

**Commodity Promotion Policy**  
**Walter J. Armbruster, Farm Foundation**  
**John P. Nichols, Texas A&M University**

Generic commodity advertising and promotion programs exist for a number of agricultural commodities. They are a tool for producers of largely undifferentiated products to jointly market the attributes of those crops to increase consumer demand. These programs authorized under federal and/or state legislation provide for collecting an assessment from producers. See tables 1 and 2 for amounts collected under the major federal programs. They allow producers to take a proactive role in marketing their products in the face of changing consumer tastes and preferences, increasing global competition and pressures to decrease government price support programs in some cases. In addition, some commodity industry groups use public funding sources authorized separately under the Farm Bill in Title III, Trade to enhance demand in export markets.

In recent years, these programs have come under intense scrutiny triggered by legal challenges to their continuation from individuals in selected promotion programs. The concerns have largely evolved around whether the program benefits to the individual outweigh the costs of participation or could the individual better spend the funds marketing their own products; whether the programs should be voluntary rather than mandatory; and whether export promotion programs are consistent with trade agreements and the interest in negotiating more open international markets.

Historical Context

Funds for domestic commodity promotion are collected under Federal authority, either authorized under individual legislation, under umbrella authorization contained in the 1995 Farm Bill, or under the Agricultural Marketing Agreement Act of 1937. The funds are used to provide information to consumers and administered through commodity boards responsible to the US Department of Agriculture. Federal commodity promotion programs began in 1954 with the passage of the National Wool Act and with an amendment in August, 1954 to the Agricultural Marketing Agreement Act of 1937 authorizing generic research and promotion programs as a part of fruit, vegetable and specialty crop marketing orders.

For a number of years, commodity advertising and promotion programs operated with relatively little controversy. In general, the programs are mandatory to overcome the “free-rider” problems of voluntary efforts that were precursors to the current commodity promotion programs. Some programs authorized individual assessment rebates for those producers who did not wish to support the program. However, producers benefit when the demand for a commodity is expanded through advertising and other promotion programs, including any non-contributors.

Principal programs for export promotion administered under USDA’s Foreign Agricultural Service are the Market Access Program (MAP) and the Foreign Market

Development Program (FMD). They are very specific regarding organizations and commodities which have access to them. Often these funds are used in conjunction with check-off programs or marketing orders to achieve a larger impact on the export market. In addition, the Emerging Markets Program, created in 1990 in response to the collapse of the USSR, is designed to allow firms to transition into more risky markets. Those that are successful can be transitioned to the more traditional MAP or FMD programs. The 1996 Farm Bill opened this Emerging Markets Program to private sector participants who are now among the largest beneficiaries of it. Finally, there is the Technical Assistance for Specialty Crops program open to universities as well as commodity organizations that is restricted to specialty crops under the 2004 Specialty Crops Act.

### Current Issues and Challenges

In recent years there have been a number of conflicting court decisions in challenges to generic commodity promotion programs' constitutionality, hence raising questions about their future. Challenges have generally been brought against domestic programs by producers within the industry who do not support the programs. Concerns about export promotion programs may arise in the context of trade negotiations and compliance with WTO requirements.

A series of cases based on first amendment concerns challenged the constitutionality of requiring individual participation in forced speech. The May 23, 2005, US Supreme Court ruling on the constitutionality of the beef promotion program concluded that commodity promotion programs are not compelled private speech, but rather represent government speech (*Johanns v. Livestock Marketing Association*). This should put the first amendment line of reasoning to rest. However, that does not mean that there will be no further challenges to the programs.

One explanation of why programs have been challenged so much in recent years may be the significant structural change taking place throughout agriculture. Industry changes have created concerns among smaller agricultural producers about whether they can proportionally benefit from the programs compared to larger producers. Some believe the administrative structure of most marketing boards that make decisions on behalf of the programs favors larger versus smaller producers. Further, as structural changes take place, the value of programs may be of concern in part due to the changing nature of retail to farm price transmission. While producers can see their direct contributions to the program costs, they have a harder time documenting the benefits as individuals. Some argue that the benefits of the programs flow disproportionately to processors and retailers.

As supply chain management becomes an increasing force in the agri-food sector, questions arise about whether commodity promotion programs are as relevant as they once were. Supply chains market products with well-established characteristics into niche markets or through branded products. Can producers who are participants in commodity promotion programs proactively obtain greater influence in the marketing of their products vis-à-vis the supply chain leaders?

Another reason for challenges to commodity promotion programs is doubts about their overall efficiency and effectiveness. Studies by economists have shown large returns to commodity promotion programs. Ward (2006) notes that benefit-to-cost ratios reported by researchers show benefits from four to six times the costs of programs for a broad range of commodities. However, not all the gains are necessarily captured by producers because of retail to farm price transmission issues (Wohlgenant, 2006).

Future challenges to commodity promotion programs may also focus on whether a program message must be explicitly endorsed by the oversight agency within the message to be clear that it is government speech. Crespi and McEowen (2006) raise this issue and spell out the requirements for government speech. The intent is to make it clear that the programs are authorized under government authority, thus reinforcing understanding about their compliance with the 2005 US Supreme Court ruling regarding government speech. However, since the court has spoken, there is some question of whether any further emphasis on attribution is needed.

The increasing size of producing firms and their increasing share of production exacerbates concerns about commodity advertising promotion programs. These programs were initiated because small industries or small players within an industry need collective efforts to generate benefits for those who cannot individually fund the marketing of their products. Now, societal values are shifting towards more market-based competition. This is reflected in the challenges to commodity promotion programs brought by individuals who argue that they can more successfully promote their own interests by using the money directly rather than by contributing it to a collective effort. However, there still are very few agricultural producers of a size able to achieve economies of scale to undertake advertising and promotion on their own.

In the case of commodity export promotion programs, challenges may arise regarding whether they are trade distorting. This could occur in WTO negotiations, or in specific country or regional trade agreements.

### Policy Alternatives and Consequences

Given the recent US Supreme Court ruling and assuming that there is continued general support for collective efforts by undifferentiated commodity producers, what does the future hold? There are several policy alternatives which may improve the effectiveness of the programs, and each has consequences.

First, incorporating exemptions or opt-out provisions for some producers into all programs is a possibility. One of the main objections to the programs is that they are mandatory. But this is at the very heart of why the programs exist at the first place, since strictly voluntary programs seldom are able to garner enough participation in funding to make them effective. Programs which have allowed refunds upon request soon found that they needed to eliminate that option. The egg and the cotton promotion programs are prime examples.

A second policy alternative is to require attribution. This would involve specific acknowledgement in all advertising and promotion which makes it clear that the Federal government authorizes the speech or message involved.

A third alternative is to significantly increase funding under commodity check off programs to focus on providing industry-wide benefits which individuals, no matter how large, are unlikely to be able to successfully fund. In particular, research to identify new product opportunities or to increase marketing and production efficiencies may be beneficial to the industry and consumers. While marketing-focused research is authorized under all the existing programs, most funds go to advertising and promotion. Some programs have already pursued this broader research agenda.

A fourth alternative relates to export promotion programs. It may be necessary to substitute more producer funded revenues to support existing programs in lieu of government support of programs as trade negotiations continue to evolve. While this is not a major issue, some commodities rely significantly on these programs for generating sales in foreign markets.

#### Exemptions and Opt-Out Provisions

An “opt-out” provision may be designed to permit producers in certain categories to be exempted or to decide on their own merits whether or not to contribute to the domestic check-off. Exempting smaller producers, as currently done in most programs, collects funding from only the larger producers who produce the vast majority of the commodity’s commercial production. Perhaps increasing number of producers exempted, for example those producing the last fifteen percent of production, would be efficient and effective. The majority of producers in most commodities produce relatively little of the crop. To the extent commodity promotion is successful in increasing demand, larger firms are the ones most likely to receive a substantial economic benefit. Further, those in the larger size category are more likely to have a role in the evolving market structure and supply chain, either with the dominant supply chain or smaller ones serving niche markets.

In addition, some programs may benefit from allowing “opt-out” refunds to some larger niche producers. For example, this option would include producers marketing products with attributes linked to specific production practices such as is already done with organics. It would be important that the opt-out provisions not apply to all producers since this could undermine the basis of support for the entire program. Consumers, marketing firms and producers all share in the benefits derived from increased demand created by commodity promotion programs. Helping producers better understand their specific potential benefits from funding programs may be necessary to maintain support over the long run.

#### Required Attribution

The option of requiring attribution in all advertising and promotion would be intended to make it clear that the Federal government authorizes the “speech” or message. This possibility has been considered in some state programs, and is currently being pursued in California. This would make it easier to defend any future challenges that may attempt to circumvent the 2005 US Supreme Court ruling. It could add credibility to the messages for those who may be skeptical of industry-sponsored messages. Government costs could be increased if more government oversight were required, but this does not appear to be likely under the current court ruling. A more significant concern may be the potential to dilute the impact of the industry message in the eyes of those who prefer less government involvement and argue that it amounts to “compelled speech.”

### Increased Emphasis on Research

Federal and state government support for research carried out by land grant universities has focused on producing benefits for producers collectively which cannot be captured by individuals. Commodity system research is a primary example where the benefits are generally widely available to the public at large. As federal and state level support has decreased for research and related extension education, it may be increasingly necessary for producers to generate funding to support research that results in collective goods for their individual industry segments.

Most commodity check-off programs currently allow research, although it is often confined to marketing issues. It may be important for maintaining the future competitiveness of U.S. commodities to increase the proportion of funding under commodity promotion programs devoted to research on identifying new product opportunities or to enhance marketing and production efficiencies. Industry participants up and down the supply chain and across size spectrums are likely to benefit from research results, but the distribution of these benefits may remain an issue in finding appropriate mechanisms to implement this alternative.

### Support for Export Promotion

As globalization of markets continues to increase, challenges from imports and opportunities for exports are critical to the success of U.S. commodities generally. Export promotion programs provide one tool for U.S. producers to increase their market share in global markets. However, there is some concern about whether export promotion programs may be considered a form of export subsidy and in conflict with international trade agreements, such as the WTO.

Concerns with these programs over the years have centered around whether corporations in the marketing chain are unfairly benefiting from federally-funded programs, since any gains in demand for exports will obviously benefit processors or handlers. Sorting out the relative distribution of benefits among producers versus processors and handling firms would help to clarify the validity of these concerns. This would also form a basis for potential regulations to address any serious issues identified.

Generally, these FAS administered programs have not been seen as trade distorting, nor a market distorting subsidy. Whether that changes as trade negotiations progress remains to be seen. Perhaps the biggest challenge is to continue to monitor the value of these programs and the distribution of their benefits. Whether legislative language is needed or desirable to assure better monitoring or evaluation might be considered.

### Summary and Conclusions

Commodity promotion and advertising programs have long been used by a number of commodity groups to promote demand expansion for their industry. In recent years there have been frequent challenges to their constitutionality by participants who oppose the programs. This appears to have been exacerbated by the changing industry structure and an increasing dichotomy between larger producers and smaller producers in their ability to participate in evolving market supply chains.

One policy option is to increase exemptions or create opt-out mechanisms which would be designed to reduce the number of proportion of the smallest producers covered. This could reduce the number of program participants to those more likely to experience an observable economic benefit or allow some flexibility.

While the recent US Supreme Court decision in the beef case has brought to a close the argument of the constitutionality of the programs based on freedom of speech arguments, it is expected there will be continuing challenges. They will likely focus on whether the “government speech” undertaken by the programs is attributable to individual producers. However, the 2005 ruling by the US Supreme Court indicates that Congress authorizes collective action on behalf of industry because it sees benefits to the industry as a whole, regardless of whether all producers believe that proposition.

Broadening emphasis in the commodity promotion programs from advertising and promotion to include more funding for collective benefits research is a policy option that may improve product quality, marketing and efficiency of production.

Finally, it is important to assure that programs are carefully structured to avoid conflicts with any current or future trade policies negotiated under WTO or the increasingly prevalent country or regional trade agreements.

With the rapidly changing structure of agriculture and the food industry, there will no doubt be continuing discussion of the role of commodity promotion programs.

#### References:

Crespi, J.M. and McEowen, R.A. (2<sup>nd</sup> Quarter 2006). *The Constitutionality of Generic Advertising Checkoff Programs*. CHOICES, 21(2): 61-65.

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<http://www.law.cornell.edu/supct/search/display.html?terms=johanns&url=/supct/html/03-1164.ZS.html>

Ward, R.W. (2<sup>nd</sup> Quarter 2006). *Commodity Checkoff Programs and Generic Advertising*. CHOICES, 21 (2): 55-60.

Wohlgenant, M.K. (2<sup>nd</sup> Quarter 2006). *Retail-to-Farm Transmission of Generic Advertising Effects*. CHOICES, 21(2): 67-72.

**TABLE 1. Assessments Collected Under National Checkoff Programs \***

<b>Active Programs</b>	<b>Million Dollars</b>
Beef	\$81.6
Blueberries	\$1.4
Cotton	\$71.4
Dairy (Producers)	\$273.1
Eggs	\$20.2
Fluid Milk (Processors)	\$105.7
Haas Avocados	\$17.7
Honey	\$3.5
Lamb	\$2.5
Mangoes	None Currently \$3.9 **
Mushrooms	\$1.4
Peanuts	\$7.0
Popcorn	\$0.6
Pork	\$47.8
Potatoes	\$8.8
Soybeans	\$88.6
Watermelons	\$1.6
<b>Total</b>	<b>\$736.8</b>

\*For most recent audited fiscal year, as of August, 2006. Source: Agricultural Marketing Service, USDA.

\*\* Projected for July 1, 2005 – December 31, 2006 initial budget.

**TABLE 2. Five Largest Research and Promotion Budgets Under Federal Fruit, Vegetable and Specialty Crop Marketing Orders**

<b>Program</b>	<b>Million Dollars *</b>
California fresh nectarines and peaches	\$5.8
Washington and Oregon pears	\$9.2
Cranberries Grown in 10 States	\$1.8
California Almonds	\$23.0
California Walnuts	\$2.1
<b>Total</b>	<b>\$41.9</b>

\*May include some funds from FAS under the MAP program, and are for the 2005-2006 crop year. Source: Agricultural Marketing Service, USDA.