

Testimony

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before

THE SUBCOMMITTEE ON ENERGY POLICY,
NATURAL RESOURCES AND REGULATORY AFFAIRS

In connection with

THE SPECIALTY CROPS COMPETITIVENESS ACT OF 2003
HR 3242

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Introduction

Good morning Mr. Chairman and Members of the Committee. My name is Robert Nielsen. I am Vice-President, Law & Government, and General Counsel of Tanimura & Antle, Inc.

Tanimura & Antle

Tanimura & Antle, headquartered in Salinas, California, is one of the largest privately-owned produce companies in the United States. We ship a full line of fresh vegetables and value-added products grown on 56,000 acres in California and Arizona. We have cooling facilities in Salinas, and Huron, California, as well as Yuma, Arizona. In addition, we have two value-added salad-processing plants in Salinas, one in Yuma, and one each in Jackson, Georgia, Plymouth, Indiana, and Boisbriand, Quebec. We sell our products throughout the United States and Canada, and also in Europe and Asia.

Founded in 1982, Tanimura & Antle, is owned 50/50 by two families and prides itself on being a leader in responsible farming that respects the land and produces crops of the highest quality. We are consumer-oriented, and at the same time value the contributions of our other constituencies: i.e., our employees, our growers, and the communities in which we operate. Tanimura & Antle is a leader in application of technology to farming, being extensively committed to drip irrigation, as well as the use of GPS satellite capacity, advanced plant-breeding techniques, and labor-saving machinery and equipment, much of which we develop within our own company.

As part of our commitment to the market place and the environment, we are an owner of (and a grower for) Natural Selection Foods, which is a major organic produce company in the United States, selling products under the “Earthbound Farms” ® label.

I am pleased to be here in behalf of our Company, as well as the two families who are our owners, our three-thousand employee-strong workforce, and the growers and communities with whom we work.

United Fresh Fruit & Vegetable Association

I am also pleased to offer this testimony in behalf of United Fresh Fruit & Vegetable Association, a national association representing the views of producers, wholesalers, distributors, brokers, and processors of fresh fruits and vegetables. United has provided a forum for the produce industry to advance common interests since 1904.

The Produce Industry

Tanimura & Antle and its fellow members of the produce industry have driven and experienced tremendous changes over the last several years. We have worked hard to remain profitable, satisfy consumer demands, conform to and develop new technology, and compete in an

increasingly global market place which is enjoying the fruits of consolidation at the retail end of the supply chain.

Our products are highly perishable. In fact, a son of Salinas, John Steinbeck described in “East of Eden” one of the first lettuce shipments from Salinas to the East Coast. Although the book is fiction, his narrative is based on facts that actually occurred. The enterprising packer/shipper who sent the rail car eastward lost everything when it was parked over the weekend on a siding in Chicago and all of the ice inside melted. This early story is an example of the constant risk-taking that we in the produce industry continue to engage in. We put millions of dollars worth of working capital into the ground with every crop that we plant, never knowing for sure that Mother Nature, retail channels, the market place, or any other number of issues will or will not stand in the way and cause us to lose or gain from the investment that we have made. Our markets are highly volatile, yet we have never relied on traditional farm programs to sustain our industry. Instead, we look to Adam Smith’s “invisible hand” to promote efficiency and reward the entrepreneurial risk-taking that so marks our industry.

Unfortunately, however, the market place in which we operate is becoming less neutral and even-handed. Myriad regulations, driven by food-safety concerns, responses to September 11, and other very legitimate consumer and customer needs, are placing more and more burdens on farmers and their partners who pack and ship perishable agricultural commodities. In our effort to respond to these needs, we are obliged to introduce costly measures and undertake expensive actions. These shift all the way back to the farmer the responsibility of supplying high-quality food that is safe and nutritious while not being too expensive for the consumer. We work hard at this, helping to continue to ensure the miracle of abundant fresh food production in the United States at prices to the American people that are very low by world standards.

Given the shifts and dynamics of our industry, we therefore welcome the opportunities now presented by Chairman Ose, this Committee, as well as Congressmen Dooley, Farr, and the other co-sponsors of HR 3242, the Specialty Crops Competitive Act of 2003. We do so because the introduction of this bill flows from the mandate of the Energy Policy, Natural Resources and Regulatory Affairs Subcommittee as we understand it. Specifically, we applaud the fact that this Subcommittee, charged with Congressional activity concerning “the overall economy, efficiency and management of . . . Agencies responsible for the nation’s economy and natural resources,” is focusing in this instance on specialty crops, the kind that we produce as part of our contribution to the health of the United States, and the strength of its domestic and export economy.

Today, I would like to take the opportunity to discuss with you and answer your questions concerning the produce industry and how it would be beneficially affected by the Specialty Crops Competitiveness Act of 2003. To that end, I would like to focus first on broad industry-wide issues, then consider specific elements of the proposed Act, as reflected in HR 3242.

Domestic Policy Issues Facing the Produce Industry

While the produce industry does not grow fruits and vegetables in every Congressional district, our industry is important to the good health of Americans and to the efforts in our country to prevent disease, reduce obesity, and improve the well-being of our citizenry, all without the need to rely solely on costly drugs and medical intervention in this day and age of spiraling medical costs and decreasing medical access. The U.S. Dietary Guidelines issued jointly by USDA and HHS call for Americans to consume from 5-to-9 servings a day of fruits and vegetables. The National Cancer Institute has led the 5 A Day for Better Health campaign for more than a decade, and recently the Centers for Disease Control and USDA have signed on as formal government partners in this program encouraging people to consume more fruit and vegetables.

We working hard to fulfill consumer needs for great-tasting, high-quality fresh vegetables, and affordable healthy food choices, but we need agricultural policy priorities to assist us in that effort. It is in this context that we raise the importance of specialty crops today – not as simply one more sector of the agricultural economy, but as a vital national priority in every Congressional district and to the health of our nation overall.

At Tanimura & Antle we believe government policy should provide incentives for private investment, tools to increase profitability, and help to those producers who are committed to constant improvement to better serve consumer needs. We do not want policies that sustain yesterday's business; we want investment in the future.

Ultimately, the goal of any fruit and vegetable farm policy should be to enhance the tools necessary to drive demand, utilization, and consumption of our products and not distort the production of those products with respect to domestic and international markets. The recent Farm Bill began to make progress toward those objectives, but so much more is required to bring fruit and vegetable producers the tools they need to meet national public policy objectives.

We also are very appreciative of Congressman Ose and the many Members who have supported this new legislation to address specialty crop concerns. HR 3242 is an important step forward.

Significant Elements from Tanimura & Antle's Perspective

The Scope of the Act

We note that the Act, by its terms, applies to “all agricultural crops, except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.” Our concern here is that such a definition is negative in that it covers everything but the crops that are enumerated. We believe that it would be more effective to take an affirmative position and say specifically what crops are covered by the Act. In that regard, we would recommend using the definition of crops covered by the Perishable Agricultural Commodities Act (PACA); i.e., “fresh fruits and fresh vegetables of every and character.” (7 U.S.C. § 499a (b)(4) that way, it would be clear that soybean, corn (and even farm-raised fish) would not be covered by the Act.

Country of Origin Labelling

At Tanimura & Antle we were pleased by the House of Representatives vote on Monday, December 8, 2003 to delay for two years implementation of regulations developed by the United States Department of Agriculture in connection with the Country of Origin Labelling provisions of the recent Farm Bill. We recognize that the law was written with good intentions, but we view it as being seriously flawed in that it does not pertain to all food items. Nor does it cover all channels of distribution. Specifically, food service sales and certain food products are excluded. As written and proposed to be implemented (even by way of the regulations recently announced by USDA), we are greatly concerned that COOL is, in effect, little more than a protectionist measure which works to the detriment of the produce industry, while adding little additional benefit to consumers.

We noted with concern, but also with understanding, the problems faced by the retail food industry in its attempts to comply with the regulations that were proposed. We saw the burdens of following the law being shifted back up the chain of distribution to packer/shippers and ultimately to farmers, themselves. It is our understanding that this shift was not the intention of thoughtful people who developed and voted for the legislation underlying the proposed regulations, but this is nonetheless the effect that has resulted.

We believe strongly in free markets and in the right and power of consumers to choose what they want. Accordingly, we remain convinced that any Country of Origin Labelling Requirement that is followed by the produce industry should be voluntary in nature, driven by economic forces, and grounded solidly in consumer preferences. In other words, we have seen research results which indicate that consumers are not as concerned about the Country of Origin of some of the products that they buy, as much as they are about year-round seasonality, taste, and cost.

We urge the Committee and Congress to include within the Act specific language authorizing and directing USDA to undertake broad-based meaningful surveys, research and analytical work that would aid the food industry in determining just exactly what consumers would like to see by way of Country of Origin Labelling. Trusting that the Senate of the United States will join with the House of Representatives in postponing implementation of COOL for two years, we appreciate the opportunity for and urgency of members of the food industry to work together to develop a viable program that responds to consumer needs (as defined and researched), while eliminating the excessive bureaucratic activities and costs that we believe would be associated with the COOL provisions of the Farm Bill, as it now stands.

Time is of the essence here, and we would hope and trust that USDA would have the necessary guidance and funding to undertake this needed research as soon as possible. Furthermore, we would hope that the results thereof would be available to the food industry within six months; i.e., June or July of 2004.

Perchlorate

The Congress has recently directed the United States Department of Defense to work with appropriate government agencies to study the effect of perchlorate on water supplies in the United States. Based on sound to science as we understand it, it is unclear that the presence of perchlorate in agricultural water poses an immediate threat to farmers and consumers of farm products. But we need to move forward in this area, guided by a specific Congressional statement which assures specialty crop farmers that they will not be penalized by the consequences of perchlorate in portions of America's water supply. In addition, it needs to be made clear to American consumers and farmers that those who have been responsible for the introduction of perchlorate into America's water supply must be responsible for cleaning it up, to the extent that such cleanup is necessary.

Organic Produce

Once derided as "food for hippies," organic produce is now a significant and growing component of healthy diets in the United States and overseas. While there is no convincing evidence that production of conventional crops using inorganic chemicals and pesticides that leave no detectable residues is ultimately harmful for consumers, there can be little doubt that organic farming techniques are beneficial to the ongoing health and sustainability of agricultural land and of our world as a whole. Indeed, members of the Tanimura family have been using organic materials in their farming operations for over fifty years. The result if such farming practices, evidencing proper stewardship of the land, is soil health and capacity that redounds to the benefit of landowners, farm owners, and consumers of crops produced on such ground. Indeed, healthy soil, coupled with good organic farming practices, strengthens plant health, obviating the need for pesticides in a number of situations. Organic yields are lower than those of conventional crops, in our experience, but the benefits to farmland and the planet as a whole from organic farming methods are beyond doubt in our opinion.

At Tanimura & Antle we believe that the Act should encourage, support and continue innovative programs that are now in place at the State level for organic specialty crops. We have found that continued research in organic farming techniques, as well as continued farmer-training and export-marked development support, is vital to the future of organic produce and the benefits that organic farming provides.

Agricultural Labor

The produce industry relies on agricultural labor to harvest fruits and vegetables across the United States. Immigrants have historically provided much of that labor. In time, those immigrants and their children move up the economic ladder, following the American Dream, and being replaced by new entrants behind them. At Tanimura & Antle we pay wages that are among the highest in the industry. We also provide our employees with full medical, dental, and vision-care benefits for themselves and their dependants. In addition, we have a prescription drug program and we have established a 401(k) plan in which all of our employees are enrolled. Tanimura & Antle has a profit-sharing program under which profits are shared with our employees, and are deposited for their benefit in their 401(k) accounts. The Company also has a

scholarship program for its employees, is working with Monterey County in the operation of an all-day child-care and preschool facility for children of our employees, located on the premises of our main headquarters in Spreckels, California. We also provide active on-going support to local schools and service organizations.

As a result of these initiatives on our part, we have developed close working relationships with our employees, most of whom are Latino and Spanish-speaking. We can attest to their commitment to our Company, to the work ethic, and to the prosperity, safety and security of the United States. For this reason, we support programs that are designed to facilitate lawful entry of farm workers into the United States. In connection with that support, we also urge the Congress through this Subcommittee and the Act, to provide legal-status authorization for farm workers who have been in the United States for a defined period of time, working consistently in agriculture, prior to the introduction of HR 3242.

Such a program would not spur new immigration, because it would be limited to incumbent farm workers with a significant work history in U.S. agriculture. Workers covered by this arrangement would have non-immigrant, but legal, status. Their spouses and minor children would be given limited rights to stay in the U.S., protected from deportation. These workers would have to verify compliance with the law and continue to report their work history to the government. Upon completion of continued work in agriculture, and specialty-crops in particular, these workers would be eligible for legal permanent resident status. Considering the time elapsed from when they would first apply to enter this process, these workers would have no advantage over regular immigrants beginning the legal immigration process at the same time.

We also support the allocation of funding and loan credits to support the construction and operation of affordable work force housing. In locations such as Monterey county, where we are headquartered, increasing population pressure is running into commendable efforts to preserve and protect open space, but with the result that land prices and construction costs are driving reasonably priced housing out of the marketplace. The net effect is farm workers having to live in sub-standard crowded conditions. In addition, they have to drive very long distances to their job sites. We note that these workers do not want to sit back and receive welfare. They actively pursue and hold down one or more jobs. What is of concern to them and their families is housing that is secure, safe, and affordable.

We urge the Committee to provide additional funding to current USDA housing-support programs, and to amend the statutory requirements of those programs in a way that will permit them to support housing that can be built and operated for the employees of specialty-crop farmers or packer/shippers. There needs to be a means whereby farm workers can acquire their own homes (perhaps by way of leveraging their 401(k) accounts for down-payment purposes, as is presently done in some communities). We are convinced that providing employees with the opportunity to live in decent housing that they can pay for (and ultimately own) enhances stability and commitment to the community, as well as increase productivity on the job. We believe that all of this is an aspect of the pursuit of the American Dream by recent arrivals in our country. It should be supported and encouraged as much as possible.

Health Care

As noted above, there is a growing health-care problem in the United States. We have found through our support of local community-based organizations in Monterey County that it is possible to deliver healthcare to farm workers and others employed in specialty-crop agriculture, doing so on a low-cost basis through clinics that work in tandem with housing-advocacy organizations, as well as local hospitals and other health-care providers. We urge the Subcommittee to include in the Act funds that would support state and local community-based activities that bring healthcare to workers in the specialty crop area by way of on-site medical personnel in facilities, the costs of which are covered by grants or loans funded through the Act. We would also urge that operating funds be made available to state and local health-care provider organizations, so that these organizations can fund the activities of professionals delivering preventative and other basic health care services to workers in the specialty crop industry.

Specific Provisions of the Act

With the foregoing in mind, I would like to turn now to provisions of the Act which we believe merit consideration and discussion from our perspective.

Food Safety Initiatives

Federal Law provides ample authority to the Food and Drug Administration to assure the safety of fresh fruits and vegetables. Specifically, FDA is granted wide latitude to refuse food shipments into interstate commerce if it appears from an examination, or otherwise, that such food is adulterated, misbranded, or has been manufactured, processed or packed under unsanitary conditions. Today, grocery retailers and restaurant operators routinely ask their produce suppliers to guarantee the quality of the food products that such suppliers are selling. Likewise, insurance carriers ask their grower, packer and shipper clients to take appropriate steps to minimize food safety related risks. We believe that the produce industry has made great strides domestically and internationally in identifying potential sources of microbial hazards in fresh fruits and vegetables, and will continue to implement prudent measures to prevent the outbreak of problems in the future.

We and other members of the fresh produce industry are committed to reducing the risk of foodborne illness that and can affect public perceptions of the health benefits of increased produce consumption. We support continued voluntary measures to identify and reduce potential sources of microbial hazards in fresh fruits and vegetables. We also support the implementation of prudent measures including education initiatives at both industry and consumer levels, to reduce occurrences of microbial pathogens and to promote sound sanitary practices. We support the creation of a public/private food safety education initiative to educate consumers and growers, shippers and handlers of fresh produce about scientifically proven practices for reducing microbial pathogens, as well as consumer/handler messages for reducing the threat of cross contamination through unsanitary handling practices. In our opinion, these initiatives are growing in importance, given the increasing role of fresh uncooked fruits and vegetables in healthy diets.

USDA's Inspection Service and Fair Trading Practices Programs

USDA's fruit and vegetable inspection is a voluntary, fee-for-service program, administered by the AMS since 1928. The objective of the inspection program is to facilitate trade by providing buyers and sellers of fresh fruits and vegetables with impartial and accurate information about the quality and condition of shipments of fresh produce, based on well-known, published USDA standards. The inspection program for fresh fruits and vegetables is available at shipping points located in growing areas and at wholesale markets and other points where large volumes of fresh produce are received.

The AMS also administers the Perishable Agricultural Commodities Act of 1930 (PACA), which established a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. PACA protects growers, shippers, distributors, retailers and others who deal in those commodities by prohibiting unfair and fraudulent practices. The law also provides a means of enforcing contracts between buyer and seller, and helps ensure that produce-related assets remain available to pay suppliers if a receiver enters insolvency proceedings. Most traders of fresh or frozen produce must obtain a valid PACA license which is issued by the Fruit & Vegetable Programs. We strongly support maintaining PACA and the protective regulatory structure that it created.

Understandably, the October, 1999 bribery and racketeering scandal at Hunts Point Terminal Produce Market in New York severely damaged the fruit and vegetable industry's confidence in USDA's AMS inspection system. Fruit and vegetable growers, and indeed the entire produce industry, depend heavily on the inspection system to provide credible and consistent third-party analysis of product condition at both shipping point and upon arrival. Our faith and trust were breached, and, in effect, the industry was told to accept the consequences of the scandal as "one of those things." To be sure, many responsible officials in USDA were deeply concerned by what happened, and took steps to ameliorate the losses suffered by members of the produce industry. We believe that the Act should make available to the shipper's who lost money at Hunt's Point as a result of the scandal compensation to the extent that losses can reasonably be demonstrated

In June of 2000 Congress appropriated funds for USDA to create a Produce Inspection Training Facility, now located in Fredericksburg, VA. This training facility provides the vital function of training existing inspectors, new inspectors, and, for a fee, it partners with the industry to train industry representatives. This facility has made significant strides in reeducation, providing refresher courses and uniformity in grading and produce inspections. USDA's oldest grading standards were developed in 1928 for blackberries and okra. USDA recently announced efforts on a long-term strategy to update all produce standards and provide new electronic inspection equipment in the field to aid in the inspections. We strongly support these efforts to update grading standards, where necessary, with the involvement of the affected industry parties. With these new updated standards and technology to be implemented over the next several years, it is vital that Congress provide a funding commitment to the Inspection Training Center. Doing so would be an act of faith that would help us once and for all to get beyond the consequences of the debacle at Hunts Point.

International Trade

We strongly support the Act's requirement that the United States Trade Representative establish at least one position in the Office of the USTR that is responsible for trade matters solely related to specialty crops.

Agriculture Research

Research serves as a foundation for the advancement of any industry. Unfortunately, over the years, investment in federal agricultural research specifically targeted to meet the needs of the fresh produce industry has been directed to limited priorities and areas. Investments in federal research should be re-examined to meet the unique research and development needs of the fresh fruit and vegetable industry, including competitive prominence in both the domestic and international marketplace (and including organic specialty crops, as discussed above). In particular, federal research dollars should be focused in the areas that quantify the clean air benefits of the specialty crop industry in relation to urban sprawl or fallow land, develop cost effective and efficacious new crop protection tools and Integrated Pest Management (IPM) systems to address the loss of key pesticides through the implementation of the Food Quality Protection Act (FQPA), identify and prioritize the harmful economic/health impact of foreign invasive pests and diseases now threatening the U.S., and conducting pre- and post harvest research targeted to maintaining and enhancing the quality of fresh produce (including taste and appearance). In this regard, we support strongly the Act's protection of intellectual property rights in plants and plant-derived material.

We also support the national specialty crops development initiative grant program, a long-term program to improve the efficiency and competitiveness of specialty crop producers in the world marketplace. This effort between the Agricultural Research Service (ARS) and Cooperative State Research, Education and Extension Service (CSREES) working jointly with the specialty crop industry, should develop a comprehensive strategic plan that addresses short-term, intermediate-term and long-term needs in production technology, marketing, product development and food safety issues essential to maintain a competitive specialty crop industry.

Pest and Disease Exclusion Program Policy

Recognizing the need to address food security, we commend the U.S. Customs and Border Patrol (CBP), Department of Homeland Security (DHS) and USDA for their leadership in working with the private sector, including our industry, to ensure that appropriate steps are in place to minimize the potential of terrorist action to contaminate foods. Continuing to ensure the safety and security of fresh fruits and vegetables, whether produced domestically or abroad, is a top priority of the entire produce industry. With this in mind, we have some concerns about the training of new CBP Officers and Agricultural Specialists.

Specifically, while the intention and concept of creating a CBP corps of officers who will present "one face at the border" to travelers and the importing community is important and essential, we are concerned that these individuals may not be adequately prepared to address invasive pests

and disease issues. We support the creation of the CBP “Agriculture Specialist” position, which will complement the work of CBP Officers and be stationed at ports with large volumes of cargo importation, particularly in those major hubs where the agriculture industry imports flowers, fruits, vegetables, meat, and other products of an agricultural interest.

Summary and Conclusion

Mr. Chairman and members of the Committee, this concludes my testimony. We at Tanimura & Antle appreciate this opportunity to have appeared before you, and I welcome any questions that you may have.

Thank you.