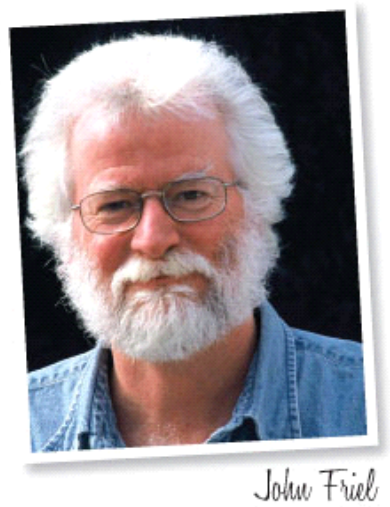
greenPROFIT

4/28/2015

Smoot Points

John Friel



Ah, May. The lovely, lusty month when a plantsman's fancy turns to thoughts of the Smoot-Hawley Tariff Act of 1930.

Where I work, May is catalog prep time. A catalog is the most visible part, aside from plants themselves, of a lot of backstage planning. There's sowing seed or sticking and rooting cuttings, divisions and TCs. There's feeding, forcing, establishing lead times, building stock to critical mass, fine-tuning cultural protocols and so on.

Before those steps is another flight: Choosing promising candidates to introduce, gathering and testing samples, shooting or acquiring quality images, selecting and labeling said images, writing accurate descriptions, setting prices that promise profit without throwing up barriers to sales.

When one has scaled all those, it's time for the new item to find its way in the world. Like a mother bird evicting fledglings from the nest, you cast it into the forest of the marketplace. You've done all you can. It will flourish or fail, fly or face plant, on its own wings.

Part of the description process involves getting the ink right on proprietary rights, especially patents. Nearly all the coolest new plants now testing their wings come with a string of letters—PPAF, USPPP, PBR—and/or a 5-digit patent number, and maybe a couple of different names. The registered cultivar name is often a nonsensical string of letters and numbers, which violates the International Code of Botanical Nomenclature and the International Code of Nomenclature for Cultivated Plants, but those, alas, are gentlemen's agreements that cut no ice with the Patent Office. Then there are marketing names, sometimes trademarked, sometimes not; sometimes a series, sometimes not; and sometimes a name change to enhance sales in other markets, e.g., Europe.

For example: An excellent new grass, *Festuca glauca* 'Casca11', USPP23307, is sold in America as Beyond Blue (trademarked). In Europe, it's Intense Blue. That's one of the easier ones. Those of us who try to keep such things straight often find ourselves navigating what seems like willful obfuscation on the part of

breeders who are really, usually, just trying to maximize the capitalization.

I digress, as usual, but less than usual. Because that's where a controversial act of Congress, marking its 85th birthday this year, fits in: Title III of Smoot-Hawley is the Plant Patent Act, the root of it all.

Horticultural legend Luther Burbank argued passionately for legislation enabling breeders to profit from their "inventions" just like those who conjured new mechanical and electrical devices. Congress granted his wish four years after his death, swayed in part by fellow legend Thomas Edison, who promised that plant patents would "give us many more Burbanks." The USPTO granted Burbank 16 patents posthumously.

The rest is history and we're living it. Most, but not all, economists believe that Smoot-Hawley exacerbated the Great Depression. Eighty-five years on, fiscal pundits still get their panties in a major twist over this. Eighty-five years on, some people are still offended by the idea of patenting living things. To them I say, sorry—genies are notoriously reluctant to slink back into their bottles.

We're left with important questions: Will the confusion and complexity ever clear? Did Smoot-Hawley get at least one thing right? Could a man named Reed Smoot be elected Senator now, even in Utah? Answers: No, Yes and Maybe.

I don't know how many Burbanks have been spawned, but it's no coincidence that as patents proliferate—we're beyond 25,000 and still counting—we enjoy an unprecedented supply of interesting new plants to grow and sell. And royalties are the wind beneath their wings.

Happy Birthday, Smoot-Hawley. **GP**

John Friel is marketing manager for Emerald Coast Growers and a freelance writer.