

PUBLIC AFFAIRS

“Beef Case” Verdict Good News for Apple Programs

States operating with apple marketing orders (AMOs) can breathe easier now that the U.S. Supreme Court has ruled the Beef Promotion and Research Order (also called the “beef checkoff” program) is constitutional. The case was seen as a litmus test regarding the legality of agricultural research, promotion and consumer information programs funded by mandatory producer payments – including programs like the state marketing orders for apples.

In a six to three decision, the Court found that the beef checkoff does not violate First Amendment free speech rights of producers

compelled to fund the program. The decision, which overturned lower court rulings, stated that promotional messages under the program are government speech, rather than the private speech of beef producers. It also preserved the funding mechanism of mandatory industry payments.

The principle driving the Court’s decision is that the beef checkoff is part of a comprehensive program whose basic message, some of its elements, and final approval authority are established by law, approved by Congress, and tightly regulated and administered by the U.S.

See Supreme Court, page 2



The U.S. Supreme Court’s decision that the Beef Checkoff program was indeed constitutional was a watershed legal victory for supporters of required industry-funded promotional programs. The decision supports state apple marketing orders that are in place in several states.

INDUSTRY INFORMATION

“Outlook 2005” Offers Insights on Marketing Trends

International trends and a workshop on apple marketing will be two of the highlights of the 2005 Apple Crop Outlook and Marketing Conference. This can’t-miss industry event will be held August 18-19, 2005 at the Four Seasons Hotel in Chicago, IL.

“The forecast of the upcoming apple crop has always been the primary focus of the Outlook Conference, and it will be so again this year,” noted USApple President and CEO Nancy Foster. “This year we will also be offering a special session specifically designed to offer information on apple marketing. This promises to be a great addition to the agenda and offer extra value for all attendees.”

The marketing session will focus on consumer trends, especially in the areas of foodservice and retail sales. “It is important to not only look at where the trends are now, but also where they are heading,” noted Foster. “Consumers continue to base their purchases on different factors. While areas such as convenience, freshness, health benefits and quality are becoming even more important, other factors, like a growth in the popularity of ethnic foods, are also having an impact on consumer purchases.”

In addition to the new marketing segment, USApple is again bringing in world-class speakers to

See Outlook, page 4

Department of Agriculture (USDA). As government speech, such messages do not fall under First Amendment protections.

“This is certainly a win for the many producers who recognize the power of pooled resources,” said USDA Secretary Mike Johanns, praising the decision. “As this administration has always contended, USDA regards such programs, when properly administered, as effective tools for market enhancement.”


Although “the Secretary of Agriculture does not write ad copy himself...the message set out in the beef promotions is from beginning to end the message established by the federal government,” Supreme Court Justice Antonin Scalia wrote in his majority opinion. “The rigorous First Amendment protections that apply to private speech do not apply when it is the government controlling and delivering the message,” he added.

The Court’s decision also left intact the required funding of the program. “Citizens may challenge compelled support of private speech, but have no First Amendment right not to fund government speech,” Scalia wrote.

Impact on AMOs

For states with AMOs, the decision means they should ensure that their efforts fall under the Court’s definition of “government speech.” The Supreme Court decision identified certain characteristics of the beef checkoff’s promotional program when finding it constitutes government speech.

Assertions that promotion programs, such as AMOs, are a violation of First Amendment rights is the most common challenge to such programs on the state and federal levels. This decision removes these grounds.

For more information on the ruling and its implications on apples, contact Nancy Foster at nfoster@usapple.org. 

Additional \$23 Million in Apples, Apple Products Purchased by USDA

This month the U.S. Department of Agriculture (USDA) fulfilled part of the promise set forth by Secretary Mike Johanns to purchase additional quantities of apples and apple products. USDA announced that it had accepted bids to purchase a total of 2.2 million cases of apples and apple products generating \$23.1 million of revenue for the domestic apple industry.

“We are very pleased to see USDA making these purchases,” noted USApple President and CEO Nancy Foster. “USApple’s role is to add value to the apple industry, and these purchases created additional demand in the market.”


The purchases were made at USApple’s request and driven in part by a letter to Agriculture Secretary Johanns from 15 members of the U.S. Senate, organized by USApple. “We are writing to urge you to consider an apple commodity purchase to assist the domestic apple industry,” wrote the Senators. “Excellent weather conditions and the productivity of our nation’s apple growers have produced an abundant crop this season. This excess supply, along with the closure of the Taiwan export market has caused apple prices to fall dramatically. This price decline has already reduced grower incomes, and is likely to worsen without assistance.”

The letter also brought attention to the significant health benefits that are attributed to eating apples and apple products. “Recent scientific studies link apple consumption with improved cognitive ability, lower incidence of digestive tract cancer and lower risk of breast cancer.

“We urge you to make this issue a high priority for the good of America’s children, low-income families and apple growers,” the Senators concluded.

Shortly after the letter was sent, Johanns announced USDA’s plan to purchase up to 78 million pounds of apples and apple products. “This purchase will provide our federal food program recipients with tasty and nutritious products,” said Johanns.

Prior to this purchase, USDA had purchased 52.4 million pounds of apples and apple products this fiscal year, including fresh apples, canned and frozen apple slices, apple juice and applesauce. USDA purchased 64.2 million pounds of apples and products in FY 2004 and 83.8 million pounds in FY 2003.

The purchases of fresh apples were from across the country. Organizations in nine states from New York to Washington were awarded bids. “We are pleased that USDA spread these sales among a wide cross-section of the industry,” said Foster. 

New USDA Apple & Apple Product Purchases - June 2005

	Cases	Pounds	Value	Delivery Period
Applesauce	89,100	2,004,750	\$809,984	July 2005 - Sept.30, 2005
Canned Slices	113,088	4,410,432	\$1,762,777	July 2005 - Nov. 15, 2005
Applesauce	370,272	14,996,016	\$4,379,251	July 2005 - Nov. 15, 2005
Applesauce	539,460	12,137,850	\$4,447,678	July 2005 - Nov. 15, 2005
Frozen Slices	183,480	5,504,400	\$1,858,956	July 2005 - Nov. 15, 2005
Apple Juice	109,480	4,105,500	\$1,200,167	July 2005 - Sept.30, 2005
Apple Juice	531,216	19,920,600	\$5,358,979	July 2005 - Jan. 31, 2005
Fresh	6,468	249,018	\$69,254	June 2005 - Dec. 30, 2005
Fresh	74,844	2,881,494	\$868,827	July 2005 - Jan. 25, 2005
Fresh	206,052	7,933,002	\$2,371,806	July 2005 - Jan. 25, 2005
Total	2,223,460	74,143,062	\$23,127,679	

USApple Urges Senate Committee to Approve CAFTA-DR

Lawmakers are gearing up for a vote this summer on the Central America and Dominican Republic Free Trade Agreement (CAFTA-DR). The Senate Committee on Agriculture, Nutrition and Forestry held a hearing on the trade agreement earlier this month, and while it will not be a committee that votes directly for the treaty, it did provide an opportunity to discuss this issue. USApple submitted written testimony supporting ratification of the agreement.

“CAFTA-DR will let fair competition drive the marketplace, instead of allowing foreign government trade barriers to disadvantage U.S. apple exports for the benefit of our competitors,” explained USApple in the testimony. “CAFTA-DR will provide true market access for the U.S. apple industry, since U.S. exports do not face sanitary-phytosanitary import barriers in these Central American markets.”

To illustrate that point, USApple provided apple import data from Costa Rica, El Salvador and Honduras. Chile signed trade agreements with Costa Rica and El Salvador that began in 2003. From 2002 to 2004, U.S. apple marketers lost 9% and 13% marketshare in Costa Rica and El Salvador, respectively. During the same period, Chile gained 21% marketshare in Costa Rica and 30% marketshare in El Salvador.

However, in Honduras, where there is no trade agreement giving Chile an unfair advantage, the marketshare for U.S. apples remained strong. While Chile still grew in the Honduras market, it captured most of its gains from “other” nations rather than the U.S.

In addition to providing an opportunity to discuss the benefits of CAFTA-DR, the Committee hearing also provided Sen. Debbie Stabenow (D-MI) with an opportunity to discuss other issues of vital importance to the apple industry. Stabenow told USDA Under Secretary J.B. Penn she had serious concerns regarding the risk of invasive species that are being brought into the country from places like China. Penn responded that she had hit on an area that is “looming large,” but declined further answers on the issue.

The ratification of CAFTA-DR is receiving increased support. Recently, President Jimmy Carter sent a letter to Congressional and Administration officials in support of the treaty. 🍏

ADMINISTRATION

Trustee Nominating Subcommittee Appointed

USApple Chairman Jeff Crist has appointed a Regular Trustee Nominating Subcommittee to recommend individuals to serve as regular members of the USApple Board of Trustees.

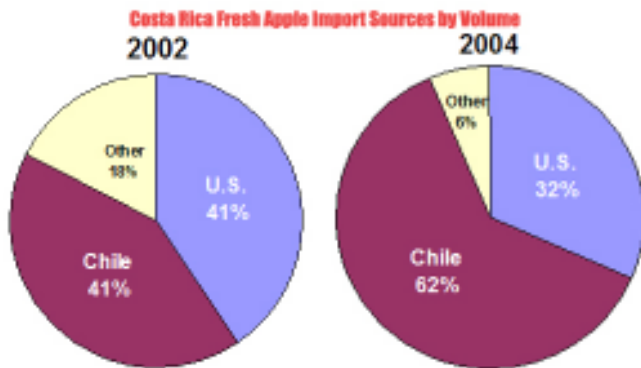
Chaired by Kelly Henggeler of Henggeler Packing in Fruitland, ID, the subcommittee will nominate individuals to fill the three Regular Trustee positions that will expire at the end of the Board of Trustees’ meeting on August 20. USApple members will vote on the nominations at its August 19 Annual Meeting.

There are three Regular Trustees whose 3-year terms will expire in August: John Graden of Dovex Fruit in Kirkland, WA; Lee Peters of Fowler Farms in Wolcott, NY; and Barry Winkel of Greg Orchards & Produce in Benton Harbor, MI.

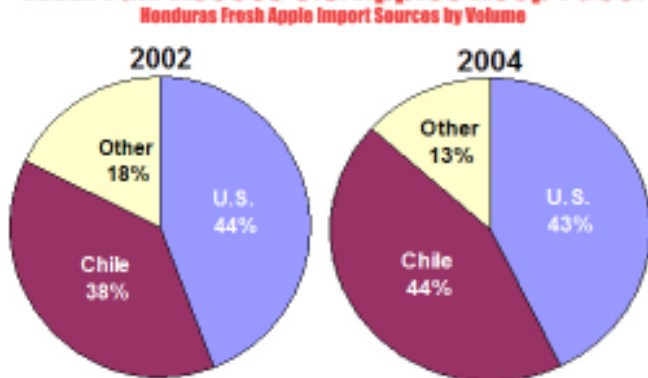
To suggest an individual to serve as a Trustee, contact any subcommittee member. In addition to Henggeler (208-452-4212), the members of the nominating committee are Don Armock of Riveridge Produce Marketing in Sparta, MI (616-887-6873); Jeff Colombini of Lodi Farming in Stockton, CA (209-608-2025); Bob Price of Price Cold Storage in Yakima, WA (509-966-4110); and Lee Showalter of Five Forks Fruit in Waynesboro, PA (717-762-2432).

For information on the nominating process contact USApple at (800) 781-4443. 🍏

Chilean Trade Agreements Cause A Shrinking U.S. Marketshare:



With Fair Access U.S. Apples Keep Pace:



Source: Global Trade Atlas

Marketing Trends Highlighted

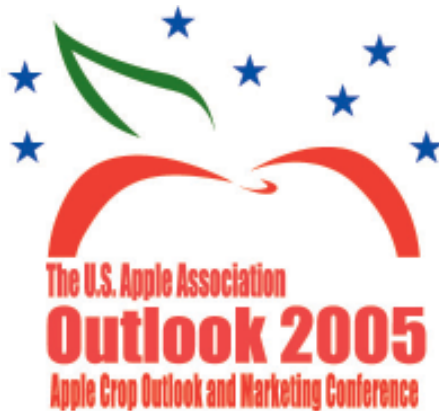
Outlook (from page 1)

address international apple trends. This year, in addition to apple industry experts from across the globe, the association has secured Erik Peterson, senior vice president at the Center for Strategic and International Studies (CSIS). Peterson has identified seven driving sources of change on the world and global economy. He will delve into the impact of change on the way we do business, communicate and structure our lives using projections out to the year 2025.

“Change is an ever-present factor in the U.S. apple industry. How we embrace change -- and even plan for it -- is a critical part of good business,” Foster said. “We are pleased that Erik will be joining

2005 Apple Crop Outlook & Marketing Conference

**August 18-19, 2005
Four Seasons Hotel
Chicago, Ill.**



us to share his vision.”

One of Peterson’s “Seven Revolutions” looks at how an increasing global population, which he calculates as 2.5 people being added to the planet every second, and an expanding income base will double world food consumption in the next 30 years.

For more information on the Outlook 2005 Conference, call the USApple office at (800) 781-4443 or visit www.USApple.org. Online registration is now available. 🍏

NATIONAL APPLE MONTH

Apple Merchandiser of the Year Award

National Apple Month (NAM) is looking for the retailer who has done the best job of merchandising apples and apple products in 2004-2005, as part of the fourth consecutive Apple Merchandiser of the Year Award. The company will join the ranks of previous recipients Meijer, Wegman's and A&P.

Nominees are evaluated on how they handle, merchandise and promote apples and apple products. Who does the best job for you? Nominate them now! All retailers, of any size, are eligible.

The winner will receive a plaque, \$1,000 donated to a charity designated by the winner, media coverage of the winner and a trip to the award presentation at the 2005 USApple Outlook & Marketing Conference.

Look for the nomination form in the mail or contact Kay Rentzel, NAM director at (717) 432-0090 or krentzel@usapple.org. 🍏

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