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Specialty Crop Issues in the 109th Congress

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Summary

The U.S. specialty crop sector is comprised of producers, handlers, processors, and retailers of fruit, vegetable, tree nut, and nursery crops. The major U.S. Department of Agriculture (USDA) commodity price and income support programs do not include specialty crops, but the industry benefits generally from USDA programs related to trade, conservation, credit, protection from pests and diseases, domestic food assistance programs, crop insurance and disaster payments, research, and other areas. Certain programs of the Food and Drug Administration, the Department of Homeland Security, and the Department of Labor also affect the specialty crop sector.

The 108th Congress passed the first law intended to address selected issues of importance to the specialty crop industry as a whole (the Specialty Crops Competitiveness Act of 2004, P.L. 108-465). It is widely expected that this act will serve as the basis of more comprehensive debate on policies affecting the sector when the House and Senate Agriculture Committees begin consideration of the omnibus farm bill that would take effect when the current farm act (P.L. 107-171) expires in 2007. Another bill that might serve a similar purpose has been introduced in the 109th Congress. The Specialty Crops and Value-Added Agriculture Promotion Act (S. 1556) would amend the 2004 Act to make some of its authorities permanent, and to address issues related to trade, the revenue insurance program, and marketing opportunities for specialty crops. See CRS Report RL33520, *Specialty Crops: 2007 Farm Bill Issues* for more information.

Bills addressing a number of other industry-related issues were introduced in the 109th Congress. These include appropriations for the programs authorized in P.L. 108-465 (H.R. 2744); planting flexibility proposals that could have affected specialty crop supplies and prices (H.R. 2045/S. 1038; S. 194); and guest worker program reform (S. 359/H.R. 884, and others). This report summarizes the 109th Congress's activity on these bills and other specialty crop issues, and will not be updated.

Contents

Background	1
Legislation in the 108 th Congress	1
Issues in the 109 th Congress	2
FY2006 and FY2007 Appropriations	2
Legislative Proposals	3
A Major Policy Proposal	3
Farmers Markets	3
Country-of-Origin Labeling (COOL)	3
Planting Flexibility	5
Trade Agreements and Planting Flexibility	5
Guest Worker Program Reform	6

Specialty Crop Issues in the 109th Congress

Background

A number of different laws authorize the programs and set the policies affecting the U.S. specialty crop sector, which is comprised of producers, handlers, processors, and retailers of fruit, vegetable, tree nut, and nursery crops. One of these is the periodic, omnibus farm act, commonly called the farm bill, that guides the U.S. Department of Agriculture's (USDA) commodity income and price support programs, and authorizes and directs funding for the major agricultural trade, conservation, and domestic food assistance programs (e.g., the school lunch program and food stamps), among many others.

Other laws besides the farm bill also set policies for programs affecting the specialty crop sector. Congress may make changes to these laws within the farm bill, or within annual appropriations bills, or in separate legislation. These separately authorized programs include those that help producers insure their crops against losses; provide monetary assistance after disastrous losses; protect agriculture from foreign diseases and pests; promote orderly marketing; and protect producers and handlers from fraud in market transactions.¹

Legislation in the 108th Congress

On December 21, 2004, President Bush signed into law the Specialty Crops Competitiveness Act of 2004 (P.L. 108-465; H.R. 3242).² The act identifies several major challenges facing specialty crops: high vulnerability to emerging pests and diseases, trade restrictions for phytosanitary reasons, nontariff trade barriers, and competition from subsidized imports.

To meet these challenges, the act authorizes (1) a pest and disease response fund within the U.S. Treasury; (2) a requirement that USDA's Animal and Plant Health Inspection Service (APHIS) reduce a backlog of export permits; (3) a peer review system to strengthen the science behind the APHIS standards that govern import and export permit requests; (4) additional funds for a program that provides technical

¹ For descriptions of USDA and other federal agencies' programs affecting the specialty crop sector, see CRS Report RL32746, *Fruits, Vegetables, and Other Specialty Crops: A Primer of Government Programs*.

² The Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs of the Committee on Government Reform held a field hearing on H.R. 3242 in Salinas, California, on December 12, 2003. The hearing record, Serial No. 108-151, *Problems Facing the Specialty Crop Industry*, is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:94067.pdf].

assistance to overcome barriers to U.S. exports of specialty crops; (5) block grants to states to support programs to increase the competitiveness of each state's specialty crops; and (6) a higher priority for specialty crop research.

H.R. 3242, as introduced, would have provided \$508 million per year for five years in mandatory money provided through the Commodity Credit Corporation (CCC) to implement the programs in the bill.³ As enacted, the law authorizes \$59 million per year in discretionary funds, subject to appropriation. The act allocates the majority of authorized funds to support the program of block grants to the states, as did H.R. 3242. Each state is to use the funds to develop and promote the state's specialty crop industry.

Issues in the 109th Congress

FY2006 and FY2007 Appropriations

The Administration's FY2006 budget request did not propose funding for any of the programs authorized in P.L. 108-465. The leading specialty crop industry group, the United Fresh Fruit and Vegetable Association (now the United Fresh Produce Association (UFPA)), called for full funding of the block grant program (\$44.5 million) and the technical assistance program for exports (\$2 million), and for maintenance of the Agricultural Marketing Service Training and Development Center in Fredericksburg, VA (\$1.5 million).⁴ The industry group also called for an additional \$42 million in appropriated funding to expand the Fruit and Vegetable program, which provides free fresh produce to schools to encourage children to snack on fruits and vegetables rather than on less nutritious foods. The final act making FY2006 appropriations for USDA (P.L. 109-97) contained \$7 million for the specialty crop block grant program, and no additional appropriated funds for the Fruit and Vegetable program beyond the \$9 million in mandatory funds authorized in a 2004 law reauthorizing and revising child nutrition programs (P.L. 108-265).⁵ Separate legislation was introduced in the 109th Congress to amend the child nutrition law to authorize \$20 million annually in FY2006 and FY2007 to support the expansion of the Fruit and Vegetable program, but it was not passed (H.R. 3562/S. 1556).

³ The CCC is a wholly owned government corporation with the authority to have up to \$30 billion in outstanding debt to the U.S. Treasury. The CCC repays the funds it borrows, usually through the regular USDA appropriation.

⁴ Telephone contact with United Fresh Fruit and Vegetable Association, April 14, 2005. Note: The United Fresh Fruit and Vegetable Association merged with the International Fresh Cut Produce Association in 2006 and now is called the United Fresh Produce Association (UFPA).

⁵ USDA's Agricultural Marketing Service (AMS) administers the block grant program. The agency published a proposed rule with request for comments on April 20, 2006 (71 FR 20353), and published the final rule on September 11, 2006 (71 FR 53303). On September 26, 2006, AMS published the first notice of funds availability inviting applications for the program (71 FR 56101).

The Administration's FY2007 budget request did not propose any funding for programs authorized by P.L. 108-465. As of the date of this report, the House-passed USDA appropriations bill included \$15.6 million for specialty crop block grants to states for FY2007 (H.R. 5384). A provision in Title VII of the Senate-reported bill would provide \$10 million in FY2007 for the program. It is expected that Congress will complete action on agriculture appropriations after the November 2006 elections.

Legislative Proposals

A Major Policy Proposal. In anticipation of possible consideration of specialty crop policies if Congress takes up debate on a new farm bill in 2007, Congresswoman Darlene Hooley and Senator Ron Wyden introduced companion measures in the 109th Congress to amend the Specialty Crops Competitiveness Act of 2004 and propose additional policies (H.R. 3562/S. 1556, the Specialty Crop and Value-Added Agriculture Promotion Act of 2005). The bills contain provisions to expand the existing block grant program and to create a new program of block grants to states to help producers develop business plans and marketing opportunities for value-added products, among several other proposals. See CRS Report RL33520, *Specialty Crops: 2007 Farm Bill Issues*, for more information on this and other 2007 farm bill proposals.

Farmers Markets. Legislation was introduced in February 2005 that would have authorized \$50 million annually through FY2007 in mandatory Commodity Credit Corporation funds to support the construction, improvement, and rehabilitation of farmers' markets (H.R. 710, the Farmers' Markets Infrastructure Assistance Act of 2005). Although Congress authorized a Farmers' Market Promotion program in the 2002 farm act (P.L.107-171) for the purpose of increasing the number of direct producer-to-consumer sales opportunities, no funds for the program have been appropriated to date. In the interim, USDA's Agricultural Marketing Service (AMS) has supported farmers' markets by tailoring to their needs some of the agency's generally available research and technical assistance under this mission area.⁶ H.R. 710 would provide targeted support for the physical establishment of farmers' markets. The 109th Congress had taken no action on this bill as of the date of this report.

Country-of-Origin Labeling (COOL)⁷

Under §304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304), every imported item must be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin. The U.S. Customs Service generally defines the "ultimate purchaser" as the last U.S. person who will receive the article in the form in which it was imported. For example, if a supermarket receives a

⁶ See [<http://www.ams.usda.gov/farmersmarkets/>] for examples of AMS activities in this area.

⁷ Information in this section is largely from CRS Report 97-508, *Country of Origin Labeling for Foods*.

shipment of Chilean grapes or Mexican tomatoes that were packaged in the country of origin into containers ready for retail sale, the law requires that their “immediate containers” carry a country of origin mark. If, on the other hand, they arrive in large boxes and are sold loose from store bins, labeling is not required because the law allows for certain products to be exempted from COOL requirements, namely “vegetables, fruits, nuts, berries ... which are in their natural state or not advanced in any manner further than is necessary for their safe transportation” (19 C.F.R. 134.33).

Section 10816 of the 2002 farm act amended the Agricultural Marketing Act of 1946 to require retail-level COOL on “perishable agricultural commodities,” as defined by the Perishable Agricultural Commodities Act (PACA; 7 U.S.C. § 499a et seq.), among several other provisions. More specifically, it requires PACA-regulated retailers (those selling at least \$230,000 a year in fruits and vegetables) to inform consumers of the origin of these products “by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers.” The 2002 law required the labeling to be implemented by September 30, 2004. House-Senate conferees on the FY2004 consolidated appropriation act (H.R. 2673; P.L. 108-199), which incorporated USDA funding, agreed to language to delay the September 30, 2004, mandatory labeling date for fruits and vegetables (and other commodities) until September 30, 2006. The USDA appropriations act for FY2006 postponed the date two more years — until September 30, 2008 (P.L. 109-97).

The United Fresh Produce Association generally is not in favor of mandatory COOL. Beginning with consideration of the 2002 farm bill COOL provision, UFPA officials have maintained that the program should be voluntary, and that COOL laws should apply to all food items and cover all channels of distribution, including food service sales. The industry is concerned that a mandatory program will lead retailers to try to shift the burden of labeling back up the chain to packer/shippers and producers.⁸ Opponents of mandatory COOL point out that the industry has voluntarily labeled U.S.-grown produce and tree nuts for years, and that the trend in supermarkets and other retail outlets also has been toward increased COOL in response to consumer preferences.

Proponents of a mandatory COOL program (which include the American Farm Bureau, the National Farmers Union, some domestic fruit and vegetable producers, and some consumer organizations) argue that consumers have a right to choose which foods they buy based on knowledge of their source, particularly since imports are increasing at a fast pace, and thus the risk is higher that foods with health and safety problems could enter the U.S. marketplace. Although imported fruits and vegetables have been the source of some foodborne illness outbreaks (e.g., the hepatitis A outbreak in November 2003, linked to green onions from Mexico), illness caused by pathogenic organisms in U.S.-grown produce also occurs, as it did with an outbreak of illness from *E. coli* O157:H7 contamination of fresh spinach from California in October 2006. Food safety officials maintain that regulations already

⁸ Op. cit., December 12, 2003, hearing of the House Committee on Government Reform, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs.

require imported produce to meet the same standards as U.S. produce, and that country-of-origin labeling does not increase food safety or protect public health.

Planting Flexibility

Congress passed a planting flexibility provision in the 1996 farm act (P.L. 104-127), allowing producers of program crops to respond to market signals when choosing what to plant. The term refers to the ability to receive subsidy payments for a particular base crop (such as corn) on a specific base acreage (as declared by the farmer during the 2002 program sign-up period), but to grow a different crop on that same acreage. In that same act, however, Congress added language restricting producers from growing fruit and vegetable crops on base acres, except in limited cases where producers had a history of planting such crops. Specialty crop growers maintain that allowing program crop producers to switch even small numbers of acres to fruits or vegetables can significantly destabilize the produce market.

Congress renewed the restriction on growing specialty crops on program acres in the 2002 farm act. In that act, however, soybeans became eligible for declaration as a “base” crop that could receive both direct payments and counter-cyclical payments. This raised an unforeseen problem, primarily for some farmers in the Midwest who traditionally have rotated soybeans with vegetable crops grown on contract for processing. Many producers found that the new soybean program rules severely restricted the amount of acreage on which they could continue that rotation. They also found owners of rental farmland much less willing to rent their soybean program acres to farmers wanting to grow vegetables, for fear of losing base acreage on which their payments are based.

Companion bills were introduced in the 109th Congress that would have reduced program payments on an acre-for-acre basis in a year in which a producer planted fruits or vegetables for processing on base acres. The following year, however, if the producer again planted a program crop on those acres, that year’s payment would be calculated on the full number of base acres for the covered commodity. In other words, no base acres could potentially be “lost” for having been planted to a fruit or vegetable crop for one year. The bills also provided that, in the event the Secretary authorized a recalculation of base acres, any acres that had been planted to fruits and vegetables for processing would have been counted as having been planted to the program crop. The 109th Congress has taken no action on these bills as of the date of this report. Regardless of what other specialty crop policies may be discussed for possible inclusion in the next farm bill, changing or continuing planting flexibility policies likely will be a key issue in that debate.

Trade Agreements and Planting Flexibility. The concept of “decoupling” is important in the context of U.S. obligations under multilateral trade agreements. The term refers to separating the direct link between federal farm payments and farmers’ decisions on what to plant on program acres. Efforts to decouple farm income and commodity support began in the 1980s, and Congress passed the first major decoupling provisions, using planting flexibility as the mechanism, in the 1996 farm act. At the same time, the act prevented producers from planting fruits and vegetables on “flex” acres except under limited circumstances.

In 2004, the World Trade Organization ruled that specific provisions of the U.S. cotton program — some related to the U.S. policy on planting flexibility — were out of compliance with the Uruguay Round Agreement on Agriculture. Some trade and market analysts, as well as legislators, became concerned that legislative changes might be necessary to bring existing cotton program operations into compliance, and that such potential changes could necessitate that the 2002 farm act be reopened well before its scheduled expiration in 2007. There was some concern, therefore, that the existing planting restrictions might need to be re-examined. However, it subsequently became apparent that the process of settling upon and implementing a compliance plan to meet the WTO finding would move slowly, and that any potential changes in the current planting restrictions affecting specialty crops would not need to be considered until Congress takes up the 2007 farm bill.⁹

Guest Worker Program Reform¹⁰

At present, the H-2A program is the only program for temporarily importing foreign agricultural workers, sometimes referred to as agricultural guest workers. Employers interested in importing workers under this program must first apply to the U.S. Labor Department for a certification that U.S. workers capable of performing the work are not available and that employment of alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

A number of bills were introduced in the 109th Congress proposing to make changes to the H-2A program (S. 359/H.R. 884, H.R. 3857, S. 2087, and others). Some of them contain provisions that would establish mechanisms for certain foreign agricultural workers to become U.S. legal permanent residents. None of these bills had been passed into law as of the date of this report.

Positions on guest worker reform proposals are mixed within the specialty crop industry and larger agriculture community. The UFFPA is strongly in favor of the proposals that have been introduced, arguing that the lack of a sufficient, legal workforce has reached crisis proportions. They further maintain that S. 359/H.R. 884 would provide a stable workforce for growers and more job stability for workers, give workers better wages and working conditions, and let responsible guest workers earn the right to stay in the United States, among other things.¹¹ Opponents of the bills largely frame their arguments in terms of immigration policy, arguing that the measures would give amnesty to illegal immigrants, and make it easier for criminals and terrorists to get into the country.

⁹ For an in-depth analysis of the WTO ruling, see CRS Report RL32571, *U.S.-Brazil WTO Cotton Subsidy Dispute*, which is available on the CRS website.

¹⁰ Much of the information in this section has been taken directly from CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*. Please see that report for a full analysis of the issue. Further questions should be directed to the author of the report.

¹¹ UFFVA position paper, “The Top Ten Reasons to Enact AgJobs,” January 2005. Available at [<http://uffva.org/government/>].

The current discussion of guest worker programs takes place against a backdrop of historically high levels of unauthorized migration to the United States. Supporters of a large-scale temporary worker program argue that such a program would help reduce unauthorized migration by providing a legal alternative for prospective foreign workers. Critics reject this reasoning and instead maintain that a new guest worker program would likely exacerbate the problem of illegal migration.

The consideration of any agricultural guest worker reform proposals would appear to raise a variety of issues. Among them are the following: how would the requirements of any new program compare to the requirements of the existing one; who would be eligible; should the program include a mechanism for participants to obtain legal permanent resident status; how would family members of eligible individuals be treated; what labor market test, if any, would the program employ; would the program be numerically limited; how would the rules and requirements of the program be enforced; and what security-related provisions, if any, would be included?