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PACA's Four Areas of Protection

Shielding the industry with enforcement, education, resolution, and protection

By Bruce W. Summers

Fair trading practices have come a long way since 1930 when the Perishable Agricultural Commodities Act, or PACA, was first enacted to protect the produce industry. Before 1930, the produce industry was thought to be particularly prone to unfair trade practices. But once PACA was enacted, produce traders had an effective recourse against trading abuses and began to feel more secure in their trading relationships. Today, PACA continues to evolve to meet and anticipate changes in industry needs.

Bruce Summers is the branch chief of the U.S. Department of Agriculture's Perishable Agricultural Commodities Act (PACA) branch. PACA facilitates fair trade in the produce industry through education, mediation, arbitration, and enforcement activities.

In many ways, the PACA license is the linchpin of the PACA's regulatory scheme. With few exceptions, it is illegal in the United States to buy and sell wholesale quantities of produce in interstate or foreign commerce without a PACA license. Most people in the produce industry hold a valid PACA license and follow the rules and guidelines established to protect the industry from dishonest traders. In those rare cases where firms operate without a license in violation of the PACA, the United States Department of Agriculture (USDA) acts to stop the offending firm.

PACA keeps competition fair and honest by establishing a code of commercial trading practices in the marketing of perishable agricultural commodities in interstate or foreign commerce. For instance, under PACA, a seller must ship the buyer produce that meets the terms of the contract of sale. In turn, a buyer must accept and pay

Key Elements

The Perishable Agricultural Commodities Act (PACA or Act) was enacted in 1930 during the Great Depression. This article discusses the reasons the PACA continues to be a cornerstone of the industry, including:

- PACA keeps competition fair and honest.
- PACA offers services to facilitate resolving contract disputes.
- PACA provides a degree of protection against bankrupt or insolvent debtors and debtors formerly involved in bankruptcies.

To learn more about each key element, look for the key throughout the article.

promptly for produce that meets contract specifications. If a firm fails to pay for produce, rejects shipments without good reason, misrepresents produce, fails to deliver produce in accordance with contract terms, or engages in other unfair or fraudulent practices, the USDA may step in.

An example of an unfair practice is the misrepresentation of produce, which can adversely affect all those in the marketing chain. PACA does not impose affirmative labeling or marking requirements on produce vendors. However, the law requires that any descriptions that are placed on containers or labels accurately represent the product.

Recently, the PACA branch (the agency created to administer the Act) received written notification alleging that a load of Columbian-grown red onions imported into the U.S. was being represented as shallots. If this allegation was found to be true it would be a serious matter, as premium shallots bring several dollars more per case than onions, and the misrepresentation would mislead buyers and undercut sellers of true shallots.

When the PACA branch received the notice it initiated a full investigation, including a USDA inspection and a review of all related documents. The inspector pulled samples of the commodity, and PACA had the samples sent to an Agricultural Research Service (ARS) expert, who examined the commodity and determined that they were red onions, not shallots.

Upon receiving this information, PACA advised the firm to correct the labeling of the product on the containers, as well as on all paperwork related to the transactions. When PACA misrepresentation or misbranding violations are found, a firm can settle its liability informally through written warnings or monetary penalties. In more serious cases, violations may justify suspending or revoking a firm's PACA license.

One way to keep businesses on a level playing field is to make sure everyone understands their rights and responsibilities. PACA offers many services to facilitate resolving contract disputes and prevent them from occurring in the first place.

Most recently, PACA's new toll-free customer service line, 800-495-PACA (7222), was established to provide instant access to an expert who can answer PACA-related questions. Program experts offer their advice and guidance on a variety of topics, such as interpreting USDA inspections, understanding good delivery guidelines, resolving disputes involving a contract, or obtaining license information. Since the beginning of 2007, PACA specialists have fielded more than 4,000 calls nationwide involving produce shipments valued in the millions of dollars.

The customer service line is available Monday through Friday from 8 AM (EST) to 4 PM (PST). PACA specialists handle many calls from receivers, including retailers, about loads that arrive with problems covering a variety of situations. By calling PACA at the time a situation is occurring, the firms get assistance in considering the options they have in order to make a sound decision.

To avoid a protracted and costly dispute, which may jeopardize a valuable business relationship, parties will often ask PACA to step in and help resolve the dispute through formal mediation. Mediation allows disputing parties to work out their differences in a neutral atmosphere—outside of the legal system—with the assistance of an unbiased mediator. By resolving more than 90 percent of its cases on an informal basis and recovering millions of dollars for the produce industry, PACA helps strengthen the industry's business relationships, which are vital to the industry's flow of commerce.

Being a PACA licensee also provides a degree of protection against bankrupt or insolvent debtors and debtors formerly involved in bankruptcies. When PACA receives a license application from a person or firm previously involved in bankruptcy, it will require the firm to post a cash surety or surety bond in an amount approved by the USDA before issuing a license. The bond is held for three years after the license is issued. This ensures that the firm will conduct business in accordance with PACA. If a PACA order is issued against them during the three years, the order is paid through the bond.

In a recent example, the USDA found that a company owed $11,000 to a Nevada shipper. When the company failed to pay the award, the shipper filed a claim with the USDA on the $35,000 surety posted by the buyer after his involvement in bankruptcy.

PACA promptly arranged for payment to be made to the seller through the surety. The buyer later replaced the $11,000. The $35,000 surety was held until February 2007 to provide assurance to the produce industry that the buyer will conduct its business according to PACA rules.

In another measure of protection afforded produce sellers in the event their buyers go bankrupt or become insolvent, a statutory trust provision was added to the PACA in 1984. This provision provides produce creditors who properly preserve their trust benefits priority status in recovering monies from the debtor's trust-related assets, which include perishable agricultural commodities, inventories of food or other derivative products, and any receivables or proceeds from the sale of such commodities or products. As a result of the provisions, produce sellers have recovered hundreds of millions of dollars that they otherwise would not have collected.

In short, PACA provides a shield of protection comprised of regulatory enforcement of fair trade provisions, education, dispute resolution, and financial protection. BP