

## **Breaking News:**

### **USDA PROPOSES EXPANSION OF MEXICAN AVOCADO IMPORTS**

The U.S. Department of Agriculture (USDA) published a Proposed Rule on May 24, 2004 that would allow Mexican Hass avocados to enter all 50 states for the entire year, without requiring any quarantine treatment for the various exotic pests that continue to be detected with regularity in the Mexican growing region.

Even though the proposed expansion is for 50 states, there is a possibility that California, Florida and Hawaii could be excluded for one year to test the proposed regulations under actual production and distribution conditions. That exclusion language, critical for our industry and negotiated with USDA by CAC, is in the Rule's Preamble, as follows:

#### **LIMITED DISTRIBUTION**

*"We are considering a limited distribution plan that would delay the entry of Hass avocados from Mexico into commercial avocado - producing areas in the United States for up to a full year. This would mean that the importation and distribution of Mexican Hass avocados would continue to be prohibited into and within California , Florida and Hawaii during the limited distribution period. This delay would provide an opportunity for the efficacy of the proposed regulations to be demonstrated under actual production and distribution conditions for up to 1 full year before Mexican Hass avocado imports would be allowed to enter commercial avocado-producing areas of the United States. We invite the public to submit information demonstrating whether or not this measure is warranted."*

USDA's rule calls for a 60-day comment period and CAC's submission will be focused on the need for the limited distribution plan. Legislators in Congressional Districts with avocados will surely support CAC's position, as will Florida and Hawaii delegation members, but it will be difficult to recruit Congressional support beyond that base.

#### **HOW DID USDA GET TO THE POINT OF PROPOSING 50 STATES FOR 12 MONTHS ?**

USDA maintains in its proposed rule that the risk of Mexican fruit fly infestation of Hass avocados is much lower than originally believed, based on research conducted in Mexico in 2001-02. Based on that research, USDA has concluded that it is safe to ship Mexican avocados to states with substantial production of citrus and other crops that are vulnerable to fruit fly attack, such as Texas and Arizona. This is a radical departure from its current position which grants limited access to 31 states from October 15 through April 15, due to the continued presence of insect pests, including Mexican fruit flies, in Mexico's growing region.

USDA has taken this new position while some experts assert that there are infirmities in the 2001-02 Fruit Fly Research and the Department's bold reliance on this single scientific study is not well founded. That should surprise no one, of course, since our own government has been aligning for years the geo-political constellation to permit expansion of the Mexican Avocado Program.

It's not just infirmities in the Fruit Fly Research that concern our industry. Equally important is the very real threat of infestation by avocado-specific pests. Even USDA admits that those

avocado pests—particularly the stem weevil—remain abundant in Mexico, as evidenced by the hundreds of insects detected during pest surveys since 1997.

### **WHAT "EVIDENCE" DOES USDA HAVE TO PROVE ITS MITIGATION NET IS EFFECTIVE ?**

Seven years of Mexican avocado shipments to the U.S. without a pest problem have convinced USDA that its risk mitigation measures are "working," and make it safe to ship Mexican avocados to California, Florida, and Hawaii—states where avocados are grown. Mexico has been leveraging in recent years this "pest-free" statistic by threatening to submit the issue to a NAFTA dispute panel alleging that USDA had acted unreasonably by not granting access to all 50 states.

Even more power for Mexico's position comes from deployment of formidable expertise across myriad fronts—political, technical, procedural and legal—made possible by an increasingly supportive and facilitative environment created by President Bush and his Administration.

Specific evidence of that support can be seen in USDA's decidedly one-sided record on avocados. California growers have been trying to gain access to the avocado market in Mexico since 1998, without success. Rather than assist U.S. growers in the dismantling of trade barriers erected by Mexico, USDA has steadily worked with Mexican officials to open up the U.S. avocado market by designing protocols, facilitating research, and giving in to the hardball tactics used by the Mexican government to secure trade deals.

### **TRACES OF A DEAL ?**

Evidence of our government's complicity in the trade deal that sacrificed California avocados can be seen in the following excerpt from an interview in "Commanding Heights" with Jorge Castaneda, Mexico's former Foreign Minister. In the interview, Castaneda discussed his views on NAFTA and Mexico's role in the Global Economy. This specific section refers to an exchange between President Bush and Vicente Fox on Mexican Avocados.

**JORGE CASTANEDA:** *[Let's] take an example. President Fox talked about the issue of avocados. We need to have an increase in the number of states and the number of months [during] which we can export avocados from Mexico, given that they are not declared unhealthy and that there are no NAFTA or WTO regulations that impede the exports. He brings it up with President Bush, gives him a piece of paper. President Bush passes the piece of paper over to Dr. [Condoleezza] Rice. Dr. Rice looks at it and then will pass it on to whoever she has to pass it on. At some point somebody will come back, probably to me or to ... our trade fellow to say, "Look, we looked at the avocado question and this is the deal."* **April 2001**

### **WHAT ABOUT A LEGAL CHALLENGE BY CAC ?**

Procedurally, it is not possible to challenge USDA at this stage of rulemaking. USDA's Proposed Rule is viewed under the law as having no legal effect—it is simply a "proposal" that the Department could later choose to modify.

CAC has challenged the Final Rules previously promulgated by USDA that provide Mexico with limited access to the U.S. market. Earlier this year, the U.S. District Court in Fresno decided that the 1997 Rule was superseded by the Final Rule issued by USDA in 2001, expanding the Mexican

avocado import program to 31 states. Accordingly, the Court declared that it would focus on that portion of CAC's challenge. Supplemental filings by all parties were allowed on this matter through April 26, 2004. With the case now fully briefed, a decision is expected in the next 90 to 120 days.

The harsh reality is that after 15 years of fighting to postpone this day, it has finally arrived.

## **CAC'S 2-PLANK STRATEGY CONTINUES IN PLAY**

Every California avocado grower must know that during the entire time we've worked on this issue, CAC has executed a 2-PLANK STRATEGY on your behalf, as follows:

### PLANK 1: PHYTO-SANITARY SECURITY

Everything possible to fight the government's move to relax the Mexican Avocado Quarantine and thereby put our industry at risk to serious pest infestation.

### PLANK 2: MARKETING DEMAND

Simultaneously push transformative Marketing Strategies (even in fight mode on PLANK 1) to maximize consumer demand in the market, by deploying these strategies:

- *California Avocado Consumer Advertising*
- *Hass Avocado Board (HAB) to assess for market development all Hass avocados sold in the U.S. market*

Working on the MARKETING DEMAND PLANK does NOT mean—will never mean—that we stop the aggressive fight to maintain our scientific position opposing the relaxation of pest protection standards that put our \$1 Billion industry at risk. We have never, are not now, and will never let up on monitoring the Mexican Avocado Import Program and responding with the highest level of resources and power.

Commitment to the 2-PLANK STRATEGY is our responsibility to you and your investment.

The immutable fact we must all confront is the inexorable rise in the aggregate supply of Hass avocados crashing into the U.S. Market. That fact, even though it comes as a result of dangerous and obscene tinkering with U.S. Phyto-Sanitary Policy by our own government, cannot be ignored. We know that new demand MUST be created in order to maintain financial vigor as the additional volume hits our turf.

More on that later. In the meantime, REMEMBER that we need your help to fight USDA's expansion rule! Look for our complete package with instructions on how you can comment in the mail soon.

**JEROME STEHLY, CHAIRMAN OF THE BOARD**

**MARK AFFLECK, PRESIDENT & CEO**

**TOM BELLAMORE, SENIOR VICE PRESIDENT & CORPORATE COUNSEL**