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As Labor Supplies Diminish and NAFTA Negotiations Begin, Commission's Congressional Efforts Intensify

Congressional engagement is an ongoing role of the Commission's Industry Affairs department. With a new presidential administration comes change, or at least the talk of change, and as we have seen over the last few months there is plenty of change being suggested from our "friends" in Washington, D.C. From a repeal of the Affordable Care Act to a rewrite of the tax code, efforts are underway to reexamine governmental policy and programs and change the laws.

Two areas critical to the California avocado industry that have risen to the top of the list for possible Washington, D.C., action are immigration and NAFTA. Both have a significant impact on the California avocado industry. The prospect of enacting new legislation, on both issues, has caused considerable consternation for all involved.

Immigration

The new administration has adopted a strict tone on immigration. Reports of Immigration and Customs Enforcement (ICE) raids on undocumented workers have caused understandable fear among those who don't have the appropriate documentation. The administration has stated they are only going after those with felony convictions. While the debate continues as to the validity of that assertion, these



Charley Wolk, former CAC Chairman, and Ken Melban meet with Congressman David Valadao (R) member, House Committee on Appropriations.

actions are without question impacting the labor supply. Workers are unwilling to move about for fear of being picked up by ICE agents. Families are concerned they will face separation. There is a tremendous amount of anxiety in these communities about what the future will hold.

During the last few months, the Commission has met with many congressional members to discuss the immigration situation and voice our

strong concern that something must be done, and soon. There are two components that will have to be addressed to remedy the labor supply emergency agriculture is facing.

First, the current workforce must be allowed to stay. This will likely involve undocumented workers paying some type of a penalty and not committing any criminal acts. Of course, this would only be available to those who have been law abiding residents, apart

from their undocumented status.

Second, a program must be developed that allows for the entry of new workers. This program must be more flexible than the current H2A program and without the onerous housing requirements. The program will have to provide workers the flexibility to relocate as needed to follow employment opportunities.

In May, Senator Dianne Feinstein introduced the Agricultural Worker Program Act, commonly known as the Blue Card legislation. The idea is that any farmworker who has worked in the agricultural industry for at least 100 days each of the past two years would be eligible for a Blue Card. These Blue Card holders would also be put on the fast track for a more permanent status in the U.S. (either a green card or residency); if they worked enough hours in agriculture they could be eligible for permanent U.S. status in three to five years. While this proposal does offer an interim fix, it won't address the long-term labor supply needs.

The bill was introduced with only Democratic support, which make the chances of success very slim in a Republican-controlled Senate. However, it will hopefully serve as an "invitation to dance" if you will, and provide an impetus to restart the conversation. There is similar Blue Card legislation being discussed on the House side but nothing has been introduced.

As with previous efforts on immigration, E-verify remains front and center in the debate. While agriculture will support E-verify, our support will only come if it's introduced concurrently with legislation that adequately addresses allowing the existing workers to stay in the U.S. along with a pathway for future workers. In the past, proponents of E-verify, like the original author Congressman Ken Calvert, have argued there would be a phase-in implementa-



Rep. Ken Calvert touring California avocado groves in Temecula with CAC staff and others on May 11.

tion requirement for agriculture. Recently the Commission met with Representative Calvert and clearly stated we would not support E-verify, even with a phase-in for agriculture, because there are no guarantees our other concerns will be resolved in the future.

Another policy that is problematic is that of a "Touch Back" requirement. The idea is workers would be required to go back to their country of origin within a certain time frame to "check in" and then could return. The concern here is workers would have no guarantee they would be let back in the U.S. In addition, many of these workers may have been here for 10, 20 years. Where would they *Touch Back*? A "Touch Back" requirement is a non-starter.

The Commission's advocacy with congressional members focuses on the dire situation agriculture is facing and the reality that these undocumented workers are not taking jobs from unemployed citizens. The partisan politics that has caused this challenge to be kicked down the road for the last two decades must be overcome. Both parties in the past decade have had full control of the House, Senate and presidency but failed to act on immigration. On the Democratic side folks on the far left

don't want to see any type of enforcement and border security action and on the far right calls for deporting all undocumented workers ring loud. Neither of those fringe elements can be allowed to continue to derail fixing the problem. Our message is simple: we need moderates from both parties to step up and get this done. Now!

NAFTA, Tariffs & BAT

A major part of President Trump's campaign focused on "fair trade" for the U.S., with much of the discussion centered on trade with Mexico. The idea of a tariff on imports from Mexico has been raised by the Trump administration and the House Republicans proposed a Border Adjustment Tax (BAT). Then, in mid-May, U.S. Trade Representative (USTR) Robert Lighthizer notified Congress of the planned renegotiation of the NAFTA. This initiates a 90-day comment period before talks with Canada and Mexico will formally begin. The Commission has been tracking the dialogue very closely and weighing in, through multiple channels, concerning how these potential trade decisions could impact the California avocado industry. In 2015, I was appointed by the U.S. Trade Representative and the U.S.



Ken Melban with Congressman Devin Nunes (R), Chairman, House Committee on Intelligence; member, Ways and Means Committee.

Secretary of Agriculture to serve on the USTR/USDA Agricultural Technical Advisory Committee (ATAC) for fruits and vegetables. The ATAC advises the administration on trade policy issues. This appointment has ensured the concerns of the California avocado industry are being heard and, hopefully, our interests will be addressed.

Without a tangible proposal, it's difficult to determine just how a renegotiated NAFTA agreement or tariff will impact the California avocado industry. As California Avocado Commission President Tom Bellamore has discussed

in previous columns, the idea of placing a tax on imported avocados may – on its surface – sound like a great opportunity to level the playing field for California growers who have much higher production costs. For discussion sake, let's say a carton of Mexican avocados is selling for \$35. If a tariff of 15 percent were imposed, that would add a tax of \$5.25 on the Mexican industry. Following this example, a box would now cost a retailer \$40.25.

While a tariff on Mexico imports may sound appealing, what's unknown is just how that will impact U.S. avocado

sales and California avocado prices. The Commission has already heard of a buyer suggesting that if the import tax were levied, the price for California avocados should go down proportionately. What if Mexico begins to shift their supplies to other markets? With demand for avocados in the U.S. at 2.5 billion pounds and growing steadily, a shortage in supplies will not help market stability, as we saw late last year. We continue to view the potential trade decision as a mixed bag for the California avocado industry. Without a specific proposal, it is impossible for the Commission to take a firm position on NAFTA and/or a tariff.

In terms of a BAT, under current law, if a company produces a product in the U.S. and sells it overseas, they pay U.S. income taxes on those exports. Conversely, if a company sells a product in the U.S. that was produced overseas, it doesn't pay U.S. income tax on the value of the imported product. Under a BAT, U.S. companies would no longer be required to pay income taxes on their export sales because the products aren't sold in the U.S. However, a BAT would require companies to pay income taxes on the value of their imports because they are sold in the U.S. There is tremendous uncertainty on how a BAT would impact U.S. consumer prices. And while taxes would increase on some U.S. companies, economists theorize the U.S. dollar would become stronger and offset the higher taxes.

Fortunately, the Commission is well positioned at all levels of government to ensure the California avocado industry's concerns are part of the debate on these important issues. Ultimately, it's vital that any new legislation, whether it's on NAFTA, immigration or any other matter, protects the interests of the California avocado industry. The Commission will continue to work towards that end regardless of how murky the waters become. 🥑