

CRS Issue Brief for Congress

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Fruits and Vegetables: Issues for Congress

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Fruits and Vegetables: Issues for Congress

SUMMARY

Although fruits and vegetables are not among crops normally receiving farm subsidies, there are a number of federal activities and programs that provide support to fruit and vegetable growers. These include crop disaster assistance and, in recent years, market loss assistance payments. The government also supports these crops through federal marketing orders, the Market Access Program (MAP), food safety activities, research programs to improve crops and to help develop safe pesticides (e.g. alternatives to methyl bromide), and research and inspection activities to prevent foreign pests and disease from entering the country and to manage and eradicate them if they are introduced. The primary law that exclusively serves the produce industry is the Perishable Agricultural Commodities Act of 1930 (PACA).

Farm bills also contain provisions that affect this industry. The House version of the next farm bill (H.R. 2646), passed on October 5, 2001, and the Senate version (text of S. 1731 as amended in lieu of the House language), passed on February 13. Both versions contain provisions that would maintain the planting flexibility restriction on fruits and vegetables. These bills also increase the authorization for the Market Access Program (MAP), authorize assistance to commercial tree growers affected by natural disasters, increase government purchases of surplus commodities, continue the Senior Farmers' Market Nutrition program, and require country of origin labeling at the retail level for fruits and vegetables. The House bill, in addition, has provisions for a caneberries marketing order and research to improve fruit and vegetable harvesting, and provides assistance to remove sanitary and phytosanitary trade barriers faced by specialty crop producers. The

Senate bill has additional nutrition provisions which would expand government support for the consumption of fruits and vegetables through food assistance programs; and provides market loss payments to apple growers.

FY2002 agricultural appropriations legislation (P.L. 107-76/H.R. 2330) was signed into law on November 28, 2001. It included \$75 million in market loss assistance for apple growers; \$344.7 million for FDA food safety activities and \$352 million for FDA inspections and import monitoring. It also increased funding for research on emerging diseases and pests of plants and invasive insect species that affect fruits and vegetables; and provided \$2,498,000 for the Methyl Bromide Transition Program. Funding for APHIS programs that benefit fruits and vegetables was increased by \$55.7 million.

A supplemental authorization act for agriculture (P.L. 107-25/H.R. 2213) became law on August 13, 2001. Out of a total of \$5.5 billion in emergency direct payments to farmers, the law provided \$159.4 million to specialty crops, including fruits and vegetables, during FY2001.

Several other bills that have been proposed but not passed in the first session of the 107th Congress relate to issues of foreign agricultural workers' immigrant status and wages.

The alleged dumping of foreign fruit and vegetable commodities into the U.S. market is an issue of concern to the produce industry, although no legislation has been proposed. Anti-dumping petitions, however, were successfully used by some growers, but other growers were unsuccessful.



MOST RECENT DEVELOPMENTS

The Senate version of the omnibus farm bill was passed on February 13, 2001, the Agriculture, Conservation, and Rural Enhancement Act of 2002 (H.R. 2646). The Senate bill inserted the text of S. 1731, the version that was approved by the Senate Agriculture, Nutrition and Forestry Committee, and a number of floor amendments were adopted before final passage of the bill. The House passed its version, the Farm Security Act 2001 (H.R. 2646) on October 5, 2001. Both bills contain provisions affecting the fruit and vegetable industry. The differences between the House and Senate bills are currently being discussed in conference. The FY2002 agriculture appropriations bill (H.R. 2330) was signed into law (P.L. 107-76) on November 23, 2001.

BACKGROUND AND ANALYSIS

Introduction

Fruits, vegetables, and tree nuts earned U.S. farmers \$28.5 billion in 2000, about 13% of all U.S. farm cash receipts. In 2000, per capita U.S. consumption of fruits and vegetables was 777 pounds, of which 307.1 pounds were fruits and tree nuts, and 469.9 pounds were vegetables and melons. Per capita consumption of fruits and vegetables grew by 12% between 1987 and 1997 for a variety of reasons: increased health concerns of Americans, improved quality, increased variety in supermarket produce departments (including packaged salads and fresh-cut vegetables and fruits), greater availability through world trade, and increased food service sales of fresh fruits and vegetables.

U.S. fruit, vegetable, and tree nut exports in 2000 totaled \$7.3 billion, or 14% of the total value of that year's agricultural exports (\$51.6 billion). Major produce exports were almonds, frozen potato fries, apples, grapes, and orange juice. In 2000 the top markets for these exports were Canada (\$2.3 billion), Japan (\$1.4 billion), the European Union (\$1.1 billion), and Mexico (\$639 million). In 2000 exports to Canada, Japan, and Mexico increased, and sales to the European Union, the third largest market, remained strong.

The value of produce imports (\$9.0 billion) exceeded produce exports by \$1.7 billion in 2000. Major U.S. produce imports were bananas and plantains, tomatoes, grapes, cashews, and peppers. The top suppliers of imported fruits and vegetables were Mexico (\$2.6 billion), South American countries (\$1.8 billion), Central American countries (\$1.1 billion), Canada (\$1.1 billion), and the European Union (\$803 million). Of the total fruits and vegetables (fresh and processed) consumed in 2000 in the United States, 17.4% were imported. About 38% of fresh fruits consumed and 11% of fresh vegetables consumed that year were imported products.

Federal Activities and Programs

Emergency Assistance

Congress has provided crop disaster assistance to growers of all crops, including fruits and vegetables and other horticultural crops, for many years, compensating them for damage from droughts, hurricanes and floods, insects, and plant diseases. In recent years, Congress also has provided market loss payments, a new type of emergency assistance to compensate producers for market losses caused by low commodity prices. Market loss assistance and disaster payments are funded through the borrowing authority of USDA's Commodity Credit Corporation (CCC) and administered by USDA's Farm Service Agency. Most disaster assistance and market loss payments have gone for grains, cotton, rice, oilseeds, and dairy, or so-called program crops. According to data from the Farm Service Agency for 1998 specialty crops got about 20% of a total of \$1.9 billion in disaster assistance paid to farmers for that year.

A law approved by Congress (P.L. 107-25/H.R. 2213) provided \$5.5 billion in emergency direct payments to farmers. The law provided \$159.4 million to specialty crops, including fruits and vegetables, during FY2001. Of the specialty crop total, \$26 million was distributed as "base state grants" with each state getting \$500,000 and Puerto Rico getting \$1 million; the remaining \$133.4 million was distributed in proportion to the value of specialty crops in each state (but not Puerto Rico), as specified in the new law. In addition to the \$159.4 million, the law provided \$10 million for processing, transportation and distribution of commodities to recipient agencies.¹

The FY2002 agricultural appropriations (P.L. 107-76/H.R. 2330) provided \$75 million in market loss assistance for apple growers, which was less than the \$150 million approved by the House but more than the Senate bill (S. 1191) which contained no such funding. For further information on agricultural emergency assistance see CRS Report RL31095, *Emergency Spending for Agriculture: A Brief History of Congressional Action, FY1989-2001*.

Marketing Services

The Agricultural Marketing Service (AMS) administers several services for the produce industry. These include Federal Marketing Orders, and programs and activities (including inspection services) authorized by the Perishable Agricultural Commodities Act of 1930 (PACA).

¹ The Senate version of this legislation (S. 1246) would have provided a total of \$7.5 billion (\$5.5 billion in FY2001 and \$2 billion in FY2002) in farm aid, with \$220 million for specialty crops experiencing low prices in 2000 and 2001 crop years. It also would have required that \$55 million of these funds be used to purchase agricultural commodities (including fruits and vegetables) for distribution in the School Lunch Program, and provided \$20 million to cover commodity transportation and distribution costs for these commodity purchases. The Senate bill also would have provided \$150 million to apple producers for market losses during the 2000 crop year. The Senate bill was defeated on the Senate floor and the House bill (H.R. 2213) was passed by the Senate in its stead on August 3.

Federal Marketing Orders. Federal marketing orders give authority to committees of growers and handlers to make regulations for the marketing of specified fruits, vegetables, tree nuts, and specialty crops. In October 2001 there were 35 federal marketing orders in effect. Local administrative committees decide if a marketing order in a specific geographical area will have regulations requiring quality controls, quantity controls, standardized packages and containers, research and promotion, and marketing information. Any regulations that are adopted are binding and must be approved by two-thirds of the growers and handlers and the Secretary of Agriculture. The activities of marketing orders are financed by assessment fees collected from handlers. AMS makes sure the marketing orders operate legally and in the public interest. The cost to the federal government of monitoring these marketing orders in FY2000 was \$7.5 million.

Perishable Agricultural Commodities Act (PACA). The Perishable Agricultural Commodities Act of 1930 promotes fair trading practices in the fruit and vegetables industry, ensures that sellers are paid even if the buyers become bankrupt, and provides procedures for resolving disputes outside the civil court system. Under this system a trust is established consisting of a buyer's produce-related assets. If a buyer becomes bankrupt, produce suppliers that have preserved their trust rights can recover money owed to them before trust assets are made available to general creditors. PACA activities in most years are funded by license and complaint filing fees (about \$7 million in FY2000), rather than by federal appropriations. However, after USDA proposed an increase in the license fee in early 2000, AMS received a one-time appropriation of \$30.5 million under the Agricultural Risk Protection Act of 2000 (P.L. 106-224) so that license fees would not need to be raised.

Under PACA, growers and shippers who were injured between 1996 and 1999 in a bribery scheme at the Hunts Point Wholesale Produce Market in Bronx, New York were permitted to file claims against the companies that were implicated. Damages to growers and shippers were estimated to be \$13.95 million to \$55.8 million. AMS inspectors were charged with accepting cash bribes in exchange for reducing the grade of the produce that they inspected, which then allowed the wholesale companies to pay amounts less than the invoice price to their suppliers. Of the 24 inspectors and wholesaler's employees who were arrested, 23 were convicted. Congress sought to improve the AMS inspection system so that such incidents would not occur in the future when it enacted the Agricultural Risk Protection Act of 2000 (P.L. 106-224) in June 2000. Under this law Congress provided \$11.55 million for AMS inspection service improvements. Many in the industry felt, however, that in addition to these provisions, Congress should provide restitution to the companies who were injured by the bribery scheme. No action was taken to do this in the 107th Congress.

Market Access Program (MAP)

MAP, a program that helps develop foreign markets for U.S. exports, is especially important to the fruit and vegetable industry. Of the 65 U.S. trade organizations receiving MAP funds in FY2001, 31 (or 48% of the total) were fruit, vegetable, and wine trade groups. These groups received \$36.2 million, or 40% of the total \$90 million of MAP allocations for that fiscal year. Although funding for MAP is provided through the Commodity Credit Corporation (CCC) and not through annual appropriations, attempts are made almost every year in the agricultural appropriations legislation to put limitations or caps on MAP funding. An amendment proposed in the House floor debate on the FY2002 agricultural appropriations (H.R. 2330) would have prohibited any MAP funding in FY2002, but the proposed

amendment was defeated by a vote of 85-241. Many in the produce industry have asked for increased funding for MAP, and the House-passed version of the farm bill (H.R. 2646) increased authorization for MAP funding from the current \$90 million to \$200 million, and the Senate bill (S. 1731) increased authorization to \$190 million.

Supporters say that the program increases U.S. exports and consequently farm income and promotes thousands of non-farm jobs. They also contend that MAP funding is necessary to counter heavily subsidized foreign competition. Produce groups see MAP as one of the few programs that helps open foreign markets to U.S. produce and food exports and note that the government does not subsidize produce as it does other crops such as grains and cotton. Opponents of MAP argue that the program is “corporate welfare” because it subsidizes the advertising budgets of some of the largest and wealthiest exporters in the United States (Sunkist Growers, Blue Diamond Nuts, Welch’s Foods, Sunsweet, Ocean Spray, and others). In response to this criticism the 1996 farm bill (Federal Agriculture Improvement and Reform (FAIR) Act, P.L. 104-127) specified that MAP funds for branded promotions be given only to cooperatives and small businesses. Opponents also question the claim that MAP offsets foreign competitors’ export subsidies and that it increases farm income or American jobs. For further information see CRS Report RS20415, *Agricultural Export Programs: The Market Access Program and Foreign Market Development Cooperator Program*, and CRS Issue Brief IB98006, *Agricultural Export and Food Aid Programs*.

Food Safety

During the 1990s food-borne illnesses linked to fruits and vegetables increased and became a major concern of officials of both the produce industry and government. Although food-borne illnesses from fruit and vegetable consumption had been increasing, the number of cases from contaminated produce was still very small compared to the number of illnesses related to meat and poultry. According to data from the Centers for Disease Control and Prevention (CDC), between 1993 and 1997, out of a total of 3,021 outbreaks from all foods, 80 of those outbreaks, or 2.6%, were attributed to fruits and vegetables. Of 92,695 individual cases of food-borne illness from all foods during the same period, 13,442 of those cases, or 14%, were attributed to fruits and vegetables. These statistics represent the number of outbreaks and cases that were reported to the CDC and that have a known vehicle of transmission. The CDC estimates that, each year, 76 million food-borne illnesses (reported and not reported) occur in the United States, resulting in 325,000 hospitalizations and 5,000 deaths. The total cases of food-borne illness, including those caused by the consumption of fruits and vegetables, resulted in a series of food safety initiatives by the Clinton Administration and the introduction of several food safety bills during the 106th Congress.

Domestically Produced Food. As part of a Food Safety Initiative, the Clinton Administration announced the *Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables* in October 1997. The major actions taken under this initiative for domestic produce were the implementation of voluntary FDA guidelines to help growers minimize microbial contamination of fresh fruits and vegetables, a regulation that requires a warning label on fruit and vegetable juices that have not been pasteurized, and a regulation that requires all fruit and vegetable juice processors to implement Hazard Analysis and Critical Control Point (HACCP) standards. HACCP standards are a method of keeping food safe by identifying where hazards could enter food during its preparation for market and steps that can be taken to prevent such hazards.

The Bush Administration has continued many of the activities on food safety that were begun under the former administration. For example, a survey of domestic fresh produce is ongoing. In an interim report on the survey in July 2001, it was reported that out of 767 samples of domestically produced fruits and vegetables, 12 samples or 1.6% were found to have the presence of either *Salmonella* or *Shigella*, but none of the samples had the presence of *E. coli* 0157:H7. Produce items that were tested were cantaloupe, celery, cilantro, green onions, loose-leaf lettuce, parsley, strawberries, and tomatoes. These were selected because they are generally eaten raw and have a greater chance of having pathogenic bacteria in them. In 1999 under the Clinton Administration the AMS began administering a pilot program called the Microbiological Data Program. Its goal is to collect information on the food-borne pathogens on domestic and imported fruits and vegetables. The Bush Administration is continuing the program because the program's information will be used to help Federal and state public health agencies, such as the CDC, and the produce industry in their food safety decisionmaking.

Imported Food. The Clinton Administration's Initiative to *Ensure the Safety of Imported and Domestic Fruits and Vegetables*, in addition to domestically produced produce, had a goal to prevent importation of unsafe produce. The initiative proposed legislation requiring inspection of foreign farms and the blocking of imported produce from countries that do not have safety standards equal to those of the United States. Legislation was introduced in the 106th Congress (H.R. 830 and S. 1126) to provide authority for this, but these bills were not passed. The initiative also proposed increased funding to expand FDA's international food inspection force and directed USDA and the Department of Health and Human Services (HHS) to help countries improve their food safety systems. In FY2000, FDA increased its food inspections by 90% over the number of inspections conducted in FY1999. Also in FY2000 the Clinton Administration provided training for foreign countries on U.S. food safety laws, and this training has continued under the Bush administration. (See below.)

The Clinton Administration also initiated a survey of imported fresh produce which was completed in January 2001. The report on the survey said that of 1003 samples that were collected and analyzed, 44 samples (4%) were contaminated with either *Shigella* or *Salmonella*, while none of the produce items were contaminated with *E. coli* 0157:H7. Items that were tested were broccoli, cantaloupe, celery, cilantro, culantro (herb similar to cilantro), loose-leaf lettuce, parsley, scallions (green onions), strawberries, and tomatoes. Items with the greatest amount of contamination were cilantro, cantaloupe, and culantro. Food safety training was provided at firms that were the source of the contaminated produce, and harvest workers were taught the proper sanitary practices needed to harvest and maintain harvest equipment in a sanitary manner.

Finally, under the Clinton Administration, the FDA proposed a rule on "port shopping" in January 2001. The proposed rule would require that food products that are refused entry into the United States for food safety reasons should be marked "UNITED STATES REFUSED ENTRY." The purpose of the proposed rule is to prevent unscrupulous importers from moving unsafe food into U.S. markets by trying to get a shipment that has been denied entry admitted through a second or third U.S. port. The proposed rule has not been finalized.

Under the Bush Administration FDA has provided training to foreign suppliers and growers on how to comply with U.S. rules for fruits and vegetables. Training sessions have

been held during 2001 in Central America, Brazil, and South Africa. In addition, the United States on September 4, 2001, signed an agreement with Mexico to share information for the purpose of reducing food-borne illnesses.

FY2002 Appropriations. President Bush's budget request for FY2002 asked for increased funding for FDA's food safety activities, including \$352 million (an increase of \$10.3 million) for inspection of imported foods such as produce and seafood and to modernize the Operational and Administrative System for Import Support (OASIS) import data processing system; \$344.7 million (an increase of \$9.4 million) for food safety laboratories, inspection of domestically produced high-risk foods that include produce and juices; and \$23 million to complete construction of a Los Angeles laboratory which tests for residues on imported fruits and vegetables. The Administration sought authority to charge user fees for Food Export Certificates in their request. However, Congress did not act on this request.

The FY2002 agriculture appropriations law (P.L. 107-76) provided \$344.7 million for FDA food safety activities, an increase of \$9.4 million. It further provided \$352 million, an increase of \$10.3 million for FDA inspections and import monitoring. The House-passed bill (H.R. 2330) would have provided \$123.7 million for FDA food safety activities. Although defeated, an amendment proposed by Representative Rosa DeLauro would have provided \$213 million in FY2002 for FDA's food safety activities; the additional funding would have begun to move FDA toward a level of 10% inspection of imported foods rather than the current 1%. The Senate bill (S. 1191) recommended \$234.8 million for FDA food safety activities; the Senate Committee wanted FDA to continue to contract with a laboratory at New Mexico State University to evaluate new testing methods for pathogens in fresh fruit and vegetables. For additional information on food safety, see CRS Issue Brief IB98009, *Food Safety Issues in the 107th Congress*.

Research

Two USDA agencies support extensive research on improving U.S. fruit and vegetable crops and protecting them from pests and diseases. USDA's in-house research agency, the Agricultural Research Service (ARS) spent \$130.4 million in FY2001 in fruit, vegetable, and tree nut research. Through USDA's Cooperative State Research, Education, and Extension Service (CSREES) \$59.2 million went to state agricultural research experiment stations for fruit and vegetable research in FY2000, and states appropriated an additional \$125 million for a total of 154.1 million.

Insect Pests and Diseases. Fruit and vegetable crops are threatened by a variety of emerging pests and diseases, including citrus canker, fruit fly (Mediterranean, Mexican, and Oriental), plum pox virus, and Pierce's disease (which affects wine and table grapes), among others. Growers testified in recent hearings that they support increased funding for research on the prevention, detection, control and eradication of these pests. It was also suggested that research be done to find new pest and disease resistant varieties of fruit and vegetable crops.

Congress annually appropriates funds to address particular ongoing or emerging pest and disease problems. During debate on the FY2002 agricultural appropriations (P.L. 107-76) the House-passed bill (H.R. 2330) proposed \$52.2 million for the Emerging and Exotic Diseases

and Pests of Plants program under ARS. This program targets Plum Pox virus, Pierce's disease, and diseases of vegetables. Both the House-passed bill and the Senate-reported bill (S. 1191) which proposed \$54.4 million are higher than the ARS request of \$51.4 million. The ARS Invasive Species (Control of Weeds/Arthropods) program supports laboratories to find natural enemies of arthropods and weeds, and to develop methods and Integrated Pest Management (IPM) Pilot Tests to control these pests. Arthropods to be investigated include several kinds of fruit flies and the glassy-winged sharpshooter that spreads Pierce's disease, among other pests. For this program in FY2002 the House proposed \$90.6 million (an increase of \$5.4 million over the ARS request for \$85.2 million), and the Senate proposed \$92.5 million (an increase of \$7.3 million over the ARS request).

Under CSREES the conference report provided \$200,000 for Emerging Pests/Critical Issues, the same amount requested by the agency and proposed in both the House and Senate bills. Other special research grants of various amounts were provided for citrus canker, citrus tristeza, and Pierce's disease. For further information on USDA research programs see CRS Report 97-325, *Agricultural Research, Education, Extension and Economics Programs: A Primer*.

Alternatives to Methyl Bromide. Methyl bromide is a pesticide that is widely used by the fruit and vegetable industry. About 87% of the total agricultural use is for soil fumigation to protect crops against weeds, insects, and plant diseases. Another 8% is used on crops after harvest to prevent the export of pests to foreign countries, many of which require the process before items can enter the country. About 5% is used for fumigation of warehouses, silos, food processing facilities, and transportation vehicles.

The use of methyl bromide has become an issue of concern because it contributes to the destruction of the ozone layer in the earth's upper atmosphere. In 1997, an amendment to an international agreement known as the "1987 Montreal Protocol on Substances which Deplete the Ozone Layer", to which the United States is a signatory, required that the use of methyl bromide be gradually reduced, and its production be completely eliminated by 2005 in industrialized countries. In the United States the deadline for the production of methyl bromide was moved up to 2001 under the 1990 Clean Air Act, but this phaseout date was later changed to conform with the Montreal Protocol's phaseout date of 2005. The change was made by the Omnibus Appropriations Act of FY1999 (P.L. 105-277), which like the Montreal Protocol also permits the use of methyl bromide for fumigation of exports of U.S. produce to foreign countries and of produce imported into the United States, since no alternative currently exists for this purpose. On July 24, 2001, the Environmental Protection Agency (EPA) published final rules for an interim process for exempting quarantine and pre-shipment applications of methyl bromide under the Clean Air Act. (See the U.S. EPA Methyl Bromide Phase Out Web Site at [<http://www.epa.gov/ozone/mbr/mbrqa.html>])

Those who are proponents of a global ban on the use of methyl bromide and ceasing its production by industrialized countries sooner than 2005 contend that there are some approved chemical and nonchemical alternatives to methyl bromide already in use, and many are in advanced stages of research. Another contention is that methyl bromide itself is hazardous to the health of farm workers who work in the fields where it is applied, as well as residents who live near those fields. According to the EPA, exposure could lead to respiratory, gastrointestinal, and neurological problems, including inflammation of nerves and organs, and degeneration of eyes as well as fetal defects in pregnant women. Because of the reported

effects of exposure to methyl bromide, farm worker advocate groups and other groups want the pesticide banned as soon as possible. Supporters of methyl bromide use contend that there are no economically viable alternatives currently available, and note that some of the suggested alternatives are not acceptable to major export markets (i.e. irradiation) or adversely affect the quality or shelf life of the exported produce (i.e. heat treatment).

The FY2002 agricultural appropriation (P.L. 107-76) provides \$2,498,000 for the Methyl Bromide Transition Program. The House-passed bill (H.R. 2330) would have provided \$2,500,000 to the Methyl Bromide Transition Program under CSREES, a slight increase (\$5,000) over the previous fiscal year; the Senate-passed bill (S. 1191) would have provided \$2,495,000, the same level as FY2001. The conference report provided \$2,498,000, a \$3,000 increase, to the ARS for methyl bromide research. The House report also called for a re-examination of the science of methyl bromide and ozone depletion, and urged USDA to report on its findings as soon as possible. The Senate report stated that the Committee expected ARS to hold down costs, to use a major part of methyl bromide funding for field testing, and to direct technology transfer to land grant institutions involved in research projects under the methyl bromide research program.

The House-passed version of the next omnibus farm bill (H.R. 2646) proposes a new section that would permit the use of methyl bromide to prevent the introduction, establishment, or spread of plant pests, including diseases, or noxious weeds. The Senate bill, as reported, made no provision on methyl bromide. For further information on methyl bromide, see CRS Report RS20863, *Stratospheric Ozone Depletion: Phase-Out of Methyl Bromide*.

Animal and Plant Health Inspection Service (APHIS)

APHIS activities protect U.S. agriculture from harmful foreign pests, noxious weeds, and plant diseases. Because of increased produce imports, tourism, and smuggling in recent years, the produce industry has asked Congress to increase appropriations for APHIS. The industry contends that new pests and disease are costing over \$20 billion annually and that it is more cost-effective in the long-term to increase funding for pest exclusion and detection activities now rather than spend more in the future on eradication measures after pests have become widespread.

The goal of APHIS activities is first to prevent foreign pests and diseases from entering the country, but in case of introduction APHIS cooperates with states to manage and eradicate them. Under pest disease and exclusion activities APHIS has three programs that are valuable to the produce industry. The first of these programs is the Agricultural Quarantine Inspection (AQI) the purpose of which is to prevent foreign species from entering the United States. AQI activities include inspection of cargo and passengers and screening of baggage at U.S. ports of entry. The program also issues export certificates and phytosanitary certificates, conducts activities to prevent smuggling of plant and produce material into the United States, and informs truckers and distributors about shipping restrictions on regulated articles like Mexican avocados and Argentine citrus. The second program is Fruit Fly Exclusion and Detection, which is intended to prevent the establishment of the Mediterranean Fruit Fly (Medfly) and the Mexican Fruit Fly in the United States, among others. The third program is the Trade Issues Resolution and Management (TIRM) program which facilitates the export of U.S. agricultural products when U.S. access to foreign

markets is threatened by sanitary and phytosanitary (SPS) barriers. SPS barriers are increasingly used by countries to protect their markets from imported agricultural products, including fruits and vegetables.

Under pest and disease management activities are two programs— Emerging Plant Pests and Golden Nematode. The Emerging Plant Pest program includes activities to eradicate citrus canker in Florida, plum pox virus in Pennsylvania, and the glassy-winged sharpshooter which cause Pierce’s disease in wine and table grapes in California. The Golden Nematode activities are intended to reduce Golden Nematode populations and protect a variety of crops in the state of New York. In addition to funding under these two programs, other funding may be provided for emergency eradication activities under the Contingency Fund and funds transferred from the Commodity Credit Corporation (CCC). In FY2001 emergency transfers of CCC funds amounted to \$24.5 million for fruit fly eradication and \$65.9 million for citrus canker eradication.

Appropriations FY2002. The following table shows the funding proposals for APHIS programs that benefit fruits and vegetables in the agriculture appropriations bills for FY2002 (H.R. 2330/S. 1191) and the amounts decided by the conference committee under the final law (P.L. 107-76). Increased funding for these programs amounted to \$55.7 million over FY2001 levels.

Funding for APHIS, FY2001-FY2002

(\$ in millions)

APHIS Program	FY2001 Estimated	FY2002 Requested	House proposed	Senate proposed	Conference
Agricultural Quarantine Inspection	38.9	47.3	47.3	47.3	47.3
Trade Issues Resolution and Management	8.2	11.4	8.2	8.2	11.4
Emerging plant pests	3.5	99.5	48.5	28.6	43.1
Fruit fly	32.5	56	34.8	36.8	36.8
Golden Nematode	0.6	0.6	1	0.6	0.8
Contingency Fund	4.1	4.1	4.1	4.1	4.1
Produce subtotal	87.8	218.9	143.9	125.6	143.5
APHIS total	529.4	702.9	587	602.7	620.7

Issues. Some regulatory activities of APHIS related to foreign imports are controversial. Domestic industry concerns with the introduction of foreign pests often clash with the trade interests of the industry. Protection from foreign pests can be perceived by the exporting country as fear of competition and therefore any restrictions would be considered unfair phytosanitary barriers. Following are some examples of recent controversies. (For further information on phytosanitary barriers, see section on **Trade Issues: Phytosanitary Issues** in this issue brief.)

Argentine Citrus. A final rule was published by APHIS on June 15, 2000, that allowed the importation into the United States of Argentine citrus from areas of Argentina that are free of citrus canker, sweet orange scab, citrus black spot, and other plant pests. Prior to this rule citrus products from Argentina were not allowed to be imported into the United States. The following month, the U.S. Citrus Science Council (USCSC) filed a lawsuit against USDA contending that the rule violated the Plant Quarantine Act of 1912 which protects U.S. growers from foreign plant diseases and insects. USCSC also contended that the science used by USDA was flawed, and asked for an independent peer review body to examine the science on which the final rule is based. The citrus industry was supported in its position by some in Congress, including Senator Barbara Boxer, who introduced an amendment to the FY2001 agriculture appropriations bill (H.R. 4461) that would have prohibited USDA from using any funds to implement the rule on Argentine citrus imports. The amendment, however, was defeated. Supporters of the import of Argentine citrus contend that excluding Argentine citrus from the United States is protectionist and would set a precedent that would cause other citrus-producing countries to exclude U.S. citrus from their markets. Some U.S. exporters of products other than produce fear that excluding Argentine citrus from the U.S. also might cause Argentina to refuse to import other U.S. agricultural products. This was a concern especially to the U.S. pork industry. A federal district court in October 2001 ruled in favor of USCSC and overturned the APHIS final rule, suspending import of Argentine citrus into the United States until the agency revises its rule.

Mexican Avocados. Despite fears by U.S. avocado growers that the import of Mexican avocados into the United States would risk the introduction of harmful pests, APHIS first approved the import of Hass avocados from the Michoacan region of Mexico into the United States in 1997. On July 13, 2001, a new proposed rule was published to expand the number of states in which fresh Mexican avocados could be distributed. The proposal would add 12 Midwestern states to the current list of 19 Northeastern states, and it would increase the length of the shipping season during which the Mexican avocados may be imported into the United States by two months. Although APHIS says that expanding the current Mexican avocado import program would pose a “negligible risk” of introducing plant pests into the United States, the California Avocado Commission disagrees. The Commission contends that under the proposal, the avocados could be imported into states with warmer climates where pests might be better able to multiply, and that the fruit could be shipped as late as April 30, which means the fruit could remain in the distribution system into the summer months, further increasing the risk of infestation. It believes that import of avocados from Mexico could lead to an infestation in the United States which could cost more than \$500 million to control and would lead to import restrictions against California produce, financial losses, and lost jobs. Both Mexican avocado growers and U.S. supporters of the proposed rule believe that U.S. growers are using the pest issue to protect the domestic avocado industry from foreign competition.

Farm Bill Issues

The 107th Congress is considering an omnibus farm bill to replace program authorizations generally due to expire in 2002 and to set the direction of federal farm policy for the next several years. During extensive hearings on the legislation, including field hearings, an array of issues emerged that are of interest to the fruit and vegetable industry. Two issues that have received widespread discussion are the existing fruit and vegetable restriction on planting by

program crop producers and whether or not to introduce direct payments to fruit and vegetable crops in the same manner as payments are now made to program commodities such as wheat, corn, soybeans, sugar, peanuts, and dairy.

Flexibility Restriction

Under the 1996 farm bill (Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act)) farmers receiving direct government payments are allowed to plant any crop except fruits and vegetables, and there are penalties for violation of this provision. This restriction was not stated in the law until the 1996 FAIR Act because it was not until enactment of that law that program crop farmers were given the flexibility to raise other crops while still receiving direct government payments. In hearings held on the next farm bill, produce industry leaders said that the restriction on the planting of fruits and vegetables on contract acreage and effective penalties for violation of this provision should be continued. They contended that unsubsidized fruit and vegetable producers should not have to compete in the marketplace with producers who are subsidized by receiving direct government payments.

Industry Assistance

The American Farm Bureau Federation (AFBF) proposed in February 2001 that government payments be made to produce growers when prices go below production costs, and that \$1.5 billion annually should be authorized for this purpose. AFBF contended that many fruit and vegetable growers are suffering low prices and are at risk of going out of business because of losses over a span of several years. AFBF proposed a counter-cyclical program in which government support payments rise when prices are low and decline when prices are higher. Later in 2001 AFBF stopped calling for direct payments to fruit and vegetable growers, reportedly because of concern that such a provision might mean an end to the restriction against planting fruits and vegetables on contract acreage.

Others in the industry contend that subsidizing production in the fruit and vegetable industry would be disastrous because it would lead to overproduction and an oversupply situation that would further depress low prices experienced in recent years by many fruit and vegetable growers. Furthermore, it is contended that many growers do not want to submit to increased regulations that would be part of accepting direct government payments. The produce industry has taken great pride in operating without government subsidies in the past, and would prefer to continue to do so in the future. Nevertheless, many in the industry contend that some government assistance is necessary because of falling commodity prices, increased imports, increased invasive pests, rising energy and water costs, among others. An alternative to direct payments has been suggested by the United Fresh Fruit and Vegetable Association and 24 other produce organizations. In testimony during a May 2, 2001 hearing before the House Committee on Agriculture, United's president delivered this alternative proposal with a suggested price tag of \$3.58 billion. Among the recommendations were an increase in funding for Section 32 government purchases of surplus produce commodities, the addition of fresh fruits and vegetables to the Food Stamp and Women, Infants and Children (WIC) programs, an increase in funding for the Market Access Program (MAP), technical assistance to help resolve problems associated with phytosanitary and technical trade barriers, and increased funding for eradication of and research on invasive pests and diseases, among other recommendations.

House Action

The House passed its version of the omnibus farm bill, the Farm Security Act 2001 (H.R. 2646), on October 5, 2001. The bill retains the restriction on fruit and vegetable planting by program crop producers receiving direct payments. It also would increase MAP funding from the current \$90 million to \$200 million annually; authorize \$3 million annually for technical assistance to remove, resolve, or mitigate sanitary and phytosanitary and related trade barriers faced by specialty crop producers, including fruits and vegetables; ask the Secretary of Agriculture to address the ability of tenant farmers, especially in fruit and vegetable production, to use payments under the Environmental Quality Incentives Program (EQIP); add a new research program to improve harvesting productivity for fruits and vegetables, including citrus; provide assistance, limited to \$50,000 per person, to orchardists who lost commercially-planted trees as a result of a natural disaster; increase funding for government purchases of surplus commodities from \$300 million to \$500 million; provide \$15 million annually for a Seniors Farmers' Market Nutrition program; and requires the Secretary of Agriculture to issue a Federal marketing order for caneberries. Provisions that were requested by the produce industry but were not included in the House bill are the inclusion of fruits and vegetables in the Food Stamp and WIC programs. During debate on the House floor an amendment proposed by Representative Bono was passed. This amendment requires country of origin labeling at the retail level of perishable agricultural commodities, both imported and domestic. Prepared food, however, is exempted. One other amendment which was proposed and then withdrawn would have affected the produce industry. This was the Hooley Amendment that would have exempted organically grown caneberries from the bill's marketing order for caneberries

Senate Action

The Senate version of the farm bill, the Agriculture, Conservation, and Rural Enhancement Act of 2002, was passed on February 13, 2002. The Senate passed H.R. 2646 with the text of S.1731 as amended inserted in place of the House language. A number of floor amendments were added to the version of S. 1731 that was approved by the Senate Agriculture, Nutrition and Forestry Committee. The Senate version of H.R. 2646 retains the fruit and vegetable restriction on planting on contract acreage; gradually increases MAP funding from the current \$90 million to \$200 million by FY2006; expresses sense of the Congress that trade negotiators should negotiate rules that eliminate practices such as sanitary or phytosanitary restrictions that are not based on scientific principles; provides assistance to tree growers that lost commercially planted trees as a result of a natural disaster; gradually increases funding for government purchases of surplus specialty crops from \$100 million in FY2002 to \$170 million in FY2006; provides \$50 million annually for the Department of Defense to purchase fresh fruits and vegetables for the schools and service institutions; provides that USDA report on the research and development of risk management products for specific produce and other specialty crops; provides for 75% Federal funding for discounts for purchases of fruit and vegetables through electronic benefit transfer cards under the food stamp program; provides \$15 million annually for the Seniors Farmers' Market Nutrition program; requires country of origin labeling at the retail level of perishable agricultural commodities, both imported and domestic; authorizes the use of Section 32 funds to conduct a pilot program to provide free fruits and vegetables to schoolchildren in four states and one Indian reservation; authorizes \$25 million annually to establish a nutrition information and awareness pilot program; authorizes the use of \$100 million in Commodity Credit Corporation funds to provide market loss payments to apple producers who lost markets in the 2000 crop

year. For additional information on the farm bill, see CRS Report RL31195, *The 2002 Farm Bill: Overview and Status*; and CRS Report RL30956, *What Is A Farm Bill?*.

Trade Issues

Phytosanitary Issues

Sanitary and phytosanitary (SPS) requirements and their potential to be trade barriers have become more prominent issues as tariffs have been reduced under recent multilateral agreements, such as the Uruguay Round Agreement on Agriculture and the North American Free Trade Agreement (NAFTA). Sanitary barriers relate to meat, poultry, and seafood while phytosanitary barriers relate to fruits and vegetables. Both the Uruguay Round (SPS Agreement) and NAFTA (Chapter 7), agreements were intended to control the use of SPS trade barriers. These agreements recognize that countries have a right to impose measures that protect the health and safety of their populations and agricultural sectors, but stipulate that such measures must be based on sound science and risk assessment. Often exporting/importing countries disagree on whether specific SPS requirements are scientifically based or are actually trade barriers.

The United States has made some progress removing other countries' SPS trade barriers in bilateral negotiations and in SPS agreements and the dispute settlement procedures of the World Trade Organization (WTO). Since the implementation of the SPS Agreement began in 1995, markets have been opened in Chile for California lemons, table grapes, kiwis, oranges, and grapefruit; markets in Japan and Taiwan have been opened for 25 varieties of U.S. tomatoes; markets in Mexico and China have opened for U.S. sweet cherries; and the market in China has opened for U.S. table grapes and citrus. Despite these successes, in 2001 some SPS trade barriers remain that prevent the export of U.S. fruits and vegetables in some countries. Examples of such SPS requirements that U.S. producers see as trade barriers include Australia's ban against the importation of California table grapes in February 2001; Chile's phytosanitary requirements against the entry of U.S. cherries and citrus; Argentina's ban on California fresh fruit; China's ban on U.S. fresh potatoes, avocados, peaches, and grapes; and Korea's ban on U.S. walnuts and apples, among others listed in the U.S. Trade Representative's 2001 National Trade Estimate Report on Foreign Trade Barriers.

Efforts made by some U.S. growers to prevent the import of specific fruits and vegetables from foreign countries on the grounds that their industry needs protection from foreign pests or diseases, have been viewed by some countries as a guise for protectionist measures. For example, charges of U.S. protectionism have been made because of U.S. produce organizations' attempts to prohibit the import of Argentine citrus and Canadian Prince Edward Island potatoes. Most recently, when USDA proposed a rule to expand the number of states that could import Mexican avocados and to increase the length of the shipping season during which the Mexican avocados may be imported into the United States, both Mexico and U.S. supporters of the proposed rule consider opposition to the rule as protectionist. Before 1997 Mexican avocados were prohibited from being imported into the United States, but since then imports have been allowed in a limited number of states during specific winter months. (See **Mexican Avocados under Animal and Plant Inspection Service (APHIS)** in this issue brief.)

The House version of the farm bill (H.R. 2646) would provide \$3 million annually for technical assistance to remove, resolve, or mitigate sanitary and phytosanitary (SPS) and related trade barriers faced by specialty crop producers, including fruits and vegetables. The Senate version expressed the sense of the Senate that U.S. trade negotiators should negotiate rules that eliminate practices such as sanitary or phytosanitary restrictions that are not based on scientific principles. For further information on sanitary and phytosanitary (SPS) measures see CRS Report 98-254, *Agricultural Negotiations in the World Trade Organization*, and CRS Report 97-952, *Agricultural Exports: Technical Barriers to Trade*.

Dumping

Dumping results when an import is sold at “less than fair value” in the importing country. U.S. fruit and vegetable farmers have sought relief from allegedly dumped imports. Under current laws, a group of growers or a commodity organization may petition the Department of Commerce, asking it to investigate whether an imported commodity is being sold in the United States at dumped prices and whether those imports are injurious to domestic growers. If Commerce determines that an imported product is being sold at less than its fair value, and if the International Trade Commission (ITC) determines that a U.S. producer is being injured, the Commerce Department will impose antidumping duties on the imported goods. U.S. apple growers have successfully used antidumping laws to protect the domestic apple industry from the dumping of Chinese apple juice concentrate. On the other hand, California grape growers were recently unsuccessful in using this legal remedy to protect against alleged dumping of grapes from Mexico and Chile.

Chinese Apple Juice Concentrate. Because of increasing Chinese apple juice imports between 1995 and 1998 and declining prices that resulted from those imports, the U.S. apple industry filed an antidumping petition against China in June 1999. The U.S. Apple Association asked the U.S. Department of Commerce and the International Trade Commission to impose a duty on Chinese apple concentrate, arguing that it was sold at below the cost of production. On May 15, 2000 the ITC ruled that apple juice concentrate imports from China were being sold in the United States at less than fair value and were economically harming U.S. apple producers. On June 5, 2000, the Department of Commerce imposed antidumping duties of 51.74 % on most Chinese apple juice concentrate imports. News reports have indicated that prices for U.S. apples significantly increased once the duties on Chinese apple juice were in place. In July 2001 the U.S. apple industry petitioned the Department of Commerce contending that semi-frozen apple juice concentrate from China was within the scope of the antidumping duty. The apple industry charged that Chinese concentrate suppliers were evading the U.S. antidumping duties by chilling non-frozen concentrate to a semi-frozen state and declaring it “frozen concentrate.” The Commerce Department found on October 1, 2001, that “semi-frozen” apple juice concentrate is classified as “frozen” and therefore does not fall within the scope of the antidumping order which applies only to non-frozen apple juice concentrate.

Mexican and Chilean Table Grapes. The Desert Grape Growers League of Coachella Valley, California on March 30, 2001 filed a petition with the U.S. Department of Commerce, asking for an investigation of the importation of Mexican and Chilean table grapes. The grape growers charged that Mexican and Chilean grapes were being sold in the U.S. market below the cost of production and were injuring the U.S. spring table grape industry. Supporters of Mexican and Chilean grape growers denied the dumping charges, contending

that the influx of imported grapes into the United States was a one-time only occurrence in 2000 caused by a combination of early table grape harvests in Mexico and California, a late Chilean harvest, and a weak European market causing a surplus of Chilean grapes to be shipped to North American markets. They also contend that because the Coachella Valley growers produce only 10% of U.S. table grapes, this group was not large enough or representative enough of the U.S. grape industry to legally make dumping charges. On June 11, 2001 the ITC determined that Mexican and Chilean table grape imports did not cause damage to the U.S. table grape industry. Once the ITC has made a determination that imports are not causing material injury, a case is terminated.

Foreign Agricultural Workers (H-2A Program)

Most fruits and vegetables are picked by hand, so that produce growers are dependent on hired and contract labor. When these growers cannot get sufficient domestic labor to harvest their crops, the H-2A program is an alternative source of farm workers. The program provides for the temporary admission of foreign agricultural workers into the United States, provided domestic workers are not available. The program is authorized by the Immigration and Nationality Act (Section 101(a)(15)(H)(ii)(a)). According to the U.S. Department of Labor, 41,827 farm workers were certified for the H-2A program in 1999.

Farmers who employ H-2A workers must follow procedures that involve the Department of Labor and the Immigration and Naturalization Service (INS). Farmers must apply for workers at least 45 days in advance of the time they are needed and must provide both domestic and foreign workers with free housing and workers' compensation.

In recent years farmers have argued that the H-2A program does not provide an adequate number of workers at the times needed, and on relatively short notice. They have recommended that the H-2A program be expanded to meet the labor needs of farmers and point out that a crackdown on illegal immigration is reducing the number of workers available (in 1999 about 52% of U.S. farm workers were illegal). They would like to see the guest worker program simplified so that it is easier for farmers to use. On a broader scale, proponents note that an adequate number of farm workers is needed to keep the U.S. competitive in the global marketplace. Without an adequate number of farm workers, U.S. producers of labor-intensive commodities will abandon production and agricultural jobs will go to other countries, it is alleged.

Opponents of an expanded H-2A program and those generally opposed to any increases in immigration levels include U.S. farm workers, their labor representatives, and farm worker advocates. They argue that there is no current or future shortage of farm workers, and that increasing the size of the guest worker program would increase the number of illegal workers who compete with legal domestic workers. They further argue that if farmers want to attract an adequate number of domestic agricultural workers, they should raise wages and improve working conditions.

In the 107th Congress several bills have been introduced to reform the H-2A program. The H-2A Reform and Agricultural Worker Adjustment Act of 2001 (H.R. 2736/S. 1313), among other provisions, would allow foreign agricultural workers to become legal temporary residents if they have worked in agriculture for at least 90 days in the 18-month period prior

to July 2001 and are otherwise admissible as an immigrant. These bills would also retain the current “adverse effect wage rate” requirement but would mandate studies of it. The “adverse effect wage rate” is the minimum wage that must be paid to both foreign and domestic agricultural workers when the employer is using non-immigrant workers; it is calculated annually on a state-by-state basis by the USDA. The Agricultural Job Opportunity, Benefits, and Security (AgJOBS) Act of 2001 (S. 1161), among other provisions, would allow foreign agricultural workers to become legal temporary residents, but they would be required to work 150 days in any consecutive 12-month period during the 18 months prior to July 4, 2001 and are otherwise admissible as immigrants. This bill would replace the “adverse effect wage rate” with the requirement that employers pay the minimum wage or the prevailing wage for agricultural workers in that area. The Wage Equity Act of 2001 (H.R. 2457/S. 1442) would also replace the “adverse effect wage rate” with a requirement that employers pay the minimum wage or the prevailing wage for agricultural workers. For further information on foreign agricultural workers and the H-2A program see CRS Report RL30852, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues*, CRS Report RL30780, *Immigration Legalization and Status Adjustment Legislation*, CRS Report RL30395, *Farm Labor Shortages and Immigration Policy*, and CRS Report 95-712, *Immigration: The Labor Market Effects of a Guest Worker Program for U.S. Farmers*.