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Fruit and Vegetable Issues in the 106th Congress: A Retrospective

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Summary

The FY2001 appropriations bill for the U.S. Department of Agriculture (USDA) and related agencies (P.L. 106-387/H.R. 4461) was signed into law on October 28, 2000. The act provided $255 million for emergency agricultural assistance (disasters and market losses) for specific fruits, vegetables, and nursery products; $218 million for FDA's part of the President's Food Safety Initiative; $2.5 million for the methyl bromide transition program; and funding for the National Organic Program, among numerous other emergency provisions.

The Agricultural Risk Protection Act of 2000 (P.L. 106-224/H.R. 2559) became law on June 22, 2000. The law reformed the crop insurance program and approved funds to help fruit and vegetable growers suffering from low market prices and specific crop diseases.

The FY2000 appropriations bill for USDA and related agencies (P.L. 106-78/H.R. 1906) was signed into law on October 22, 1999. The act provided $1.2 billion in disaster assistance to farmers who lost crops from natural disasters, including fruit and vegetable growers; $188 million for the President's Food Safety Initiative; $2 million for the methyl bromide transition program; and $200,000 for research on food irradiation. The act also reduced the Department of Labor's approval time for processing farm employers' applications for legal H-2A workers. Proposed amendments on the Market Access Program (MAP) and country-of-origin labeling were defeated.

Subsequently, a supplemental appropriations bill (H.R. 3425) was enacted as part of the FY2000 Consolidated Appropriations Act (P.L. 106-113) which added $576 million in emergency USDA assistance to the $8.7 billion provided in P.L. 106-78. Included in the $576 million is $186 million for crop disaster assistance, which when added to the $1.2 billion provided by P.L. 106-78, brought the total available for 1999 crop disaster assistance to $1.38 billion. P.L. 106-113 also instructed the Secretary of Agriculture to consider growers of fruits and vegetables when decisions were made as to who would get crop disaster assistance. USDA was also required to help growers of specific produce crops purchase crop insurance for the 2001 crop year.

Other bills proposed but not enacted in the 106th Congress had provisions to increase border inspections of imported food, including fresh fruits and vegetables; to require country-of-origin labeling at the retail level; to counter unfair trading practices, including non-tariff barriers such as sanitary and phytosanitary measures; to ensure that sound science and public discussion are used in decision-making on pesticide registrations; and to reform the agricultural guest worker (H-2A) program.

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Introduction

Fruits, vegetables, and tree nuts earned U.S. farmers $28 billion in 1999, about 13% of all U.S. farm cash receipts. In 1999, per capita U.S. consumption of fruits and vegetables was 740.8 pounds, of which 287 pounds were fruits and tree nuts, and 453.8 pounds were vegetables and melons. Per capita consumption of fruits and vegetables grew by 24% between 1970 and 1997 for a variety of reasons: changes in dietary habits; better access to local produce; growth in the availability of specialty produce, especially specialty lettuces; increase in the number of produce items in supermarkets; and the increased number of ethnic, gourmet, and natural foodstores that sell fresh produce.

U.S. fruit, vegetable, and tree nut exports in 1999 totaled $8.8 billion, or 18% of the total value of that year's agricultural exports ($49.1 billion). The value of produce imports ($9.9 billion) exceeded produce exports by $1.1 billion in that year.

Major produce exports were almonds, apples, frozen French fries, orange juice, raisins, and grapefruit. In 1999 the top markets for these exports were Canada ($2.2 billion), Japan ($1.3 billion), the European Union ($1.2 billion), and Mexico ($417 million). In 1999 exports to Japan and Mexico increased, and sales to Canada and the European Union, the first and third largest markets, remained strong.

Major U.S. fruit imports were bananas, grapes, olives, cantaloupes, mangoes, pineapples, and apples; major U.S. vegetable imports were tomatoes, peppers, onions, cucumbers, and asparagus. The top suppliers of imported fruits and vegetables were Mexico ($2.6 billion), South American countries ($1.8 billion), and Central American countries ($972 million), Canada ($926 million), and the European Union ($836 million). Of the total fruits and vegetables (fresh and processed) consumed in 1999 in the United States, 16.4% were imported; 21% of fresh fruits and vegetables consumed that year were imported.

Issues of concern to the fruit and vegetable industry addressed during the 106th Congress and discussed in this report are emergency assistance for fruits and vegetables, food safety, irradiated produce, phystosanitary barriers, the Market Access Program, country-of-origin labeling, the Export Apple Act, the agricultural guestworker program (H-2A), methyl bromide, organic produce, and pesticides.

Emergency Funding for Fruits and Vegetables

FY2001 Appropriations

The FY2001 appropriations for USDA and related agencies (P.L. 106-387/H.R. 4461) was signed into law on October 28, 2000. The act provided a total of $255 million in emergency assistance to fruit, vegetable, and nursery growers, including $58 million to compensate commercial citrus and lime growers for trees removed to control citrus canker; $19 million to compensate growers for losses resulting from Mexican fruit fly quarantines in California, plum pox virus, Pierce's disease, watermelon sudden wilt disease, and infestations of grasshoppers and Mormon crickets; $100 million for market loss assistance to apple growers; $38 million to apple and potato growers for quality losses from disasters in 1999 and 2000; $20 million for market loss assistance to cranberry producers; and $20 million to growers of tomatoes, pears, peaches, and apricots because of agriculture cooperative losses in California. Other emergency assistance provided unspecified amounts to compensate growers of nursery stock for losses from Hurricane Irene in 1999 and growers of citrus fruit for losses from a 1998 freeze in California; and production and quality assistance because of disasters in 2000 to growers of irrigated crops, pecans, and Florida nursery crops.

The Agricultural Risk Protection Act of 2000 (P.L. 106-224, H.R. 2559) became law on June 22, 2000. Although its primary purpose was to reform the crop insurance program, it also approved funds to help fruit and vegetable growers. These funds included $200 million to purchase specialty crops that experienced low prices during the 1998 and 1999 crop year (including apples, black-eyed peas, cherries, citrus, cranberries, onions, melons, peaches, potatoes, and others); $5 million to make loans to apple producers suffering economic loss resulting from low apple prices; $25 million to compensate growers who lost commodities because of plum pox virus, Pierce's disease, and citrus canker; and $71 million for Perishable Agricultural Commodities Act reserve fund and for licensing costs and inspection services so that fees charged to industry participants do not have to be increased.

For further information, see CRS Report RL30501, *Appropriations for FY2001: U.S. Department of Agriculture and Related Agencies;* and CRS Report RS20729, *Fruits, Vegetables, and Other Horticultural Crops: Crop Insurance and Emergency Assistance*.

FY2000 Appropriations

The President signed theFY2000 agriculture appropriations act (P.L. 106-78/H.R. 1906) into law on October 22, 1999. The law provided $1.2 billion in disaster assistance to farmers who lost crops because of natural disasters in 1999, including Hurricane Floyd. The conference report expected the Secretary of Agriculture to ensure that fruit and vegetable producers received fair and equitable treatment when allocating disaster assistance. Specifically mentioned were producers of capsicums, valencia oranges, and apples. P.L. 106-78 also required the Food and

Drug Administration (FDA) to propose a rule on the use of irradiation on ready-to-eat meats, poultry, fruits, and vegetables.

The FY2000 Consolidated Appropriations Act (P.L. 106-113/H.R. 3194), which was signed into law on November 29, 1999, provided for the enactment of H.R. 3425, which made available $576 million in USDA disaster assistance, primarily in response to agricultural damage caused by Hurricane Floyd in the Southeast. Of that amount $186 million in crop disaster assistance was provided in addition to the $1.2 billion in the agricultural appropriations act (P.L. 106-78), for a total of $1.38 billion. This amount was for all crops, not just fruits and vegetables. Conferees on P.L. 106-113 stated, however, that they expected the Secretary of Agriculture in deciding on who gets crop loss assistance to take into account quality losses including those related to potato blight and grading losses of fruits and vegetables (including sweet potatoes) due to excessive moisture and related conditions. P.L. 106-113 further assisted agricultural producers of citrus fruit, avocados in California, and macadamia nuts in purchasing additional crop insurance coverage for the 2001 crop year, under the $400 million provided for crop insurance in Section 814 of P.L. 106-78. P.L. 106-113 provided $16 million to replace commercial and residential citrus trees in Florida that were removed to control citrus canker in the state.

For further information, see CRS Report RL30201, *Appropriations for FY2000: U.S. Department of Agriculture and Related Agencies.*

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 illness 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 the Centers for Disease Control and Prevention (CDC), out of 3,021 foodborne illness outbreaks from all foods between 1993 and 1997, 80 of those outbreaks were attributed to fruits and vegetables.[1] In September 1999, the CDC estimated that each year 76 million food-borne illnesses occur in the United States, resulting in 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 proposals by the Clinton Administration and the introduction of several food safety bills in Congress.

Administrative Action

The Clinton Administration took three major actions, as part of its Food Safety Initiative, that affected the produce industry. The first action, the *Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables*, was announced on

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[1]Centers for Disease Control and Prevention. CDC Surveillance Summaries, Morbidity and Mortality Weekly Report, March 17,2000, v. 49, no. SS-1: 27-30; CDC, Outbreak Response and Surveillance Unit. Table 4. Revised 1997 Outbreak Data (Revised January 2001). Available on the Web at http://www.cdc.gov/ncidod/dbmd/outbreak/us_outb.htm

October 2, 1997. This initiative proposed legislation requiring the Food and Drug Administration (FDA) to inspect foreign farms and block imports of fruits and vegetables from countries that do not have safety standards equal to those of the United States; proposed increased funds to expand FDA's international food inspection force; directed the Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) to help countries improve their food safety systems to prevent importation of unsafe produce; and directed USDA and HHS to develop guidelines for good agricultural and manufacturing practices. On July 3, 1999, President Clinton took steps to prevent unsafe foods from entering the United States by directing the U.S. Customs Service and the FDA to step up inspections of imported fresh fruits and vegetables, and other foods, and to destroy imported food that poses a serious health risk to U.S. consumers. He also directed the agencies to stamp imported foods that were denied admission with a stamp that says "Refused U.S." as a means of preventing "port shopping". Port shopping is a practice where some importers attempt to gain entry for their cargo at a second port after it has already been denied admission at a U.S. port.

Secondly, the FDA issued voluntary guidelines on October 29, 1998, entitled *Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables*. The guidelines addressed microbial food safety hazards through good manufacturing practices that involve the use of water for cleaning and irrigation, the use of manure as fertilizer, worker sanitation and hygiene in the fields and in processing facilities, and sanitation of vehicles transporting produce. Methods of tracing food at the table back to its source were recommended to limit any future outbreaks of food-borne illnesses. Although the guidelines were voluntary, some in the industry believed that they would eventually become mandatory.

A third action taken by the Administration was the proposal of new regulations for fruit and vegetable juices. On April 24, 1998, FDA proposed two rules. The first rule stated that a warning label must be applied to apple juice and/or cider that has not undergone pasteurization. The label warns consumers that such juices may contain microbial pathogens and therefore can cause serious illness in children, the elderly, and persons with weakened immune systems. The final rule was published on September 8, 1998. Under the new regulation, other unprocessed fruit and vegetable juices, except for citrus juices, were required to display the warning label beginning November 5, 1998, but fresh citrus juice manufacturers had until July 8, 1999 to comply with the warning label requirements. After that date the warning statement was required on all juices. The second rule proposed on April 24, 1998, would require that all fruit and vegetable juice processors implement Hazard Analysis and Critical Control Point (HACCP) standards to protect the public from food-borne illness. This rule was still under consideration at the end of 2000. (For a detailed explanation of HACCP, see CRS Issue Brief IB98009, *Food Safety Issues in the 106th Congress*.)

In July 1999 FDA issued two consumer advisories. One advisory warned against drinking unpasteurized orange juice products that are distributed by Sun Orchard because they may be contaminated with *Salmonella muenchen*. Another advisory warned all consumers, not just high-risk persons, to avoid eating all varieties of raw sprouts, not just alfalfa sprouts, because numerous outbreaks of salmonellosis had been associated with sprouts since the beginning of the year. In October 1999 FDA

published guidance documents for sprout producers that identified measures to reduce the risk of foodborne illness from sprouts. These measures included good agricultural practices, seed disinfection, and microbial testing of both sprouts and spent irrigation water used during sprout production. Producers of sprouts and unpasteurized orange juice continue to work with FDA to eliminate the microbial contamination caused by these foods.

Legislative Action

The FY2000 agriculture appropriations (P.L. 106-78/H.R. 1906) provided FDA with $188 million or an increase of $30 million for FDA's part of the food safety initiative. The conference report also expected FDA to ensure timely testing of produce imports by conducting survey tests at the USDA or FDA laboratory closest to the port of entry so that testing results are provided within 24 hours of collection. The FY2001 agricultural appropriations (P.L. 106-387/H.R. 4461) provided $218 million or $30 million more for FDA's part of the food safety initiative. Of that amount, $1.5 million was to be used to establish a laboratory to conduct rapid screening for microbial contamination of fresh fruits and vegetables.

Several bills were introduced but not passed in the 106th Congress to improve the safety of produce consumed in the United States. Some bills emphasized the need to increase the number of border inspections of imported food (H.R. 830, S. 1123, S. 1126). Others would have increased the number of inspections of both imported and domestically produced food, among other provisions (S. 823 and H.R. 1612/S. 908).

For further information, see CRS Issue Brief IB98009, *Food Safety Issues in the 106th Congress*; CRS Report 98-850, *The Safety of Imported Foods: The Federal Role and Issues Before Congress*; and CRS Report 98-91, *Food Safety Agencies and Authorities: A Primer*.

Irradiated Produce

In the United States, food that has been irradiated is exposed to ionizing energy from cobalt 60 or cesium 137. According to scientists, these sources of energy give off gamma rays, but they do not make the food radioactive. The gamma rays pass through the food, similar to the way microwaves pass through food. They kill bacteria and parasites (but not viruses) that would otherwise cause foodborne illness.[2] In addition to food safety uses, irradiation also can be used as a fumigant to replace methyl bromide when this fumigant is banned in January 2005 (see section on "Methyl Bromide" below). Furthermore, many in the produce industry favor irradiation because it lengthens the shelf life of foods by killing microbes that cause decay. Currently, there is a debate on the use of the term "irradiation". Food industry advocates want the term changed to "cold pasteurization" or "electronic pasteurization" because they believe the current term "irradiation" scares consumers away from purchasing irradiated foods. Consumer advocates, on the other hand, do

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[2]Centers for Disease Control. Frequently Asked Questions about Food Irradiation. p. 4 online. http://www.cdc.gov/ncidod/dbmd/diseaseinfo/foodirradiation.htm

not want to eliminate the term "irradiation" because they argue that consumers have a right to know that the food they are purchasing has been irradiated.

Administrative Action

The growing concern for food safety has fueled discussion among U.S. government health and agriculture officials on the use of irradiation for fresh fruits and vegetables. The FDA has already approved the use of irradiation for controlling microorganisms and insects in some fruits and vegetables as well as other foods. According to the American Dietetic Association, in 1999, U.S. irradiation facilities were processing citrus fruits, tropical fruits, strawberries, tomatoes, mushrooms, potatoes, onions, and spices. By 2000 FDA had approved irradiation for juice products and seeds for sprouting. In recent years the USDA's Agricultural Research Service (ARS) and the FDA conducted research into the use of irradiation on raspberries, carrots, and sprouts. Funding for ARS research on food irradiation of fruits and vegetables was $915,300 in FY1999 and $1 million in FY2000, with about $1 million projected for FY2001.

FDA regulates the irradiation process as a food additive under Section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) and, therefore, must pre-market approve the process before it can be used on food for human consumption. Regulations require that irradiated foods be labeled with the radura, the international symbol for irradiation, and the words "treated by irradiation" or "treated with radiation." During 1997 there was debate over the size of the required wording. The food industry favored smaller print because it believed the large size wording would be seen by consumers as a warning that something is wrong with the product. Consumer groups favored prominent labeling of irradiated foods, some arguing that if the irradiated product is safe, the fact that it is irradiated should not be hidden. The FDA Modernization Act of 1997 (FDAMA, P.L. 105-115) favored the industry position and required that the irradiation disclosure statement should not be more prominent than the declaration of ingredients. Since FDA's former regulations did not specify the size of the irradiation disclosure statement, the FDA on August 17, 1998, published a final rule conforming labeling regulations to the language in FDAMA.

Legislative Action

In October 1997 Congress discussed irradiation of produce at a hearing on food safety by the Senate Agriculture, Nutrition and Forestry Committee. Critics of the use of irradiation on produce and other foods contend that irradiation produces carcinogenic substances in food and depletes its nutritional value, both of which would adversely affect human health. Critics further believe the use of radioactive material at irradiation facilities endangers the safety of workers and the public and has potential to contaminate local surface waters. They also worry that the existence of these facilities would increase the amount of radioactive material being transported on the nation's highways which, they argue, would further endanger the public safety. Supporters of irradiation counter that potential carcinogenic substances and depletion of nutrients in irradiated foods are no greater than in foods processed by cooking, freezing, or pasteurization. They further contend that transportation and handling of

radioactive material is strictly regulated, and irradiation facilities are constructed to withstand a variety of natural disasters without endangering workers or the surrounding community.

Legislation on irradiated food continued in the 106th Congress. Title VI of the FY2000 agriculture appropriations act (P.L. 106-78, enacted in October 1999) required FDA to propose a rule on the use of irradiation on ready-to-eat foods, including meats, poultry, and fruits and vegetables after receiving a petition to that effect. Within 12 months of receipt of the petition FDA was required to issue a final rule on the use of irradiation for this purpose. This legislation was the result of a developing controversy between the food industry and consumers on the use of irradiation on foods. Industry organizations filed a petition with FDA in August 1999 to allow irradiation of ready-to-eat foods as a means of reducing incidents of foodborne illness by eliminating microbial pathogens on these foods. One consumer organization opposing the petition, said that although irradiation may provide one solution to curbing foodborne illness, the process could also destroy nutrition in the treated foods. Furthermore, opponents contended, irradiation could make the treated foods toxic to humans because FDA had not based past approvals of irradiation on established scientific protocols. The petition on irradiation of ready-to-eat foods was still under review in March 2001.

Although FDA had published a final rule in August 1998 on the size of the irradiation label, it had not yet published a rule on revision of the label language that would "not be perceived as a warning or give rise to inappropriate consumer anxiety" as required by FDAMA. That situation resulted in conference report language of the FY2001 agriculture appropriations (P.L. 106-387/H.R. 4461) which noted that FDA had not finalized labeling regulations on food irradiation that were required under the FDAMA, and conferees expected a status report by November 15, 2000, with regulations finalized by March 1, 2002. FDA submitted a report to Congress in November 2000 that said it had asked for comment on 15 issues concerning how the current irradiation label is perceived by consumers and whether the label language could be revised. The agency report said that the majority of the comments urged the agency to keep special labeling for irradiated foods, but did not address the issues on which FDA had requested comment. Therefore, the agency concluded that "no consensus about what alternative language for disclosure of irradiation processing would be truthful and not misleading." Nevertheless, FDA planned to propose a rule during FY2001, and to publish a final rule by March 1, 2002.

Trade

Phytosanitary Barriers

Sanitary and phytosanitary (SPS) trade barriers have become more prominent in recent years 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. Under both the Uruguay Round (SPS Agreement) and NAFTA (Chapter 7), agreements were made 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 such measures must be based on science and risk assessment.

The United States has made some progress removing SPS trade barriers using bilateral negotiations as well as the SPS agreements and the dispute settlement procedures of the World Trade Organization (WTO). Since the implementation of the SPS Agreement 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 2000 some SPS trade barriers remained that prevent the export of U.S. fruits and vegetables. An example of such SPS trade barriers was Korea's policies that exclude U.S. citrus and potato preparations.

Some in the industry advocate more aggressive efforts to eliminate SPS trade barriers. Many in the industry believe funding should be increased for the U.S. Trade Representative (USTR) and USDA's Foreign Agricultural Service to improve their ability to eliminate phytosanitary barriers to U.S. exports. One organization suggests that a deadline should be established for completing studies that prove the safety of fresh produce exports to foreign countries, because without a deadline a country can stretch negotiations over many years, while denying other countries access to its market. It took over 7 years, for example, for Japan to accept studies showing that California fresh tomatoes posed no phytosanitary threat. Some produce organizations also would like to see more funding for APHIS activities that work to keep foreign plant pests out of the United States by inspecting produce imports and travelers crossing U.S. borders. The industry argues that APHIS activities are increasingly important as the number of produce imports into the Unite States rises.

Phytosanitary barriers were of interest to some in the 106th Congress, and three bills on the subject were proposed. These bills were not passed, and none had hearings or went to the floor for debate. The United States Agricultural Trade Act of 1999 (S. 101/H.R. 817) would have required the U.S. Trade Representative (USTR) to identify countries that engage in unfair trade practices, including non-tariff barriers, against U.S. agricultural commodities, livestock, and value-added products. USTR and USDA then could use appropriate U.S. programs to counter the unfair practices. The bill would have required the USTR to submit an annual report on the actions taken and the reasons for such actions, including progress made in achieving fair and equitable market access for U.S. agricultural commodities. H.R. 817 would have required USDA to identify sanitary and phytosanitary measures negatively affecting agricultural exports, by country and by commodity, and to report on its findings to Congress by July 31, 1999. S. 101 did not have this provision. The United States Agricultural Products Market Access of 1999 (H.R. 450) had provisions similar to these two bills.

For further information, see CRS Report 98-254, *Agriculture in the Next Round of Multilateral Trade Negotiations*; CRS Report 97-952, *Agricultural Exports: Technical Barriers to Trade*; CRS Report 97-592, *The European Union's Ban on Hormone-Treated Meat*; CRS Report 94-512, *Sanitary and Phytosanitary Safety Standards for Foods in the GATT Uruguay Round Accords*; and CRS Report 98-861, *U.S.-European Agricultural Trade: Food Safety and Biotechnology Issues*.

Market Access Program (MAP)

MAP, a program that helps develop foreign market for U.S. exports, is especially important to the fruit and vegetable industry. Of the 65 U.S. trade organizations receiving MAP funds in FY2000, 31 (or 48% of the total) were fruit, vegetable, and wine trade groups. These groups received $46.6 million, or 52% 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. Similar attempts were made in the 106th Congress. H.R. 1470 proposed that MAP should be repealed, and the Chabot Amendment to H.R. 1906 would have prohibited any MAP funding in FY2000. The Chabot Amendment was defeated in the House, but Title VIII, Section 818 to the FY2000 agriculture appropriations act (P.L. 106-78/H.R. 1906) expressed the sense of the Congress that the President should conduct a comprehensive evaluation of all existing export and food aid programs, including the MAP. The Royce Amendment to H.R. 4461, the FY2001 agriculture appropriations bill, proposed that new funding for MAP be eliminated, but the amendment did not pass the House.

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. 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 their view, these exporting companies should be paying for their advertising out of their own pockets. In response to this criticism the 1996 farm bill (Federal Agriculture Improvement and Reform (FAIR) Act, P.L. 104-127) specified that MAP funds be given only to small businesses to be used for branded promotions. The Secretary of Agriculture announced that all FY1998 MAP funds for promotion of branded products would be allocated to cooperatives and small U.S. companies. 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 RS29415, *Agricultural Export Programs: Market Access Program and Foreign Market Development Cooperator Program;* CRS Report RL30201, *Appropriations for FY2000: U.S. Department of Agriculture and Related Agencies*; and CRS Issue Brief IB98006, *Agricultural Export and Food Aid Programs*.

Country-of-Origin Labeling

Under current federal law, imported fresh produce is not required to be labeled for country of origin at the retail level unless the store buys it in ready-to-retail packaging. Federal law does require, however, that at the port where fruits,

vegetables, nuts, and berries enter the United States, these items should have country of origin labels on their immediate containers and the labels must be in English (Section 304 of the 1930 Tariff Act, 19 U.S.C. 1304). Two states, Florida and Maine, have laws that require retailers to display country-of-origin information for loose produce.

Supporters of country-of-origin labeling for imported produce say that consumers have a right to know the countries where the produce that they purchase is grown. This information will enable consumers to make informed decisions if they have food safety concerns or if they have concerns about labor, pesticide, or environmental practices in specific countries. Supporters further contend that such labeling will assist in the traceback process when foodborne illness outbreaks occur and can protect the domestic produce industry by alleviating consumer fears of a U.S.-grown product when the foodborne illness originated with produce grown in a foreign country. Supporters say that because other countries have country-of-origin labeling laws, a similar U.S. law is needed to level the playing field. They also note that the Florida country-of-origin law has not added large costs for retailers as feared by the domestic retail industry. Food safety is another concern of proponents. They contend that imported produce introduces new pathogens into the United States and that foreign growers use pesticides that are illegal in the United States, use unsafe food handling practices, irrigate their crops with contaminated water, and employ child labor. Another group of supporters takes a more international view and advocates a uniform system of country-of-origin labeling requirements among the various trading nations.

Opponents of country-of-origin labeling include domestic retailers who believe such a law would impose new expenses (the cost of signs and labor) that would be passed on to consumers. They also oppose the penalties for violations of the law. Importers believe that a country-of-origin law is protectionist and is an attempt to prevent an increase of produce imports from Mexico and other countries. Importers and some federal officials say that if the United States passes a country-of-origin law, then foreign countries will retaliate with their own country-of-origin labeling requirements. This, they believe, could make U.S. products targets of foreign boycotts. Growers also are concerned about greater regulatory burdens and production costs.

In the 106th Congress several bills were proposed requiring country-of-origin labeling at the retail level. Three of the bills (H.R. 830, H.R. 1346, and S. 860) would require country-of-origin labeling of imported produce only, but the Produce Consumers' Right-to-Know Act (H.R. 1145) would require country-of-origin labeling for both imported and domestically-produced fruits and vegetables. Hearings were held on country-of-origin labeling by the House in April 1999 and by the Senate in May of the same year. During debate on the FY2000 agriculture appropriations act (P.L. 106-78/H.R. 1906), Senator Harkin proposed an amendment that, among other provisions, would require country-of-origin labeling at the retail level for imported meat and fresh and frozen produce, with exemption for food service establishments, and penalties for violations by retailers. The Harkin Amendment was defeated.

For further information see CRS Report 97-508, *Country of Origin Labeling for Foods: Current Law and Proposed Changes*.

Export Apple Act

H.R. 609 was proposed in February 1999 to amend the Export Apple and Pear Act, and was signed into law in November of the same year (P.L. 106-96). The amending language removed "pears" from the definition and all other references from the 1933 act, so that the law became the Export Apple Act and now applies to apples only. The new law was supported by both U.S. producers and exporters of pears because it allowed the pear industry to meet the increasing demand for lower grade pears in foreign countries. USDA supported the bill and argued that the high quality of exported pears would continue to be assured by contractual arrangements between buyers and sellers and by requirements under state regulations and two federal marketing orders for pears produced in Oregon and Washington. No objection to the deletion of pears from the 1933 act was expressed by the apple industry.

Agricultural Guestworker Program (H-2A)

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 farmworkers. 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)). In 1997, about 2 million workers were employed in farmwork, excluding farmers and farm managers, according to the U.S. Department of Labor. Of this number about 600,000 farmworkers were illegal and 34,898 farmworkers were certified by the Department of Labor for the H-2A program in 1998.

For farmers to employ H-2A workers, they must follow procedures that involve the Department of Labor and the Immigration and Naturalization Service (INS). Farmers must apply for workers at least 60 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. They also would like to see the guestworker program simplified so that it is easier for farmers to use. On a broader scale, proponents note that an adequate number of farmworkers is needed to keep the U.S. competitive in the global marketplace; without an adequate number of farmworkers, U.S. producers of labor-intensive commodities will abandon production and agricultural jobs will go to other countries.

Opponents of an expanded H-2A program generally include U.S. farmworkers, their labor representatives, and farmworker advocates. They argue that there is no current or future shortage of farmworkers, and that increasing the size of the guestworker 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 106th Congress hearings on the H-2A program were held on May 12, 1999, by the Senate Judiciary Subcommittee on Immigration. Later in the year Section 748 of the FY2000 agriculture appropriations act (P.L. 106-78) amended the Immigration and Nationality Act to reduce the Department of Labor's approval time for processing farmworkers' applications for legal H-2A workers. Conference report language for P.L. 106-113 instructed the Department of Labor (DOL) to prepare a report containing options (a) to promote a legal domestic workforce in the agricultural sector, and (b) to improve compensation and benefits, living conditions, and better transportation between jobs. The report was to be submitted to Congress as soon as possible.

The Agricultural Job Opportunity Benefits and Security Act of 1999 (S. 1814) was introduced in October 1999, and a nearly identical House bill (H.R. 4056) was introduced in March 2000. A hearing was held in the Senate on S. 1814 on May 4, 2000, by the Senate Judiciary Immigration Subcommittee. Both bills proposed to reform the H-2A program. They would have adjusted the legal status of currently illegal agricultural workers, providing a process by which these workers could eventually become "legal permanent" residents. They proposed to create a computerized national registry system that favors the hiring of U.S. workers first, followed by "adjusted" workers, and finally the recruitment of H-2A workers if no U.S. or adjusted workers are available. Both U.S. and H-2A workers would have been paid the prevailing wage rate or a modified "adverse effect wage rate" (re-defined as 5% above the prevailing rate of pay). Farmworkers, both U.S. and foreign, were to be provided housing or a housing allowance, to be reimbursed for some transportation costs, and to receive worker protections, including partial coverage under the Migrant Seasonal Agricultural Worker Protection Act.

In the House, another bill, the Agricultural Opportunities Act (H.R. 4548) was introduced May 25, 2000, and a hearing was held on June 15 by the House Judiciary Immigration Subcommittee. The bill would have established a pilot H-2C foreign agricultural worker program to supplement the existing H-2A program; created a system of agricultural worker registries; and required agricultural employers to apply for registry workers before being allowed to import H-2C workers. Unlike S. 1814/H.R. 4056, this bill did not adjust the legal status of currently illegal agricultural workers. It did, however, make provisions for wages, housing, and transportation similar to S. 1814/H.R. 4056. Although supporters at the end of the106th Congress attempted to attach H.R. 4548 provisions to an appropriations bill, these efforts did not succeed, and no changes were made in the existing H-2A program.

For further details on the H-2A agricultural guestworker program and on legislation to change it, see CRS Report RL30780, *Immigration Legalization and Status Adjustment Legislation*, CRS Report 97-714, *Immigration: The "H-2A" Temporary Agricultural Worker Program*, CRS Report RL30395, *Farm Labor Shortages and Immigration Policy*; and CRS Issue Brief IB10044, *Immigration Legislation and Issues in the 106th Congress*.

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. About 5% is used for fumigation of warehouses, silos, food processing facilities, and transportation vehicles.

Despite its wide use in agriculture, methyl bromide has many detractors. One criticism is that its use contributes to destruction of the ozone layer in the earth's upper atmosphere. The ozone layer protects both humans and ecosystems from ultraviolet light, and its depletion may lead to a rising incidence of skin cancer and eye cataracts. An international agreement known as the 1987 Montreal Protocol on Substances which Deplete the Ozone Layer requires that the use of methyl bromide be gradually reduced and completely eliminated by 2005 in industrialized countries. Developing countries have until 2015 to eliminate the use of the pesticide. In the United States the deadline for the elimination of methyl bromide had been moved up to 2001 under the Clean Air Act. Legislation was proposed in the 105th Congress as well as the previous Congress to delay the phaseout of the use of methyl bromide, and a hearing was held on the subject in June 1998 by the House Subcommittee on Forestry, Resource Conservation, and Research. Under Section 764 of the Omnibus Appropriations Act of FY1999 (P.L. 105-277), the phaseout was delayed from 2001 to 2005. This provision harmonized the U.S. phaseout schedule with the schedule in the Montreal Protocol as amended in 1997. It also permitted 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. Under Section 743, Title VII, of the conference report language, the conferees expected the Agricultural Research Service to submit to Congress a report on methyl bromide alternatives research 6 months after enactment. The most recent of these reports was sent to Congress in January 2001.

Opponents of the use of methyl bromide until after 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 farmworkers who work in the fields where it is applied, as well as residents who live near those fields. According to the Environmental Protection Agency (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, farmworker 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).

Title I of the FY2000 agriculture appropriations act (P.L. 106-78) provided $2 million for the methyl bromide transition program as part of the integrated research,

education, and extension competitive grants programs (Integrated Activities). This program supports research, education and extension activities on alternatives to methyl bromide. Title I of the FY2001 agriculture appropriations (P.L. 106-387/H.R. 4461) provided $2.5 million for the methyl bromide transition program.

For further details, see CRS Report RS20863, *Stratospheric Ozone Depletion: Phase-Out of Methyl Bromide*; CRS Report 98-590, *Methyl Bromide and Stratospheric Ozone Depletion Policy Issues*.

Organic Produce

Currently, according to USDA, the United States has an estimated 12,200 organic farmers. In 1997, a total of 180,000 acres were in organic fruit, vegetable, and tree nut production or 13% of the total organic acreage (1,346,558 acres). Nearly half the organic vegetables were produced by California organic growers, and the leading states in organic fruit and tree nut production were California, Arizona, Washington, Colorado, and Texas. According to the Natural Foods Merchandiser, a trade magazine for the natural foods industry, organic product sales were $4 billion in 1999, a growth of 22% over 1998 sales in natural products stores. Organic fruit and vegetable sales were $833 million out of the $4 billion. Sales of organic products also have increased in conventional supermarkets in recent years.

The USDA market analyses suggest that the demand for organic foods has grown in recent years for a number of reasons. Among these are the increase in the number of high-quality natural product supermarkets, the introduction of more organic products in conventional supermarkets, and growth in direct marketing of organics through farmers' markets and consumer supported agricultural associations. Increasing numbers of consumers wish to avoid pesticide residues and state that they prefer the taste and appearance of organic foods, analysts suggest. Some consumers also are concerned about farmworker safety and environmental issues such as soil and water quality and wildlife habitat.

Data on exports and imports of organic produce do not exist, either by volume or by sales value. Nevertheless, according to USDA's Foreign Agricultural Service, major markets for U.S. organic produce exporters are the European Union, Japan, and Canada. Although the strongest demand is for organic grains and beans, there is a growing demand for fresh and dried fruits, frozen vegetables, nuts, wine, juice, snacks, and prepared foods. There are no data on the major sources of organic produce imports into the United States. However, the main sources of organic U.S. banana imports, according to the Food and Agriculture Organization, are the Dominican Republic, Mexico, and Honduras.

At the beginning of the 106th Congress, organic farmers were concerned that USDA had not yet published a final rule establishing national organic standards. In the late 1980s, the organic foods industry asked the federal government to establish a national standard to replace the various state and private certification standards for organic foods. Congress subsequently passed the Organic Foods Production Act of 1990. It established a National Organic Standards Board and charged it with developing a set of national standards and a National List of acceptable organic

inputs. It also authorized a National Organic Program to accredit producers, processors, and handlers based on the national standards and on the National List of acceptable organic production inputs. The National Organic Program, however, was not implemented because of differences between USDA and the National Organic Standards Board and because the USDA final regulations were not issued until late 2000. In December 1997, USDA proposed a national organic standards rule and received about 200,000 comments. The rule would have allowed foods bearing the organic label to be produced with biotechnology, irradiation, and municipal sewage sludge (biosolids). Supporters contended that such foods are safe. Opponents rejected these three practices as dangerous to the health of humans and ecosystems, and asserted that the practices contradict the fundamental premise of organic foods, which favors back-to-nature methods instead of new technology. A final rule, published in December 2000, eliminated the three practices. To facilitate implementation of the National Organic Program, Congress appropriated $639,000 in the FY2001 USDA appropriations act (P.L. 106-387). The Agricultural Marketing Service is to use the funds in lieu of charging fees for accreditation for the first 18 months of the program. Thereafter, the program is expected to be self-supporting through fees collected from producers, certifying agents, and handlers.

For further information, see CRS Report 98-264, *Organic Foods and the USDA National Organic Program*.

Pesticides

Minor-use pesticides are chemicals that are used on small market crops such as fruits, nuts, and vegetables. Currently the EPA is reviewing these and other pesticides because of requirements under the Food Quality Protection Act (FQPA), P.L. 104-170, which became law in August 1996. The FQPA established a new safety standard for pesticide residues on foods, which directs the EPA to ensure a "reasonable certainty of no harm" due to pesticide exposure. EPA must assess harm considering all sources of pesticide exposure and exposure to other similar pesticides. Before the FQPA, harm was assessed for each pesticide and food use. The law also requires EPA to review all existing residue tolerances against the new safety standard within 10 years of enactment, so that all pesticides will be reviewed by August 2006. By August 1999, at least 33% of pesticides were required to be reviewed.

Growers in the fruit and vegetable industry fear that during the review EPA might cancel registrations for popular minor-use pesticides (including organophosphates and carbamates, such as methyl parathion) that are considered essential to the prosperity of the industry. Grower organizations contend that if these pesticides are no longer allowed for use on fruit and vegetable crops, production costs for these crops will increase, thousands of U.S. growers will go out of business, consumers will become more dependent on imported produce, prices for produce will increase significantly, and successful Integrated Pest Management (IPM) programs will be disrupted. Pesticide manufacturers are concerned that EPA will evaluate pesticide products unfairly in order to meet its statutory deadlines.

Consumer organizations, on the other hand, are concerned with the safety of foods that contain pesticide residues, especially the safety of foods consumed by

infants and children. It is argued that the levels of pesticides now legally permitted on foods are much higher than what is safe for children. Some consumer organizations believe the EPA is moving too slowly on restricting the use of the most toxic organophosphates and that it should speed up registration of safer alternative pesticides. The Consumers Union in 1998 identified alternatives for 40 pesticides that it considers to be high-risk and stated that many American farmers are successfully using these alternatives without the application of organophosphates.

On August 2, 1999, EPA announced cancellation of the use of methyl parathion on 26 fruits and vegetables, and it tightened restrictions on the use of azinphos methyl. Both pesticides are widely used on fruits and vegetables. EPA explained that the actions were taken to reduce the risk to children and to provide greater protection to farmworkers. The agency also allowed the registration of 47 new, safer pesticides that can serve as lower-risk alternatives to more toxic pesticides, such as organophosphates.

P.L. 104-170, in addition to its provisions on registrations, required that EPA develop and distribute to the nation's grocery stores a consumer brochure on pesticides that explains the risks and benefits of pesticide residues on food. The first copies of the brochure were made available in February 1999. A paragraph in the original draft was controversial because it recommended that consumers could buy organic products as a way to reduce their exposure to pesticides on food. The final brochure modified the paragraph to say that foods grown using Integrated Pest Management (IPM) or organic practices were foods grown using few or no pesticides.

Dissatisfaction continues with the wording of the brochure, although EPA has no immediate plans to change it. Although some in the food industry are pleased with the brochure, others believe the brochure is sending a mixed message to consumers–telling them that food is unsafe because of pesticide residues and at the same time encouraging them to eat more fruits and vegetables. Consumer groups charge that the brochure does not warn the public about potential health risks of pesticide residues on food. They further contend that the brochure is misleading consumers by suggesting that EPA is protecting the public from the harmful effects of pesticides when, according to their view, that will not be true until the FQPA is fully implemented.

In the 106th Congress three similar bills were proposed to require additional analysis prior to restricting pesticide uses to ensure that sound science and public discussion would influence decisions on suspending or restricting pesticides, among other provisions. The bills were the Regulatory Fairness and Openness Act of 1999 (H.R. 1592 and its companion bill S. 1464), and the FQPA Implementation Act of 1999 (H.R. 1334). A subcommittee of the House Agriculture Committee held hearings in April 1999 on EPA's implementation of the FQPA to determine if the agency is using "sound science" and "real-world data" in making decisions on organophosphate pesticides.

For further information, see CRS Issue Brief IB10067, *Environmental Protection Issues in the 107th Congress*; CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation*; and CRS

Report 96-759, *Pesticide Legislation: Food Quality Protection Act of 1996 (P.L. 194-170)*.