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SUMMARY

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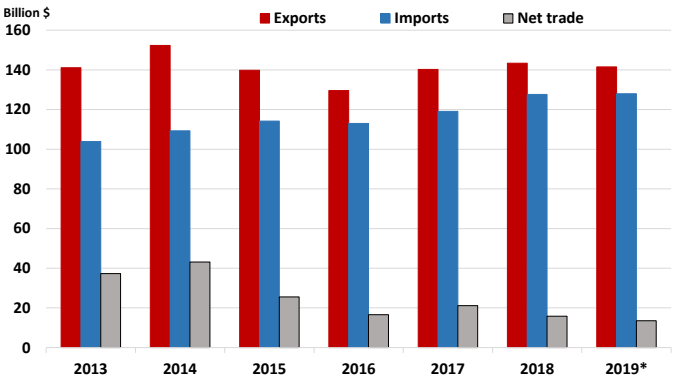
Sales of U.S. agricultural products to foreign markets absorb about one-fifth of U.S. agricultural production, thus contributing significantly to the health of the farm economy. Farm product exports, which totaled $143 billion in FY2018 (see chart below), make up about 9% of total U.S. exports and contribute positively to the U.S. balance of trade. The economic benefits of agricultural exports also extend across rural communities, while overseas farm sales help to buoy a wide array of industries linked to agriculture, including transportation, processing, and farm input suppliers.

U.S. Agricultural Trade, FY2013-FY2019



Source: USDA, Outlook for U.S. Agricultural Trade, AES-107, February 2019.

Notes: *denotes forecast. Data is not adjusted for inflation.

Congress has traditionally displayed a keen interest in agricultural trade issues given their importance to farmers and ranchers and to the overall economy. A major area of interest for the 116th Congress has been the loss of overseas export market shares for agricultural products due to the direction of the Trump Administration's trade policy, which places increased emphasis on reducing the overall U.S. trade deficit. In March 2018, the Trump Administration imposed Section 232 tariffs on U.S. imports of steel and aluminum from most countries and additional Section 301 tariffs on a number of imports from China. Following these actions, Canada, China, Mexico, the European Union (EU), and Turkey imposed retaliatory tariffs on more than 800 U.S. agricultural and food product exports. In response, USDA authorized $12 billion in short-term assistance to the affected agricultural producers and commodities under its Market Facilitation Program to help mitigate the economic impact on farmers.

A number of policy developments undertaken by the Trump Administration in bilateral and regional trade agreements may affect agricultural markets as well. On the Administration's initiative, the North American Free Trade Agreement (NAFTA) has been renegotiated and signed as the U.S.-Mexico-Canada Agreement (USMCA). This agreement is subject to legislative ratification by Canada and Mexico and approval by U.S. Congress. President Trump withdrew the United States from the Trans-Pacific Partnership (TPP) in January 2017. In March 2018, the remaining 11 countries concluded a revised version of TPP, the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP). Signatories of CPTPP have begun to reduce tariffs and provide greater agricultural market access for imports from CPTPP signatory countries, actions that could potentially erode U.S. agricultural market shares in the region. At the bilateral level, the Trump Administration has notified Congress of its intent to begin trade negotiations with Japan (a CPTPP member), the EU, and the United Kingdom.

At the global level, and at the initiative of the United States, the World Trade Organization (WTO) recently ruled that China has subsidized its agricultural production beyond the level permitted under its WTO obligations and that China's administration of its agricultural market access policies are inconsistent with its WTO obligations. The United States has also filed a counter notification against India at the WTO stating that India has underreported its agricultural domestic subsidies.

Several other agricultural trade issues may be of interest to Congress. For example, the proposed USMCA does not address all the issues that restrict U.S. agricultural exports to Mexico and Canada, and Southeastern U.S. produce growers have been seeking changes to trade remedy laws to address imports of seasonal produce. A key objective of U.S. trade negotiations continues to be the establishment of a common framework for approval, trade, and marketing of the products of agricultural

biotechnology. U.S. farm and food interests see the potential for market expansion opportunities in Cuba, but a prohibition on private U.S. financing is generally viewed as a major obstacle to this end. Moreover, the United States has announced its intention to withdraw eligibility for the Generalized System of Preference (GSP)—which provides duty-free tariff treatment for certain products from developing countries—from Turkey and India. On another front, U.S. exports of beef, pork, and chicken continue to face bans and trade restrictions over disease outbreaks even though the bans are inconsistent with international trade protocols, among which are China's ongoing bans on imports of U.S. beef and poultry and restrictions imposed by several foreign markets on U.S. ractopamine-fed pork.

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Introduction

This report identifies selected current major trade issues for U.S. agriculture that may be of interest to the 116th Congress. It provides background on individual trade issues and attempts to bring perspective on the significance of each for U.S. agricultural trade. Each trade issue summary concludes with an assessment of its current status.

The report begins by examining a series of overarching issues. These issues include U.S. agricultural trade and its importance to the agricultural sector, a brief description of the trade policy being pursued by the Trump Administration and its ramifications for U.S. agricultural exports, the Administration's actions to mitigate the economic impact on agriculture from retaliatory actions by trading partners against its trade policies, and the implications for U.S. agriculture of the U.S. withdrawal from the Trans-Pacific Partnership (TPP) agreement. The report then reviews a number of ongoing trade disputes and trade negotiations while also examining a series of narrower trade issues of importance to the agricultural sector. The format for these more focused trade issues is similar, consisting of background and perspective on the issue at hand and an assessment of their current status.

Overview of U.S. Agricultural Trade[1]

U.S. agricultural exports have long been a bright spot in the U.S. balance of trade, with exports exceeding imports in every year since 1960. In recent years, the value of farm exports have experienced a downturn from the record level recorded in FY2014. The U.S. Department of Agriculture (USDA) forecasts U.S. agricultural exports in FY2019 at $141.5 billion (see **Figure 1**). If realized, this total would represent a decline from FY2018, when exports totaled $143 billion. Exports in FY2018 were $3 billion above the FY2017 total but almost $11 billion below the peak of $152.3 billion in FY2014.[2] The decline in the value of farm exports since FY2014 initially reflected lower market prices for bulk commodities, such as soybeans and corn. Agricultural prices and U.S. exports of certain bulk commodities such as soybeans were further affected in 2018 by retaliatory tariffs imposed on selected U.S. agricultural imports by China, Canada, Mexico, the European Union (EU), and Turkey.[3] The retaliatory tariffs were in response to the Trump Administration's imposition of Section 301 tariffs on certain imports from China and Section 232 tariffs on U.S. imports of steel and aluminum.

U.S. agricultural imports are forecast to total $128 billion in FY2019, slightly up from $127.6 billion in FY2018, resulting in an agricultural trade surplus of $13.5 billion. This would be below the surplus of $15.8 billion in FY2018 and below the record high in nominal dollars of $43.1 billion in FY2014.

Agricultural exports are important both to farmers and to the U.S. economy. During the calendar years 2017 and 2018, the value of U.S. agricultural exports accounted for 8% and 9% of total U.S. exports, respectively, and 5% of total U.S. imports, according to the U.S. Census data.[4] As

[1] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS.

[2] USDA, Economic Research Service (ERS), "Outlook for U.S. Agricultural Trade," AES-107, February 21, 2019.

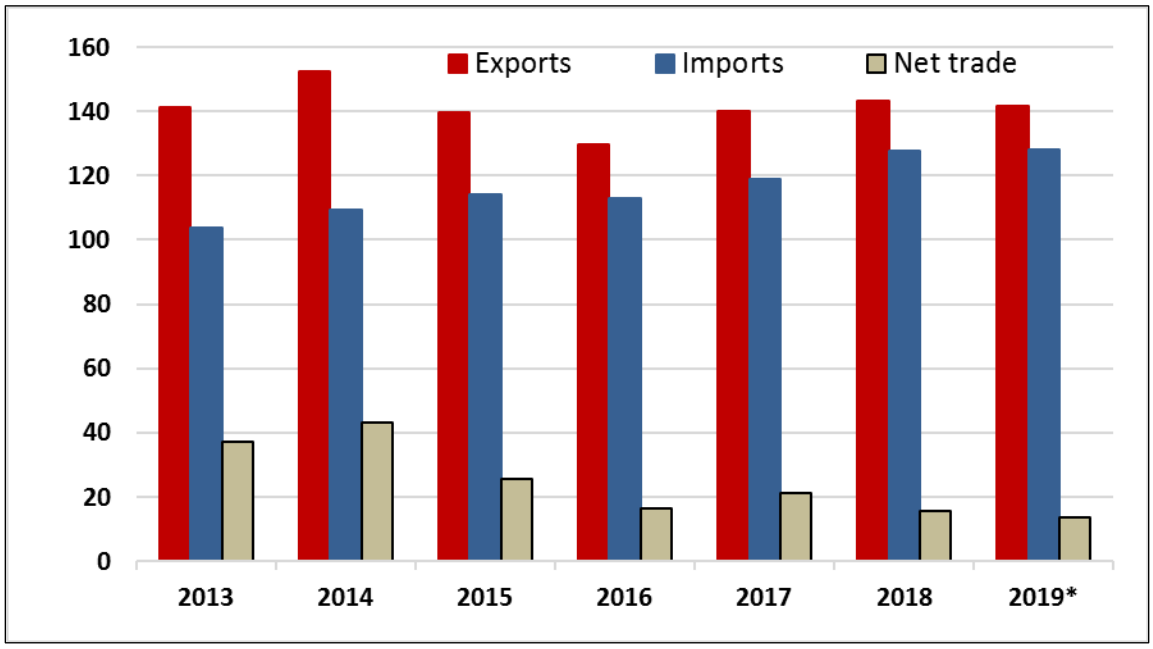
[3] For more information on this issue, see CRS Report R45448, *Profiles and Effects of Retaliatory Tariffs on U.S. Agricultural Exports*.

[4] U.S. Census, https://www.census.gov/foreign-trade/Press-Release/current_press_release/exh15.pdf. USDA generally expresses agricultural trade forecasts on a fiscal year basis, but is expressed here on a calendar year basis to allow for a comparison with Census Bureau data of all U.S. merchandise trade.

for the contribution of U.S. agricultural exports to the overall U.S. economy, USDA's Economic Research Service (ERS) estimates that in 2017 each dollar of U.S. agricultural exports stimulated an additional $1.30 in business activity. Moreover, that same year, U.S. agricultural exports generated an estimated 1,161,000 full-time civilian jobs, including 795,000 jobs outside the farm sector.[5]

Figure 1. U.S. Agricultural Trade, FY2013-FY2019

billion U.S. dollars



Source: USDA, "Outlook for U.S. Agricultural Trade," AES-107, February 2019.

Notes: * denotes forecast. Data is not adjusted for inflation. *Net trade* denotes the trade surplus, which is the difference between U.S. exports and U.S. imports.

With the productivity of U.S. agriculture growing faster than domestic demand, farmers and agriculturally oriented firms rely on export markets to sustain prices and revenue. Within the agricultural sector itself, the importance of exports account for around 20% of total farm production by value.[6] Export markets are a major outlet for many farm commodities, absorbing over one-half of U.S. output for cotton and about half of total U.S. production for wheat, soybeans, and some specialty crops.[7]

Within the overall mix of agricultural exports, soybeans, corn, other feed crops, and wheat continue to rank at or near the top of the list of farm exports by volume. The high-value product (HVP) category—which includes such products as live animals, meat, dairy products, fruits and vegetables, nuts, fats, hides, manufactured feeds, sugar products, processed fruits and vegetables,

[5] ERS, Effects of Trade on the U.S. Economy, 2017 Data Overview.

[6] ERS, "U.S. Agricultural Trade, Export Share of Production," https://www.ers.usda.gov/topics/international-markets-us-trade/us-agricultural-trade/data/.

[7] CRS calculations based on USDA, Foreign Agricultural Service (FAS), Production Supply and Demand Online, https://apps.fas.usda.gov/psdonline/app/index.html#/app/home.

and other processed food products—comprises the largest share of exports in value terms. In FY2018, the HVP share of the value of U.S. agricultural exports represented 66% of the total.[8]

All U.S. states export agricultural commodities, but a minority of states account for a majority of farm export sales. In calendar year 2017, the 10 leading agricultural exporting states based on value—California, Iowa, Illinois, Texas, Minnesota, Nebraska, Kansas, Indiana, North Dakota, and Missouri—accounted for 57% of the total value of U.S. agricultural exports that year.[9]

Status: In December 2018, Congress reauthorized major agricultural export promotion programs through FY2023 with the passage of the so-called 2018 farm bill (P.L. 115-334).[10] Title III of the farm bill includes provisions covering export credit guarantee programs, export market development programs, and international science and technical exchange programs that are designed to develop agricultural export markets in emerging economies.

Trump Administration Trade Policy[11]

In establishing policy for U.S. participation in international trade, the Trump Administration has placed increased emphasis on trade deficits,[12] which it views as an indicator of "unfair" foreign trade practices,[13] with potential implications for U.S. industry and jobs. With the objective of reducing trade deficits, the Administration's trade policy has focused on withdrawing from or renegotiating existing trade agreements that the Administration views as being "unfair;" initiating new bilateral agreements; and responding to the trade practices of U.S. trade partners (whether geopolitical ally or adversary) that it views as unfair, illegal, or threatening to U.S. industry, with punitive[14] trade actions.[15] The punitive actions have included the imposition of Section 232 tariffs on U.S. imports of steel and aluminum and Section 301 tariffs on U.S. imports of products from China. The direction of the Administration's trade policy—for example, withdrawing from the Trans-Pacific Partnership (TPP) agreement with Japan and 10 other Pacific-facing nations and engaging in trade disputes with important agricultural trading partners that have resulted in

[8] ERS, Data Products, https://www.ers.usda.gov/data-products/foreign-agricultural-trade-of-the-united-states-fatus/fiscal-year/.

[9] ERS, Data Products, https://www.ers.usda.gov/data-products/state-export-data/.

[10] For more information on this issue, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*.

[11] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS.

[12] A trade deficit represents an imbalance whereby U.S. imports from a particular trading partner exceed U.S. exports to that same country during a particular time period, usually a year. A trade surplus would occur with a trading partner when U.S. exports exceed imports from that country.

[13] The White House, "President Donald J. Trump Is Fulfilling His Promise on the United States–Korea Free Trade Agreement and on National Security," September 24, 2018, https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-fulfilling-promise-united-states-korea-free-trade-agreement-national-security/. See also U.S. Trade Representative (USTR), *The President's 2017 Trade Policy Agenda*, https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/Chapter%20I%20-%20The%20President%27s%20Trade%20Policy%20Agenda.pdf.

[14] Punitive actions impose trade constraints on trading partners with the objective of bringing change to that partner's trade practices that the United States views as being unfair, illegal, or threatening to U.S. industry.

[15] For more information on this issue, see CRS Report R45249, *Section 232 Investigations: Overview and Issues for Congress*; CRS In Focus IF10156, *U.S. Trade Policy: Background and Current Issues*; CRS Report R45529, *Trump Administration Tariff Actions (Sections 201, 232, and 301): Frequently Asked Questions*; and CRS In Focus IF10708, *Enforcing U.S. Trade Laws: Section 301 and China*.

retaliatory tariffs on U.S. agricultural products—has coincided with market share losses for certain U.S. agricultural exports.[16]

The Trump Administration has taken the position that current trade agreements to which the United States is a party and where the U.S. has a trade deficit or where the Administration perceives that the United States is being treated unfairly must be renegotiated or the United States will withdraw from them.[17] Furthermore, the Administration questions the benefits of multi-party agreements, viewing them in some instances as improper vehicles for achieving meaningful negotiations.[18] The Administration has also threatened to withdraw from the World Trade Organization (WTO) if it fails to undergo certain reforms.[19] In January 2017, the Trump Administration withdrew from the TPP, which was subsequently concluded by the remaining TPP signatories under a modified framework renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in March 2018.[20] Under U.S. initiative, the North American Free Trade Agreement (NAFTA) was renegotiated as the U.S.-Mexico-Canada Agreement (USMCA).[21] USMCA was signed by the leaders of the three nations in November 2018 but requires legislative ratification to enter into force.

In contrast to the Trump Administration's view of regional or multilateral negotiations, the Administration believes that greater potential gains can be achieved under bilateral negotiations where two countries can negotiate directly in the absence of group consensus.[22] The Administration has sought to update some existing bilateral trade agreements and open new bilateral negotiations:

- The Administration negotiated selected modifications to the U.S.-South Korea free trade agreement.[23]
- The Administration has notified Congress of its intent to begin negotiations under Trade Promotion Authority (TPA)[24] with trading partners including Japan, the EU, and the United Kingdom (UK).
- The Administration is currently engaged in bilateral trade negotiations with China in an attempt to resolve the current trade dispute that has resulted in retaliatory tariffs on a wide range of U.S. agricultural products.[25]

Status: The Administration's trade policy actions have in some cases resulted in retaliatory tariffs against U.S. agricultural product exports, while the status of new agreements with several important agricultural trading partners, such as Canada and Mexico, remains uncertain. U.S.

[16] For more information on this issue, see CRS Report R45448, *Profiles and Effects of Retaliatory Tariffs on U.S. Agricultural Exports*.

[17] USTR, *The President's 2017 Trade Policy Agenda*.

[18] USTR, *The President's 2017 Trade Policy Agenda*.

[19] For more information on this issue, see CRS Insight IN10945, *The World Trade Organization (WTO): U.S. Participation at Risk?* Also see Section "WTO and U.S. Agriculture."

[20] For more information on this issue, see CRS In Focus IF10000, *TPP: Overview and Current Status*. See also section "U.S. Withdrawal from Trans-Pacific Partnership (TPP)."

[21] For more information on this issue, see CRS Report R45661, *Agricultural Provisions of the U.S.-Mexico-Canada Agreement*; CRS In Focus IF10997, *Proposed U.S.-Mexico-Canada (USMCA) Trade Agreement*. Also see Section "U.S.-Mexico-Canada Agreement (USMCA)."

[22] USTR, *The President's 2017 Trade Policy Agenda*.

[23] For more information on this issue, see CRS In Focus IF10733, *U.S.-South Korea (KORUS) FTA*.

[24] For more information on this issue, see CRS In Focus IF10038, *Trade Promotion Authority (TPA)*.

[25] For more information on this issue, see CRS Report RL33536, *China-U.S. Trade Issues*.

agricultural exports continue to be subject to retaliatory tariffs imposed by trading partners in response to the Administration's imposition of Section 232 tariffs on steel and aluminum and Section 301 tariffs on China. The signed USMCA awaits consideration by Congress and ratification by Canada and Mexico. Numerous stakeholders have raised concerns that U.S. agriculture will lose export market shares to competitors due to U.S. withdrawal from TPP and its absence from CPTPP. Some stakeholders wonder whether agriculture will be prioritized in all planned bilateral negotiations.[26] The Office of the U.S. Trade Representative (USTR) had indicated that it may pursue negotiations with Japan in stages, declaring that the automobiles sector will be a priority.[27]At the same time, both President Trump and the Secretary of Agriculture have stated that U.S.-Japan negotiations would occur in stages with a "very quick" deal on agriculture.[28] However, the Japanese economy minister has stated that the United States and Japan would not reach an agreement in any one sector before other sectors.[29]

Elsewhere, the EU negotiating mandate for conducting trade negotiations with the United States articulates that a key EU goal is "a trade agreement limited to the elimination of tariffs for industrial goods only, excluding agricultural products."[30] As for the UK, it cannot formally negotiate or conclude a new trade agreement with the United States until it exits the EU.[31]

Retaliatory Tariffs on U.S. Agricultural Exports[32]

On March 23, 2018, the Trump Administration applied a 25% tariff to certain U.S. steel imports and a 10% tariff to certain U.S. aluminum imports under Section 232 of the Trade Expansion Act of 1962. This action followed Department of Commerce (DOC) investigations that determined that current imports threaten U.S. national security. Citing objections to China's policies on intellectual property, technology, and innovation, the Administration also implemented three rounds of tariff increases under Section 301 on a total of $250 billion worth of Chinese products.

Canada, China, Mexico, the EU, and Turkey—whose exports were affected by the steel and aluminum tariffs—retaliated with tariffs on imports of a range of U.S. agricultural and food products and other goods. India has proposed retaliatory tariffs on a number of U.S. agricultural products, but it has delayed implementation pending ongoing negotiations with the Trump Administration.[33]

In all, the retaliatory tariffs imposed by these trading partners have targeted more than 800 U.S. agricultural and food products. Exports of those products to these five trading partners amounted

[26] Presentations by representatives of U.S. Meat Export Federation, U.S. Wheat Associates, and Peterson Institute for International Economics at the 2019 USDA Outlook Forum, https://www.usda.gov/oce/forum/2019/Program.htm#s27.

[27] For more information on this issue, see CRS In Focus IF11120, *U.S.-Japan Trade Agreement Negotiations*; Jeffrey Schott, "Will US-Japan Trade Talks Help US Farmers and Ranchers?," 2019 USDA Outlook Forum, https://www.usda.gov/oce/forum/2019/speeches/Jeffrey_Schott.pdf.

[28] A. Behsudi, "Japan Trade Talks Gear Up, with Ag and Autos as Issues," *Politico*, April 15, 2019; A. Behsudi, "Trump: Ag Will Be Big Focus of Japan Trade Talks," *Politico*, April 26, 2018.

[29] I. Hoagland, "Motegi: No Deal with Japan in Any Particular Category Before the Other," *World Trade Online*, May 7, 2019.

[30] Council of the European Union, "Trade with the United States: Council Authorises Negotiations on Elimination of Tariffs for Industrial Goods and on Conformity Assessment," press release, April 15, 2019.

[31] For more information on this issue, see CRS In Focus IF11123, *Brexit and Outlook for U.S.-UK Trade Agreement*.

[32] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS.

[33] For more information on this issue, see CRS Report R45448, *Profiles and Effects of Retaliatory Tariffs on U.S. Agricultural Exports*.

to $26.9 billion in calendar year 2017, or about 18% of global U.S. agricultural and food product exports of $150.8 billion that year.

Retaliatory tariffs by China affect 99% of U.S. agricultural products exported to China. With a combination of Section 301 and Section 232 retaliations, China has levied retaliatory tariffs ranging from 5% to 50%, in addition to existing most-favored nation (MFN) tariffs, on more than 800 U.S. food and agricultural products that were worth about $20.6 billion in calendar year 2017. The products, subject to retaliatory tariffs, span all agricultural and food categories, including grains, meat and animal products, fruits and vegetables, seafood, and processed foods. The U.S. agricultural imports into China with the largest loss of markets since the tariffs were imposed in 2018, compared with 2017, are soybeans, cotton, sorghum, and hides and skins.

Canada has levied retaliatory tariffs of 10% on more than 20 U.S. agricultural and food products that are otherwise duty free under NAFTA. U.S. exports most affected by these tariffs are roasted coffee, ketchup, various beverage waters, licorice and toffee, and orange juice. U.S. exports of the products subject to Canada's retaliatory tariffs were valued at $2.6 billion in 2017.

Mexico has placed retaliatory tariffs of 15%-25% on a range of U.S. products that are otherwise duty free under NAFTA. U.S. exports to Mexico of these products amounted to approximately $2.5 billion in 2017. U.S. exports of cheese and pork have been the commodities most affected by Mexico's retaliatory tariffs as measured by reduced exports in 2018 compared with 2017.

The EU has levied a 25% tariff on certain U.S. exports of prepared vegetables and legumes, grains, fruit juice, peanut butter, and whiskey, which together amounted to $1 billion in sales in 2017. Turkey has imposed retaliatory tariffs on U.S. tree nuts, rice, prepared foods, whiskey, and unmanufactured tobacco. U.S. exports of these products to Turkey totaled $250 million in 2017.

A study from Purdue University found that the retaliatory tariffs could result in a reduction of U.S. agricultural exports by as much as $8 billion annually (in inflation adjusted values) after the markets have adjusted in the near future.[34] The study also projects that the reduction in U.S. agricultural exports could lower agricultural land prices and result in the reallocation of 45,000 farm, ranch, and processing workers. Additionally, the authors suggest that U.S. soybean producers would see the most change in the wake of tariff retaliation, with exports potentially falling by 21% and land prices declining by about 18%. The impact estimated by the model would be affected over time by other policy shocks and technological and population changes that are not accounted for in the model. A recent United Nations study states that extended imposition of retaliatory tariffs will erode U.S. market share in favor of export competitors in the longer term.[35]

Status: U.S. agricultural exports continue to face retaliatory tariffs in response to the Administration's 2018 trade actions. The USDA forecasts U.S. agricultural exports for FY2019 at $141.5 billion compared with $143.4 billion in FY2018, reflecting its expectation that increased trade with other regions that are not involved in the tariff dispute will partially offset tariff-related trade losses, particularly with China. U.S. agricultural exports to China are forecast to decline in FY2019 by over $7 billion from $16 billion in FY2018.[36] The United States and China are

[34] Chepeliev et al., "How U.S. Agriculture Will Fare Under the USMCA and Retaliatory Tariffs," commissioned by the Farm Foundation, GTAP Working Paper No. 84, Purdue University, October 2018, https://www.gtap.agecon.purdue.edu/resources/working_papers.asp.

[35] U.N. Conference on Trade and Development, "Key Statistics and Trends in Trade Policy," 2018, https://news.un.org/en/story/2019/02/1031921.

[36] ERS, "Outlook for U.S. Agricultural Trade," AES-107, February 21, 2019.

engaged in bilateral discussions to resolve the current trade dispute. USMCA—the proposed successor to NAFTA—does not address the Section 232 tariffs that led Canada and Mexico to impose retaliatory tariffs. Representatives of the U.S. business community, agriculture interest groups, other congressional leaders, and Canadian and Mexican government officials have stated that the Section 232 tariff issues must be resolved before USMCA enters into force.[37]

USDA's Trade-Aid Package in Response to Trade Retaliation[38]

On July 24, 2018, Secretary of Agriculture Sonny Perdue announced that the USDA would take several temporary actions to assist farmers in response to trade-related consequences from what the Administration characterized as "unjustified retaliation" against several U.S. agricultural products in 2018.[39] Specifically, the Secretary said that the USDA would authorize up to $12 billion in financial assistance—referred to as a trade aid package—for certain agricultural commodities using the authority provided under Section 5 of the Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. §714c).[40]

The Secretary initially stated that there would be no further trade-related financial assistance beyond this $12 billion package. However, on May 10, 2019, Secretary Perdue tweeted that the White House had directed USDA to work on a new aid package.[41] The 2018 trade aid package includes (1) a Market Facilitation Program (MFP) of direct payments (valued at up to $10 billion) to producers of commodities most affected by the trade retaliation, (2) a Food Purchase and Distribution Program to partially offset lost export sales of affected commodities ($1.2 billion), and (3) an Agricultural Trade Promotion program to expand foreign markets ($200 million).

The largest component of the trade aid package, the MFP, provides direct financial assistance to producers of commodities that are most impacted by actions of foreign governments resulting in the loss of traditional exports. Affected commodities include soybeans, corn, cotton, sorghum, wheat, hogs, dairy, fresh sweet cherries, and shelled almonds. USDA announced MFP per-unit payment rates to be applied to certified production of eligible commodities in 2018.

USDA's Farm Service Agency administers the MFP. Eligible participants had to sign up for payments from September 2018 to February 2019. They also had to meet additional criteria, including being "actively engaged in farming," having an average adjusted gross income of less than $900,000, meeting conservation compliance provisions, and certifying their 2018 production with USDA by May 1, 2019.

USDA determined the MFP per-unit payment rate based on the estimated "direct trade damage"—the difference in expected *trade* value for each affected commodity with and without

[37] Letter from group of 46 industries to the Honorable Wilbur Ross and the Honorable Robert Lighthizer, January 23, 2019; Reuters, "Senate Finance Chair Says Tariffs on Steel, Aluminum Should Go," January 30, 2019, https://www.reuters.com/article/us-usa-trade-grassley/senate-finance-chair-says-tariffs-on-steel-aluminum-should-go-idUSKCN1PO25X; I. Hoagland, "Ways and Means Democrats Question USMCA Timing, Point to 232 Issues," *World Trade Online*, January 23, 2019.

[38] Prepared by Randy Schnepf, Specialist in Agricultural Policy, CRS. This section is based on CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*.

[39] USDA, "USDA Assists Farmers Impacted by Unjustified Retaliation," press release, July 24, 2018.

[40] For more information on the Secretary's authority under the CCC Charter, see CRS Report R44606, *The Commodity Credit Corporation: In Brief*; and CRS Insight IN10941, *Commodity Credit Corporation: Q&A*.

[41] *The Hagstrom Report*, "China Talks Break Down as Pence, Hoeven Talk More Aid to Farmers," vol. 9, no. 102 (May 10, 2019).

the retaliatory tariffs.[42] The estimated "trade damage" for each affected commodity was then divided by the crop's production in 2017 to derive a per-unit payment rate. Indirect effects—such as any decline in market prices for affected commodities that were used domestically rather than exported—were not included in the payment calculation. Based on 2017 production data, USDA estimated that approximately $9.6 billion would be distributed in MFP payments to eligible producers, with over three-fourths ($7.3 billion) of MFP payments provided to soybean producers.

By linking MFP commodity payments only to the trade loss associated with each named MFP commodity, the payment formula favored commodities that relied more heavily on export markets than on domestic markets. Soybean growers and most farm-advocacy groups have generally been supportive of the payments, but some commodity groups—most notably associations representing corn, wheat, milk, and specialty crops—argued that the MFP payment formulation was inadequate to fully compensate their industries.[43] For example, the National Corn Growers Association states that the 2018 trade disputes lowered corn prices by $0.44 per bushel for a potential total loss of $6.3 billion. Similarly, the National Association of Wheat Growers estimates a $0.75 per bushel decrease in domestic wheat prices that resulted in nearly $2.5 billion in lost value, while the National Milk Producers Federation has calculated that the retaliatory tariffs resulted in a $1.10 per hundredweight decline in domestic milk prices and over $1.2 billion in losses for milk producers based on milk futures prices. Similarly, many specialty crop groups contend that their tariff-related export losses were not fully compensated by the trade aid programs. To this point, a 2018 study by researchers at the University of California-Davis stated that, in California alone, specialty crops may suffer trade-related losses of over $3.3 billion on their 2018 production.[44]

Status: In March 2019, USDA estimated that a total of $8.7 billion in outlays would be made available under the MFP program, including $5.2 billion in 2018 and $3.5 billion in 2019.[45] The large volume of payments could attract international attention about whether they are consistent with WTO rules and commitments on domestic support.[46] The trade aid package raises a number of potential questions. For instance, if the United States and China do not reach an agreement in their ongoing tariff-driven trade negotiations, should another trade aid package, or some alternative compensatory measure, be provided in 2019, and possibly beyond? If MFP payments are to be repeated in the future, should USDA revise its payment formulation to provide a broader distribution of payments across the U.S. agricultural sector?

[42] USDA, "USDA Releases Details Trade Damage Estimate Calculations," press release, September 13, 2018; and USDA, Office of the Chief Economist, "Trade Damage Estimation for the Market Facilitation Program and Food Purchase and Distribution Program," September 13, 2018.

[43] *The Hagstrom Report*, "Summary of Trump Trade Aid: It's Not Enough," vol. 8, no. 201 (August 28, 2018); and Bottemiller Evich et al, "Trump Offers Trade Aid to Farmers, but Some Question Its Fairness," *Politico,* August 28, 2018. See also Y. Zhou et al., "Dispatches from the Trade Wars," *Farmdoc Daily,* August 29, 2018.

[44] D. Sumner and T. Hanon, "Economic Impacts of Increased Tariffs That Have Reduced Import Access for U.S. Fruit and Tree Nuts Exports to Important Markets," University of California, August 1, 2018.

[45] ERS, "2019 Farm Income Forecast," March 6, 2019, https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/farm-sector-income-forecast/.

[46] For more information, see section "2018 Farm Bill and WTO Compliance."

U.S. Withdrawal from Trans-Pacific Partnership (TPP)[47]

The TPP was concluded on October 4, 2015, among 12 countries: the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. The agreement had not yet entered into force when President Trump signed an executive order withdrawing the United States from TPP on January 23, 2017. On March 8, 2018, the remaining 11 countries concluded a revised agreement—the CPTPP. On December 30, 2018, the CPTPP entered into force among the first six countries to ratify the agreement—Canada, Australia, Japan, Mexico, New Zealand, and Singapore. On January 14, 2019, the CPTPP entered into force for Vietnam.

With the United States, the TPP would have become the world's largest trade agreement, covering 40% of the global economy and providing comprehensive market access through the elimination and reduction of tariff and non-tariff barriers. The TPP provisions would have significantly increased the overseas markets to which U.S. farm and food products would have preferential access.[48] The CPTPP provisions are based on the TPP. The agricultural provisions of the CPTPP seek to liberalize trade through lower tariffs, expanded tariff-rate quotas (TRQs),[49] and agreements for reducing non-tariff barriers, including laws and regulations pertaining to products of agricultural biotechnology.[50]

In 2016, the U.S. International Trade Commission (USITC) had assessed the potential economic benefits from TPP ratification, projecting that by 2032 U.S. agricultural exports would be higher by $7.2 billion, or 2.6%, under TPP than without the agreement.[51] Most of the increase in U.S. exports would have been concentrated in Japan (up $3.6 billion) and Vietnam (up $3.3 billion).

CPTPP countries represent a major component of U.S. farm and food trade, providing markets for 42% of U.S. farm exports between 2015 and 2018 while also supplying 52% of U.S. agricultural imports. By one estimate, U.S. absence from CPTPP will lead to a decline in U.S. agricultural exports of about $1.8 billion (1.2% of FY2018 U.S. agricultural exports of $143 billion) per year.[52] The combination of U.S. absence from CPTPP, retaliatory tariffs on U.S. farm and food exports, and the possibility of the United States withdrawing entirely from NAFTA—as President Trump has threatened in the absence of USMCA ratification—could lead to a potential annual drop in U.S. agricultural exports of $21.8 billion, according to a study commissioned by the Farm Foundation.[53] As the CPTPP agreement is relatively new, the possible range of impact on U.S. agriculture is uncertain because of limited studies that are available.

A broad cross-section of agricultural groups and food and agribusiness interests are concerned about losing potential export markets given U.S. absence from CPTPP. Under CPTPP, for example, Japanese tariffs on wheat imports will face a 50% reduction by 2025, which will put

[47] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS.

[48] U.S. International Trade Commission (USITC), "Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors," May 2016, https://www.usitc.gov/publications/332/pub4607.pdf.

[49] Under a TRQ, a lower tariff rate is levied on import quantities within the quota amount, while a higher tariff rate is imposed on quantities in excess of the quota.

[50] Government of Canada, Comprehensive and Progressive Agreement for Trans-Pacific Partnership, https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/index.aspx?lang=eng.

[51] USITC, "Trans-Pacific Partnership Agreement."

[52] Chepeliev et al., "How Differing Trade Policies May Impact U.S. Agriculture: The Potential Economic Impacts of TPP, USMCA, and NAFTA," presented at the Farm Foundation Forum, March 4, 2019.

[53] Chepeliev et al., "How Differing Trade Policies May Impact U.S. Agriculture."

U.S. wheat exports to Japan at a competitive disadvantage.[54] Similarly, the U.S. dairy industry estimates that by 2027, almost half of the U.S. dairy exports to Japan are likely to be replaced by dairy products from CPTPP and other countries with preferential trading agreements with Japan.[55] Japan has historically accounted for more than a quarter of the total value of U.S. beef and pork exports. The U.S. share of Japan's imports of these commodities is expected to decline, because CPTPP competitors receive more favorable access to the Japanese market for beef and pork. U.S. Meat Export Federation states that annual beef export losses could reach $550 million by 2023 and more than $1.2 billion by 2028. Annual U.S. pork export losses are estimated to exceed $600 million by 2023 and reach $1 billion by 2028.[56] USDA officials and representatives of the U.S. wheat and barley industries assert that U.S. wheat and barley exports are rapidly losing market share in Japan to CPTPP member countries and the EU.[57]

Status: U.S. agricultural exports appear to be at an increasing disadvantage in the CPTPP member country markets as these countries have begun to expand market access and reduce tariffs on imported products from CPTPP signatory countries. On October 16, 2018, under the TPA procedures, the Trump Administration gave Congress its official 90-day advance notification of intent to enter into trade negotiations with Japan, a CPTPP member country. In view of the Trump Administration's expressed objectives to "achieve fairer, more balanced trade," including in auto trade, stakeholders are uncertain about the prospects of reaching a quick deal with Japan.[58] At the same time, both President Trump and the Secretary of Agriculture have stated that U.S.-Japan negotiations would occur in stages with a "very quick" deal on agriculture.[59] However, the Japanese economy minister has stated that the United States and Japan would not reach an agreement in any one sector before other sectors.[60]

Agricultural Trade Issues with Canada and Mexico

Since 2002, Canada has been the United States' top agricultural export market, with U.S. agricultural exports averaging over $20 billion between FY2016 and FY2018. In FY2018, Canada accounted for 14% of the total value of U.S. agricultural exports to all destinations. Mexico has been the third-largest market for U.S. agricultural exports since FY2010. U.S. agricultural exports to Mexico averaged over $18 billion between FY2016 and FY2018, accounting for 13% of the total value of U.S. agricultural exports to all destinations in FY2018.

[54] U.S. Wheat Associates, presentation at the 2019 USDA Outlook Forum, February 22, 2019.

[55] Meros Consulting, "Analyzing the Impact of the CPTPP and the Japan-EU EPA on the U.S. Dairy Exports to Japan," January 2019.

[56] U.S. Meat Export Federation, presentation at USDA Outlook Forum, February 22, 2019.

[57] B. Tomson, "US Wheat and Barley Are Losing Japanese Market Share Fast," *Agri-Pulse*, March 27, 2019, https://www.agri-pulse.com/articles/12041-us-wheat-and-barley-are-losing-japanese-market-share-fast?iframe=1.

[58] USTR, "United States-Japan Trade Agreement (USJTA) Negotiations: Summary of Specific Negotiating Objectives," December 2018.

For more information on this issue, see CRS In Focus IF11120, *U.S.-Japan Trade Agreement Negotiations*; and also, J. Schott, Will US-Japan Trade Talks Help US Farmers and Ranchers? 2019 USDA Outlook Forum.

[59] Behsudi, "Japan Trade Talks Gear Up;" Behsudi, "Trump: Ag Will Be Big Focus of Japan Trade Talks."

[60] Hoagland, "Motegi: No Deal with Japan in Any Particular Category Before the Other."

U.S.-Mexico-Canada Agreement (USMCA)[61]

On September 30, 2018, the Trump Administration announced an agreement with Canada and Mexico, USMCA, which it is promoting as a replacement for the NAFTA.[62] Under NAFTA, all agricultural tariffs were phased out to zero except for certain products traded between the United States and Canada. These included U.S. imports from Canada of dairy products, peanuts, peanut butter, cotton, sugar, and sugar-containing products and Canadian imports from the United States of dairy products, poultry, eggs, and margarine. Quotas that once governed bilateral trade in these commodities were redefined as TRQs to comply with WTO commitments. Under a TRQ, a lower tariff rate is levied on import quantities within the quota amount, while a higher tariff rate is imposed on quantities in excess of the quota. The United States and Mexico agreement under NAFTA did not exclude any agricultural products from trade liberalization.

The proposed USMCA would expand upon the agricultural provisions of NAFTA. All food and agricultural products that have zero tariffs under NAFTA would remain at zero under USMCA. Under USMCA, market access would be expanded for the agricultural products traded between Canada and the United States that were exempt from tariff elimination under NAFTA. Canada agreed to create new U.S.-specific TRQs for U.S. dairy products[63] and to replace the existing NAFTA poultry TRQs with new USMCA TRQs.[64] All U.S. exports within the set TRQ volume limit would be subject to zero tariffs rates, but U.S. over-quota exports would still face the higher levels of tariffs currently in place under Canada's WTO commitment. The United States, in turn, agreed to improve access for imports of Canadian dairy, sugar, peanuts, and cotton. Canada and the United States also agreed to grade each other's like varieties of wheat as if they were produced domestically, a long-standing request of the U.S. wheat industry.

Under USMCA, provisions are made for textiles and apparel to promote greater use of North American origin products, which may support domestic U.S. cotton production. Also, each country would offer the same treatment for distributing another USMCA country's spirits, wine, beer, and other alcoholic beverages as it would its own products. USMCA's Sanitary and Phytosanitary (SPS) chapter calls for greater transparency in SPS rules and improved regulatory alignment among the three countries. Under USMCA, the United States, Canada, and Mexico agreed to provide procedural safeguards for recognition of new geographic indications, which are place names used to identify products that come from certain regions or locations. The agricultural chapter of USMCA also lays out provisions for addressing the products of agricultural biotechnology, an issue NAFTA does not address.

In April 2019, USITC released its report that provides an assessment of the likely effects of USMCA on the overall U.S. economy and its component sectors.[65] Because NAFTA has already eliminated duties on most goods and reduced most non-tariff barriers, USITC's quantitative assessment includes changes that are not easily quantifiable. These provisions of trade negotiations were excluded from past USITC quantitative analyses. The provisions included in USMCA assessment by USITC—such as intellectual property rights, future commitments to open flows of data, and strengthening labor standards and rights—may reduce uncertainty in future

[61] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS.

[62] For more information on this issue, see CRS In Focus IF10997, *Proposed U.S.-Mexico-Canada (USMCA) Trade Agreement*.

[63] For more information on this issue, see section "U.S. Dairy Exports to Canada."

[64] For more information on this issue, see CRS Report R45661, *Agricultural Provisions of the U.S.-Mexico-Canada Agreement*.

[65] USITC, "U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors," April 2019, https://www.usitc.gov/publications/332/pub4889.pdf.

trading regimes. Uncertainty reducing provisions are part of most free-trade agreements, including NAFTA, even if past assessments excluded them in the analyses. The USITC report finds that U.S. agricultural exports would increase by 1.1% in year 6 of USMCA implementation compared to its 2017 baseline export levels. In inflation-adjusted dollars, U.S. dairy exports to NAFTA countries would increase by $314.5 million (7.1%), and U.S. poultry exports would increase by $183.5 million (1%) compared to exports in 2017.

A 2018 study commissioned by the Farm Foundation performs an economy-wide analysis, but the analysis takes into consideration only the changes in agricultural tariffs and TRQs proposed under USMCA. The market access changes are introduced as shocks into a multi-region, economy-wide model. The impacts of these changes are analyzed after the economy has adjusted to the shocks after full implementation of USMCA—year 6. The adjustment process can include changes in production and consumption structure, including production costs and changes in the volume of agricultural outputs. This study estimates, in 2014 dollars, a net increase in annual U.S. agricultural exports of $450 million under USMCA, or about 1% of U.S. agricultural exports under NAFTA—$41 billion in FY2014.[66] It projects the export losses from the retaliatory tariffs imposed by Canada and Mexico in response to U.S. Section 232 tariffs on steel and aluminum imports to be $1.8 billion per year (in 2014 dollars), which would more than offset the projected export gain of $450 million from USMCA. These losses include changes in production decisions and volumes resulting from higher production costs. This study does not consider changes in other sectors of the economy that would result from the implementation of USMCA provisions in these other sectors. Moreover, the impact estimated by the model would be affected over time by other policy shocks and technological and population changes that are not accounted for in the model.

According to an updated version of the Farm Foundation study, under the possible scenario of a complete withdrawal from NAFTA without ratification of USMCA, tariffs on U.S. exports to Canada and Mexico would be expected to return to the higher WTO MFN rates. Under this scenario, the study finds that, in 2014 dollars, U.S. agricultural and food exports to Canada and Mexico would decline by about $12 billion annually.[67]

A study conducted by researchers at the International Monetary Fund assesses the potential impacts of USMCA on North America as a region taking into consideration the following provisions of the proposed USMCA: (1) higher vehicle and auto parts regional value content requirement; (2) new labor value content requirement for vehicles; (3) stricter rules of origin for USMCA textile and apparel trade; (4) agricultural trade liberalization that increases U.S. access to Canadian supply-managed markets and reduces U.S. barriers on Canadian dairy, sugar and sugar products, and peanuts and peanut products; and (5) trade facilitation measures.[68]

The results describe a medium-term adjustment five to seven years after full implementation of USMCA—year 6. By this time, labor and capital would have been reallocated among sectors, but new investment spending would not yet have increased productive capacity. The study compares base period with what may happen five to seven years after full implementation of USMCA. This study finds that increasing higher regional vehicle and labor requirements would contribute to an economic loss for all three USMCA countries, with a decline in the production of vehicles and parts, shifts toward greater sourcing of both vehicles and parts from outside of the region, and higher prices for consumers. Regarding agricultural provisions of USMCA, the report highlights

[66] Chepeliev et al., "How U.S. Agriculture Will Fare Under the USMCA and Retaliatory Tariffs."

[67] Chepeliev et al., "How Differing Trade Policies May Impact U.S. Agriculture."

[68] Burfisher et al., "NAFTA to USMCA: What Is Gained?," IMF Working Paper WP/19/73, March 2019.

that Canada would stand to gain more than the United States. The study also highlights that the trade facilitation provisions of USMCA would potentially provide the largest gain to the region. Another researcher reiterates the findings of the International Monetary Fund study that the new domestic content provisions in USMCA would increase input costs for U.S. farmers who would end up paying more for trucks and machinery.[69] As few studies have analyzed the potential impacts of USMCA, the diversity in the findings regarding the impacts from the implementation of USMCA is limited.

Stakeholder groups have expressed mixed responses to USMCA. A broad coalition representing more than 200 U.S. companies and industry associations has advocated for USMCA's approval.[70] The American Farm Bureau Federation, which is the largest general farm organization, expressed satisfaction that USMCA not only locks in market opportunities previously developed but also builds on those trade relationships in several key areas.[71] On the other hand, the National Farmers Union and the Institute for Agriculture and Trade Policy have expressed concern that the proposed agreement does not go far enough to institute a fair trade framework that benefits family farmers and ranchers.[72]

Status: The proposed USMCA does not enter into force unless approved by the U.S. Congress and ratified by Canada and Mexico. A report by USITC that assesses the impact of USMCA on U.S. economy was submitted to Congress on April 18, 2019.[73] The timeline for congressional approval of USMCA would likely be governed by the TPA procedures established under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26) but would not be initiated until the President submits the draft implementing bill to Congress.[74]

Some policymakers have stated that the path to ratifying USMCA by Congress is uncertain, in part because the three countries have yet to resolve disputes over U.S. Section 232 tariffs on imports of steel and aluminum and over the retaliatory tariffs that Canada and Mexico have imposed on U.S. agricultural products.[75] Senator Chuck Grassley is reported to have called on the Trump Administration to lift tariffs on steel and aluminum imports from Canada and Mexico before Congress begins considering legislation to implement USMCA.[76] House Speaker Nancy Pelosi has reportedly stated that she wants "stronger enforcement language" and that USMCA

[69] J. Glauber, "The Emperor's New NAFTA," FARE Share Newsletter, February 2019.

[70] *Inside U.S. Trade*, "More than 200 Companies, Associations Form the 'USMCA Coalition' to Push the Deal's Passage," February 26, 2019.

[71] American Farm Bureau Federation, "USMCA," https://www.fb.org/issues/trade/usmca/.

[72] National Farmers Union, "USMCA Deal Falls Short of Fair Trade Framework for Family Farmers, NFU Says," press release, November 30, 2018, https://nfu.org/2018/11/30/usmca-deal-falls-short-of-fair-trade-framework-for-family-farmers-nfu-says/; Institute for Agriculture and Trade Policy, "Comments on No. TPA-105-003, United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors," December 20, 2018, https://www.iatp.org/sites/default/files/2019-01/USITC-USMCA-Comment-IATP.pdf.

[73] USITC, "U.S.-Mexico-Canada Trade Agreement."

[74] For more information on this issue, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*.

[75] Hoagland, "Ways and Means Democrats Question USMCA Timing, Point to 232 Issues;" and I. Hoagland, "Brady: Congress Not Willing to Consider USMCA until Steel, Aluminum Issues Resolved," *World Trade Online*, January 29, 2019.

[76] Reuters, "Senate Finance Chair Says Tariffs on Steel, Aluminum Should Go," January 30, 2019, https://www.reuters.com/article/us-usa-trade-grassley/senate-finance-chair-says-tariffs-on-steel-aluminum-should-go-idUSKCN1PO25X.

talks should be reopened to tighten enforcement provisions for labor and environmental protections.[77]

For more information, see CRS Report R45661, *Agricultural Provisions of the U.S.-Mexico-Canada Agreement*.

U.S. Dairy Exports to Canada[78]

The Canadian dairy sector limits production, sets prices, and restricts imports. Canadian imports of dairy products are restricted through TRQs, with over-quota tariffs in excess of 200% for some products. Although Canada is the second-largest market for U.S. dairy product exports, U.S. exports would likely be higher but for Canadian import restrictions.

In recent years, U.S. milk producers began exporting increased quantities of ultra-filtered (UF) milk to Canada. UF milk is a high-protein liquid product made by separating and concentrating certain milk components (such as protein and fat) for use as ingredients in dairy products, such as cheese, yogurt, and ice cream. U.S. UF milk found a market among Canadian cheese makers in 2008 after Canada revised its compositional standards for cheese. This revision significantly reduced the use of several milk products that U.S. processors had been supplying to Canadian food manufacturers, including milk protein concentrates and dried protein products.

In recent years, growing demand for butterfat in Canada resulted in increased Canadian milk production and, consequently, surplus supplies of skim milk. To address the surplus, Canada adopted the Class 7 milk price classification in 2017 (Class 6 in Ontario). Milk classified as Class 7 comprises skim milk components—primarily milk protein concentrates (MPC) and skim milk powder (SMP)—used to process dairy products. Prices for Class 7 products were set at low levels. Once the Class 7 regime was implemented, Canadian skim milk products became cheaper. Canada expanded global exports of SMP with the consequence that U.S. producers lost exports of high-protein UF milk to Canadian cheese and yogurt processors.

According to USDA, the value of U.S. UF milk exports to Canada peaked at nearly $107 million in 2015 but declined after the Class 7 regime was implemented in 2017 to $49 million in 2017 and $32 million in 2018.[79] At the same time, Canada's exports of SMP more than tripled in 2017 to $133 million, compared with $42 million in 2016 before the Class 7 price regime was implemented.[80] Eliminating Canada's Class 7 pricing regime became a priority for the U.S. dairy industry when NAFTA renegotiations commenced in 2017.

Status: Under USMCA, Canada agreed to eliminate the Class 7 pricing regime six months after USMCA enters into force. Canada also agreed to reclassify Class 7 products according to their end use and base its selling price on a formula that takes into consideration the USDA reported nonfat dry milk price. Also under the agreement, Canada would be required to monitor its exports of MPC, SMP, and infant formula and report at the harmonized tariff schedule level monthly.

Although Canada would maintain its milk supply management system under USMCA, it would expand TRQs for U.S. exports of milk, cheese, cream, skim milk powder, condensed milk, yogurt, and several other dairy products. U.S. dairy products within the USMCA TRQs would

[77] David J. Lynch, "Pelosi Demands Changes to Trump's Trade Deal with Mexico, Canada," *Washington Post*, April 2, 2019.

[78] Prepared by Joel Greene, Analyst in Agricultural Policy, CRS.

[79] FAS, Global Agricultural Trade System Online, Foreign Agricultural Trade of the United States dairy definition, adjusted to include protein concentrate (UF milk), https://apps.fas.usda.gov/gats/default.aspx.

[80] Global Trade Atlas, export data for skim milk powder (harmonized code 040210).

enter Canada duty free, while U.S. exports above the TRQ quantities would be subject to the existing higher over-quota tariffs. Likewise, the United States would establish TRQs for imports of Canadian dairy products.

In total, under USMCA Canada would grant the United States duty-free access to nearly 17,000 metric tons (MT) of dairy products the first year of the agreement, 100,000 MT in the sixth year, and 109,000 MT in year 19. The USMCA quota is specific to the United States and would be in addition to the 93,648 MT of WTO global quota, which is available under NAFTA to exports from the United States as well as to exports from other WTO member countries.[81] For more information, see CRS In Focus IF11149, *Dairy Provisions in USMCA*.

U.S.-Canada Dispute Regarding the Sale of Wine in Grocery Stores[82]

In Canada, the authority to import and distribute alcohol rests with the provincial governments. Starting in 2015, British Columbia (BC) initiated a series of policies and regulations that provide BC wine exclusive access to retail channels and grocery store shelves, while imported wine maybe sold in grocery stores only through a "store within a store"[83] physically separated from the main retail outlet and with separate cash registers.[84] Overall, the U.S.-based Wine Institute reports that Canada is the leading export market for California wine—the leading wine producing state in the United States—accounting for $444 million in sales in 2017.[85]

Status: In January 2017, the Obama Administration initiated trade enforcement action against Canada at the WTO regarding Canada's BC wine measures.[86] Subsequent actions by the Trump Administration, in September 2017, led to the United States requesting formal consultations with Canada regarding BC wine measures.[87] USTR states that "discriminatory regulations implemented by British Columbia are unfairly keeping U.S. wine off of grocery store shelves" and that the measures are inconsistent with Canada's commitments and obligations under the WTO.[88] The Canadian wine industry estimates that wine imports account for nearly 70% of the Canadian wine market. It also points out that the BC Vintners Quality Alliance has been issuing store licenses for the industry since the 1980s.[89] The United States reiterated its concerns as part

[81] A. Mussell and D. Hedley, "The Canadian Dairy Sector in Relation to the Canada-US-Mexico Agreement and Comprehensive and Progressive Agreement for Trans-Pacific Partnership," *Agri-Food Economic Systems*, February 2019.

[82] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[83] WTO, "Canada—Measures Governing the Sale of Wine in Grocery Stores (Second Complaint), Request for the Establishment of a Panel by the United States," WT/DS531/7, May 29, 2018.

[84] Separately, in 2016 Quebec enacted policies that would streamline provincial approval for Quebec wines. Most wine in Quebec is distributed through retail outlets owned by its provincial liquor authority, the Société des alcools du Québec. Quebec is the largest wine importing province in Canada. For more, see USDA, "Canada: The Wine Market in the Province of Quebec," *GAIN* Report CA17013, April 12, 2017.

[85] Wine Institute, "Wine Institute Commends U.S. Government's Efforts to Improve Market Access in Canada," May 25, 2018.

[86] USTR, "United States Challenges Canadian Trade Measures That Discriminate Against U.S. Wine," January 2017.

[87] WTO, "Canada—Measures Governing the Sale of Wine in Grocery Stores (Second Complaint)."

[88] USTR "United States Takes Action Against Canadian Trade Measures That Discriminate Against U.S. Wine," press release, May 25, 2018. The U.S. complaint cites Article III:4 of the 1994 General Agreement on Tariffs and Trade.

[89] T. Walker, "VQA and the USMCA," *Orchard and Wine Magazine*, December 4, 2018.

of a second complaint issued in this case in July 2018. Argentina, Australia, New Zealand, and the EU have requested to join the consultation.

The proposed USMCA addresses U.S. concerns about Canada's BC wine measures as part of a side letter to the proposed agreement. As outlined in the side letter, Canada would modify certain measures that provide preferential grocery store shelf space to wines produced within the province and "implement any changes no later than November 1, 2019."[90]

Other North American Trade Issues

The proposed USMCA does not address all the issues that restrict U.S. agricultural exports to Mexico and Canada, nor does it include all of the changes sought by U.S. agricultural interest groups. For instance, Southeastern U.S. produce growers have been seeking changes to trade remedy laws to address imports of seasonal produce.

Import Competition of Seasonal Produce from Mexico[91]

Mexico's production of some fruits and vegetables—tomatoes, peppers, cucumbers, berries, and melons—has increased in recent years in part due to Mexico's investment in large-scale greenhouse production facilities and other types of technological innovations. Greenhouse production in Mexico continues to rise, with 2018 estimates of nearly 57,500 acres of produce grown under protection, up from an estimated 9,000 acres in 2017.[92] USDA researchers reported that Mexico is the largest foreign supplier of U.S. imports of vegetables and fruits (excluding bananas).[93]

Representatives of the Florida Fruit and Vegetable Association (FFVA) claim that Mexico's investment in produce production is supported by government subsidies and should be addressed through countervailing duties (CVD) on U.S. imports of these products.[94] They further state that these exports enter the United States at prices below the cost of production and should be countered by higher antidumping (AD) duties. FFVA also believes that Mexico's labor cost advantage in fruit and vegetable production gives Mexico a competitive advantage over U.S. produce growers.[95] In general, trade concerns have centered on tomatoes, peppers, and berries.

One of the Trump Administration's initial agriculture-related objectives in the renegotiation of NAFTA included a proposal to establish new rules for seasonal and perishable products, such as fruits and vegetables.[96] The proposal would have established a separate domestic industry provision for perishable and seasonal products in AD and CVD proceedings, making it easier for a group of regional producers to initiate an injury case and to prove injury, thereby implementing

[90] USTR, USMCA side letter to Canada's Minister of Foreign Affairs, Chrystia Freeland, November 30, 2018, v/sites/default/files/files/agreements/FTA/USMCA/Text/CA-US_Side_Letter_on_Wine.pdf.

[91] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[92] T. Burfield, Mexican Greenhouse Production Soars," *The Packer*, March 12, 2019.

[93] L. Calvin and S. Zahniser, "Mexico-US Agricultural Trade," presentation at "Farm Labor and Mexico's Export Produce Industry," Wilson Center, November 15, 2017, https://migration.ucdavis.edu/farm-labor/,

[94] Comments from FFVA to USTR Robert E. Lighthizer, Docket No. 2017-0006, June 12, 2017; and FFVA, "Renegotiating NAFTA: Opportunities for Agriculture," statement at a House Agriculture Committee hearing, July 26, 2017.

[95] FFVA cites a report that is not publicly available (Florida Department of Agriculture and Consumer Services, "An Examination of International Competitive Impacts on Florida Agriculture," March 2017).

[96] USTR, "Summary of Objectives for the NAFTA Renegotiation," November 2017. Previous objectives were released in July 2017.

CVD or AD duties to be levied on the imported products responsible for the injury. This could protect certain U.S. seasonal fruit and vegetable products in some regions by making it easier to initiate trade remedy cases.[97] USITC has previously reviewed trade remedy cases involving perishable agricultural products that have proven difficult to settle.[98]

Some Members of Congress supported including seasonal protections as part of NAFTA's renegotiation.[99] Others opposed including such protections, contending that seasonal production complements rather than competes with U.S. growing seasons,[100] while still others worried it could open the door to an "uncontrolled proliferation of regional, seasonal, perishable remedies against U.S. exports."[101] Most U.S. food and agricultural sectors, including some fruit and vegetable producer groups, opposed including seasonal protections as part of the renegotiation.[102] Some worried that efforts to push for seasonal protections would derail the renegotiation. Others claimed that such efforts would favor a few "politically-connected, wealthy agribusiness firms from Florida" at the expense of others in the U.S. produce industry[103] and at the expense of both consumers and growers in other fruit and vegetable producing states, such as California.[104] The Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables (F&V ATAC) supported not including provisions in the NAFTA renegotiation, acknowledging that including such protections would generate "significant opposition from Mexican and Canadian negotiators, in addition to raising concern by many in the U.S. agricultural community, including many in the fruit and vegetable industry."[105] In January 2018, F&V ATAC passed a resolution supporting the withdrawal of the seasonal and perishable trade remedy proposal from the U.S. negotiating objectives.[106]

Status: The proposed USMCA that might replace NAFTA does not include changes to U.S. trade remedy laws to address seasonal produce trade. As a result, some in Congress have taken additional steps to try to address this issue.[107] Bills were introduced in both the House and Senate in the 115th Congress as part of the Agricultural Trade Improvement Act of 2018 (S. 3510; H.R.

[97] For more background, see CRS Report R45038, *Efforts to Address Seasonal Agricultural Import Competition in the NAFTA Renegotiation*. Information on the renegotiation is in CRS In Focus IF10682, *NAFTA Renegotiation: Issues for U.S. Agriculture*.

[98] For more background, see "Applying Antidumping Law to Perishable Agricultural Goods," *Michigan Law Review*, vol. 80, no. 3 (January 1982); and S. J. Powell and M. A. Barnett, "The Role of United States Trade Laws in Resolving the Florida-Mexico Tomato Conflict," UF Law Faculty Publications, 1997. See also, USITC, "Fall-Harvested Round White Potatoes from Canada, Determination of the Commission in Inv. No. 731-TA-124 (Final)," USITC Pub. 1463, December 1983. See also 48 *Federal Register* 51669, November 10, 1983; USITC, "ITC Votes to End Cases on Spring Table Grapes from Chile and Mexico," press release, Inv. Nos. 731-TA-926 and 927 (P), June 11, 2001; and 66 *Federal Register* 32645, June 15, 2001.

[99] Letters from the Florida and Georgia congressional delegations to USTR, August 31, 2017, and September 1, 2017.

[100] See, for example, statements from Members of Congress at a House Agriculture Committee hearing, "Renegotiating NAFTA: Opportunities for Agriculture," July 26, 2017.

[101] Letter from several Members of Congress to USTR Robert E. Lighthizer, August 17, 2017.

[102] Letters from U.S. agricultural, including produce industry, groups, to USTR, USDA, Department of Commerce, and National Economic Council, August 30, 2017, and August 31, 2017.

[103] Fresh Produce Association of the Americas, "To Favor a Few Agribusiness, U.S. NAFTA Objective Would Hurt All Consumers," press release, August 9, 2017.

[104] G. C. Hufbauer and E. Jung, "NAFTA Mischief in Fruits and Vegetables," PIIE, July 26, 2017.

[105] F&V ATAC, letter to USTR Robert E. Lighthizer reflecting consensus advisory opinion, September 27, 2018.

[106] See, for example, letter from Senators to USTR Robert E. Lighthizer April 6, 2018, and letter from some Members of the U.S. Senate to USTR Robert E. Lighthizer, August 27, 2018, requesting that AD/CVD provisions that address import competition of seasonal produce be included in a renegotiated agreement.

[107] See footnote 106.

7015). These bills would have provided for CVD and AD procedures for seasonal producers and defined *core seasonal industry* in U.S. trade remedy laws, among other changes. These two bills were reintroduced in the 116th Congress but renamed "Defending Domestic Produce Production Act of 2019" (S. 16; H.R. 101). Current law generally requires that an injury case be supported by at least 50% of the domestic industry.[108] The House and Senate bills would allow regional groups representing less than 50% of nationwide seasonal growers to initiate an injury investigation. Such changes could make it easier for a group of regional producers to initiate trade remedy cases.

Withdrawal of the U.S.-Mexico Tomato Suspension Agreement[109]

The U.S.-Mexico Tomato Suspension Agreement is an agreement between DOC and signatory producers/exporters[110] of fresh tomatoes grown in Mexico that suspends the U.S. AD investigation into whether Mexican fresh tomatoes were sold into the U.S. market at less than fair value.[111] Fresh tomatoes imported from Mexico have been governed by suspension agreements since 1996.[112] The first suspension agreement on fresh tomatoes from Mexico became effective in November 1996. The Mexican signatory growers and the United States entered into new agreements in 2002 and 2008. The most recent agreement became effective in March 2013. Under the current agreement, the signatories agree to suspend the AD investigation and monitor compliance with the agreement. The basis for the suspension agreement was a commitment by each signatory producer/exporter to sell tomatoes at or above the stated reference price in order to eliminate the injurious effects of exports of fresh tomatoes to the United States. Analysis commissioned by the Fresh Produce Association of the Americas (FPAA) found that terminating the agreement could "reduce the supply of tomatoes in the US market, and raise prices paid by consumers in the U.S., particularly during the winter tomato season (October-June)."[113]

The agreement sets different floor prices for Mexican fresh tomatoes during the summer and winter and specifies prices for open field/adapted-environment and controlled-environment production. These price floors cover all types of fresh or chilled tomatoes from Mexico, including common round, cherry, grape, plum, pear, and greenhouse tomatoes. The agreement does not cover tomatoes that are for processing.

In early 2018, DOC initiated consultations with the Mexican tomato growers and exporters to negotiate possible revisions to the 2013 agreement. In addition, DOC initiated its five-year sunset review of the suspended AD investigation and published the preliminary and final results of its analysis in late 2018. DOC's analysis indicated that dumping of fresh tomatoes was likely to occur or recur and calculated weighted-average dumping margins of up to 188%.[114] In November

[108] USITC, *Antidumping and Countervailing Duty Handbook*, Publication 4540, June 2015, p. I-6.

[109] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[110] Reportedly, more than 600 Mexican growers and exporters signed the most recent agreement.

[111] 61 *Federal Register* 18377, April 25, 1996. In general, under a suspension agreement, the exporters and producers or the foreign government agree to modify their behavior in a manner that eliminates dumping or subsidization and injury. 19 C.F.R. Section 351.208 specifies procedures for suspending a trade remedy investigation.

[112] The text of the agreement is at http://ia.ita.doc.gov/tomato/2013-agreement/2013-agreement.html. See also USDA, "Section 8e Regulations and the Tomato Suspension Agreement—FAQs," https://www.ams.usda.gov/sites/default/files/media/Tomato_Suspension_FAQs%5B1%5D_0.pdf. For more background, see USDA and DOC, "Tomato Suspension Agreement Explained," March 4, 2013.

[113] Timothy J. Richards, Badger Metrics, "Economic Impact of Restricting Tomato Imports to the U.S.," memorandum to Lance Jungmeyer, President, FPAA, April 22, 2019.

[114] 83 *Federal Register* 43642, August 27, 2018 (preliminary); 83 *Federal Register* 66680, December 27, 2018 (final).

2018, the Florida Tomato Exchange requested that the United States withdraw from the suspension agreement, eliminate the reference prices, and resume the related initial 1996 AD investigation.[115] Several Members of Congress in both the House and the Senate have expressed support for withdrawing from the suspension agreement.[116] Among the groups that oppose withdrawal are the FPAA and other groups representing Mexican growers and exporters as well as businesses, various associations, and local and county governments.[117]

Status: On May 7, 2019, the United States terminated the 2013 Suspension Agreement on Fresh Tomatoes from Mexico but said it plans to continue negotiations regarding a possible revised agreement.[118] DOC initially announced its intention to withdraw from the agreement in February 2019 following its periodic review of the agreement, which concluded that Mexican fresh tomatoes have been sold into the U.S. market at less than fair value.[119] Without a suspension agreement, an AD order could be issued if USITC makes a determination of financial injury to U.S. growers. Reportedly, the DOC and Mexico have been unable to develop a revised agreement that is acceptable to both sides, despite ongoing negotiations since early 2018.[120] In April 2019, Mexico's tomato growers proposed to eliminate a price distinction between winter and summer season tomatoes and increase the reference price for USDA-certified organic tomatoes.[121] The government of Mexico has expressed its disappointment about the U.S. decision.[122]

U.S.-Mexico Sugar Suspension Agreements[123]

In December 2014, DOC signed suspension agreements with the government of Mexico and Mexican sugar producers and exporters that prevented the imposition of CVD and AD on U.S. imports of Mexican sugar. This was a consequence of U.S. government determinations that Mexican sugar was being subsidized by the government of Mexico and was being sold into the U.S. market at less than fair value.

19 C.F.R. Section 351.218 specifies procedures for conducting a sunset review. The weighted average dumping margin refers to "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer" (19 USCS §1677 35 (B)).

[115] T. Thompson, "Tomato Suspension Agreement Under Florida Assault," *Produce News*, November 26, 2018.

[116] Letter from several Members of Congress to Wilbur Ross, Secretary of Commerce, February 1, 2019. See also Office of Senator Marco Rubio, "Rubio, Yoho Applaud U.S. Commerce Department Decision to Withdraw from Tomato Suspension Agreement with Mexico," press release, February 7, 2019.

[117] See, for example, letter from the Border Trade Alliance to Wilbur Ross, Secretary of Commerce, March 6, 2019. See also 84 *Federal Register* 7872, March 5, 2019.

[118] DOC, "U.S. Department of Commerce Announces the Termination of the Suspension Agreement on Fresh Tomatoes from Mexico," press release, May 7, 2019.

[119] 84 *Federal Register* 7872, March 5, 2019. See also DOC, "U.S. Department of Commerce Announces Intent to Withdraw from Suspension Agreement on Fresh Tomatoes from Mexico," press release, February 6, 2019. Commerce gave notice of its intent to withdraw from the 2013 suspension agreement to the Mexican signatories on February 6, 2019.

[120] A. Nickle, "U.S. Withdrawing from Tomato Suspension Agreement with Mexico," *The Packer*, February 7, 2019.

[121] Submission from Mexico's tomato grower associations to Wilbur Ross, Secretary of Commerce, requesting changes to the 2013 Agreement Suspending the Antidumping Investigation on Fresh Tomatoes from Mexico (Case No. A-201-820), April 8, 2019.

[122] Government of Mexico, Ministry of the Economy, "Comunicado de Prensa Sobre el Acuerdo de Suspensión del Tomate Mexicano en Estados Unidos," Comunicado No. 045, May 5, 2019.

[123] Prepared by Joel Greene, Analyst in Agricultural Policy, CRS.

The suspension agreements limit Mexico's sugar exports to the United States to the residual of U.S. needs for domestic human use in a given marketing year after subtracting U.S. production and imports from other countries. The agreements establish minimum reference prices for Mexican sugar that are above U.S. sugar program loan levels for domestically produced sugar. Another provision limits the share of Mexican sugar that can enter the United States as refined sugar.

After the suspension agreements took effect, a number of stakeholders in the U.S. sugar market asserted that the suspension agreements had not worked as intended and had not entirely eliminated the injury caused by the subsidization and dumping of Mexican sugar. One widely held criticism was that cane refiners who were dependent on imports of raw cane from Mexico had received an inadequate share of sugar from Mexico. Another criticism leveled at the agreements was that Mexican exporters were not always adhering to limits on the share of Mexican sugar imports that are refined sugar as compared with raw sugar nor to the specified minimum reference prices.[124]

In November 2016, the American Sugar Coalition—representing sugar cane and sugar beet producers and sugar processors, refiners, and workers—called on DOC to withdraw from the agreements, an action that could have caused AD and CVD duties to be imposed on Mexican sugar.[125] Imperial Sugar Company, a U.S. cane refiner, also advocated for withdrawal. The Sweetener Users Association, which represents sugar-using businesses, recommended renegotiating the agreements to address their shortcomings and warned that terminating them would virtually eliminate Mexican sugar from the U.S. market. In November 2016, DOC issued results of a preliminary administrative review.[126] In it, the DOC concluded that the agreements may not have entirely redressed the injury, and that certain import transactions may not have adhered to the terms in the agreements.

Status: In June 2017, the United States and Mexico agreed to amendments to the suspension agreements.[127] Under the amendments, effective October 1, 2017, the price of imported Mexican raw sugar was increased from $0.2225 per pound to $0.23 per pound. The price of imported refined sugar was increased from $0.26 per pound to $0.28 per pound. The maximum share of refined sugar imports was limited to 30%, with raw sugar imports constituting at least 70% of the total, compared with 53% and 47%, respectively, under the 2014 agreement. The agreement also requires that imported raw sugar be loaded in bulk and free flowing—that is, not packaged. Any raw sugar imports that are packaged would be counted toward the refined sugar allotment. In addition, if USDA determines that the United States requires additional sugar imports to meet its needs, Mexico would be awarded the first opportunity to fill the need. For more information, see CRS In Focus IF10693, *Amended Sugar Agreements Recast U.S.-Mexico Trade*.

Other Major Trade Issues

Several other trade issues may be of interest to Congress. A key objective of U.S. trade negotiations has been to establish a common framework for approval, trade, and marketing of the products of agricultural biotechnology. Among other high-profile issues, geographical indications are increasingly becoming an agricultural trade issue. In addition, U.S. farm and food interests

[124] For further information on stakeholder views, see CRS In Focus IF10517, *U.S. Stakeholders Critical of U.S.-Mexico Sugar Agreements*.

[125] R. Sterk, *Food Business News*, "Imperial Asks DOC to End Mexican Sugar Deal," December 6, 2016.

[126] 81 *Federal Register* 87539, December 5, 2016; and 81 *Federal Register* 87541, December 5, 2016.

[127] 82 *Federal Register* 31942, July 11, 2017; and 82 *Federal Register* 31945, July 11, 2017.

continue to see potential market expansion opportunities in Cuba, but interested exporters regard a prohibition on private U.S. financing as a major obstacle to this end. On the import side of the trade ledger, in March 2019, the United States initiated its review of the Generalized System of Preference (GSP), which provides duty-free tariff treatment for certain products imported from developing countries.

Agricultural Biotechnology[128]

Agricultural biotechnology refers primarily to the commercial use of recombinant DNA techniques to genetically modify or bioengineer plants and animals so that they have certain desired characteristics, primarily herbicide tolerance and pest resistance. More recently, the term has also come to encompass a range of new genetic technologies involving genomic editing (e.g., CRISPR-Cas9) rather than recombinant DNA techniques alone.[129] U.S. soybean, corn, cotton, and sugar beet producers have rapidly adopted genetically engineered (GE) varieties of these crops since commercialization began in the mid-1990s. The United States is the leading country in cultivating GE crops, accounting for more than 40% of total acres growing GE crops worldwide.

Elsewhere in the world, the adoption and cultivation of GE crops by both producers and consumers has been mixed. In the EU, for example, the European Commission (EC) may approve of GE products for import and marketing, but individual member states may maintain bans. GE crop production in the EU accounts for about 1% of crop acreage—about 325,000 acres—all in a single variety of pest-resistant GE corn: MON810.[130] This particular variety is cultivated predominantly in Spain and Portugal. Eighteen EU member states ban cultivation of GE crops and/or have specific rules on the trade of GE seeds.[131] EU officials have been cautious in permitting GE products to be cultivated within the EU, but EU-approved varieties of GE commodities can be imported.[132]

All GE-derived food and feed imported to the EU must be labeled as such. The EU's regulatory framework regarding biotechnology is generally regarded as one of the most stringent worldwide. Many U.S. producers assert that EU labeling and traceability regulations for approving GE crops have effectively limited certain U.S. agricultural exports to the EU. The EU's approval process for GE products—effectively a *de facto* moratorium since 1998—has been a source of dispute since 2003 and continues to be a contentious issue in the current U.S.-EU agricultural trade negotiations.

While the EU as a policymaking entity generally supports GE production, public opinion remains strongly opposed to GE food and crops in most EU member states. This opposition in the EU has also been an important factor in the acceptance of GE crops in lesser developed countries. Most African countries have largely followed the EU in restricting or banning the cultivation of GE crops.

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[128] Prepared by Tadlock Cowan, Analyst in Natural Resources and Rural Development, CRS.

[129] See CRS Report R44824, *Advanced Gene Editing: CRISPR-Cas9*.

[130] The EC approved a variety of GE potato for cultivation and sale in 2010, but the General Court of the EU subsequently overturned this approval in 2013.

[131] In January 2015, the European Parliament voted to allow each member country to ban or approve GE crops in their respective territories.

[132] Approximately 50 varieties of GE crops have been authorized in the EU. These include varieties of corn, cotton, rapeseed, soybeans, and sugar beets. For a description of approved GE varieties see EU, "EU Register of Authorised GMOs," http://ec.europa.eu/food/dyna/gm_register/index_en.cfm.

The U.S. Secretary of Agriculture stated that the United States will not regulate plants created through genomic editing so long as they are developed without using a plant pest as the donor or vector and are not plant pests themselves.[133] In contrast, the EU Court of Justice ruled that organisms obtained by mutagenesis[134] are genetically modified organisms (GMOs) and are in principle within the scope of the GMO Directive, which governs the deliberate release of GMOs into the environment.[135] The EU Court considers that the risks posed by new mutagenesis techniques such as gene editing (CRISPR-Cas9) to be similar to crops created from transgenesis, wherein GE crops have genetic material introduced from other organisms.

China's reluctance to approve GE crops or GE imports is a source of frustration for U.S. agricultural interests. While GE crops are technically banned from China, U.S.-developed GMOs appear to be grown in China without authorization despite Chinese laws banning their cultivation.[136] In September 2016, China agreed to improve its agricultural biotechnology approval process. That commitment did not include specific details, although China stated that they are committed to review eight long-pending applications of agricultural biotechnology in a "timely, ongoing, and science-based manner."[137] On January 8, 2019, the Chinese Ministry of Agriculture and Rural Affairs announced approval of five new biotech traits in imported crops for processing, the first new approvals since June 2017.[138] At the same time, the ministry amended the regulations on safety assessment, import approval, and labeling of agricultural GMOs without notifying the changes to the WTO nor soliciting comments from stakeholders.

With respect to the proposed USMCA, the agreement specifically includes provisions to improve transparency in approving and bringing to market products of agricultural biotechnology, something NAFTA did not cover. USMCA provisions cover crops produced with all biotechnology methods, including recombinant DNA and gene editing.

Trade negotiations concerning agricultural biotechnology also involve labeling issues and other provisions that address the unintended presence of GE products in non-GE shipments. As the United States implements its new "bioengineered food disclosure" standard, it may raise concerns among some trading partners—particularly the EU.[139] The food disclosure standard, for example, will not mandate labeling of highly refined ingredients from any GE crop if "no modified genetic material" is detectable. This provision would exclude food products, for example, containing high-fructose corn syrup, refined soybean oil, and sugar from sugar beets.

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[133] USDA, "Secretary Perdue Issues USDA Statement on Plant Breeding Innovation," press release, March 28, 2018, https://www.usda.gov/media/press-releases/2018/03/28/secretary-perdue-issues-usda-statement-plant-breeding-innovation.

[134] Mutagenesis is the process of inducing mutations in an organism. Older forms of mutagenesis include ionizing radiation, chemicals, and ultraviolet light. A variety of new *in vitro* mutagenesis techniques have been developed over the past decade that allow researchers to generate point mutations to modify related gene sequences (e.g., site-directed mutagenesis).

[135] Court of the EU, press release no. 111/18, July 25, 2018, Judgment in Case C-528/16, https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-07/cp180111en.pdf.

[136] U.S.-China Economic and Security Review Commission, "2018 Report to Congress," November 2018.

[137] USTR, "2018 Report to Congress on China's WTO Compliance," February 2019.

[138] FAS, "Regulatory Process Getting More Unpredictable, Additional Requirements on Trials and Data for Approvals," *GAIN* Report CH18085, February 22, 2019.

[139] The National Bioengineered Food Disclosure Standard amends the Agricultural Marketing Act of 1946 (7 U.S.C. §1621 *et seq.*) to establish the first mandatory disclosure requirement for bioengineered food. The implementation date of the standard is January 2021.

Status: A key objective of U.S. trade negotiations, such as the U.S.-EU agricultural trade negotiations and U.S. negotiations with China, has been to establish a common framework for GE approvals. This includes labeling practices consistent with the U.S. guidelines and harmonized regulatory procedures concerning GE presence in products that are consistent with the Codex Alimentarius Commission *Annex on Food Safety Assessment in Situations of Low-Level Presence of Recombinant-DNA Plant Material in Food*. The proposed USMCA specifically includes provisions to improve transparency in approving and bringing to market products of agricultural biotechnology. For other negotiations, U.S. objectives on agricultural biotechnology, for the most part, remain aspirational. Additionally, the United States believes that U.S. export opportunities are being impaired due to EU pressure on lesser developed countries to adopt EU SPS measures that ban GE products.

Geographical Indications (GIs)[140]

GIs are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region. The term GI is most often applied to wines, spirits, and agricultural products. Some food producers benefit from the use of GIs by giving certain foods recognition for their distinctiveness, thereby differentiating them in the marketplace. In this manner, GIs can be commercially valuable. GIs may also be eligible for relief from acts of infringement or unfair competition. While the use of GIs may protect consumers from deceptive or misleading labels, they also have the potential to impair trade when the use of names that are considered common or generic in one market are protected in another. Examples of registered or established GIs include Parmigiano Reggiano cheese and Prosciutto di Parma ham from the Parma region of Italy, Toscano olive oil from the Tuscany region of Italy, Roquefort cheese from France, Champagne from the region of the same name in France, Irish whiskey, Darjeeling tea, Florida oranges, Idaho potatoes, Vidalia onions, Washington State apples, and Napa Valley wines.

GIs—along with other types of intellectual property such as patents, copyrights, trademarks, and trade secrets—are an example of intellectual property rights (IPR). The use of GIs has become a contentious international trade issue, particularly for U.S. wine, cheese, and sausage makers. In general, some consider GIs to be protected intellectual property, while others consider them to be generic or semi-generic terms. For example, in the United States, *feta* is considered the generic name for a type of cheese. However, it is protected as a GI in Europe. As such, feta cheese produced in the United States may not be exported for sale in the EU, since only feta produced in countries or regions currently holding GI registrations may be sold commercially.

Laws and regulations governing GIs differ markedly between the United States and EU, which further complicates this issue. In addition, registered products often fall under GI protections in certain third-country markets, and some EU GIs have been trademarked in some non-EU countries. This has become a concern for U.S. agricultural exporters following a series of recently concluded trade agreements among the EU and Canada, Japan, South Korea, South Africa, and other countries that in many cases are also trading partners of the United States. As a result, Canada has agreed to recognize a list of 143 EU GIs in Canada,[141] and Japan has agreed to recognize 71 EU GIs in Japan.[142] More than 4,500 product names are registered and protected in the EU for foods, wine, and spirits originating in both EU member states and other countries.

[140] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[141] USDA, "U.S.-Canada Agricultural Trade Implications of Canada-EU CETA," *GAIN* Report CA17004, March 3, 2017.

[142] USDA, "MAFF Approves 70 EU-Proposed GIs for Agricultural Items," *GAIN* Report JA7151, December 20, 2017.

The EU's GI program remains a contentious issue for many in the U.S. Congress, particularly among Members with dairy constituencies. Some have long expressed their concerns about EU protections for GIs, which they claim are being misused to create market and trade barriers.[143] A 2019 study commissioned by the U.S. dairy industry forecasts declining U.S. cheese exports due to expanding restrictions on the use of generic terms such as parmesan, asiago, and feta cheese.[144] However, some U.S. agricultural industry groups are trying to create a system similar to the EU GI system for U.S. products to promote certain distinctive American agricultural products as part of the American Origin Products Association, which represents certain U.S. potato, maple syrup, ginseng, coffee, and chile pepper producers and certain U.S. winemakers, among other regional producer groups,[145] and seeks to work with federal authorities to "create of a list of qualified U.S. distinctive product names, which correspond to the GI definition."

Status: GIs are included among other IPR issues in the current U.S. trade agenda.[146] The proposed USMCA protects common names and limits the ability to register new GIs that some producers regard as common (generic) names. USMCA includes a side letter between the U.S. and Mexico regarding the use of 33 cheese names.[147]

GIs have been an active area of debate between the United States and EU in previous trade negotiations.[148] GIs continue to be a trade issue for USTR, and the United States is working "to advance U.S. market access interests in foreign markets and to ensure that GI-related trade initiatives of the EU, its Member States, like-minded countries, and international organizations, do not undercut such market access," stating that the EU's GI agenda "significantly undermines the scope of trademarks and other [intellectual property] rights held by U.S. producers and imposes barriers on market access for American-made goods that rely on the use of common names."[149] Previously, USDA officials have indicated that the United States would likely not agree to EU demands to reserve certain food names for EU producers and have expressed concerns about the EU's system of protections for GIs.[150] GIs are also included in the United States' IPR negotiating objectives for the U.S.-EU and U.S.-Japan trade negotiations.[151]

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[143] See, for example, comments during a House Committee on Ways and Means, "U.S. Trade Policy Agenda," January 27, 2015, and testimony during a Senate Finance Committee hearing on "President Obama's 2015 Trade Policy Agenda," January 27, 2015. See also a letter from Senate leadership to Ambassador Michael Froman, USTR, April 22, 2016; a letter from several Members of Congress to USTR and USDA, May 9, 2014; a letter from Senate Finance Committee Chairman and ranking member to USTR, February 12, 2013; and a letter from several Members of Congress to USTR, September 27, 2010. See also letter referenced in Senator Pat Roberts, "Sens. Roberts and Baldwin Fight to Protect U.S. Producers Against Ridiculous EU Trade Demands on Names of Meat Products," press release, April 4, 2014.

[144] Informa Agribusiness Consulting, "Assessing the Potential Impact of Geographical Indications for Common Cheeses on the U.S. Dairy Sector," February 2019.

[145] American Origin Products Association, "AOPA Policy Agenda," http://www.aop-us.org/aopa-policy-agenda.html.

[146] USTR, "2018 Trade Policy Agenda and 2017 Annual Report of the President of the United States on the Trade Agreements Program," March 31, 2018.

[147] USMCA side letter from USTR to Mexico's Secretary of Economy, Ildefonso Guajardo Villarreal, November 30, 2018, https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/MX-US_Side_Letter_on_Cheeses.pdf.

[148] For more information on this issue, see CRS Report R44556, *Geographical Indications (GIs) in U.S. Food and Agricultural Trade*; and CRS Report R43658, *The U.S. Wine Industry and Selected Trade Issues with the European Union*.

[149] USTR, "2019 Special 301 Report," April 2019, p. 19.

[150] See, for example, *World Trade Online*, "Vilsack Shoots Down EU GI Demands in Meeting with Agriculture Ministers," June 16, 2014; and A. Marshall, "Vilsack: Biotech, Geographical Indications, Cloning Discussed at 'Historic' TTIP Meeting," *Agri-Pulse*, June 17, 2014.

[151] USTR, "United States-European Union Negotiations, Summary of Specific Negotiating Objectives," January 2019,

U.S. Farm Trade with Cuba[152]

The U.S. embargo on trade and financial transactions with Cuba dates from 1962. The sanctions on Cuba were partially eased in 2000 with regard to U.S. exports of agricultural products with the enactment of the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387). The law allows for one-year export licenses for selling agricultural commodities to Cuba but without the availability of U.S. government assistance, foreign assistance, export assistance, credits, or credit guarantees to finance the trade. The law also denies exporters of agricultural goods access to U.S. private commercial financing or credit, although U.S. private export financing is permitted for all other authorized export trade to Cuba.[153] Moreover, all agricultural product transactions must be conducted on a cash-in-advance basis or with financing from third countries.

Cuba received almost $5.7 billion, in nominal dollars, in U.S. agricultural products from FY2001 to FY2018. U.S agricultural exports to Cuba peaked in FY2008, reaching $658 million.[154] Major exports during the earlier years included poultry, corn, soybeans, wheat, rice, and feed and fodder products including soybean meal and distillers grains. Since FY2008, U.S. agricultural exports to Cuba declined partly due to negligible exports of rice, wheat, cotton, beef, pork, and distillers grains. Shipments of U.S. farm products to Cuba amounted to $230 million in FY2018, down from $266 million in FY2017.

A USDA attaché report on Cuba contends that the decline in U.S. market share in Cuba "is largely attributable to a decrease in bulk commodity exports from the United States in light of favorable credit terms offered by key competitors."[155] The same report concluded that lifting U.S. restrictions on travel and capital flow to Cuba, and enabling USDA to conduct market development and credit guarantee programs in Cuba, would help the United States recapture its market share in Cuba.

A 2016 USITC report noted that Cuba imports 70%-80% of its food needs, which amount to some $2 billion per year.[156] Given the price competitiveness and logistical advantages of key U.S. agricultural products compared with export competitors, ITC indicated that U.S. agricultural exports could expand significantly—to about $800 million within five years—if the remaining U.S. restrictions on trade with Cuba were removed. The report identified corn, wheat, rice, and dairy products (particularly milk powder) as the commodities that could see the greatest dollar increase in exports over the near term. The same report observed that U.S. agricultural suppliers view prohibitions on providing credit on food and agricultural product sales and U.S. restrictions on travel to Cuba as key obstacles to increasing U.S. farm exports to the island nation.

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https://ustr.gov/sites/default/files/01.11.2019_Summary_of_U.S.-EU_Negotiating_Objectives.pdf; and USTR, "United States-Japan Trade Agreement (USJTA) Negotiations," December 2018, https://ustr.gov/sites/default/files/2018.12.21_Summary_of_U.S.-Japan_Negotiating_Objectives.pdf.

[152] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS.

[153] For more information on this issue, see CRS Report R44822, *Cuba: U.S. Policy in the 115th Congress*.

[154] U.S. Census Bureau Trade Data, BICO-HS10, accessed from https://apps.fas.usda.gov/gats/default.aspx, March 7, 2019.

[155] FAS, "Where to Next for Cuban Food and Agriculture," *GAIN* Report CB1515, October 2015.

[156] USITC, "U.S. Agricultural Sales to Cuba: Certain Economic Effects of U.S. Restrictions," July 2007, http://www.usitc.gov/publications/332/pub3932.pdf; USITC, "U.S. Agricultural Sales to Cuba: Certain Economic Effects of U.S. Restrictions, An Update," June 2009, http://www.usitc.gov/publications/332/ID-22.pdf; and USITC, "Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions," April 18, 2016, http://www.usitc.gov/publications/332/pub4597.pdf.

USDA also maintains that Cuba would likely develop comparative advantages in the production and export of certain citrus and tropical fruit, vegetables, tropical plants, and cut flowers.[157] Some agricultural interests in Florida have expressed concern about potentially subsidized competition from Cuba and exposing U.S. agriculture to invasive pests and diseases. Sugar trade could be an area that would require negotiations. The United States is a major sugar importer, and Cuba is a sugar exporter. Should the embargo be further eased, Cuba may wish to export sugar to the United States. The United States tightly manages sugar imports, so any access for Cuba to export sugar to the U.S. market would have to be negotiated.

Status: In December 2014, President Obama announced a major shift away from a sanctions-based policy with Cuba toward a policy of engagement. President Obama acknowledged that he did not have the authority to lift the embargo because it is codified into Section 102(h) of the Cuban Liberty and Democratic Solidarity Act of 1996, P.L. 104-114. Removing the overall economic embargo would require amending or repealing that law as well as other statutes—such as the Cuban Democracy Act of 1992 (Title XVII of P.L. 102-484) and the Trade Sanctions Reform and Export Enhancement Act (P.L. 106-387)—that include provisions impeding normal economic relations with Cuba. In 2017, the Trump Administration introduced new sanctions and partially rolled back some of the Obama Administration's efforts to normalize relations, including adding restrictions on transactions with companies controlled by the Cuban military and the elimination of individual people-to-people travel. On March 4, 2019, the Administration allowed lawsuits to go forward against some 200 Cuban entities operated by the Cuban military, intelligence, or security services for trafficking in confiscated property.

Amid this policy shift toward Cuba, the 2018 farm bill (P.L. 115-334) permits funding to be used to operate two U.S. agricultural export promotion programs in Cuba—the Market Access Program and the Foreign Market Development Cooperator Program.[158]

For more on U.S. agricultural trade with Cuba, see CRS Report R44119, *U.S. Agricultural Trade with Cuba: Current Limitations and Future Prospects*. For information on U.S. policy toward Cuba, see CRS Report R44822, *Cuba: U.S. Policy in the 115th Congress* and CRS In Focus IF10045, *Cuba: U.S. Policy Overview*.

Generalized System of Preferences (GSP)[159]

The GSP provides duty-free tariff treatment for certain products from designated developing countries. U.S. agricultural imports under GSP totaled $2.4 billion in 2018, accounting for about 15% of the value of total U.S. GSP imports. Leading agricultural imports (based on value) include processed foods and food processing inputs, beverages and drinking waters, processed and fresh fruits and vegetables, sugar and sugar confectionery, olive oil, fresh fruits, and miscellaneous food preparations and inputs for further processing. In 2018, the six leading GSP countries—Thailand, India, Turkey, Indonesia, Brazil, and Argentina—accounted for nearly 70% of all GSP-eligible U.S. agricultural imports.[160] In recent years, a debate has emerged over the limits of eligibility for GSP treatment.

[157] S. Zahniser and B. Cook, "U.S.-Cuba Agricultural Trade: Past, Present, and Possible Future," *Amber Waves*, ERS, August 3, 2015.

[158] Agricultural Act of 2018, P.L. 115-334, Title III, §203.

[159] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[160] A list of GSP-eligible agricultural products is available at https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-program-i-0. For more information, see CRS Report RS22541,

Over the past decade, GSP has been extended through a series of short-term extensions—most recently until December 31, 2020 (P.L. 115-141). This latest extension made certain technical modifications related to GSP imports and required USTR to submit an annual report to Congress on its efforts to ensure that GSP countries are meeting the eligibility criteria for the program.

Members of Congress have expressed a range of views on whether to include emerging market developing countries (e.g., India, Brazil) as GSP beneficiaries or limit the program to least-developed countries.[161] Some GSP beneficiary countries have become ineligible to participate in the U.S. program. For example, in 2014, Russia's GSP status was terminated, and in 2017, Seychelles, Uruguay, and Venezuela were graduated out of the program because it was determined they had become "high income" countries. Argentina's GSP eligibility was suspended in 2012 but was reinstated in 2017. In early 2018, USTR initiated a series of actions regarding GSP as part of its ongoing review of specific country practices. USTR's review is in response to concerns about the countries' compliance under the program but is also part of its GSP country eligibility assessment and petition process.[162] Some of the countries subject to USTR's review are actively exporting to the United States under GSP, including India, Indonesia, and Turkey. Combined, these three countries accounted for an estimated $800 million in 2018, or about one-third of the value of all GSP-eligible agricultural imports to the United States.

The interagency Trade Policy Staff Committee, chaired by USTR, reviews and revises the lists of eligible products annually, generally on the basis of petitions received from beneficiary countries or interested parties requesting that additional products be added or removed.[163] When a country's petition for product eligibility is approved, the product becomes GSP-eligible for all GSP-beneficiary developing countries (or only for least developed countries if so designated).[164] Based on previous reviews, opinions within the U.S. agricultural industry are often mixed, reflecting both support for and opposition to the current program.[165]

Status: USTR initiated its current annual GSP product and country review in March 2019[166] and announced its intention to terminate GSP designations for Turkey and India "because they no longer comply with the statutory eligibility criteria."[167] Press reports suggest that continued U.S. GSP eligibility is a top priority for India, while other reports suggest that Turkey views U.S. GSP review standards as being in violation of WTO rules.[168] Action by USTR to terminate GSP designations for Turkey and India could increase trade tensions between the United States and these two trading partners, potentially affecting future trade relations and U.S. agricultural

Generalized System of Preferences: Agricultural Imports.

[161] For more information on this issue, see CRS Report RL33663, *Generalized System of Preferences (GSP): Overview and Issues for Congress*.

[162] 83 *Federal Register* 18618, April 27, 2018; and 83 *Federal Register* 40839, August 16, 2018. See also USTR, "USTR Announces New Enforcement Priorities for GSP," press release, October 2017.

[163] The GSP Subcommittee is a sub-group of the Trade Policy Staff Committee and is charged (through USTR) with advising the President on GSP beneficiary country designations and covered products. See Section 8 of Executive Order 11846, 40 *Federal Register* 14291, March 31, 1975.

[164] For more information, see USTR, *U.S. Generalized System of Preferences: Guidebook*, September 2016.

[165] See, for example, CRS Report RS22541, *Generalized System of Preferences: Agricultural Imports*.

[166] 84 *Federal Register* 57: 11150, March 25, 2019.

[167] USTR, "United States Will Terminate GSP Designation of India and Turkey," March 4, 2019. See also CRS Insight IN11075, *Trump Administration's Proposed Removal of Generalized System of Preferences (GSP) Benefits for India and Turkey*.

[168] For example, *World Trade Online*, "United States Will Terminate GSP Designation of India and Turkey," March 4, 2019.

exports. Some in Congress have expressed opposition to the Administration's stated intent to terminate India's designation as a GSP beneficiary.[169] A survey of companies conducted by the Coalition for GSP suggests that terminating India's and Turkey's GSP beneficiary status could adversely affect U.S. businesses, including some food and agricultural companies, through higher tariffs for some imported products and ingredients.[170]

U.S.-EU Agricultural Trade Issues

The EU has historically been one of the top U.S. agricultural export markets, currently ranking as the fourth-largest buyer of U.S. agricultural products. U.S. agricultural exports to the EU totaled $12.7 billion in FY2018 and for FY2019 is forecast to reach $13.4 billion.[171] Tree nuts, soybeans, and alcoholic beverages are among the top U.S. exports to the EU based on value. The EU is also a major supplier of U.S. agricultural products. The United States imported $23.7 billion worth of agricultural products in FY2018, and USDA forecasts imports of $24 billion in FY2019. Processed agricultural products such as wine and beer, essential oils, cheese, and other consumer-oriented food products are the top U.S. purchases from the EU. Based on the value of agricultural trade, the U.S. agricultural trade deficit with the EU was $11 billion in FY2018 and is projected to be $10.6 billion in FY2019.

U.S.-EU Agricultural Trade Negotiations[172]

The United States and the EU are the world's largest mutual trade and investment partners. Although this trading relationship is largely harmonious, the EU was among those U.S. trading partners that placed retaliatory tariffs on some U.S. products in response to Section 232 tariffs imposed by the Trump Administration on U.S. imports of steel and aluminum. Effective in June 2018, the EU imposed tariffs of 25% on U.S. exports of prepared vegetables and legumes, grains, fruit juice, peanut butter, and whiskey, among other products. These tariffs affect about $1 billion in U.S. agricultural exports to the EU, or about 8% of total U.S.-EU agricultural trade in recent years.[173] In July 2018, the Trump Administration and the EC issued a joint statement announcing that they were forming an executive working group that will seek to reduce transatlantic barriers to trade, including eliminating non-auto industrial tariffs and non-tariff barriers.[174] In October 2018, USTR officially notified Congress of the Administration's intention to start negotiations.[175]

The WTO reports that the simple average WTO MFN tariff applied to agricultural products entering the United States was 5.1% in 2014, compared to an average of 12.2% for products entering the EU.[176] Including all products imported under an applied tariff or a TRQ, USDA

[169] Letter from more than 20 House Members to USTR Robert E. Lighthizer, May 2, 2019.

[170] Coalition for GSP, "How GSP Terminations Would Hurt American Businesses and Workers," May, 2019.

[171] ERS, "Outlook for U.S. Agricultural Trade," AES-107, February 21, 2019.

[172] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[173] FAS, "EU Imposes Additional Tariffs on U.S. Products," *GAIN* Report E18045, June 21, 2018. The 8% figure is based on CRS calculations from U.S. Census Bureau Trade Data, which indicate that U.S. exports to the EU have averaged $12 billion over 2014-2018 on both a fiscal-year and a calendar-year basis.

[174] *EC News Archive*, "Joint EU-U.S. Statement following President Juncker's Visit to the White House," June 25, 2018. See also USTR, "U.S.-EU Trade Agreement Negotiations," https://ustr.gov/countries-regions/europe-middle-east/europe/.

[175] USTR Robert E. Lighthizer, letter to Senator Orrin Hatch, October 16, 2018.

[176] WTO, "World Tariff Profiles, 2015," https://www.wto.org/english/res_e/booksp_e/tariff_profiles15_e.pdf.

Note, calculation of average WTO MFN tariff rates do not take into consideration tariff rates under preferential trade

reports that the calculated average rate across all U.S. agricultural imports is roughly 12%, well below the EU's average of 30%.[177] Restrictive TRQs on EU imports of agricultural products are an issue for U.S. exporters.

In 2013, the Obama Administration engaged in negotiations with the EU as part of the Transatlantic Trade and Investment Partnership (T-TIP) with the goal of concluding a "comprehensive and high standard" agreement within two years. T-TIP's last negotiating round was in October 2016, and negotiations were largely paused for both sides to evaluate progress.[178] Underlying regulatory and administrative differences between the United States and the EU on issues of food safety, public health, and IPR for some types of agricultural products have been areas of contention in these negotiations.

The United States and the EU have engaged in a series of long-standing disputes involving agricultural products and certain SPS standards.[179] These include, for example, delays in reviews of biotech products (limiting U.S. exports of grain and oilseed products), prohibitions on growth hormones in beef production and certain antimicrobial and pathogen reduction treatments (limiting U.S. meat and poultry exports), and complex certification requirements (limiting U.S. exports of processed foods, animal products, and dairy products). Other EU regulations of concern to U.S. exporters include the arguable lack of a science-based focus in establishing SPS measures, difficulty meeting food safety standards and securing product certification, the perceived lack of cohesive labeling requirements, and stringent testing requirements that appear to be implemented often inconsistently among EU member nations. Some U.S. agricultural producers also oppose EU policies on GIs. (See section "Geographical Indications (GIs).")

Status: In January 2019, USTR announced its negotiating objectives for a U.S.-EU trade agreement following a public comment period and a hearing involving several leading U.S. agricultural trade associations.[180] These include agricultural policies—both market access and non-tariff measures such as TRQ administration and other regulatory issues. Among regulatory issues, key U.S. objectives include harmonizing regulatory processes and standards to facilitate trade, including SPS standards, and establishing specific commitments for trade in products developed through agricultural biotechnologies. The U.S. objectives also include addressing GIs by protecting generic terms for common use. U.S. agricultural interests generally support including agriculture as part of the U.S. negotiating objectives for a U.S.-EU trade agreement.[181] Several Members of Congress support this position and are opposed to the EU's decision to exclude agricultural policies in their negotiating mandate. A letter to USTR from a bipartisan group of 114 House Members states that "an agreement with the EU that does not address trade in agriculture would be, in our eyes, unacceptable."[182] Senate Finance Committee Chairman Chuck

agreements or temporary increases in tariffs resulting from any ongoing trade disputes.

[177] USDA estimates, February 2015.

[178] For more information on this issue, see CRS Report R44564, *Agriculture and the Transatlantic Trade and Investment Partnership (T-TIP) Negotiations*.

[179] USTR, "2018 National Trade Estimate Report," pp. 165-168. For more information, see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*.

[180] USTR, "United States-European Union Negotiations, Summary of Specific Negotiating Objectives," January 2019. See also 83 *Federal Register* 57526, November 15, 2018.

[181] Letter from U.S. agricultural trade associations to USTR Robert E. Lighthizer, December 17, 2018; and American Farm Bureau Federation, "US-EU Trade Negotiations," February 2019. See also comments at USTR's "Public Hearing on Negotiating Objectives for U.S.-EU Trade Agreement U.S.-EU Trade Agreement," December 14, 2018 (Docket No. USTR-2018-0035).

[182] Letter to USTR Robert E. Lighthizer from 114 House Members, March 14, 2019.

Grassley has reiterated, "Bipartisan members of the Senate and House … have voiced their objections to a deal without agriculture, making it unlikely that such a deal would pass Congress."[183] The EU, however, has indicated that it is planning for a more limited negotiation that does not include agricultural products and policies. In late January 2019, the EC published a progress report confirming that its joint agenda does not include agriculture, since it "is a sensitivity for the EU side."[184] The EU negotiating mandate states that a key EU goal is "a trade agreement limited to the elimination of tariffs for industrial goods only, excluding agricultural products."[185]

Separately, the EU has taken certain measures to avoid escalating agricultural trade tensions with the United States, for example, by increasing imports of U.S. soybeans as a source of biofuels[186] and by proposing to lift a ban on certain pest-resistant American grapes in EU wine production, among other measures.[187] At the same time, the EU has announced that it would retaliate against "unlawful subsidies given" to Boeing by imposing increased tariffs on imports of U.S. food products such as frozen fish, fruits, wine, liquors, and ketchup.[188]

U.S.-EU Dispute over U.S. Olive Imports[189]

In 2018, the United States concluded an injury investigation regarding ripe olives imported from Spain based on complaints from two California-based olive producers. In June 2018, DOC announced its affirmative final determinations in the AD and CVD investigations.[190] In the AD investigation, DOC found that Spanish ripe olives were being sold in the United States at less than fair value and calculated dumping margins ranging from about 17% to 25% on imports of ripe olives from Spain. In the CVD investigation, DOC determined that Spanish ripe olive producers and exporters were subsidized at rates ranging from about 8% to 27%. In July, USITC determined that U.S. producers were materially injured by imports of ripe olives from Spain.[191] Given these determinations, AD and CVD duty orders on U.S. Spanish ripe olive imports were issued and became effective on August 1, 2018.

Status: In January 2019, the EU requested WTO dispute consultations with the United States concerning U.S. AD and CVD duties imposed on imported ripe olives from Spain.[192] The EU

[183] U.S. Senate Finance Committee, "Grassley Statement on the Omission of Agriculture from E.U. Trade Negotiating Mandate," press release, April 15, 2019.

[184] EC, "EU-US Relations: Interim Report on the Work of the Executive Working Group," January 30, 2019.

[185] Council of the European Union, "Trade with the United States: Council Authorises Negotiations on Elimination of Tariffs for Industrial Goods and on Conformity Assessment," press release, April 15, 2019.

[186] USDA, "Oilseeds and Products," *GAIN* Report AU1804, September 12, 2018; and USDA, "EU Recognizes U.S. Soybean Industry Sustainability Scheme," *GAIN* Report E19003, February 11, 2019. See also EC, "Imports of U.S. Soybeans Increase by over 280%," press release, January 8, 2018.

[187] USDA, "Oilseeds and Products;" USDA, "EU Recognizes U.S. Soybean Industry Sustainability Scheme;" and EC, "Imports of U.S. Soybeans Increase by over 280%." See also communication between Secretary-General of the EC to the Secretary-General of the Council of the European Union, Interinstitutional file: 2018/0218 (COD), June 1, 2018.

[188] H. von der Burchard, "EU Prepares €20B Retaliation Against US over Boeing Subsidies" *Politico*, April 17, 2019.

[189] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[190] DOC, "Commerce Finds Dumping and Subsidization of Imports of Ripe Olives from Spain," June 2018; and 83 *Federal Register* 28193, June 18, 2018. Covers subheadings 2005.70.02, 2005.70.04, 2005.70.50, 2005.70.60, 2005.70.70, and 2005.70.75 of the Harmonized Tariff Schedule of the United States.

[191] USITC, "Ripe Olives from Spain Injure U.S. Industry, Says USITC," press release, July 10, 2018; and 83 *Federal Register* 36966, July 31, 2018.

[192] WTO, "European Union Initiates WTO Dispute Proceedings Against US Olive Duties," January 31, 2019,

position is that these measures are inconsistent with the U.S. commitments under the WTO.[193] USTR states that "the EU's case is without merit" and that it intends to "fight it very aggressively."[194] AD/CVD duties levied against ripe olives from Spain have reportedly already cost the Spanish olive industry an estimated $27 million in lost exports.[195]

U.S.-EU Beef Hormone Dispute[196]

The United States and the EU have engaged in a long-standing trade dispute over the EU's ban on hormone-treated meat. The EU adopted restrictions on livestock production in the early 1980s, limiting the use of natural hormones to therapeutic purposes, banning the use of synthetic hormones, and prohibiting imports of animals and meat from animals that have been administered the hormones. In response, the United States suspended trade concessions with the EU in 1999 by imposing retaliatory tariffs of 100% *ad valorem*[197] on selected food products from EU countries. Despite an ongoing series of WTO dispute settlement proceedings and decisions, the United States and the EU continue to disagree on a range of legal and procedural issues, as well as the scientific evidence and consensus affirming the safety of hormone-treated beef.[198]

Many in the United States perceive EU's action and the use of SPS measures and non-tariff barriers as disguised protectionism intended to unjustifiably restrict and discriminate against product exports from certain countries.[199] In January 2009, USTR announced its intent to make changes to the list of EU products subject to increased tariffs under the dispute, including changes to the EU countries and products affected, with additional tariffs on some products. The EU claimed that this action constituted an "escalation" of the dispute. In May 2009, following a series of negotiations, the United States and the EU signed a memorandum of understanding that phased in certain changes over the next several years, and the United States suspended its retaliatory tariffs for imported EU products under the dispute.

As part of the 2009 memorandum, the EU granted market access to U.S. exports of beef raised without growth promotants as part of its High-Quality Beef (HQB) TRQ. The EU's HQB quota is currently set at 45,000 MT annually and assessed a customs tariff of 20%.[200] However, the HQB quota remains open to other beef exporting nations, which effectively limits the ability for U.S. beef producers to fully benefit under the quota. According to USTR and the U.S. beef industry,

https://www.wto.org/english/news_e/news19_e/ds577rfc_31jan19_e.htm. For more detailed information, see WTO, "United States—Anti-Dumping and Countervailing Duties on Ripe Olives From Spain, Request for Consultations by the European Union," WT/DS577/1, January 31, 2019.

[193] As found in Articles 19.1, 19.3, 19.4, 1.2, 2.1, 2.1(a), (b) and (c), 2.2 and 2.4 of the Agreement on Subsidies and Countervailing Measures.

[194] USTR, "USTR Statement on the EU's Consultation Request at the WTO," January 29, 2019.

[195] Z. Thomas, "Olives Pitting U.S. Against EU in Global Trade Fight," *BBC Business*, February 21, 2019.

[196] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[197] *Ad valorem* tariffs refer to tariff rates charged as a percentage of the price or value of the traded product.

[198] For more information on this issue, see CRS Report R40449, *The U.S.-EU Beef Hormone Dispute*. See also WTO, "DS26: EC—Measures Concerning Meat and Meat Products (Hormones)," https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm.

[199] See, for example, letter from many U.S. agriculture trade associations to Michael Froman, Deputy National Security Advisor for International Economic Affairs, May 20, 2013; and statement from U.S. Chamber of Commerce. See also Council for Agricultural Science and Technology, "Impact of the Precautionary Principle on Feeding Current and Future Generations," June 2013.

[200] As part of the EU-Canada Comprehensive Economic and Trade Agreement (CETA), Canada is granted an additional access of 3,200 metric tons of hormone-free beef, which is duty-free (i.e., 0% tariff).

most of the HQB quota has been filled by countries other than the United States, and the EU has been unwilling to consider an allocation that would reserve a significant part of the HQB quota for the United States.[201]

In December 2016, USTR proposed reinstating retaliatory tariffs on EU products under the dispute. In February 2017, USTR convened a hearing to review this possible retaliatory action.[202] To date, the United States has not imposed retaliatory tariffs connected to the U.S.-EU beef hormone dispute.

Status: The EU continues to impose bans and restrictions on meat produced using hormones, beta agonists, and other growth promotants, and it allows only imports of beef produced without hormones subject to the EU's HQB quota. The United States maintains that scientific evidence demonstrates that meat produced using hormones, beta agonists, and other growth promotants is safe for consumers.[203]

The United States continues to seek a U.S.-specific allocation of the EU's HQB import quota. In late 2018, the EU agreed to review its existing HQB quota and renegotiate its quota with the United States with the expectation that a revised HQB agreement would be implemented in early 2019.[204] In March 2019, press reports indicated that the U.S. and EU had reached an "agreement in principle" for reallocating the EU's HQB quota, which could provide the United States a share of EU's annual quota.[205] If realized, such an agreement could result in additional market access to the EU for U.S. beef certified as produced without hormones.[206]

U.S.-EU Dispute over Pathogen Reduction Treatments (PRTs)[207]

In January 2009, the United States escalated a long-running dispute with the EU over its refusal to accept imports of U.S. poultry that are subject to certain pathogen reduction treatments (PRTs). PRTs are antimicrobial rinses that have been approved for use by the USDA in poultry production to reduce the amount of microbes on meat. Meat and poultry products processed with PRTs are judged safe by the United States and also by European food safety authorities. However, the EU prohibits the use of PRTs and the importation of poultry treated with these substances. The EU generally opposes such chemical interventions and asserts that its own poultry producers follow much stricter production and processing rules that are more effective in reducing microbiological contamination than simply washing poultry products. In general, EU consumer groups argue that the use of such treatments compensates for poor hygiene in the supply chain.[208] The United States requested WTO consultations with the EU on the matter, a prerequisite first step toward the

[201] See, for example, National Cattlemen's Beef Association, "NCBA Applauds USTR for Defending U.S. Beef from European," December 22, 2016.

[202] 81 *Federal Register* 95724, December 28, 2016 (Docket# USTR-2016-0025-0001).

[203] See, for example, USTR, "2018 National Trade Estimate Report," March 2018, pp. 165-166.

[204] USDA, "EU-28: 2018-19 HQB Q2 Fill Maintains Record Pace as U.S. and EU Renegotiate," *GAIN* Report E18064, November 12, 2018; and EC, "European Commission Recommends Settling Longstanding WTO Dispute," September 3, 2018.

[205] H. von der Burchard, "EU and U.S. Finalize Talks on Hormone-Free Beef, *Politico Pro*, March 12, 2019.

[206] Tomson, B., "EU Negotiators Get Green Light for Deal on U.S. Beef Trade," *Agri-Pulse*, October 24, 2018.

[207] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS.

[208] See, for example, European Consumer Organization, "Peroxyacetic Acid Rinses on Poultry Meat: The Consumer Perspective," BEUC Position Paper BEUC-X-2014-052, July 7, 2019.

establishment of a formal WTO dispute settlement panel. A WTO panel was subsequently established in November 2009, but this case has not moved forward.[209]

In 2013, USDA submitted an application for the approval of peroxyacetic acid as a PRT for poultry. Although the EU initially put forward a proposal to authorize the PRT, the EU withdrew its proposal in December 2015, citing the European Food Safety Authority's (EFSA) opinion of insufficient evidence of peroxyacetic acid's efficacy against campylobacter.[210]

EFSA cleared lactic acid for reducing pathogens on beef carcasses, cuts, and trimmings in 2011.[211] In 2013, the EU lifted its ban on the use of lactic acid in beef PRTs on beef carcasses, half-carcasses, and beef quarters in the slaughterhouse.[212] In 2017, the National Pork Producers Council submitted an application to EFSA to approve organic lactic and acetic acid for use on pork carcasses and cuts. EFSA's panel report, issued in October 2018, concluded that use of the treatments do not pose a safety concern provided that the substances comply with the EU specifications for food additives and that their use is efficacious compared to untreated meat.[213] However, EFSA raised questions about whether lactic and acetic acid were more efficacious than water treatment for certain applications.

Status: The United States continues to maintain that PRTs are a "critical tool during meat processing that helps further the safety of products being placed on the market" and continues to seek approval of certain PRTs for beef, pork, and poultry.[214] To date, however, the United States and the EU have not been able to agree on a number of issues related to veterinary equivalency, and the EU continues to prohibit any substance other than water to remove contamination from animal products unless the EU approves the substance.

EU Regulation of Edible Gelatin and Collagen[215]

In December 2018, USDA's Animal and Plant Health Inspection Service (APHIS) responded to the WTO notification of a new EU regulation, 2017/625, concerning new requirements for gelatin and collagen entering the EU for human consumption. In FY2018, the U.S. exported over $199 million worth of raw materials to the EU for the production of gelatin and collagen that were intended for human consumption.[216] APHIS and industry trade groups have objected to the EU's new requirement, which would be enforceable as of December 14, 2019.

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[209] For more information on this issue, see CRS Report R40199, *U.S.-EU Poultry Dispute on the Use of Pathogen Reduction Treatments (PRTs)*. See also: WTO, "DS389: EC—Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States," https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds389_e.htm.

[210] USTR, "2018 National Trade Estimate Report," p. 168.

[211] EFSA, "Scientific Opinion on the Evaluation of the Safety and Efficacy of Lactic Acid for the Removal of Microbial Surface Contamination of Beef Carcasses, Cuts and Trimmings," *EFSA Journal* 2011:9 (7):2317, July 26, 2011.

[212] Commission Regulation (EU) No 101/2013 of 4 February 2013 concerning the use of lactic acid to reduce microbiological surface contamination on bovine carcases (sic). See also EU Food Law, "EU to Allow Lactic Acid Opening Door to US Beef Imports," November 30, 2012.

[213] EFSA, "Evaluation of the Safety and Efficacy of the Organic Acids Lactic and Acetic Acids to Reduce Microbiological Surface Contamination on Pork Carcasses and Pork Cuts," *EFSA Journal*, October 25, 2018.

[214] USTR, "2018 National Trade Estimate Report," p. 168. See also testimony by William Roenigk, National Chicken Council, at a Senate Finance Committee hearing on T-TIP, October 30, 2013; and C. Perkins, "U.S. Poultry Industry Raises Concerns About TTIP," *Global Meat*, June 4, 2013.

[215] Prepared by Sahar Angadjivand, Analyst in Agricultural Policy, CRS.

[216] USDA, Global Agricultural Trade System, using Foreign Agricultural Trade of the United States export data

U.S. animal byproduct exports to the EU follow an EU regulation in force since 2011 that provides detailed rules for trade in animal byproducts.[217] The current regulation allows APHIS to make changes to the list of eligible U.S. animal byproduct facilities that are authorized to export to the EU. The new EU regulation would require all U.S. animal byproduct exporters to register their establishments in the EU Trade Control Expert System (TRACES).[218] APHIS contends that the TRACES registration process is cumbersome in that it could take more than a month to add a new facility or to amend an existing approval, creating delays that could potentially impede trade.

Currently, the EU recognizes only U.S. meat intended for human consumption overseen by the Food Safety and Inspection Service (FSIS) of USDA as equivalent to EU-produced products. As a result, many FSIS-inspected establishments are already listed in TRACES. However, not all animal byproduct facilities in the United States are overseen by FSIS, and these may not already be listed on TRACES. Some raw materials intended for collagen or gelatin products may have originated from FSIS-inspected establishments, but processed products and animal feeds may be overseen by U.S. Food and Drug Administration or other federal agencies. The new EU proposed regulation would eventually allow many of these facilities to be listed in TRACES.

Under the current EU Regulation 142/2011 Chapter 8 Health Certificate, APHIS is the recognized oversight authority for U.S. exports. The EU's proposed 2017 regulation *Model Certificate* would require that APHIS be present at all times during the loading of animal byproducts into a container.[219] U.S. trade associations have expressed the view that the EU-specific certificate requirements are not consistent with guidance provided by Codex Alimentarius—the international food standards organization that sets guidelines to protect public health and ensure fair practices in the food trade. Instead, they allege that the EU requirements are unnecessarily restrictive and would have "the effect of closing the EU market to the majority of U.S. hides and skins exported for the purposes of edible gelatin and collagen production."[220]

Status: In December 2018, APHIS submitted comments to the WTO in response to the proposed EU 2017 draft regulation. APHIS "requests that the EU delay the proposed implementation date to allow for competent authorities [USDA] to adequately prepare for implementation and provide the EU additional time to clarify its requirements."[221] Officials at APHIS await an official response from the EU.

subheadings "Other Hides and Skins, "Other Animal Fats," and "Bovine Hides," March 11, 2019.

[217] See Commission Regulation (EU) No 142/2011, implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0142&from=EN.

[218] In 2011, the EC implemented TRACES to strengthen cooperation with EU partners, facilitate trade, accelerate administrative procedures, and improve the risk management of health threats while combating fraud and enhancing the safety of the food chain, animal health, and plant health. For more information, see EU Commission, "TRACES: Trade Control and Expert System," https://ec.europa.eu/food/animals/traces_en.

[219] C. Needham, Legislative Director, APHIS, communication with CRS, February 11, 2019.

[220] U.S. Hide, Skin, and Leather Association, "RE: Proposed EU Amendment to Annex III of Regulation (EC) No 853/2004 Regarding the Importation of Raw Materials for the Production of Gelatin and Collagen Products," August 24, 2015.

[221] C. Needham, Legislative Director, APHIS, communication with CRS, February 11, 2019.

Issues Related to Livestock Trade

In 2018, exports of U.S. livestock and products totaled $29.6 billion, while imports totaled $16.5 billion. Foreign demand for U.S. animals and products supports prices of domestic livestock, poultry, and dairy products, while imports help to meet U.S. consumer demand for a variety of livestock and dairy products. U.S. producers in the livestock sector look to the U.S. government to negotiate market access agreements, monitor international trading policies, and settle trade disputes, including restrictions that certain countries impose on U.S. exports in response to animal disease concerns.

Export Bans on U.S. Meat and Poultry[222]

In 2019, the USDA forecasts that exports of meat and poultry products will represent about 17% of U.S. domestic production.[223] Periodically, foreign countries impose export bans on U.S. meat products in response to an outbreak of certain animal diseases. The bans are disruptive for livestock producers and meat exporters, are often inconsistent with internationally accepted protocols, and vary in terms of how broadly and how long trading partners apply them. For example, bans were imposed on U.S. beef exports because of the discovery of bovine spongiform encephalopathy (BSE, or mad cow disease) in 2003. An outbreak of highly pathogenic avian influenza (HPAI) at the end of 2014 and early 2015 in U.S. turkey and egg-laying flocks triggered export bans on poultry products by more than 30 countries. The bans on U.S. broiler meat exports were imposed for various periods of time even though the HPAI outbreaks were not in areas in close proximity of commercial broiler production.[224]

The World Organization for Animal Health (known as OIE) has established trade protocols when disease outbreaks occur in countries that export meat and poultry products.[225] According to OIE, in most cases total export bans are not recommended or needed when there is a BSE or HPAI discovery or outbreak in exporting countries. In 2013, the OIE determined that the United States is at "negligible risk" for BSE, meaning that U.S. surveillance and safeguard systems are strong. For HPAI, USDA, in collaboration with states, has implemented increased flock biosecurity and has a system in place to rapidly contain and eradicate an outbreak of HPAI.

Over the years, while some foreign markets imposed total bans on U.S. beef exports following the 2003 BSE incident, other export markets for U.S. beef imposed specific conditions for imports of U.S. beef. For example, Japan and South Korea—two importers of U.S. beef—require that imported U.S. beef be produced from cattle under 30 months of age. China did not lift its ban on U.S beef exports until 2017 and included an age restriction when it did. Regarding poultry, some foreign markets imposed total bans on poultry exports during the HPAI outbreak, while other markets imposed export bans only from the regions affected by the outbreak, consistent with the recommended OIE protocol. As the United States demonstrated that the outbreak was contained and then eliminated, most of these bans were lifted.

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[222] Prepared by Joel Greene, Analyst in Agricultural Policy, CRS.

[223] USDA, "World Agricultural Supply and Demand Estimates," April 9, 2019, p. 32.

[224] For more information on this issue, see CRS Report R44114, *Update on the Highly-Pathogenic Avian Influenza Outbreak of 2014-2015*.

[225] OIE, "Terrestrial Animal Health Code (2018)," vol. II: Recommendations Applicable to OIE Listed Diseases and Other Diseases of Importance to International Trade, http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/.

Status: China lifted the ban on U.S. beef in 2017 but restricts imports of U.S. beef to cattle under 30 months of age, similar to other countries that maintain age restrictions.[226] The OIE guidelines do not include age restrictions for countries with the "negligible risk" status.[227] China also requires that U.S. exporters of beef to China participate in the USDA Agricultural Marketing Service export verification program,[228] which verifies that U.S. suppliers are meeting importing country requirements. In 2017 and 2018, the U.S. shipped about 10,000 MT of beef to China, representing 0.5% total U.S. beef exports.

China continues to ban U.S. exports of poultry meat because of the HPAI outbreak and has been unwilling to accept regionalization—the internationally accepted principle that export bans be applied only to areas affected by an animal disease outbreak. In 2018, the United States and South Korea reached an agreement accepting regionalization in the event of an HPAI outbreak in the United States instead of imposing nationwide bans.[229]

U.S. Meat and Poultry Imports[230]

Currently, 33 countries are eligible to export meat and poultry to the United States.[231] Before the United States authorizes imports of meat or poultry, APHIS conducts risk assessments of any foreign animal diseases that could pose a threat to U.S. animal health. Also, FSIS must determine if a foreign meat or poultry inspection system provides an "equivalent" level of sanitation and protection of public health as the U.S. system.[232] Foreign governments document how inspection systems are regulated, and FSIS conducts onsite audits of foreign facilities. FSIS also conducts equivalency verification and periodic audits of countries already approved to export meat and poultry to the United States.

Imports of Chicken from China

In August 2013, FSIS confirmed that China's poultry processing inspection system was equivalent to the U.S. poultry inspection system. This determination allowed China to export processed (cooked) poultry meat that is sourced raw from the United States or from countries eligible to export poultry to the United States. In March 2016, FSIS recommended that the process of verifying equivalency for China's poultry slaughter inspection system move

[226] FSIS, "Export Requirements for The People's Republic of China," updated March 18, 2019, https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products/export-library-requirements-by-country/Peoples-Republic-of-China.

[227] OIE, "Terrestrial Animal Health Code (2018)," Chapter 11.4 Bovine Spongiform Encephalopathy.

[228] Agricultural Marketing Service, "Bovine, Ovine and Caprine Export Verification Programs," https://www.ams.usda.gov/services/imports-exports/bovine-ovine-and-caprine-export-verification-programs.

[229] USDA, "USDA Announces Regionalization Agreement with South Korea to Help Protect U.S. Trade During HPAI Detections," press release, March 15, 2018, https://www.usda.gov/media/press-releases/2018/03/15/usda-announces-regionalization-agreement-south-korea-help-protect.

[230] Prepared by Joel Greene, Analyst in Agricultural Policy, CRS.

[231] FSIS, "Import Library: Eligible Countries and Products," accessed March 18, 2019, https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/eligible-countries-and-products.

[232] Equivalency is authorized under the Federal Meat Inspection Act (21 U.S.C. §601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. §451 *et seq.*). Regulations for FSIS equivalency are in 9 C.F.R. 327. See FSIS, "Process for Evaluating the Equivalence of Foreign Meat, Poultry, and Egg Products Food Regulatory Systems," https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/equivalence/equivalence-process-apply-for-initial-equivalence.

forward.[233] In August 2017, FSIS released an audit report confirming that China's poultry processing system remained equivalent.[234] To date, USDA has not issued a final rule on equivalency for China's poultry slaughter system.

These actions were the culmination of a process that began in 2005, when China requested that USDA evaluate its poultry inspection system. Congress halted the process in FY2006, when appropriations provisions prohibited FSIS from expending funds to evaluate China's poultry inspection system. The process resumed in FY2010 on the condition that FSIS provide Congress with regular reports on the equivalency process. The possibility that the United States could import poultry meat from China has alarmed some food safety advocates and some Members of Congress because of concerns about relatively lax food safety enforcement in China for both domestically consumed products and exports. Testimony presented during a Congressional-Executive Commission on China hearing highlighted concerns regarding China's food safety.[235]

Status: In response to concern about China's record on food safety, Section 749 of Division B of the Consolidated Appropriations Act, 2019 (P.L. 116-6), prohibits USDA from using any funds to purchase Chinese raw or processed poultry products for feeding programs, including the school lunch and school breakfast programs. Section 753 of Division B of the FY2019 appropriations act prohibits USDA from finalizing the proposed rule to allow the importation of slaughtered Chinese poultry.[236]

In 2017, the United States imported about 500 pounds of processed poultry meat from China but did not import any processed poultry meat in 2018. If Congress were to lift the appropriations prohibition on finalizing the China poultry slaughter rule, China would still be restricted to sending only cooked/processed products because of APHIS restrictions on uncooked/processed products due to the presence of animal diseases in China, such as avian influenza.

Fresh Beef Imports from Brazil and Argentina

The United States restricts or prohibits the importation of animals or animal products (including meat) from countries where highly infectious animal diseases exist in order to protect U.S. herds. Fresh beef imports from Brazil and Argentina have been prohibited or restricted because of foot-and-mouth disease (FMD) in the two countries. U.S. beef imports from Brazil and Argentina have mostly been limited to fully cooked/processed product. Argentina was approved to export fresh beef to the United States from 1997 to 2001,\ until the United States halted exports after an Argentine FMD outbreak in 2001.

In December 2013, APHIS proposed a rule that would allow fresh beef imports from 13 regions in Brazil.[237] In August 2014, APHIS proposed a separate rule to allow fresh beef imports from Patagonia and northern Argentina.[238] In July 2015, APHIS released final rules to allow the import

[233] FSIS, "Evaluating the Food Safety Systems Governing Slaughtered Poultry for Export to the United States," February 17, 2016, https://www.fsis.usda.gov/wps/wcm/connect/bd2f2159-63b2-4846-a738-7983f38f297f/2015-China-Slaughtered-Poultry-FAR.pdf?MOD=AJPERES.

[234] FSIS, "Evaluating the Food Safety Systems Governing Production of Processed Poultry Products Exported to the United States," August 10, 2017.

[235] Hearing, Congressional-Executive Commission on China, *Pet Treats and Processed Chicken from China: Concerns for American Consumers and Pets*, June 17, 2014, http://www.cecc.gov/events/hearings/pet-treats-and-processed-chicken-from-china-concerns-for-american-consumers-and-pets.

[236] 82 *Federal Register* 27625, June 16, 2017.

[237] 78 *Federal Register* 77370, December 23, 2013.

[238] 79 *Federal Register* 51508, August 29, 2014; and 79 *Federal Register* 51528, August 29, 2014.

of fresh beef from these regions of Brazil and Argentina.[239] USDA risk assessments determined that, under certain circumstances, fresh beef could be safely imported from Brazil and Argentina without threatening the FMD-free status of the United States. Some livestock industry stakeholders, such as the National Cattlemen's Beef Association and the National Farmers Union, have expressed opposition to allowing fresh beef from Brazil and Argentina because neither country is considered to be free of FMD.[240] FMD was eradicated in the United States in 1929, and any introduction of the disease back into the United States could be economically devastating for the livestock industry. In 2013, the Department of Homeland Security estimated that the cost of an FMD outbreak in the United States could exceed $50 billion.[241]

In May 2015, FSIS found that Brazil's beef inspection system would provide an equivalent level of food safety as the U.S. system.[242] In August 2016, USDA announced that Brazil was approved to ship fresh beef to the United States, and the first shipments arrived the following month. In June 2017, USDA suspended imports of fresh beef from Brazil after FSIS found problems with re-inspected Brazilian beef at the U.S. port of entry.[243] According to USDA, FSIS was re-inspecting 100% of Brazilian fresh beef imports and refused entry to 11% of shipments, well above the 1% refusal rate for other beef imports.

In November 2018, FSIS announced that the Argentine beef inspection system was equivalent, and the country could export fresh beef to the United States again.[244] FSIS also announced that within six months of the November 2018 equivalency determination, the agency would undertake additional onsite audits of Argentina's raw beef inspection system.

Status: The United States continues to suspend its approval of fresh beef imports from Brazil. The United States imported about 10,000 MT of fresh Brazilian beef since September 2016, when U.S. imports began, until shipments were suspended in June 2017. In a step to allow U.S. beef imports from Brazil to resume, President Trump and President Bolsonaro of Brazil issued a joint statement during President Bolsonaro's March 2019 visit in which the United States agreed to "expeditiously schedule" an audit of Brazil's beef inspection system once FSIS is "satisfied with Brazil's food safety documentation."[245]

The United States imported nearly 1,100 pounds of fresh beef from Argentina in December 2018. Argentina holds a 20,000 MT ton duty-free TRQ allotment for beef shipments to the United States.

[239] 80 *Federal Register* 37923, July 2, 2015; and 80 *Federal Register* 37935, July 2, 2015.

[240] National Cattlemen's Beef Association, Docket Number APHIS 2009-0017, Importation of Beef from a Region in Brazil, April 22, 2014, https://www.regulations.gov/document?D=APHIS-2009-0017-0820; and National Farmers Union, Docket Number APHIS 2009-0017, Importation of Beef from a Region in Brazil, April 21, 2014, https://www.regulations.gov/document?D=APHIS-2009-0017-0755.

[241] U.S. Department of Homeland Security, "A World Free of One of the Most Virulent Animal Diseases," updated October 28, 2013, http://www.dhs.gov/world-free-one-most-virulent-animal-diseases.

[242] The FSIS audit report for Brazil is available at https://www.fsis.usda.gov/wps/wcm/connect/d0c646c1-cc80-4540-b3df-01da1d9e9040/Brazil-2015-FAR.pdf?MOD=AJPERES.

[243] USDA, "Perdue: USDA Halting Import of Fresh Brazilian Beef," press release, June 22, 2017.

[244] FSIS, "Argentina Eligible to Export Raw Beef Products to the U.S.," November 30, 2018, https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2018/ConstUpdate113018.

[245] The White House, "Joint Statement from President Donald J. Trump and President Jair Bolsonaro," press release, March 19, 2019.

Trade Restrictions on Ractopamine Use[246]

Ractopamine, an animal drug that increases animal weight gain and meat yield, is approved by FDA for use in U.S. cattle, hog, and turkey production. It is also approved for use in countries such as Canada, Japan, Mexico, and South Korea, but many other countries ban the use of ractopamine in meat production. In 2012, the Codex Alimentarius—the international food standards organization that sets guidelines to protect public health and ensure fair practices in the food trade—set maximum residue levels for ractopamine in beef and pork. However, several of the largest markets for U.S. meat exports have restricted imports of meat produced with ractopamine, despite U.S. adherence to the residue standards established by Codex.

The USTR, in its "2019 National Trade Estimate Report on Foreign Trade Barriers," states that the EU, China, Taiwan, and Thailand continue to restrict U.S. meat exports produced with ractopamine.[247] According to FSIS, U.S. meat exports—particularly pork—may be shipped to markets with ractopamine restrictions if the exported product is raised without ractopamine and is certified through USDA's Never Fed Beta Agonists Program.[248] U.S. exports to markets that have ractopamine restrictions are subject to increased certification and testing costs, potentially affecting competitiveness and dampening market opportunities.

Status: USDA and the USTR continue to engage with trading partners to encourage them to accept international standards on the use of ractopamine.

Country-of-Origin Labeling (COOL)[249]

In March 2009, USDA implemented a final rule to implement country-of-origin labeling (COOL) to provide consumers information on the origin of fresh fruits and vegetables, fish, shellfish, peanuts, pecans, macadamia nuts, ginseng, and ground and muscle cuts of beef, pork, lamb, chicken, and goat. The rules were required by the 2002 farm bill (P.L. 107-171) as amended by the 2008 farm bill (P.L. 110-246).

In 2009, Canada and Mexico challenged U.S. COOL in the WTO, arguing that COOL reduced the value and number of cattle and hogs shipped to the U.S. market, thus violating WTO trade commitments. In 2011, the WTO found that COOL treated imported livestock less favorably than U.S. livestock and did not provide complete information to consumers on the origin of meat products. The United States appealed the WTO ruling, but the Appellate Body upheld the findings. USDA issued a revised COOL rule in May 2013, which required that production steps—born, raised, and slaughtered, by origin country—be included on meat labels, but in 2014 the WTO found that the revised COOL regulations still violated U.S. WTO obligations by discriminating against imported livestock. In December 2015, the WTO authorized Canada and Mexico to retaliate against $1 billion worth of products imported from the United States. In December 2015, Congress repealed the COOL requirements for beef and pork and ground beef and pork in Section 759 of Division A of the Consolidated Appropriations Act, 2016 (P.L. 114-113). USDA then issued a final rule that removed beef and pork from COOL regulations, thus settling the trade dispute. Even so, Canada and Mexico retain their rights granted by the WTO to

[246] Prepared by Joel Greene, Analyst in Agricultural Policy, CRS.

[247] USTR, "2019 National Trade Estimate Report on Foreign Trade Barriers," March 29, 2019, https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2019/2019-national-trade-estimate.

[248] USDA, "Never Fed Beta Agonists Program," https://www.ams.usda.gov/services/imports-exports/beta-agonists.

[249] Prepared by Joel Greene, Analyst in Agricultural Policy, CRS.

retaliate if the United States should implement laws or regulations that violate the WTO findings on U.S. COOL for beef and pork.

Status: Following the repeal of COOL for beef and pork, several state legislatures—including Wyoming, South Dakota, Montana, and Colorado—have considered bills that would require COOL on meat sold within the state, but thus far none has been enacted. The Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America and the Cattle Producers of Washington sued USDA to restore COOL for beef and pork in June 2017.[250] In June 2018, the district court in eastern Washington ruled in favor of USDA because the plaintiffs had missed "the applicable statute of limitations time period and because the regulations follow Congress's clear intent."[251]

In June 2018, the Organization for Competitive Markets and the American Grassfed Association petitioned FSIS to change its "Product of USA" label.[252] The organizations state that foreign meat is imported into the United States, minimally processed, and then sold as "Product of USA" meat. The petition requests that FSIS change its Food Standards and Labeling Policy Book[253] to clarify that the ingredients in a product must be of domestic origin to have a "Product of USA" label. To date, FSIS has not responded to this request.

WTO and U.S. Agriculture

The 164-member WTO oversees and administers multilateral trade rules, serves as a forum for trade liberalization negotiations, and resolves trade disputes through its Dispute Settlement Understanding (DSU). As a signatory member of the WTO, the United States has committed to abide by WTO rules and disciplines, including those that govern domestic farm policy.[254] The WTO's general rules concerning subsidy disciplines, trade behavior, and market access concessions apply to all members.

2018 Farm Bill and WTO Compliance[255]

Two developments in 2018 have created some uncertainty about whether the United States will remain in compliance with rules and spending limits for domestic support programs that it has agreed to in the WTO. These developments are farm program changes under both the 2018 farm bill (P.L. 115-334) and a new USDA direct payment program—the MFP—implemented in 2018 under other statutory authorities in response to foreign trade retaliation targeting U.S. agricultural products.[256] The outcome will depend on market conditions, but the potential for non-compliance

[250] Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America, "United States Farmers File Suit to Require Country-of-Origin Labeling on Meat Products," press release, June 19, 2017.

[251] *Plaintiffs Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America, and Cattle Producers of Washington v. Sonny Perdue and United States Department of Agriculture*, 2:17-cv-00223 20 (Eastern District of Washington 2018).

[252] Organization for Competitive Markets and American Grassfed Association, *Petition Submitted by Organization for Competitive Markets and the American Grassfed Association*, June 12, 2018.

[253] FSIS, "Food Standards and Labeling Policy Book," August 2005, p. 147, https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES.

[254] For more information on this issue, see CRS Report R45305, *Agriculture in the WTO: Rules and Limits on U.S. Domestic Support.*

[255] Prepared by Randy Schnepf, Specialist in Agricultural Policy, CRS.

[256] For more information on this issue, see CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*.

would be heightened if market prices for major commodity crops were to weaken and lower prices were to generate farm program payments above current USDA projections.

In general, the farm program changes enacted in the 2018 farm bill incrementally shift farm safety net outlays away from decoupled programs that do not tie crop support payments to production and toward coupled programs that are potentially more market distorting. This resulted from the addition of a new, albeit temporary, coupled support program (the MFP) and, in the 2018 farm bill, from raising support levels for existing coupled programs and from removing several of the coupled programs from individual farm payment limit requirements.

Direct farm support payments may occur under:

- One of the revenue-support programs authorized by the farm bill—the Market Assistance Loan (MAL), Agricultural Risk Coverage (ARC), Price Loss Coverage (PLC), and Dairy Margin Coverage (DMC) programs;[257]
- A program authorized by the Secretary of Agriculture using authority under the CCC Charter[258] to make payments in support of U.S. agriculture—two such programs are the Cotton Ginning Cost Share (CGCS) program and the MFP;[259] or
- One of the four disaster assistance programs—the Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), Tree Assistance Program (TAP), and Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP).

In a change from previous policy, the 2018 farm bill excluded payments made under MAL, LIP, TAP, and ELAP from annual individual payment limits.[260] DMC, like its predecessor—the Margin Protection Program—operates without any farm payment limit. The absence of a limit on benefits received by an individual farmer under these programs represents the potential for unlimited, fully coupled USDA farm support outlays that would count against U.S. domestic support limits agreed to under U.S. WTO commitments.

MAL payments are coupled directly to actual production (subject to a producer's participation choice). DMC payments are made on a producer-selected share of a historical production base that is adjusted upward for annual growth in national average milk production. Milk producers must participate in the program to receive the annual base adjustment. Thus DMC payments are treated as coupled. The 2018 farm bill raised support levels for both dairy producers under the DMC and for several program crops under MAL, including barley, corn, grain sorghum, oats, extra-long-staple cotton, rice, soybeans, dry peas, lentils, and small and large chickpeas. Higher support levels increase the potential for higher payments during a market downturn. Such payments count against the market-distorting spending limit. Furthermore, coupled payments can influence producer production choices in favor of those farm activities expected to receive larger support payments. If such payments are noticeably large relative to the commodity's farm value and result in surplus production that moves into international markets, then they could attract the attention of competitor nations. Such spillovers, if measurably harmful to foreign export

[257] For more information on this issue, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*.

[258] For more information on this issue, see CRS Report R44606, *The Commodity Credit Corporation: In Brief*.

[259] For more information on this issue, see CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*.

[260] For more information on this issue, see CRS In Focus IF10722, *Farm Bill Primer: Program Eligibility and Payment Limits*.

competitors or producers, could lead to challenges under the WTO's dispute settlement process.[261]

Of the direct payment programs, ARC and PLC are partially decoupled from producer behavior: Payments are made to a portion (85%) of historical base acres irrespective of actual plantings. Because of this they are notified as non-product specific and have been excluded from counting against WTO spending limits under a special "de minimis" exclusion, which allows minimum amounts of domestic support even if they are market distorting. Most of the other direct support programs—MAL, DMC, LFP, LIP, TAP, and ELAP—count against the United States' annual market-distorting "amber box" payment limit of $19.1 billion.

CGCS and MFP are special cases. The United States has yet to notify spending under either of these programs to the WTO, so their exact WTO spending classification is currently unknown. However, because their payments are coupled directly to specific commodities, they could well be included with other market-distorting payments subject to the spending limit. To the extent that producers expect payments under these programs to recur, they can become market distorting and subject to potential WTO challenge. Secretary Perdue has, however, stated that MFP was a one-time assistance and would not be extended beyond the package announced in July 2018.[262] CGCS outlays were $326 million in 2016 and $216 million in 2018. Actual outlays under MFP are estimated at $5.2 billion in 2018 and $3.5 billion in 2019.[263]

The U.S. sugar program does not rely on direct payments from USDA.[264] Instead, USDA provides indirect price support via MAL loans to processors at statutorily fixed prices (which were raised slightly by the 2018 farm bill) while limiting the amount of sugar supplied for food use in the U.S. market. In its 2015 notification of domestic support to the WTO (the most recent notification year), USDA notified the implicit cost of the sugar program at $1.5 billion.

The federally subsidized crop insurance program was largely unchanged by the 2018 farm bill. Annual USDA premium subsidies—which have averaged $6.4 billion per year since 2011—count against the U.S. trade-distorting spending limit of $19.1 billion. Payments under U.S. conservation programs are deemed generally non-market distorting and are notified as "green box" payments, which are not subject to any spending limit.

Status: Most recent studies suggest that, for U.S. program spending to exceed the $19.1 billion cumulative spending limit, even with the addition of large MFP payments and higher MAL and DMC support levels, a combination of events would have to occur that would broadly depress commodity prices. Perhaps more relevant to U.S. agricultural trade is the concern that, because the United States plays such a prominent role in most international markets for agricultural products, any distortion resulting from U.S. policy would be both visible and potentially vulnerable to challenge under WTO rules.[265]

[261] For more information on this issue, see CRS Report R43817, *2014 Farm Bill Provisions and WTO Compliance*.

[262] Reuters, "U.S. Agriculture Chief Says No Plan to Extend Farm Aid to Offset Tariffs," October 29, 2018.

[263] ERS, "2019 Farm Income Forecast," March 6, 2019.

[264] For more information on this issue, see CRS Report R43998, *U.S. Sugar Program Fundamentals*.

[265] For more information on this issue, see CRS Report RS22522, *Potential Challenges to U.S. Farm Subsidies in the WTO: A Brief Overview*.

U.S. Challenges of Farm Support Spending of WTO Members[266]

The United States was a major force behind the establishment of the WTO in 1995 and the rules and procedures governing its DSU. The United States has frequently used DSU, often successfully.

Since the summer of 2017, the United States has blocked the appointment of new DSU Appellate Body (AB) jurists, which has limited the ability of the system to hear dispute cases.[267] The AB currently has three jurists (the minimum number to hear a case) out of a total of seven positions.[268] In December 2019, the terms of two of the three will expire, potentially leaving the AB unable to function if no new jurists are appointed.

Status: Since the inception of the WTO in 1995, the United States has brought to it 46 cases on agriculture. Of these cases, 34 were fully or partially decided in favor of the United States by the WTO panel hearing the case.[269] Most recently, the WTO ruled in favor of the United States against China over Chinese domestic support policies for its agricultural sector and over China's administration of its market access policies. The United States has notified the WTO on a similar domestic support case against India. However, if no new members are appointed to the WTO AB, then pending U.S. cases may be unable to move forward toward a ruling.

U.S. Challenges of China's Agricultural Domestic Support

In September 2016, USTR filed a dispute settlement case (DS511) at the WTO over Chinese domestic support policies for its agricultural sector that USTR alleged were inconsistent with WTO rules and commitments.[270] Furthermore, USTR contended that China's policies had distorted international trade in wheat, rice, and corn and that government support payments were in excess of China's WTO spending limits.[271] In December 2016, USTR requested that WTO establish a dispute settlement panel to examine China's domestic support levels for these crops, a request that was fulfilled in January 2017.

In its challenge, USTR contended that the level of support that China provided for rice, wheat, and corn had exceeded—by nearly $100 million from 2012 through 2015—the level to which China had committed to when it joined the WTO. USTR also asserted that China's price support for domestic production had been above the world market prices since 2012, thereby creating an incentive for Chinese farmers to increase production of the subsidized crops, which in turn displaced imports from the United States and elsewhere.

When China acceded to the WTO in 2001, some of its domestic support policies—including market price support and certain producer payments and input subsidies linked to production—

[266] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS.

[267] For more information on this issue, see CRS Report R45417, *World Trade Organization: Overview and Future Direction*.

[268] T. Payosova et al., "The Dispute Settlement Crisis in the World Trade Organization: Causes and Cure," Peterson Institute for International Economics, March 2018.

[269] Extracted from WTO, Disputes by Member, case total reported as of April 23, 2019.

https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm.

[270] See WTO, "DS511: China-Domestic Support for Agricultural Producers," https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds511_e.htm.

[271] See USTR, "United States Challenges Excessive Chinese Support for Rice, Wheat, and Corn," press release, September 13, 2016.

became subject to an annual spending limit of 8.5% of each product's value based on China's domestic prices.[272]

Since all of China's domestic production was potentially eligible for the above-market support prices—and on the assumption that all domestic producers had incorporated the high support levels into their production decisions—USTR stated that the correct measure of total support should be based on the total production of wheat, rice, and corn in the provinces and regions where the support programs operated. However, USTR asserted that China reported the subsidies only on the smaller quantities purchased by the government. USTR also argued that China's fixed external reference price for wheat, rice, and corn should be based on the three-year averages of 1986-1988 world prices, as specified in the WTO Agreement on Agriculture.[273] In contrast, China had used the much higher 1996-1998 prices, which had resulted in smaller price gap calculations. Finally, the United States and China disagreed on whether to measure the level of market price support for milled or unmilled rice and the appropriate conversion factor between the two.[274]

Status: On February 28, 2019, the WTO dispute settlement body (DSB) found that China had exceeded its domestic support limits for wheat and rice in each year between 2012 and 2015 and therefore was not in compliance with its WTO commitment. The panel agreed with China's reference price calculations based on 1996-1998 prices because these years had been used in China's WTO accession documentation. The panel disagreed with China's methodology of calculating domestic support taking into consideration only the purchases made by the government. The DSB panel made recommendations for calculation of reference prices and domestic support for China in order to comply with its WTO commitments. The DSB panel did not make a ruling on corn because, following the 2015 harvest, China made changes to its calculations of corn prices that were found to be less market distorting than the method used prior to 2015. If neither the United States nor China appeals the report, the findings and recommendations in the report would be adopted within 60 days of public circulation. China recently stated that it will not appeal the WTO ruling.[275]

U.S. Challenges of China's Agricultural Market Access Policy[276]

On December 15, 2016, USTR filed another WTO dispute settlement case (DS517) against China, alleging that China's administration of its TRQs for wheat, rice, and corn are unclear and that China had failed to fill the within-quota commitments, thus undermining U.S. exports.[277] While China announced on an annual basis the opening of TRQs, USTR stated that China's application criteria and procedures were unclear and that China did not provide meaningful information on how it actually administered the TRQs.

When China joined the WTO in 2001, it agreed to create TRQs to allow imports of wheat, rice, and corn. Imports within the set quota volume would be levied a lower within-quota tariff rate, while imports beyond the set quota amount would be levied at a higher tariff rate. Under China's WTO commitments, by 2004, the wheat TRQ would reach 9.6 million metric tons, rice 5.4

[272] WTO, "DS511, China—Domestic Support for Agricultural Producers," current Status as accessed March 13, 2019.

[273] See WTO Legal Texts, Agreement on Agriculture, https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm.

[274] L. Brink et al., "WTO Dispute Panel Report on China's Agricultural Support," *Farmdoc Daily*, March 6, 2019.

[275] A. Behsudi, "China Won't Appeal U.S. Victory in WTO Agriculture Subsidy Case," *Politico*, April 26, 2019.

[276] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS.

[277] See USTR, "United States Challenges Chinese Grain Tariff Rate Quotas for Rice, Wheat, and Corn," press release, December 15, 2016.

million metric tons, and corn 7.2 million metric tons.[278] The in-quota tariffs for all three commodities are 1%, while the over-quota tariffs are set at 65%.

Despite the low within-quota tariff, China's TRQs for wheat, rice, and corn have never been filled even when imported grains were priced lower and were more competitive than domestic grains. According to prices reported by China's Ministry of Agriculture, during 2014-2016, the import prices were lower by about 30-40% for wheat, 25-35% for rice, and 15-35% for corn.[279] USTR states that China's TRQ administration appears to restrict imports and fails to provide sufficient information to permit the processing of quota application and importation.

Status: On September 22, 2017, a WTO DSB panel was established on "China—Tariff Rate Quotas for Certain Agricultural Products" (DS517). On April 18, 2019, the WTO ruled in favor of the United States, stating that "China's administration of its TRQs for wheat, rice and corn were inconsistent with its obligations under the WTO to administer TRQs on a transparent, predictable and fair basis." The WTO recommends that China make changes to make its TRQ administration to conform with its WTO obligations.[280]

U.S. Challenges of India's Domestic Agricultural Support

In May 2018, the United States challenged India's domestic agricultural support notifications at the WTO, charging that India had under-notified spending on its market price support for rice and wheat for the marketing years 2010/11 through 2013/14.[281] The United States alleged that India's market price support for wheat and rice exceeded its allowable levels of trade distorting domestic support under the WTO.

In November 2018, the United States also challenged India's domestic support for cotton, stating that it exceeded its allowable level under its WTO commitments.[282] At about the same time, Australia, Brazil, and Guatemala challenged India's level of domestic support for sugar, charging that India had violated its WTO commitment levels.[283]

In February 2019, the United States further challenged India stating that it had substantially underreported its market price support for chickpeas, pigeon peas, black matpe (a type of black lentil), mung beans, and lentils. According to USTR, when calculated using the WTO Agreement on Agriculture methodology, India's market price support for each of these pulses has exceeded the allowable levels of trade-distorting domestic support under India's WTO commitments.[284]

Status: The United States' challenge to India's domestic support for rice and wheat was raised at the May 2018 WTO Committee on Agriculture (COA) meeting. USTR raised the issue concerning India's cotton price support during the November 2018 COA meeting, and the challenge against India's domestic support for pulses was raised at the February 2019 COA meeting. USTR raised these issues at the COA to alert India and other WTO members that the

[278] F. Gale, "U.S. Challenges China's Tariff-Rate Quota (TRQ) Administration System for Grains," presentation at the International Agricultural Research Consortium's 2017 Annual Meeting, December 2017.

[279] Gale, "U.S. Challenges China's Tariff-Rate Quota(TRQ) Administration System for Grains."

[280] WTO, "China—Tariff Rate Quotas for Certain Agricultural Products," Report of the Panel, April 18, 2019.

[281] WTO, "Certain Measures of India Providing Market Price Support to Rice and Wheat," May 9, 2018, G/AG/W/174.

[282] WTO, "Certain Measure of India Providing Market Price Support to Cotton," G/AG/W/188, November 9, 2018.

[283] WTO, "India's Measures to Provide Market Price Support to Sugarcane," G/AG/W/189, November 16, 2018; WTO, "DS580: India—Measures Concerning Sugar and Sugarcane;" WTO, "DS579: India—Measures Concerning Sugar and Sugarcane;" WTO, "DS581: India—Measures Concerning Sugar and Sugarcane."

[284] USTR, "United States Issues WTO Counter Notification Concerning India's Market Price Support for Various Pulses," February 15, 2019.

United States is aware and concerned about India's underreporting of its domestic agricultural subsidies. USTR intends to continue challenging India's domestic support for agriculture at upcoming COA meetings and, if necessary, could pursue these concerns through WTO's dispute settlement mechanism.

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