Major Agricultural Trade Issues in 2020

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SUMMARY

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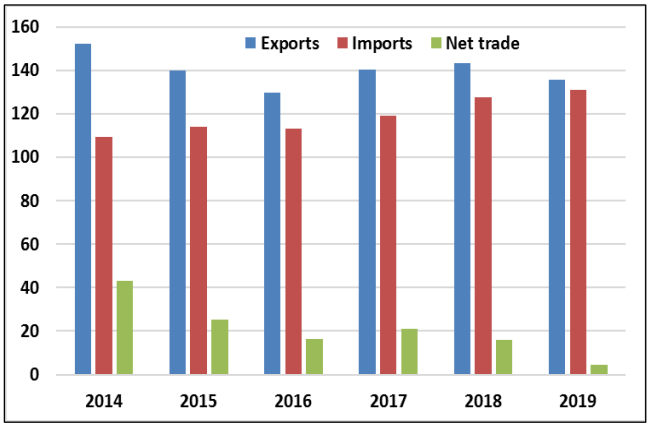
Sales of U.S. agricultural products to foreign markets absorb about one-fifth of U.S. agricultural production, thus contributing significantly to the health of the farm economy. Farm product exports, which totaled $136 billion in FY2019 (see chart), make up about 8% of total U.S. exports and contribute 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, Fiscal Years, 2014-19

Billion U.S. Dollars



Source: USDA, Economic Research Service (ERS), January 2020.

A major area of interest for the 116th Congress during its first session was the loss of export demand for agricultural products in the wake of tariff increases imposed by the Trump Administration on U.S. imports of steel and aluminum from certain countries and other imported products from China. Some of the affected countries levied retaliatory tariffs on U.S. agricultural products, contributing to a 53% decline in value of U.S. agricultural exports to China in 2018 and a broader decline in exports across countries imposing retaliatory tariffs in 2019. To help mitigate the economic impact from export losses, the U.S. Department of Agriculture (USDA) authorized two short-term assistance ("trade aid") programs to producers of affected agricultural commodities, valued at up to $12 billion in 2019 and $16 billion in 2019.

Other major agricultural trade developments in 2019 included efforts to ratify the U.S.-Mexico-Canada Agreement (USMCA), trade negotiations with China, Japan, and the European Union, and continued review of U.S. participation in the World Trade Organization (WTO). The USMCA was ratified by Mexico and the U.S. Congress, and awaits ratification by Canada before it can enter into force. The United States and Japan signed an agreement increasing market access for many U.S. agricultural exports to Japan. This agreement, which does not require congressional approval, excludes provisions pertaining to non-tariff measures that could become future trade barriers for U.S. agricultural exporters. A second-stage negotiation toward a more comprehensive pact could commence in 2020.

In January 2020, President Trump signed a "Phase One" executive agreement (that also does not require congressional approval) with the Chinese government on trade and investment issues, including agriculture. Under the agreement, China is not required to repeal any tariffs, but it has reduced certain retaliatory tariffs and is granting tariff exclusions for various agricultural products in order to reach a target level of U.S. imports—$32 billion (relative to a 2017 base of $24 billion) over a two-year period. The coronavirus outbreak since January 2020 may affect China's ability to meet these commitments.

In addition to further negotiations with Japan and China, the Administration has stated its intent to pursue trade agreements with the European Union, India, Kenya, the United Kingdom, and possibly other countries. The Trump Administration has also indicated that reforming the WTO is a priority for 2020. The WTO Ministerial Conference in June 2020 presents an opportunity to address pressing concerns over agricultural reform efforts.

Among other agricultural trade issues that may arise in the 116th Congress are proposed changes to U.S. trade remedy laws to address imports of seasonal produce affecting growers in the Southeast, the establishment of a common international framework for approval, trade, and marketing of the products of agricultural biotechnology, and foreign restrictions on U.S. exports of meat that are inconsistent with international trade protocols. Additionally, U.S. beef and pork face trade barriers in several markets because of U.S. producers' use of growth promotants and the feed additive ractopamine.

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Introduction

This report identifies selected current major trade issues for U.S. agriculture that may be of interest in the second session of 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 status.

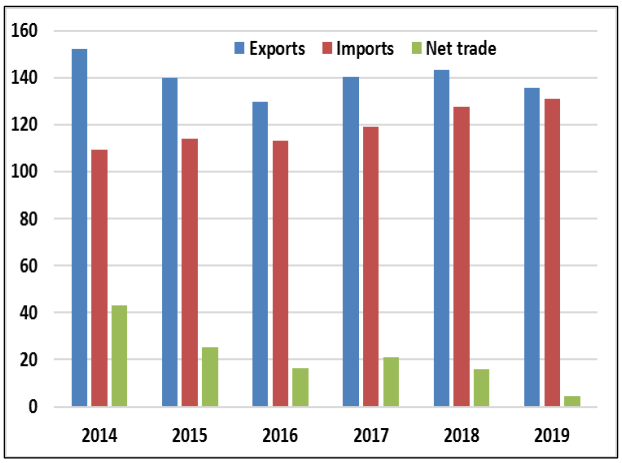
The report begins by examining a series of overarching issues. These include U.S. agricultural trade and its importance to the sector; a brief description of the trade policy being pursued by the Trump Administration in 2020 and its ramifications for U.S. agricultural exports; an update on the Administration's 2019 trade policy actions; a discussion of the ongoing and proposed new trade negotiations planned for 2020; and an update on World Trade Organization (WTO) agricultural issues related to the United States—including the Administration's 2020 plans to engage in reforming the institution. The report then reviews a number of ongoing trade policy concerns to U.S. agriculture, including non-tariff measures, and trade barriers and disputes involving specialty crops, livestock, and dairy issues. The format for these 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.[2] In recent years, the value of farm exports has remained below the record level of $152 billion reached in FY2014. The U.S. Department of Agriculture (USDA) reports U.S. agricultural exports in FY2019 of $136 billion (see **Figure 1**).[3] The FY2019 export total represents an $8 billion decline from FY2018.[4] 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 commodities, such as soybeans, were further affected by retaliatory tariffs imposed on U.S. agricultural imports by China and some other countries since 2018 in response

Figure 1. U.S. Agricultural Trade, 2014-19

Billion U.S. Dollars



Source: USDA, Economic Research service (ERS), U.S. Agricultural Trade Data Update, updated January 8, 2020, https://www.ers.usda.gov/data-products/foreign-agricultural-trade-of-the-united-states-fatus/us-agricultural-trade-data-update/.

Notes: Data are not adjusted for inflation and pertain to fiscal years. 'Net trade' denotes the trade surplus, which is the difference between U.S. exports and U.S. imports.

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

[2] U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), Global Agricultural Trade System (GATS), February 2020.

[3] CRS calculation based on Census Bureau Trade Statistics, accessed via Global Trade Atlas, February 2020.

[4] USDA, Economic Research Service (ERS), U.S. Agricultural Trade Data Update, updated January 8, 2020,

to the Trump Administration's imposition of tariffs on certain imports from China and on U.S. imports of steel and aluminum from selected countries.[5]

In FY2019, U.S. agricultural imports were $131 billion, up $3 billion from FY2018, resulting in an agricultural trade surplus of $5 billion. This is below the surplus of $16 billion in FY2018 and below the record high in nominal dollars of $43 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.[6] USDA's Economic Research Service (ERS) estimates that in 2017 U.S. agricultural exports generated about 1,161,000 full-time civilian jobs, including 795,000 jobs outside the farm sector.[7] Exports account for around 20% of total farm production by value[8] and are a major outlet for many farm commodities, absorbing over three-fourths of U.S. output of cotton and about half of total U.S. production of wheat and soybeans.[9] Although feed crops and wheat account for most exports by volume, the high value product (HVPs) category—which includes live animals, meat, dairy products, fruits and vegetables, nuts, fats, hides, manufactured feeds, sugar products, processed fruits and vegetables, and other processed food products—accounted for 68% of the value of agricultural exports in FY2019.[10]

All states export agricultural commodities, but a minority of states account for a majority of farm export sales. In calendar year 2018, the 10 leading agricultural exporting states based on value—California, Iowa, Illinois, Minnesota, Texas, Nebraska, Kansas, Indiana, North Dakota, and Missouri—accounted for 58% of the total value of U.S. agricultural exports that year.[11]

In December 2018, Congress reauthorized major agricultural export promotion programs through FY2023 with the 2018 farm bill (P.L. 115-334).[12] Title III of the farm bill includes provisions covering export credit guarantee programs, export market development programs, and international science and technical exchange programs designed to develop agricultural export markets in emerging economies. Among other provisions, the 2018 farm bill permits funding to operate two U.S. agricultural export promotion programs in Cuba—the Market Access Program and the Foreign Market Development Cooperator Program.[13]

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https://www.ers.usda.gov/data-products/foreign-agricultural-trade-of-the-united-states-fatus/us-agricultural-trade-data-update/.

[5] For more information on this issue, see CRS Report R45903, *Retaliatory Tariffs and U.S. Agriculture*.

[6] 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.

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

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

[9] CRS calculations based on FAS, Production Supply and Demand (PSD) Online, https://apps.fas.usda.gov/psdonline/app/index.html#/app/home, accessed January 27, 2020.

[10] CRS calculations based on GATS, https://www.ers.usda.gov/data-products/foreign-agricultural-trade-of-the-united-states-fatus/fiscal-year/, accessed January 27, 2020.

[11] ERS, Data Products, https://www.ers.usda.gov/data-products/state-export-data/, accessed January 2020.

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

[13] The Agricultural Act of 2018, P.L. 115-334, Title III, Sec. 203.

Trump Administration Trade Priorities for 2020[14]

In establishing policy for U.S. participation in international trade, the Trump Administration has emphasized reducing U.S. bilateral trade deficits;[15] focusing on renegotiating existing trade agreements that it viewed as being "unfair;" initiating new bilateral agreements; and responding to the trade practices of U.S. trading partners that it viewed as unfair, in violation of international trading commitments, or threatening to U.S. industry.[16] Under various provisions of law, the Administration imposed punitive tariffs on U.S. imports of steel and aluminum from certain countries and on U.S. imports of selected products from China.[17] These countries in turn, responded with retaliatory tariffs on U.S. exports, particularly agricultural products.[18]

During the second session of the 116th Congress, the Trump Administration's agenda may focus on the following priorities:

Trade Agreement Implementation and Monitoring

U.S.-Mexico-Canada Agreement (USMCA)

Legislation implementing a new trade agreement among the United States, Mexico, and Canada was enacted on January 29, 2020. The agreement awaits ratification by Canada, and certification by the United States that all parties have completed the necessary steps for entry into force. The U.S.-Mexico-Canada agreement replaces the North American Free Trade Agreement (NAFTA), which took effect in 1994.

"Stage One" U.S.-Japan Trade Agreement (USJTA)

On October 7, 2019, the Trump Administration signed the "Stage One" trade agreement with Japan, which included significant market access improvements in Japan for U.S. agricultural exports. The agreement took effect on January 1, 2020. Because it dealt only with tariffs and other market access issues, pursuant to P.L. 114-26, the agreement did not require congressional approval.[19] The Administration has indicated that it hopes to negotiate a second trade agreement with Japan that addresses a broader range of issues. Such an agreement might require congressional approval.

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

[15] A bilateral trade deficit represents an imbalance whereby the value of U.S. imports from a particular trading partner exceed the value of U.S. exports to that same country during a particular time period, usually a year. A bilateral trade surplus occurs when U.S. exports exceed imports from a particular country.

[16] For more on this issue, see CRS Report R45474, *International Trade and Finance: Overview and Issues for the 116th Congress*.

[17] For more information on this issue, see CRS Insight IN10971, *Escalating U.S. Tariffs: Affected Trade* ; CRS In Focus IF11346, *Section 301 of the Trade Act of 1974*; and CRS In Focus IF11284, *U.S.-China Trade and Economic Relations: Overview*.

[18] For more on this issue, see CRS Report R45903, *Retaliatory Tariffs and U.S. Agriculture*.

[19] For more on this, see CRS Report R46140, *"Stage One" U.S.-Japan Trade Agreements*.

U.S.-China Phase One Agreement

On January 15, 2020, President Trump signed a "Phase One" executive agreement with China on trade and investment issues, including agriculture.[20] This agreement, which entered into force on February 14, 2020, did not require congressional approval as it consisted largely of commitments by China. The Administration has stated its intent to negotiate a second phase of the agreement with China.[21] Depending on the scope of such a negotiation, the Administration could be required under law to consult with Congress in advance and to submit an eventual agreement for congressional approval.

Ongoing and Proposed Negotiations

The Office of the U.S. Trade Representative (USTR) has indicated that the United States may also pursue new trade agreements with the European Union (EU), India, Kenya, the United Kingdom (UK), and a number of other countries. The Administration has stated that the U.S.-Kenya and the U.S.-UK negotiations will be "comprehensive," dealing with other trade-related issues in addition to market access.[22] In those cases, the Administration might be required to consult with Congress in advance of negotiations and to submit any agreements for congressional approval.

Multilateral Trading System Reforms

USTR has indicated interest in WTO institutional reform.[23] The upcoming WTO Ministerial Conference in June 2020 in Kazakhstan presents the United States and WTO members with an opportunity to address reform efforts, which are expected to include consideration of the WTO's treatment of agricultural trade.[24] Some Members of Congress have indicated WTO reform to be a priority for 2020.[25]

Agricultural Trade Disputes and Negotiations[26]

Since early 2018, Canada, China, the EU, India, Mexico, and Turkey targeted U.S. food and agricultural products with retaliatory tariffs in response to tariffs imposed by the United States on imports of steel and aluminum and certain imports from China. To facilitate ratification of USMCA, the United States removed tariffs on steel and aluminum imports from Canada and Mexico and these countries removed their retaliatory tariffs on U. S. agricultural imports in May 2019. The retaliatory tariffs made imports of U.S. agricultural products relatively more expensive compared to similar products from competitor nations.

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[20] For more on this issue, see CRS In Focus IF11412, *U.S.-China Phase I Deal: Agriculture*.

[21] I. Isco, "Mnuchin: Administration Has Phase-Two China Pact Chapters 'Dealt With,'" *Inside U.S. Trade*, February 12, 2020.

[22] Office of the United States Trade Representative (USTR) Fiscal Year 2021 Budget, February 2020.

[23] USTR, *2019 Trade Policy Agenda and 2018 Annual Report*, March 2019; and USTR, *USTR Issues Report on the WTO Appellate Body*, February 11, 2020.

[24] WTO, "DDG Wolff: It is Time to Update the WTO Rulebook for Agriculture," January 18, 2020.

[25] See H.Res. 746; and Icso, I., "Blumenauer Cites USMCA Enforcement, WTO Reform Among Trade Panel's 2020 Priorities," *Inside World Trade*, January 31, 2020.

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

Initially, the announcements of retaliatory tariffs led to an increase in U.S. agricultural exports as importing countries built stocks in anticipation of the tariffs. U.S. agricultural exports increased slightly in 2018. In 2019, however, U.S. agricultural exports declined about 2%, due to lower global demand for affected U.S. agricultural products and downward pressure on prices of some commodities.[27]

In the short run, retaliatory tariffs contributed to price declines for certain U.S. agricultural commodities and to a reduction in exports, particularly for soybeans. Declining prices and export sales, combined with rising input and farm machinery costs, contributed to a 16% decrease in U.S. net farm income in 2018, which prompted USDA to provide trade aid payments to the farm sector in 2018 and 2019.

Negotiations with China

Imports from China have been subject to U.S. tariff increases on steel and aluminum under Section 232 of the Trade Expansion Act, which allows the President to impose tariffs on imports that "threaten to impair the national security." Additionally, U.S. imports of certain other Chinese products are subject to tariff increases under Section 301 of the Trade Act of 1974, which allows tariffs in response to trade practices that are determined to be unfair and injurious to a U.S. industry. China first retaliated in April 2018, by raising tariffs on certain U.S. imports, including agricultural products such as pork, fruit, and tree nuts.[28] These retaliatory tariffs are in addition to existing Most Favored Nation (MFN) tariffs that China levies on imports from all countries including the United States.[29] By September 2019, China had levied retaliatory tariffs on almost all U.S. agricultural products, ranging from 5% to 60%.[30]

After the imposition of retaliatory tariffs on U.S. products, U.S. agricultural exports to China experienced a 53% decline from $19.5 billion in 2017 to $9.2 billion in 2018. The Chinese market is important for several U.S. agricultural products. For example, in 2016 and 2017, the United States supplied over one-third of China's total soybean imports, almost all of China's distillers' grain imports (primarily used as animal feed), and most of China's sorghum imports.[31] With the retaliatory tariffs in effect, U.S. soybean exports to China in 2018 declined in value to $3 billion (8 billion metric tons [MT]) from $12 billion (32 billion MT) in 2017. Similarly, the value of U.S. exports of sorghum and distillers dry grain declined about 40% and 30% respectively from 2017 to 2018. Most other U.S. agricultural exports to China also declined in 2018.[32]

Negotiations to resolve the U.S.-China dispute began in the fall of 2019 and resulted in a "Phase One" executive agreement (that does not require congressional approval) on trade and investment issues, including agriculture, signed in January 2020.[33] Under the agreement, China is to import $32 billion worth of additional U.S. agricultural products over a two-year period. This implies an

[27] U.S. Census Bureau Trade Data, accessed via GATS, February 6, 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

[28] FAS, "China Responds to U.S. 301 Announcement with Revised Product List," GAIN Report Number: CH 18034, June 21, 2018.

[29] MFN tariffs must be levied in a non-discriminatory manner, but lower levels of tariffs can be applied to imports from countries with which a nation has a preferential trade agreement.

[30] For more on this, see CRS Report R45929, *China's Retaliatory Tariffs on U.S. Agriculture: In Brief*.

[31] Chinese customs data, accessed via Global Trade Atlas, August 2019.

[32] For more on this issue, see CRS Report R45903, *Retaliatory Tariffs and U.S. Agriculture*.

[33] For more on this issue, see CRS In Focus IF11412, *U.S.-China Phase I Deal: Agriculture*.

average annual increase of two-thirds from a 2017 base of $24 billion.[34] Products mentioned in the agreement include oilseeds, meat, cereals, cotton, and seafood. China has not committed to tariff exemptions or import levels for any specific products, but it may grant tariff exclusions on U.S. imports on a case-by-case basis. On February 18, 2020, China released a list indicating that it may be willing to grant one-year tariff exemptions on most agricultural products.[35]

China agreed to improve its administration of tariff-rate quotas (TRQs) on wheat, corn, and rice to comply with a WTO ruling in favor of the United States in a dispute case regarding China's TRQ administration.[36] Changes in China's TRQ administration would be expected to improve market access for these U.S. grains.

Other Provisions of the Phase One agreement

Domestic support: China agreed to improve the transparency of its domestic agricultural support measures.

Sanitary and phytosanitary measures: China agreed to implement science- and risk-based food safety regulations. China also agreed to finalize phytosanitary protocols for U.S. avocadoes, blueberries, potatoes, barley, alfalfa pellets and cubes, almond meal pellets and cubes, hay, and California nectarines, and to implement a transparent, predictable, efficient, science- and risk-based regulatory process for the evaluation and authorization of products of agricultural biotechnology. In exchange, the United States agreed to complete its regulatory notice process for imports of Chinese fragrant pears, citrus, and jujube, and to complete a phytosanitary protocol for bonsai.

Livestock and fish: China agreed to improve access for U.S. beef products, including eliminating age restrictions on cattle slaughtered for export, eliminating traceability requirements, and establishing maximum residue levels for three hormones that are approved for use in livestock in the United States. It agreed to engage in technical discussions to import U.S. live cattle for breeding. China agreed to broaden the list of pork products that are eligible for importation, and to conduct a risk assessment for the veterinary drug ractopamine, which is allowed in U.S. beef and pork production. With respect to poultry, after having lifted a five-year ban on imports of U.S. poultry in November 2019, China agreed to adopt import regulations consistent with the World Organization for Animal Health Terrestrial Animal Health Code; this would potentially limit future import bans imposed due to avian influenza to poultry from the affected U.S. region rather than the entire country. China also agreed to approve for importation 26 aquatic species from the United States, and to streamline its procedures for registering U.S. seafood facilities and products.

Technical Barriers to Trade: China agreed to implement the USDA Public Health Information System, an electronic system to provide export health certificates to an importing country in advance of shipment arrival. It also made commitments to provide regulatory certainty and market stability regarding U.S. dairy and infant formula products, rice, distillers' dried grains with solubles, feed additives, and pet foods. It agreed not to undermine market access for U.S. exports that use trademarks and generic terms by recognizing geographical indications (GI) in

[34] Chinese commitments of $24 billion includes products defined by USDA as agricultural products, plus agriculture-related products such as distilled spirits and fish and seafood products.

[35] State Council Customs Tariff Commission—Exclusions Criteria Circular, February 18, 2020, http://www.gov.cn/zhengce/zhengceku/2020-02/18/content_5480381.htm.

[36] Tariff-rate quotas provide for a comparatively low tariff rate on a specified quota of imports and a higher tariff rate on imports of the relevant commodity above the quota.

international agreements. GIs are place names used to identify products that come from certain regions or locations.

Status and Outlook: The U.S.-China Phase One agreement is expected to improve opportunities for certain U.S. exporters; however, it may not create notable new market demand. Instead, it may produce a rearrangement of trading patterns between China and its various import suppliers, in which case the market price effects may be limited. Additionally, the coronavirus outbreak is expected to slow China's economic growth in the near-term, and may reduce Chinese overall import demand for agricultural products. It has also been disrupting global supply chains going in and out of China.[37] Therefore, U.S. agricultural exports to China could fall short of the target of $32 billion additional exports to the 2017 base over a two-year period. The agreement provides China some flexibility to meet its purchase commitment. Both the United States and China "acknowledge that purchases will be made at market prices based on commercial considerations and that market conditions, particularly in the case of agricultural goods, may dictate the timing of purchases within any given year" (Chapter 6, Article 6.2.1 of the Phase One agreement).

Under the agreement, China is not required to repeal any tariffs, but it has reduced certain retaliatory tariffs and will grant one-year tariff exclusions for various agricultural products in order to reach a target level of U.S. imports.[38] Effective February 14, 2020, China halved the additional 5% and 10% retaliatory tariffs that it had imposed on U.S. products in August 2019.[39] Nevertheless, tariffs imposed in April and July 2018, ranging from 2.5% to 55%, remain in place.[40] USDA and USTR have stated that China has also taken a number of other actions to begin implementing its agriculture related commitments.[41] Both China and the United States have indicated they expect to engage in further negotiations on trade during 2020.

Negotiations with Canada and Mexico[42]

Soon after taking office in January 2017, the Trump Administration announced its desire to renegotiate the North America Free Trade Agreement (NAFTA) among the three countries. Nonetheless, the United States imposed tariffs on steel and aluminum imports from Canada and Mexico in 2017. The United States also threatened tariffs on imported passenger vehicles, an action that would have a significant impact on both Canada and Mexico. In June 2018, Mexico retaliated against the steel and aluminum tariffs with a 15% tariff on U.S. sausage imports; a 20% tariff on other pork products, certain cheeses, apples, potatoes, and cranberries; and a 25% tariff on whey, blue-veined cheese, and whiskies.[43] The following month, Canada imposed a retaliatory tariff of 10% on certain U.S. products, including dairy, poultry and beef products; coffee,

[37] For example, see I. Almeida, "U.S. Farmers Need to Wait a While for China's Buying Spree," *Bloomberg*, February 3, 2020; A. Behsudi, "USTR: No Chinese Request to Ease Purchase Demands," *Politico*, February 3, 2020; and CRS In Focus IF11434, *The Coronavirus: U.S.-China Economic Considerations*.

[38] State Council Customs Tariff Commission—Exclusions Criteria Circular, February 18, 2020, http://www.gov.cn/zhengce/zhengceku/2020-02/18/content_5480381.htm; and FAS, "China Announces a New Round of Tariff Exclusions," GAIN Report: CH2020-0017, February 26, 2020.

[39] FAS, "China Announces Reductions in Certain Additional Tariffs," GAIN Report Number: CH2020-0016, February 14, 2020.

[40] For more on this, see CRS Report R45929, *China's Retaliatory Tariffs on U.S. Agriculture: In Brief*.

[41] USTR, "USDA and USTR Announce Progress on Implementation of U.S.-China Phase One Agreement," February 25, 2020.

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

[43] FAS, "The Phasing In Of Mexican Retaliatory Tariffs," GAIN Report Number: MX8028, July 11, 2018.

chocolate, sugar and confectionery; prepared food products; condiments; bottled water; and whiskies.[44]

A new trade agreement, referred to as the United States-Mexico-Canada Agreement (USMCA), was announced in 2018. The U.S. implementing legislation was enacted on January 29, 2020. Mexico has ratified the USMCA and the Canadian Parliament has begun deliberations on the agreement.[45] After ratification by all three countries, and certification by the United States that all parties have taken actions required under the agreement, the agreement would enter into force. The agricultural provisions of USMCA are summarized below.[46]

- All food and agricultural products that had zero tariffs under NAFTA is to remain at zero under USMCA. This includes all agricultural imports from Mexico and almost all from Canada—excepting certain dairy and poultry products.
- Canada is to increase market access for U.S. dairy products via TRQs. U.S. dairy imports within a TRQ is to enter Canada duty-free, while imports beyond the quota level face higher over-quota tariff rates of over 200% in many cases.
- Canada is to replace poultry TRQs under NAFTA with new TRQs. These are expected to lead to greater imports of U.S. eggs, turkey meat, and eggs, but reduce the quantity of U.S. chicken meat that can be imported into Canada duty free. Imports of U.S. poultry products above the set quotas is to face tariffs exceeding 200%.
- The United States, agreed to provide additional access to Canadian dairy products, sugar, peanuts and peanut products.
- Canada is to provide treatment and price to U.S. wheat equivalent to those of Canadian wheat if the U.S. wheat variety is registered as being similar to a Canadian variety. Currently, U.S. wheat exports to Canada are graded as feed wheat, and as such command a lower price. Four Members of Congress have requested USTR to work closely with Canada, through the Consultative Committee on Agriculture, to expedite the process for the registration of U.S. wheat varieties in Canada.[47]
- The United States, Canada, and Mexico are required to treat the distribution of each other's spirits, wine, beer, and other alcoholic beverages as they do for products of national origin. The agreement establishes listing requirements for a product to be sold, along with specific limits on cost markups.
- Regarding sanitary and phytosanitary measures (SPS), USMCA requires greater transparency in rules and regulatory alignment among the three countries. It also would establish a new mechanism for technical consultations to resolve SPS issues.
- USMCA includes procedural safeguards for recognition of new geographical indications. USMCA would protect the GIs for food products that Canada and Mexico have already agreed to in trade negotiations with the EU, and would lay out transparency and notification requirements for recognition of any proposed

[44] FAS, "Canada Announces Final List of Ag Products in Response to U.S. Tariffs," GAIN Report Number: CA18046, June 29, 2018.

[45] Inside U.S. Trade, "Canada Begins USMCA Ratification Process; Trump to Ink Implementing Bill," January 27, 2020.

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

[47] Letter to USTR from Senators Kevin Cramer, John Hoeven, Tina Smith and Steve Daines, July 8, 2019.

new GIs. In a side letter accompanying the agreement, Mexico confirmed a list of 33 terms for cheese that would remain available as common names for U.S. cheese producers to use in exporting cheeses to Mexico. The list includes some terms that are protected as GIs by the EU. USMCA provisions also would protect certain U.S., Canadian, and Mexican spirits as distinctive products.

- USMCA signatories agreed to protect the confidentiality of proprietary formula information in the same manner for domestic and imported products.
- USMCA includes provisions for a Working Group for Cooperation on Agricultural Biotechnology to facilitate information exchange on policy and trade-related matters associated with agricultural biotechnology, an issue that was not covered under NAFTA.

Status: The United States removed the tariffs it had imposed on steel and aluminum imports from Canada and Mexico on May 17, 2019, and, in turn, these countries removed their retaliatory tariffs on U.S. imports.[48] USMCA requires ratification by Canada to enter into force.

"Stage One" U.S. Japan Trade Agreement (USJTA)[49]

On October 7, 2019, the United States and Japan signed the U.S.-Japan Trade Agreement (USJTA), which provides for limited tariff reductions and quota expansions to improve U.S. access to Japan's market, including for agricultural products. The agreement, which entered into force January 1, 2020, also provides for reciprocal U.S. tariff reductions, largely on industrial goods. Japan previously negotiated agricultural market access provisions with the United States in the context of the Trans-Pacific Partnership (TPP), a 2016 agreement among 12 Pacific-facing nations[50] that the United States did not ratify. Those provisions were folded into the agreement that the remaining TPP countries agreed upon—TPP-11—that went into force for Japan on December 30, 2018.[51] As Japan began to improve market access for TPP-11 countries, various U.S. agricultural exports to Japan became less competitive compared to products from TPP-11 countries.

Under the USJTA, Japan provides the same level of market access to U.S. products included in the USJTA as it provides to exports from TPP-11 member countries. Japan agreed to eliminate or reduce tariffs for certain U.S. agricultural exports and to provide preferential quotas for other U.S. agricultural products. Some products included in TPP-11 such as rice and certain dairy products are not included in the USJTA. Key agricultural provisions of USJTA are provided below.

- Japan is to reduce tariffs on meat products such as beef and pork or gradually eliminate them.
- Upon entry into force, tariffs were eliminated for certain products, including almonds, walnuts, blueberries, cranberries, corn, sorghum, and broccoli.[52]

[48] USTR, "United States Announces Deal with Canada and Mexico to Lift Retaliatory Tariffs," press release, May 17, 2019.

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

[50] The countries include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States.

[51] Comprehensive and Progressive Agreement for Trans-Pacific Partnership text and resources, February 21, 2018, https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/.

[52] Note that Japan's current tariff on soybeans, another important export commodity for the United States, is zero.

- Japan is to phase out tariffs in stages for products such as cheeses, processed pork, poultry, beef offal, ethanol, wine, frozen potatoes, oranges, fresh cherries, egg products, and tomato paste.
- Japan agreed to provide country-specific quotas (CSQ) to all products that the United States had negotiated CSQs for under TPP, excepting for rice. Products covered by CSQs include wheat, wheat products, malt, whey, processed cheese, glucose, fructose, corn starch, potato starch, and inulin.
- Japan agreed to reduce the mark-ups on U.S. products that Japanese state trading enterprises import under quotas and sell in the domestic market with an additional price mark-up that makes them more expensive that the domestic product.
- Under Japan's WTO market access schedule, it reserves the right to temporarily increase tariffs on imports of sensitive agricultural products when they exceed a set threshold, or when the price of the imported product is below a set threshold. Under USJTA, Japan agreed to restrict the use of these additional tariffs (known as safeguards) on U.S. beef, pork, whey, oranges and race horses.
- Under TPP, the United States had negotiated market access under TRQs that were open to all TPP members, for barley and barley products other than malt; butter; skim and other milk powder; cocoa products; evaporated and condensed milk; edible fats and oils; vegetable preparations; coffee, tea and other preparations; chocolate, candies and confectionary; and sugar. No corresponding U.S. access to these TPP-wide TRQs is included in USJTA.
- The United States agreed to reduce tariffs on imports of certain perennial plants and cut flowers, persimmons, green tea, chewing gum, certain confectionary products, and soy sauce. The United States also agreed to provide Japan the opportunity to export more beef by folding a country-specific quota for Japan of 200 MT into a larger TRQ designated for "other countries."

Status: The Administration took a staged approach to U.S. negotiations with Japan in order to facilitate expedited market access improvements for U.S. agricultural products in Japan. The first stage agreement (USJTA) is much more limited than a traditional U.S. free trade agreement, allowing the USJTA (P.L. 114-26) to take effect without approval by Congress.[53] In consequence, the text does not address non-tariff issues such as sanitary and phytosanitary measures, agricultural biotechnology, technical barriers to trade, or geographical indications. These issues are expected to be covered in a further negotiation, which may commence in 2020.

In February 2019, after the USJTA entered into force, Japan reached a trade agreement with the EU under which Japan agreed to recognize more than 200 EU GIs. If USTR were to determine that any of these European GIs poses a barrier to U.S. agricultural exports to Japan, the lack of legal text regarding geographical indications and the absence of a formal dispute settlement mechanism could limit U.S. ability to challenge such a barrier under the USJTA. Both the United States and Japan are members of the WTO, so the United States could challenge potential new trade barriers as inconsistent with Japan's WTO commitments.

[53] For more on this issue, see CRS Report R46140, *"Stage One" U.S.-Japan Trade Agreements*.

U.S.-EU Agricultural Trade[54]

The Trump Administration's decision to impose tariffs on steel and aluminum affected imports from the EU. In June 2018, the EU responded to the steel and aluminum tariffs by imposing a 25% tariff on imports of U.S. corn, rice, sweetcorn, kidney beans, certain breakfast cereals, peanut butter, orange juice, cranberry juice, whiskies, cigars, and other tobacco products, and a 10% tariff on certain essential oils.[55] The EU also could be affected if the United States were to impose tariffs on passenger vehicles, and could respond with further punitive tariffs against U.S. exports.

On October 18, 2019, the United States imposed additional tariffs on $7.5 billion worth of U.S. imports from the EU. The action, authorized by WTO dispute settlement procedures, came after USTR determined that the EU and certain EU member states had not complied with a WTO Dispute Settlement Body ruling recommending the withdrawal of subsidies on the manufacture of large civil aircraft.[56]

USTR has indicated that additional tariffs initially will be limited to 10% of the product value on large civil aircraft and 25% on agricultural and other products from the EU. In total, 561 agricultural tariff lines are affected,[57] including cheeses, biscuits, pork products, fish products, fruit products, olives, whiskies, liquors, and wine. The UK, which left the EU in January 2020, is included among the affected countries, and 56 tariff lines of UK products are subject to additional 25% tariffs.

Limited Expected Role of Agricultural Issues in Upcoming Trade Talks

Against this background, in October 2018, USTR officially notified the Congress of the Trump Administration's plans to enter into formal trade negotiations with the EU.[58] This action followed a July 2018 U.S.-EU Joint Statement by President Trump and then-European Commission President Jean-Claude Juncker announcing that they would work to reduce tariffs and other trade barriers, address unfair trading practices, and increase U.S. exports of soybeans and certain other products. Previously, in 2016, U.S.-EU negotiations to create a Transatlantic Trade and Investment Partnership (T-TIP) under the Obama Administration stalled after 15 rounds. Among the areas of contention were certain regulatory and administrative differences between the United States and the EU on issues of food safety, public health, and product naming schemes for some types of food and agricultural products.

The United States and the EU are the world's largest trade and investment partners.[59] While food and agricultural trade between the United States and the EU27[60] accounts for less than 1% of the value of overall trade in total goods and services, the EU27 remains a leading export market for U.S. agricultural exports. It accounted for about 8% of the value of all U.S. exports and ranked as

[54] Prepared by Renée Johnson, Specialist in Agricultural Policy, CRS, with contributions from Andres B. Schwarzenberg, Analyst in International Trade and Finance, CRS.

[55] FAS, "EU Imposes Additional Tariffs on U.S. Products," GAIN Report Number: E18045, June 21, 2018.

[56] For more on this, see CRS In Focus IF11364, *Boeing-Airbus Subsidy Dispute: Recent Developments.*

[57] CRS compilation by Andres Schwarzenberg, Analyst in International Trade and Finance, based on information from USTR, February 2020.

[58] Letter from Robert Lighthizer to then Speaker of the House of Representatives, Paul Ryan, October 16, 2018.

[59] For more information, see CRS In Focus IF11209, *Proposed U.S.-EU Trade Agreement Negotiations*.

[60] This excludes the UK, which officially exited EU as of January 2020, but will remain a member of the EU customs union until December 31, 2020.

the fifth largest market for U.S. food and farm exports in 2019—after Canada, Mexico, China, and Japan. In 2019, U.S. exports of agricultural and related product exports to the EU27 totaled $12.4 billion, while U.S. imports of agricultural and related product imports from the EU27 totaled $29.7 billion, resulting in a U.S. trade deficit of approximately $17.3 billion.[61] This is the reverse of U.S. trade surpluses with the EU27 during the 1990s. Leading U.S. agricultural exports to the EU27 were corn and soybeans, tree nuts, distilled spirits, fish products, wine and beer, planting seeds, tobacco products, and processed foods. Leading U.S. agricultural imports from the EU27 were wine, distilled spirits, beer, drinking waters, olive oil, cheese, baked goods, processed foods, and cocoa products.

In January 2019, USTR announced its negotiating objectives for the agricultural portion of a U.S.-EU trade agreement following a public comment period and a hearing involving several leading U.S. agricultural trade associations.[62] The objectives include greater market access, changes to EU administration of tariff-rate quotas, and changes to a variety of EU regulations. Among regulatory issues, key U.S. objectives include harmonizing regulatory processes and standards to facilitate trade, including sanitary and phytosanitary standards, and establishing specific commitments for trade regarding agricultural biotechnologies. The U.S. objectives also include addressing geographical indications by protecting generic terms for common use.[63] U.S. agricultural interests generally support including agriculture as part of the U.S. negotiating objectives for a U.S.-EU trade agreement. The EU negotiating mandate, however, states that a key EU goal is "a trade agreement limited to the elimination of tariffs for industrial goods only, excluding agricultural products."[64] Several Members of Congress have stated their opposition to the EU's decision to exclude agricultural policies in their negotiating mandate.[65]

The U.S.-EU trade negotiations come amid heightened U.S.-EU trade frictions. In response to U.S. Section 232 tariffs on steel and aluminum imports, the EU had retaliated in June 2018 by imposing a tariff increase of 25% on imports of certain U.S. food and beverage products.[66] The value of U.S. agricultural exports to the EU28 (included the UK) targeted by these additional tariffs is approximately $1.2 billion in 2018, or about 9% of total U.S. agricultural exports to the EU28. In October 2019, U.S.-EU trade tensions escalated further when the United States imposed additional tariffs on $7.5 billion worth of certain U.S. imports from the EU, including food products. This action—authorized by the WTO—followed a USTR investigation initiated in April 2019 under Section 301 of the Trade Act of 1974.[67]

Aside from ongoing trade tension, some of the same issues that stalled U.S.-EU agricultural talks in the T-TIP negotiations could prove to be equally intractable today. For food and agricultural products, a series of non-tariff issues stem in part from commercial and cultural practices often

[61] USDA trade statistics for "Agricultural and Related Products," which includes agricultural products (including bulk and intermediate products and also consumer-oriented products) and agricultural-related products (including fish and shellfish products, distilled spirits, forest products, and ethanol and biodiesel blends.

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

[63] For more on this, see section on "Geographical Indications (GIs)."

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

[65] See, for example, letter to USTR Robert E. Lighthizer from 114 House Members, March 14, 2019, and U.S. Senate Finance Committee press release, April 15, 2019.

[66] For a full list of product codes subject to higher duties, see Commission Implementing Regulation (EU) 2018/886 available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018R0886&from=EN. This includes the UK.

[67] For a list of product codes, see 84 *Federal Register* 32248, July 5, 2019.

enshrined in EU laws and regulations that vary from those of the United States—namely differences involving SPS and technical barriers to trade, broadly covering laws and regulations measures intended to protect public health—as well as differences involving GIs.[68]

Status: The outlook for the new U.S.-EU trade talks remains uncertain, given ongoing trade tensions. Whether or not the talks will include food and agriculture is also uncertain, as there continues to be disagreement between the two trading partners about the scope of the negotiations, particularly the EU's intent to exclude agriculture from the talks. Perhaps the overarching goal for the U.S. side is addressing the U.S. trade deficit in agricultural products with the EU.[69]

Public statements by U.S. and EU officials in early 2020 signaled that the U.S.-EU trade talks might include SPS and regulatory barriers to agricultural trade. It is not clear, however, that both sides agree which specific types of non-tariff trade barriers might actually be part of the talks. Some press reports indicate that USDA officials have said that selected SPS barriers as well as GIs would need to be addressed.[70] Specific SPS issues important to the U.S. side include the EU's prohibitions on the use of hormones in meat production (see "U.S.-EU Beef Hormone Dispute") and pathogen reduction treatments for poultry (see section "U.S.-EU Dispute Over Pathogen Reduction Treatments (PRTs)"), and EU restrictions on the use of biotechnology (see section "Agricultural Biotechnology"). Other press reports, however, indicate that some EU officials have downplayed the extent that certain non-tariff barriers—such as biotechnology product permits, approval of certain pathogen rinses for poultry, regulations on pesticides or food standards—would be part of the talks.[71] The United States continues to push for additional concessions from the EU.[72] More formal discussions are expected in spring 2020.[73]

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[68] For more on this, see section "Sanitary and Phytosanitary (SPS) and Other Non-Tariff Barriers;" and "Geographical Indications (GIs)".

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

[70] See R. McCrimmon, "Perdue Lays Out Ag Objectives in U.S. Trade Talks," *Politico*, January 29, 2020; S. Chase, "Perdue Eyes SPS, GI barriers as Key Issues in Potential US-EU Deal," *Agri-Pulse*, January 29, 2020; and S. Michalopoulos, "US Agriculture Chief Urges EU to Listen to Science, Not Fear-Mongering NGOs," *Euractiv*, January 27, 2020; and *World Trade Online*, "Hogan Hopes SPS Solutions Can Break EU-U.S. Ag Impasse," January 17, 2020.

[71] See, for example, A. Shalal and D. Lawder, "As Trump Takes Aim at EU Trade, European Officials Brace for Fight," *Reuters Business News*, February 11, 2020; and *World Trade Online*, "Hogan Doubles Down on EU Regulations as U.S. Officials Demand Ag Concessions," February 20, 2020.

[72] *World Trade Online*, "U.S., EU Negotiators Accelerating Talks, Eyeing Monthly High-level Meetings," February 13, 2020.

[73] European Parliament press release, "Trade MEPs in Washington, DC, to Discuss EU-US Trade Relations," February 21, 2020; and *World Trade Online*, "U.S., EU Negotiators Accelerating Talks, Eyeing Monthly High-Level Meetings," February 13, 2020.

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

[85] See R. McCrimmon, "Perdue Lays Out Ag Objectives in U.S. Trade Talks," *Politico*, January 29, 2020; S. Chase, "Perdue Eyes SPS, GI barriers as Key Issues in Potential US-EU Deal," *Agri-Pulse*, January 29, 2020; and S. Michalopoulos, "US Agriculture Chief Urges EU to Listen to Science, Not Fear-Mongering NGOs," *Euractiv*, January 27, 2020; and *World Trade Online*, "Hogan Hopes SPS Solutions Can Break EU-U.S. Ag Impasse," January 17, 2020.

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[87] *World Trade Online*, "U.S., EU Negotiators Accelerating Talks, Eyeing Monthly High-Level Meetings," February 13, 2020.

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Trade Aid in Response to Trade Retaliation[89]

During 2018 and 2019, the Secretary of Agriculture used his authority under the Commodity Credit Corporation Charter Act[90] to initiate two ad hoc trade assistance programs in response to foreign trade retaliation targeting U.S. agricultural products. The trade aid packages were part of the Administration's effort to provide short-term assistance to farmers for the temporary loss of important international markets.[91] On July 24, 2018, USDA announced the first "trade aid" package, which targeted production of selected agricultural commodities in 2018 and was valued at up to $12 billion. On May 23, 2019, USDA announced a second package, which targeted production of an expanded list of commodities and was valued at up to an additional $16 billion. Thus, the two years of combined trade assistance were valued at up to $28 billion.

Both trade aid packages included (1) a Market Facilitation Program (MFP) of direct payments to producers of commodities most affected by the trade retaliation, (2) a Food Purchase and Distribution Program (FPDP) designed to partially offset lost export sales of affected commodities, and (3) an Agricultural Trade Promotion (ATP) program to expand foreign markets. The largest part of the aid is two years of MFP payments initially valued at a combined $24.5 billion (up to $10 billion in 2018 and $14.5 billion in 2019).

Status: As of February 10, 2020, USDA estimates that it has spent $8.6 billion under the 2018 MFP and $14.2 billion under the 2019 MFP.[92] Payments of this magnitude could attract international attention about whether they are consistent with WTO rules and U.S. commitments on domestic support,[93] as some WTO member countries are questioning whether this additional aid violates U.S. spending limits under the WTO.[94] The trade aid packages raise other potential questions as well. For instance, if the U.S.-China Phase One trade agreement does not produce the commodity purchases promised by China, or if commodity prices remain relatively low, should another trade aid package, or some alternative compensatory measure, be provided in 2020, and possibly beyond? If MFP payments are provided in the future, should USDA revise its payment formulation to provide a broader distribution of payments across the U.S. agricultural sector?

Future Trade Negotiations[95]

India

India is the world's second most populous country after China. Since 2000, its economy has been the fastest growing in the world. Given the rapid growth in population and income among a large segment of the population, demand for higher-value food products such as fruits, nuts, dairy products, and other livestock products, is expected to increase among Indian consumers. While India is among the world's largest producers and consumers of a range of crop and livestock

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

[90] CRS Report R44606, *The Commodity Credit Corporation: In Brief*, by Megan Stubbs.

[91] See CRS Report R45903, *Retaliatory Tariffs and U.S. Agriculture*, by Anita Regmi.

[92] USDA, MFP payment data, accessed February 24, 2020, https://www.farmers.gov/manage/mfp.

[93] For a discussion, see section "2018 Farm Bill, Trade Aid, and WTO Compliance," and also see CRS Report R45310, *Farm Policy: USDA's 2018 Trade Aid Package*.

[94] For more on this issue, see CRS Report R45940, *U.S. Farm Support: Compliance with WTO Commitments*.

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

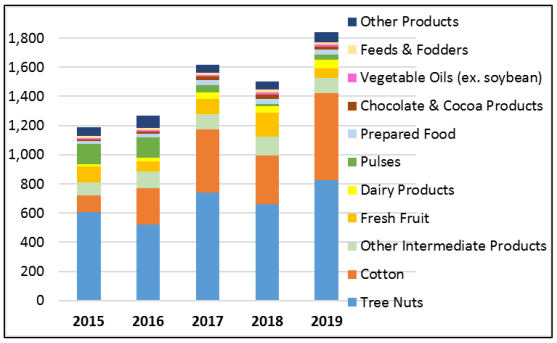
commodities, USDA projects India will continue to be an important importer of dairy products, vegetable oils, pulses, tree nuts, and fruit, and that it will continue to be a major exporter of rice, cotton and buffalo meat.[96]

U.S. agricultural exports to India have increased since 2015, reaching $1.6 billion in 2017 (**Figure 2**). In 2018, U.S. exports declined to $1.5 billion, coinciding with India's imposition of retaliatory tariffs on imports of U.S. almonds, walnuts, apples, chickpeas, and lentils, but U.S. exports rebounded to $1.8 billion in 2019 due to increased sales of cotton and tree nuts (largely pecans, pistachios, and dried coconut). Tree nuts (mainly almonds), cotton, and fresh fruit are key U.S. exports to India. However, other U.S. high-value products are registering rapid growth. For example, U.S. dairy exports to India grew by almost 300% from $16 million in 2015 to $60 million in 2019.

In 2019, the United States imported agricultural products valued at $2.6 billion from India.[97] Spices, rice, essential oils, tea, processed fruit and vegetables, and other vegetable oils are the leading U.S. imports from India.

Figure 2. U.S. Exports to India

Millions of U.S. Dollars



Source: U.S. Census Bureau trade data, accessed via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), BICO-HS-10 grouping, February 2019, https://apps.fas.usda.gov/gats/default.aspx.

Notes: Based on USDA's definition of *agriculture*.

U.S.-India trade negotiations follow a period of trade tensions. In March 2018, the United States levied additional tariffs on steel and aluminum imports from India. India responded by identifying certain U.S. food products for retaliatory tariffs[98] but did not levy them until June 16, 2019, after the United States terminated preferential treatment for India under the Generalized System of Preferences (GSP).[99] India's retaliatory tariffs range from 10% to 25% on imports of U.S. chickpeas, shelled almonds, walnuts, apples, and lentils.[100] Both countries' tariffs are likely to become an issue if the United States and India undertake a major trade negotiation, as USTR has proposed.

Trade Policy Issues

India's tariffs and non-tariff barriers have prevented greater market penetration of U.S. agricultural products. India maintains very high tariffs on many products, for example 60% on flowers, 100% on raisins, and 150% on alcoholic beverages.[101] Since 2017, a system of annual

[96] Landes and Hjort, "Food Policy and Productivity Key to India Outlook," *Amber Waves*, ERS, July 2015.

[97] U.S. Census Bureau Trade Data, accessed from GATS, February 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

[98] India, Immediate Notification Under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and other Obligations Referred to in Paragraph 2 of Article 8 of the Agreement on Safeguards, WTO, May 18, 2018.

[99] The GSP provides duty-free tariff treatment for certain products from designated developing countries.

[100] Data from Ministry of Commerce and Industry of India, February 2020.

[101] USTR, *2019 National Trade Estimate Report on foreign Trade Barriers*, 2019.

import quotas on pulses has restricted U.S. exports of pulses to India.[102] U.S. exports of wheat and barley to India are currently restricted due to its zero-tolerance standard for certain pests and weeds, and restrictions also exist on imports of livestock genetic material.

Similarly, processed products, including ethanol, are subject to various restrictions that prevent U.S. exports to India. India bans imports of tallow, fat, and oils of animal origin. India's complex requirements for U.S. dairy products have been a barrier for expanding U.S. exports. In 2015, India revised its health certificate requirement for pork imports. Since then, the United States has been seeking approval to export pork to India.

USTR asserts that India's customs regulations are not transparent or predictable.[103] India's approval process for genetically engineered products are slow and not transparent.[104]

India maintains a large and complex program for public food stockholding, both to distribute food to poor consumers and to stabilize market prices, essentially subsidizing domestic production. India provides a broad range of support to its agricultural sector. In May 2018, the United States argued at the WTO that India was under-reporting its price supports for rice and wheat.[105] In November 2018, the United States questioned India's price support for cotton,[106] while Australia has questioned India's price support for sugarcane.[107]

Status: In 2019, in response to various U.S. concerns over India's trade barriers, the United States revoked India's eligibility for preferential tariff treatment under the U.S. GSP.[108] Total value of U.S. imports of agricultural products from India were down 1% in 2019 from $2.7 billion in 2018 to $2.6 billion in 2019. USTR has stated that it hopes to reach an agreement in 2020 that will, among other things, provide greater access to the Indian market for U.S. agricultural products, potentially in exchange for U.S. restoration of India's eligibility under GSP.[109]

Kenya

On February 6, 2020, the Trump Administration announced that the United States intends to negotiate a comprehensive trade agreement with Kenya using the authority under P.L. 114-26.[110] The Administration asserts that such a trade agreement will complement Africa's regional integration efforts, including as part of the African Continental Free Trade Area (AfCFTA), to which the United States has pledged support.[111]

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[102] Senators Cramer (North Dakota) and Daines (Montana) requested in a February 29, 2020 letter to President Trump that the Administration seek a favorable pulse crop provision in negotiations with India, February 19, 2020, https://senatorkevincramer.app.box.com/s/1lc5yt7ja6w9ttr9oeph34x8e3ik5u7c.

[103] USTR, *2019 National Trade Estimate Report on foreign Trade Barriers*, 2019.

[104] FAS, "India: Agricultural Biotechnology Annual," IN2019-0109, February 04,2020.

[105] For more on this, see CRS Report R45728, *Major Agricultural Trade Issues in the 116th Congress*.

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

[107] WTO, "India's Measures to Provide Market Price Support to Sugarcane," G/AG/W/189, November 16, 2018.

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

[109] A. Behsudi, "U.S., India in Final Stages of Limited Trade Deal," *Politico*, January 28, 2020.

[110] USTR, "President Trump Announces Intent to Negotiate Trade Agreement with Kenya", press release, February 6, 2020.

[111] USTR, "U.S.-Kenya Trade and Investment Relationship," February 2020, https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2020/february/fact-sheet-us-kenya-trade-and-investment-relationship.

Kenya hosts three international agricultural research centers that focus on innovations, including agricultural biotechnology, to sustainably improve global food security. These institutions are the International Livestock Research Institute, the World Agroforestry Center, and the International Centre of Insect Physiology and Ecology.

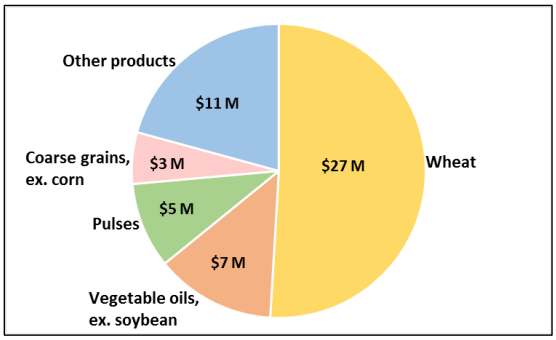
Kenya is an emerging middle-income country, home to more than 47 million people with an estimated population growth rate of 2.5% in 2017.[112] USDA projects Kenya's real GDP per capita to grow at an annual rate of about 4% though 2031.[113] With anticipated growth in population and per capita income, Kenya has the potential to increase its imports of food and other agricultural products. Kenya's top five agricultural imports are wheat, palm oil, sugar, corn and rice. Its top exports from the United States are wheat, vegetable oils excluding soybean oil, pulses, coarse grains, and other products that include many prepared food products (**Figure 3**).

Trade Policy Issues

Kenya is a beneficiary of the African Growth and Opportunity Act, most recently extended in P.L. 114-27, under which it has duty-free access to the U.S. market for 6,400 products including agricultural products. In 2019, the United States imported agricultural products valued at $126 million from Kenya,[114] with major products being macadamia and cashew nuts, coffee, tea, roses, and non-edible vegetable and nut oils.[115]

Figure 3. U.S. Agricultural Exports to Kenya

$53 Million in 2019



Source: U.S. Census Bureau Trade Data, BICO-10 grouping, accessed from FAS, USDA, February 7, 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

Notes: USDA definition of *agriculture* is used; 'ex.'=excluding.

Kenya's MFN tariffs—rates that apply to imports from the United States—are relatively high. For example, simple average MFN tariffs for animal products are 23.1%, dairy products are 51.7%, fruit and vegetables are 22%, cereals and preparations are 22.2%, sugar is 40%, and fish products are 24.8%.[116] Other concerns raised by USDA include a Kenyan ban on imports of genetically engineered (GE) agricultural products (although it has approved field trials for GE cotton[117] and drought and insect resistant corn), bans on imports of U.S. whole peas and lentils,[118] and had a ban on wheat from the U.S. Pacific Northwest over concerns regarding a certain fungus. In February 2020, Kenya adopted a

[112] USTR, "U.S.-Kenya Trade and Investment Relationship."

[113] ERS, International Macroeconomic Data Set, Real Per Capita GDP Projections in 2010 U.S. Dollars, January 3, 2020.

[114] U.S. Census Bureau Trade Data, accessed from GATS, February 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

[115] FAS, "Strengthening the U.S.-Kenya Trade Relationship to Grow U.S. Agricultural Exports to East Asia," *International Agricultural Trade Report*, June 2019.

[116] WTO, Kenya and the WTO, accessed February 4, 2020, https://www.wto.org/english/thewto_e/countries_e/kenya_e.htm. The average tariffs are not trade weighted.

[117] In 2020, Kenya is planning its first production of Bt cotton for commercialization, for more on this see FAS, "Kenya: Agricultural Biotechnology Annual," GAIN Report KE2019-0008, February 14, 2020.

[118] USTR, *2019 National Trade Estimate Report on foreign Trade Barriers*, 2019.

phytosanitary protocol that allows wheat growers in Washington State, Oregon, and Idaho access to Kenya's wheat market, potentially allowing increased U.S. wheat exports to Kenya.[119]

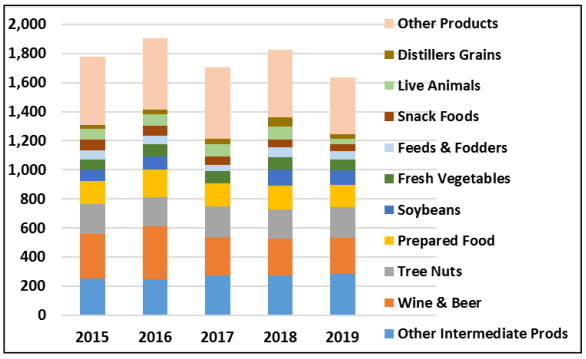
Status: USTR has said it plans to officially notify Congress of its intent to start negotiations following consultations with Congress as required by the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26). Subsequently, USTR is to publish notices in the *Federal Register* requesting public comment on the direction, focus, and content of the trade negotiations with Kenya. USTR is to publish objectives for the negotiations at least 30 days before trade negotiations begin. Some Members of Congress have expressed their support for a free trade agreement with Kenya.[120]

United Kingdom (UK)

In January 2020, the UK left the EU. It remains a member of the EU customs union, so U.S.-UK trade continues to be governed by agreements between the United States and the EU in addition to WTO rules. However, the UK has announced its intention to withdraw from the EU customs union on December 31, 2020. Thereafter, U.S.-UK trade will occur under WTO rules unless a separate agreement is reached between the United States and the UK. The UK entered the WTO as a member of the EU, and does not have its own schedule of commitments under the WTO.[121] U.S.-UK trade would thus continue to be governed by the EU WTO schedule, with some confusion regarding what share of quota and subsidy commitments made by the EU will henceforth apply to the UK. Therefore, some Members of Congress have indicated that a comprehensive U.S.-UK trade agreement should be a priority for the United States.[122]

Figure 4. U.S. Agricultural Exports to the UK

Millions of U.S. Dollars



Source: U.S. Census Bureau Trade Data, BICO-10 grouping, accessed from FAS, USDA, February 7, 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

Notes: USDA definition of *agriculture* is used.

The UK has accounted for about 1.3% of total U.S. agricultural exports from 2015 to 2019. Major U.S. exports are wine and beer, tree nuts, prepared food, soybeans, live animals and other products (**Figure 4**). The United States does not export notable quantities of meat products to the UK, and the Trump Administration and some Members of Congress and U.S. agricultural industry would like to expand exports of these products in the post-Brexit environment.[123]

[119] FAS, "USDA Expands Market for U.S. Wheat: Adds Idaho, Oregon, and Washington to List of States That Can Export Wheat to Kenya," press release, February 25, 2020.

[120] Office of Senator Mike Enzi, "Inhofe, Enzi, Coons, Rounds, Kaine, Boozman Applaud First Steps to US-Kenya Free Trade Agreement," press release, February 7, 2020.

[121] This raises issues for the UK and the EU regarding how to apportion subsidies and quotas between EU-27 and the UK and would require the UK to establish its own WTO schedule. For more on this see, CRS Report R45944, *Brexit: Status and Outlook*.

[122] Twelve U.S. Senators' Letter to USTR, February 14, 2020, https://www.portman.senate.gov/sites/default/files/2020-02/Signed%20UK%20Trade%20Letter.pdf.

[123] See for example, A. Behsudi, "Trump's U.K. Trade Deal Could Depend on Whether the Brits Can Stomach

As a member of the EU, the UK posed the same set of trade barriers to U.S. agricultural exports as those discussed under "U.S.-EU Agricultural Trade". In particular, hormone treated beef, chlorine-washed poultry, and bio-engineered food products have faced restrictions in accessing EU markets. The UK has sent mixed signals regarding these issues and has hinted that it may allow imports of genetically engineered U.S. agricultural products.[124] At the same time, some reports indicate the UK will not allow imports of chlorine-washed chicken meat.[125]

Among other goals for U.S. agricultural trade, USTR has identified reducing or eliminating tariffs, providing adjustment periods for U.S. import-sensitive products before initiating tariff reduction, eliminating non-tariff barriers that discriminate against U.S. agricultural goods, improving UK's TRQ administration, promoting regulatory compatibility, and establishing commitments for trade in agricultural biotechnology products.[126] USTR has also articulated specific goals regarding sanitary and phytosanitary provisions, customs and trade facilitation, rules of origin, and technical barriers to trade. Some Members of Congress have requested that improved market access for U.S. rice be an objective of U.S. negotiators.[127]

Status: On October 16, 2018, the Trump Administration notified Congress of proposed trade agreement negotiations with the UK. The UK could not formally negotiate or conclude a new agreement until it exited the EU, which occurred on January 31, 2020, and any agreement could not take effect until the UK exits the EU single market and customs union. Given the proposed scope of the negotiations, any resulting agreement would likely be subject to ratification by Congress.

WTO and U.S. Agriculture[128]

The World Trade Organization is an international organization that administers the rules and agreements negotiated among its 164 members to eliminate trade barriers and govern trade.[129] It also serves as an important forum for resolving trade disputes through its committee structures and its Dispute Settlement Body, which approves reports issued by panels of legal experts and a separate Appellate Body. The United States was a major force behind the establishment of the WTO in 1995.

Under the WTO's Agreement on Agriculture (AoA), agreed in 1995, national agricultural policies—including domestic farm support, agricultural export subsidies, and restrictive import controls—were placed under a multilaterally agreed-upon set of disciplines for the first time.[130] WTO members agreed to reform their domestic agricultural support policies, increase access to imports, and reduce export subsidies. The disciplines on these three "pillars" of agricultural

'Chlorine Chicken'," *Politico*, January 6, 2020.

[124] R. Mason "Boris Johnson Hints at Allowing GM Food Imports from U.S.," *The Guardian*, February 3, 2020.

[125] E. Courea, "Pompeo: Agriculture a Sticking Point in U.K.-U.S. Trade Talks," *Politico*, January 30, 2020.

[126] USTR, "United States-United Kingdom Negotiations: Summary of Specific Negotiating Objectives," February 2019.

[127] U.S. Senate, Letter to Ambassador Lighthizer, Signed by Senators Wicker (MI), Hyde-Smith (MI), Boozman (AK), Blunt (MO), Cornyn (TX), Cotton (AK), Cruz (TX), and Hawley (MO), February 10, 2020, https://www.hydesmith.senate.gov/sites/default/files/2020-02/021020%20USTR%20Ambassador%20Lighthizer%20UK%20Rice%20Letter.pdf.

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

[129] CRS Report R45417, *World Trade Organization: Overview and Future Direction*.

[130] WTO, Agreement on Agriculture, Legal Text 1995, https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm.

policy involved freezing (or "binding") protective measures and subsidies at base period levels, then instituting annual reductions from the bound levels. Article 15 of the AoA granted developing and least-developed countries special rights or extra leniency—termed "special and differential treatment"—in the implementation of their policy commitments. Specifically, they had longer periods over which to reduce subsidies and to improve market access. They were also allowed to retain certain subsidies that were prohibited for other countries.

During the AoA's early years, Article 13, known as the Peace Clause or "due restraint" clause, provided additional impetus for reform. The Peace Clause provided temporary protection for market-distorting domestic support and export subsidy measures from challenges under other WTO provisions, as long as these measures complied with certain requirements.[131] However, such subsidies would be open to challenge after the Peace Clause expired around January 2004.[132]

The AoA was envisioned as a first step in the process of global market liberalization in the agricultural sector. The impending expiration of the Peace Clause coupled with Article 20's directive to continue the reform process led WTO members to launch the Doha Round of negotiations in 2001. But, the Doha Round failed to reach consensus on formulas to reduce tariffs and agricultural subsidies, due in part to disagreements among developing countries that wished to retain their special and differential treatment under the AoA and wealthier countries that wanted to limit such preferences. The Doha Round has been at an impasse since 2009.[133]

The WTO's effectiveness as a negotiating body for broad-based trade liberalization and its role in resolving trade disputes therefore have come under intensified scrutiny in recent years. The WTO has struggled to address newer issues, such as digital trade and regulations affecting services. In addition, the Appellate Body is effectively non-functional due to the United States' decision to block the nomination of members, which prevents it from having a quorum needed to resolve disputes.

Status: USTR has stated that WTO institutional reform is a priority in 2020.[134] Some Mof Congress have voiced their agreement.[135] The WTO's chair for agricultural negotiations may circulate a negotiating framework for the June 2020 meeting of WTO trade ministers in Kazakhstan that includes rules designed to increase sustainable agricultural production.[136] The meeting may also consider a proposal by a group representing 19 countries, known as the Cairns Group, to "cap and reduce by at least half the current sum of global agricultural trade- and production-distorting domestic support entitlements by 2030."[137]

[131] Exemption was allowed provided that cumulative outlays on such measures did not grant support to a specific commodity in excess of that decided during the 1992 marketing year.

[132] WTO, AoA, Article 1.f, 1995. There has never been a definitive statement as to when the Peace Clause expired, with the only WTO panel to address it finding that, at the earliest, it expired on January 1, 2004, but could have expired at later points in 2004.

[133] For more on this issue, see CRS Report RS22927, *WTO Doha Round: Implications for U.S. Agriculture*.

[134] For more on this issue see, CRS Report R45474, *International Trade and Finance: Overview and Issues for the 116th Congress*; USTR, *2019 Trade Policy Agenda and 2018 Annual Report*, March 2019; and USTR, *USTR Issues Report on the WTO Appellate Body*, February 11, 2020.

[135] See H.Res. 746; and Icso, "Blumenauer Cites USMCA Enforcement, WTO Reform Among Trade Panel's 2020 Priorities," *Inside World Trade*, January 31, 2020.

[136] WTO, "DDG Wolff: It is Time to Update the WTO Rulebook for Agriculture," January 18, 2020.

[137] The Cairns Group, "41st Cairns Group Ministerial Meeting Statement and Framework for Negotiations," January 23, 2020, https://cairnsgroup.org/Pages/Statement-of-the-41st-Cairns-Group-Ministerial-Meeting.aspx.

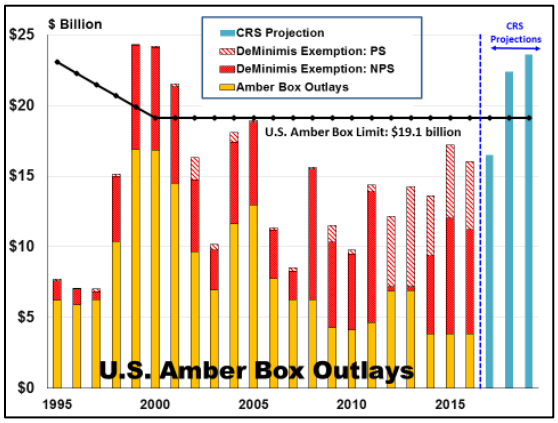
2018 Farm Bill, Trade Aid, and WTO Compliance[138]

Under the AoA, the United States has committed to limit its domestic support program spending deemed most trade-distorting (referred to as "amber box" outlays) to $19.1 billion per year. The AoA spells out the rules for countries to determine whether their policies are potentially trade-distorting, how to calculate the costs of any distortion using a specially defined indicator, the "Aggregate Measure of Support" (AMS), and how to report those costs to the WTO in a public and transparent manner.[139] While the AMS is subject to a spending limit, the AoA provides four potential exemptions from the AMS spending limit.

First, if a program's outlays are considered to be minimally trade distorting or non-trade distorting (in accordance with specific criteria listed in Annex 2 of the AoA), then they may qualify as "green box" programs and not be included in the AMS. Second, if program spending is trade-distorting but has offsetting features that limit the production associated with support payments, then they may qualify as "blue box" programs and not be included in the AMS. Third, if AMS outlays for a specific commodity are sufficiently small relative to the output value of that commodity (product-specific de minimis), they may be exempted. Finally, if aggregate AMS outlays are small relative to the value of total agricultural production (non-product-specific de minimis)—then they may be exempted. Any AMS left over after applying these four exemptions constitutes the amber box.

Since the WTO's establishment, the United States has generally met its WTO amber box spending commitment. However, in some years U.S. compliance has hinged on judicious use of de minimis exemptions, which permit it to exclude certain spending from being considered under its amber box limit (see **Figure 5**). To date, no WTO member has challenged these exemptions.

Figure 5. U.S. Amber Box Compliance, Historical and Projected



Source: PS=product specific; NPS=non-product-specific. Compiled by CRS from U.S. notification to the WTO for 1995-2016. Years 2017-2019 are compiled by CRS from USDA payment and farm income data and Congressional Budget Office May 2019 baseline projections for farm program outlays.

Notes: The United States has yet to notify domestic support outlays beyond 2016. Thus, it is unknown how USDA will categorize new spending programs such as the Market Facilitation Program (MFP). As a result, CRS does not distinguish between amber box and de minimis spending for the projected years 2017, 2018, and 2019; for a projected breakout, see CRS Report R45940, *U.S. Farm Support: Compliance with WTO Commitments*.

Since 2010, U.S. outlays on potentially market-distorting farm programs have been trending upward (**Figure 5**). From 2011 through 2016, AMS outlays (amber box plus de minimis exemptions) averaged $14.6 billion per year.[140] However, several policy developments since 2016 have created uncertainty about whether the United States will remain in compliance with the rules

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

[139] For more information, see CRS Report R45940, *U.S. Farm Support: Compliance with WTO Commitments*, by Randy Schnepf.

[140] Compiled by CRS from U.S. official notifications to the WTO.

and spending limits for domestic support programs that it has agreed to in the WTO. These developments are, first, farm program changes under both the 2018 farm bill (P.L. 115-334), which expanded payment eligibility and eliminated certain programs from payment limits,[141] and, second, USDA trade aid programs implemented in 2018 and 2019 under other statutory authorities in response to foreign trade retaliation targeting U.S. agricultural products (see "Trade Aid in Response to Trade Retaliation").[142]

U.S. AMS spending is estimated to have been higher in 2017 through 2019, based on CRS compilation of USDA program data. Outlays in 2017 are estimated to have been $16.5 billion; however, the classification of $10.1 billion in program spending as de minimis exemptions would limit amber box outlays to $6.3 billion. The addition of the Administration's two MFP "trade aid" payments, valued at $8.6 billion in 2018 and approximately $10.7 billion in 2019, are estimated to push total AMS outlays above the U.S. amber box spending limit—to $22.4 billion in 2018 and $23.6 billion in 2019. Whether the United States will violate its spending commitment or not would be expected to depend on the extent that de minimis exemptions apply for those two years.[143]

The United States has yet to notify spending to the WTO under any of the trade assistance programs, so the exact WTO spending classification is currently unknown. However, past practice can serve as a guide for the likely notification. The FPDP and ATP programs for 2018 and 2019 are expected to have been implemented in a similar manner during both years. USDA outlays under food purchase and distribution programs have historically been notified to the WTO as green box compliant and thus not subject to any spending limit. Trade promotion programs, such as ATP, are not notified under domestic support, because they do not involve direct payments to producers. Thus, the FPDP and ATP programs are not expected to affect the United States' ability to meet its WTO commitments.

Payments under the two MFP programs were structured differently during 2018 and 2019. As a result, they are likely to be notified under different WTO classifications. The specific manner of determining how payments are made to individual producers is likely to determine their WTO status. Potential AMS classifications are:[144]

- USDA's MFP payments for 2018 were based on each farm's harvested production of eligible crops during 2018 times a fixed per-unit payment rate. Payments to dairy were based on historical production, while hog payments used mid-year inventory data. Under this specification, 2018 MFP payments are likely to be notified as coupled, product-specific AMS and would count against the U.S. annual spending limit of $19.1 billion (unless they are exempted under the product-specific de minimis exemption).
- USDA's MFP payments for 2019 were coupled to a producer having planted at least one eligible commodity within the county, but they are independent of which commodity or commodities were planted. Under this specification, the

[141] See CRS Report R45730, *Farm Commodity Provisions in the 2018 Farm Bill (P.L. 115-334)*.

[142] For details regarding trade-aid payments, see CRS Report R45310, *Farm Policy: USDA's 2018 Trade Aid Package*; and CRS Report R45865, *Farm Policy: USDA's 2019 Trade Aid Package*.

[143] These projections hinge on several as-yet-unknown factors, including market prices, output values, and program outlays under traditional countercyclical ARC and PLC programs. If the final prices are higher than currently projected, then program payments under ARC and PLC could be smaller than those used in this analysis. This could decrease both aggregate non-product-specific outlays and the possibility of exceeding the amber box spending limit.

[144] These potential notifications are CRS projections based on analysis of the design of the 2018 and 2019 MFP programs and how they correspond with previous U.S. notifications. USDA may use a different line of reasoning and notify 2018 and 2019 MFP payments under different WTO classifications.

2019 MFP payments would appear to be coupled to planted acres—a producer has to plant an eligible crop to get a payment—but are non-product-specific, thus possibly notifiable as non-product-specific AMS.

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 traditional program 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 could be both visible and potentially vulnerable to challenge under WTO rules.[145]

U.S. Challenges to Farm Support Spending of WTO Members[146]

Since the inception of the WTO in 1995, the United States has initiated 46 WTO dispute cases related to agriculture. Of these cases, 34 were fully or partially decided in favor of the United States by the WTO panel hearing the case.[147]

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

In September 2016, USTR filed a dispute settlement case (DS511) at the WTO over China's domestic agricultural support policies, alleging they were inconsistent with WTO rules and commitments.[148] 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.[149] In December 2016, USTR requested that the WTO establish a dispute settlement panel to examine China's domestic support levels for these crops.

On February 28, 2019, the WTO dispute settlement panel 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 made recommendations that China change its calculations of reference prices and domestic support in order to comply with its WTO commitments. The panel did not make a ruling on corn because China had already made changes to its support for corn that were found to be less trade distorting than the method used prior to 2015.

[145] See CRS Report RS22522, *Potential Challenges to U.S. Farm Subsidies in the WTO: A Brief Overview*.

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

[147] 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.

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

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

Status: Under the U.S.-China Phase One trade agreement, China stated that it will respect its WTO obligations and publish in its official journal its laws, regulations and other measures pertaining to its domestic support programs and policies.

U.S. Challenges to China's Agricultural Market Access Policy

On December 15, 2016, USTR filed another WTO dispute settlement case (DS517) against China, alleging that China administered its TRQs for wheat, rice, and corn in such a way that the duty-free quotas were never filled, even when imported grains were priced lower than domestic grains.[150]

USTR stated that China's TRQ administration appeared to restrict imports and failed to provide sufficient information to permit the processing of quota applications and importation.

On September 22, 2017, a WTO dispute settlement panel was established on *China – Tariff Rate Quotas for Certain Agricultural Products*. On April 18, 2019, the panel 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 panel recommended that China make changes to its TRQ administration to conform to its WTO obligations.[151]

Status: In the U.S.-China Phase One trade agreement, China stated that it will ensure that its TRQ measures conform with the WTO panel ruling.

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

In May 2018, the United States asserted at the WTO that India had not accurately notified the WTO of its spending on its market price support for rice and wheat for the marketing years 2010/11 through 2013/14.[152] 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 at the WTO, stating that it exceeded its allowable level under its WTO commitments.[153] 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.[154]

In February 2019, the United States further challenged India at the WTO, 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 AoA 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.[155]

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

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

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

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

[154] 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.

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

The United States' challenge to India's domestic support for rice and wheat was raised at the May 2018 WTO Committee on Agriculture meeting. USTR raised the issue concerning India's cotton price support during the November 2018 committee meeting, and the challenge against India's domestic support for pulses was raised at the February 2019 meeting.

Status: USTR may continue challenging India's domestic support for agriculture at upcoming WTO Committee on Agriculture (COA) meetings and, if necessary, could pursue these concerns through WTO's dispute settlement mechanism. India's domestic support for agriculture could be an issue during U.S.-India trade negotiations or during the discussions related to WTO reform on agriculture.

Foreign Challenges to U.S. Farm Support[156]

The U.S. shift toward greater use of domestic trade laws and less reliance on the WTO to address concerns about other countries' trade policies could also produce unintended consequences as trading partners consider responding to a pattern of increasing U.S. farm support outlays over the past decade. For example, in lieu of using the WTO's dispute settlement process to have an independent panel resolve disputes, countries may choose to use trade remedy investigations performed by their national authorities to impose anti-dumping (AD) duties on products found to be sold below cost and countervailing duties (CVD) on imports found to be unfairly subsidized or otherwise traded unfairly.

Under the Article 13 of the 1995 WTO Agreement on Agriculture (AoA), a provision known as the Peace Clause kept members from taking action against domestic subsidies of WTO members who complied with their AoA commitments. Article 13's protection expired in January 2004, making countries with subsidies to their agricultural sectors vulnerable to AD or CVD actions by their trading partners. Since then, a number of challenges to U.S. imports have involved repeated or multiple investigations into the same products (examples include Mexican investigations into apples and the Peruvian investigation into corn).[157] Large trade aid payments to the U.S. farm sector in 2018 and 2019 have raised new questions from some WTO members, who may perceive these payments as providing an unfair advantage for the U.S. agricultural sector.

When a country initiates an AD or a CVD investigation of U.S. agricultural exports, the U.S. government and the affected industries may participate in the investigation by providing evidence, such as showing that any subsidies were permissible under WTO rules or that the imposition of duties is not justified. U.S. exporters may also challenge an AD or CVD ruling under free trade agreements, such as NAFTA or USMCA in the future. A third option is for the United States to bring a claim via the WTO dispute settlement process, alleging that the trading partner has violated the WTO Anti-Dumping Agreement or the Agreement on Subsidies and Countervailing Measures. However, the WTO Appellate Body, which hears appeals of cases from WTO dispute settlement panels, currently lacks a sufficient number of judges to issue rulings,

[156] Prepared by Anita Regmi, Analyst in Agricultural Policy, CRS. This section includes contributions from Nina Hart, Legislative Attorney, CRS.

[157] NAFTA, *Binational Panel Report, In the Matter of the Review of the Final Determination of the Anti-dumping Duty Investigation on Imports of Certain Red Delicious Apples and Golden Delicious Apples from the United States of America*, paras. 54-55, MEX-USA-2006-1904-2, October 15, 2009; and Technical Secretariat of the Supervision Commission of Dumping and Subsidies, *Informe No. 026-2018/CDB-INDECOPI*, July 12, 2018, para. 7 n.7 and para. 107, https://www.indecopi.gob.pe/documents/1902049/4099489/INFORME+026-2018.PDF.pdf/3df6d1c7-49d3-d75c-0a16-29e7aaa435bd.

because the United States has blocked the appointment of judges to replace those whose terms have expired. This means that the Appellate Body is unable to adjudicate disputes.

Peru currently imposes countervailing duties on U.S. ethanol imports. In May 2019, Colombia imposed preliminary duties on U.S. ethanol for a four-month period during a countervailing duty investigation.[158] In 2018, Peru initiated a similar investigation into U.S. corn, and China launched an investigation into U.S. sorghum, although neither case has resulted in countervailing duties to date.

Status: Over the years, trading partners have expanded the scope of U.S. programs that they considered to be "actionable"—that is, potentially subject to punitive duties.[159] In some cases, programs other than those that the United States reports to the WTO under its amber box commitments have been the subject of foreign government investigations. These have included direct payments to farmers, subsidies for biodiesel and ethanol, export credit guarantees, farm ownership and operating loans, and Market Access and Foreign Market Development Programs operated by the Foreign Agricultural Service.[160] In 2019, a European Parliament report suggested that perhaps the U.S. Environmental Quality Incentives Program could be considered an unfair subsidy to the U.S. farm sector.[161] Given the WTO's limited ability to resolve disputes though legal procedures at present, the United States may have difficulty challenging duties levied on U.S. agricultural products by a country with which the United States does not have a trade agreement that includes dispute resolution provisions.

Non-Tariff Trade Barriers

Sanitary and Phytosanitary (SPS) and Other Non-Tariff Barriers[162]

SPS measures are laws, regulations, standards, and procedures that governments employ as "necessary to protect human, animal or plant life or health" from the risks associated with the spread of pests, diseases, or disease-carrying and causing organisms, or from additives, toxins, or contaminants in food, beverages, or feedstuffs. Examples include product standards, requirements that products be produced in disease-free areas, quarantine and inspection procedures, sampling and testing requirements, residue limits for pesticides and drugs in foods, and limits on food additives. Technical barriers to trade (TBTs) cover both food and non-food traded products. TBTs in agriculture include SPS measures, but also include other types of measures related to health and quality standards, testing, registration, and certification requirements, as well as packaging and labeling regulations. Both SPS and TBT measures regarding food safety and related public health protection are addressed in various multilateral trade agreements and are regularly notified to and debated within both the SPS Agreement and TBT Agreement within the WTO.[163] Under the agreements, countries are encouraged to observe established and recognized international

[158] FAS, "Colombia: Biofuels Annual," Attaché Report, July 23, 2019.

[159] Technical Secretariat of the Supervision Commission of Dumping and Subsidies, *Informe No. 002-202/CDB-INDECOPI*, Jan. 8, 2020; and FAS, "MOFCOM Drops AD and CVD Investigations of Imports of U.S. Sorghum," GAIN Report No. CH:18029, May 18, 2018.

[160] The latter two were included in the China CVD investigation into U.S. sorghum.

[161] European Parliament, "US Duties on Imports of Spanish Ripe Olives," March 2019, http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635558/EPRS_ATA(2019)635558_EN.pdf.

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

[163] See CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*.

standards, and avoid any improper use of SPS and TBT measures that might create barriers to trade that are not supported by science.

Examples of prominent U.S. trade concerns involving SPS and TBT issues include restrictions in some global markets on the use of agricultural biotechnology (see section "Agricultural Biotechnology"), EU prohibitions on the use of hormones in meat production (see "U.S.-EU Beef Hormone Dispute"), and the use of pathogen reduction treatments for poultry (see section "U.S.-EU Dispute Over Pathogen Reduction Treatments (PRTs)").

Bilateral and regional free trade agreements (FTAs) between the United States and other countries address SPS and TBT matters. Provisions in most U.S. FTAs have generally reaffirmed rights and obligations of both parties under the WTO SPS and TBT agreements. Some FTAs have resulted in the establishment of a standing bilateral committee to enhance understanding of each other's measures and to consult regularly on related matters. Some FTAs have included side letters or agreements for the parties to continue to cooperate on scientific and technical issues, which in some cases may be related to certain specific market access concerns. However, to date, most FTAs have not addressed specific non-tariff trade concerns directly.

In the early 2010s, as part of the lead up to negotiations with the EU and with Asia-Pacific countries, there were active efforts to "go beyond" the rules, rights, and obligations in the WTO SPS and TBT Agreements, as well as beyond commitments in existing U.S. FTAs. These efforts were often referred to as "WTO-Plus" rules, or alternatively, as "SPS-Plus" and "TBT-Plus" rules, and they were intended to address concerns that trade negotiations might not adequately address SPS concerns and cover "all significant barriers in a single comprehensive agreement."[164] Related issues involved the need to more effectively address enhanced regulatory cooperation and coherence between trading partners in an FTA.[165] Many in Congress also continued to call for "effective rules and enforceable rules to strengthen the role of science" to resolve international trade differences in FTA negotiations.[166]

Status: Statements by USDA and EU officials in early 2020 signaled that issues involving SPS barriers and regulatory cooperation could become part of the U.S.-EU Trade Agreement negotiations.[167] Other statements by USDA officials further indicated that certain long-standing SPS disputes—including the EU's continued ban on the use of hormones and certain pathogen reduction treatments in meat production—might also be part of the negotiations.[168] These and other non-tariff barriers continue to be actively debated as part of the official U.S. trade agenda.[169] Among U.S. concerns involving the application of such measures in some countries is the

[164] See, for example, letter to former U.S. Trade Representative Ron Kirk from several U.S. agriculture and food groups, March 4, 2013.

[165] See CRS Report R44564, *Agriculture and the Transatlantic Trade and Investment Partnership (T-TIP) Negotiations*. Regulatory cooperation generally refers to enhanced partnerships and interactions among regulators in each country, while regulatory coherence refers to the practices, transparency, and stakeholder engagement in the regulatory process.

[166] See, for example, letter to former U.S. Trade Representative Michael Froman from Members of the House Agriculture Committee and House Ways and Means Committee, August 7, 2013.

[167] S. Chase, "Perdue Eyes SPS, GI Barriers as Key Issues in Potential US-EU Deal," *Agri-Pulse*, January 29, 2020; and *World Trade Online*, "Hogan Hopes SPS Solutions Can Break EU-U.S. Ag Impasse," January 17, 2020.

[168] *World Trade Online*, "Perdue: EU Should Accept U.S. Chicken, Beef as Part of U.S.-EU Reset," January 28, 2020; and K. Good, "Sec. Perdue Highlights EU Ag Trade Issues," *Farm Policy News*, February 3, 2020.

[169] USTR, "2019 Trade Policy Agenda," March 2019, pp. 44-45; and USTR, *2019 National Trade Estimate Report on Foreign Trade Barriers* (which provides specific examples of SPS and TBT measures in selected countries.).

perception that their use may not be based on accepted science or on international standards, and that they instead constitute disguised protectionist barriers to U.S. exports.

In recent developments, both USMCA and the U.S.-China Phase One trade agreement incorporated policy changes regarding SPS and TBT measures that go beyond the rules, rights, and obligations in the WTO. Those changes also go beyond commitments in existing U.S. trade agreements. Specifically, according to the U.S. International Trade Commission, USMCA "goes further [than previous agreements] in requiring transparency and encouraging harmonization or equivalence of SPS measures" and incorporates all of the proposed enhanced TPP disciplines "in the areas of equivalence, science and risk analysis, transparency, and cooperative technical consultations."[170] Some industry representatives claim USMCA "goes beyond TPP in establishing deadlines for 'import checks,' by requiring importing parties to inform exporters or importers within five days of shipments being denied entry."[171] The final U.S.-China Phase One trade agreement also requires both parties to "engage each other cooperatively" on agriculture-related technical and SPS measures, including "risk communication."[172] It further requires that China implement a phytosanitary protocol to allow the importation of U.S. agricultural crops, and establish various protocols and certificate requirements. Both of these U.S. FTAs are notable in that they specifically address agricultural biotechnology in the agreement.[173]

Ongoing Trade Issues Involving SPS Measures[174]

Outside of the FTA negotiation process, various U.S. federal agencies regularly address trade concerns involving SPS and TBT measures as part of their day-to-day oversight and regulatory responsibilities. For example, the United States maintains ongoing interagency processes and mechanisms to identify, review, analyze, and address foreign government standards-related measures that may function as barriers to trade. These activities are coordinated through the USTR-led Trade Policy Staff Committee, which comprises representatives from several federal agencies, including USDA, the Department of Commerce (DOC), and the State Department. USTR also chairs an interagency group (i.e., both USDA and non-USDA agencies with SPS and TBT responsibilities) that meets weekly to review SPS and TBT measures involving globally traded goods that are notified to the WTO, as required under the SPS and TBT agreements. These agency officials also work with their international counterparts on an ongoing basis on various trade concerns involving SPS and TBT measures.[175] USTR tracks issues related to SPS and TBT measures as part of a series of ongoing annual reports.[176] In addition, USDA's Animal and Plant Health Inspection Service (APHIS) administers various regulatory and control programs

[170] USITC, "U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors," Publication# 4889, Investigation Number: TPA 105-003, April 2019, pp. 132-133.

[171] USITC, "U.S.-Mexico-Canada Trade Agreement," p. 133.

[172] Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China, Chapter 3 (Trade in Food and Agricultural Products).

[173] For more on this, see section on "Agricultural Biotechnology."

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

[175] Both the SPS and TBT agreements encourage the international harmonization of food standards, recognizing three international standard-setting organizations including the Codex Alimentarius Commission, the World Organisation for Animal Health, and the International Plant Protection Convention. The SPS Agreement recognizes each of these organizations as the primary "relevant" (or reference) organizations for developing international standards, guidelines, and recommendations on animal health, food safety, and plant health.

[176] USTR reports include Trade Policy Agenda Annual Report of the President of the United States on the Trade Agreements Program; the annual *National Trade Estimate Report on Foreign Trade Barriers* (or NTE report) and periodic SPS and TBT reports (last published covering 2014).

pertaining to animal and plant health and quarantine, humane treatment of animals, and the control and eradication of pests and diseases. APHIS also oversees SPS certification requirements for imported and exported agricultural goods.[177] This work is ongoing.[178]

Status: While specific SPS and TBT issues regarding individual agricultural commodities generally fall outside most formal FTA negotiations, statements by USDA officials in early 2020 have signaled that certain issues that arise from normal day-to-day operations within the Executive Branch could become part of the U.S.-EU trade agreement negotiations. Press reports indicate that such issues could include EU concerns involving phytosanitary certificates for U.S. imports of apples and pears from some EU countries as well as post-arrival requirements for U.S. imports of sheep and goat semen from the EU.[179] U.S. concerns include the EU's restrictions on the use of agricultural chemicals and biotechnology, animal cloning, pesticide maximum residues limits, and import requirements for live cattle and animal byproducts.[180]

Agricultural Biotechnology[181]

Agricultural biotechnology refers primarily to the commercial development of plants and animals through recombinant DNA techniques to provide certain desired characteristics, primarily herbicide tolerance and pest resistance. More recently, the term has come to encompass a range of new technologies that manipulate genetic material through targeted *in vivo* or *in vitro* techniques, popularly referred to as genomic "editing" (e.g., CRISPR-Cas9) rather than just recombinant DNA techniques. 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. Globally, the United States leads in cultivating GE crops, accounting for nearly 40% of total acres growing GE crops worldwide.[182]

Elsewhere in the world, the adoption and cultivation of GE crops by both producers and consumers are mixed.[183] Argentina and Brazil, for example, are major cultivators and exporters of GE corn and soybeans. India is a major cultivator of GE cotton. EU policy is more complicated. Through labeling requirements, strict traceability rules for imported food and commodities, and comparatively strong democratic pressures from the public at local levels, the EU has made cultivation and sale of GE foods and crops very difficult. Moreover, while the European Commission (EC) has approved varieties of GE commodities for import and marketing, individual member states may maintain bans. This opposition in the EU has also been a factor in opposition to GE crops in less developed countries. Many African countries have largely followed

[177] For more background, see CRS Report R45267, *Animal and Plant Export Health Certificates in U.S. Agricultural Trade* and CRS Report R45457, *Animal and Plant Health Import Permits in U.S. Agricultural Trade.*

[178] See USDA's website at https://www.federalregister.gov/agencies/animal-and-plant-health-inspection-service.

[179] *World Trade Online*, "Perdue: US Could Address Apples, Goats, Other Irritants in Deal with EU," January 28, 2020.

[180] For example, based on issues highlighted in USTR's "2019 Trade Policy Agenda," March 2019, and USTR's *2019 National Trade Estimate Report on Foreign Trade Barriers.*

[181] Prepared by Tadlock Cowan, Analyst in Natural Resources and Rural Development, and Genevieve Croft, Analyst in Agriculture, CRS.

[182] International Service for the Acquisition of Agri-Biotech Applications, ISAAA Brief 54-2018. http://www.isaaa.org/resources/publications/briefs/54/executivesummary/default.asp.

[183] For a review of restrictions on GE organisms in other countries, see Law Library of Congress, Global Legal Research Center, *Restrictions on Genetically Modified Organisms*. March 2014.

the EU in restricting or banning the commercial cultivation of GE crops, confining cultivation mostly to field trials and greenhouse containment.

In March 2018, the U.S. Secretary of Agriculture stated that the United States will not regulate plants created through genomic editing as long as they are developed without using a plant pest as the donor or vector, and are not plant pests themselves.[184] In contrast, the European Court of Justice ruled in July 2018 that organisms obtained by mutagenesis 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. The European Court considers the risks posed by new mutagenic techniques such as gene editing (CRISPR-Cas9), to be similar to crops created from transgenesis, where GE crops have genetic material from other, unrelated organisms introduced into the host plant.

China's reluctance to approve GE crops or GE imports remains a source of frustration for U.S. agricultural interests. Nonetheless, U.S.-developed GE varieties appear to be grown in China despite Chinese laws banning their cultivation. In September 2016, China agreed to improve its agricultural biotechnology approval process and, in January 2019, it announced approval of five new GE traits in imported crops for processing, the first new approvals since June 2017. At the same time, the ministry amended regulations on safety assessment, import approval, and labeling of agricultural GMOs without notifying the changes to the WTO, nor soliciting comments from stakeholders. In the U.S.-China Phase One trade agreement, China agreed to establish a predictable and risk-based regulatory regime with respect to its safety evaluation of agricultural biotechnology.[185] With respect to GE products for animal feed or further processing, China also agreed to reduce the time between submission of applications for authorization and a final decision to approve or disapprove.

For the first time in an FTA, the USMCA specifically includes provisions to improve transparency and coordination in approving and bringing to market products of agricultural biotechnology. USMCA provisions will cover crops produced with all biotechnology methods, including recombinant DNA and gene editing.[186]

Trade negotiations concerning agricultural biotechnology also involve labeling issues and other provisions that address the unintended presence of unapproved GE products in food and commodity imports. In 2016, Congress enacted P.L. 114-216, comprehensive legislation to govern the mandatory labeling of *bioengineered* foods, a term defined in the act and similar to the terms *GE foods* and *GMOs*. USDA's Agricultural Marketing Service established the National Bioengineered Food Disclosure Standard to regulate the mandatory disclosure of bioengineered foods and food ingredients to consumers. Food manufacturers, retailers, and importers are responsible for making disclosures. Importers are responsible for ensuring that all imported bioengineered foods comply with the new regulation.[187]

Implementation of the labeling standard began on January 1, 2020, and compliance is voluntary until January 1, 2022, when it becomes mandatory. The labeling standard does not require refined

[184] USDA Press Release No. 0070.18. March 28, 2018.

[185] Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China, Chapter 3. https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/text.

[186] USMCA, Chapter 3, Section B. https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between.

[187] For more information, see CRS Report R46183, *The National Bioengineered Food Disclosure Standard: Overview and Select Considerations*.

products derived from bioengineered crops (e.g., refined soy oil, high-fructose corn syrup) to be labeled if the modified genetic material is not detectable in the food product. The Agricultural Marketing Service stated that it does not expect the new regulation to disrupt foreign trade.[188]

Status: A key objective of U.S. trade negotiations has been to establish a common framework for GE approvals and adoption. 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. This general policy was reiterated through publication of the June 2019 *Executive Order on Modernizing the Regulatory Framework for Agricultural Products*.[189] For the first time in an FTA, the USMCA specifically includes provisions to improve transparency in approving and bringing to market products of agricultural biotechnology. The Phase One trade agreement with China has resulted in China's agreement to establish a predictable and risk-based regulatory regime regarding its safety evaluation of agricultural biotechnology.

Geographical Indications (GIs)[190]

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 because their products gain 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, 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.[191]

GIs are protected by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which obligates WTO members to recognize and protect GIs as intellectual property. The United States is a signatory of TRIPS and is subject to its rights and obligations. Accordingly, under TRIPS, the United States and EU have committed to providing a minimum standard of protection for GIs (i.e., protecting GI products to avoid misleading the public and prevent unfair competition) and an "enhanced level of protection" to wines and spirits that carry a GI, subject to certain exceptions. However, the United States considers some EU GIs 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, cheese produced in

[188] AMS, "BE Frequently Asked Questions—General," at https://www.ams.usda.gov/rules-regulations/be/faq/general. See also 7 U.S.C. §1639c(a), a provision in the act that states, "This subchapter shall be applied in a manner consistent with United States obligations under international agreements."

[189] E.O. 13874. June 2019. See https://www.whitehouse.gov/presidential-actions/executive-order-modernizing-regulatory-framework-agricultural-biotechnology-products/.

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

[191] For more information, 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*.

the United States may not be exported for sale as feta cheese in the EU, since only feta produced in countries or regions currently holding GI registrations may be sold there commercially.

Laws and regulations governing GIs differ markedly between the United States and EU, which further complicates this issue. More than 3,300 product names registered and protected in the EU for foods, wine, and spirits originating in both EU member states and other countries. 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 pursuant to those countries' trade agreements with the EU.[192] For example, Canada has agreed to recognize a list of 143 EU GIs in Canada,[193] and Japan has agreed to recognize more than 200 EU GIs in Japan.[194] These GI protections could limit U.S. sales of certain products to these countries.

The EU is in the process of negotiating trade agreements with several other U.S. trading partners, including Mexico, Australia, New Zealand, and the Mercosur states (Argentina, Brazil, Paraguay, and Uruguay). Each of these efforts include a selected list of GIs that would become protected under the proposed trade agreement.[195] In December 2019, the EU also entered into an agreement with China regarding GIs that would protect a reported 100 EU GIs in China.[196]

Some Members of Congress, particularly those with dairy constituencies, have claimed that EU protections for GIs are being misused to create market and trade barriers.[197] Much of this debate is focused on expanding restrictions on the use of certain terms used by cheesemakers, such as "parmesan," "asiago," and "feta," which are generally regarded as generic names in the United States.[198] Some U.S. industry groups, however, are trying to institute GI protections to promote distinctive American agricultural products. For example, the American Origin Products Association, which represents certain U.S. potato, maple syrup, ginseng, coffee, and chili pepper producers and certain U.S. winemakers, seeks to work with federal authorities to "create of a list of qualified U.S. distinctive product names, which correspond to the GI definition."[199]

Status: Statements by USDA officials in early 2020 have signaled that concerns about GIs could resurface as part of the U.S.-EU trade talks.[200] In addition, both USMCA and the U.S.-China Phase One trade agreement address GIs in ways that could further complicate future U.S.-EU discussions. Specifically, USMCA includes language regarding the transparency of GI applications, approvals, and cancellations, along with guidelines for determining whether a term is customary in common use.[201] USMCA also includes a side letter between the United States and

[192] A listing of EU FTAs is at https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/.

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

[194] EU Business in Japan, "EPA & Geographical Indications," EU-Japan Center for Industrial Cooperation, accessed September 2019, https://www.eubusinessinjapan.eu/issues/economic-partnership-agreement/epa-geographical-indications. See also EU-Japan Economic Partnership Agreement, Annex 14-B, List of Geographical Indications.

[195] Based on agreement text for Mexico, Singapore, and Vietnam, and also other released FTA language for Australia.

[196] European Commission, "EU-China Geographical Indications Agreement—Factsheet," December 13, 2019.

[197] See, for example, comments during a House Committee on Ways and Means trade policy hearing, January 27, 2015, and testimony during a Senate Finance Committee trade policy hearing, January 27, 2015.

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

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

[200] S. Chase, "Perdue Eyes SPS, GI Barriers as Key Issues in Potential US-EU Deal," *Agri-Pulse*, January 29, 2020.

[201] USITC, "U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors," Publication# 4889, Investigation Number: TPA 105-003, April 2019, pp. 118.

Mexico regarding more than 30 cheese terms.[202] These provisions may prove to be incompatible with GI provisions that are likely to be part of a trade agreement between the EU and Mexico, as well as existing provisions in the EU-Canada Comprehensive Economic and Trade Agreement. The U.S.-China Phase One trade agreement requires China to "not undermine market access for U.S. exports to China of goods," and provides the United States with "necessary opportunities to raise disagreement" regarding GIs, among other provisions.[203] These provisions may also prove to be incompatible with provisions agreed to in the 2019 EU-China agreement which protect certain EU GIs in China.[204]

U.S.-EU Beef Hormone Dispute[205]

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, which maintains that beef produced using hormones is safe for consumers, suspended trade concessions with the EU in 1999 by imposing retaliatory tariffs of 100% *ad valorem*[206] on selected EU food products. 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.[207]

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 implementing an agreement specifying actions intended to resolve this dispute 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 agreed to expand market access to U.S. exports of beef raised without hormones as part of its High-Quality Beef (HQB) TRQ. The EU's HQB quota is set at 45,000 MT annually and assessed a tariff of 20%.[208] However, as the HQB quota is open to other beef-exporting nations, this has effectively limited the ability for U.S. beef producers to fully benefit under the quota. According to USTR and the U.S. beef industry, most of the HQB quota was being filled by countries other than the United States, and the EU has been unwilling to

[202] USMCA side letter from U.S. Trade Representative Robert E. Lighthizer to Mexico's Secretary of the Economy, Ildefonso Guajardo Villarreal, November 30, 2018. Another side letter is an agreement to protect certain distilled spirits.

[203] Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China, Chapter 1 (Intellectual Property), Section F (Geographical indications), pp. 1-9, 1-10..

[204] European Commission, "EU-China Geographical Indications Agreement—Factsheet," December 13, 2019.

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

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

[207] 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.

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

consider an allocation that would reserve a significant part of the HQB quota for the United States.[209]

In December 2016, USTR proposed reinstating retaliatory tariffs on EU products under the U.S.-EU beef hormone dispute, given the U.S. contention that the U.S.-specific allocation of the EU's HQB import quota for hormone-free beef had not expanded pursuant to the 2009 memorandum. In February 2017, USTR convened a hearing to review this possible retaliatory action.[210] 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.[211] The United States ultimately did impose retaliatory tariffs in connection with the dispute.

Status: The U.S. and the EU reached an agreement in principle regarding U.S.-specific allocation of the EU's HQB import quota for hormone-free beef in June 2019. The agreement provides that the United States would be allocated 35,000 MT of the 45,000 HQB quota (about 78%), phased-in over a seven year period.[212] Starting January 1, 2020, the phased-in quota allocations are as follows: 18,500 MT (2020), 23,000 MT (2021), 25,400 MT (2022), 27,800 (2023), 30,200 MT (2024), 32,600 MT (2025), 35,000 (2026 and subsequent years).[213] During this time, the remaining amount of the quota each year would be available to other exporting countries. Current substantial users of EU's HQB quota—Australia, Argentina, and Uruguay—all had to agree to the reallocation in order for the agreement to be compliant with WTO rules.[214]

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 EU's restrictions involving meat production continues to be actively debated as part of the official U.S. trade agenda, as these types of practices are common in U.S. meat production.[215] Statements by USDA officials in early 2020 have signaled that this issue could resurface as part of the U.S.-EU trade agreement negotiations.[216]

U.S.-EU Dispute Over Pathogen Reduction Treatments (PRTs)[217]

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

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

[210] 81 *Federal Register* 95724, December 28, 2016 (Docket# USTR-2016-0025-0001).

[211] 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.

[212] EC, "The European Union and the United States Reach an Agreement on Imports of Hormone-Free Beef," press release, June 14, 2019.

[213] USDA, "New High Quality Beef TRQ Allocation Starting January 1 of 2020," GAIN Report E42019-0049, December 23, 2019.

[214] H. von der Burchard, "Australia, Argentina, and Uruguay Accept EU-U.S. Beef Deal," *Politico*, June 14, 2019.

[215] USTR, "2019 Trade Policy Agenda," March 2019, pp. 48 and 87. USTR's *2019 National Trade Estimate Report on Foreign Trade Barriers*, pp. 184-185.

[216] *World Trade Online*, "Perdue: EU Should Accept U.S. Chicken, Beef as Part of U.S.-EU Reset," January 28, 2020.

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

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.[218] The United States requested WTO consultations with the EU on the matter, a prerequisite first step toward the establishment of a formal WTO dispute settlement panel. A WTO panel was subsequently established in November 2009, but this case has not moved forward.[219]

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, it 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.[220]

EFSA cleared lactic acid for reducing pathogens on beef carcasses, cuts, and trimmings in 2011.[221] 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.[222] 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 does not pose a safety concern provided that the substances comply with EU specifications for food additives and that their use is efficacious compared to untreated meat.[223] 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 EU approval of certain PRTs for beef, pork, and poultry.[224] To date, 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. Statements by USDA officials in early 2020 have signaled that this issue could resurface as part of the U.S.-EU trade agreement negotiations.[225]

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[218] 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.

[219] 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.

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

[221] 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.

[222] 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.

[223] 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.

[224] USTR, *2019 National Trade Estimate Report*, p. 188. 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.

[225] *World Trade Online*, "Perdue: EU Should Accept U.S. Chicken, Beef as Part of U.S.-EU Reset," January 28, 2020.

Trade Restrictions on Ractopamine Use[226]

Ractopamine, an animal drug that increases animal weight gain and meat yield, is approved by the U.S. Food and Drug Administration (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.

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.[227] According to USDA's Food Safety and Inspection Service, 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.[228] 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 USTR continue to encourage trading partners to accept international standards on the use of ractopamine. Under the U.S.-China Phase One trade agreement, China agreed to consult with U.S. experts and conduct a risk assessment of ractopamine that is consistent with Codex standards. The assessment is to be based on conditions and use in the United States. The countries are to set up a working group to discuss steps to follow based on a risk assessment of ractopamine.[229] The United States exported 250% more pork to China in 2019 than 2018 largely because of China's African Swine Fever outbreak. An agreement on a ractopamine maximum residue limit (MRL) should facilitate more U.S. pork shipments to China going forward.

Selected Trade Issues Involving Specialty Crops

The United States has gone from being a net exporter of fresh and processed fruits and vegetables in the early 1970s to being a net importer of fruits and vegetables today. Although U.S. fruit and vegetable exports totaled $9.2 billion in 2018, U.S. imports of fruits and vegetables were $24.8 billion, resulting in a gap between imports and exports of $15.6 billion (excludes nuts). Several factors have contributed to this trade imbalance including a relatively open import regime and lower average tariffs in the United States, increased competition from low-cost or government-subsidized producing countries, and non-tariff trade barriers to U.S. exports in some countries. Additionally, other market factors, such as exchange rate fluctuations and structural changes in the U.S. food industry, as well as increased U.S. overseas investment and diversification in market sourcing by U.S. companies, have contributed to the trade imbalance. Increased domestic and year-round demand for fruits and vegetables as well as opportunities for counter-seasonal supplies through imports have also contributed to this trade situation.[230] Despite U.S. efforts to

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

[227] 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.

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

[229] U.S.-China trade agreement, Chapter 3, Annex 7.5, January 15, 2020.

[230] For more information, see CRS Report RL34468, *The U.S. Trade Situation for Fruit and Vegetable Products*.

address some of these issues as part of recent FTA discussion, a number of these issues are unresolved. Other U.S. concerns include import competition regarding seasonal produce from Mexico, long-standing suspensions agreements between the U.S. and Mexico involving fresh tomatoes, and regulatory requirements regarding retail wine sales in Canada.

Import Competition of Seasonal Produce from Mexico[231]

Mexico remains the largest foreign supplier of U.S. imports of vegetables and fruits (excluding bananas). Production of some Mexican 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. Reportedly, protected (greenhouse/shade) production in Mexico has risen to nearly 101,000 acres in 2016, up from about 19,500 acres in 2000.[232] According to researchers, Mexican growers benefit from a combination of relatively lower labor costs and subsidies invested in the specialty crop sector under various government programs, including Mexico's Agriculture Promotion Program and its AgriFood Productivity and Competiveness Program.[233] These programs are generally focused on increasing the infrastructure capacity of Mexico's agricultural sector. The Florida Fruit and Vegetable Association (FFVA) claims that Mexico's produce industry benefits from subsidies paid by the Mexican government and that it prices its products below fair market value, and therefore should be subject to both AD duties and CVD on U.S. imports of some fruits and vegetables.[234] Trade concerns by U.S. growers have primarily centered on imported 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.[235] 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 resulting in CVD or AD duties on the imported products responsible for the injury. This could protect certain U.S. seasonal produce growers in some regions by making it easier to initiate trade remedy cases.[236] The U.S. International Trade Commission (USITC) has previously reviewed trade remedy cases involving perishable agricultural products—namely, Fall-harvested Round White Potatoes from Canada and Spring Table Grapes from Chile—that proved difficult to settle. As noted by USTR, current trade laws "are really not set up for seasonal product," making it difficult to prove injury over a period of time.[237]

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

[232] F. Wu et al., "Government Support in Mexican Agriculture," *CHOICES* magazine, 3rd Quarter (2018).

[233] E. Canales et al., "Mexico's Agricultural Sector: Production Potential and Implications for Trade," *CHOICES* magazine, 3rd Quarter 2019.

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

[235] USTR, "Summary of Objectives for the NAFTA Renegotiation," November 2017.

[236] 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*.

[237] Comments by U.S. Trade Representative Robert E. Lighthizer to the House Ways and Means Committee trade hearing, June 19, 2019.

Support for seasonal produce protections through changes to U.S. trade laws is mixed. Some Members of Congress supported including seasonal protections as part of NAFTA's renegotiation.[238] Others opposed including such protections, contending that seasonal production complements rather than competes with U.S. growing seasons.[239] Others worried it could open the door to an "uncontrolled proliferation of regional, seasonal, perishable remedies against U.S. exports."[240] Most U.S. food and agricultural sectors, including some fruit and vegetable producer groups, opposed including seasonal protections as part of the renegotiation.[241] 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[242] and at the expense of both consumers and growers in other fruit and vegetable producing states, such as California.[243] The Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables (F&V ATAC) supported not including seasonal provisions in the NAFTA renegotiation.[244] 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.[245]

Changes to USMCA released in October 2018 did not alter U.S. trade remedy laws to address seasonal produce trade. USTR claimed it tried to include such provisions but was unable to do so.[246] In response, the Agricultural Trade Improvement Act of 2018 (S. 3510; H.R. 7015) was introduced in the House and the Senate. These bills were reintroduced in the 116th Congress but renamed as Defending Domestic Produce Production Act of 2019 (S. 16; H.R. 101).

Status: USMCA does not include changes to U.S. trade remedy laws to address seasonal produce trade. Although lawmakers from Florida and Georgia continued to push USTR for seasonal produce provisions in USMCA, others in Congress continued to oppose such changes.[247] In January 2020, USTR announced that it planned to investigate trade practices by Mexico's produce industry, hold field hearings in Florida and Georgia, and engage the help of U.S. International Trade Commission (USITC) and DOC to monitor imports, among other actions.[248]

[238] Letters from the Florida and Georgia congressional delegations to USTR, dated April 4, 2019, August 31, 2017, and September 1, 2017. See also press release from Senator Marco Rubio, "Rubio, Colleagues Raise Concerns to Lighthizer Regarding Lack of Effective Trade Enforcement for Seasonal Produce in USMCA," April 4, 2019.

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

[240] Letter from several Members of Congress to U.S. Trade Representative Robert E. Lighthizer, August 17, 2017.

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

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

[243] G. C. Hufbauer and E. Jung, "NAFTA Mischief in Fruits and Vegetables," Peterson Institute for International Economics, July 26, 2017.

[244] F&V ATAC, letter to U.S. Trade Representative Robert E. Lighthizer reflecting consensus advisory opinion, September 27, 2018.

[245] See, for example, letter from Senators to U.S. Trade Representative Robert E. Lighthizer April 6, 2018, and letter from some Members of the U.S. Senate to U.S. Trade Representative Robert E. Lighthizer, August 27, 2018.

[246] Comments by U.S. Trade Representative Robert E. Lighthizer to the House Ways and Means Committee trade hearing, June 19, 2019.

[247] See, for example, a bipartisan letter to U.S. Trade Representative Robert E. Lighthizer from several House and Senate members representing Arizona, Texas, and California, June 14, 2019.

[248] See letters from U.S. Trade Representative Robert E. Lighthizer to Members of Congress from Florida and Georgia, January 9, 2020.

One Member of Congress claimed USTR's plan would "sidestep the issue and install policies" that could result in future trade conflicts;[249] another encouraged USTR to "consider data from a variety of sources" when examining the issue.[250] Some in Congress have raised concerns about the possible negative impacts of imported fruits and vegetables on U.S. growers more broadly.[251] Legislation introduced in the 116th Congress (S. 564) would establish a task force to identify countervailable subsidies and dumping practices to counter perceived unfair trade practices involving imports within the U.S. produce market.[252]

U.S.-Mexico Tomato Suspension Agreements[253]

The U.S.-Mexico Tomato Suspension Agreement is an agreement between DOC and signatory producers/exporters[254] 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.[255] Fresh tomatoes imported from Mexico have been governed by suspension agreements since 1996.[256] The first suspension agreement became effective in November 1996. The Mexican signatory growers and the United States entered into new agreements in 2002, 2008, and 2013. Under the 2013 agreement, the signatories agreed 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. The agreement set 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 covered all types of fresh or chilled tomatoes from Mexico. The agreement did 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. DOC also 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/recur and calculated weighted-average dumping margins of up to 188%.[257] In November 2018, the

[249] Letter to U.S. Trade Representative Robert E. Lighthizer from Senator Martha McSally, January 17, 2020.

[250] Letter to U.S. Trade Representative Robert E. Lighthizer from Senator Kyrsten Sinema, January 16, 2020.

[251] See, for example, letter to U.S. Trade Representative Robert E. Lighthizer from Representative Bill Huizenga, January 17, 2020.

[252] See also Representative Gary Peters, "Peters Testifies Before International Trade Commission in Support of Michigan Cherry Growers, Tariffs Against Turkish Cherry Exporters," press release, December 3, 2019.

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

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

[255] 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.

[256] 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.

[257] 83 *Federal Register* 43642, August 27, 2018 (preliminary); 83 *Federal Register* 66680, December 27, 2018 (final). 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)).

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.[258] They claim the pricing agreements failed to ensure that Mexico did not undercut U.S. growers, costing the Florida tomato industry $3.4 billion to $6.8 billion per year in lost sales.[259] Several Members of Congress expressed support for withdrawing from the agreement.[260] Among the groups that opposed withdrawal were the Fresh Produce Association of the Americas and other groups representing Mexican growers and exporters as well as businesses, various associations, and local and county governments.[261] These groups claim the U.S. lost sales because Mexico offers more variety of tomatoes that appeal to consumers and commercial users.

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.[262] In May 2019, the United States terminated the 2013 agreement and announced it would resume collecting tariffs on chilled and fresh tomatoes from Mexico, and later set a preliminary dumping margin of 25.28%.[263] Mexican tomato grower filed a suit at the Court of international Trade requesting an injunction against the reimposed tariffs.[264] The Mexican government claimed that the new duties would cost its tomato industry more than $350 million annually.[265] USITC resumed its AD investigation of Mexican tomatoes, and concluded that U.S. growers are "threatened with material injury" from imports.[266]

Status: Between May and September 2019, the United States and Mexican tomato growers considered various proposals regarding a possible revised agreement. On September 19, 2019, DOC signed a new suspension agreement with Mexico's growers and exporters of fresh tomatoes. DOC and USITC suspended their respective AD investigations.[267] The new suspension agreement sets increased minimum prices for specialty and organic tomatoes at certain times of the year, and establishes new inspections requirements of tomato shipments crossing the border to prevent low-quality tomatoes from entering the United States where they might undercut domestic prices.[268]

More recently, there have been growing concerns that a virus (brown rugose) found in tomatoes imported from Mexico could be harmful to U.S.-grown tomatoes and peppers. Increased inspections have reportedly caused border delays of product shipments, and have led to

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

[259] E. Ferguson, "A Mexican Tomato Beef Could Lead to a Bigger Trade Battle," *Roll Call*, May 7, 2019.

[260] 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.

[261] 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.

[262] 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.

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

[264] Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C. v. United States, 2019 CIT 69, June 6, 2019.

[265] Mexico's Secretary of the Economy, "Comunicado de Prensa Sobre el Acuerdo de Suspensión del Tomate Mexicano en Estados Unidos," press release, Comicado No. 045, May 7, 2109.

[266] 84 *Federal Register* 67958, December 12, 2019.

[267] 84 *Federal Register* 49987, September 24, 2019, and 84 *Federal Register* 54639, September 24, 2019, respectively.

[268] DOC, "U.S. Department of Commerce Finalizes Suspension Agreement on Fresh Tomatoes from Mexico," September 19, 2019; and *Produce Blue Book*, "Importers Prepare for Mandatory Tomato Inspections," January 17, 2020.

complaints from Mexican officials that such detentions are "unjustified."[269] During the last two months of 2019, the United States reportedly returned 43 tomato shipments inspected at the U.S.-Mexico border.

Regulatory Requirements Regarding Retail Wine Sales in Canada[270]

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 may be sold in grocery stores only through a "store within a store"[271]—that is, a space that is physically separated from the main retail outlet with separate cash registers. In 2016, Quebec—the largest wine-importing province in Canada—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.[272] The rules allow Quebec small wine producers to bypass the provincial liquor board. Regulations are also in place in Ontario requiring that 50% of the wine on display at a grocery store meet certain requirements that some claim make it difficult for imported products to compete with like domestic products.[273] According to the U.S.-based Wine Institute, Canada is the leading export market for California wine—the leading wine producing state in the United States—accounting for $448 million in sales in 2018.[274]

In January 2017, the Obama Administration initiated trade enforcement action against Canada at the WTO regarding Canada's BC wine measures.[275] Subsequent actions by the Trump Administration, in September 2017, led to the United States requesting formal consultations with Canada regarding BC wine measures.[276] 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.[277] The United States reiterated its concerns as part of a second complaint issued in this case in July 2018. Argentina, Australia, New Zealand, and the EU joined the consultation. The WTO case remains active.

[269] N. Mahoney, "Mexican Tomato Exporters say Their Produce Is Virus Free," *FreightWaves*, January 2, 2020.

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

[271] 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. Regulations are available at http://www.bcvqa.ca/regulations/. See also M. LaCombe, "More Problems with Wine Regulation in Canada," *MJIL Online*, vol. 41 (2019).

[272] Quebec's regulations are at http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/S-13,%20r.%206. See also USDA, "Canada: The Wine Market in the Province of Quebec," *GAIN* Report CA17013, April 12, 2017.

[273] These include conditions related to the size of the winery producing the wine, where the grapes were grown, and whether the wine meets the definition of a *quality assurance wine*. Ontario's regulations are at https://www.ontario.ca/laws/regulation/160232.

[274] Wine Institute, "US Wine Exports Total $1.46 Billion in 2018," April 8, 2019.

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

[276] WTO, "Canada—Measures Governing the Sale of Wine in Grocery Stores (Second Complaint)," WT/DS531/7, May 29, 2018. For more information on Canada's wine regulations in selected provinces, see USTR, *2019 National Trade Estimate Report on Foreign Trade Barriers*, pp. 84-85.

[277] 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.

Status: The USMCA includes a side letter addressing U.S. concerns about Canada's BC wine measures. 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."[278] At this time, it is unclear whether Canada has taken additional action to address U.S. concerns about the status of BC's regulations. The USMCA side letter does not address potential market barriers to U.S. wine in Quebec and Ontario. Canada's wine regulations in certain provinces continues to be a concern to some in Congress.[279]

Issues Related to Livestock and Meat Trade[280]

In 2019, exports of U.S. livestock and poultry products totaled $24.1 billion, and imports totaled $14.2 billion. Foreign demand for U.S. animals and products supports prices of domestic livestock and poultry producers, while imports supplement U.S. consumer demand for a variety of livestock and poultry products. Recent trade agreements with Canada and Mexico, China, and Japan will facilitate increased livestock and poultry product exports to these four markets, which accounted for 65% of the value of total U.S. exports of these products in 2019. The U.S.-Japan agreement lowers tariffs for U.S. beef and pork products, and adjusts beef and pork safeguards. These measures offer U.S. livestock producers benefits that competing exporters have enjoyed under the TPP-11, the successor to Trans-Pacific Partnership agreement—from which the Trump Administration withdrew the United States before its ratification. Under U.S.-China Phase One trade agreement, China agreed to abide by international standards and guidelines for trade, while expanding market access for more meat products that the USDA Food Safety and Inspection Service regulates should ease the process for U.S. meat and poultry exporters.

Export Bans on U.S. Meat and Poultry

USDA forecasts that exports of meat and poultry products will represent about 17% of U.S. domestic production in 2020.[281] 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 scope and duration. 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 were imposed on all U.S. products even though the HPAI outbreaks were not in areas in close proximity to commercial broiler production.[282]

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.[283] According to OIE,

[278] USMCA side letter from USTR Robert E. Lighthizer to Canada's Minister of Foreign Affairs, Chrystia Freeland, November 30, 2018.

[279] See, for example, Senator Schumer, "Schumer To USTR: Level the Playing Field and Uncork Potential for the Thousand Islands Seaway & St. Lawrence Wine Trails," press release, March 21, 2019.

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

[281] USDA, "World Agricultural Supply and Demand Estimates," January 10, 2020, p. 32.

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

[283] 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-

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"[284] for BSE, meaning that U.S. surveillance and safeguard systems are adequate. For HPAI, USDA, in collaboration with states, has implemented increased flock biosecurity and has placed a system 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 major importers of U.S. beef—required 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 under 30-month age restriction. 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 regionalization protocol that allows for trade from regions that are disease free.[285] As the United States demonstrated that the outbreak was contained and then eliminated, most of these bans were lifted.

Status: China lifted the ban on U.S. beef in 2017 but continued to restrict imports of U.S. beef to cattle under 30 months of age, similar to other countries maintaining age restrictions.[286] However, under the U.S.-China Phase One trade agreement, China agreed to amend import protocols that align with international standards. China agreed to (1) eliminate the cattle age restriction; [287] (2) recognize that the U.S. traceability system meets or exceeds OIE guidelines for maintaining "negligible risk" for bovine disease, and if the U.S. status should change, China would set import regulations that follow OIE guidelines; and (3) adopt MRLs for certain hormones used in U.S. beef production, and follow Codex MRL guidelines.[288] China continues to require that U.S. beef exporters participate in the USDA Agricultural Marketing Service export verification program,[289] which verifies that U.S. suppliers are meeting importing country requirements. In 2019, the U.S. shipped about 10,507 MT of beef to China, representing about 1% of total U.S. beef exports. U.S. beef exports to China were valued at $85.3 million.

China lifted its ban on the import of U.S. poultry meat in November 2019, allowing U.S. poultry exports from approved FSIS poultry plants.[290] Under the U.S.-China Phase One trade agreement, the United States and China agreed to finalize a protocol accepting regionalization when there are

code/access-online/.

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

[285] For example, 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. USDA, "USDA Announces Regionalization Agreement with South Korea to Help Protect U.S. Trade During HPAI Detections," press release, March 15, 2018.

[286] USDA, Food Safety and Inspection Service, "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.

[287] USTR, *Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China* (hereafter the U.S.-China trade agreement), Chapter 3, Annex 4.2, January 15, 2020.

[288] U.S.-China Phase One trade agreement, Chapter 3, Annex 4.2, 4.3, and 4.5, January 15, 2020.

[289] 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.

[290] FAS, *U.S. Poultry and Poultry Products Return to China*, GAIN Report, CH2019-0153, November 25, 2019. Includes an unofficial translation of China's November 14, 2019, General Administration of Customs and Ministry of Agriculture and Rural Affairs Announcement No. 177 that lifted five separate bans on U.S. poultry.

outbreaks of poultry diseases, and China agreed to follow OIE guidelines on international trade.[291] Poultry industry analysts believe U.S. poultry exports to China could reach $1 billion in a short time, which would exceed record exports of $750 million in 2008.[292]

China's hog industry was hit hard with African Swine Fever in 2019, leaving a large gap in China's pork supplies and increasing demand for pork imports. In 2019, the value of U.S. pork and pork product exports (includes pork offal) to China more than doubled to $1.3 billion. Under the U.S.-China Phase One trade agreement, China is to increase the number of U.S. pork products inspected by FSIS that are eligible for import.[293]

U.S. Meat and Poultry Imports

Currently, 33 countries are eligible to export meat and poultry to the United States.[294] 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. APHIS maintains a list of countries and their animal health status for critical diseases.[295] Also, FSIS must determine if foreign meat or poultry inspection systems provide an "equivalent" level of sanitation and protection of public health as the U.S. system.[296] Foreign governments provide documentation on how their 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. inspection system. This 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 forward.[297] In August 2017, FSIS released an audit report confirming that China's poultry processing system remained equivalent.[298]

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[291] U.S.-China trade agreement, Chapter 3, Annex 3.1 and 3.3.

[292] Austin Alonzo, "U.S. Could Find $1 Billion Poultry Market in China," *Watt Poultry USA*, January 2020, pp. 13-14.

[293] U.S.-China Phase One trade agreement, Chapter 3, Annex 6.2.

[294] 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.

[295] APHIS, *Animal Health Status of Regions*, updated September 30, 2019, https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.

[296] 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.

[297] 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.

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

In November 2019, FSIS issued a final rule that determined that China's poultry slaughter system is equivalent and that China could export domestically slaughtered poultry meat to the United States.[299] China may only export fully cooked—not shelf stable-products.[300] China is not permitted to export raw poultry products due to animal disease risks. The United States did not import poultry meat from China in 2018 and 2019.

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.[301]

Status: In response to concern about China's record on food safety, Section 738 of Division B of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) 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 741 of Division B of the FY2020 appropriations act prohibits USDA from finalizing the proposed rule to allow the importation of slaughtered Chinese poultry unless certain conditions are met to ensure the food safety of poultry meat imports from China.[302]

Under the U.S.-China Phase One trade agreement, China may submit a formal request to the United States to evaluate regional avian influenza (AI) status.[303] Within 30 days of receipt of the request, APHIS would initiate an evaluation of conditions in the regions in order to determine if a region or regions could be recognized as AI-free.[304] Such a determination would allow China to export raw poultry meat if FSIS determines that poultry plants in the region(s) met equivalency standards.

Fresh Beef Imports from Brazil and Argentina

The United States restricts or prohibits imports 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

[299] 84 *Federal Register* 60318, November 8, 2019.

[300] Products that undergo a full lethality heat process (cooking) and require freezing or refrigeration for food safety.

[301] 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.

[302] FSIS issued the final rule in November 2019 before the FY2020 appropriations act was enacted. The final rule addresses the conditions included in Sec. 741 to ensure that imports from China are safe. The final rule requires China to comply with any APHIS animal health requirements and all imports from China will be subject to re-inspection.

[303] U.S.-China Phase One trade agreement; USTR, *Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China*, Chapter 3, Annex 3.4, January 15, 2020.

[304] APHIS, "Regionalization," updated November 9, 2017, https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request.

beef to the United States from 1997-2001, 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.[305] In August 2014, APHIS proposed a separate rule to allow fresh beef imports from Patagonia and northern Argentina.[306] In July 2015, APHIS released final rules to allow the import of fresh beef from these regions of Brazil and Argentina.[307] 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.[308] 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.[309]

In May 2015, FSIS found that Brazil's beef inspection system would provide an equivalent level of food safety as the U.S. system.[310] 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.[311] 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.[312] 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. The United States imported about 1,623 MT of fresh beef from Argentina in 2019. Argentina holds a 20,000 MT ton duty-free TRQ allotment for beef shipments to the United States.

Status: On February 21, 2020, the United States lifted the suspension on imports of raw, intact beef from Brazil.[313] FSIS released a targeted on-site audit report on February 20, 2020 that

[305] 78 *Federal Register* 77370, December 23, 2013.

[306] 79 *Federal Register* 51508, August 29, 2014; and 79 *Federal Register* 51528, August 29, 2014.

[307] 80 *Federal Register* 37923, July 2, 2015; and 80 *Federal Register* 37935, July 2, 2015.

[308] 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.

[309] 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.

[310] 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.

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

[312] 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.

[313] FSIS, *Constituent Update*, February 21, 2019, https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2020/ConstUpdate022120.

addressed corrective actions taken by Brazil.[314] Raw beef imports from Brazil will be subject to re-inspection at U.S. points of entry by FSIS.

FSIS released an on-site audit report on Argentina's meat inspection system in September 2019 and noted that further on-site audits would be conducted to ensure that corrective actions undertaken as a result of the audit were implemented.[315]

Meat Exports Under U.S.-Japan Trade Agreement (USJTA)

Japan is a leading export market for U.S. beef and pork products. In 2019, U.S. beef and beef product exports to Japan totaled about $2 billion, and pork and pork products amounted to $1.5 billion. Exports of both products were lower than the value of shipments in 2018, partly due to the preferential tariff treatment that competing exporters, such as Australia, New Zealand, Canada, and Mexico, have with Japan through the TPP-11 agreement.

For example, Japan's beef imports from TPP-11 member nations entered at a 26.6% tariff rate in 2019 (year 2 of the TPP-11 agreement), but U.S. beef entered with a tariff rate of 38.5%. Under USJTA, the tariff on U.S. beef is now aligned with the TPP-11 tariff rates.[316] Under these agreements, Japan's tariff on beef from the TPP-11 countries and the United States is scheduled to decline until it reaches 9% in year 15 of the USJTA (year 16 of TPP-11).

Similarly, Japan's tariffs on imports of U.S. pork are reduced under the agreement, matching the TPP-11 tariff rates. Instead of an ad valorem rate of 4.3% on U.S. pork, the rate is 1.9% in the first year of the agreement, and is phased out in year 9. Japan maintains a variable duty mechanism (gate price),[317] which is set to a fixed value and will gradually decline until year 9.[318]

U.S. beef and pork exports are not subject to Japan's WTO safeguards,[319] but to U.S.-specific safeguards for beef and pork. The U.S. beef safeguard threshold is set at 242,000 MT and increases annually after year 2 of the agreement. Japan will terminate the beef safeguard measure if it does not trigger for four consecutive years after year 14 of the agreement. The U.S. pork safeguard will trigger if imports of U.S. pork exceed 112% of the largest import volume in the previous three years. The pork safeguard will terminate after year 10 of the agreement.[320]

Status: USJTA has been in effect since January 1, 2020, and U.S. meat exports to Japan are expected to increase as a result.

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[314] FSIS, *Evaluating the Food Safety Systems Governing Raw and Processed Meat Products Exported to the United States of America*, Final Followup Report of an Audit Conducted in Brazil, January 13-24, 2020, February 20, 2020, https://www.fsis.usda.gov/wps/wcm/connect/8f9c5e4c-2564-47f8-81af-22bac0cc0b4d/brazil-far-2020.pdf?MOD=AJPERES.

[315] FSIS, *Evaluating the Food Safety Inspection Systems Governing Meat Products Exported to the United States of America*, Final Report of an Audit Conducted in Argentina, February 25-March 15, September 25, 2019, https://www.fsis.usda.gov/wps/wcm/connect/1afd4cf5-b578-4d41-854b-fe6d78d974d4/Argentina-2019-FAR.pdf?MOD=AJPERES.

[316] USTR, USJTA, Annex 1, Subsection 2, Tariff Elimination or Reduction, 2(bb), October 7, 2019.

[317] Japan sets a minimum price for pork import values (393 yen per kilogram for pork cuts and 524 yen for processed pork). If the customs value of imported pork is below the gate price, the difference between the two values is paid as a variable duty in addition to the ad valorem tariff.

[318] USTR, USJTA, Annex 1, Subsection 2, Tariff Elimination or Reduction, 2(dd) and (ee).

[319] Safeguard measures allow for the imposition of temporary higher tariff rates if import volumes exceed an established threshold.

[320] USTR, USJTA, Annex 1, Subsection 4, Agricultural Safeguard Measures, Part 9 and 10.

Issues in Dairy Product Trade[321]

The United States exported $6.0 billion in dairy products in 2019, and imported $3.1 billion worth of products. Reform of dairy pricing and establishing specific dairy product TRQs in Canada is expected to expand access in that market for U.S. dairy producers. The USJTA lowers tariffs for U.S. dairy products and expands some dairy product TRQs. Like U.S. livestock producers, dairy producers gain benefits that competing exporters have enjoyed under the TPP-11. Under the U.S.-China Phase One trade agreement, China is to streamline the regulatory process to facilitate trade in U.S. dairy and infant formula.

U.S. Dairy Exports to Canada

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 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 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.[322] 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.[323] 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

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

[322] 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.

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

of milk protein concentrates, 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. milk, cheese, cream, skim milk powder, condensed milk, yogurt, and several other dairy products. U.S. dairy products within the USMCA TRQs would enter Canada duty free, while U.S. exports above the TRQ quantities would be subject to the existing over-quota tariffs. In return, the United States agreed to 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 MT of dairy products in 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 open to U.S. dairy products as well as to those from other WTO member countries as was the case under NAFTA.[324]

Dairy Exports under U.S.-Japan Trade Agreement (USJTA)

U.S. exports of dairy products to Japan totaled nearly $283 million in 2019, making Japan the fifth largest dairy export market for the United States. The Japanese dairy sector is protected by high import tariff rates and TRQ. In addition, competing exporters of dairy products to Japan (Australia, New Zealand, Canada, and the EU) have preferential tariffs through free trade agreements. The USJTA is expected to improve the competitive position of U.S. dairy producers through tariff reductions, and eventual tariff elimination in 15 years. Japan also established a country specific TRQ of 5,400 MT for U.S. whey products that is to increase to 9,000 MT in year 10. In-quota exports are to enter duty-free at the beginning of the agreement and tariffs on over-quota exports are to be eliminated in five years. Over-quota tariffs on other dairy products are to be phased out at various times through the agreement.[325]

Status: "Stage One" of USJTA became effective on January 1, 2020. Unlike the provisions the United States had negotiated with Japan under the Trans-Pacific Partnership (TPP), USJTA does not include TRQs for certain dairy products such as butter and skim milk powder. The U.S. dairy industry has identified that the lack of provisions on non-tariff measures, such as GIs, could prove to be a market access barrier for certain U.S. cheese exports to the Japanese market. Additional negotiations with Japan toward a more comprehensive agreement are expected in 2020 and may address these issues.

U.S.-China Phase One Trade Agreement: Dairy

China was the third-largest market for U.S. dairy exports in 2019 at nearly $374 million, but this total was 25% lower than in 2018 as retaliatory tariffs hindered trade. Under the U.S.-China Phase One trade agreement, China is to streamline the regulatory process to facilitate U.S. exports. China is to accept dairy products manufactured in facilities compiled by FDA and which have a USDA dairy sanitary certificate. China is to accept that the U.S. dairy regulatory system provides the same level of safety as China's system. FDA is to provide China updated lists of

[324] 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. For more information, also see CRS In Focus IF11149, *Dairy Provisions in USMCA*.

[325] USTR, "Provisions of the U.S.-Japan Traded Agreement Dairy Products," https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/october/provisions-of-the-us-japan-trade-agreement-dairy-products.

dairy facilities under FDA jurisdiction. In addition, China's General Administration of Customs China and the FDA is to hold technical discussions regarding FDA guidance (U.S. Import Alert 99-30) on dairy products and the presence of melamine in imports of Chinese milk products. For infant formula, China is to also streamline its import approval process (such as issuing product registrations, technical reviews, and considering FDA's review, inspections and regulatory determinations).[326]

Status: The U.S.-China Phase One trade agreement entered into force February 14, 2020.

U.S.-Mexico Sugar Suspension Agreements[327]

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.

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.[328]

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.[329] 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,[330] in which it 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.

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[326] U.S.-China Phase One trade agreement, Chapter 3, Annex 2.1, 2.2, and 2.3.

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

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

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

[330] 81 *Federal Register* 87539, December 5, 2016; and 81 *Federal Register* 87541, December 5, 2016.

In June 2017, the United States and Mexico agreed to amendments to the suspension agreements.[331] 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 be 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.[332]

Status: In October 2019, the U.S. Court of International Trade (USCIT) voided the 2017 suspension agreements because DOC failed to follow recordkeeping requirements during the negotiations over the agreement. CSC Sugar LLC, a sugar trader and refiner of liquid sugar sued because the agreement changed the purity definition of refined sugar, harming its business, and it was unable to provide comment on the changes.[333] As a result of the USCIT ruling, the 2014 suspension agreement provisions went back into force.

On January 15, 2020, the DOC and Mexico agreed to new terms for the suspension agreement, specifically limiting imports from Mexico to 1,004,726 short tons from October 2019 through September 2020, with the share of refined sugar limited to 30% of import volume.[334] CSC Sugar LLC again filed suit in the USCIT to block the new agreements between the United States and Mexico.[335]

[331] 82 *Federal Register* 31942, July 11, 2017; and 82 *Federal Register* 31945, July 11, 2017.

[332] CRS In Focus IF10693, *Amended Sugar Agreements Recast U.S.-Mexico Trade*.

[333] Sugar purity is measured by polarity and in the 2014 agreement refined sugar was defined as 99.5% polarity. The 2017 agreement defined refined sugar at 99.2% polarity.

[334] Khorri Atkinson, *Law360*, "US, Mexico Sign Deal to Settle Sugar Trade Dispute," January 21, 2020. See 85 *Federal Register* 3613 (January 22, 2020).

[335] Sarah Martinson, *Law360*, "US. Sugar Co. Wants Revised US-Mexico Sugar Deal Scrapped," January 24, 2020.

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