The Packer

Court rules for USDA, Argentina lemons

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Turning back a lawsuit from California growers, the U.S. District Court for the Eastern District of California has ruled in favor of the USDA and Argentina lemon imports. (File photo)

On-again off-again Argentina lemons are back on again.

The U.S. District Court for the Eastern District of California on Feb. 27 ruled in favor of the U.S. Department of Agriculture in a lawsuit brought last May by the U.S. Citrus Science Council and five growers seeking to overturn USDA approval of Argentina lemon imports.

“It was disappointing,” said Joel Nelsen, president of Exeter-based California Citrus Mutual. “We were surprised at the ruling, as we thought we had made a good case in which the rule was promulgated and implemented.”

Citrus leaders are reviewing the ruling to see if there are opportunities to appeal, he said March 1.

“Next week we will try to get our team together to evaluate what next steps could be or would be,” he said. Nelsen said the judge felt the USDA sufficiently adhered to the rulemaking process for Argentina lemon imports, while the citrus industry felt the quality of the process and the result were flawed.

The public affairs office of the USDA Animal Plant Health Inspection Service could not immediately be reached for comment.

Nelsen speculated Argentina lemon imports could begin soon. Imports from the country would typically begin the middle of April and continue for about three months, he said.

Background

The lawsuit by Santa Paula, Calif.-based U.S. Citrus Science Council, Santa Paula Creek Ranch, CPR Farms, Green Leaf Farms, Bravante Produce and Richard Bagdasarian Inc. argued that proper procedures were not followed to develop the rule, which was originally issued in December 2016, subjected to a 60-day stay Jan. 22 and to another 60-day stay March 17 last year. In October, a federal district court concluded the grower plaintiffs and the U.S. Citrus Science Council had standing to pursue their lawsuit against the USDA.

Argentina lemon imports have been a contentious issue.

Since 1947, USDA regulations have barred U.S. imports of Argentina lemon and other citrus. The USDA put forward a rule to lift the ban in 2000 but that regulation was abandoned in 2001 after a lawsuit from the U.S. Citrus Science Council. The U.S. District Court for the Eastern District of California concluded at the time the USDA relied on faulty assumptions in completing its pest risk assessment.

In the 40-page court ruling, the court gave summary judgment to the USDA.The court said that the USDA’s conclusions about the risk associated with Citrus Black Spot disease were not reckless.

“Here, the record indicates that APHIS has thoroughly reviewed the body of academic literature regarding the risk of CBS through imported citrus, both before and in response to the EU study, and reaffirmed their conclusion that imported fruit was not a likely pathway for Citrus Black Spot,” U.S. District Court Judge Lawrence O’Neill said.

Plaintiffs also charged that USDA’s rule to allow Argentina lemon imports was colored by foreign policy considerations, pointing to the fact that, after years of considering the Argentine lemon industry, the lifting of the ban was announced just six weeks after President Obama visited Argentina. Moreover, the lawsuit said in April 2017 President Trump met with President Macri of Argentina. Trump said at the time he intended to use the lifting of the lemon import ban as a bargaining chip in exchange for Argentina’s support in the United States’ efforts to negotiate with North Korea.

Four days after the meeting, USDA APHIS announced the lemon import rule would go into effect May, 26.

The USDA told the court that there was no evidence that the meetings had any bearing on the substance of the final rule.

The court agreed.

“There is simply no support in the record for the proposition that foreign policy considerations overcame the agency’s scientific judgment in formulating the rule,” the judge wrote.

The lawsuit against the USDA also challenged the final rule’s provision that, for 2017 and 2018, Argentine lemons will be imported only into the northeastern U.S.

The growers argued that the port limitation implies the systems approach was not sufficient in the short term to protect domestic citrus crops in California from the threat of quarantine pests.

The USDA countered that the limitation was a concession, proposed by the Argentine government, to U.S. lemon producers who expressed concerns about the importation of Argentine lemons from both a phytosanitary and an economic perspective.

The court sided with the USDA.

“(The temporary port restriction) was a discretionary and voluntary concession by Argentina and APHIS to domestic citrus producers, not a reconsideration of the scientific judgment underpinning the Final Rule,” the judge wrote. “The northeast port limitation does not render the Final Rule arbitrary and capricious.”