrective action, remain in place today, fifteen years later;
- For a seven-year period spanning before and after the CITT Inquiry, pesticide regulation matters were investigated by a Pesticide Registration Review Team, yet, many of the challenges examined by that group remain in place today;
- The outcome of the Pesticide Registration Review Team, which was the formation of the Pesticide Management Regulatory Agency (PMRA). However, the *Pest Control Products Act*, which the PMRA was designed to enforce remains dormant until an undetermined date.

The most damaging ramifications of this issue, which were revealed in both the primary and secondary research conducted for this project, include:

- Pesticides registered for use in the USA but not in Canada yet produce grown in the USA using that pesticide enters the Canadian marketplace¹⁹;

¹⁹ MISB/AAFC 2002/2003 Horticulture Overview indicates that a pest control product for fire blight ,affecting apples and pears, has been permanently registered in the USA, called 1-MCP

- Activol® and ProJib® - identical active ingredient pest control product for sour cherries sells in Canada at four times the price it sells for in the USA, available from only one registered supplier. Yet, Canadian farms are fewer and smaller in size;
- Canada is one of only two countries (the other being New Zealand) which allows produce with pesticide residue levels to be imported; all other countries have a minimum residue level (MRL) of zero. Effectively, Canada has harmonized its pesticide residue tolerances with only New Zealand;
- The USA registration process does not include an efficacy component, only a safety component. The Canadian registration process includes an efficacy component, which according to the PMRA literature, is a *value* assessment. A value assessment can be a subjective judgement, and begs the question as to why it is a component of regulatory oversight.
- Exporters to Canada may petition Health Canada if they object to Canada's legislated MRLs²⁰, but, domestic producers cannot do so. In addition, exporters to the USA cannot petition the FDA for leniency on MRL's (called tolerances in the USA).

Pertinent Regulations

The regulations pertinent to this issue, and commentary on each, are as follows:

American Regulations

The Environmental Protection Agency enforces the *Environmental Protection Act*, and in so doing, works to a sequential workplan to ensure that pesticide regulation applications are assessed in a timely manner. The evaluation does not include an efficacy evaluation.

The *Food, Drugs and Cosmetics Act* does not permit pesticide residue levels on produce imported into the USA.

NAFTA Regulations

The NAFTA Regulations very clearly state that it is incumbent upon each party of Canada, the USA and Mexico, to independently implement measures within their own countries to ensure that phytosanitary measures do not result in obstacles to trade. Chapter 7, Section B, Article 712, Basic Rights and Obligations reads as follows:

(methylcyclopropene). Meanwhile, Canadian producers have only temporary access to streptomycin to control fire blight.

²⁰ Minimum Residue Levels. Example: Regulations amending the Food and Drug Regulations (1404 - Daminozide). The regulatory impact statement to that amendment states: Any exporter to Canada who uses a pesticide at application rates and with agricultural practices that would result in residues exceeding a Canadian MRL can petition the PMRA to establish a different MRL so that higher residue levels would be permitted. The petitioner must submit the necessary information, including a description of the use of the pesticide and relevant data on residue chemistry and levels.

Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

The remainder of Article 712, Sections 1 to 6, is in Annex 5 .

It is the opinion of the author that Canada, through Health Canada's PMRA, is delinquent with respect to its Rights and Obligations under Article 712 of NAFTA, in that it has not taken the necessary measures to ensure that pesticide regulations in Canada do not act trade irritants amongst the NAFTA parties.

Canadian Regulations

As aforementioned, the *Pest Control Products Act*, which was designed to replace the *Pest Management Act* (PMA), is dormant. The PMRA is still using the PMA²¹. Interviewees for this project claim that the PMRA is using the American *Environmental Protection Act* to carry out its regulatory oversight.

The *Food & Drug Regulations* (FDR) work in tandem with the *Pest Management Act/Pest Control Products Act*, in that MRL's established by the PMRA are incorporated into the FDR.

Value Impact

The grower is negatively impacted by:

- the existing pesticide regulations in Canada;
- PMRA's apparent failure to exercise Canada's rights and obligations under NAFTA Article 712.

Processors can be both positively or negatively effected, as they have access to American produce, but could possibly benefit from, or desire, domestic produce. Retailers are positively effected by duty-free imported produce allowed under NAFTA.

²¹ The CITT Inquiry reports that prior to 1977, pesticides traded freely between the US and Canada. At that time, Canada decided to support the domestic industrial chemical industry by making pesticide registration mandatory in Canada. Due to economic reasons, that has not happened, and the victim has been the horticulture sector.

2. *Second Issue: Imported produce being labelled and sold as 'Produce of Canada' or graded as 'Canada Choice #1'*

This issue was placed second due to:

- Its second highest frequency of mention among interviewees (6/82, a statistically significant distant second);
- The complaint is legitimate in that Canadian consumers responding to the Product of Canada designation cannot be faulted for assuming that the edible portion of the product is Canadian in origin;
- It assumes the nature of 'passing off', a legal term in which marketplace goods pose as having attributes that they do not necessarily have.

The regulations pertinent to this issue, and commentary on each, are as follows:

Canadian Regulations

The *Consumer Products and Labelling Act & Regulations* 31(2), implemented by the Competition Bureau of Industry Canada, enforces Product of Canada claims.

CAPA's Processed Products Act clear states that only Canadian product can carry the descriptor 'Canada'.

See Annex 6 for a list of the criteria used to apply the designations 'Product of Canada' and 'Canada Choice'. Clearly, these terms are to pertain only to Canadian raw produce. The violations reported appear to be a case of inadequate enforcement rather than inadequate regulations.

Value Impact

The grower is negatively impacted by the lack of enforcement of the above two mentioned regulations in that their competitors are usurping the Canadian country of origin descriptor in the domestic marketplace. Processors and retailers benefit as long as consumers are none the wiser.

3. *Third Issue: Ministerial Exemptions (ME's) which permit bulk import of fruit and vegetables*

This issue was placed third due to:

- Tied at third place of frequency of mention (5/82);
- Both primary and secondary research implies that there is a high number of ME's being transacted. For example, the CFIA has an entire website dedicated to how to apply for a ME²².

²² <http://www.inspection.gc.ca/english/plaveg/fresh/meguide.shtml>

- Following from above, it appears that exemptions have become the norm rather than the exception. A title like 'Exemption' implies that the reverse should be true.

The regulations pertinent to this issue, and commentary, are as follows:

Canadian Regulations

CAPA's Fresh Fruit & Vegetable Regulations make provisions for Ministerial Exemptions.

Value Impact

The grower is predominantly negatively effected by ME's in that their produce is replaced by imported varieties. In some cases, ME's can support the local growers' business interests. For example, during low crop yields, supply can be maintained with imported varieties, and consequently, consumer loyalty and satisfaction in the marketplace upheld.

Processors and retailers positively benefit from ME's through access to consistent supply from the US. This point was made very clear in the SWOT Analysis of the Fresh-cut Industry in Ontario, previously noted.

4. *Fourth Issue: A regulatory framework disproportionately sized and sophisticated compared to the size and potential of the domestic market, and the Canadian portion of the international market;*

This issue was placed fourth due to:

- Tied at third place of frequency of mention (5/82);
- Both primary and secondary research indicates that Canada's pesticide regulatory regime is overly restrictive and rigorous, and disproportionately large compared to the size of the horticulture industry.

The regulations pertinent to this issue, and commentary, are as follows:

Canadian Regulations

PMRA's *Pest Management Act* (old) and dormant *Pest Control Products Act*.

Value Impact

Each of Grower, Processor and Retailer are negatively impacted by an overly restrictive regulatory climate in that access and time to market for domestic produce is stalled. This in turn negatively impacts value generation at these three levels of the supply chain.

5. *Fifth Issue: Imported wine, or, a blend of Canadian wine and imported wine, being labelled as Canadian wine;*

This issue was tied at fifth due to:

- Same frequency of mention (3/82);

The regulations pertinent to this issue, and commentary, are as follows:

Canadian Regulations

The Food & Drug Regulations state that a "clear indication of the country of origin is required on all standardized wine products described in B.02.100 and B.02.102 to B.02.107. This declaration must be shown in English and French [B.01.012.(2)] and must appear on the principal display panel [B.02.108]."

The CFIA website indicates that this regulation is under review.

Value Impact

The grower is predominantly negatively effected in that their wine is replaced by imported produce, yet the product bears the name 'Canada/Canadian'. However, upside benefits may accrue as well. During low crop yields, imported wine can maintain supply and subsequently, consumer loyalty and satisfaction in the marketplace.

Processors and retailers positively benefit from imported wine through access to consistent supply.

6. *Sixth Issue: Pest management/control regulations pertinent to only the domestic market, rather than the global market;*

This issue was tied at fifth due to:

- Same frequency of mention (3/82);

The regulations pertinent to this issue are identical to those effecting the first issue - "lack of harmonization of pesticide regulations between Canada and the USA", and are re-stated below, as follows:

American Regulations

The *Environmental Protection Agency* implements the *Environmental Protection Act*, and in so doing, works to a sequential workplan to ensure that pesticide regulation applications are assessed in a timely manner. The evaluation does not include an efficacy evaluation.

The Food, Drugs and Cosmetics Act does not permit pesticide residue levels on produce imported into the USA.

NAFTA Regulations

The NAFTA Regulations very clearly state that it is incumbent upon each party of Canada, the USA and Mexico to independently enforce measures within their own countries to ensure that phytosanitary measures do not result in obstacles to trade. Chapter 7, Section B, Article 712, Basic Rights and Obligations, reads as follows:

Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

The remainder of Article 712, Sections 1 to 6, is in Annex 5 .

Canadian Regulations

As aforementioned, the *Pest Control Products Act*, which was designed to replace the *Pest Management Act* (PMA), is dormant. The PMRA is still using the PMA²³.

It is the opinion of the author that Canada, through Health Canada's PMRA is delinquent with respect to its Rights and Obligations under Article 712 of NAFTA, in that it has not taken the necessary measures to ensure that pesticide regulations in Canada do not act as impediments to free trade amongst the NAFTA parties.

Value Impact

The grower is negatively impacted by the existing pesticide regulations, and pesticide residue regulations in Canada, and further, by PMRA's apparent failure to exercise Canada's rights and obligations under NAFTA Article 712. Processors can be both positively or negatively effected, as they have access to American supply, but could possibly benefit from and desire local produce. Retailers are positively effected by the free trade of imported produce allowed under NAFTA.

²³ The CITT Inquiry reports that prior to 1977, pesticides traded freely between the US and Canada. At that time, Canada decided to support the domestic industrial chemical industry by making pesticide registration mandatory in Canada. Due to economic reasons, that has not happened, and the victim has been the horticulture sector.

Seventh and Eighth Issues:

- 7. Lack of legal support from the Canadian government with which to fund all or part of international disputes;***
- 8. Lack of a domestic feeding program, such as that in place in the USA that would position vendors of Canadian produce with right to first refusal to supply federal institutions;***

These issues were tied at fifth place due to same frequency of mention (3/82). They are coupled together here because both prevail due to lack of Canadian regulations, rather than inadequate, outdated, or dormant Canadian regulations. For the seventh issue, lack of legal support, it is unknown at time of writing which American regulations provide legal support for international disputes. Regarding the eighth issue, the *USDA Farm Bill* implements the Domestic Feeding Program.

Value Impact

The lack of a legal support mechanism to finance international legal claims and disputes negatively impacts the grower, and may or may not, depending on the circumstances, negatively impact on the processor and retailer. The playing field is un-level from the outset. The examples provided by the interviewees indicate that in two separate instances, Canadian tomato producers had to pay C\$ 3mm and C\$ 4mm respectively, to legally defend themselves against charges placed against them by their American counterparts.

The lack of a Domestic Feeding Program, such as that in place in the USA, negatively impacts growers and processors, relative to their American counterparts, in that the Canadian producer does not have access to large, consistent customers such as federally-operated schools, office buildings, penitentiaries, museums, etc. In addition, the brand of American produce is reinforced in these outlets. Canadian producers would like similar access and branding opportunities in Canadian federal institutions.

- 9. Ninth Issue: Domestic Produce Branding Program such as Foodland Ontario™;***

This 'issue' was one of three that interviewees collectively attributed to farm income generation. The tremendous praise one grower lavished on all aspects of the Foodland Ontario™ program renders it noteworthy mention in the body of this paper. The Foodland Ontario branding program is an example of a government initiative, though not a regulation, which generates farm income for not only Ontario horticulture farmers, but also processors and retailers alike. It indicates what can be achieved, through government programs, to create and sustain farm income in the horticulture sector and further down the supply chain. Further information on the success of the Foodland Ontario program is in Annex 8.

Canadian Regulations

There are no pertinent regulations for this provincially initiated and managed program. However, the *Food & Drugs Act* is at play in terms of preventing the produce from being mislabelled and mis-represented (i.e. one cannot, as per the *Food & Drugs Act*, represent California strawberries as Canadian strawberries).

Value Impact

The Foodland Ontario program benefits all stakeholders in the value chain. In-store merchandising contests are held with the retail chain; processors can become involved; the grower is provided with an infrastructure in which to leverage the local nature of their produce.

Juxtaposition of the success of this program against practices discussed in Issue #2 (positioning imported produce and processed product as Canadian in country of origin) indicates that consumers prefer local produce.

<u>Issue</u>	<u>Mentions</u>	<u>Impact/Relevance Statement</u>	<u>Example(s)</u>	<u>Pertinent Federal Act(s)</u>	<u>Proponent Position in Supply Chain</u>	<u>Impact in the Supply Chain: Stakeholder Creation or Destruction of Value</u>		
1,4,6						Grower	Processor	Retailer
<ul style="list-style-type: none"> o Lack of harmony of pesticide regulations between Canada and the USA; o Overly large, expensive and complex regulatory regime; o Regulatory assessments incompatible with trade requirements and countries of destination. 	<p>27/82</p> <p>5/82</p> <p>3/82</p>	<ul style="list-style-type: none"> o USA imports = 67% fruit 89% vegetables, many grown using pesticides not registered in Canada. o Differing regulatory requirements disadvantage Canadian horticultural growers in both domestic and US markets. o PMRA risk assessment includes value judgements, including efficacy, economic and social impacts. 	<ul style="list-style-type: none"> o Pesticide efficacy not required in US; is in Canada, often on products with USA history of use. o Costly regulatory approvals deter investment on smaller yields. o Zero residue tolerance requirements ban Canadian crops from all markets ex: New Zealand. o Imported crops with residues freely enter the Canadian market. 	 <i>Environmental Protection Act</i> *** <i>Food, Drugs & Cosmetics Act</i>  NAFTA  <i>Pest Control Products Act</i> *** <i>Pest Management Act</i> *** <i>Food & Drugs Act & Regulations</i>	<p>Growers; Growers' Associations; Agriculture Innovation Advocate</p>	Neg	Neg/Pos	Pos

<u>Issue</u>	<u>Mentions</u>	<u>Impact/Relevance Statement</u>	<u>Example(s)</u>	<u>Pertinent Act(s)</u>	<u>Proponent's Position in Supply Chain</u>	<u>Impact in the Supply Chain: Stakeholder Creation or Destruction of Value</u>		
						Grower	Processor	Retailer
2						Grower	Processor	Retailer
Produce grown outside Canada, or processed product prepared on a base of imported raw ingredient, being labelled 'Product of Canada' or 'Canada Choice #1' and sold as such in the domestic market, perhaps also in foreign markets.	6/82	Sales are being made on a 'Canada Choice' or 'Product of Canada' designation, yet, the edible content is not Canadian. Claims of fraudulent misbranding although the <i>Food & Drugs Act</i> states that the label of a product shall not be misleading.	i) A horticultural crop, i.e. California baby carrots, can be produced to Canada Choice # 1 Grade in USA, labeled and sold as such in Canada; ii) Peruvian asparagus is rated as Canada Choice #1; iii) Apple Juice from imported concentrate labelled Product of Canada.	 <i>Consumer Packaging and Labeling Act and Regulations administered by <u>Industry Canada Competition Bureau</u></i> <i>Canadian Agricultural Products Act and Processed Product Regulations administered by CFIA</i>	Grower; Growers' Association; Agricultural Innovation Advocate	Neg	Pos	Pos

<u>Issue</u>	<u>Frequency of Mention</u>	<u>Relevance Statement</u>	<u>Example(s)</u>	<u>Pertinent Regulation(s)</u>	<u>Proponent's Position in Supply Chain</u>	<u>Impact in the Supply Chain: Stakeholder Creation or Destruction of Value</u>		
<u>3</u>						Grower	Processor	Retailer
Ministerial Exemptions (ME's) permit import into Canada of horticultural products in bulk quantity, to address shortfalls in domestic supply. Requires the approval of the producer organization; Minister of Agriculture approves, and exempts from certain legislative requirements, the importation.	5/82	i) Bulk horticultural shipments are exempt from several pieces of legislation and are re-packed here. ii) Some continue on an annual basis without being ratified into law. iii) ME's apply intraprovincially but not interprovincially iv) US is challenging ME's, claiming they are contrary to NAFTA.	i) Apply mostly to apples and potatoes for use by Canadian processors. Used by: ii) fresh fruit salad makers to source cantaloupes. iii) foodservice chains to source iceberg lettuce. iv) tomato processors to fulfill forecast volume requirements when domestic crop shortfalls.	 <i>Canadian Agricultural Products Act and Fresh Fruit & Vegetable Regulations</i>	Grower; Growers' Association;	Neg/Pos	Pos	Pos

<u>Issue</u>	<u>Frequency of Mention</u>	<u>Relevance Statement</u>	<u>Example(s)</u>	<u>Pertinent Regulation(s)</u>	<u>Proponent's Position in Supply Chain</u>	<u>Impact in the Supply Chain: Stakeholder Creation or Destruction of Value</u>		
						<u>Grower</u>	<u>Processor</u>	<u>Retailer</u>
5						Grower	Processor	Retailer
The ability to label wine blended outside Canada, or inside Canada with imported wine, as Canadian wine.	3/82	Allows wineries to import wine from other countries, blend it with and label it as Canadian wine. Claimed to have been beneficial one year when local crops fell short of yield requirements; practice continues when good local growing conditions return. Results in mislabeling of content.	Only 10% of wine need be Canadian for it to be labeled Canadian wine. With respect to Ontario wine, the minimum content was at one time 70%, then 30%, is now 10%. Only ON VQA is 100% ON wine content.	 <i>Food & Drugs Act & Regulations (Section B)</i> Note: Notice on CFIA website that this regulation is under review.	Growers' Association	Neg/Pos	Pos	Pos

<u>Issue</u>	<u>Frequency of Mention</u>	<u>Relevance Statement</u>	<u>Example(s)</u>	<u>Pertinent Regulation(s)</u>	<u>Proponent's Position in Supply Chain</u>	<u>Impact in the Supply Chain: Stakeholder Creation or Destruction of Value</u>		
						<u>Grower</u>	<u>Processor</u>	<u>Retailer</u>
<u>7</u>								
Lack of legal support from Canadian government to fund all or part of international disputes.	3/82	International trade disputes are funded, in whole or in part in the US, by the US government. In Canada, the sector must finance their legal defense themselves, which is often so prohibitive, a legal case is not mounted. If a temporary duty is imposed in the US, it flows to the sector; in Canada, it flows to the government.	i) Cdn field tomato and greenhouse tomato sectors have been legally challenged by their American counterparts. Legal defense cost each sector \$3mm - 4mm. In the US, these costs would be borne by the government. ii) Cdn sector cannot afford to mount legal proceedings.	N/A with respect to Canada as this is an example of lack of regulations to support the sector.	Growers' Association	Neg	N/A	N/A

<u>Issue</u>	<u>Frequency</u>	<u>Relevance</u>	<u>Example(s)</u>	<u>Pertinent</u>	<u>Proponent's</u>	<u>Impact in the Supply Chain:</u>
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	<u>of Mention</u>	<u>Statement</u>		<u>Regulation(s)</u>	<u>Position in Supply Chain</u>	<u>Stakeholder Creation or Destruction of Value</u>		
						Grower	Processor	Retailer
8								
Lack of a Domestic Feeding Program (DFP), such as that in place in the US that would position vendors of Canadian produce with right to first refusal to supply federal organizations and institutions such as schools, prisons, administrative buildings, museums, etc.	3/82	The US's DFP, enforced and financed by the <i>USDA Farm Bill</i> , ensures that food supplied to state institutions and organizations be sourced, firstly if possible, from US suppliers; results in a large and consistent market for American growers.	Canadian Federal and Provincial institutions do not grant Canadian producers the right to first refusal to supply their food requirements, including fresh fruits and vegetables. There is no policy that stipulates they need to or should try to buy from Canadian suppliers first.	 <i>USDA Farm Bill</i>	Grower; Growers' Association	Neg	Neg	N/A

<u>Issue</u>	<u>Frequency of Mention</u>	<u>Relevance Statement</u>	<u>Example(s)</u>	<u>Pertinent Regulation(s)</u>	<u>Proponent's Position in Supply Chain</u>	<u>Impact in the Supply Chain: Stakeholder Creation or Destruction of Value</u>		
						Grower	Processor	Retailer
9								
Domestic Produce Branding Program such as Foodland Ontario	1/82	A provincial marketing program in existence since 1977, dedicated to promoting fruit, vegetable and some legume consumption in Ontario through branding Ontario produce. Three dominant promotion channels of: i) paid consumer advertising, ii) media coverage iii) elaborate retail POS program.	Market research conducted in year 2004 indicates Foodland Ontario™ brand performs at the level of national brand recognition and loyalty. Logo awareness and consumer propensity to buy sits at 80% among principal grocery shoppers across Ontario.	N/A	Grower	Pos	Pos	Pos

Review of Regulatory Impact Studies in the Horticulture Sector

To the best of the author's knowledge, a formal evaluation of the direct relationship between horticulture regulations and farm income in Canada has not been conducted. On a few occasions, the topic of regulatory impact has been addressed in terms of national agricultural competitiveness.

There was extensive review of Canada's pesticide regulatory regime and its effect on competitiveness, especially in the decade leading up to the year of NAFTA implementation, 1994. A summary of the studies related to the topic of pesticides, and subsequent action if known, reviewed for this research project, is provided below.

1990: Final Report of the Pesticide Registration Review Team

The above report, the official title of which is "Recommendations for a Revised Federal Pest Management Regulatory System" (ISBN 0-662-57832-5) is one of the first documents to signal the need for pesticide regulatory reform in Canada. That the report is dated 1990 indicates that awareness of this issue arose prior to or during the 1980's.

1990: Canadian International Trade Tribunal Inquiry

A 1990 CITT Inquiry into the Competitiveness of the Canadian Fresh and Processed Fruit and Vegetable Industry²⁴ identified two major deterrents to rendering Canada's fruit and vegetable sector a competitive stance: Canadian pesticide regulations and CUSTA²⁵ implementation. Both are inextricably connected to each other. Excerpts from the CITT Inquiry of 15 years ago very clearly portray an lack of preparedness and inability of the horticulture sector and produce processing industry, through no fault of their own, to withstand the then upcoming impact of free trade with the USA. Moreover, the CITT put forth an unequivocal directive that the regulatory framework, particularly that governing pesticides, be modified to permit the horticulture sector to compete against foreign producers, and, foreign products, as early as the 1992 harvest. Excerpts from the 1990 CITT Inquiry report are provided in Annex 1, and cover:

- CITT's general overview of the challenges facing the horticulture sector
- A very short summary of CITT's opinion of the pesticide regulatory framework in Canada
- A summary of the CITT's recommendations to rectify the pesticide regulations situation

In their concluding remarks, the CITT wrote:

²⁴ http://www.citt-tcce.gc.ca/doc/english/References/Reports/gc90001_e.pdf Reference No. GC-90-001

²⁵ Forerunner name to NAFTA.

In short, Canadian basic policy on pesticide registrations, insofar as it affects the horticulture industry, appears to make little sense. [...] For this reason, the Tribunal will make, in the next chapter, some suggestions for more²⁶ fundamental improvements to Canada's policy on pesticides.

Summary of CITT's Recommendations pertaining to Pesticides

- Before the 1992 growing season, speed up the pesticide registration process and facilitate registration of pesticides for 'minor use'.
- Undertake fundamental reforms to the Canadian pesticide policy along the following lines:
 1. In the short run, approve for use in Canada any pesticide used in the United States, provided that rigorous testing of domestic produce treated with it meets the same residue tests which are applied to imported produce similarly treated.
 2. In the medium term, negotiate to mutually recognize each other's testing and registration systems, provided the testing had been conducted in areas of similar soil and growing conditions.
 3. Under both of the above options, provide for immediate duty-free entry from the United States, by both commercial importers and individual users, of any pesticide product registered for use in Canada.
 4. Where action is taken on points (1) and (2) above, require that Canadian producers maintain a log of every application of pesticides, as recently adopted in the State of California, available for inspection at any time. This regulation would provide the necessary safety mechanisms for operator, environment and consumer, and, help scientists monitor pesticide usage to judge, over time, the effectiveness of a product.

Both primary research and secondary research conducted for this regulatory impact project indicates that the fundamental reforms called for by the CITT in 1990, have not been carried out to any significant extent, if at all, in this year of 2005.

²⁶ The word 'more' refers to the fact that as the CITT report was going to press, the Tribunal became aware that the Government was implementing some of the recommendations of the 1990 Pesticide Review Team. However, in the Tribunal's words "the Tribunal notes the deep-seated nature of the problem and wishes to offer some reasons for seeking more far-reaching solutions."

1993: Canadian Horticulture Action Plan

This document, mandated by the CITT and championed by Agriculture Canada, was the result of a multi-sectorial review of the steps required to position Canada's horticulture sector in a competitive mode. The CHAP includes several tables prepared by CITT which compare and contrast variances in horticulture input costs between Canada and the USA, such as basic hourly wages, employers' hourly costs per hired farm worker, farm fuel prices, comparison of land values, nominal and real interest rates, and relative shares of canned and frozen processing.

The CHAP report is silent on the topic of negatively effected competitiveness due to unequal access to pest management products, and differing acceptable levels of MRLs, between Canadian growers and foreign/USA importers. An explanation for this matter, conspicuous by its absence, was provided by an informed industry stakeholder²⁷ who confirmed that pesticide regulations underwent a 7-year investigation, from 1988 to 1994-1995, by a multi-sectorial group called the Pesticide Registration Review Team. To avoid duplication of effort, the issue of pesticide regulations was deliberately excluded from the CHAP. The outcome of the extensive 7-year review was the establishment in 1995 of the Pest Management Regulatory Agency (PMRA), under the jurisdiction of Health Canada.

1993: Auditor General's Report²⁸

Chapter 13 of the 1993 Auditor Generals Report involved a Department of Agriculture Agri-Food Policy Review, including a Regulatory Review and Pesticides Registration Review. The general observation was made that regulatory reform would be required to increase Canadian agricultural competitiveness. Several concerns related to pesticide registration were noted, including: the lack of transparency in the registration system; the knowledge that older, more commonly used pesticides would not meet current registration standards; and the fact that certain products were not available to Canadian producers or were much more expensive than in other jurisdictions.

It was recommended that the *Pest Management Act and Regulations* be rewritten and entitled the *Pest Control Products Act and Regulations*.

Salient points from each of the Regulatory Review and Pesticides Registration Review, are provided in Annex 2.

²⁷ Ian MacKenzie. Executive Vice President. Ontario Produce Marketing Association. May 2, 2005.

²⁸ www.oag-bvg.gc.ca

1994 & 1999: Revised Pest Management Regulatory System

In 1994 a federal government led revised pesticide regulatory system was proposed; it received stakeholder agreement from the provinces and territories in 1999.

1994: North American Free Trade Agreement

In 1994, NAFTA came into force. The documents referenced above, beginning with the 1990 CITT Inquiry, indicate that efforts were being made to equip Canada's pesticide regulatory regime to operate in a fashion which would permit Canada's horticulture sector to compete on equal footing with their American counterparts.

As aforementioned, are Canada's Rights and Obligations under NAFTA Chapter Seven, Section B (Sanitary and Phytosanitary Measures), Article 712, which stipulates that all parties to NAFTA have both a right and obligation to remove phytosanitary measures that are operating as trade irritants amongst the parties. It appears that Canada is negligent, given the examples put forth in this paper, on removing phytosanitary specific trade irritants, at Canada's own expense.

2000: "Pesticides: Making the Right Choice for the Protection of Health and the Environment"

This report was tabled by the House of Commons Standing Committee on Environmental and Sustainable Development. It indicates a reversal of the thrust to harmonize pesticide registration with the USA, and 'called again for renewal of Canadian pesticide legislation."

2002: Pest Control Products Act

This Act received Royal Assent in 2002, was revised in 2003, and currently lays dormant with the Department of Justice, awaiting a date to be brought into force. In the interim, the Pest Management Regulatory Agency is reported to be relying on the outdated *Pest Management Act*.

2004: MISB/AAFC 2002/2003 Overview of the Canadian Horticulture Sector

This document does not devote dedicated review to regulations operative in the sector. The topic of pesticide regulations is referenced under the caption "Environment". There appears to be no awareness of the restrictive nature of Canada's pesticide regulatory regime on competitiveness.

2004: SWOT Analysis of Ontario's Fresh-cut Produce Industry²⁹

This project was not a regulatory impact study. However, in the SWOT (Strengths, Weaknesses, Opportunities, Threats) analyses, attention was devoted to regulatory influence.

While silent on the phrase 'farm income' there was mention of opportunity for 'significant import replacement' by domestic producers. In addition, the study pinpointed restrictive regulations in the produce sector, categorized as Trade Issues.

Salient points in the report that relate to horticultural farm income, lost/potentially lost farm income and import replacement opportunity are provided in Annex 3. However, two in particular are included in the body of this report so as to put the aspect of pesticide regulations into a farm income perspective:

- *Major US suppliers are both the source of much of the raw material for Ontario fresh-cut processors and also their direct competitor in all markets.³⁰ This implies that the Ontario fresh-cut processors are operating at the pleasure of their competitors. There is a highly unusual situation in that produce originated in the US and processed in Ontario is very competitive when sold back into the US.*
- *Of the \$1.5 Billion of fresh-cut produce processed in Ontario, over 50% is exported [to the US]. This is a sign of a very healthy processing industry, especially since much of the raw material used originated in the US.*

Ongoing: Pest Management Act & Food & Drugs Act & Regulations

When a pesticide is approved by the PMRA, its use is legalized on the fruit or vegetable to which it is subject, by an amendment to the *Food & Drugs Regulations*. A recent (2005) series of *Food & Drug Regulations* Amendments verified that an importer into Canada of the pertinent produce could appeal the stipulated MRL, with the requisite safety data. However, a domestic producer has no access to such an appeal.

²⁹ A study to evaluate the Strengths, Weaknesses, Opportunities and Threats in Ontario's Fresh-cut Produce Industry. Prepared for OMAF Food Industry Competitiveness Branch by WCM Consulting. January 2004. Note: Although this study is particular to Ontario, in many cases, the descriptor 'Ontario' could be replaced by 'Canada' and still be both true, and relevant to this research into horticulture regulatory impact on farm income.

³⁰ It is noteworthy that the US supplier of produce is regarded as the direct competitor in all markets, including Canada's domestic market.

Conclusion

The hypotheses investigated were the following:

- I. Regulations to which Canada's horticulture sector is subject, directly impact on farm income generation, either positively or negatively.
- II. Lack of regulations to which Canada's horticulture sector is subject, directly impact on farm income generation, either positively or negatively.
- III. Horticulture-specific legislation can have either a direct or indirect financial impact on downstream stakeholders in the supply channel.

The test results against the hypotheses are as follows:

- I. Regulations to which Canada's horticulture sector is subject, directly impact on farm income generation, either positively or negatively.

Canada's pesticide regulations were found to be counterproductive to the competitiveness of the horticulture sector by the CITT Tribunal in 1990, as long as 15 years ago. This, in turn, negatively effects farm income generation. In the words of the Tribunal, Canada's pesticide registration system 'does not make sense'. This research project has verified through both primary and secondary research, as well as verification of the pertinent regulations, that the same illogic and counterproductive regulations are in operation today, exercising a negative force on horticulture farm income.

In 1993, the observation was made by the Auditor General, that regulatory reform would be required to increase Canadian agricultural competitiveness. Several concerns related to pesticide registration were noted, including: the lack of transparency in the registration system; the knowledge that older, more commonly used pesticides would not meet current registration standards; and the fact that certain products were not available to Canadian producers or were much more expensive than in other jurisdictions.

These concerns still exist today, 15 or so years hence. Examples include:

Sour Cherry Pesticide: the same active ingredient in a sour cherry pesticide is marketed in the USA as ProJib® at one-quarter of the cost of the identical counterpart marketed in Canada as Activol®. Activol has to be re-constituted in water; ProJib, ready-to-use, does not, yet is significantly cheaper. Sour cherries are imported into Canada from the USA which have been treated with ProJib.

Pear and Apple Pesticide: Canadian producers have access to only one product - the antibiotic streptomycin - to fight the virus 'fire blight', and only on a temporary annual basis. This uncertainty deters investment in pear and apple orchards.

American apple producers have access to a permanently registered product 1-MCP (methylcyclopropene). Reportedly, 50% of apples sold in the Canadian market are imported from the USA, some of which have been treated with 1-MCP.

Unequal right to Appeal MRL's: Importers can appeal MRL's established by the PMRA. Domestic producers cannot.

Antiquated Products Non-Compliant with Trade Requirements: The relatively small size of Canada's horticulture sector is a trade deterrent to investment in Canada as efficacy studies are required for regulatory approval. Reportedly 95% of the products submitted for regulatory approval in Canada have a history of prior use in the USA. As a result, Canada's producers do not have access to the latest pesticides that result in zero residue levels, a requirement for export to every country in the industrialized world, save New Zealand.

Disproportionate Harmonization: Only two countries in the world - Canada and New Zealand - allow residues on imported fruits and vegetables. Effectively, our pesticide regime has harmonized with only one small country.

Several stakeholders readily, and reasonably so, compare Canada's pesticide regulatory regime to that of the USA, given that 50% of Canada's fruit and vegetables are imported from the USA. Many make an appeal for harmonization and/or mutual recognition between the two regulatory approaches. However, a fundamental philosophical difference exists between the two countries. Canada's newly created ('new' as in 1995) PMRA resides under the jurisdiction of Health Canada. Thus, its focus is primarily health of Canadians and the environment. Indeed, in a regulatory assessment, the PMRA conducts a 'value' (words of the PMRA) judgement, comparing risk to societal and economic benefit. In contrast, the American counterpart, the Environmental Protection Agency, is a stand alone department, the Administrator of which reports to the US President. To gain similar regulatory oversight, the differing philosophical approaches to pesticide registration must first be addressed.

CAPA's Fresh Fruit & Vegetable Regulations, through Ministerial Exemptions, provide for importation of bulk produce, thereby displacing, in some cases, domestic produce, and reducing horticultural farm income. Originally designed to address shortfalls of a particular crop season, ME's appear to have become the rule rather than the exemption. Cantaloupes, iceberg lettuce, apples and potatoes are regularly granted ME's, and have for several years. There is no mention of research and development to grow some of this produce in Canada through greenhouse measures.

Article 712 of NAFTA , designed to remove trade irritants that arise from phytosanitary measures in the agriculture sector, appear to have been ignored by Canada. In this case, lack of enforcement of existing regulations is the factor.

- II. Lack of regulations to which Canada's horticulture sector is subject, directly impact on farm income generation, either positively or negatively.

The *Pest Control Products Act*, which is to replace the *Pest Management Act*, has not been brought into force. This situation mimics lack of regulations, and has the same suppressive effect on horticultural farm income as that noted in I. above.

Lack of regulations to provide legal support for the horticultural producers in international disputes puts them at a major cost and legal disadvantage to their American competitors.

Lack of regulations that place Canadian product first in the line of potential supply for federal institutions, such as the USA Domestic Feeding Program, allows for imported produce to be sourced ahead of, or instead of local produce, thereby giving a large share of the domestic market to competitors.

III. Horticulture-specific legislation can have either a direct or indirect financial impact on downstream stakeholders in the supply channel.

Regulations to which the horticultural sector is directly responsible can have a rippling effect to other downstream stakeholders in either a positive or negative manner.

While Ministerial Exemptions displace domestic produce, they provide a source of consistent supply of quality produce for use by processors, and for sale by retailers.

The lack of a Domestic Feeding Program is also a potential loss for processors.

While blending of foreign wine with that of a domestic variety and labelling the product Canadian is a loss for growers during high crop yields, it does allow processors and retailers to maintain a supply of domestic wine, and thus, a loyal consumer.

Enforcement issues are at play in which regulations are in place to deal with a matter, but, not being acted upon. Specifically, the practice of branding imported produce, or imported horticulture-based product, as a Product of Canada, is subject to the *Consumer Packaging and Labelling Act* enforced by Industry Canada's Competition Bureau, and as well, by the Processed Product Regulations of the *Canadian Agricultural Products Act*. In these instances, formal complaints should be lodged with the appropriate regulatory authorities. With respect to blending of Canadian wine with imported wine, the pertinent regulations are under review.

Canada is home to a brisk fruit and vegetable market. Per capita consumption of fruits and vegetables was 125 kg and 185 kg, respectively in 2001, 67% of which was fresh. Yet, in the words of an interviewee 'they've given our market away to our competitors'. A basic management tool such as a pesticide is not accessible to Canadian producers, yet, food treated with residue levels from the same pesticide is imported into Canada and consumed daily by Canadians. The horticulture (fresh and processed) import:export ratio in 2004 was 2.24:1. Canada is a country of rich resources, and relatively small population. According to the 2001 Agriculture census,

2.4% of the Canadian population farm. While 100% of Canadians eat, Canada's fruit and vegetable market has an estimated 70% foreign content.

Several government bodies have discussed and reviewed Canada's pesticide regulatory regime for at least 20, perhaps 30 years, attempting to address its source of trade irritants and its lack of preparedness to equip producers with access to the latest and more efficient technology. Yet, the same issues are paramount today and appear to be becoming more severe.

The mandate of CAPI is to provide third-party review and advice to issues creating disharmony between industry and government. It appears that Canada's stagnant, inefficient and antiquated pesticide regulatory regime is a situation requiring CAPI attention.

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Annex 1: Excerpts from the CITT Inquiry

CITT's General Overview of the Canadian Horticulture Sector

[...]

We also recognized that the horticultural industry in Canada has more reason than any other branch of agriculture to be alert to the implications of the Canada-U.S. Trade Agreement (CUSTA). Here is an industry that produces perishable crops in season, but often in a slightly later and lower-priced season than its competitors in the northern states. Here is an industry that must win back its own consumers every year. Here is an industry that for many products is a residual supplier in its own market. Here is an industry that is losing much of its trade protection with the phasing out of seasonal tariffs between Canada and the United States. And here is an industry that wonders if its costs will come down as rapidly as its tariff protection.

The rest of agriculture faces rather different circumstances. The supply-managed sector does not meet the full rigour of international competition. The meat and livestock sector is not seasonal, and long has been accustomed to competing on a North American basis, in a largely tariff-free environment. The grains sector is in crisis, but is far more concerned about international issues than CUSTA; furthermore, its products are much less perishable than horticultural crops, and it faces less short-term volatility in prices.

[...]

The industry recognizes that it is operating in a world of falling trade barriers, tight government budgets and consumers who are increasingly cost and quality-conscious. It knows that much of its future success will depend on its own efforts. However, it looks to governments to improve the regulatory framework under which it operates in order to remove obstacles to success.

On two matters in particular, pesticides and CUSTA implementation, we share industry's view that government action is needed. We believe that Canada's policy on pesticides should be overhauled to allow our producers a greater choice of products at lower costs, while still meeting high standards of health, safety and environmental protection. With respect to free trade, the industry feels that CUSTA so far has been largely a tariff deal and not a fully balanced trade arrangement. We agree with the industry that the Canadian and U.S. governments must breathe more life into the CUSTA working groups which aim at reducing barriers to trade caused by differences in areas such as health, safety, labelling and quality standards. Steady two-way

progress on these issues would give our industry a bigger world in which to prosper.

[...]

As are were completing this inquiry, "competitiveness" was becoming the focus of discussion on Canada's economic policy. Concerns about our competitiveness as a country were prompting responses from business, labour, educators and governments.

In this context, we believe our report is timely, as it represents one of the first completed studies in the area of competitiveness.

[...]

It may be appropriate to point out that the business end of all studies on competitiveness must be action. If we are going to enhance the competitiveness of Canadian industry, we are going to have to change somehow the way we do things. Our report may be short on models and "paradigms" of competitive success, but it is rich in research and in the experience and wisdom of the fruit and vegetable industry.

CITT's opinion of the pesticide regulatory framework in Canada

[...]

During the 18 months of our inquiry, we found that the most frustrating issue for the industry by far was that of Canada's policy on pesticides. [...] Our research shows that many of the pesticides available in Canada can cost half again as much as those in the United States. [...] The question of availability is even more important. The classic illustration of the problem is the lack of availability in Canada of the pesticide Amitraz which controls an insect on pears known as pear psylla. Pear production in Canada dropped significantly during the 1980s, as pear psylla spread. From the first to the second half of the decade, the domestic producers' market share fell from 45 percent to 33 percent, while consumption went on increasing. The US imports, which largely replaced Canadian supply, had been treated by Amitraz. They were admitted because spot checks at the border showed the produce to be residue-free or within acceptable tolerance levels. Pear growers in Niagara and the Okanagan may be excused for not understanding why pears produced in the State of Washington, with the aid of Amitraz, are judged safe for the Canadian consumer, while pears grown and treated in Canada in the same way would be acceptable.³¹

[...]

In addition to health, safety and environmental concerns, Canadian pesticide policy for the last fifteen years appears to have been driven by industrial development objectives. Until 1977, Canadian farmers could import US products if they were

³¹ This example dates to the 1980's. Research conducted for this project - both primary and second - confirms that the same situation continues to occur in 2005.

registered for the same application in Canada. The ensuing ban on imports of pesticides was aimed partly at creating our own agricultural chemical industry. This objective has not been achieved. The related requirements of separate registration in Canada simply has led many international chemical companies to avoid the time and expense of registering products for US in our relatively small market.³²

[...]

There is a need to consider whether the Canadian pesticide policy is fully meeting its stated health objectives, despite the strong role played in it by the Department of Health and Welfare. If consumer health is the primary objective, what is the point of allowing into Canada fruits and vegetables grown with the use of chemicals not available here? Why not permit the use in Canada of all chemicals used on fruits and vegetables imported in Canada, provided the domestic produce meets the same strict residue tests as the imported good? If producers' health, as opposed to consumer health, is the driving concern, then why not address this through operator training, log books and spot checks rather than through the outright ban of certain pesticides?

[...]

In short, Canadian basic policy on pesticide registrations, insofar as it affects the horticulture industry, appears to make little sense. [...] For this reason, the Tribunal will make, in the next chapter, some suggestions for more fundamental improvements to Canada's policy on pesticides.

Summary of CITT's Recommendations pertaining to Pesticides

- Before the 1992 growing season, speed up the pesticide registration process and facilitate registration of pesticides for 'minor use'.
- Undertake fundamental reforms to the Canadian pesticide policy along the following lines:
 1. In the short run, approve for use in Canada any pesticide used in the United States, provided that rigorous testing of domestic produce treated with it meets the same residue tests which are applied to imported produce similarly treated.
 2. In the medium term, negotiate to mutually recognize each other's testing and registration systems, provided the testing had been conducted in areas of similar soil and growing conditions.
 3. Under both of the above options, provide for immediate duty-free entry from the United States, by both commercial importers and individual users, of any pesticide product registered for use in Canada.

4. Where action is taken on points (1) and (2) above, require that Canadian producers maintain a log of every application of pesticides, as recently adopted in the State of California, available for inspection at any time. This regulation would provide the necessary safety mechanisms for operator, environment and consumer, and, help scientists monitor pesticide usage to judge, over time, the effectiveness of a product.

Annex 2: Excerpts from the 1993 Auditor General's Report

Regulatory Review

Background

A document entitled *Growing Together* urged the removal of regulatory obstacles to competitiveness. In June 1990 the Task Force on Competitiveness also recommended improving the regulatory environment for the agri-food industry.

The regulatory review covered regulations with respect to Grains and Oilseeds and Food Production and Inspection. These reviews were conducted in parallel, Using common departmental structures.

Food Production and Inspection Branch reviewed all regulations in its Acts, except those related to pesticides and racetrack supervision. The Food Production and Inspection regulations were reviewed in four groups: Horticulture, Animal Products, Animal and Plant Health, and Inputs (i.e., fertilizers and seeds).

Agreed-to next steps include the following:

The Department will develop an ongoing review process to schedule the review of all regulations on a cyclical basis. This will also help stakeholders to better plan their participation in the reviews.

The Department will continue to develop ways to ensure that the invitation to participate in the review process is extended to all interested stakeholders. In particular it is working to find ways to better capture the views of the provinces, consumers and the general public.

Pesticides Registration Review

Background

The *Pest Control Products Act* has not been amended significantly since 1969. Our 1988 Report raised a number of concerns about the operation of the registration process. In 1989, as a result of this and a number of other widely held concerns, the Minister of Agriculture launched a comprehensive review of the pesticide registration system. These concerns included: the lack of transparency in the registration system; the knowledge that older, more commonly used pesticides would not meet current registration standards; and the fact that certain products were not available to Canadian producers or were much more expensive than in other jurisdictions.

The review team issued its final report in December 1990. In October 1991, the government accepted the thrust of the review team's 27 recommendations and indicated it would proceed with the implementation of a revised regulatory system based on these recommendations.

Progress in developing a new system

The government has stated that the *Pest Control Products Act* and Pest Control Products Regulations administered by the Department of Agriculture will be amended, to entrench the revised roles and responsibilities of the departments of Health and Welfare, Environment and Forestry and to incorporate several new initiatives.

It has established an Interdepartmental Executive Committee to manage the pesticides registration process and to meet operational standards for on-time performance. A Pest Management Secretariat was established to support the Executive Committee.

The government has approved the expenditure of around 257 person-years and \$81 million over six years to implement the recommendations of the review team and to facilitate the ongoing registration process.

Progress has been made in a number of areas, for example, the expansion of the minor Use program, the price-monitoring program and the product import program.

Agreed-to next steps include the following:

The Interdepartmental Executive Committee is continuing efforts to better integrate the various registration responsibilities and activities now carried out by the departments of Agriculture, Health and Welfare, Environment and Forestry, and to ensure the timely approval of products during the transition.

The government recognizes the need to enact the new legislation in order to provide a foundation of stability, predictability and accountability for a revised system.

Annex 3: Excerpts from the 2004 SWOT Analysis of Ontario's Fresh-cut Produce

- The overall Canadian/Ontario produce industry is one of the strongest agri-food sub-sectors in Canada and has experienced growth similar to that in the US. In 2002, Canadian produce industry sales to all geographical markets are estimated at \$10-12 Billion.
- Due to climate and soil conditions, 80% of all fresh-cut vegetables sold in Ontario originates in California and Arizona.
- Major US suppliers are both the source of much of the raw material for Ontario fresh-cut processors and also their direct competitor in all markets.³³ This implies that the Ontario fresh-cut processors are operating at the pleasure of their competitors.
- Of the \$1.5 Billion of fresh-cut produce processed in Ontario, over 50% is exported [to the US]. This is a sign of a very healthy processing industry, especially since much of the raw material used originated in the U.S. There is a highly unusual situation in that produce originated in the US and processed in Ontario is very competitive when sold back into the US.
- In the US, while overall produce sales have been relatively flat, fresh-cut produce sales are approaching fully half of all produce sales; in Canada it has reached barely 10%. If the US market is a foreteller of future trends in the Canadian market, then the Ontario producer and Ontario fresh-cut processor must find ways to work more closely with each other. Failing this, the future growth and success that *will* be enjoyed by the Ontario processor will be reflected by a similar *decline* in the Ontario producer. Simply, the Ontario processor can today, and will tomorrow, find alternate sources of produce supply.
- Relatively few Ontario producers are selling to the fresh-cut processors in Ontario and the latter have to source much from US farms. **This raises the opportunity for significant import replacement.**³⁴

Ontario fresh-cut processors state that there are clear opportunities for Ontario producers if they are willing to work with the individual fresh-cut processors on a supply contract basis [versus selling only during peak price periods]. However, there [is] poor communication and significant mistrust between producers and processors. This is severely limiting the co-development of the

³³ It is noteworthy that the US supplier of produce is regarded as the direct competitor in all markets, including Canada's domestic market.

³⁴ Bolding of font is by author of the SWOT analysis.

*Ontario producer in the fresh-cut market since the Ontario processor can also obtain all required raw materials from U.S. sources.*³⁵

- A highly concentrated buying structure exists in the Ontario retail market, which is dominated by U.S. suppliers. Lack of consistency of availability and quality from local processors may be reasons. If this can be overcome, the Ontario-based industry can enjoy significant growth.

The SWOT analyses indicated that trade [regulatory] issues represent key barriers and opportunities for both the fresh-cut produce processor and producer in Ontario. Examples include:

- "Ministerial Exemptions" for imported bulk produce, and the lack of any such intervention for packaged produce. Excerpt as follows:

*At present, for every bulk shipment of most produce imported, it is necessary for the Ontario processor to obtain a new permit in the form of a Request for Exemption. This is a tiresome and inconvenient process. Conversely, any US processor shipping into Canada in processed form (such as retail packs) is exempt from this requirement. **Essentially, the Ontario processor is penalized for performing the value-added processing in Ontario.***

- USDA inspection delay on exports into the US

USDA inspections on exports from Ontario into the US continue to pose problems. Fresh-cut produce is subject to the same scrutiny as are meat products and if a shipment is held up for any period of time, then the shipment can be lost due to shelf-life limitations. Apart from the cost impact, this, in turn, can potentially cause the processor in Ontario to lose the business of the US customer.

- Canada-U.S. differences in allowable [processing] additives³⁶

Local regulations in Canada prohibit the use of certain chemicals and other substances in the production process. These same substances are not always prohibited in the US and the product so processed is not prevented by Canadian regulations from entering Ontario and being sold therein. This may give the US processor certain cost advantages over the Ontario processor who must often use alternatives, and more expensive, processing techniques.

³⁵ "

³⁶ The example provided indicates that the author is referring to a pesticide.

For example, alar is a substance Used to stimulate growth in apples. The use of this substance is now banned in Canada but not in the US and both fresh and processed apples containing alar may be imported into Canada. Canadian producers may choose between a number of permitted alternatives to alar but none have proven as effective or efficient.

Canada and New Zealand are the only industrialized jurisdictions in the world that allow imported horticultural products that have been treated with pesticides. The use of these same pesticides is forbidden in Canada. While steps are being taken that may close this loop-hole in Canada, Canadian producers are currently at a disadvantage in terms of crop yields.

Harmonization between Canada and the US on food additives in general, and in fruit and vegetable additives in particular, has been tried for a number of years. There are several working committees within associations and government who are reviewing these issues but the number of substances permitted to enter Canada in a processed product that are forbidden for use in domestic production, is considerable.

- 'Changes without Notice' by US regulators

There is the risk of 'Changes without Notice' from the US as that country responds to potential biohazard threats as part of the Homeland Security measures. This may seriously impact the Ontario-based fresh-cut produce processor in exports to the US.

Annex 4: Pertinent Marketplace and “Farm Place” Anecdotal Information

During the course of the primary research interviews, anecdotal data was collected which serves useful in assessing the regulatory impact of the pertinent regulations. This information, some of which has been verified by subsequent secondary research, is as follows:

Marketplace

- 60% of the apples in the domestic market are Canadian produced
- \$3 of every \$4 (75%) spent on fruits and vegetables in Canada is on imported produce
- There are more than 200 different fruits and vegetables sold in Canada, governed by 31 Grades (the number of Grade categories in the US on fresh product is 150)
- There are 500 to 600 SKU's (Stock Keeping Units) for fresh fruits and vegetables
- 30% of the produce in the Canadian market is domestically produced; 50% is USA produced; 20% produced elsewhere. Therefore Cda:US:All Else is 30:50:20
- The Canadian market (do not know if this is the entire Canadian marketplace, or, just the horticulture sector) comprises 2% of the global market, yet it is subject to one of the most rigorous set of regulations in the world
- The horticultural market in Canada is controlled by major retailers, including Sobey's, Loblaw's, Dominion, Metro-Richelieu, Safeway
- Farmers receive low return on processed products, for example:
 - Corn Flakes: from the corn - 3 ¢ per box
 - Large Pack of Cigarettes: from the tobacco – 8 ½ ¢ per pack
 - McDonald's Cherry Pie: from the cherries – ½ ¢ per pie
 - Bottle of ON wine: from the grapes – 50 ¢ per bottle
 - 64-oz Apple Juice: from the apples – 16 ¢ per can
- Ontario is home to the highest per capita consumption of fresh fruits and vegetables in North America; it is twice that of the Americans
- The profit margin on fresh produce for retailers is estimated to be much higher than that for shelf-stable goods. No exact figures were provided.
- The Foodland Ontario™ brand of Ontario produce enjoys 80% recognition and 80% propensity to buy amongst Ontario principal grocery shoppers, as of year 2004. The percentages have been higher in past years.

“Farm Place”

- An annual CFIA inspection fee was gradually negotiated downwards from \$2,710, to \$700; the same inspection is conducted in the USA, for an identical but much larger type of farm, for US\$50
- 95% of all new pest control management products come from the USA, where there is a history of use
- There are 135 active pesticide ingredients, comprising approximately 400 products registered and used in the USA to which Canadian producers do not have access
- Canadian producers receive 10-15% of farm income in subsidies; USA producers, 30-35%; EU producers, 60%
- Labourers get paid 50¢ per day in China, \$6 per day in Peru, \$11-12 per hour (including benefits) in Ontario
- The soon-to-be-legislated On-farm Food Safety program costs an additional 5¢ per unit to implement; yet, the marketplace is not willing to pay for this extra cost. While Canadian retailers give service to this Canadian program, they buy imported produce which has not followed the program.
- The NAFTA regulated Dispute Resolution Corporation (creates value by providing recourse for invoice payment) has handled 400 – 500 informal cases over the past 5 years; 40 – 60 formal cases.

Annex 5: NAFTA Article 712: Basic Rights and Obligations

Right to Take Sanitary and Phytosanitary Measures

1. Each Party may, in accordance with this Section, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or recommendation.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Section, each Party may, in protecting human, animal or plant life or health, establish its appropriate levels of protection in accordance with Article 715.

Scientific Principles

3. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is:

- a) based on scientific principles, taking into account relevant factors including, where appropriate, different geographic conditions;
- b) not maintained where there is no longer a scientific basis for it; and
- c) based on a risk assessment, as appropriate to the circumstances.

Non-Discriminatory Treatment

4. Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

Unnecessary Obstacles

5. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility.

Disguised Restrictions

6. No Party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

Annex 6: Product of Canada and Canada Choice Regulations

Both "**made in Canada**" and "**Product of Canada**" imply that the food was manufactured in this country. However, these statements do not necessarily mean that **all of the ingredients** used are domestic. It may be possible to use more appropriate and explicit terms than "made in Canada" to describe the process that the food has undergone. For example:

- "roasted and blended in Canada" to describe coffee since the coffee beans are always imported;
- "fermented and bottled in Canada from Canadian and imported grapes" to describe wine when more than 25 percent of the grape juice or the grapes are imported;
- "packaged in Canada" to describe food which is imported in bulk and packaged in Canada;
- "processed in Canada" to describe a food such as peanut butter when the peanuts are imported.

The term "Made in Canada" should not be used to describe foods when it is only the label or container that is made in Canada.

Finally, according to the *Consumer Packaging and Labelling Regulations*, subsection 31(2), if a prepackaged product has been wholly manufactured or produced in a country other than Canada, and the identity and principal place of business of the person in Canada for whom the prepackaged product was manufactured or produced for resale appears on the label, then the identity and principal place of business shall be preceded by the words "**imported by**" or "**imported for**", unless the geographic origin of the product is stated on the label grouped with, or adjacent to, the Canadian name and address

Canadian Agricultural Products Act & Processed Product Regulations

Grade

CANNED / FROZEN

Canadian Product:

- CANADA FANCY / CANADA A
- CANADA CHOICE / CANADA B
- CANADA STANDARD / CANADA C
- SUBSTANDARD*

Imported Product: (sold in its original container)

- FANCY GRADE / GRADE A
- CHOICE GRADE / GRADE B
- STANDARD GRADE / GRADE C

* the substandard grade is not permitted for imported products

Annex 7: Ministerial Exemptions Explanation

Ministerial Exemptions are regulated by the Fresh Fruit and Vegetable Regulations of the *Canadian Agricultural Products Act*. Processors or packers are free to source their supplies from the area or supplier of their own choice provided those supplies comply with all the requirements of the Act and the Regulations. In the case where adequate quality and quantity of supplies are not available, processors or packers may apply to the Minister for an exemption to obtain non-complying product from another province or another country. Provisions exist for the Minister or a delegate of the Minister, when there is a shortage in Canada of a type of product (or a suitable equivalent product), to exempt such products from the minimum quality (grade), labeling or packaging requirements in order to provide packers and processors with the supplies necessary to meet their needs.

Annex 8: Foodland Ontario Program; Notes from Interview

Description

- is dedicated to the domestic Ontario market to promote fruit & vegetable (some legumes) consumption in Ontario
- been in existence since 1977
- achieved through branding Foodland Ontario™ as an Ontario brand of produce and have established a track record through the consumer
- three promotion channels:
 - paid advertising to the consumer
 - media coverage
 - elaborate province-wide retail POS program
- example:
 - in 25-year anniversary, 2002, nothing said about the anniversary but, published a Foodland Ontario calendar that has shown to have 83% usage among those who have the calendar
 - 1.5 mm Ontarians repeatedly see the calendar

Consumer/Market Research conducted in/for year 2004

- shows that the brand performs at the level of national brand recognition and loyalty
- logo awareness sits at 80% among principal grocery shoppers across ON
- consumer propensity to buy (will/probably will) is at 80% among principal grocery shoppers across Ontario
- these are enviable numbers for any brand to acquire
- although these numbers are very good, they have been higher in the past
- there was the assumption that the equity was high in rural Ontario, but not in cities like Toronto; recent research proves that this is not the case and that the Foodland Ontario brand has equity and loyalty even in major urban centres

Background

- for a limited period, Foodland Ontario was for all non-processed food that originated in Ontario – included protein foods such as poultry, meat, etc.
- since the 1980's, the program is specific to fruits, vegetables and legumes
- currently, program is working with a diminishing budget
 - requires real ingenuity and hard work
 - we succeed, because we are nimble, smart and dedicated
 - we function like a private company
- sometimes things fall through the cracks, i.e. store employee misplaces the logo, places it in front of CA strawberries; we can't help that

Comparison to Other Similar Programs

- there was a Buy BC program but understands it is now defunct
- Nova Scotia launched a program in recent years, is unsure of status
- State of New Jersey – has a long running and successful program that applies to all State foods, called “Jersey Fresh”
- Britain has as strong program ‘Buy British Food’

NAFTA Impact

- allowed major retailers like Loblaw’s to source year-round duty-free
- fills need of a major multi-cultural centre like Toronto for fresh fruits and vegetables
- produce is a very profitable sector for retailers – in the double digit area – more profitable than shelf-stable goods
- reports that Ontario per capita consumption of fruits & vegetables is the highest in North America
- Ontarians consume twice as much fresh fruit & vegetables as do the Americans
- Ontarians have a huge appetite for the duty-free product coming in from the US and major retailers know this; they cater to that need year round with duty-free imported produce
- In addition, fresh produce has a proportionally higher margin for retailers than do shelf stable goods, for example
- What happens? The domestic share shrinks, and it has
- Foodland Ontario program props up the domestic producer share as much as possible