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Major Agricultural Trade Issues in the 117th Congress

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SUMMARY

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Major Agricultural Trade Issues in the 117th Congress

Sales of U.S. agricultural products to foreign markets absorb about one-fifth of U.S. agricultural production, contributing significantly to the health of the farm economy. Farm product exports, which totaled $136 billion in FY2020, make up about 8% of total U.S. exports. The United States has persistently run a trade surplus in agricultural products, although it has declined over time.

A major area of interest for the 116th Congress was the loss of foreign demand for U.S. agricultural exports in the wake of tariff increases imposed by the Trump Administration on U.S. imports of steel and aluminum from certain countries and on other imported products from China. Some of the affected countries levied retaliatory tariffs on U.S. agricultural products, contributing to a 53% decline in the value of U.S. agricultural exports to China in 2018 and a broader decline in exports in 2019. To mitigate the economic impact from export losses and from the transportation and supply chain disruptions caused by the Coronavirus Disease 2019 (COVID-19) pandemic, the U.S. government initiated several large ad hoc spending programs from 2018 through 2020, valued at up to $60.4 billion. However, these programs may violate U.S. commitments to the World Trade Organization (WTO) to reduce trade-distorting agricultural subsidies. The 117th Congress may consider other options to assist the U.S. farm sector in the face of higher foreign tariffs on its exports or if other unforeseen events contribute to declines in farm sales.

Since 2019, the United States has signed three agreements affecting agricultural trade with major trading partners: the U.S.-Mexico-Canada Agreement (USMCA), which expanded access for U.S. exports of dairy and most poultry products to Canada and for Canadian peanut butter, dairy, and sugar exports to the United States; the "Stage One" agreement with Japan, which reduces tariffs on meat and other U.S. agricultural exports; and the "Phase One" agreement with China, under which that country agreed to purchase an additional $32 billion of U.S. agricultural products over a two-year period and to reduce various technical barriers to trade. The two latter agreements were negotiated under procedures that did not require congressional approval. The 117th Congress may monitor the implementation of all three agreements and assess their impact on the U.S. agricultural sector. The Biden Administration may also advance proposals for the United States to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, an 11-country pact that could address additional U.S. agricultural interests in Asian markets, and to engage in additional talks to improve market access for U.S. agricultural products in China.

In addition to further negotiations with Japan and China, the 117th Congress may weigh in on trade negotiations initiated with the European Union (EU), the United Kingdom (UK), India, Kenya, other countries, and the WTO. The COVID-19 pandemic slowed down the ongoing efforts to reform the WTO. The WTO Ministerial Conference that was postponed from June 2020 to late 2021 presents an opportunity to address pressing concerns over agricultural reform efforts.

Other trade issues that may arise in the 117th Congress concern various nontariff trade barriers, seasonal produce, and foreign restrictions on U.S. meat and dairy products. Improving market access for agricultural biotechnology products has long been a U.S. trade priority, and U.S. goals include establishing a common framework among trading partners for approval, adoption, and labeling of such products. With mandatory labeling of bioengineered food products offered for sale in the United States to begin in January 2022, the 117th Congress may engage with the Biden Administration's trade negotiation efforts to ensure that U.S. adoption of this labeling requirement contributes to harmonization of such standards with bilateral partners and at the multilateral level.

As Congress continues to monitor the impact of COVID-19, it may consider the extent to which health and regulatory measures associated with the actions of trading partners to limit the spread of COVID-19 may affect trade. Many WTO members have requested that the planned 2021 conference of trade ministers review the WTO's Sanitary and Phytosanitary (SPS) Agreement in the wake of the COVID-19 pandemic, and Congress could seek to guide U.S. proposals on this subject.

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Introduction

This report identifies selected current major trade issues for U.S. agriculture that may be of interest in the 117th Congress. It 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 pursued by the Trump Administration and its implications for U.S. agricultural exports, a discussion of the ongoing and proposed new trade negotiations, and an update on World Trade Organization (WTO) agricultural issues related to the United States. The report then reviews a number of ongoing trade policy concerns to U.S. agriculture, including nontariff measures and trade barriers and disputes involving specialty crops, livestock, and dairy. The format for all issues is similar, consisting of background and perspective on the issue at hand and an assessment of its current status.

Overview of U.S. Agricultural Trade[1]

U.S. agricultural exports have exceeded imports in every year since 1960.[2] In recent years, the growth in the value of U.S. agricultural imports has outpaced growth in U.S. agricultural exports, contributing to a decline in the agricultural trade surplus from $25.5 billion in FY2015 to $2.7 billion in FY2020 (**Figure 1**).

Bulk commodities like grains and oilseeds continue to account for about a third of the total value of U.S. agricultural exports but about 70% of the total volume.[3] In FY2020, the high-value product category—which includes meats, dairy products, fruits and vegetables, nuts, manufactured feeds, sugar products, processed fruits and vegetables, and other packaged food products—accounted for 68% of the value of U.S. agricultural exports.[4]

In comparison, 90% of all U.S. agricultural imports are high-value products. Import values of high-value products increased from $99.3 billion in FY2015 to $120.3 billion in FY2020—up 21%. This increase is a major reason for the decline in the agricultural trade surplus. In FY2020, the value of all U.S. agricultural imports was $133 billion, up 17% from FY2015.

Exports account for around 20% of total farm production by value[5] 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.[6] For FY2021, the U.S. Department of Agriculture (USDA) is projecting exports at $152.0 billion, up from $135.9 billion in FY2020—largely due to increased exports to China.[7] USDA projects U.S. imports to increase from $133.2 billion in FY2019 to $137.0 billion in FY2021.

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

[2] U.S. Census Bureau Trade Data, accessed via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), November 2020, https://www.fas.usda.gov/databases/global-agricultural-trade-system-gats.

[3] U.S. Census Bureau Trade Data, accessed via FAS, November 2020, https://www.fas.usda.gov/databases/global-agricultural-trade-system-gats.

[4] Ibid. CRS calculation of export shares.

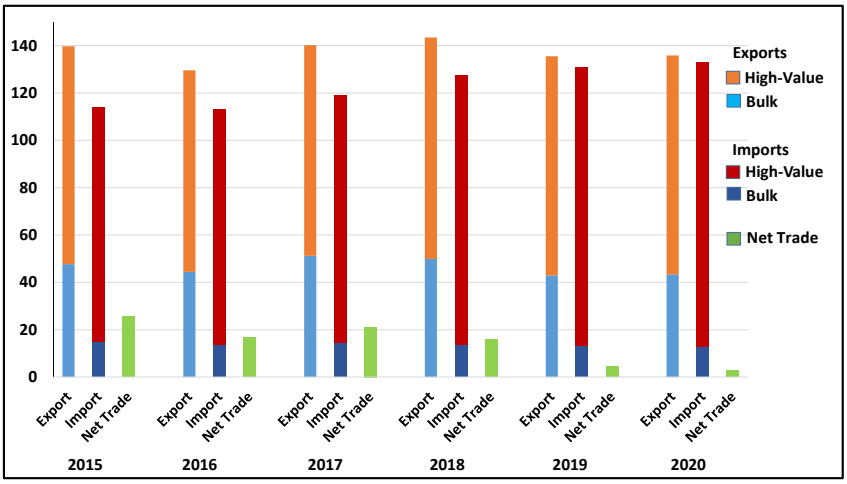
[5] USDA, Economic Research Service (ERS), "Agricultural Trade: Exports Expand the Market for U.S. Agricultural Products," accessed November 2020, https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/agricultural-trade/.

[6] CRS calculation based on FAS, Production Supply and Demand Online, accessed November 2020, https://apps.fas.usda.gov/psdonline/app/index.html#/app/home.

[7] Bart Kenner and Hui Jiang, "Outlook for U.S. Agricultural Trade," ERS, November 23, 2020.

Figure 1. U.S. Agricultural Trade, Fiscal Years, 2015-2020

In Billions of U.S. Dollars



Source: U.S. Census Bureau Trade Data, accessed via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), accessed November 2020, https://apps.fas.usda.gov/gats/default.aspx.

Notes: Data are not adjusted for inflation and pertain to fiscal years. "Net Trade" denotes the trade balance, which is the difference between U.S. exports and U.S. imports. Based on USDA's definition, *bulk products* includes grains, oilseeds, pulses, cotton, and other raw agricultural products; *high-value agricultural products* includes meats, dairy, fruit, vegetables, processed and packaged food, oils, butter, and other semiprocessed products used for manufacturing consumer-ready products.

All states export agricultural commodities, but a minority of states account for a majority of farm export sales. In calendar year 2019, the 10 leading agricultural exporting states based on value—California, Iowa, Illinois, Minnesota, Texas, Nebraska, Kansas, Indiana, North Dakota, and Missouri—accounted for almost 60% of the total value of U.S. agricultural exports that year.[8]

U.S. Agricultural Export Markets

The top five export markets—Canada, Mexico, China, the European Union (EU), and Japan—jointly account for 60% of the total value of U.S. agricultural exports.[9] With the exception of Mexico, U.S. exports to these markets have declined or changed minimally since 2015. Developed countries such as Canada, the EU, and Japan experienced slower economic and population growth, contributing to relatively stagnant growth in import demand compared to the developing countries.[10]

In Mexico and other developing markets with younger populations, higher income growth and rapid urbanization have contributed to notable growth in U.S. agricultural exports of both bulk and high-value products (**Figure 2**). Currently, Southeast Asia is the largest U.S. export market among the developing group of countries, but export growth has occurred faster in other regions. For example, from 2015 to 2019, U.S. agricultural exports to the Caribbean region grew 33%, to

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

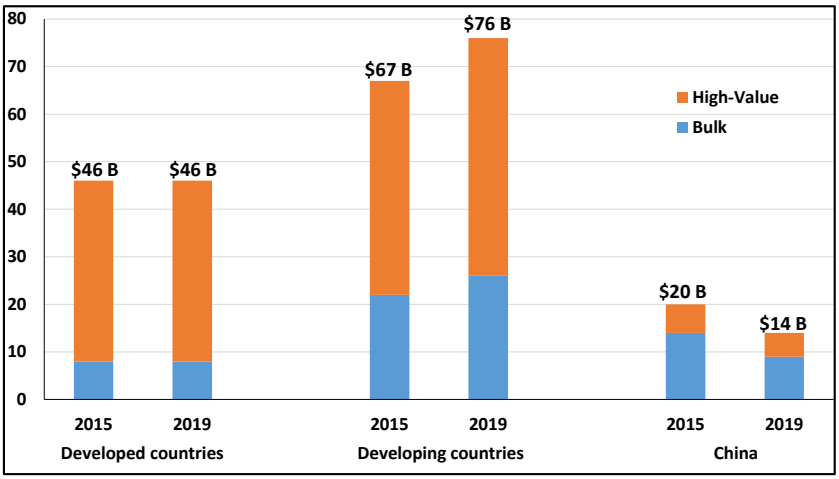
[9] U.S. Census Bureau Trade Data, accessed via FAS, November 2020, https://apps.fas.usda.gov/gats/default.aspx.

[10] ERS, International Macroeconomic Dataset, accessed October 2020, https://www.ers.usda.gov/data-products/international-macroeconomic-data-set/.

South Asia 80%, to North Africa 71%, and to Sub-Saharan Africa 64%. Agricultural exports to Southeast Asia increased 13% during the same period.[11]

Figure 2. U.S. Agricultural Exports by Country Groupings

In Billions (B) of U.S. Dollars, 2015 and 2019



Source: U.S. Census Bureau Trade Data, accessed via FAS, accessed November 2020, https://apps.fas.usda.gov/gats/default.aspx.

Notes: Data are not adjusted for inflation and pertain to calendar years. Based on USDA's definition, *bulk products* includes grains, oilseeds, pulses, cotton, and other raw agricultural products; *high-value agricultural products* includes meats, dairy, fruit, vegetables, processed and packaged food, oils, butter, and other semiprocessed products used for manufacturing consumer-ready products. China is not included in either developed or developing country groupings.

In 2018, the United States imposed punitive tariffs on many products imported from China. China retaliated with tariffs on certain U.S. exports, notably agricultural products. As a result, U.S. agricultural exports to China, the third largest U.S. agricultural export market in 2017, declined more than 50% from 2017 to 2018—down from $19 billion to $9 billion. In January 2020, the United States and China signed a "Phase One" agreement intended to reduce trade tensions. Since that time, exports of U.S. food and agricultural products to China have increased above 2018 and 2019 levels (see "China").

Status: The Coronavirus Disease 2019 (COVID-19) pandemic has placed unexpected stresses on food supply chains, with bottlenecks in farm labor, processing, transport, and logistics,[12] in the United States and in overseas markets—particularly in developing countries.[13] The combination of trade disputes and the COVID-19 pandemic disrupted U.S. farm sales and contributed to export share losses of certain products in some markets. The 117th Congress may examine the resilience of food supply chains, particularly in developing countries where the demand for U.S. agricultural products is growing. Some Members of Congress have also proposed to amend the Defense Production Act of 1950 to include the Secretary of Agriculture as a member of the

[11] U.S. Census Bureau Trade Data, accessed via FAS, accessed November 2020, https://apps.fas.usda.gov/gats/default.aspx.

[12] OECD, "Food Supply Chains and COVID-19: Impacts and Policy Lessons," June 2, 2020.

[13] Piergiuseppe Fortunato, "How COVID-19 Is Changing Global Value Chains," United Nations Conference on Trade and Development, September 2, 2020; and TRIDGE, *COVID-19 Market Report: Impact of the Coronavirus on Global Agricultural Trade*, March 31, 2020, https://cdn.tridge.com/reports/covid19-market-report-v2.pdf.

Committee on Foreign Investment in the United States (H.R. 6540, 116th Congress), which reviews certain mergers and acquisitions of U.S. companies by foreign entities.

In December 2018, Congress reauthorized major agricultural export promotion and other international programs through FY2023 in the 2018 farm bill (P.L. 115-334).[14] Title III of the farm bill includes provisions covering export credit guarantee programs, export market development programs, strengthening of global agricultural statistics, and international science and technical support and exchange programs designed to promote global food security as well as develop agricultural export markets in emerging economies. Among other provisions, the 2018 law authorizes funding to operate two U.S. agricultural export promotion programs in Cuba—the Market Access Program and the Foreign Market Development Cooperator Program.[15] In the 116th Congress, bills (H.R. 1898 and S. 1447) were introduced in both houses of Congress to remove prohibitions on financing of agricultural exports to Cuba.

Trump Administration Trade Policy[16]

In establishing policy for U.S. participation in international trade, the Trump Administration emphasized reducing U.S. bilateral trade deficits[17] 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. industries.[18] Under various provisions of U.S. law, and in response to these and other domestic concerns, the Trump Administration imposed punitive tariffs on U.S. imports of steel and aluminum from certain countries and on U.S. imports of most products from China.[19] Many of these countries, in turn, responded with retaliatory tariffs on U.S. exports, particularly agricultural products.[20] The direction of these policies contributed to market-share losses for certain U.S. agricultural exports in 2018 and 2019,[21] some of which recovered with the implementation of partial agreements with China and Japan in 2020.

The Trump Administration also made trade agreement negotiations a focus of its trade policy, including renegotiating existing trade agreements that it viewed as being "unfair." In January 2017, the United States withdrew from the Trans-Pacific Partnership (TPP) agreement, which was subsequently concluded by the 11 remaining TPP signatories under a modified framework renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in March 2018.[22] Under U.S. initiative, the North American Free Trade Agreement (NAFTA) was renegotiated as the U.S.-Mexico-Canada Agreement (USMCA) and entered into force on July 1,

[14] For more information on this issue, see CRS In Focus IF11223, *2018 Farm Bill Primer: Agricultural Trade and Food Assistance*, by Anita Regmi and Alyssa R. Casey.

[15] Ibid.

[16] Prepared by Anita Regmi, Specialist in Agricultural Policy.

[17] A bilateral trade deficit represents an imbalance whereby the value of U.S. imports from a particular trading partner exceeds 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.

[18] For more information, see CRS Report R45474, *International Trade and Finance: Overview and Issues for the 116th Congress*, coordinated by Andres B. Schwarzenberg and Rebecca M. Nelson.

[19] For more information, see CRS Insight IN10971, *Escalating U.S. Tariffs: Affected Trade*, coordinated by Brock R. Williams; CRS In Focus IF11346, *Section 301 of the Trade Act of 1974*, by Andres B. Schwarzenberg; and CRS In Focus IF11284, *U.S.-China Trade and Economic Relations: Overview*, by Karen M. Sutter.

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

[21] Ibid; and CRS Report R46576, *"Stage One" U.S.-Japan Agreement: Agriculture*, by Anita Regmi.

[22] CRS In Focus IF10000, *TPP: Overview and Current Status*, by Brock R. Williams and Ian F. Fergusson.

2020.[23] The Trump Administration also negotiated selected modifications to the U.S.-South Korea free trade agreement,[24] concluded the partial Stage One agreement with Japan,[25] and concluded the partial "Phase One" agreement with China.[26]

The Trump Administration also notified Congress of its intent to begin negotiation of new trade agreements with the EU, the United Kingdom (UK), and Kenya.

United States-Mexico-Canada Agreement (USMCA)

The USMCA, a comprehensive free trade agreement among the United States, Mexico, and Canada, entered into force on July 1, 2020. USMCA replaced NAFTA, which had been in effect since 1994 (P.L. 103-182). NAFTA provisions eliminated tariffs on most agricultural products, with the exception of certain products in bilateral trade between the United States and Canada. USMCA provides for some further liberalization of agricultural trade between Canada and the United States but does not alter the framework for agricultural trade between the United States and Mexico.[27]

- All food and agricultural products that had zero tariffs under NAFTA remain at zero under USMCA. This includes all U.S. agricultural trade with Mexico and almost all with Canada—excepting certain dairy, poultry, and other products.
- Canada is increasing access for U.S. dairy products via tariff-rate quotas (TRQs), which provide for a volume of imports to enter duty-free but assess high tariffs on imports beyond the quota amount, exceeding 200% in many cases.
- Canada replaced poultry TRQs under NAFTA with new TRQs that provide greater access for exports of U.S. turkey meat and eggs but may lower access for U.S. chicken meat. U.S. exports to Canada of poultry products above the set quotas will face tariffs exceeding 200%.
- The United States is phasing out the tariffs on cotton, peanut, and peanut butter imports from Canada and agreed to eliminate these tariffs on January 1, 2025.
- The United States is expanding access for Canadian beet sugar and for dairy products with Canada-specific TRQs.
- Canada will 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.
- 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.

[23] CRS Report R45661, *Agricultural Provisions of the U.S.-Mexico-Canada Agreement*, by Anita Regmi.

[24] CRS In Focus IF10733, *U.S.-South Korea (KORUS) FTA*, coordinated by Brock R. Williams.

[25] CRS Report R46576, *"Stage One" U.S.-Japan Agreement: Agriculture*, by Anita Regmi.

[26] CRS In Focus IF11412, *U.S.-China Phase I Deal: Agriculture*, by Anita Regmi.

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

- Regarding sanitary and phytosanitary measures (SPS), USMCA requires greater transparency in rules and regulatory alignment among the three countries and will establish a new mechanism for technical consultations to resolve SPS issues.
- USMCA includes procedural safeguards for recognition of new geographical indications (GIs).[28]
- USMCA signatories agreed to protect the confidentiality of proprietary formula information in the same manner for domestic and imported products.

Status: USMCA entered into force July 1, 2020. Some Members of Congress have raised concerns regarding the implementation of certain provisions by Canada and Mexico. Other Members have stated that Canada's dairy TRQ allocation may not be consistent with its commitments under USMCA and that Mexico has not taken actions to improve access for U.S. cheeses and agricultural biotechnology products.[29] Some Members have also suggested that the Office of the U.S. Trade Representative (USTR) and USDA use the GIs provisions in USMCA as a model for other trade agreements.[30]

Regarding USMCA's wheat provisions, a standardized Declaration of Eligibility for Delivery of Grain must accompany all shipments of approved varieties of wheat, whether grown in the United States or Canada, effective August 1, 2020.[31] As Canada also removed the official inspection certification requirement for approved varieties of U.S. shipments, these changes may encourage some U.S. wheat producers to plant more Canadian-approved varieties.[32]

Canada and Mexico are the top two destinations and sources for U.S. agricultural trade. In the first calendar quarter after USMCA entered into force in July 2020, U.S. exports of dairy and poultry to Canada increased, and U.S. imports of Canadian sugar and dairy products also increased. In contrast, U.S. year-on-year exports to Mexico declined during the first three quarters of 2020 compared to 2019 as Mexico faced difficulties in transportation and logistics with the outbreak of COVID-19, particularly with regard to a shortage of refrigerated containers.[33]

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

On October 7, 2019, the United States and Japan signed the USJTA, which provides for limited tariff reductions and quota expansions to improve U.S. access to Japan's market, including for

[28] GIs are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region (see "Geographical Indications (GIs).")

[29] Group of 29 Senators, letter to USDA Secretary Sonny Perdue and U.S. Trade Representative (USTR) Robert Lighthizer, August 25, 2020, https://www.smith.senate.gov/us-senators-tina-smith-mike-crapo-make-bipartisan-push-enforce-usmca-dairy-provisions; and House Ways and Means Committee, "Trump Administration USMCA Implementation Report Card," November 2020, https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Trump%20Admin%20USMCA%20Implementation%20Assessment%20.pdf.

[30] Group of 111 Representatives letter to USTR Robert Lighthizer and USDA Secretary Sonny Perdue, "Bipartisan Letter to Protect U.S. Food & Wine Exports Using Common Terms," November 2, 2020, https://www.nmpf.org/wp-content/uploads/2020/11/Letter-House-Common-Food-and-Wine-Terms-Letter-USTR-USDA-11.02.2020.pdf.

[31] Canadian Grain Commission, "Declaration of Eligibility for Delivery of Grain," accessed December 2020, https://grainscanada.gc.ca/en/protection/delivery/pdf/producer-declaration-20-21.pdf.

[32] FAS, "Canada Grain and Feed Update," GAIN Report Number: CA2020-0088, November 4, 2020.

[33] Tridge, *COVID-19 Market Report: Impact of the Coronavirus on Global Agricultural Trade*.

agricultural products.[34] The agreement, which entered into force January 1, 2020, provides for reciprocal U.S. tariff reductions, largely on industrial goods.[35]

Japan previously negotiated agricultural market access provisions with the United States in the context of the TPP, a 2016 agreement among 12 Pacific-facing nations[36] that the United States did not ratify. Those provisions were folded into the agreement that the remaining TPP countries agreed upon—CPTPP—that went into force for Japan on December 30, 2018.[37] As Japan began to improve market access for CPTPP countries, various U.S. agricultural exports to Japan became less competitive compared to products from CPTPP 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 CPTPP 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 CPTPP, 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 (see "U.S.-Japan Meat Trade Issues").
- Upon entry into force, tariffs were eliminated for certain products, including almonds, walnuts, blueberries, cranberries, corn, sorghum, and broccoli.[38]
- 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 (CSQs) for all products for which the United States had negotiated CSQs under TPP, except rice. Products covered by CSQs include wheat, wheat products, malt, whey, processed cheese, glucose, fructose, corn starch, potato starch, and inulin.
- Japan agreed not to use "safeguards," which increase tariffs on sensitive agricultural products when imports exceed a set threshold, on U.S. beef, pork, whey, oranges, and racehorses.
- 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, but the bulk of U.S. tariff commitments were for industrial goods. The United States also agreed to provide Japan the opportunity

[34] CRS Report R46576, *"Stage One" U.S.-Japan Agreement: Agriculture*, by Anita Regmi.

[35] CRS Report R46140, *"Stage One" U.S.-Japan Trade Agreements*, coordinated by Brock R. Williams.

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

[37] CPTPP 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/.

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

to export more beef by folding a CSQ for Japan of 200 metric tons (MT) into a larger TRQ designated for "other countries."

Status: Starting April 1, 2020, Japan created TRQs for the product categories it had agreed to under its USJTA commitments.[39] In most cases, imports for the initial six-month period (April-September) were well below the volumes permitted. Congress may wish to examine why Japanese importers are not fully utilizing the TRQs.

USJTA is much more limited than a traditional U.S. free trade agreement. The Trump Administration chose to shape the agreement in this way so it could take effect under statutory tariff authorities without approval by Congress.[40] As a consequence, the text does not address nontariff issues such as SPS, agricultural biotechnology, technical barriers to trade, or GIs. It also does not include provisions for trade in organic products, an issue that the CPTPP covers. Congress may wish to consider how best to approach further negotiations with Japan, including with respect to the impact of Japan's trade agreements with other major trading partners, such as the EU.[41]

China "Phase One" Agreement

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. products, including agricultural products such as pork, fruit, and tree nuts.[42] These retaliatory tariffs are in addition to existing Most Favored Nation tariffs that China levies on imports from all countries including the United States.[43] By September 2019, China had levied retaliatory tariffs on almost all U.S. agricultural products, ranging from 5% to 60%.[44] These tariffs led to significant declines in Chinese purchases of U.S. soybeans, sorghum, distillers' dried grains, and other products.

Negotiations to resolve the U.S.-China dispute resulted in a "Phase One" executive agreement on trade and investment issues, which was signed in January 2020 and entered into force February 14, 2020.[45] Under the agreement, which did not require congressional approval, China is to import $32 billion worth of additional U.S. agricultural products over a two-year period. This

[39] FAS, "USJTA TRQs Remain Underutilized in First Half of JFY 2020," GAIN Report Number: JA2020-0205, December 17, 2020.

[40] For more, see CRS In Focus IF11400, *Presidential Authority to Address Tariff Barriers in Trade Agreements Under Section 103(a)*, by Christopher A. Casey and Brandon J. Murrill.

[41] Under Japan's 2019 trade agreement with the EU, it agreed to recognize more than 200 EU GIs, which may have implications for U.S. agricultural exports. If USTR were to determine that any of these EU GIs poses a barrier to U.S. agricultural exports to Japan, the lack of legal text regarding GIs and the absence of a formal dispute settlement mechanism in the USJTA could limit U.S. ability to challenge such a barrier under the USJTA. Both the United States and Japan are WTO members, so the United States could challenge it as inconsistent with Japan's WTO commitments.

[42] FAS, "China Responds to U.S. 301 Announcement with Revised Product List," GAIN Report Number: CH18034, June 21, 2018.

[43] Most Favored Nation tariffs must be levied in a nondiscriminatory manner, but lower levels of tariffs can be applied to imports from countries with which a nation has a preferential trade agreement.

[44] See CRS Report R45929, *China's Retaliatory Tariffs on U.S. Agriculture: In Brief*, by Anita Regmi.

[45] For more information, see CRS In Focus IF11412, *U.S.-China Phase I Deal: Agriculture*, by Anita Regmi.

implies an average annual increase of two-thirds from a 2017 base of $24 billion.[46] Products mentioned in the agreement include oilseeds, meat, cereals, cotton, and seafood. China has not committed to removing the retaliatory tariffs, but it has granted one-year tariff exemptions on most U.S. agricultural products[47] and some exemptions targeted to individual importers.[48]

China agreed to improve its administration of TRQs on wheat, corn, and rice to comply with a WTO ruling.[49] These changes should 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 and to finalize phytosanitary protocols for U.S. avocadoes, blueberries, potatoes, barley, alfalfa pellets and cubes, almond meal pellets and cubes, hay, and California nectarines. China agreed to implement a transparent, predictable, efficient, science- and risk-based regulatory process for the evaluation and authorization of agricultural biotechnology products. In turn, 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, initiate discussions to import live cattle for breeding, broaden the list of pork products eligible for import, adopt poultry import regulations consistent with the World Organisation for Animal Health Terrestrial Animal Health Code, and streamline requirements and approve 26 U.S. aquatic species for import (see "Meat Trade Issues With China").

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 GIs in international agreements.

Status: The two-year purchase commitments under "Phase One" expire in February 2022. The agreement did not address U.S. concerns about Chinese policies on intellectual property protection, technology transfer, industrial promotion, and state subsidies, which are expected to be addressed in subsequent negotiations. For example, the agreement does not require China to allow a greater private sector role in grain trade—currently largely conducted by state trading

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

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

[48] For example, see FAS, "Update to the Export Process for US Pork and Pork Products," GAIN Report Number: CH2020-0039, March 27, 2020.

[49] TRQs 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.

enterprises[50]—or to abide by its WTO commitments to limit and report on its subsidies on agricultural inputs such as fertilizers.[51]

Since January 2020, China has implemented 50 of 57 commitments that have specific deadlines.[52] These include removing most restrictions on imports of U.S. meat and various high-value products. The value of U.S. food and agricultural exports to China during the first 10 months of calendar year 2020 was nearly twice that during the corresponding period of 2018 and 61% higher than in 2019.[53]

The agreement provides China some flexibility to meet its purchase commitments. 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."[54]

Congress may monitor implementation of the "Phase One" agreement with China. Additionally, as China's commitment to purchase U.S. agricultural products under the Phase One agreement expires in February 2022, Congress faces consideration of the desirability of pursuing a more far-reaching trade agreement with China. While the existing agreement improved market access for selected U.S. agricultural products, many issues remain to be addressed in follow-up negotiations. It is unclear whether the partial agreement will reduce the United States' leverage in reaching a more comprehensive trade agreement with China.

Ongoing and Potential Future Trade Negotiations

Potential future U.S. trade negotiations depend upon the extension of Trade Promotion Authority (TPA), which allows the President to enter into reciprocal trade agreements on reducing tariff and nontariff barriers, with any resulting agreements subject to approval of both houses of Congress under expedited procedures and without amendment. The current law authorizing TPA (P.L. 114-26) expires July 1, 2021.[55] In the absence of TPA, Congress would be able to amend trade agreements reached by the Administration, which could make other parties less willing to negotiate such agreements with the United States.

The European Union (EU)[56]

The United States and the EU are the world's largest trade and investment partners.[57] While food and agricultural trade between the United States and the EU27 (excluding the UK) accounts for less than 1% of the value of overall trade in total goods and services, the EU27 is a leading export

[50] Fred Gale, "U.S Challenge of China's Tariff-Rate Quota (TRQ) Administration System for Grains," Selected Paper, International Agricultural Trade Research Consortium, 2017 Annual Meeting, December 3-5, 2017.

[51] WTO, "Report of the Working Party on the Accession of China," WT/ACC/CHN/49, October 1, 2001, paragraph 235 for input subsidies.

[52] USTR and USDA, "Interim Report on The Economic and Trade Agreement Between the United States of America and the People's Republic of China: Agricultural Trade," October 23, 2020.

[53] U.S. Census Trade Data, accessed December 8, 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

[54] Chapter 6, Article 6.2.1 of the "Phase One" agreement, https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf.

[55] CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

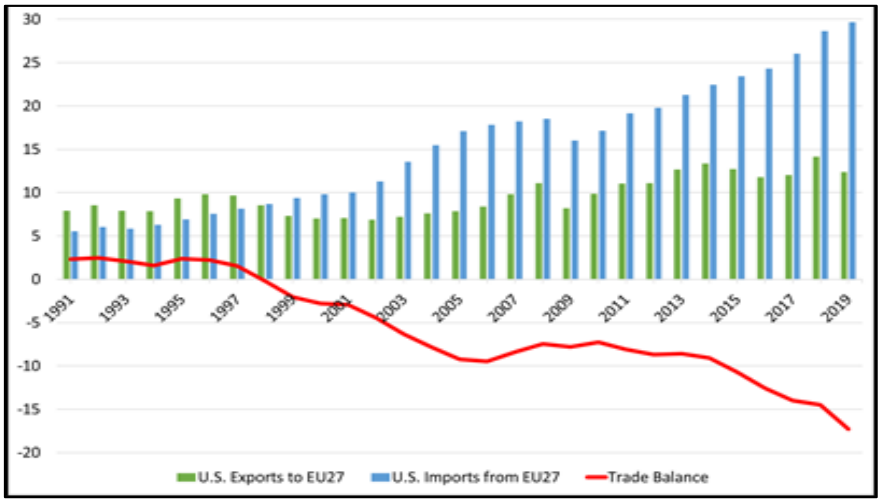
[56] Prepared by Renée Johnson, Specialist in Agricultural Policy.

[57] For more information, see CRS In Focus IF11209, *U.S.-EU Trade Agreement Negotiations: Issues and Prospects*, coordinated by Shayerah I. Akhtar.

market for U.S. agricultural exports. It accounted for about 8% of the value of all U.S. agricultural and related product exports and ranked as the fifth-largest market for U.S. exports of these products in 2019 after Canada, Mexico, China, and Japan. In 2019, U.S. exports of agricultural and related products to the EU27 totaled $12.4 billion, while U.S. imports of agricultural and related products from the EU27 totaled $29.7 billion, resulting in a U.S. trade deficit of approximately $17.3 billion (**Figure 3**).[58] The United States has run an agricultural trade deficit with the EU27 since 1998 after running surpluses for most of the 1990s. Leading U.S. agricultural exports to the EU27 in 2019 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, beer, distilled spirits, drinking waters, olive oil, cheese, baked goods, processed foods, and cocoa products.

Figure 3. U.S.-EU27 Agricultural Trade

In Billions of Current U.S. Dollars



Source: CRS from USDA data for "Total Agricultural and Related Products" (BICO-HS6). EU27 excludes UK.

In October 2018, the Trump Administration notified Congress under the TPA of its plans to negotiate a new trade agreement with the EU.[59] In January 2019, USTR announced its specific negotiating objectives.[60] The U.S. objectives with respect to agriculture include greater market access, changes to EU administration of TRQs, and changes to a variety of EU regulations. As reported by U.S. officials, the calculated average tariff rate across all U.S. agricultural imports is roughly 12%, below the EU average of 30%.[61] Among regulatory issues, key U.S. objectives include harmonizing SPS standards.[62] The U.S. objectives also include addressing GIs by protecting generic terms for common use.[63] (See "Nontariff Trade Barriers.")

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

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

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

[61] USDA, "Why Trade Promotion Authority Is Essential for U.S. Agriculture and T-TIP," February 2015.

[62] For more information, see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*, by Renée Johnson.

[63] For more information, see CRS Report R44556, *Geographical Indications (GIs) in U.S. Food and Agricultural*

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] U.S. agricultural interests also generally support including agriculture as part of the U.S. negotiating objectives for a U.S.-EU trade agreement.

Status: The outlook for U.S.-EU trade talks remains uncertain, given ongoing trade tensions. In November 2020, the EU imposed additional tariffs on approximately $4.0 billion worth of EU imports annually from the United States covering a range of agricultural and industrial products.[66] The higher EU tariffs were in retaliation for higher U.S. tariffs imposed on certain EU products in 2019. Both the U.S. and EU tariff actions are in response to the Boeing-Airbus subsidy dispute at the WTO and were approved by the WTO. The higher U.S. tariffs on EU goods affect approximately $7.5 billion worth of imports annually, covering a range of industrial, agricultural, and other consumer products.[67] In November 2020, a coalition of U.S. agricultural groups asked USTR to "deepen trade discussions" with the EU to remove retaliatory tariffs targeting U.S. food and agricultural exports.[68] The EU has sought to defuse agricultural trade tensions by increasing imports of U.S. soybeans and negotiating changes to its quota for U.S. hormone-free beef and, more recently, by agreeing to eliminate tariffs on imported U.S. lobster.

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. 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 nontariff trade barriers might actually be part of the talks. Specific SPS issues important to the U.S. side include the EU's prohibitions on the use of hormones in meat production and pathogen reduction treatments for poultry and EU restrictions on the use of biotechnology (see "Barriers to Trade in Agricultural Biotechnology Products"). Other press reports, however, indicate that some EU officials have downplayed the extent that certain nontariff barriers—such as biotechnology product permits, approval of certain pathogen rinses for poultry, and regulations on pesticides or food standards—would be part of the talks.[69]

Separately, the United States expressed concerns about the EU's Farm to Fork (F2F) plan—referring to the EU's proposed strategies that would impose restrictions on EU agriculture through targeted reductions in the use of land, antimicrobials, fertilizers, and pesticides.[70] F2F

Trade, by Renée Johnson; and CRS Report R43658, *The U.S. Wine Industry and Selected Trade Issues with the European Union*, by Renée Johnson.

[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 list of product codes, see USDA, "European Union: The EU Adopts Countermeasures Against US Exports Following WTO Ruling on Boeing November 12, 2020," *GAIN* Report E42020-0084, November 12, 2020.

[67] For a list of product codes, see 84 *Federal Register* 32248, July 5, 2019 (which was further modified on August 12, 2020).

[68] Letter to USTR Robert E. Lighthizer from the stakeholder group Farmers for Free Trade, November 18, 2020.

[69] 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.

[70] European Commission, "A Farm to Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System," COM(2020) 381 final, May 20, 2020. See also https://ec.europa.eu/food/farm2fork_en. For more background, see CRS In Focus IF11704, *U.S. Trade Concerns Regarding the EU's Farm to Fork Strategy*, by Renée Johnson.

includes an action plan that sets a target for organic farming covering at least 25% of EU agricultural land by 2030.[71] USDA officials contend that F2F's focus on specific agricultural practices and promotion of local production is protectionist and would impact U.S.-EU trade.[72]

United Kingdom (UK)[73]

In January 2020, the UK left the EU. It remained a member of the EU customs union during a transition period when U.S.-UK trade was governed by agreements between the United States and the EU in addition to WTO rules. The UK withdrew from the EU customs union on December 31, 2020.[74] U.S.-UK trade will henceforth 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 but has recently made separate WTO commitments.[75] U.S.-UK trade will thus be governed by the UK's WTO commitments concerning tariffs, quotas, and other policies, although the UK is still revising its quota allocations for various agricultural products.[76]

Some Members of Congress have indicated that a comprehensive U.S.-UK trade agreement should be a priority for the United States.[77]

The United States has a positive agricultural trade balance with the UK (**Figure 4**). The UK has accounted for about 1.3% of total U.S. agricultural exports from 2015 to 2019.[78] Major U.S. exports are wine and beer, tree nuts, prepared food, soybeans, live animals, and other products. Major U.S. imports from the UK are packaged food, snack food, cheese, wine and beer, meat products, and live horses. The United States does not export notable quantities of meat products to the UK, and the Trump Administration, some Members of Congress, and the U.S. agricultural industry indicated the desire to expand exports of these products in the post-Brexit environment.[79]

As a member of the EU, the UK posed the same set of trade barriers to U.S. agricultural exports as those by the EU. In particular, hormone-treated beef, chlorine-washed poultry, and genetically engineered food products face restrictions in accessing EU markets. The UK has sent mixed

[71] European Commission, "Organic Farming—Action Plan for the Development of EU Organic Production," September 4, 2020. Separately, the EU is seeking to negotiate a new U.S.-EU organic equivalency agreement, replacing the current 2012 agreement that harmonized organic standards between with the two trading blocs. The EU has set a deadline of year-end 2025 for a new deal.

[72] USDA, "Press Briefing with Secretary Sonny Perdue," October 7, 2020, https://www.state.gov/press-briefing-with-secretary-sonny-perdue-u-s-department-of-agriculture/.

[73] Prepared by Anita Regmi, Specialist in Agricultural Policy, CRS.

[74] European Commission, "EU-UK Trade and Cooperation Agreement: Protecting European Interests, Ensuring Fair Competition, and Continued Cooperation in Areas of Mutual Interest," December 24, 2020.

[75] WTO, "Rectifications and Modifications of Schedules: Schedule XIX—United Kingdom," submitted by the UK to the WTO Committee on Market Access, G/MA/TAR/RS/570, July 23, 2018; and addendum submitted by the UK to the WTO Committee on Market Access, G/MA/TAR/RS/570/Add.1, May 28, 2020.

[76] For a list of UK TRQs, see "The Customs (Tariff Quotas) (EU Exit) Regulations 2020: Tariff Quotas," version 2.0, December 29, 2020, https://www.gov.uk/government/publications/reference-documents-for-the-customs-tariff-quotas-eu-exit-regulations-2020; and, for examples of suggested changes, see WTO, "Rectifications and Modifications of Schedules: Schedule XIX—United Kingdom," addendum submitted by the UK to the WTO Committee on Market Access, G/MA/TAR/RS/570/Add.2, December 16, 2020.

[77] Group of 19 Senators, letter to USTR, February 14, 2020, https://www.portman.senate.gov/sites/default/files/2020-02/Signed%20UK%20Trade%20Letter.pdf.

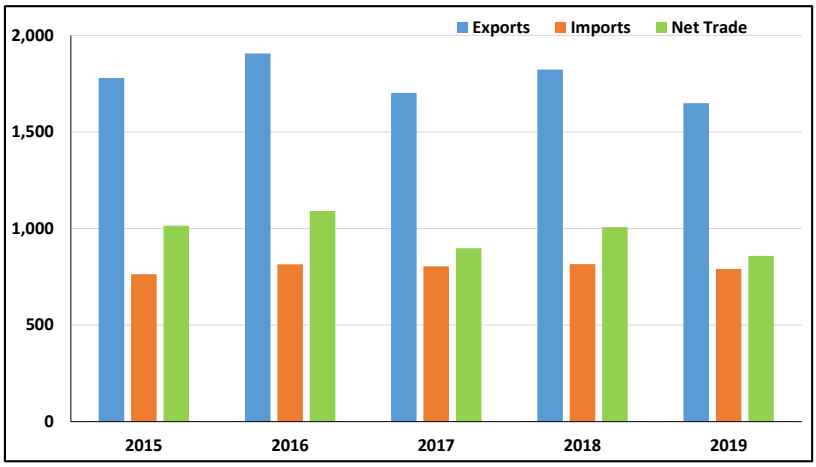
[78] U.S. Census Bureau Trade Data, accessed from FAS, December, 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

[79] See, for example, Adam Behsudi, "Trump's U.K. Trade Deal Could Depend on Whether the Brits Can Stomach 'Chlorine Chicken,'" *Politico*, January 6, 2020.

signals regarding these issues. Some media reports indicate that the UK will not allow imports of chlorine-washed chicken meat and hormone-treated beef.[80] Others hint that it may allow imports of genetically engineered U.S. agricultural products.[81] A USDA attaché reports that, in the longer term, modifications may be possible in UK policy regarding trade in agricultural biotechnology products.[82] Currently, the UK is a leader in biotechnology research, and it has focused on delivering medical applications or conducting basic research.

Figure 4. U.S.-UK Agricultural Trade

In Millions of U.S. Dollars, 2015-2019



Source: U.S. Census Bureau Trade Data, accessed from FAS, December 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

Notes: USDA definition of *agriculture* is used. *Net trade* denotes the trade balance, which is the difference between U.S. exports and U.S. imports.

In February 2019, USTR released a summary of objectives for U.S.-UK negotiations.[83] In February 2020, the UK Department of International Trade released its objectives for negotiations with the United States.[84]

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 nontariff barriers that discriminate against U.S. agricultural goods, improving the UK's TRQ administration, promoting regulatory compatibility, and establishing commitments for trade in agricultural biotechnology products.[85] USTR has also articulated specific goals regarding SPS provisions, customs and trade facilitation, rules of origin, and technical barriers to trade.

The UK goals are similar to the currently stated U.S. goals regarding market access and nontariff measures, with a few exceptions. For example, UK objectives do not mention trade in agricultural biotechnology products as a specific goal. Similarly, the UK does not mention allowing imports

[80] Lisa O'Carroll, "UK Will Not Import Chlorinated Chicken from US, Ministers Say," *The Guardian*, November 1, 2020.

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

[82] FAS, "United Kingdom: Agricultural Biotechnology Annual," GAIN Report, December 19, 2018. The April 9, 2020, annual report is no longer available on the USDA website.

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

[84] UK Department for International Trade, "UK-US Free Trade Agreement," February 2020.

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

of products with labels that the United States considers as common names but are protected GIs in some countries. The UK negotiating objectives mention as a goal seeking cooperation with the United States on multilateral and third-country subsidy issues.

Status: On October 16, 2018, the Trump Administration notified Congress of proposed trade agreement negotiations with the UK, which have begun. For the agreement to be concluded before the expiration of TPA on July 1, 2021, the new Administration would need to notify Congress of its intent to sign an agreement with the UK by April 1 and publish its text by May 1.

The UK withdrawal from the EU has opened the possibility of its departure from EU policy positions on agricultural biotechnology, although a 2020 USDA Foreign Agriculture Service report assessed that the UK is unlikely to deviate from EU policy in the near to mid-term.[86] Some Members of Congress continue to emphasize that any agreement must provide access to U.S. poultry, agricultural biotechnology products, and products labeled with what the United States considers as common names but that may be protected as GIs in some countries.[87] Some Members of Congress have requested that improved market access for U.S. rice be an objective of U.S. negotiators.[88] Some Members of the House Ways and Means Committee urged USTR Robert Lighthizer to use the USMCA provisions on SPS and nontariff measures as a blueprint for a U.S.-UK agreement.[89]

Kenya[90]

On March 17, 2020, the Trump Administration notified Congress of its intent to negotiate a trade agreement with Kenya, subject to approval by Congress under TPA. Kenya is a beneficiary of the African Growth and Opportunity Act (AGOA), 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.

Kenya's top agricultural imports from the United States in 2019 were wheat, vegetable oils excluding soybean oil, pulses, coarse grains, and other products that include many prepared food products (**Figure 5**). The United States imported agricultural products valued at $126 million from Kenya in 2019,[91] with key imports being macadamia and cashew nuts, coffee, tea, roses, and nonedible vegetable and nut oils.[92]

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[86] FAS, "United Kingdom: Agricultural Biotechnology Annual," GAIN Report Number: UK2019-0013, April 9, 2020. This required annual report is no longer available on the USDA website.

[87] Twelve Members of Ways and Means Committee, letter to USTR Robert Lighthizer, June 1, 2020, https://dankildee.house.gov/sites/dankildee.house.gov/files/06-01-20%20-%20Ways%20and%20Means%20UK%20Ag%20Letter%20%28Lighthizer%29.pdf; and 47 Members of Congress, letter to USTR Robert Lighthizer, March 10, 2020, https://womack.house.gov/uploadedfiles/3.10_signed_ustr_poultry_letter.pdf.

[88] Group of Eight Senators, letter to USTR Robert Lighthizer, February 10, 2020, https://www.hydesmith.senate.gov/sites/default/files/2020-02/021020%20USTR%20Ambassador%20Lighthizer%20UK%20Rice%20Letter.pdf.

[89] Twelve Members of Ways and Means Committee, letter to USTR Robert Lighthizer, June 1, 2020, https://dankildee.house.gov/sites/dankildee.house.gov/files/06-01-20%20-%20Ways%20and%20Means%20UK%20Ag%20Letter%20%28Lighthizer%29.pdf; and 47 Members of Congress, letter to USTR Robert Lighthizer, March 10, 2020, https://womack.house.gov/uploadedfiles/3.10_signed_ustr_poultry_letter.pdf.

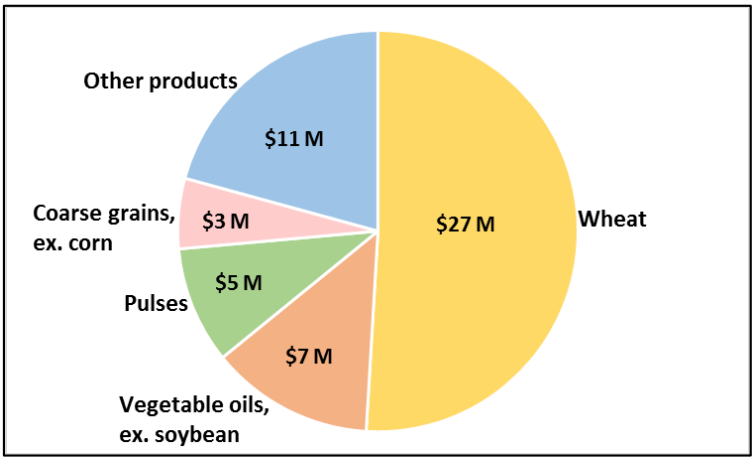
[90] Prepared by Anita Regmi, Specialist in Agricultural Policy, CRS.

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

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

Figure 5. U.S. Agricultural Exports to Kenya

$53 Million in 2019



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

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

The Kenyan tariffs that apply to imports from the United States are relatively high. For example, simple average tariffs facing U.S. exporters are 23.1% on animal products, 51.7% on dairy products, 22% on fruit and vegetables, and 22.2% on cereals and cereal preparations.[93] Other concerns raised by USDA include a Kenyan ban on imports of agricultural biotechnology products (although it has approved field trials for genetically engineered crops: an insect-resistant cotton variety[94] and drought- and insect-resistant corn) and bans on imports of U.S. whole peas and lentils.[95] Kenya formerly banned wheat from the U.S. Pacific Northwest over concerns regarding a certain fungus, but a Kenyan phytosanitary protocol adopted in February 2020 allows wheat growers in Washington State, Oregon, and Idaho access to Kenya's wheat market.[96]

USTR's principal agriculture-related objectives in negotiations with Kenya include establishing specific commitments for trade in products developed through agricultural biotechnology and obtaining commitments from Kenya that it will not foreclose export opportunities to U.S. products because of agreements with other countries regarding SPS and GI regulations.[97] USTR states that it expects a U.S-Kenya trade agreement to serve as a model for future trade agreements with other countries on the continent.[98]

[93] 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.

[94] In 2020, Kenya is planning its first production of Bt cotton for commercialization. For more information, see FAS, "Kenya: Agricultural Biotechnology Annual," GAIN Report KE2019-0008, February 14, 2020. Kenya hosts three international agricultural research centers: the International Livestock Research Institute, the World Agroforestry Center, and the International Centre of Insect Physiology and Ecology.

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

[96] 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.

[97] USTR, *United States-Kenya Negotiations: Summary of Specific Negotiating Objectives*, May 2020.

[98] USTR, "President Trump Announces Intent to Negotiate Trade Agreement with Kenya," press release, February 6, 2020, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/february/president-trump-announces-intent-negotiate-trade-agreement-kenya.

Kenya views the agreement as an instrument for economic development that also offers the opportunity to secure permanent preferential access for Kenyan exports to the U.S. market.[99] In 2019, nearly 80% of U.S. imports from Kenya entered duty-free under either AGOA or the Generalized System of Preferences (GSP, authorized in Title V of the Trade Act of 1974 [19 U.S.C. §§2461-2467]).[100] The current authorization of the GSP,[101] which offers duty-free import benefits to eligible developing countries, expired December 31, 2020. The AGOA is set to expire in 2025.[102]

Status: The U.S.-Kenya trade talks started virtually July 8-17, 2020,[103] with delays due to the COVID-19 pandemic. Some Members of Congress have expressed their support for a free trade agreement with Kenya.[104] A Member of Congress has expressed concerns that some industry representatives may be seeking to reverse Kenya's existing strict limits on plastics, which could affect negotiations.[105] Given the relatively slow pace of negotiations, it may be unlikely that an agreement will be concluded before the expiration of TPA on July 1, 2021.

India[106]

In 2018, President Trump stated that India expressed interest in negotiating a free trade agreement.[107] The United States and India view one another as important strategic partners to advance common interests regionally and globally. India is the world's second-most populous country after China, with one of the world's fastest-growing economies since 2000. 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 growing among Indian consumers. While India is among the world's largest producers and consumers of a range of crop and livestock commodities, USDA projects that 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.[108] Media reports indicate that India may provide opportunities to exports of U.S. poultry, pork, and livestock feed, although

[99] Republic of Kenya, Ministry of Industrialization, Trade, and Enterprise Development, "Proposed Kenya-United States of America Free Trade Area Agreement: Negotiation Principles, Objectives, and Scope," June 6, 2020.

[100] See CRS In Focus IF11526, *U.S.-Kenya FTA Negotiations*, by Brock R. Williams and Lauren Ploch Blanchard.

[101] See CRS Infographic IG10018, *Generalized System of Preferences (GSP): 2019 Overview*, by Liana Wong.

[102] See CRS In Focus IF11526, *U.S.-Kenya FTA Negotiations*, by Brock R. Williams and Lauren Ploch Blanchard.

[103] USTR, "Joint Statement Between the United States and Kenya on the Launch of Negotiations Towards a Free Trade Agreement," July 8, 2020, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/july/joint-statement-between-united-states-and-kenya-launch-negotiations-towards-free-trade-agreement.

[104] 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.

[105] Isabelle Icso, "Blumenauer: Kenya Plastics Concern Could Be 'Flashpoint' for Trade Panel," *Inside U.S. Trade*, September 1, 2020; Hiroko Tabuchi, Michael Corkery and Carlos Mureithi, "Big Oil Is in Trouble. Its Plan: Flood Africa with Plastic," *New York Times*, August 30, 2020; and Rob Picheta and Sarah Dean, "Over 180 Countries—Not Including the US—Agree to Restrict Global Plastic Waste Trade," CNN, May 11, 2019, https://www.cnn.com/2019/05/11/world/basel-convention-plastic-waste-trade-intl/index.html.

[106] Prepared by Anita Regmi, Specialist in Agricultural Policy, CRS.

[107] For more information, see CRS In Focus IF10384, *U.S.-India Trade Relations*, by Shayerah Ilias Akhtar and K. Alan Kronstadt.

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

SPS regulations currently restrict U.S. pork entry while allowing pork imports from other countries.[109]

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[110] but did not levy them until June 16, 2019, after the United States terminated preferential treatment for India under GSP.[111] India's retaliatory tariffs range from 10% to 25% on imports of U.S. chickpeas, shelled almonds, walnuts, apples, and lentils.[112] Both countries' tariffs and India's GSP status are likely issues in the ongoing negotiations.

U.S. agricultural exports to India have increased since 2015, reaching $1.6 billion in 2019 (**Figure 6**). Tree nuts (mainly almonds), cotton, and fresh fruit are key U.S. exports to India. While U.S. exports of many high-value products are growing rapidly, U.S. exports of some products affected by the retaliatory tariffs have declined. For example, U.S. dairy exports to India grew by almost 300%, from $16 million in 2015 to $60 million in 2019. In contrast, U.S. apple exports to India, which faced higher tariffs, declined 64% to $56 million in 2019.[113]

In 2019, the United States imported agricultural products valued at $2.6 billion from India.[114] Spices, rice, essential oils, tea, processed fruit and vegetables, and other vegetable oils are the leading products.

India's tariffs and nontariff barriers have prevented greater market penetration of U.S. agricultural products. India maintains high tariffs on many products—for example, 60% on flowers, 100% on raisins, and 150% on alcoholic beverages.[115] Some Members of Congress have requested that USTR seek to reduce the current 36% tariffs faced by U.S. pecans.[116] Since 2017, a system of annual import quotas on pulses has restricted U.S. exports of pulses to India.[117] 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.

[109] Pratik Parija and Megan Durisin, "More Meat-Loving Indians Mean Chicken-Feed Imports Are Surging," *Bloomberg News*, July 29, 2019; and Jackie Linden, "Indian Pork Imports Increased by Double Digits," Watt Poultry, July 27, 2016, https://www.wattagnet.com/articles/27700-indian-pork-imports-increased-by-double-digits.

[110] 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.

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

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

[113] U.S. Census Trade Data, accessed via FAS, November 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

[114] Ibid.

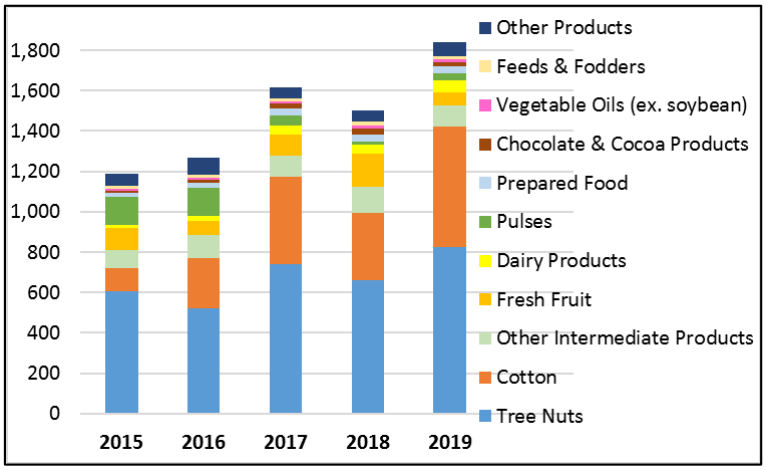
[115] USTR, *2019 National Trade Estimate Report on Foreign Trade Barriers*, 2019.

[116] Group of 33 Representatives, letter to USTR Robert Lighthizer, October 15, 2020, https://austinscott.house.gov/media-center/press-releases/rep-austin-scott-leads-bipartisan-push-increase-international-market.

[117] 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.

Figure 6. U.S. Exports to India

In Millions of U.S. Dollars



Source: U.S. Census Bureau trade data, accessed via FAS, BICO-HS-10 grouping, February 2019, https://apps.fas.usda.gov/gats/default.aspx.
Note: Based on USDA's definition of *agriculture*.

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. USTR asserts that India's customs regulations are not transparent or predictable.[118] It has also objected to India's approval process for genetically engineered agricultural products.[119] More generally, the United States has criticized India's extensive subsidies for domestic production of foodstuffs and cotton.

Status: The United States and India are negotiating on a wide range of trade concerns, including greater access to the Indian market for U.S. agricultural products, potentially in exchange for U.S. restoration of India's eligibility under GSP. The current status of the negotiations has not been disclosed. In September 2020 the Indian government enacted three laws intended, in part, to help integrate Indian agriculture into the global market.[120]

Other Negotiations[121]

Brazil and Ecuador

In March 2020, President Trump and Brazilian President Jair Bolsonaro announced plans to deepen the bilateral trade relationship and potentially move toward free trade agreement negotiations in the years to come.[122] Those discussions led to a "mini trade deal," signed in October 2020, to facilitate trade, improve regulatory cooperation, and strengthen anticorruption efforts—actions likely to facilitate trade, including for agricultural products. Likewise, on

[118] USTR, *2019 National Trade Estimate Report on Foreign Trade Barriers*, March 29, 2019.

[119] FAS, "India: Agricultural Biotechnology Annual," IN2019-0109, February 4, 2020.

[120] FAS, "Government of India Passes Agriculture Market Reforms as Opposition and Regional Parties Protest," GAIN Report Number: IN2020-0136, October 1, 2020.

[121] Prepared by Anita Regmi, Specialist in Agricultural Policy, CRS.

[122] For more, see CRS Report R46619, *U.S.-Brazil Economic Relations*, coordinated by M. Angeles Villarreal; and CRS In Focus IF10447, *U.S.-Brazil Trade Relations*, by M. Angeles Villarreal and Andres B. Schwarzenberg.

December 8, 2020, the Trump Administration signed a partial trade agreement with Ecuador that did not require congressional approval covering trade facilitation, good regulatory practices, and anticorruption measures—actions also expected to facilitate agricultural trade.[123] Effective November 1, 2020, the United States removed tariffs on roses from Ecuador.[124]

Status: A bill (H.R. 4263) introduced in the 116th Congress would have prohibited the United States from negotiating a trade agreement with Brazil because of Brazil's inability to prevent deforestation of the Amazon rainforest. Some Members of the House Ways and Means Committee have also raised concerns that U.S. negotiations with Ecuador did not include congressional consultations.[125] The next Administration will face the option to pursue further trade agreements with these countries.

Taiwan

Following enactment of the Taiwan Allies International Protection and Enhancement Initiative Act (P.L. 116-135) in 2020, 50 Senators asked USTR to initiate negotiations toward a comprehensive trade agreement with Taiwan, currently the seventh-largest export market for U.S. agricultural products.[126] Any comprehensive trade agreement with Taiwan would need to address issues related to the unofficial status of relations between Taiwan and the United States. The Taiwan government has agreed to remove restrictions limiting U.S. beef imports to cattle of less than 30 months of age[127] and restrictions on the use of ractopamine (a beta-agonist that promotes leanness in meat) as a feed additive in imported pork.[128] Taiwan is in the process of establishing a Maximum Residue Limit for ractopamine in pig meat in an effort to resolve a long-standing obstacle to trade talks.[129] Negotiation of a comprehensive trade agreement with Taiwan, as opposed to an agreement dealing exclusively with tariffs, is likely to depend on congressional reauthorization of TPA.

WTO and U.S. Agriculture[130]

The WTO is an international organization that administers the rules and agreements negotiated among its 164 members to eliminate trade barriers and govern trade.[131] It also serves as an

[123] USTR, "Protocol to the Trade and Investment Council Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to Trade Rules and Transparency," December 8, 2020, https://ustr.gov/sites/default/files/files/Press/Releases/US-Ecuador_Protocol.pdf.

[124] Paul Smits, "US Eliminates Import Tariffs on Ecuadorean Roses," HortiPoint, November 3, 2020, https://www.hortipoint.nl/floribusiness/us-eliminates-import-tariffs-on-ecuadorean-roses/.

[125] Twenty-two Members of the House Ways and Means Committee, letter to USTR Robert Lighthizer, December 9, 2020, https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Ecuador%20Letter%20to%20USTR%20120920%20Final%20Signed.pdf.

[126] Group of 50 Senators, letter to USTR Robert Lighthizer, October 1, 2020, https://www.inhofe.senate.gov/newsroom/press-releases/50-senators-led-by-inhofe-menendez-urge-lighthizer-to-begin-talks-for-a-trade-agreement-with-taiwan.

[127] FAS, "Taiwan to Ease Restrictions on US Beef Imports," GAIN Report Number: TW2020-0042, September 16, 2020.

[128] FAS, "Taiwan Publishes Draft MRL for Ractopamine in Pork," GAIN Report Number: TW2020-0040, September 15, 2020.

[129] CRS In Focus IF10256, *U.S.-Taiwan Trade Relations*, by Karen M. Sutter.

[130] Prepared by Anita Regmi, Specialist in Agricultural Policy, CRS.

[131] CRS Report R46456, *Reforming the WTO Agreement on Agriculture*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

important forum for resolving trade disputes through its committee structures and its Dispute Settlement Body, which approves reports on a member's compliance with its WTO commitments, issued by panels of legal experts and a separate Appellate Body.[132] The United States was a major force behind the establishment of the WTO in 1995.

Under the WTO's Agreement on Agriculture (AoA), which took effect 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. 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 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 so long as these measures complied with certain requirements.[133] However, such subsidies would be open to challenge after the Peace Clause expired around January 2004.[134]

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 AoA 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.[135]

Status: The WTO's 12th Ministerial Conference, postponed due to the global outbreak of COVID-19, is planned to convene in 2021[136] and to focus on "elements and processes" for continued liberalization of agricultural trade under the AoA. Among issues likely to be raised are limits on trade-distorting domestic support, market access, government-owned stocks of agricultural products, use of special safeguards to restrict imports, export competition, export restrictions, and trade in cotton.[137]

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[132] CRS In Focus IF10436, *Dispute Settlement in the World Trade Organization: Key Legal Concepts*, by Brandon J. Murrill.

[133] 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.

[134] 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.

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

[136] See CRS Report R46456, *Reforming the WTO Agreement on Agriculture*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

[137] Ibid.; and Hannah Monicken, "In WTO Ag Talks, U.S. Pushes for Transparency Deal by Next Ministerial," *Inside U.S. Trade*, November 12, 2020.

The United States has urged member countries to improve transparency in their implementation of AoA commitments.[138] A group of 72 countries has emphasized that the conference should seek progress toward the goals of the 2030 Agenda for Sustainable Development, in particular the goals on "zero hunger" (Sustainable Development Goal 2) and "partnerships for the goals" (Sustainable Development Goal 17).[139] In December 2020, at the request of the United States, the WTO shared with its members a draft ministerial decision concerning the use of trade rules to advance sustainability goals for consideration.[140] The 117th Congress may consider providing input to the executive branch about how to shape the U.S. agenda leading up to the WTO ministerial conference.

2018 Farm Bill, Ad Hoc Payments, and WTO Compliance[141]

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.[142] 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 minimally or non-trade-distorting (in accordance with 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 [PS] de minimis), they may be exempted.[143] Finally, if aggregate AMS outlays are small relative to the value of total agricultural production (non-product-specific [NPS] 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 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. From 1995 through 2017, U.S. outlays on potentially market-distorting farm programs (i.e., AMS, which equals amber box plus de minimis exemptions) averaged $14.3 billion per year. However, U.S. AMS spending is estimated at much higher levels in 2018-2020 based on CRS's compilation of USDA program data (see **Figure 7**).

[138] Ibid.

[139] Global Forum for Food and Agriculture, "Global Forum for Food and Agriculture Communiqué 2020: Food for All! Trade for Secure, Diverse and Sustainable Nutrition," 12th Berlin Agriculture Ministers' Conference, January 18, 2020, https://www.gffa-berlin.de/wp-content/uploads/2020/02/GFFA-Communique-2020-EN.pdf.

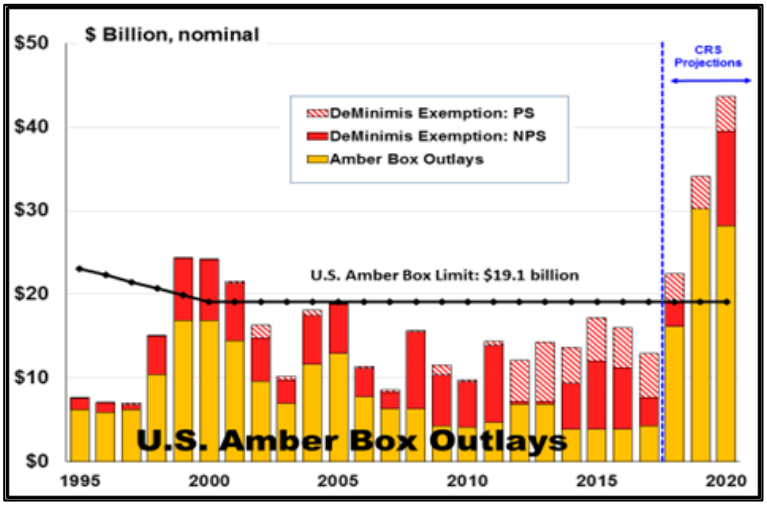
[140] WTO, "Advancing Sustainability Goals Through Trade Rules to Level the Playing Field: Draft Ministerial Decision," WT/GC/W/814, December 17, 2020, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W814.pdf&Open=True.

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

[142] See CRS Report R45305, *Agriculture in the WTO: Rules and Limits on U.S. Domestic Support*, by Randy Schnepf.

[143] For details regarding product- versus non-product-specific notification determinations, see CRS Report R46577, *U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020*, by Randy Schnepf.

Figure 7. U.S. Compliance with WTO Spending Limit, Historical and Projected



Source: Data for 1995-2017 are from official USDA notifications to the WTO. Data for 2018-2020 are compiled by CRS from USDA projections supplemented by other sources cited in the text and based on historical notification and exemption trends.

Notes: PS = Product Specific; NPS = Non-Product-Specific. The United States has yet to notify domestic support outlays beyond 2017. Thus, it is unknown how USDA will categorize new spending programs such as the Market Facilitation Program. For a projected breakout, see CRS Report R46577, *U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020*, by Randy Schnepf.

Large Ad Hoc Spending Since 2018

In addition to traditional farm support programs, U.S. agriculture has benefited from five major ad hoc payment programs since 2018 that include both PS and NPS payment components. These programs—valued at up to $65 billion—were initiated in response to international trade retaliation in 2018 and 2019 and to economic disruption caused by the COVID-19 pandemic in 2020. USDA has not yet notified to the WTO its domestic support spending for 2018-2020, nor has it indicated how it will classify outlays under these new ad hoc spending programs. These classifications can be critical to determining compliance with the AoA's spending limit. Past practice can serve as a guide for the likely notification.[144] The specific manner of determining how payments are made to individual producers is likely to determine their WTO status. Because of their substantial values and potential impact on domestic agricultural production and trade, each of these ad hoc programs is briefly summarized here.

Agricultural Aid in Response to Trade Retaliation

During 2018 and 2019, the Secretary of Agriculture used his authority under the Commodity Credit Corporation (CCC) Charter Act[145] 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 Trump Administration's effort to provide short-term assistance to farmers for the

[144] These potential notifications discussed here are CRS projections based on analysis of the design of each ad hoc program and how it corresponds with previous U.S. notifications. USDA may use a different line of reasoning and notify payments from these programs under different WTO classifications.

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

temporary loss of important international markets.[146] 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.[147] 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.[148] 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 FPDP is likely to be treated as domestic food assistance and classified as a green box program, while the ATP program is not a domestic farm program. However, the largest part of the aid—the 2018 and 2019 MFP—is relevant with respect to U.S. compliance with domestic support outlays.

- The **2018 MFP** made $8.6 billion in PS payments based on each farm's harvested production during 2018 of eligible crops (corn, cotton, sorghum, soybeans, wheat, fresh sweet cherries, and shelled almonds) times a fixed commodity-specific payment rate per unit. Dairy payments were based on historical production. Hog payments used mid-2018 inventory data.[149]
- The **2019 MFP** outlays of $14.5 billion included both PS and NPS payments. An estimated $12.8 billion in NPS payments was coupled to a producer having planted at least one eligible commodity within the county, but they were independent of which commodity or commodities were planted. To achieve this, commodity-specific payment rates were weighted by production for any of 29 eligible field crops[150] produced within a county in 2019. A similar weighted county payment rate was calculated for six tree nuts (almonds, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts) harvested in 2019. Second, $1.7 billion in PS payments was made on production of cranberries, ginseng, fresh sweet cherries, and table grapes harvested in 2019; hog inventories from mid-2019; and historical milk production—times a fixed commodity-specific per-unit payment rate.[151]

Agricultural Aid in Response to COVID-19

In March and April of 2020, Congress passed, and the President signed into law, four supplemental appropriations acts in response to the COVID-19 pandemic.[152] One of these—the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136)—provided $9.5 billion to USDA for immediate agricultural relief assistance and $14 billion of funding for the

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

[147] CRS Report R45310, *Farm Policy: USDA's 2018 Trade Aid Package*, by Randy Schnepf et al.

[148] CRS Report R45865, *Farm Policy: USDA's 2019 Trade Aid Package*, by Randy Schnepf.

[149] Payments are as of September 18, 2020. CRS Report R45310, *Farm Policy: USDA's 2018 Trade Aid Package*, by Randy Schnepf et al.

[150] Alfalfa hay, barley, canola, corn, crambe, dried beans, dry peas, extra-long-staple cotton, flaxseed, lentils, long- and medium-grain rice, millet, mustard seed, oats, peanuts, rapeseed, rye, safflower, sesame seed, small and large chickpeas, sorghum, soybeans, sunflower seed, temperate japonica rice, triticale, upland cotton, and wheat.

[151] CRS Report R45865, *Farm Policy: USDA's 2019 Trade Aid Package*, by Randy Schnepf.

[152] CRS In Focus IF11491, *Supplemental Appropriations for Agriculture and Related Agencies Due to COVID-19*, by Jim Monke.

CCC to be available for use by late summer.[153] Using a combination of CARES Act funding and general authority under the CCC Charter Act, USDA initiated two rounds of financial relief under the Coronavirus Food Assistance Program (CFAP-1 and CFAP-2) to farmers, ranchers, and consumers in response to the COVID-19 national emergency.

In addition, the CARES Act created both the Small Business Administration's Paycheck Protection Program (PPP) and the Emergency Economic Injury Disaster Loan (EIDL) grants to provide short-term economic relief to certain small businesses and nonprofits. Data for EIDL grants to agricultural operations have not been analyzed and are not included in this analysis.[154]

- The **2020 CFAP-1** (announced on April 17, 2020) consisted of two distinct initiatives: (1) a $16 billion direct payment program for agricultural producers that have been impacted by the decline in commodity prices and the disruption in food supply chains related to COVID-19 and (2) the $3 billion FPDP.[155] Although funded at up to $16 billion, CFAP-1 is expected to make payments of $11.0 billion,[156] including $4.0 billion in PS payments on 138 different commodities based on on-farm inventories from the 2019 harvest (assigned to crop year 2019) and $7.0 billion in PS payments to unsold inventories in 2020 of livestock (cattle, hogs, lamb, and sheep) and dairy (assigned to crop year 2020).[157] The FPDP is likely green box.
- The **2020 CFAP-2** (announced on September 18, 2020) is expected to make up to $14.0 billion in PS payments to agricultural producers who continued to face market disruptions and associated costs related to COVID-19.[158] CFAP-2 includes an expanded list (of at least 150 commodities) of 2020 crop and livestock products (assigned to crop year 2020).
- The **2020 PPP** is expected to forgive loans to agricultural interests valued at $7.3 billion, including $3.6 billion to PS production activities and $3.7 billion to NPS activities (assigned to crop year 2020).[159]

[153] The delay was due to a technical budget restriction. See footnote 152.

[154] CRS Insight IN11357, *COVID-19-Related Loan Assistance for Agricultural Enterprises*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry.

[155] CRS Report R46395, *USDA's Coronavirus Food Assistance Program: Round One (CFAP-1)*, by Randy Schnepf.

[156] As of December 27, 2020, $10.5 billion had been disbursed. Sign-up for CFAP-1 closed on September 11, 2020. CRS projects final payments to be $11 billion.

[157] See CRS Report R46395, *USDA's Coronavirus Food Assistance Program: Round One (CFAP-1)*, by Randy Schnepf.

[158] As of December 27, 2020, $12.3 billion had been disbursed. USDA projects outlays of $13.3 billion after adjusting for expected participation and payment limits. USDA, "Coronavirus Food Assistance Program 2, Cost-Benefit Analysis," September 18, 2020; and USDA, "Coronavirus Food Assistance Program, Final Rule," 85 *Federal Register* 59380, September 22, 2020.

[159] The CARES Act created both the Small Business Administration's PPP and the EIDL grants to provide short-term economic relief to certain small businesses and nonprofits. Data for EIDL grants to agricultural operations have not been analyzed and are not included in this analysis. See CRS Insight IN11357, *COVID-19-Related Loan Assistance for Agricultural Enterprises*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry. USDA's ERS farm income forecast for 2020 assumes that $5.9 billion in PPP loans (79.5%) is forgiven and thus counted as farm income in 2020 out of a total of $7.3 billion in agriculture-related PPP loans. The 79.5% share is applied to both the PS($3.6 billion) and NPS ($3.7 billion) components of PPP loans to obtain estimates of $2.9 billion each of PS and NPS nonexempt outlays.

Status: USDA estimates that it has spent $8.6 billion under the 2018 MFP and $14.5 billion under the 2019 MFP.[160] Outlays under the CFAP-1 and CFAP-2 are not finalized but are estimated at $11 billion and $13.3 billion, respectively.[161] Recipients of PPP loans must meet certain criteria to qualify for "loan forgiveness." USDA anticipates that $5.9 billion out of $7.3 billion of PPP loans to agricultural interests will be forgiven.[162] The MFP, CFAP, and PPP outlays are in addition to traditional farm program spending. USDA has not notified the WTO of its domestic support spending for 2018, 2019, or 2020. Neither has USDA indicated how it will classify outlays under the new ad hoc spending programs. If USDA follows historical precedent in how it has categorized and notified U.S. domestic support outlays in recent years, then CRS analysis suggests that the United States will be in compliance with WTO spending limits during 2018 but could exceed the annual U.S. spending limit of $19.1 billion in both 2019 and 2020 (see **Figure 7**.)[163]

Some WTO member countries have already questioned whether these various aid programs violate U.S. commitments to limit spending on trade-distorting agricultural subsidies under the WTO. Perhaps equally important 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 highly visible and potentially vulnerable to challenge under WTO rules.[164]

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 2021, and possibly beyond? If MFP or CFAP payments are provided in the future, should USDA revise its payment formulation to minimize its impact on producer behavior and market conditions?

Foreign Challenges to U.S. Farm Support[165]

The recent 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.[166] 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

[160] USDA, 2018 MFP payment data, accessed September 18, 2020; and 2019 MFP payment data, accessed November 23, 2020, https://www.farmers.gov/manage/mfp.

[161] As of December 13, 2020, CFAP-1 outlays totaled $10.5 billion, and CFAP-2 totaled $12.5 billion. USDA, CFAP-1 and CFAP-2 payment data, https://www.farmers.gov/cfap.

[162] ERS, "2020 Farm Sector Income Forecast," December 2, 2020.

[163] The projections presented in this report represent a single potential WTO compliance scenario. USDA's eventual notification of spending under both traditional and ad hoc programs for crop years 2018-2020 may vary from these CRS projections in terms of timing, size, WTO categorization (i.e., AMS, blue box, or green box), and specificity (PS or NPS) of final payments. For more information, see CRS Report R46577, *U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020*, by Randy Schnepf.

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

[165] Prepared by Anita Regmi, Specialist in Agricultural Policy, CRS.

[166] CRS Report R46263, *Foreign Trade Remedy Investigations of U.S. Agricultural Products*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

products found to be sold below cost and countervailing duties (CVD) on imports found to be unfairly subsidized or otherwise traded unfairly.

Following AoA Article 13's protection expiration in January 2004, countries with subsidies to their agricultural sectors became 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 a Peruvian investigation into corn.) As discussed, large trade aid payments to the U.S. farm sector in 2018-2020 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 USMCA. 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.[167] However, the WTO Appellate Body, which hears appeals of cases from WTO dispute settlement panels, currently lacks judges to issue rulings, because the United States has blocked the appointment of judges to replace those whose terms have expired.[168] This means that the Appellate Body is unable to adjudicate disputes that are appealed.

Status: Peru currently imposes CVDs 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. 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.

Over the years, trading partners have expanded the scope of U.S. programs they considered to be "actionable"—that is, potentially subject to punitive duties.[169] In recent years, a number of trading partners have challenged imports of U.S. agricultural products, even initiating repeated or multiple investigations into the same products. Since 2004, trading partners have expanded the scope of U.S. subsidies they consider subject to punitive duties. In some cases, programs other than those that the United States reports to the WTO have been the subject of foreign government investigations. These have included subsidies for ethanol, export credit guarantees, farm ownership and operating loans, and export promotion programs. Some investigations have included subsidies to raw inputs (for example, corn) in their consideration of subsidies to the investigated product (e.g., ethanol or poultry meat). 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.

[167] For more on these agreements, see WTO, "Anti-Dumping, Subsidies, Safeguards: Contingencies, etc.," accessed December 2020, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm.

[168] The last panel member completed term November 30, 2020, leaving the seven-member body with no jurists. See Inside U.S. Trade, "WTO Appellate Body to Lose Its Final Member on Monday," November 25, 2020.

[169] See CRS Report R46263, *Foreign Trade Remedy Investigations of U.S. Agricultural Products*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

U.S. Challenges to Farm Support Spending of WTO Members[170]

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.[171] As of December 2019, panel findings that are appealed cannot be reviewed given the lack of an Appellate Body, which could leave ongoing disputes unresolved. The following sections discuss ongoing cases involving U.S. challenges of China's and India's agricultural policies.

China's Domestic Agricultural Support

In September 2016, USTR filed a dispute settlement case (DS511) at the WTO over China's domestic agricultural support policies, alleging that they were inconsistent with WTO rules and commitments.[172] 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 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.[173] 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 recommended 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.

Status: On June 18, 2020, China notified the WTO that it had implemented changes to its rice and wheat policies to comply with the WTO recommendations. China adopted an approach that the dispute settlement body had indicated as potentially legal under the WTO's AoA. The United States announced that it does not consider the new policy to comply with the WTO ruling. On July 16, 2020, USTR submitted a notification to the WTO requesting authorization to take countermeasures against imports from China.[174] Upon China's request, the WTO has established a panel to assess China's compliance.[175]

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[170] Prepared by Anita Regmi, Specialist in Agricultural Policy, CRS.

[171] 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.

[172] 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.

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

[174] CRS Insight IN11469, *U.S. Challenges to China's Farm Policies*, by Anita Regmi.

[175] WTO, "Panel Established to Review China's Compliance with Farm Subsidy Ruling," September 28, 2020, https://www.wto.org/english/news_e/news20_e/dsb_28sep20_e.htm.

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.[176]

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.[177]

Status: The United States and China informed the WTO on November 17, 2020, that they had agreed that China would comply with the WTO ruling by December 31, 2020.[178] China's compliance has not yet been confirmed.

India's Domestic Agricultural Support

In May 2018, the United States asserted at the WTO Committee on Agriculture (COA) meeting 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.[179] 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 raised concerns to the COA that India's domestic support for cotton exceeded the allowable level under its AoA commitments.[180] 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.[181]

In February 2019, the United States further raised concerns at the COA that India 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.[182]

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

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

[178] See CRS Insight IN11469, *U.S. Challenges to China's Farm Policies*, by Anita Regmi.

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

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

[181] 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;" and WTO, "DS581: India—Measures Concerning Sugar and Sugarcane."

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

Status: USTR may continue challenging India's domestic support for agriculture at upcoming COA meetings and, if necessary, could pursue these concerns through WTO's dispute settlement mechanism. 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.

Nontariff Trade Barriers[183]

A nation's regulations, standards, and institutional capacity and processes involving trade, other than tariffs, can often become barriers to trade. These are discussed below.

Sanitary and Phytosanitary (SPS) Measures

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. WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement)[184] provides guidelines for global trade on these issues and addresses the application of food safety, animal health, and plant protection rules as they relate to international agricultural trade. The SPS Agreement explicitly recognizes the rights of governments to adopt regulations and establish the levels of protection from risk they deem appropriate, provided such measures do not unnecessarily restrict trade. Countries may agree to standards that go beyond these provisions in free trade agreements, such as in the USMCA.

Technical Barriers to Trade (TBTs)

TBTs cover both food and non-food traded products and include measures related to health and quality standards, testing, registration, and certification requirements, as well as packaging and labeling regulations. WTO's TBT Agreement provides guidance on TBT measures adopted by member countries.[185] Similar to SPS measures, TBT provisions agreed to under free trade agreements may go beyond the WTO guidelines.

Geographical Indications (GIs)

GIs are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) obligates WTO members to recognize and protect GIs as intellectual property.[186] The United States is a signatory of TRIPS and has accordingly committed to abide by

[183] For additional information on SPS measures and on geographical indications, see CRS Report R46242, *Major Agricultural Trade Issues in 2020*, coordinated by Anita Regmi. For additional information on technical barriers to trade, please consult CRS analyst Joel Greene regarding meat and livestock and CRS specialist Renée Johnson on other products. On customs and trade facilitation, please consult CRS specialist Vivian C. Jones and analyst Liana Wong.

[184] WTO, "Understanding the WTO Agreement on Sanitary and Phytosanitary Measures," accessed December 2020, https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm.

[185] WTO, "Technical Barriers to Trade," accessed December 2020, https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm.

[186] WTO, "Trade-Related Aspects of Intellectual Property Rights," accessed December 2020, https://www.wto.org/english/tratop_e/trips_e/trips_e.htm.

its provisions. U.S. trade concerns related to GIs center on trade of certain products that are considered to have common name labels in the United States, but the same labels are considered to be protected as GIs in the EU. For example, in the United States, feta is considered the generic name for a type of cheese; feta is protected as a GI in Europe. As such, cheese produced in 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.

Customs and Trade Facilitation

Customs and trade facilitation includes bureaucratic measures such as regulations, procedures for customs clearance, automation (or lack of automation) of information flow from port of departure to port of entry, expedited processes to minimize loss of products, and levies or taxes for customs processing and other measures that can affect the delivery of traded goods. In developing countries, additional constraints such as lack of warehousing, transportation, refrigerated facilities, and others can hamper trade in food products. WTO's Trade Facilitation Agreement provides guidance for addressing these bureaucratic measures and "red tape" that can pose a burden for traders moving goods across borders.[187] WTO provisions include assistance to help ensure that developing and least-developed countries have the necessary capacity to engage in trade. Countries can also engage in bilateral arrangements where they mutually recognize each other's systems as being equivalent and trade can be facilitated with reduced time for customs clearance.

Status: 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. The USMCA also includes provisions on trade facilitation that are likely to facilitate the movement of goods across borders within North America. SPS and TBT issues have arisen in ongoing U.S. negotiations with the EU, UK, and other countries. Kenya has also made trade facilitation a key goal in its ongoing negotiations with the United States.[188]

Regarding GIs, U.S. agricultural interests do not have a common position on GIs. Groups representing the dairy, meat, and wine industries, such as the U.S.-based Consortium for Common Food Names, support efforts to limit the use of GIs.[189] On the other hand, the Wine Origins Alliance, which includes various U.S. member organizations,[190] and the American Origin Products Association (AOPA)—which represents certain U.S. potato, maple syrup, ginseng, coffee, and chile pepper producers and some U.S. winemakers[191]—favors greater use of GIs for products originating in the United States. Congress continues to monitor implementation of GI provisions in U.S. trade agreements. Some Members of Congress have also suggested that USTR and USDA use the GI provisions in USMCA as a model for other trade agreements.[192]

In addition to these engagements under bilateral or multilateral discussions, the United States routinely deals with nontariff-related issues with its trading partners pertaining to equivalency

[187] WTO, "Trade Facilitation," accessed December 2020, https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

[188] Republic of Kenya, Ministry of Industrialization, Trade, and Enterprise Development, "Proposed Kenya-United States of America Free Trade Area Agreement: Negotiation Principles, Objectives, and Scope," June 6, 2020.

[189] For more background, see http://www.commonfoodnames.com/.

[190] For more background, see https://www.origins.wine/.

[191] AOPA recently reincorporated and reorganized, and a new website is under production.

[192] Group of 111 Representatives, letter to USTR Robert Lighthizer and USDA Secretary Sonny Perdue, "Bipartisan Letter to Protect U.S. Food & Wine Exports Using Common Terms," November 2, 2020, https://www.nmpf.org/wp-content/uploads/2020/11/Letter-House-Common-Food-and-Wine-Terms-Letter-USTR-USDA-11.02.2020.pdf.

arrangements or resulting from a pest or disease outbreak in the United States or in the partner country. For SPS issues concerning animal health, see "Animal Health and Trade."

As Congress continues to monitor the impact of COVID-19, it may consider the extent to which SPS and TBT measures associated with the actions of trading partners to address the spread of COVID-19 may affect trade. For example, U.S. exporters have indicated that China has undertaken COVID-19-related product testing for meat, seafood, fresh fruit, and bulk grains.[193] The United States and other countries have raised concerns about potential global trade effects of COVID-19 emergency measures, calling on WTO members "to ensure that any emergency measures in agriculture in response to COVID-19 are targeted, proportionate, transparent, temporary and consistent with WTO rules and to exercise restraint when considering introducing new measures; and for all members to be transparent about any COVID-19-related agriculture measures and to notify the WTO as soon as possible when adopting such measures."[194] Additionally, SPS may be an item covered by the WTO's 12th Ministerial Conference in 2021, as many WTO members have requested its review, stating that the COVID-19 pandemic has underlined the importance of coordinated responses to global crises and of leveraging available regulatory tools in meeting these challenges in a science-based manner.[195]

Barriers to Trade in Agricultural Biotechnology Products[196]

Agricultural biotechnology refers to a range of tools—including genetic engineering[197] and traditional breeding—to genetically modify living plants, animals, microbes, and other organisms for agricultural uses. The term commonly refers to recombinant DNA techniques that introduce desired characteristics into target organisms, predominantly pest and herbicide resistance in crops. It also encompasses a range of new genome editing technologies that manipulate genetic material at precise locations in the genome (e.g., CRISPR-Cas9). Most genetically engineered (GE) agricultural products are crops: In the United States, the two GE animals approved for human consumption are the AquAdvantage salmon and the GalSafe pig.[198]

The United States is the leading cultivator of GE crops, accounting for nearly 40% of total acres planted worldwide.[199] U.S. soybean, corn, cotton, and sugar beet producers have rapidly adopted GE varieties since commercialization began in the mid-1990s. Outside of the United States, adoption of GE crops is mixed.[200] Argentina and Brazil, for example, are major cultivators and

[193] Ibid. See also CRS Insight IN11453, *Food Safety and COVID-19*, by Renée Johnson.

[194] WTO, "WTO Members Resume Agriculture Negotiations Following COVID-19 Pause," September 25, 2020; and WTO, "WTO Members Push for Increased Transparency on COVID-19 Measures in Farm Trade," July 28, 2020. For other background, see CRS Insight IN11453, *Food Safety and COVID-19*, by Renée Johnson.

[195] WTO, "Members Discuss Possible SPS Declaration for WTO's 12th Ministerial Conference," accessed December 2020, https://www.wto.org/english/news_e/news20_e/sps_26jun20_e.htm.

[196] Prepared by Genevieve Croft, Analyst in Agricultural Policy, CRS.

[197] USDA defines *genetic engineering* as "manipulation of an organism's genes by introducing, eliminating or rearranging specific genes using the methods of modern molecular biology, particularly those techniques referred to as recombinant DNA techniques," at https://www.usda.gov/topics/biotechnology/biotechnology-glossary.

[198] U.S. Food and Drug Administration, "FDA Approves First-of-its-Kind Intentional Genomic Alteration in Line of Domestic Pigs for Both Human Food, Potential Therapeutic Uses," press release, December 14, 2020.

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

[200] 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.

exporters of GE corn and soybeans. India is a major cultivator of GE cotton. Policies in China and the EU are more complicated.

Market access for agricultural biotechnology products is a major U.S. trade objective.[201] Goals include establishing a common framework for GE approvals and adoption, as well as labeling practices consistent with U.S. guidelines and harmonizing regulatory procedures concerning GE presence in agricultural products.[202] General U.S. policies toward agricultural biotechnology and trade were reiterated through publication of the June 2019 *Executive Order on Modernizing the Regulatory Framework for Agricultural Biotechnology Products*.[203]

USMCA was the first free trade agreement to include provisions addressing agricultural products of modern biotechnology, including those created with genome editing.[204] These provisions focus on improving transparency and coordination in approving and bringing such products to market.

Similarly, in 2016, China released a roadmap for commercialization of GE crops. Since that time, it has approved new GE traits in imported crops for food, feed, and processing use.[205] However, it has also amended regulations on safety assessment, import approval, and labeling of agricultural GE products without notifying these changes to the WTO or soliciting stakeholder comments. China made new commitments related to agricultural biotechnology in the U.S.-China "Phase One" trade agreement. Among these, China agreed to establish a predictable and risk-based regulatory regime with respect to its safety evaluations.[206] It also agreed to reduce the time between submission of an application to authorize agricultural biotechnology products for feed or further processing and a decision to approve or deny it.

In the EU, labeling requirements, strict traceability rules for imported food and commodities, and public pressure at local levels have made the cultivation, importation, and sale of GE crops and foods difficult. Moreover, while the European Commission has approved certain varieties of GE commodities for import and marketing, individual member states may maintain bans. The United States and the EU have taken different approaches to the regulation of genome editing in agricultural plants, which may impair U.S. exports of certain food and agricultural products. In May 2020, USDA's Animal and Plant Health Inspection Service (APHIS) published a final rule to revise its regulation of certain GE plants and other organisms.[207] The revised regulations largely exempt GE plants created through genome editing from many of the regulatory hurdles that other GE products must overcome for approval. In contrast, the European Court of Justice ruled in July 2018 that in principle, organisms deriving from genome editing and similar

[201] See USTR, *2020 National Trade Estimate Report on Foreign Trade Barriers*, March 2020.

[202] The United States seeks harmonization consistent with the Codex Alimentarius Commission guidelines, available at FAO, "Annex 3: Food Safety Assessment in Situations of Low-Level Presence of Recombinant-DNA Plant Material in Food," *Guideline for the Conduct of Food Safety Assessment of Food Derived from Recombinant-DNA Plants*, CAC/GL 45-2003.

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

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

[205] For additional information, see FAS, *China: Agricultural Biotechnology Annual*, GAIN Report CH 18085, February 22, 2019.

[206] 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.

[207] For additional information, see CRS In Focus IF11573, *USDA's SECURE Rule to Regulate Agricultural Biotechnology*.

processes are within the scope of the EU's existing regulations on genetically modified organisms.[208]

EU opposition to GE commodities has been a factor in similar opposition in less developed countries. Many African nations have largely followed the EU in restricting or banning the commercial cultivation of GE crops, confining cultivation mostly to field trials and greenhouses.

Trade negotiations concerning agricultural biotechnology may also involve GE labeling issues. In 2016, Congress enacted P.L. 114-216 to govern the mandatory labeling of bioengineered[209] foods and food ingredients. USDA's Agricultural Marketing Service established the National Bioengineered Food Disclosure Standard to regulate this disclosure to consumers.[210] Mandatory compliance begins on January 1, 2022. Among the requirements of the standard, importers are responsible for the compliance of imported bioengineered foods.[211] USDA notified this rule to the WTO, and USDA has stated that it does not expect the new regulation to disrupt foreign trade.[212]

Status: Recently negotiated trade agreements, including the USMCA and the U.S.-China "Phase One" agreement, raise questions about the extent to which the United States has succeeded in negotiating greater access to foreign markets for products of agricultural biotechnology. Some in Congress have called on the United States to enforce the agricultural biotechnology provisions of the USMCA, citing Mexico's lack of compliance.[213] U.S. farm groups have raised questions about whether China will comply with provisions of the U.S.-China "Phase One" agreement as it relates to agricultural biotechnology.[214] As the United States and the UK continue to negotiate the terms of a new FTA, Congress may monitor whether the UK retains the EU's restrictive approach to agricultural biotechnology or hews more closely to U.S. policy approaches.[215]

Competition from Seasonal Imports from Mexico[216]

The United States is a net importer of fruits and vegetables, with Mexico accounting for nearly one-half of the value of those imports. In 2019, while U.S. exports to Mexico totaled $1.4 billion in 2019, U.S. imports of fresh and processed fruits and vegetables amounted to $15.6 billion, resulting in a trade deficit of $14.1 billion (excludes nuts and bananas).[217] Several factors have

[208] For additional information, see European Court of Justice, "Organisms Obtained by Mutagenesis Are GMOs and Are, in Principle, Subject to the Obligations Laid Down by the GMO Directive," press release 111/18, July 25, 2018.

[209] This term is defined in legislation and is similar to *genetically engineered*.

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

[211] The labeling standard does not require refined 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.

[212] Agricultural Marketing Service, "BE Frequently Asked Questions—General," 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."

[213] See, for example, letter from Sen. Ron Wyden, Ranking Member of the Senate Committee on Finance, to President Trump, October 30, 2020. See also Inside U.S. Trade, "Grassley: Lighthizer Prepared to Take Enforcement Action on USMCA," *World Trade Online*, November 3, 2020.

[214] Letter from 192 farm groups to President Trump, June 16, 2020, available at https://www.profarmer.com/system/files/inline-files/ChinaLetterPhase1.pdf.

[215] FAS, "United Kingdom: Agricultural Biotechnology Annual," GAIN Report Number: UK2019-0013, April 9, 2020. This required annual report is no longer available on the USDA website.

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

[217] CRS from data in the U.S. International Trade Commission's (USITC's) Trade DataWeb database. Includes fresh and processed products as reflected in U.S. Harmonized Tariff Schedule (HTS) chapters 07, 08, and 20, excluding nut

contributed to this trade imbalance, including relatively open and free trade between the United States and Mexico, increased year-round demand for fruits and vegetables, and the availability of counter-seasonal supplies through imports, among other factors.[218] 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 technological innovations, which some claim has been supported by the Mexican government and should be subject to both AD duties and CVD on U.S. imports.[219] Trade concerns by U.S. growers have centered primarily on imported tomatoes, peppers, and berries.

Establishing new rules for seasonal and perishable products, such as fruits and vegetables, was among the initial U.S. objectives in negotiating USMCA.[220] A U.S. proposal would have established separate rules for perishable and seasonal products in AD and CVD proceedings, making it easier for a group of regional producers to initiate a case and to prove injury, thereby resulting in CVD or AD duties on the imported products responsible for the injury. Domestic support for seasonal produce protections was mixed, however. Lawmakers from Florida and Georgia called on USTR to insist on seasonal produce protections in USMCA,[221] and language that would have changed U.S. trade laws to provide seasonal produce protections was introduced in the 116th Congress (S. 16 and H.R. 101).[222] Others in Congress opposed such changes, contending that seasonal imports complement rather than compete with U.S. growing seasons, and the legislation was not approved in either house.[223] Most U.S. food and agricultural sectors, including some fruit and vegetable producer groups, opposed including seasonal produce protections as part of the renegotiation.[224]

As ratified, USMCA did not include changes to U.S. trade remedy laws to address seasonal produce trade. At a July 2019 congressional hearing, USTR indicated that it attempted to include such provisions but was unable to do so, citing opposition by Mexican negotiators.[225] In January 2020, USTR announced that it planned to investigate trade practices affecting Mexico's produce industry, hold field hearings in Florida and Georgia, and engage the help of U.S. International Trade Commission (USITC) and the Department of Commerce to monitor imports, among other actions.[226] Press reports at the time indicated that the support for USMCA by some Members of

products (HTS 801-802) and bananas (HTS 803).

[218] For more information, see CRS Report R45038, *Efforts to Address Seasonal Agricultural Import Competition in the NAFTA Renegotiation*; and CRS Report RL34468, *The U.S. Trade Situation for Fruit and Vegetable Products*.

[219] 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.

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

[221] Letters from the Florida and Georgia congressional delegations to USTR Robert E. Lighthizer, dated April 4, 2019, August 31, 2017, and September 1, 2017.

[222] Legislation introduced in the 115th Congress included the Agricultural Trade Improvement Act of 2018 (S. 3510; H.R. 7015).

[223] See, for example, a bipartisan letter to USTR Robert E. Lighthizer from several Members of Congress from Arizona, Texas, and California, June 14, 2019; and statements from Members of Congress at a House Agriculture Committee hearing, "Renegotiating NAFTA: Opportunities for Agriculture," July 26, 2017.

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

[225] Comments by USTR Robert E. Lighthizer at a House Ways and Means Committee hearing, June 19, 2019.

[226] Letter from USTR Robert E. Lighthizer to Members of Congress from Georgia, January 9, 2020.

Congress hinged on expectations that further action regarding seasonal produce protections would be forthcoming.[227]

Status: Efforts to enact seasonal produce protections through changes to U.S. trade laws have continued in the aftermath of USMCA ratification.[228] Virtual hearings held by USTR in August 2020 highlighted concerns on both sides of this issue.[229] USTR released its plan for seasonal and perishable produce in September 2020, which initiated certain U.S. trade remedy investigations and other actions.[230] USTR's plan included a self-initiated request that the USITC open a global safeguard investigation into blueberry imports (from all sources, including Mexico) under Section 201 of the Trade Act of 1974.[231] Depending on the outcome of this investigation, this could permit temporary relief for a U.S. industry in the form of additional tariffs or import quotas to facilitate the industry's adjustment to import competition.[232] Some Members of Congress have further requested that the Section 201 blueberry investigation include both cultivated and wild frozen blueberry imports.[233] USITC initiated its Section 201 blueberry investigation in September 2020 and almost immediately determined that such an investigation is "extraordinarily complicated."[234]

USTR also indicated that it requested an investigation by USITC "to monitor and investigate imports of strawberries and bell peppers, which could enable an expedited Section 201 global safeguard investigation" that includes Mexico as one of the import sources.[235] In December 2020, USITC launched investigations of strawberries and bell pepper imports from all sources under Section 332 of the Trade Act of 1930, as requested by USTR.[236] Under a Section 332 general fact-finding investigation, USITC may investigate a wide variety of trade matters involving tariffs or international trade, including conditions of competition between the United States and foreign industries.[237] In November, two Members of Congress asked that USTR further request that USITC also conduct a Section 332 general fact-finding investigation of cucumbers and squash.[238]

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[227] See, for example, *World Trade Online*, "USTR Commits to Seasonal Produce Plan Within 60 days of USMCA's Entry into Force," January 13, 2020; and "Scott, Seeking Side Letter on Seasonal Produce, Undecided on USMCA," January 9, 2020.

[228] For more information, see CRS In Focus IF11701, *Seasonal Fruit and Vegetable Competition in U.S.-Mexico Trade*, by Renée Johnson.

[229] Comments at "Hearings Regarding Trade Distorting Policies That May Be Affecting Seasonal and Perishable Products in U.S. Commerce," August 13 and 20, 2020. Hearing transcripts are available at https://www.regulations.gov/ (Docket Number USTR-2020-0010).

[230] USTR, "Federal Agencies Outline Plan to Help Farmers of Seasonal and Perishable Fruits and Vegetables," September 1, 2020.

[231] Ibid., p. 9. See also USTR, "USTR Requests the International Trade Commission Commence a Section 201 Global Safeguard Investigation for Blueberries," September 29, 2020.

[232] 19 U.S.C. §§2251-2254. For more background, see CRS In Focus IF10786, *Safeguards: Section 201 of the Trade Act of 1974*, by Vivian C. Jones.

[233] See letter to USTR Robert E. Lighthizer from Members of Congress from Maine, September 17, 2020.

[234] USITC, "Fresh, Chilled, or Frozen Blueberries," Investigation No. TA-201-77, October 6, 2020.

[235] USTR, Department of Commerce, and USDA, *Report on Seasonal and Perishable Products in U.S. Commerce*, September 1, 2020, p. 14.

[236] USITC, "USITC to Monitor U.S. Imports of Fresh or Chilled Strawberries and Bell Peppers," News Release 20-141, December 2, 2020. See also letter from USTR Robert E. Lighthizer to Jason Kearns, Chairman of the USITC, November 3, 2020.

[237] 19 U.S.C. §1332. Other information is at USITC's website, https://www.usitc.gov/press_room/general_factfinding.htm.

[238] Letter to USTR Robert E. Lighthizer from Senators David A. Perdue and Kelly Loeffler, November 19, 2020.

Mexico is a leading source of U.S. imports of these products.[239] At the August 2020 virtual hearings, other industry stakeholders recommended trade remedy investigations involving other types of crops, including tomatoes and pecans.[240] Mexican restrictions on U.S. potato exports also remain a concern.[241]

At the August 2020 hearings, some Members of Congress and industry groups who testified asked that USTR launch an investigation of Mexican trade practices and policies under Section 301 of the Trade Act of 1974.[242] To date, USTR has not initiated a Section 301 investigation that would focus on seasonal and perishable produce imports just from Mexico.

Livestock, Meat, and Dairy Trade Issues[243]

Livestock and Meat Trade Issues

The United States is both a leading exporter and importer of meat and animal products. USDA projects that the United States will export 17% of its 2020 domestic meat production, while U.S. meat imports are equal to 4.5% of production.[244] However, the import percentage skews toward beef as imports account for almost 13% of domestic beef production.

In FY2020, the United States exported livestock and poultry products valued at $24.2 billion, and imported $14.6 billion worth of products.[245] The United States was the third-leading global exporter of beef, and second-leading exporter of pork and broiler meat.[246] The total value of U.S. meat exports was $17.2 billion in FY2020, accounting for 71% of total livestock and poultry product export value. Other leading export products are variety meats, hides and skins, fats and oils, and live animals.

For meat imports, the United States is the world's second-leading importer of beef and lamb, but a minor importer of pork and poultry meat.[247] In FY2020, the value of U.S. meat imports reached almost $10 billion, 67% of total livestock and poultry product imports. Other leading U.S. import products are live animals and fats and oils.

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[239] U.S. Census Bureau Trade Data, accessed via FAS, December 2020, https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

[240] S. Hubbart, "Imported Tomatoes from Mexico Have Some U.S. Growers Seeing Red," *TradeVistas*, August 20, 2020; and B. Tomson, "Georgia's Pecan and Blueberry Farmers Plead for Protection from Mexico," *Agri-Pulse*, August 19, 2020.

[241] Letter to USTR Robert E. Lighthizer from Senators Cory Gardner and James E. Risch, August 18, 2020.

[242] 19 U.S.C. §§2411-2420. See, for example, testimony by Senator Marco Rubio at USTR's virtual hearing, August 13, 2020. A Section 301 investigation refers to trade remedy actions that impose duties or other restrictions on goods or services of foreign countries that violate U.S. trade agreements or engage in acts that are "unjustifiable" or "unreasonable" and burden U.S. commerce. For background, see CRS In Focus IF11346, *Section 301 of the Trade Act of 1974*, by Andres B. Schwarzenberg.

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

[244] USDA, *World Agricultural Supply and Demand Estimates*, November 10, 2020, p. 32.

[245] FAS, *Global Agricultural Trade System (GATS) Online*, Foreign Agricultural Trade of the U.S. (FATUS) definition, at https://apps.fas.usda.gov/gats/default.aspx.

[246] FAS, *Livestock and Poultry: World Markets and Trade*, October 9, 2020, at https://www.fas.usda.gov/psdonline/circulars/livestock_poultry.pdf.

[247] *Livestock and Poultry: World Markets and Trade*, except lamb meat. Lamb data are from the *Trade Data Monitor* import database of global imports.

Generally, livestock and poultry products are not eligible for the price and income support programs authorized in farm bills for major crops such as grains, cotton, and oilseeds. However, the livestock sector received $575 million under the 2019 Market Facilitation Program[248] and nearly $8 billion under the Coronavirus Food Assistance Program (CFAP-1 and CFAP-2).[249] Livestock and poultry producers depend on the federal government taking a leadership role in policy areas that benefit the entire industry, such as animal health, food safety, the promotion of fair and competitive trade practices, and foreign trade.

Status: The Trump Administration's withdrawal from the TPP agreement at the beginning of 2017 placed U.S. livestock and poultry exporters at a disadvantage in the 10 countries that ratified the CPTPP, as market competitors such as CPTTP members Australia and New Zealand enjoyed reduced tariffs. In addition, the United States' nonparticipation in the newly established Regional Comprehensive Economic Partnership (RCEP)[250] could potentially disadvantage the U.S. livestock sector, similarly to its withdrawal from TPP.

Meat Trade with Canada and Mexico

The North American Free Trade Agreement liberalized livestock and poultry trade among the United States, Canada, and Mexico. The volume of U.S. beef, pork, and broiler meat exports increased sixfold from 1995, when the agreement went into force, to 2019. Under the USMCA, which superseded NAFTA and went into force on July 1, 2020, Canada agreed to provide a U.S.-specific tariff-rate quota of 47,000 MT for chicken meat in year one of the agreement, which increases about 4% each year to reach 57,000 MT in year six.[251] After year six, the TRQ increases about 1% per year through year 16. In addition, the United States retains its access to Canada's WTO chicken TRQ of 39,800 MT. U.S. chicken meat enters Canada duty-free under both the USMCA and WTO TRQ. The sum of the USMCA and WTO quotas is less than the total quota that was available to U.S. chicken meat under NAFTA.[252] However, given the U.S. proximity to Canada, U.S. chicken meat may have a price advantage over chicken meat from export competitors.

Status: The U.S. TRQ on chicken meat for July 1, 2020, to December 31, 2020, is 23,500 MT. The full-year 2021 U.S. TRQ will increase to 49,000 MT. USDA's Foreign Agriculture Service (FAS) expects the United States to fill the USMCA TRQ and part of the WTO TRQ.[253]

U.S.-Japan Meat Trade Issues

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

[248] See "Agricultural Aid in Response to Trade Retaliation."

[249] MFP was created to offset producer losses due to retaliatory tariffs, at https://www.farmers.gov/manage/mfp; and CFAP-1 and CFAP-2 to provide immediate financial relief to producers and consumers in response to the COVID-19 national emergency; see https://www.farmers.gov/cfap.

[250] This agreement currently has 15 signatories, some of which are also signatories to the CPTTP. See CRS Insight IN11200, *The Regional Comprehensive Economic Partnership: Status and Recent Developments*, by Cathleen D. Cimino-Isaacs and Michael D. Sutherland.

[251] USMCA, Chapter 2, Appendix 2, Section 19, at https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between.

[252] See CRS Report R45661, *Agricultural Provisions of the U.S.-Mexico-Canada Agreement*, by Anita Regmi.

[253] FAS, *Poultry and Products Annual*, CA2020-0078, August 26, 2020; and also see CRS Report R45661, *Agricultural Provisions of the U.S.-Mexico-Canada Agreement*, by Anita Regmi.

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 CPTPP. For example, Japan's beef imports from CPTPP member nations entered at a 26.6% tariff rate in 2019 (year two of the CPTPP agreement), whereas U.S. beef entered with a tariff rate of 38.5%. The USJTA went into effect on January 1, 2020. Under this agreement, tariff rates on U.S. beef match the CPTTP rates.[254] Tariffs on U.S. beef will decline progressively to 9% in year 15 of the agreement.

Similarly, Japan's tariffs on imports of U.S. pork are reduced under the agreement, matching the CPTPP tariff rates. Instead of an ad valorem rate of 4.3% on U.S. pork, the USJTA rate is 1.9% in the first year of the agreement, and is phased out in year nine. In addition, Japan maintains a variable duty mechanism (gate price),[255] which is set to a fixed value and will gradually decline until it is eliminated in year nine.[256]

U.S. beef and pork exports to Japan are subject to U.S.-specific safeguards. U.S. beef faces higher tariffs if annual imports exceed 242,000 MT in the first two years of the agreement, with the threshold increasing annually after year two. Japan will terminate the beef safeguard measure if it does not trigger for four consecutive years after year 14 of the agreement. Higher tariffs on U.S. pork will trigger if imports exceed 112% of the largest import volume in the previous three years. The pork safeguard will terminate after year 10 of the agreement.[257]

Status: On April 1, 2020, Japan's tariff rate on U.S. beef was lowered to 25.8%. From January to October 2020, U.S. beef exports totaled 219,000 MT, 4% higher than the same period in 2019. Lower tariffs on U.S. pork (1.7% compared to 4.3% before the USJTA was implemented) helped to support a 5% increase in U.S. pork exports to Japan during January-October 2020, compared with 2019. Monthly U.S. exports slowed in the late spring and early summer because of the COVID-19 pandemic, but rebounded in the second half of the year.

Animal Health and Trade

Section 12101 of the 2018 farm bill (P.L. 115-334; 7 U.S.C. §8308a) established the National Animal Disease Preparedness and Response Program[258] to expand efforts and resources to protect U.S. livestock and poultry from animal diseases entering and spreading in the United States. An animal disease outbreak could have a devastating effect on the livestock or poultry sector. For example, reintroduction of foot-and-mouth disease (FMD), which was last detected in the United States in 1929, would be devastating for the livestock industry in that foreign markets would immediately ban U.S. meat exports, resulting in estimated damages to the beef and pork sectors that could run as high as $13 billion in annual losses for up to 10 years.[259] An outbreak of African

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

[255] 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.

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

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

[258] The disease preparedness and management program also includes the National Animal Vaccine and Veterinary Countermeasures Bank and the National Animal Health Laboratory Network.

[259] Dermot Hayes, Jacinto Fabiosa, and Amani Elobeid, et al., "Economy Wide Impacts of a Foreign Animal Disease in the United States," *Working Paper 11-WP 525, Center for Agricultural and Rural Development*, November 2011.

Swine Fever could have similar consequences ($50 billion in losses over 10 years) for the pork industry.[260]

The U.S. livestock and poultry industries are concerned about policies that open U.S. markets to imports of meat, livestock, and poultry products from countries where highly infectious foreign animal diseases exist. Currently, 34 countries are eligible to export meat and poultry to the United States.[261] Before the United States authorizes imports of meat or poultry, USDA's Animal and Plant Health Inspection Service 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.[262] In addition, USDA's Food Safety and Inspection Service (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. inspection system.[263] Foreign governments provide documentation on how their inspection systems are regulated, and FSIS conducts on-site 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.

Export Bans Due to SPS Issues

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. In addition to bans applied to U.S. meat exports for disease outbreaks, some countries have banned meat exports in response to certain production practices. For example, the United States and the European Union have banned meat exports from the United States when synthetic hormones and ractopamine are used in the production process, or when certain pathogen reduction treatments are used.[264] Other countries that are key markets for U.S. meat exports, such as China and Taiwan, have prohibited imports of U.S. pork when ractopamine is used.

Ractopamine is an animal beta agonist drug that increases animal weight gain and meat yield, which is approved by the U.S. Food and Drug Administration (FDA) for use in U.S. livestock 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

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[260] Miguel Carriquiry, Amani Elobeid, and David Swenson, et al., *National and Iowa Impacts of African Swine Fever in the United States*, Iowa State University, April 1, 2020.

[261] FSIS, *Import Library: Eligible Countries and Products*, updated October 9, 2020, at https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/eligible-countries-and-products.

[262] For more background, see CRS Report R45267, *Animal and Plant Export Health Certificates in U.S. Agricultural Trade*, by Sahar Angadjivand; and CRS Report R45457, *Animal and Plant Health Import Permits in U.S. Agricultural Trade*, by Sahar Angadjivand. See also APHIS, *Animal Health Status of Regions*, updated October 29, 2020, at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.

[263] 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," at https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/Equivalence/equivalence-process-overview.

[264] USTR, *2020 National Trade Estimate Report on Foreign Trade Barriers (NTE)*, March 31, 2020, pp. 186, 190, at https://ustr.gov/sites/default/files/2020_National_Trade_Estimate_Report.pdf.

restricted imports of meat produced with ractopamine, despite U.S. adherence to the residue standards established by Codex. According to FSIS, U.S. meat exports—particularly pork—may be shipped to markets with ractopamine restrictions if the exported product is raised without ractopamine and is certified through USDA's Never Fed Beta Agonists Program.[265] 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: China is conducting a risk assessment on ractopamine use, and depending on the results is to consult with the United States on lifting the ban on U.S. meat imports that are produced using ractopamine.[266] On September 7, 2020, Taiwan's Council of Agriculture removed restrictions on the use of ractopamine in imported pork, and established maximum residual levels for ractopamine in imported pork. These changes were to take place on January 1, 2021.[267]

Meat Trade Issues With China

Over the years, U.S. meat trade with China has been restricted or halted because of China's trade measures in response to disease occurrences or production practices in the United States. Under the U.S.-China "Phase One" trade agreement in 2020, the countries agreed to undertake actions to promote transparency to facilitate trade in meat.

China banned U.S. beef exports following the discovery of Bovine Spongiform Encephalopathy ("mad cow" disease) in the United States in 2003. China lifted the ban in 2017, but continued to restrict U.S. beef imports to beef from cattle under 30 months of age. In the "Phase One" agreement, China agreed to amend its import protocols to align with international standards. As such, China agreed to (1) eliminate the cattle age restriction;[268] (2) recognize that the U.S. traceability system meets or exceeds the World Organisation for Animal Health (OIE) guidelines for maintaining "negligible risk" for bovine disease, and in the event the U.S. status should change, China would set import regulations that follow OIE guidelines; and (3) adopt maximum risk levels (MRLs) for certain hormones used in U.S. beef production, and follow Codex Alimentarius (Codex)[269] MRL guidelines.[270] China continues to require that U.S. beef exporters participate in the USDA Agricultural Marketing Service export verification program,[271] which verifies that U.S. suppliers are meeting importing country requirements.

China lifted its ban (due to avian influenza in U.S. poultry flocks) on the import of U.S. poultry meat in November 2019, allowing U.S. poultry exports from poultry plants approved by USDA's FSIS.[272] Under the U.S.-China "Phase One" trade agreement, the United States and China agreed

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

[266] U.S.-China Phase One trade agreement, Chapter 3, Annex 7.5.

[267] FAS, "FAS, Taiwan Publishes Draft MRL for Ractopamine in Pork," GAIN Report Number: TW2020-0040, September 15, 2020, at https://www.fas.usda.gov/data/taiwan-taiwan-publishes-draft-mrl-ractopamine-pork.

[268] 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.

[269] Codex is the international organization that sets standards, guidelines, and codes for international food trade. See http://www.fao.org/fao-who-codexalimentarius/about-codex/en/#c453333.

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

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

[272] 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.

to finalize a protocol accepting regionalization[273] when there are outbreaks of poultry diseases, and China agreed to follow the relevant OIE guidelines on international trade.[274]

U.S. pork exports to China have been limited by restrictions that allow only certain pork cuts to be imported, and by China's zero tolerance standard for ractopamine. Ractopamine has been widely used in the U.S. hog industry, although many producers have phased out its use in recent years. Under the U.S.-China "Phase One" trade agreement, China agreed to increase the number of U.S. pork products inspected by FSIS that are eligible for import.[275] China also agreed to conduct a risk analysis of ractopamine in cattle and hogs, and to create a joint working group to discuss the results.[276]

Status: In 2019, the U.S. shipped 10,507 MT of beef to China. In January-October 2020, U.S. exports of beef totaled 23,000 MT. China's domestic hog industry was hit hard by African Swine Fever in 2019, leaving a large gap in China's pork supplies and increasing demand for pork imports in 2020. From January-October 2020, U.S. pork exports rose to a record 622,000 MT, an increase of 162% compared with the same period in 2019.

U.S. Imports of Chicken from China

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.[277] China may export only fully cooked poultry meat—not shelf stable-products.[278] The United States does not permit China to export raw poultry products to the United States due to animal disease risks, such as avian influenza. The United States has not imported poultry meat from China in 2020.

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 that food safety enforcement in China for both domestically consumed products and exports may be relatively lax.[279]

Status: Section 764 of Division A of the Consolidated Appropriations Act, 2021 (P.L. 116-260) prohibits USDA from using any funds to purchase raw or processed poultry products from China for feeding programs, including the school lunch and school breakfast programs.

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[273] Regionalization is the principle that allows for parts of a country to be declared free of a certain disease and enable the continuation of trade when other parts of the country are not disease-free.

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

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

[276] U.S.-China Phase One trade agreement, Chapter 3, Annex 7.5.

[277] 84 *Federal Register* 60318, November 8, 2019.

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

[279] Hearing, Congressional-Executive Commission on China, *Pet Treats and Processed Chicken from China: Concerns for American Consumers and Pets*, June 17, 2014, at http://www.cecc.gov/events/hearings/pet-treats-and-processed-chicken-from-china-concerns-for-american-consumers-and-pets; and Lydia Zuraw, "Advocates Petition Congress to Block Chinese Chicken," *Food Safety News*, January 14, 2014, at https://www.foodsafetynews.com/2014/01/petition-to-block-chinese-chicken/.

Under the U.S.-China "Phase One" trade agreement, the United States and China agreed to regionalization for poultry disease outbreaks, such as highly pathogenic avian influenza and virulent Newcastle disease.[280] Both countries agreed to follow international standards, guidelines, and recommendations for regionalization for trade in poultry products during an outbreak.[281] APHIS agreed to regionalization for Chinese poultry once disease-free regions are recognized for China. Such a determination would allow China to export raw poultry meat if FSIS determines that poultry plants in the region(s) meet equivalency standards.

Fresh Beef Imports from Brazil and Argentina

In the past, the United States has prohibited or restricted imports of fresh beef from Brazil and Argentina because the existence of foot-and-mouth disease in these countries. U.S. beef imports have mostly been limited to fully cooked or processed product. Argentina was approved to export fresh beef to the United States from 1997 until the United States halted exports after an Argentine FMD outbreak in 2001.

In July 2015, APHIS released final rules to allow the import of fresh beef from certain regions of Brazil and Argentina.[282] APHIS 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 imports of fresh beef from Brazil and Argentina because neither country is considered to be free of FMD.[283] In May 2015, USDA's FSIS found that Brazil's beef inspection system would provide an equivalent level of food safety as the U.S. system.[284] 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 reinspected Brazilian beef at the U.S. port of entry.[285] According to USDA, FSIS was reinspecting 100% of Brazilian fresh beef imports and refused entry to 11% of shipments, well above the 1% refusal rate for other beef imports. On February 21, 2020, the United States lifted the suspension on imports of raw, intact beef from Brazil.[286] FSIS released a targeted on-site audit report on February 20, 2020, that addressed corrective actions taken by Brazil.[287] Fresh beef imports from Brazil are subject to reinspection at U.S. points of entry by FSIS.

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[280] APHIS, "APHIS Leadership Signs Poultry Regionalization Agreement with China," press release, March 23, 2020, at https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/sa_by_date/sa-2020/sa-03/poultry-agreement-china.

[281] Regionalization allows for trade from geographic areas of countries that are recognized as free of a disease.

[282] 80 *Federal Register* 37923, July 2, 2015; and 80 *Federal Register* 37935, July 2, 2015.

[283] National Cattlemen's Beef Association, Docket Number APHIS 2009-0017, "Importation of Beef from a Region in Brazil," April 22, 2014, at 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, at https://www.regulations.gov/document?D=APHIS-2009-0017-0755.

[284] 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.

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

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

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

In November 2018, FSIS announced that the Argentine beef inspection system was equivalent, and the country could export fresh beef to the United States.[288] FSIS also announced that within six months of the November 2018 equivalency determination, the agency would undertake additional on-site audits of Argentina's raw beef inspection system.

Status: The United States imported 15,300 MT of fresh beef from Brazil from May to October 2020. Brazilian beef enters the United States under the 64,805 MT beef TRQ for countries that do not hold a country-specific TRQ.[289] U.S. fresh beef imports from Argentina from January to October 2020 totaled 20,100 MT. FSIS released a follow-up on-site verification audit report on Argentina's beef inspection on March 20, 2020. Argentina holds a 20,000 MT ton TRQ allotment for beef shipments to the United States.[290]

Issues in Dairy Product Trade[291]

The United States exported $6.5 billion in dairy products in FY2020, and imported $3.2 billion worth of such products. Reform of dairy pricing and establishment of specific dairy product TRQs in Canada under the USMCA are expected to expand access to that market for U.S. dairy producers. Under the U.S.-China "Phase One" trade agreement, China is to streamline its regulatory process to facilitate trade in U.S. dairy products and infant formula.

U.S. Dairy Exports to Canada

Canadian dairy policies limit production, set prices, and restrict import through TRQs, with over-quota tariffs in excess of 200% on some products. Although Canada is the second-largest market for U.S. dairy exports, U.S. exports would likely be larger but for Canadian import restrictions.

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—used in processed dairy products. Prices for Class 7 products were set at low levels. Once the Class 7 regime was implemented, Canadian cheese and yogurt processors substituted domestic skim milk powder for U.S. imports of high-protein ultra-filtered milk, and Canada expanded global exports of skim milk powder.

According to USDA, the value of U.S. ultra-filtered 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.[292] At the same time, Canada's exports of skim milk

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

[289] There are no limits on U.S. beef imports from Canada and Mexico. Country-specific TRQs are Australia, 378,214 MT; New Zealand, 213,402 MT; Japan, 200 MT; Argentina, 20,000 MT; Uruguay, 20,000 MT; and all other countries, 64,805 MT.

[290] USDA, FSIS, *Evaluating the Food Safety Inspection Systems Governing Meat Products Exported to the United States of America*, Follow-Up Report of an Audit Conducted in Argentina, December 2-6, 2019, March 20, 2020, at https://www.fsis.usda.gov/wps/wcm/connect/58e24d77-305c-4dbb-9e7f-95f50a5ed45f/argentina-2020-far.pdf?MOD=AJPERES.

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

[292] FAS, Global Agricultural Trade System Online, Foreign Agricultural Trade of the United States dairy definition,

products more than tripled in 2017 to $133 million, compared with $42 million in 2016 before the Class 7 price regime was implemented.[293] Eliminating Canada's Class 7 pricing regime became a priority for the U.S. dairy industry when negotiations over a replacement for NAFTA commenced in 2017.

Status: Under USMCA, Canada agreed to eliminate the Class 7 pricing regime six months after USMCA enters into force. As of June 2020, Canada no longer issues a Class 7 price in its Harmonized Milk Classification System.[294] Under the agreement, Canada is required to monitor its exports of milk protein concentrates, skim milk products, and infant formula and to report detailed data monthly.

Although Canada maintains its milk supply management system under USMCA, the agreement expands TRQs for U.S. milk, cheese, cream, skim milk powder, condensed milk, yogurt, and several other dairy products. U.S. product imports within the TRQs quantities 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 is to grant the United States duty-free access to nearly 17,000 MT of dairy products in the first year of the agreement, increasing progressively to 100,000 MT in the sixth year, and to 109,000 MT in year 19. The USMCA quota is specific to the United States and is in addition to Canada's WTO global quota 93,648 MT, which is open to U.S. dairy products as well as to those from other WTO member countries, as was the case under NAFTA.[295]

The U.S. dairy industry remains concerned that Canada will allocate new dairy TRQs to domestic dairy processors with limited incentive to import U.S. products. This could restrict the U.S. dairy industry's ability to gain access into the Canadian dairy market through the negotiated TRQs.[296] On December 9, 2020, USTR announced that the U.S. government is challenging Canada's allocation of TRQs to processors, and requesting consultations.[297] USTR noted that if consultations do not resolve concerns, the United States could request the establishment of a USMCA dispute settlement panel.

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 that China imposed on U.S. products curbed trade. Under the U.S.-China "Phase One" trade agreement, China is to streamline its regulatory process to facilitate U.S. exports. China is to accept dairy products manufactured in

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adjusted to include protein concentrate (UF milk), at https://apps.fas.usda.gov/gats/default.aspx.

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

[294] FAS, "Canada Dairy and Products Annual," GAIN Report Number: CA2020-0087, October 15, 2020, at https://www.fas.usda.gov/data/canada-dairy-and-products-annual-6.

[295] Al Mussell and Douglas 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, see also CRS In Focus IF11149, *Dairy Provisions in USMCA*, by Joel L. Greene.

[296] U.S. Dairy Export Council, National Milk Producers Federation, "U.S. Dairy Industry Criticizes Canada TRQ Allocations, Urges U.S. Government to Insist on Good Faith Implementation of USMCA," press release, June 17, 2020, at https://www.usdec.org/newsroom/news-releases/news-releases/news-release-06/17/2020.

[297] USTR, *United States Takes Action for American Dairy Farmers by Filing First-Ever USMCA Enforcement Action*, press release, December 9, 2020, at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/december/united-states-takes-action-american-dairy-farmers-filing-first-ever-usmca-enforcement-action.

facilities from a list approved by FDA that have received 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. In addition, China's General Administration of Customs and the FDA are to hold technical discussions regarding FDA guidance[298] on dairy products and the presence of melamine in imports of Chinese milk-containing food products. For infant formula, China is also to streamline its import approval process. This includes issuing product registrations, conducting technical reviews, considering FDA reviews, and carrying out inspections and regulatory determinations.[299]

Status: The U.S.-China "Phase One" trade agreement, which entered into force on February 14, 2020, should boost U.S. dairy product exports to China, reflecting China's commitment to streamlining its import regulatory processes. On July 16, 2020, China Customs updated its registration list for U.S. dairy facilities that may export dairy products to China. On September 14, 2020, China's State Council Tariff Commission extended Section 301 tariff exclusions until September 2021 on U.S. whey used for feed. China is the world's largest importer of whey products because of strong demand for animal feed.[300]

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[298] FDA, "Detention Without Physical Examination of All Milk Products, Milk Derived Ingredients and ***Milk Containing*** Finished Food Products from China Due to the Presence of Melamine and/or Melamine Analogs," Import Alert 99-30, August 20, 2020, at https://www.accessdata.fda.gov/cms_ia/importalert_401.html.

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

[300] FAS, "China Dairy and Products Annual," GAIN Report Number: CH2020-0139, October 15, 2020, at https://www.fas.usda.gov/data/china-dairy-and-products-annual-3.

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