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Industry Agrees on Sec. 199A Fix; Challenge is Getting Congress to Act

Trade groups representing farmer-owned cooperatives and the grain industry this week hashed out a final fix to a section of the new tax reform law that upended grain markets, tilting sellers to co-ops and away from private companies and grain elevators. The challenge now is getting the fix through Congress and to President Trump's desk.

To remedy problems created by the new Sec. 199A deduction for cooperatives – the new tax law repealed the old Sec. 199 manufacturing deduction enjoyed by co-ops and redefined co-ops as "pass-through" business entities under Sec. 199A to mimic the benefits of Sec. 199 – is to reinstate benefits for cooperatives similar to those in Sec. 199, bringing back at least parts of the Domestic Production Activities Deduction (DPAD). The fix, retroactive to January 1, repeals co-op pass-through status and the 20% deduction on gross sales given to cooperatives under Sec. 199A.

"The stakeholder concepts on which this legislative language is based have been analyzed and reanalyzed in excruciating detail by tax experts representing both cooperative and private/independent businesses, as well as congressional tax staff experts," said Randy Gordon, National Grain & Feed Assn. (NGFA) president. "We believe the solution merits enactment so that competitive choices remain available to agricultural producers and the marketplace – not the tax code – determines with whom they do business."

Under the deal, cooperative members would not be allowed to deduct 20% of their sales, but producers selling directly to cooperatives would get a DPAD deduction from their co-ops. Another 20% deduction from net farm income would be allowed, minus 9% of that net farm income or 50% of wages paid, whichever is less, according to one ag economist's blog post reported by *Agri-Pulse*. If a farmer sold to both private companies and cooperatives, two income streams would have to be kept separate to calculate taxes, the blog said.

The National Council of Farmer Cooperatives (NCFC), reluctant to give up the unintended benefits of the new Sec. 199A, said, "This is contrary to how the old DPAD operated," and NCFC doesn't think the fix is enough to make co-ops whole because farms set up as C corporations would not be eligible for the 20% deduction.

Ag groups generally applauded the action, which took weeks to negotiate, with NCFC and NGFA formally endorsing the deal, jointly asking that the fix be included in the FY2018 omnibus spending bill up for a likely vote next week. Senate Minority Leader Chuck Schumer (R, NY) has not blessed including the Sec. 199A repair language in the omnibus, and may use the much-needed fix to try and leverage other changes to the tax reform law.

"Federal tax policy should not be picking winners and losers in the marketplace," said USDA Undersecretary for Marketing & Regulatory Affairs Greg Ibach. "We applaud Congress and stakeholders for coming together and agreeing to a solution for the good of all agriculture. At USDA, we will provide whatever information is necessary to support Congress in its efforts to have the proposal included in the Omnibus appropriations bill."

“We would welcome the opportunity to have a bipartisan agreement on changing some of the bad parts of that tax bill,” Schumer said. One target for Schumer – the “transaction cost” for getting out of the way of the 199A fix – is getting inclusion of a $2-billion low-income housing tax credit dumped from the code during the tax reform evolution. House Minority Leader Nancy Pelosi (D, CA) said this week she’s willing to work with the GOP to get the 199A fix in place, or as she put it, “I’m open to having a bipartisan conversation about the problem.”

Congress Unwilling to Wade into Steel Tariff Battle; Industry Continues to Warn Trump of Backlash

Even with Sen. Jeff Flake (R, AZ) introducing legislation this week to block President Trump’s move to impose tariffs on imported steel and aluminum, it’s unlikely Congress will engage on the tariff issue. First, it appears at this point most of the U.S. major trade partners will wind up exempted from the new levies, and second, the GOP congressional agenda is packed, and there’s no political will to get into a public confrontation with Trump in an election year.

Meanwhile industry – including a big chunk of agriculture – is hammering the White House on the consequences of a trade war possibly precipitated by the tariffs. Farmers and ranchers will launch a television ad campaign on Fox News, MSNBC and in Palm Beach, Florida media markets next month detailing the damage such a trade war would have on ag exports.

A Washington, DC, analytics firm released a report this week claiming that should a trade war ensue over the steel/aluminum tariffs, up to 24,000 ag jobs may disappear. The report assumes major trading partners – the European Union (EU), Japan, Brazil and Korea – move to restrict U.S. imports. The processed food industry could lose up to 6,000 jobs, the company said, while trade and distribution service job losses could tally nearly 132,000. New steel and aluminum jobs would total about 6,000.

Flake’s bill – one of several introduced to block the 25% tariff on steel and the 10% tariff on aluminum imports – is designed to head off a trade war with major importers of U.S. goods. “If we enter a trade war, we risk reversing those gains we’ve made, and we in Congress cannot be complicit as this administration courts economic disaster in this fashion,” the lawmaker said. “You can be pro-growth; you can be pro-tariff, but you can’t be both.”

Sen. John Cornyn (R, TX) said of the congressional effort to convince the president to narrow the tariff targets, “We’re making progress without legislation.” Sen. John Thune (R, SD) said, “We’re doing the best we can to persuade folks in the administration to scale this back to make it less harmful.”

Agriculture Secretary Sonny Perdue praised Trump for allowing exemptions in the tariff scheme for Canada, Mexico and Australia, particularly during NAFTA 2.0 negotiations. Those exemptions were hard won, Perdue said, adding, “I’m grateful, frankly. We worked for the flexibility to make sure Canada and Mexico during these NAFTA negotiations were not included.” Perdue wants similar exemptions to be extended to European and Asian allies.

The EU and Japan said they’re awaiting details of how the U.S. will grant exemptions to trading partners based on national security and trade balance calculations. U.S. Trade Representative (USTR) Robert Lighthizer met this week with Japan’s Minister of Economy Hiroshige Seko and EU Trade Commissioner Cecilia Malmstrom, promising them the guidelines would be “published very soon.” Malmstrom said she didn’t leave the Lighthizer meeting “with sufficient clarity” on the U.S. program.

Malmstrom said the EU is "very disappointed…that long-standing allies and security partners from Europe need to justify their exports…and to prove they are not a threat to U.S. security."

Malmstrom also told the media this week the EU has put together two lists of U.S. exports against which it would retaliate if the political bloc is not exempted. First, the EU would offer the U.S. 30 days of consultation on the tariff tug-of-war, but within 90 days could begin retaliation using the two lists of targeted products, including U.S. food and agriculture products. The first list would target $3.4 billion in tariffs – equivalent to the value of EU steel sold to the U.S. – which can be set immediately; the second list carries another $3.2 billion in tariffs which would kick in after three years.

Trump Orders Separate $30-Billion-PlusTariff List on Chinese Exports, Targets Investment in U.S., Visas

As if ag exporters weren't nervous enough about the future of NAFTA and possible global retaliation for U.S. steel and aluminum import tariffs, President Trump has ordered the U.S. Special Trade Representative (USTR) to come with a three-part trade hit on China, including up to $30 billion in U.S. tariffs on imports of a laundry list of over 100 Chinese products.

Word of the Chinese targeting first emerged from last week's cabinet meeting, with Trump saying he wants to take on not only Chinese imports, but investment in the U.S. and restrictions on U.S. visas for Chinese workers. The action is aimed at claims of Chinese "theft" of U.S. intellectual property and technology, according to reports, referring to U.S. companies' complaints about China's "technology transfer" requirements that foreign companies hand over underlying science/technology in order to do business in the country.

The tariffs, authorized under Sec. 301 of the Trade Act of 1974, would begin at $30 billion and might be increased to a higher amount, Trump said, and told his cabinet and senior staff to expect a formal announcement as early as next week.

When word of the China-specific tariffs leaked, the U.S. Chamber of Commerce said such action against Chinese imports "could lead to a destructive trade war with serious consequences to the U.S. economic growth and job creation." Others contend it may just be the "big stick" needed to get China to the negotiating table.

The second part of the plan is to restrict Chinese investment in the U.S., though for now Trump is asking for "concepts" on how that might be achieved given not only World Trade Organization (WTO) concerns, but potential U.S. legal restrictions. Trump said he's also considering restricting Chinese visas, a move that would hit students at school in the U.S. in science and technology programs and Chinese workers in other sensitive jobs. The president may also slap a restriction on U.S. sales of certain domestic technologies and products – particularly those with both military and non-military applications – as part of the program.

Bills to Consolidate Producer Regulatory Reform, Protections, EPA Exemptions introduced

Led by Sen. John Barrasso (R, WY), chair of the Senate Environment & Public Works Committee, legislation to eliminate regulatory burdens while consolidating regulatory exemptions and protections for farmers and ranchers were introduced this week in both the Senate and House.

The so-called ACRE Act consolidates eight other bills with protections ranging from legislating an exemption from CERCLA emissions reporting requirements for "normal" farms and ranches to ending a redundant permitting program at EPA for pesticide applications near water, a problem Congress has tried to solve several times over the last six years. A companion bill was introduced this week in the House.

The keystone of the Barrasso bill is legislation by Sen. Deb Fischer (R, NE) that removes farms and ranches from Superfund reporting requirements on ammonia emissions. The bill formalizes a 2008 administrative exemption by EPA for farmers and ranchers lost in a recent court decision.

Also included is language protecting the personal information supplied by farmers and ranchers as part of EPA registration and reporting, and protecting farms and ranches from being fined for "normal agricultural operations that could be considered 'baiting' of game birds."

Committee ranking member Sen. Tom Carper (D, DE) said he's not on board with all parts of the Barrasso bill, particularly as they might affect wildlife protection.

Conaway Cancels Farm Bill Introduction, Committee Mark-up Over Food Stamp Fracas

House Agriculture Committee Chair Mike Conaway's (R, TX) ambitious schedule to introduce, debate and approve a 2018 Farm Bill during the first quarter of 2018, was derailed this week as committee Democrats, opposed a move to tighten federal food stamp eligibility language in Conaway's draft bill, forced the chair to call off next week's planned bill introduction and committee markup.

Sources indicate Conaway is hoping to reschedule the bill's public unveiling and committee markup for after April 10, when Congress returns from its two-week spring break. That would jive with Senate Agriculture Committee Chair Pat Roberts' (R, KS) hoped-for release of his committee's version of the omnibus USDA program bill.

Rep. Collin Peterson (D, MN), committee ranking member, this week delivered to Conaway a letter from all 19 committee Democrats demanding talks over Supplemental Nutrition Assistance Program (SNAP) eligibility requirements cease until they see specific bill language along with cost estimates prepared by the Congressional Budget Office (CBO). "I'm not sure where this will take us, but it will give members information about what is actually being proposed," Peterson said.

Democrat members complained that while Conaway has briefed them on changes contemplated in various Farm Bill programs, details of SNAP changes have been largely learned from the media. That frustration led to the Democrats' letter Peterson delivered to Conaway this week. "My next steps are clear and I will not be continuing negotiations with the chairman per the unanimous request of all Democrats on the committee," Peterson said.

Complicating the process is the fact Peterson has had both the bill language and the CBO cost estimates since late February, according to a committee spokesperson. Peterson says he didn't share either document with committee members because Conaway asked him not to, and that Conaway has not reported to him how proposed SNAP changes will affect food stamp recipients.

At issue is a GOP move to raise the age limit on "able-bodied" SNAP recipients who don't have dependent children, making more work at least 20 hours per week to get food stamps. Also being questioned are contemplated changes to "categorical eligibility" criteria, which allows recipients of other welfare programs to automatically qualify for food stamps, and some programs states use to increase SNAP benefits. Critics say the moves are simply a way of driving about 8 million SNAP beneficiaries off the program's roles to save money.

RIN Reform Looking More Likely as RFS/RIN Meetings Continue; Biodiesel Tax Credit Push Heats Up

USDA, EPA and senior White House staff continued to meet this week chasing ways in which the Renewable Identification Number (RIN) program can be modified to make it more "transparent" and less volatile. USDA and EPA also continued to talk with industry stakeholders, including crop and alternative fuel producers, in hopes of finding what President Trump has called a "win-win" solution on fixes to the RIN program and the Renewable Fuel Standard (RFS).

More administration meetings are expected this week, but likely will not include stakeholders.

In a related biofuels development, feedstock suppliers and makers of biodiesel and renewable diesel took advantage of a House Ways & Means Committee taxation subcommittee hearing this week, ramping up efforts to get their $1-per-gallon blenders' tax credit extended at least through 2018. The biodiesel industry was disappointed a recent tax extender bill approved by Congress renewed the blenders' credit only for calendar 2017.

The ethanol and biodiesel industries have rejected out of hand a proposal by Sen. Ted Cruz (R, TX) to cap RIN prices – he contends high RIN prices and volatile, speculative trading endangers small petroleum refiners – fearing the negative impact on corn and soybean producers who sell feedstocks into biofuels refining, compounded by lost gallons produced by refiners and increased imports. However, they're concerned more and more attention is being paid by the White House to a possible two-year cap on RIN prices in exchange for allowing E15 to be sold year-around.

Agriculture Secretary Sonny Perdue used a Capitol Hill appearance at the Senate Commerce Committee to restate his strong support for the biofuels industry, his support for year-around sales of E15 and his opposition to a RIN cap, according to reports. At the same time, EPA Administrator Scott Pruitt told gathered farmers in Washington, DC, this week that limiting who can trade RINs and thereby limiting speculation in the RIN market, is an option he's looking at closely.

The blender's tax credit issue plays directly into the RIN debate, says industry. If Congress were to extend the tax credit for 2018, the impact would be to automatically lower RIN prices by as much as 10-15 cents per gallon, industry groups say. All industries testifying at this week's hearing on extenders said they want to see extensions included in the FY2018 omnibus appropriations bill.

At the Ways & Means Committee subcommittee hearing, called by panel Chair Vern Buchanan (R, FL), beneficiaries of various tax breaks not extended through 2018 were allowed to come in make a case for why their particular federal credit should be renewed or made permanent. Buchanan, echoing full committee Chair Kevin Brady (R, TX), posited to witnesses that "only special circumstances" might lead to extensions given many of the tax credits are unnecessary now that more friendly federal corporate tax rates are in place.

Support for the biodiesel blenders' tax credit was strong, with several subcommittee members on both sides of the aisle calling for making the credit permanent. As to Buchanan's assertion that tax reform can supplant the tax credit, industry argues many biodiesel refiners are small companies not benefitting as much as Buchanan thinks.

PRIA on the Brink Again

EPA's money-generating pesticide registration program, set to be authorized by the Pesticide Registration Improvement Act (PRIA), is once again on the brink as its funding runs out on March 23 if Congress does not pass either an omnibus spending package or another continuing resolution (CR).

The fees paid by crop chemical manufacturers for registration and maintenance account for about 33% of EPA's pesticide program budget.

A bill reauthorizing PRIA passed the House last year, but the Senate Agriculture Committee, despite a hearing on the issue, saw Sen. Tom Udall (D, NM) put a hold on the bill because critics contended it weakened pesticide worker protection standards. EPA has since said it intends to publish proposals for enhanced worker protections, but hasn't given a target date.

Meanwhile, a handful of Senate Democrats offered up a substitute PRIA version that would stop EPA from weakening worker protection standards or certification of pesticide applicator rules, as well make the agency jump through new hoops on its decision to find chloryphos safe for continued use.

Dodd-Frank Reform Bill Moves from Senate to House; House Wants to Parlay

A bill to loosen federal regulation of small and community banks currently regulated under the Dodd-Frank law was approved by the Senate this week, but is on hold in the House until Senators signal they're willing to negotiate on changes to the bill by going to conference to reconcile the two chambers' efforts on reform.

"We're not rubberstamping the bill," said House Financial Services Committee Chair Jeb Hensarling (R, TX). "It's got to be bicameral and bipartisan." The Senate bill was approved with the support of 13 Democrats. Hensarling also said he's not holding talks with any Senators right now.

The issue is the Senate's unwillingness to include – or even discuss – in the final bill a handful of measures already approved by Hensarling's committee or the full House, most with at least some bipartisan support. However, some Senate Democrats say they're not willing to reopen the bill to accommodate up to a dozen House measures.

While the Senate crafted an original bill to provide relief to community banks and smaller institutions, particularly those in rural communities, the House, through Hensarling's committee, rewrote or sought to outright repeal of major sections of the Dodd-Frank law. Dodd-Frank was enacted after the economic crisis of the 2008. The Senate wouldn't take up the House bill, deeming it too conservative.

Syngenta Reaches Deal with Corn Producers

In 2013, when China refused for almost a year to accept U.S. corn because export shipments contained or may have contained a genetically modified Syngenta variety not on China's approved list, farmers – those who planted the Syngenta seed and those who didn't – alleged it cost them millions in lost sales, and promptly sued the company. This week, in what some are calling the largest agricultural litigation settlement in history, Syngenta agreed to pay those farmers and others $1.51 billion.

The preliminary settlement filed in Kansas allocates $1.5 billion to be paid to four plaintiff categories, including those who bought Syngenta variety; farmers who didn't buy the Syngenta GM corn; grain handling facilities and ethanol refiners who sold corn priced after Sept. 15, 2013, according to the federal court filing in Kansas. Of the total, grain handling facilities and ethanol makers will get about $72 million.

According to Reuters, Cargill is still pursuing separate claims against Syngenta and is not part of the settlement. Archer Daniels Midland Co. announced it reached a separate settlement with the company in February.