Order Code RL32951

CRS Report for Congress
Received through the CRS Web

Specialty Crop Issues in the 109th Congress

August 19, 2005

Jean M. Rawson
Specialist in Agriculture Policy
Resources, Science, and Industry Division

Specialty Crop Issues in the 109th Congress

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.

In the short term, before farm bill deliberations begin, the 109th Congress is addressing certain issues affecting specialty crops. These include appropriations for the programs authorized in P.L. 108-465 (H.R. 2744); planting flexibility proposals that could affect specialty crop supplies and prices (H.R. 2045/S. 1038; S. 194); upcoming implementation of a mandatory country-of-origin labeling program for fresh produce; guest worker program reform (S. 359/H.R. 884); and the potential effects that recent Supreme Court decisions could have on producer check-off programs that fund generic promotion campaigns for selected fruits and vegetables.

This report will be updated periodically to reflect congressional and USDA action concerning these issues.

Contents

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.

Government programs affecting the sector are not limited to USDA. The Department of Commerce and the U.S. International Trade Commission are the agencies to which specialty crop growers can turn for assistance if they suspect that foreign countries are selling their products in the United States at less than fair value (a practice called "dumping"). The Department of Homeland Security, in cooperation with USDA's Animal and Plant Health Inspection Agency (APHIS) is responsible for inspecting passengers and cargo at U.S. ports of entry to ensure that foreign agricultural products do not present a risk to U.S. agriculture.

The Food and Drug Administration (FDA), within the Department of Health and Human Services) is responsible for assuring the safety of both domestic and imported specialty crop foods for human consumption, and the Environmental Protection Agency (EPA) regulates the safety of pesticides used on specialty crops and sets tolerances for permissible residues (which are enforced by FDA).[1]

The Department of Labor, the Department of Homeland Security, and the State Department all have roles to play in administering a program that allows the

---

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

temporary immigration of foreign workers to provide seasonal agricultural labor if enough U.S. workers cannot be found.[2]

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).[3] The act identifies the following as 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 authorized (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 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.[4] 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.

Block Grants. The block grant provision in P.L. 108-465 is modeled after an earlier program. Congress originally used the block grants approach to help specialty crops in August 2001, in a one-time, mandatory program that was contained in a supplemental appropriation bill to ameliorate a period of low net cash income in the farm sector (P.L. 107-25). This law provided for each state to receive $500,000 in CCC funds as a base (Puerto Rico received $1 million). Another $133.4 million was distributed to the states based on the ratio of each state's specialty crop production to the total value of U.S. specialty crop production.

---

[2] This is the H-2A program, after the name of the authorizing section of the Immigration and Naturalization Act of 1952 (Sec. 101(a)(15)(H)(ii)(a)).

[3] 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].

[4] 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.

In the majority of states, the respective State Department of Agriculture administered the use of the grants. In February 2004, the National Association of State Departments of Agriculture (NASDA) released a review of the program, which states that the block grants supported more than 1,400 projects nationwide (as of spring 2003), with marketing projects accounting for the greatest use of funds, followed by education, research, pest and disease management, production, and food safety. Gene Hugoson, then NASDA president, said in the cover letter to Congress:

> We feel that these block grants were especially effective due to their delivery through State Departments of Agriculture. Each state tailored the grant program to fit its industry's unique needs and circumstances. I would encourage members to support the same system for delivery of future programs to specialty crop producers around the country.[5]

There have been concerns, however, about the block grant approach. In a November 2003 hearing on policies affecting specialty crops, Representative Robin Hayes of North Carolina stated: "... several of you have expressed support for State specialty block grants and were part of the 2001 economic package. Some States were not as effective in using the funding and the industry never saw the benefits. We heard concerns that some States may absorb this funding into their shrinking budgets if a block grant approach is used again."[6]

Nonetheless, the arguments in support of a permanent block grant program prevailed in the crafting of the final bill. The program is arguably the cornerstone of the act, as indicated by Congress' having allocated to it the majority of authorized funding. P.L. 108-465 was enacted too close to the release of the FY2006 budget to have been included in the Administration's request. The House-passed appropriations bill for FY2006 includes $7 million for the block grant program (H.R. 2744; H.Rept. 109-102).

Looking Toward the 2007 Farm Bill. The measures included in P.L. 108-465 constitute about one quarter of the provisions that H.R. 3242 originally contained. It is widely acknowledged among policymakers and industry officials that the act is significant for being the first piece of legislation to address policies affecting the specialty crop sector as a whole, and that it is likely to serve as the basis for a much broader policy discussion in the debate on the next omnibus farm bill.

---

[5] NASDA, *Improving the Competitiveness of Specialty Crop Agriculture: A Progress Report on State Agricultural Block Grants*, February 2004. Available online at [http://www.nasda.org/specialty crop/].

[6] House Committee on Agriculture, Subcommittee on Livestock and Horticulture, Hearing, November 5, 2003, Serial No. 108-20, *Review of Domestic Policies Affecting the Specialty Crop Industry*. Available at [http://www.gpo.gov/congress/house].

Issues in the 109th Congress

FY2006 Appropriations

The release date of the Administration's FY2006 budget request came so soon after the enactment of P.L. 108-465 that none of its provisions were targeted specifically for funding. Officials of the leading specialty crop industry group, the United Fresh Fruit and Vegetable Association (UFFVA), are calling for full funding of the block grant program ($44.5 million), 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).[7] The House-passed FY2006 USDA appropriations measure (H.R. 2744) contains $7 million for the block grant program; the Senate Committee-reported version of H.R. 2744 contains no similar provision.

The industry group also supports increased funding for 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. Congress authorized the program in the 2002 farm act (P.L. 107-171) to begin as a pilot project covering100 schools in four states and 7 schools on Indian reservations. It was funded by a one-time allocation of $6 million in Section 32 funds.[8] A 2004 law reauthorizing and revising child nutrition programs (P.L. 108-265) expanded the project to include schools in four more states and additional schools on reservations; made it a permanent part of child nutrition law; provided mandatory funding of $9 million annually through FY2008; and authorized additional appropriations to support further expansion.

A UFFVA official says that the association is seeking an FY2006 appropriation of $42 million to spread the program to the remaining 42 states.[9] Separate legislation has been introduced in the 109th Congress that would amend the child nutrition law to authorize $20 million annually in FY2006 and FY2007 to support the expansion of the Fruit and Vegetable program (H.R. 3562/S. 1556, the Specialty Crop and Value-Added Agriculture Promotion Act of 2005). The intent of this provision is to extend the program to up to 100 schools in each state, and to elementary and secondary schools on one Indian reservation in each state (where they exist).

---

[7] Telephone contact with United Fresh Fruit and Vegetable Association, April 14, 2005.

[8] Section 32 of the Act of August 24, 1935, authorizes a permanent appropriation equal to 30% of annual U.S. customs receipts (P.L. 74-320, as amended; 7 U.S.C. 612c).

[9] In May 2003, USDA's Economic Research Service (ERS) published an evaluation of the pilot project in which it reported that the participating schools found it successful at increasing student interest in eating fresh produce. The complete report, *Evaluation of the USDA Fruit and Vegetable Pilot Program: Report to Congress* (ERS Report E-FAN 03-006), is available online at [http://www.ers.usda.gov/].

Legislative Proposals

In addition to the provision authorizing increased appropriations for expanding the Fruit and Vegetable Program, the Specialty Crop and Value-Added Agriculture Promotion Act (H.R. 3562/S. 1556) would amend the Specialty Crops Competitiveness Act of 2004 in two other respects. First, the act would add farm-raised and wild-harvested fish and shellfish to the list of products considered specialty crops, making them beneficiaries of the act's trade provisions and eligible for marketing projects supported by the block grants to states. Second, the act would provide permanent authority for $500 million in annual appropriations to support the block grant program (compared with $44.5 million annually authorized in P.L. 108-465).

The proposed legislation would amend the Agricultural Risk Protection Act of 2000 (P.L. 106-224) to remove authority for an Agricultural Marketing Resource Center pilot project and instead create another program of block grants to states. States would award grants to individual producers or specified groups of producers, on a competitive basis, to help them develop business plans and marketing opportunities for value-added agricultural products. The bill proposes to support the program with $100 million in mandatory CCC funds annually.

This proposed program is similar to the existing Value-added Producer Grant Program (VAPG), which was first established in the Agricultural Risk Protection Act of 2000 (P.L. 106-224, as amended). Under the VAPG program, USDA's Rural Business-Cooperative Service awards grants to independent producers, cooperatives, and producer-based business ventures, among others, to plan and provide working capital for marketing value-added products. The primary difference between VAPG and the grant program proposed in H.R. 3562/S. 1556 is that under the latter, states would award the grants from a block grant received from USDA.

Other provisions in H.R. 3562/S. 1556 include: (1) an incentive program to encourage specialty crop producers and processors to obtain third-party certification of their use of Good Agricultural Practices, Good Manufacturing Practices, etc.; (2) nationwide expansion of USDA's revenue insurance program and a study to determine how well the program serves specialty crop producers; (3) an increase in the limit that a producer can receive in direct operating loan amounts, indexed to inflation; (4) the appointment of an Assistant U.S. Trade Representative for Specialty Crops; (5) a study of the impact of the current multinational trade agreement on specialty crop businesses; (6) a requirement that USDA develop and implement a foreign market access strategy for specialty crops; and (7) an increase in the mandatory funds available to eligible public and private organizations to conduct activities whose goal is to lower trade barriers to specialty crops.

Separately, legislation was introduced in February 2005 that would authorize $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.[10] H.R. 710 would provide targeted support for the physical establishment of farmers' markets.

Country-of-Origin Labeling (COOL)[11]

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 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.

Continuing differences on COOL have propelled the issue into the 109th Congress, although measures introduced to date to amend the 2002 law chiefly concern the mandatory labeling of meats. The 109th Congress has taken no action that would affect the currently authorized September 2006 implementation date for mandatory labeling of fruits and vegetables. AMS, the agency that will oversee the program once it takes effect, is requesting a small increase in FY2006 funds for that purpose. The Senate Committee-reported FY2006 USDA appropriations bill would allocate $3.1 million to AMS for fruit and vegetable COOL; the House-passed bill contains no similar provision.

---

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

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

The United Fresh Fruit and Vegetable Association generally is not in favor of mandatory COOL. Beginning with consideration of the 2002 farm bill COOL provision, UFFVA 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.[12] 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 its 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. Much of this concern about the health risks of imported foods has arisen since the discovery of bovine spongiform encephalopathy (BSE, or mad cow disease) in Canada, which is a large exporter of both live cattle and processed meat to the United States.

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 has been documented (e.g., foodborne illness outbreaks in the late 1990s from E. coli O157:H7 contamination of alfalfa sprouts and unpasteurized fruit juices). Food safety officials maintain that regulations already 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.

Check-Off Programs[13]

The generic product advertising campaigns paid for by fees collected under research and promotion programs (commonly referred to as check-off programs) have come under legal challenge several times by producers who have argued that they are unconstitutional because they force producers to pay for commercial speech (a First Amendment issue). The specialty crops that currently have active federal research and promotion programs are cultivated blueberries, Hass avocados, mangoes, mushrooms, potatoes, and watermelons.

Supporters of mandatory check-off programs view them as economically beneficial, farmer self-help activities that increase total demand for a commodity,

---

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

[13] Information in this section was largely taken from CRS Report 95-353, *Federal Farm Promotion ("Check-Off") Programs.* Please refer to that report for a more detailed analysis of the status of current legal challenges, possible outcomes and effects, and alternative approaches.

expand foreign markets, and fund research on product improvement or consumer preferences. They maintain, furthermore, that mandatory check-offs avoid the problem of "free riders" — growers or importers who benefit from generic advertising but refuse to pay assessments. Opponents contend that the check-off is a form of taxation to fund advertising and other activities they would not pay for voluntarily, and thus is a violation of their right to free speech.

The most recent cases to come before the Supreme Court concerned check-off programs for beef, pork, and dairy.[14] It was widely thought that the Court's rulings on these cases, if they were in favor of the those challenging the program as a violation of the First Amendment, would affect all check-off programs, and might ultimately cause Congress to re-examine the programs' statutory basis.

In late May 2005, the Supreme Court ruled in favor of the government in the beef case, upholding the program; and vacated the lower court rulings on pork and dairy checkoffs, sending the cases back to the appeals courts for further consideration. Because of the Court's decision upholding the beef checkoff, most observers now think it less likely that Congress will re-examine the underlying statutes anytime soon. The legal cases on pork and dairy are expected to continue, with uncertain final dates for conclusion.

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. The 1996 act and the subsequent 2002 farm act restricted 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. In a hearing on domestic policies affecting specialty crops, held in November 2003, a Michigan Farm Bureau representative offered the following example:

> Michigan's two major program crops are corn and soybeans. In 2003, 2.3 million acres of corn and 2.1 million acres of soybeans were planted in Michigan. Just one percent of the combined acreage of corn and soybeans (44,000 acres) is equal to 37 percent of total vegetable acreage in Michigan. Switching as little as one tenth of one percent of combined corn and soybean acreage would more than double Michigan's acreage of such crops as processing tomatoes, fresh snap beans, fresh carrots, and fresh onions .... Non-program producers ... should not have to suffer the consequences of additional

[14] *Johanns v. Livestock Marketing Assn.* and *Nebraska Cattlemen v. Livestock Marketing Assn.* (Nos. 03-1164 and 03-1165).

> competition from traditional program crop producers who can simply return to their program payments if market prices collapse due to over-planting.[15]

It is widely held among agricultural policymakers and observers that Congress inserted the fruit and vegetable planting restrictions in the 1996 act in order to protect the specialty crop industry until other policies could be put into place (most likely in the 2007 farm bill) to strengthen the industry's ability to withstand changes in market prices and production levels. Many consider the Specialty Crop Competitiveness Act of 2004 to be primarily a signal that Congress may consider more substantial measures to strengthen the specialty crop sector in the next farm bill.

Domestic Issues. Congress maintained 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 108th Congress that would have allowed producers to plant fruits and vegetables exclusively for processing and allowed the acreage to be considered as planted to soybeans when calculating base acres for program benefits (H.R. 2181/S. 2141). No action was taken on these bills.

Two somewhat similar proposals have been introduced in the 109th Congress. H.R. 2045/S. 1038 would reduce 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 provide that, in the event the Secretary authorizes a recalculation of base acres, any acres that have been planted to fruits and vegetables for processing will be counted as having been planted to the program crop.

Additionally, a bill has been introduced in the 109th Congress that would permit growers of program crops to plant chicory as a "flex" crop and receive a reduced program payment (S. 194).

Trade Issues. 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

---

[15] House Committee on Agriculture, Subcommittee on Livestock and Horticulture, Hearing, November 5, 2003, Serial No. 108-20, *Review of Domestic Policies Affecting the Specialty Crop Industry*. Available at [http://agriculture.house.gov/hearings/108/10820.pdf].

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.

The World Trade Organization recently found specific provisions of the U.S. cotton program to be out of compliance with the Uruguay Round Agreement on Agriculture. Part of the WTO finding related to U.S. policy on planting flexibility, and some trade and market analysts, as well as legislators, initially were 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. Subsequent analysis suggests that the process of settling upon and implementing a compliance plan to meet the WTO finding will move slowly. Any potential changes in the current planting restrictions affecting specialty crops are not expected to be considered until Congress takes up the 2007 farm bill.[16]

Guest Worker Program Reform[17]

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.

Bills before the 109th Congress propose to make changes to the H-2A program (S. 359/H.R. 884). These bills also would establish a mechanism for certain foreign agricultural workers to become U.S. legal permanent residents. Other guest worker legislation may be introduced later in this Congress. Various measures to reform the H-2A program were introduced in the 108th Congress, but they saw no action beyond committee referrals.

Positions on guest worker reform proposals are mixed within the specialty crop industry and larger agriculture community. The UFFVA 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 will 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.[18] Opponents of the bills largely frame their arguments in terms of immigration policy, arguing that the

---

[16] 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.

[17] 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.

[18] UFFVA position paper, "The Top Ten Reasons to Enact AgJobs," January 2005. Available at [http://uffva.org/government/].

measures would give amnesty to illegal immigrants, and make it easier for criminals and terrorists to get into the country.

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 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?