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Trade Remedies and Agriculture

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Trade Remedies And Agriculture

Summary

U.S. laws provide a variety of avenues for U.S. industries, including agricultural producers, to seek relief when they believe they have been by injured by imports or unfair trade practices. Currently, federal law provides for four primary trade remedies. Three of these – safeguards, countervailing duties, and anti-dumping duties – address concerns about the impacts of competing imports. The fourth remedy, commonly called Section 301, is the principal tool to challenge (under dispute settlement procedures in international trade agreements where applicable) unfair foreign trade practices that affect U.S. commerce generally, including exports to other countries.

Recent examples of prominent agricultural import cases concern cattle from Mexico and Canada; wheat from Canada; lamb meat from Australia and New Zealand; wheat gluten from the European Union; and apple juice and honey from China.

The use of trade remedies has grown along with increased U.S. involvement in bilateral and multilateral trade agreements. The availability of trade remedies is viewed as a cushion against the potentially negative impacts of trade liberalization on import-sensitive products – a number of them agricultural – thus helping to build broader political support for trade agreements. On the other hand, trade remedies also can have costs, to the extent that they raise import prices for U.S. consumers and processors, sustain economically inefficient U.S. producers, heighten international trade tensions, and/or increase government outlays.

A range of bills have been introduced in recent Congresses, including the 107th, to change various trade remedy laws, mostly with the objective of increasing the likelihood that domestic industries will prevail when they seek such assistance. Other bills propose tools for helping U.S. industries cope with import competition – such as extending trade adjustment assistance to farmers.

Current U.S. trade remedy laws already have come under scrutiny and challenge by the United States' major trading partners. Over the next few years, the World Trade Organization will be involved in negotiations aimed at clarifying the antidumping and subsidies agreements. U.S. officials point out that these negotiations are premised on preserving the "basic concepts, principles and effectiveness of these Agreements and the instruments and objectives." Some U.S. trading partners suggest that this position is inconsistent with past U.S. opposition to discussions that examine anti-dumping practices with a possible view toward revision. Still, U.S. agricultural producers are likely to resist changes in U.S. law, and possibly to push for stronger protections, so long as they perceive foreign competitors are engaging in unfair subsidization of their own agricultural producers.

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Trade Remedies and Agriculture

Introduction

U.S. laws provide a variety of avenues for U.S. industries, including agricultural producers, to seek relief when they believe they have been injured by the effects of trade. Trade remedies, the primary means of such relief, are designed to counter the economic effects on U.S. producers of imports sold in the United States at unfairly low prices or of exports that benefit from a foreign government's domestic or export subsidies. They might also be sought to reduce the impacts of surges in fairly-traded imports.

The use of trade remedies has grown along with increased U.S. involvement in trade agreements. Trade relief is viewed as a cushion against the potentially negative impacts of trade liberalization on import-sensitive products – a number of them agricultural – thus helping to build broader political support for trade agreements.

U.S. trade remedy laws generally reflect and are subject to international trade rules, notably those under the World Trade Organization (WTO) multilateral agreements and the North American Free Trade Agreement (NAFTA).[1] On the one hand, other countries, utilizing various WTO and NAFTA rules and procedures, can and do challenge the legality of some U.S. actions taken under its trade remedy laws. On the other hand, when such U.S. laws are applied in conformity with the international trade rules, WTO and NAFTA dispute settlement procedures can serve to validate and strengthen any U.S. actions taken. In addition, U.S. producers, working through U.S. trade officials, might also tap WTO and NAFTA to resolve trade issues on a consultative or other lower-profile basis before they escalate into more costly, contentious cases involving hearing panels, appeals, sanctions, and the like. (Appendix A describes provisions and procedures on dispute settlement under the WTO and NAFTA.)

Some prominent examples where segments of U.S. agriculture have formally sought import relief in recent years include cattle imports from Canada and Mexico; wheat imports from Canada; lamb meat imports primarily from Australia and New Zealand; wheat gluten from Europe; and apple juice and honey from China, among others. As U.S. producers of these items have found, the procedures for pursuing

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[1]Cooper, William H., CRS Report RL30461, *Trade Remedy Law Reform in the 107th Congress.* Trade remedies are discussed extensively in *Overview and Compilation of U.S. Trade Statutes*, 1997 edition, June 25, 1997, Committee Print WMCP 105-4, 105th Congress, 1st session, Committee on Ways and Means, U.S. House of Representatives; and in *Summary of Statutory Provisions Related to Import Relief*, U.S. International Trade Commission Publication 3125, August 1998.

trade remedies are somewhat complex, resource-intensive, and time consuming. Winning a case is even more difficult.

Types of Trade Remedies and Trade Relief

Currently, federal law provides for four primary trade remedies. Three address import concerns: safeguards (or escape clause), antidumping duties (AD), and countervailing duties (CVD). The fourth, commonly called Section 301, is the principal tool to challenge unfair foreign trade practices that affect U.S. commerce generally, including exports to other countries.

Safeguards (Escape Clause)[2]

The Trade Act of 1974 provides for the imposition of temporary duties, quotas, or other restrictions on imports that are traded fairly but which cause or threaten to cause injury to a domestic industry. The U.S. International Trade Commission (ITC) makes the determination of injury. This provision is intended to provide relief from injurious competition when temporary protection will enable the domestic industry to make adjustments to meet the competition from imports. Also, unlike antidumping and countervailing duty cases (see below), safeguard cases encompass imports from throughout the world, not specific countries.

Safeguard Procedures. Safeguard procedures can be invoked by petition from affected parties (an association, industry group, or other organization), Presidential request, request of House Ways and Means or Senate Finance Committees, or the ITC's own initiative. Industry petitioners are encouraged to submit, along with their petition, a plan to promote positive adjustment to the competition from imports.

During the course of its investigation of the petition or request, the ITC must take into account all relevant economic factors, including certain specific factors enumerated in the statute and must consider the condition of the industry over the relevant business cycle. If the ITC determines that imports have been a "substantial cause" of "serious injury" or the threat thereof to the industry, it recommends remedial measures which must include an increase in tariffs on the imported product, a tariff-rate quota (TRQ), a quantitative restriction, adjustment measures, or a combination of those measures.

The ITC submits its recommendations to the President, who decides whether or not to impose the import restrictions. In making a decision about what action is appropriate, the President must consider such factors as the industry's adjustment plan, the plan's probable effectiveness to promote positive adjustment, other factors related to the national economic interest, and the national security interest. The President can impose safeguards for an initial period of up to 4 years and may extend the action one or more years, but the total period or import relief may not exceed 8

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[2]Legislative authority: Sections 201-204 of the Trade Act of 1974, as amended (19 U.S.C.2251-2254), and/or Sections 302-307 of the NAFTA Implementation Act of 1994.

years. The President must report to Congress the actions he plans to take. Should the President decide to take actions other than those recommended by the ITC or to take no action, Congress may direct him to implement the recommendations of the ITC by enacting a joint resolution of disapproval of his proposed action.

Trade Obligations. Safeguards must be applied in conformity with the Agreement on Safeguards agreed to during the Uruguay Round of multilateral trade negotiations. This WTO agreement provides rules for the application of Article XIX of the General Agreement on Tariffs and Trade (GATT, 1947).[3] Rules negotiated in the Agreement provide for greater transparency in procedures and limitations on the duration of relief measures. Expanding on Article XIX, the Agreement provides that a WTO member country may not exercise its right to take retaliatory action during the first 3 years that a safeguard is in effect, provided that the safeguard measure resulted from an absolute increase in imports and otherwise conforms to the Agreement.

U.S. obligations under NAFTA also affect the use of safeguards vis-a-vis Canada and Mexico. Chapter 8 of NAFTA provides, among other things, that escape clause measures against NAFTA members generally last no more than three years. Section 311 of the NAFTA Implementation Act (P.L.103-182, 19 U.S.C. 3371) provides that a relief action is not to apply to imports from Canada or Mexico unless they account for a substantial share of total imports of a good.

Countervailing and Antidumping Duties[4]

Trade law provides also for the imposition of countervailing duties on goods imported into the United States if the Department of Commerce (DOC) determines that a countervailable subsidy is being provided by a foreign government and if the ITC determines that the imports are causing or threatening to cause material injury to a U.S. industry. The purpose of CVD law is to offset any unfair competitive advantage that foreign manufacturers or exporters might have over U.S. producers because of foreign countervailable subsidies. Countervailable subsidies could include a wide range of practices such as export subsidies, import substitution subsidies, and domestic subsidies provided to a specific industry or to inputs used by an industry.

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[3]Article XIX, which was not changed by the Uruguay Round Agreement on Safeguards, reads: "If, as a result of unforseen developments and of the effect of the obligations incurred by a contracting party under this agreement, including tariff concessions, any product imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product and to the extent and for such time as may be necessary to prevent such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."

[4]Legislative authority: CVD, Subtitle A, Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671); AD, Subtitle A, Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1673). Also, the Continued Dumping and Subsidy Offset Act of 2000 (the "Byrd Amendment") requires AD and CVD duties to be disbursed to injured domestic producers in the cases. Attached are information on the amendment and a list of agricultural recipients in FY2001.

Trade law also authorizes antidumping duties on imported goods if the DOC determines that an imported product is being sold at less than its fair value, and if the ITC determines that a U.S. producer is thereby being injured. Dumping is a form of price discrimination whereby goods are sold in one export market at prices lower than the prices of comparable goods in the home market or in other export markets.

CVD and AD Procedures. Although CVD and AD laws are aimed at different forms of unfair trade, they are similar procedurally and substantively. CVD and AD investigations may be initiated by the DOC or by an interested party. Interested parties may be a manufacturer or producer; a union or group or workers representative of the affected industry; a trade or business association; a coalition of firms, unions, or trade associations; or a coalition or trade association, representative of processors or, in the case of processed agricultural products, processors and growers. Petitions are filed simultaneously with the DOC and the ITC. If the DOC decides the petition is legally sufficient to commence an investigation, one is initiated with respect to imports of a particular product from a particular country.

The ITC makes a preliminary determination as to whether there is a "reasonable indication" that imports in question are causing or threaten to cause material injury to the industry. An affirmative decision allows the investigation to proceed; a negative decision terminates the investigation.

The DOC then must make a preliminary determination whether dumping or subsidies have taken place and, if so, make a preliminary calculation of what the dumping or subsidy margin would be. Regardless of whether the DOC's preliminary determination is positive or negative, the DOC continues the investigation and makes a final determination of dumping or subsidies and a final calculation of duty margins. The investigation is terminated if DOC makes a negative final determination. In the event of an affirmative final determination, then the ITC continues its investigation and renders a final determination of material injury or threat thereof. A negative ITC determination terminates the investigation. If the two final determinations are affirmative, then extra duties are placed on imports to be paid by the importer. The determinations are subject to judicial review and also may be challenged in the WTO dispute settlement mechanism.[5]

Both the DOC and the ITC must take into account a number of criteria in making their respective determinations. In CVD cases, the DOC must consider evidence of direct subsidies or upstream subsidies (subsidies provided to inputs the benefits of which are passed on to the final producer); if found, the DOC must determine what would be the net countervailable subsidy. In AD cases the DOC must first determine the "normal value" of the import (based on the price in the exporting country's home market, on the price of the export of the product to a third country market, or on a "constructed" price, depending on the availability of data). The DOC must compare the "normal value" with the actual price of the import in question to

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[5]The Continued Dumping and Subsidy Offset Act of 2000 now requires the U.S. Customs Service to redistribute duties collected under AD and CVD orders to affected domestic parties, and agricultural petitioners have been receiving such monies. See "Byrd Amendment" discussion on page 15.

determine whether dumping is taking place and, if so, what the dumping margin is. In either procedure, the ITC must make two determinations: (1) Is the domestic industry being materially injured or facing a threat of material injury? (2) Are the imports in question a cause of the material injury? U.S. law establishes time frames within which the respective agencies must make their determinations.

Trade Obligations. As in the case of safeguards, AD and CVD actions must be applied in conformity with trade agreements entered into by the United States, in particular, the Tokyo Round Subsidies Code, the Uruguay Round Agreement on Subsidies and Countervailing Measures, and the NAFTA. The "peace clause" (see below) in the Uruguay Round Agreement on Agriculture (URAA) has particular relevance for the use of countervailing measures for agricultural products.

In the Tokyo Round of multilateral trade negotiations (1973-1979), a subsidies code governing the use of subsidies and countervailing measures was negotiated and signed by the United States. The code provided for improved procedures for notification, consultation, and dispute settlement and application of remedial measures or countermeasures through the dispute settlement process. Under the code, countries could take traditional countervailing duty actions to offset subsidies upon showing material injury to a domestic industry because of subsidized imports. The code also sets out criteria for determining material injury.

During the Uruguay Round, an Agreement on Subsidies and Countervailing measures was concluded that goes beyond the Tokyo Round Subsidies Code and applies to all WTO member countries. (Only GATT member countries that had signed on to the Tokyo Round subsidies code were bound by it.) This Agreement provides, among other things, definitions of such terms as subsidies and serious prejudice for the first time in a GATT agreement; prohibits export subsidies based on the use of domestic instead of imported goods; requires most developing countries to phase out export subsidies and import substitution subsidies; and applies the WTO dispute settlement mechanism (which prevents subsidizing governments from blocking the adoption of unfavorable panel reports) to countervailing and antidumping cases.

In NAFTA, Chapter 19 permits final determinations in CVD and AD cases involving another member's goods to be reviewed by binational panels rather than domestic courts, if requested by a NAFTA partner.

The "Peace Clause" and CVD. Article 13 of the URAA, commonly referred to as the peace clause, is an agreement among WTO countries to refrain from challenging certain of each other's agricultural subsidy programs in domestic countervailing duty proceedings during a 9-year period, 1995 through 2003. (The peace clause applies also to other WTO dispute settlement proceedings in situations where countries might allege "adverse effects," "serious prejudice," or "non-violation nullification and impairment of benefits" actions.)

Under Article 13, governments must refrain for the first 9 years that the URAA is in effect from taking action under domestic countervailing duty proceedings so long as the subsidies in question are so-called "green box" – that is, not considered to be trade-distorting subsidies. Article 13 also deals with possible challenges to domestic support measures that fall outside the "green box" (e.g., so-called "amber box" or

more likely trade-distorting subsidies) in circumstances in which the WTO country providing the subsidy is meeting its subsidy reduction commitments agreed to in the URAA. In such cases, countries are to exercise "due restraint" in initiating investigations. Similarly, with export subsidies, member countries are to exercise due restraint in initiating investigations.

Section 301[6]

Title III of the Trade Act of 1974, as amended, provides the authority and procedures to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign trade practices. These provisions, which together are commonly referred to as "Section 301," provide that if the U.S. Trade Representative (USTR) determines that a foreign act, policy, or practice violates or is inconsistent with a trade agreement or is unjustifiable and burdens or restricts U.S. commerce, then USTR must act to enforce U.S. rights under the trade agreement or to obtain the elimination of the act, policy, or practice, subject to the specific direction, if any, of the President.

Section 301 empowers the USTR to take several forms of action to deal with unfair practices. USTR can: 1) suspend, withdraw, or prevent the application in the foreign country involved of benefits from concessions made in a trade agreement; (2) impose duties or other import restrictions on the goods and services of the foreign country for such time as the USTR deems appropriate; (3) withdraw or suspend preferential duty treatment under various trade preference schemes; or (4) enter into binding agreements that commit the foreign country to eliminate or phase out the act, policy or practice; eliminate any burden or restriction on U.S. commerce resulting from those acts, policies, or practices; or provide the United States with compensatory trade benefits that are satisfactory to the USTR. Under Section 301, USTR can take all appropriate action, including retaliation, to obtain the removal of any act, policy, or practice of a foreign government that violates an international agreement or is unjustified, unreasonable, or discriminatory, and which burdens or restricts U.S. commerce.

Section 301 Procedures. Any interested person may file a petition with the USTR requesting that action be taken under Section 301. Investigations also may be initiated by a petition filed with the USTR by an affected party or parties, or on USTR's own motion. If USTR makes a determination to initiate an investigation, it must at the same time request consultations with the foreign country concerned regarding the issues. If consultations with the foreign country in question do not resolve the issues and the investigation involves a trade agreement, then USTR is obliged to resort to dispute settlement procedures provided for under that agreement.

Trade Obligations. Sections 301-309 are the U.S. domestic counterparts to the WTO consultation and dispute settlement procedures set forth generally in Articles XII and XIII of the GATT (1947), as elaborated on by agreements reached during the Tokyo Round and in the Uruguay Round Understanding on Rules and

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[6]Legislative authority: Sections 301-310 of the Trade Act of 1974, as amended (19 U.S.C. 2411).

Procedures Governing the Settlement of Disputes. These sections contain the authority in U.S. domestic law to take retaliatory action, including import restrictions if deemed necessary, to enforce U.S. rights against violations of trade agreements by foreign countries and unjustifiable, unreasonable, or discriminatory foreign trade practices which burden or restrict U.S. commerce.

Former Agricultural Trade Remedies

Formerly, certain U.S. agricultural producers also might potentially benefit from import relief under another measure commonly called "Section 22," which refers to a provision of permanent agricultural law (the Agricultural Adjustment Act Amendment of 1935) allowing the President to impose import fees or import quotas to prevent imports from non-WTO member countries from undermining the price support and supply control objectives of domestic farm programs. Legislation implementing NAFTA and the WTO URAA exempts NAFTA and WTO member countries from Section 22 quotas and fees. Under both trade agreements, the United States converted then-in-effect Section 22 restrictions (e.g., affecting cotton, peanuts, dairy, and sugar) into tariff-rate quotas (TRQs).[7]

Another import relief mechanism was the Meat Import Act of 1979, which required the President to impose quotas on beef, veal, mutton, and goat imports when aggregate quantities of imports of such products were expected to exceed a prescribed trigger level (although voluntary restraint agreements negotiated with affected countries were used to avert such quotas). With the URAA, a TRQ replaced the previous meat import restrictions.

Choice of Trade Remedy[8]

Agricultural industries have some latitude in determining which remedy for import relief to pursue. Factors involved in the choice of remedy include the causation and injury standards to be met, the procedures involved, and the manner by which the remedy is treated in trade agreements.

The causation and injury standards applied in safeguard determinations are higher than those applied in CVD or AD cases. Section 201 requires that imports be a "substantial" cause of or threat of "serious injury." "Substantial cause" is defined in the statute as "a cause which is important and not less than any other cause." "Serious injury" is injury that is a significant, overall impairment to the position of the

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[7]A TRQ combines two policy instruments historically used to restrict imports that compete with a domestically-produced commodity or product: quotas and tariffs. In a TRQ, the quota component works together with a specified tariff level to provide the desired degree of import protection. Imports entering during a specific time period under the quota portion of a TRQ are usually subject to a lower, or sometimes a zero, tariff rate. Imports above the quota's quantitative threshold face a much higher, and usually prohibitive, tariff.

[8]For a comparison of injury thresholds and procedures, see *Trade Remedy Law Reform in the 107th Congress*, CRS Report RL304612, June 6, 2001.

domestic industry. In contrast, CVD and AD statutes require the determination of "material injury," defined as injury which is "not inconsequential, immaterial or unimportant." CVD and AD statutes require that the injury occur "by reason of" the subsidized or dumped imports, a less precise and lower causation standard than under the safeguard statute.

In addition to stricter causation and injury standards, procedures for safeguard relief entail decisions with respect to import relief that are made at a higher policy level – the President and possibly Congress – than in AD and CVD procedures.[9] The President has wide discretion, including taking no action at all, in deciding what, if any, safeguard relief to implement. Congress also may have a role in the process if the President does not follow the recommendation of the ITC. In contrast, no such discretion exists in CVD and AD cases. Relief as determined by the DOC is implemented by a DOC antidumping or countervailing duty order without presidential or congressional involvement.

The higher injury standards and more demanding procedures for safeguard relief reflect the fact that the statute involves fairly traded imports from all sources. In addition, the President, in deciding on the actions to be taken, must take into account factors related to national economic and security interests. Foreign countries whose trade will be affected by safeguard actions will seek to encourage the President to refrain from imposing, or otherwise to moderate, the safeguards.

The stricter standards and procedures are probably a significant reason why U.S. industries, including agriculture, have sought and received relief much more often from AD and CVD procedures than from safeguards (see below). Also, recent experience with WTO dispute settlement involving U.S. imposition of safeguard actions, particularly in regard to wheat gluten and lamb imports (discussed below), may discourage parties who claim import-related injury from using Section 201. In both cases, the WTO questioned the methodology used by U.S. ITC in determining injury caused by imports and overturned the remedy invoked by the President. U.S. agricultural CVD and AD decisions have faced much less scrutiny in WTO dispute settlement.

Agricultural Cases

Safeguard Actions

A total of 73 ITC safeguard investigations have been conducted since passage of the Trade Act of 1974. Twenty of them covered food and agriculture product imports, six completed since 1995 (the list in table 1 is chronological, beginning with the earliest). Of the 20 food and agriculture cases, seven have received some form of relief.

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[9] *Trade Remedy Law Reform in the 107th Congress* (CRS Report RL30461), p. 5.

Table 1. U.S. ITC Investigations of Food and Agricultural Imports Completed Under Section 201 of the Trade Act of 1974

Number	Subject	Final Disposition
TA-201-3	Wrapper tobacco	No relief
TA-201-4	Asparagus	No relief
TA-201-10	Mushrooms	Adjustment assistance
TA-201-12	Shrimp	Adjustment assistance
TA-201-14	Honey	No relief
TA-201-16	Sugar	Price support
TA-201-17	Mushrooms	No relief
TA-201-22	Fresh cut flowers	No relief
TA-201-25	Live cattle/certain meat products	No relief
TA-201-41	Certain fish	No relief
TA-201-42	Roses	No relief
TA-201-43	Mushrooms	Tariff increase
TA-201-53	Certain canned tuna	No relief
TA-201-59	Apple juice	No relief
TA-201-64	Fresh winter tomatoes	No relief*
TA-201-65	Broom corn brooms	3-year relief
TA-201-66	Fresh tomatoes/bell peppers	No relief
TA-201-67	Wheat gluten	3-year relief
TA-201-68	Lamb meat	3-year relief
TA-201-71	Crabmeat from swimming crabs	No relief

Source: International Trade Commission. *Investigation terminated at petitioners' request.

The most recent high-profile agricultural investigations have involved wheat gluten and lamb meat imports. In both instances, the ITC found in favor of the domestic industry, and the President imposed import restrictions. WTO dispute settlement panels sided with foreign countries in their challenges of both the wheat gluten and lamb meat restrictions. Although the restrictions have been removed as a result of the adverse WTO rulings, adjustment assistance to the affected U.S. producers has continued.

European Union Wheat Gluten. Wheat gluten is used by the baking industry to raise the protein level of flour. The domestic industry contends that

European Union (EU) wheat gluten unfairly benefits from subsidies and trade barriers, and that EU exports to the United States have caused serious economic injury to domestic producers. An initial effort by the Wheat Gluten Industry Council to seek relief through a Section 301 action in 1997 made no progress. However, the Council, on January 15, 1998, petitioned the ITC under Section 201 for the imposition of safeguard measures against the EU imports. After the ITC found that such imports were a substantial cause of serious injury to the U.S. industry, the President, on May 30, 1998, proclaimed an annual import quota for wheat gluten, for a 3-year period ending June 1, 2001, starting at about 126 million pounds in the first year and rising to 142 million pounds in the third year.

The EU in mid-1999 challenged the wheat gluten safeguards, and a WTO dispute panel in December 2000 concluded that the ITC had not ensured that injury caused by other factors was attributed to imports. Once the WTO had ruled that the U.S. safeguard was in violation of the Safeguard Agreement, the EU subsequently retaliated by imposing a special duty on imports of U.S. corn gluten feed. On June 1, 2001, the Bush Administration announced that it would not extend the wheat gluten quota. Following the lifting of the U.S. quota, the EU announced it would discontinue the tariffs on corn gluten feed. The Administration said it instead would provide the U.S. industry with $40 million over 2 years so that the industry could continue its efforts to become more competitive. Two U.S. wheat gluten companies – Midwest Grains, and Manildra, a subsidiary of an Australian firm – were expected to benefit from the subsidies.[10]

Australia and New Zealand Lamb Meat. Acting on a Section 201 petition filed by the American Sheep Industry Association (ASI) and others, the ITC on February 9, 1999, found that increased lamb meat imports were a substantial cause of the threat of serious injury to the U.S. lamb meat industry. Subsequently, President Clinton announced, on July 7, 1999, an import relief package for the U.S. industry that included both a 3-year, $100 million initiative to help the industry improve productivity, and tariff-rate quotas on lamb meat imports from Australia and New Zealand (which account for 99% of such imports).

Following complaints filed by the two countries, a WTO dispute panel ruled on December 6, 2000, that the United States had violated the WTO's safeguard provision by improperly attributing, to the imports, the economic injury that was caused by other factors. On May 1, 2001, a WTO appellate body turned aside a U.S. appeal. The Bush Administration on August 31, 2001, then announced that it would end the tariff-rate quota safeguard on November 15, 2001. As part of an agreement with New Zealand and Australia, the United States is to provide the U.S. lamb industry with up to $42.7 million in assistance (in addition to the $100 million) through FY2003 to help the U.S. industry continue to adjust to import competition.[11]

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[10]Source: *Inside U.S. Trade*, June 8, 2001; and a USTR press release dated June 1, 2001. For more details on the case see CRS Report RL30610, *Vital Wheat Gluten: U.S. Industry Performance and Foreign Trade Implications of Section 201 Quotas*.

[11]See also: USTR press release dated August 31, 2001.

Countervailing and Anti-Dumping Duties

More than 1,200 individual AD and CVD cases have been initiated since 1980, of which 76 were for food and agricultural product imports (see Appendix B table). Since 1994, more than 300 AD and CVD cases of all types were initiated; of these, 30 were food and agricultural. However, numerous cases are related to each other.[12]

Petitioners for import relief frequently are unsuccessful in AD and CVD cases. However, a substantial number do gain relief. As of December 2001, approximately 260 AD and nearly 50 CVD orders were in effect for all types of products. Of these, 35 were food and agricultural cases (again, some of them are related to each other). Some were initiated as far back as the late 1970s (see table 2). Such orders, issued when investigations find in favor of the domestic industry seeking relief, entail higher duties on imports of these products from targeted countries.[13]

Apple Juice. A recent example of a successful U.S. petition was a recent apple industry case. Apple industry groups from Michigan, California, Pennsylvania, and Washington, in 1999 petitioned for relief from what, they argued, were unfairly-priced imports of non-frozen concentrated apple juice from China that were causing them economic injury. An anti-dumping investigation was instituted on June 7, 1999, and, ultimately, DOC and ITC determinations upheld the U.S. industry's assertions. DOC imposed anti-dumping duties of up to 52%, effective June 5, 2000.

Honey. Importers can be subject to provisional duties if, in the course of an investigation, a preliminary determination is made that dumping is occurring. For example, in the cases filed September 29, 2000, against honey imports from Argentina and China (see table 2), DOC made a preliminary determination (on May 7, 2001) that dumping was occurring. DOC imposed provisional duties on imports from the two countries ranging as high as 184% *ad valorem* (varying rates apply, depending upon the specific importing entity). The determination means that importers were required to post bonds or make cash deposits in the appropriate amounts to cover the duties until the end of the process – when either final orders, with countervailing and/or anti-dumping duties, are issued, or else the cases are terminated by DOC or ITC.

U.S. honey producers subsequently prevailed when the DOC issued a final ruling that dumping and/or countervailable subsidies were occurring; and the ITC determined that the U.S. industry is being, or threatened with being, materially injured. On December 10, 2001, DOC issued a final AD order imposing import duties on Argentine and Chinese honey ranging from about 26% to 184% *ad valorem* (depending upon the importing entity), as well as a final CVD order for import duties of nearly 6% on Argentine honey.

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[12] For example, four separate but related cases were initiated against preserved mushrooms; they all were filed on January 6, 1998, but against four different countries. In another example, live cattle were the subject of three separate cases initiated on November 12, 1998. However, all three cases were related: AD and CVD investigation against Canadian cattle, and an AD investigation against Mexican cattle. Source: ITC.

[13] As noted, agricultural and other petitioners are receiving distributions from duties collected under AD and CVD orders; see "Byrd Amendment" on page 15.

Cattle. An example of an unsuccessful petition was a challenge against live cattle imports from Mexico and Canada under both the AD and CVD laws. In November 1998, Ranchers-Cattlemen Action Legal Foundation (R-CALF) filed a complaint that such imports were being sold in the United States at less than fair value. The ITC first voted to terminate the case against Mexico but did find reasonable indication that U.S. cattlemen were threatened or injured economically by low-cost Canadian cattle imports. DOC next concluded that Canadian cattle feeders were dumping cattle, at margins ranging from 3.86% to 15.69%. However, on November 9, 1999, the ITC ruled finally that despite such margins, the imports were not materially injuring or threatening to injure U.S. producers – therefore, no anti-dumping order (with duties) was issued.

Table 2. Anti-Dumping (AD) and Countervailing Duty (CVD) Orders in Effect for Food and Agricultural Products as of December 2001

Product Name	Countries Affected	Date of Original Action	Type
Apple Juice Concentrate	China	06/05/00	AD
Crawfish Tail Meat	China	09/15/97	AD
Garlic, Fresh	China	11/16/94	AD
Honey	Argentina	12/10/01	AD
Honey	Argentina, China	12/10/01	CVD
Mushrooms, Preserved	Chile	12/02/98	AD
Mushrooms, Preserved	China, India, Indonesia	02/19/99	AD
Orange Juice, Frzn. Conc.	Brazil	05/05/87	AD
Pasta	Italy, Turkey	07/24/96	AD
Pasta	Italy, Turkey	07/24/96	CVD
Pineapple, Canned	Thailand	07/18/95	AD
Pistachios, Raw In-shell	Iran	07/17/86	AD
Pistachios, Roasted In-shell	Iran	10/07/86	CVD
Pistachios, Raw In-Shell	Iran	03/11/86	CVD
Salmon, Fresh	Chile	07/30/98	AD
Salmon, Fresh & Chilled	Norway	04/12/91	AD
Salmon, Fresh & Chilled	Norway	04/12/91	CVD
Sugar	Belgium, France, Germany	06/13/79	AD
Sugar	European Union	07/31/78	CVD
Tomatoes, Fresh*	Mexico	11/01/96	AD
Urea, Solid	Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Uzbekistan	07/14/87	AD

Sources: U.S. International Trade Comm.; International Trade Admin. *Suspended.

Section 301

As noted, Section 301 primarily has addressed complaints not about imports, but rather that U.S. exports have been impaired by unreasonable foreign policies or actions. More than a dozen 301 cases involving food and agricultural products (a number of them related to each other) were initiated between 1994 and 2001. These have involved the EU and bananas, dairy products, meat, and wheat gluten (the latter eventually was pursued under safeguard authority; see above); Korea and meat products; Australia and leather; Japan and certain agricultural products; Canada and dairy products and wheat; and Mexico and high fructose corn syrup (HFCS). Details on some of the more prominent cases follow.

European Union Banana Regime. In 1993, the EU established a banana import regime that favored imports from EU countries' former colonies, especially in the Caribbean, and that restricted access to bananas produced in Latin America. At the request of U.S. banana interests operating in Latin America, section 301 investigations were undertaken into whether the EU policies and practices were discriminatory. Following a series of bilateral and multilateral consultations, USTR took the issue into the WTO dispute settlement process, where, in 1997, the WTO found that the EU banana import regime was inconsistent with EU trade obligations. By 1999, the EU (with a $5 billion banana market) had not implemented the WTO reforms, so the United States imposed WTO-approved retaliation (in the form of 100% tariffs) on nearly $200 million of EU exports to the United States.

In April 2001, the United States and the EU reached an agreement that resolved the banana dispute. In response to the EU's agreement to increase market access for U.S. banana distributors, the United States lifted its retaliatory duties on July 1, 2001. The agreement provides for a transition to a tariff-only system of imports in 2006. In the period until 2006, the EU is establishing quotas and a licensing system based on historical trade shares that should increase the prospects for Latin American banana imports in the EU market, especially bananas marketed by U.S. firms like Chiquita Brands International. Under the agreement, banana imports from developing countries that are former EU member country colonies (the so-called ACP countries in Africa, the Caribbean, and Pacific) will continue to enjoy preferential entry. Trade ministers in the Fourth Ministerial Conference of the WTO held in Doha, Qatar, from November 9-11, 2001, agreed to grant the EU waivers from its non-discrimination obligations in order to enable it to give preferential tariff concessions to the ACP countries and to augment the quota for Latin American bananas. As a result, full implementation of the agreement can now proceed.[14]

European Union Meat Hormone Directive. Section 301 actions were instituted to challenge an EU ban, which took effect in 1989, on imports of meat derived from animals treated with growth hormones. The United States contended that the ban lacks a scientific justification and therefore is inconsistent with the Uruguay Round Sanitary and Phytosanitary (SPS) Agreement. WTO panels eventually agreed with the U.S. argument, left open the option for the EU to conduct

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[14] *Inside U.S. Trade*, July 27, 2001. Also see: *U.S.-EU Banana Dispute*, in the CRS Electronic Briefing Book on Trade.

a risk assessment of hormone-treated meat; and gave the EU until May 13, 1999, to bring its hormone measure into compliance with SPS rules. The EU, citing studies that, it contends, raise human health questions about the use of such hormones, did not meet the deadline and said it intended to maintain the ban. Effective July 29, 1999, the United States imposed 100% retaliatory tariffs on $116 million worth of imports from the EU (the level approved by the WTO). The tariffs are a punitive measure that will not reopen the European market to most U.S. meat products, at least in the near term. Both sides still express a desire to reach an amicable settlement, but none was at hand as of early 2002.[15]

Mexico High Fructose Corn Syrup. A Section 301 investigation was initiated in early 1998 after the U.S. Corn Refiners Association alleged that the Mexican government had denied fair and equitable marketing opportunities for U.S. high fructose corn syrup (HFCS), by fostering collusion between the Mexican sugar and soft drink industries. NAFTA and WTO dispute proceedings already were underway to address the U.S. contention that Mexico had failed to abide by its own laws when it imposed, in January 1998, anti-dumping duties ranging from $55 to $175 per ton on U.S. HFCS imports. NAFTA and WTO panels both have since sided with the United States, essentially agreeing that Mexico had not proven that the imports injure or threaten to injure a domestic industry. That could lead to retaliation in the form of 100% tariffs on some as-yet undetermined value of Mexican imports.

However, the HFCS dispute is closely tied to ongoing negotiations on market access to the U.S. market for Mexican sugar. Starting October 1, 2000, Mexico under NAFTA became eligible to ship much more sugar duty free to the U.S. market than the 25,000 metric tons allowed to enter in earlier years. U.S. and Mexican negotiators continue to disagree, however, over just how much sugar Mexico actually can export to the United States. An agreement was reached in December 2001 between Mexico and the United States to attempt to find a negotiated settlement in the dispute, while leaving the HFCS duties in place. However, the sweetener issue became more contentious when Mexico imposed, on January 1, 2002, a new tax of up to 20% on soft drinks containing HFCS. This tax, too, could be challenged under NAFTA or WTO provisions.[16]

Canada Wheat. USTR initiated, on October 23, 2000, a Section 301 investigation after the North Dakota Wheat Commission filed a petition alleging that the Canadian government and the Canadian Wheat Board were engaging in anti-competitive practices in third-country markets, i.e., offering to undersell U.S. wheat with lower prices in some markets, and charging higher prices in others to make up the difference. Earlier this year, USTR asked the ITC to investigate these practices and the ITC published its report on December 18, 2001.[17] The ITC's

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[15]See CRS Report RS20142, *The European Union's Ban on Hormone-Treated Meat*.

[16]"Mexico Says Resolving Sweetener Dispute a Priority; High-Level Talks With U.S. Needed," *International Trade Reporter*, January 24, 2002. For current status, see CRS Issue Brief IB95117, *Sugar Policy Issues*.

[17]U.S. ITC, *Wheat Trading Practices: Competitive Conditions between U.S. and Canadian Wheat*, USITC Publication 3465, December 2001.

analysis does not support the charge that the Canadian Wheat Board is systematically underpricing exports in U.S. or third country markets.

However, on February 15, 2002, USTR released an "affirmative finding" that the Government of Canada grants the Canadian Wheat Board special monopoly status that gives it a competitive advantage that harm U.S. producers. USTR said it would "aggressively pursue" several avenues to address the finding: (1) examine whether to take a dispute settlement case to the WTO; (2) work with the North Dakota Wheat Commission and the U.S. industry to examine whether to file U.S. CVD and AD petitions with Commerce and the ITC; (3) with industry, identify specific impediments to U.S. wheat exports to Canada, and to negotiate with Canada to ensure fair two-way trade; and (4) complement the first three actions with "the Administration's ongoing commitment to vigorously pursue comprehensive and meaningful reform of state trading enterprises in the WTO agriculture negotiations."
USTR said it would not impose a tariff-rate quota at this time, contending that it would violate NAFTA and WTO commitments, could attract Canadian retaliation against U.S. agriculture, and would not achieve a "durable solution" to the market distortions caused by the Canadian Wheat Board monopoly.[18]

Recent Policy Developments

A variety of measures have been passed or proposed in recent years aimed at improving U.S. producers' ability to obtain relief from what they view as unfair import pricing and/or barriers to their own exports. In some cases, these measures have been offered primarily in response to concerns raised by U.S. agriculture. Often, they have been fueled by the trade problems experienced by other U.S. industries, but nonetheless are or would be applicable across the economy, including agriculture.

Some argue that agriculture deserves special treatment under U.S. trade policy in general and trade remedy legislation in particular due to its unique characteristics. Characteristics often cited as in support of special agricultural treatment include the highly perishable and cyclical nature of agricultural products and the importance of a financially healthy farm sector in ensuring adequate food at reasonable prices. However, a counter-argument could be made that modern U.S. agriculture has become far more integrated into, and similar to, much of the rest of the U.S. economy, making special treatment unnecessary. Besides, it could be argued, the sector already is supported – far more than other industries – through an array of extensive and costly price and income supports, export programs, and other government spending that helps to cushion and insulate farmers from trade problems.

This section surveys a number of legislative and trade policy developments with potential implications for agricultural producers.

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[18] *United States to Purse Action Against Monopolistic Canadian Wheat Board,* USTR press release, February 15, 2002.

Byrd Amendment

Senator Byrd successfully sponsored an amendment to the FY2001 agricultural appropriation (P.L. 106-387; section 1003) that requires that anti-dumping and countervailing duties be redistributed to the domestic industries found to be injured by the imports and subject to the AD and CVD orders. The provision, entitled the Continued Dumping and Subsidy Offset Act of 2000, applies to all industries and not just agriculture. It requires the U.S. Customs Service to deposit the duties into a special account rather than into the general treasury, as previously. Customs then must distribute the funds to eligible firms, farmers, or other producers that were petitioners in the original AD or CVD cases to offset certain expenses they incurred as a result of the dumped or subsidized imports.

Customs published on August 3, 2001, a list of AD and CVD orders, and the names of affected domestic producers potentially eligible under the "Byrd Amendment" for a redistribution of FY2001 duty collections. Customs on January 30, 2002, released details on the first disbursements under the Byrd Amendment, which totaled approximately $200 million. Much of the $200 million went to U.S. manufacturers of ball bearings and other steel products.

About $22 million of the $200 million was for agricultural AD and CVD cases (generally, those in table 2 on page 11). Most of the agricultural disbursements were for petitioners in the Italian pasta cases (see table 2), notably to Hershey Foods at approximately $8 million and to American Italian Pasta at more than $7 million. Customs reported that another nearly $2 billion was being held (as of October 1, 2001) in clearing accounts awaiting final liquidation (some but not necessarily all of it ultimately will be paid to AD/CVD petitioners); about $121 million was for agriculture-related cases.

The Byrd amendment has been controversial, initially because of criticism that it was inserted into the legislation during conference without committee consideration in either chamber, and more recently because of budgetary and international trade concerns. In late 2000 and early 2001, the EU, Japan, and 10 other countries lodged complaints with the WTO charging that the amendment violates WTO obligations (see below, "Concluding Observations").

"Carousel" Retaliation

Section 407 of the Trade and Development Act of 2000, (P.L. 106-200) directs the USTR periodically to revise the list of products subject to trade retaliation; revision is not required if the USTR determines that implementation of WTO obligations is imminent, or the USTR and the petitioner agree that revision is unnecessary. Impetus for the provision grew largely from the difficulties the United States had in forcing the EU to change its banana import regime and its beef hormone ban (see page 13), even though WTO panels had ruled for the United States and permitted it to impose retaliatory duties against various imports from the EU. Proponents of the carousel provision contend that rotating the list of products subject

to retaliation would bring more pressure to bear on the offending party by exposing a broader swath of its economy to economic pain.[19]

The USTR began implementing the provision in late May 2000, but product lists have not been changed. The EC has challenged the carousel provision in the WTO as violating the Dispute Settlement Understanding; the proceeding is still in consultations. The United States also reportedly is reluctant to employ "carousel" because of other sensitive U.S.-EU trade matters, particularly in light of a WTO panel decision that a U.S. tax benefit provided to U.S. foreign sales corporations violates trade rules, which could potentially subject the United States to as much as $4 billion in retaliatory tariffs. The amount of retaliation is currently in WTO arbitration.

Other Proposals to Change Current Trade Remedy Laws

Several bills have been introduced in the 107th Congress that would make potentially significant changes in existing trade remedy statutes. For example, H.R. 518, S. 979, and H.R. 1988 contain various provisions aimed at easing the requirements for determining that imports have caused, or threatened to cause, material injury to a U.S. industry, including but not limited to agriculture. Proposed provisions would, among other things, specify that imports could be one of the causes of injury; they no longer would have to be the primary cause for gaining import relief. Other examples include S. 1869 and H.R. 3571, both of which would provide for expedited antidumping investigations when imports increase materially from new suppliers after an antidumping order has been issued.

S. 979 and H.R. 1988, which are companion bills, also contain language related directly to agriculture. In determining whether injury has occurred, the ITC effectively would be required, if it determines that a product is a perishable agricultural product with a short shelf life, to measure the economic effects during the course of the product's defined production period or season (i.e., not over a longer period, when the effects of an import might be diluted statistically). Several provisions also specify several factors that should or should not be weighed in determining economic injury.

Agriculture in Trade Promotion Authority Legislation

The Administration and congressional supporters are seeking to renew authority for the President to negotiate trade agreements with expedited procedures for legislation to implement those agreements. This authority is commonly called "trade promotion authority" (TPA) or "fast-track authority." As in the past, many (although not all) agricultural groups are among the export-oriented interests that support such authority. It is expected that a final TPA law will include language that recognizes the industry's "special status" and/or makes other special concessions to it.

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[19] The Administration already had the authority to rotate product lists, but had not taken such action. See: CRS Report RS20751 (pdf), *Trade Retaliation: the "Carousel" Approach*, and "The Foreign Sales Corporation (FSC) Export Tax Benefit and the ETI Replacement Provisions" in the CRS Trade Electronic Briefing Book.

On December 6, 2001, the House narrowly passed, largely along party lines, a TPA bill (H.R. 3005) that would authorize the President to negotiate trade agreements reached by June 30, 2005 (with a 2-year extension possible). The Senate Finance Committee cleared its version of H.R. 3005 on December 18, 2001; full Senate consideration is expected shortly.

In part to shore up support for TPA among agricultural groups and also to address their specific trade concerns, proponents of H.R. 3005 have included extensive provisions regarding negotiating objectives and consultation requirements for agriculture. H.R. 3005 includes, among numerous agricultural negotiating objectives: eliminating practices that adversely affect trade in perishable or cyclical products and addressing their trade problems; and ensuring that import relief mechanisms for such products are as accessible and useful to U.S. growers as they are to producers in other countries.[20]

Also to garner more support from agricultural members, the bill's House sponsors added language expanding the consultation requirements that U.S. officials must follow before undertaking tariff reduction negotiations on agricultural products considered "import-sensitive" (defined in the House version as those subject to the minimum 2.5% annual reduction required under the URAA). The USTR would have to identify such products – likely more than 200 specific items ranging from cheese and many other dairy products to various fresh fruits and vegetables, sugar and other sweeteners, beef and lamb, oilseeds, wine, tobaccos, cotton, wool, and chocolate – and consult with Congress on how domestic producers would be affected by tariff cuts, among other requirements. The Senate version contains somewhat different language but with the same intent.

Some analysts note that while H.R. 3005 and the Senate bill give the President the authority he has sought to proceed with negotiations, provisions in those bills will make it difficult for the President to achieve stated negotiating objectives for agriculture. In particular, analysts say both bills' requirement to consult in advance with Congress before negotiating cuts in tariffs on import-sensitive products, make negotiating tariff reductions more difficult and prevent negotiation of trade-offs between sectors. The Administration, however, has expressed the view that while the fast track bills pose additional hurdles for lowering tariffs on import-sensitive products, in the long-run they provide a "better basis" for negotiations.

Trade Adjustment Assistance for Farmers

Several proposals have been offered to extend trade adjustment assistance (TAA) to farmers. TAA programs are available for workers (through the Department of Labor) and for firms (through the Department of Commerce). They provide funds for training and other adjustment measures to those who can demonstrate an adverse impact from imports. Many economists prefer this option over trade restrictive

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[20]Examples of other objectives include reducing or eliminating import tariffs, export subsidies, and trade distorting domestic support; maintaining bona fide food assistance programs, and preserving U.S. market development and export credit programs. For more information see CRS Report 97-817, *Agriculture and Fast Track or Trade Promotion Authority.*

remedies because it directs assistance to those most affected and does so without distorting prices. But TAA programs as currently designed and administered have been criticized by labor advocacy groups as ineffective in responding to workers' needs in a globalizing economy.[21] They also may be of limited value for agriculture.

Current legislative authority for TAA for workers and firms expired at the end of FY2001, and the 107th Congress has been considering legislation to extend it.[22] Proposals to include farmers have been offered, and are included in the major vehicles now under consideration. Senator Conrad introduced, on June 26, 2001, the Trade Adjustment Assistance for Farmers Act (S. 1100), which would add a new chapter to Title II of the Trade Act of 1974 (the TAA authorizing law, at 19 U.S.C. 2251 *et seq.*) creating such a program for FY2002-FY2006. The bill's language was incorporated into a broader bill to extend and amend the TAA programs, the Trade Adjustment Assistance for Workers, Farmers, Communities, and Firms Act of 2001 (S. 1209), introduced July 19, 2001, by Senator Bingaman, which was substantially amended and approved by the Senate Finance Committee on December 4, 2001.

Under S. 1209, a group of agricultural producers could petition the Secretary of Agriculture to be certified as eligible for TAA. The Secretary would have 60 days to determine that the national average price for the affected commodity or class of goods from that commodity (for the most recent marketing year) was less than 80% of the average price for the prior 5 years, and imports of like items "contributed importantly" to the price decline.[23]

Once such a determination was made, each member of the eligible group could apply to the Secretary for a cash payment equal to: one-half of the difference between the most recent year's national average price and 80% of the preceding 5 marketing years, times his or her production for the year. An individual's benefits would be limited to $10,000 per year, and all claims could be decreased proportionately, if necessary, to maintain the total national cost of the program at a proposed authorized funding cap of $90 million annually. Several bills with similar farmer language have been introduced into the House, including H.R. 3359 and H.R. 3670.

Current TAA eligibility for workers is based on loss of a job. The language in S. 1209 ties payments to the price effects of an imported commodity. Tying subsidies to price and production already is a key feature of a number of existing and proposed farm support programs administered by USDA.[24]

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[21] *Trade Remedy Law Reform in the 107th Congress.*

[22] Although the authorization for the program has expired, it continues to operate normally with the funds appropriated for FY2002 in P.L. 107-116. For background see, in the CRS Trade Electronic Briefing Book, Trade Adjustment Assistance for Workers and Trade Adjustment Assistance for Firms.

[23] A separate provision would require the Secretary to report on potential producer eligibility for TAA for any agricultural commodity involved in an USITC safeguard investigation.

[24] For background see CRS Report RS20848, *Farm Commodity Programs: A Short Primer*, and CRS Report RL31195, *The 2002 Farm Bill: Overview and Status.*

The Labor report on TAA for agricultural producers observed that the existing programs for workers emphasize retraining those who have lost their jobs so that they can find other occupations. "Any modifications to these DOL programs such as to provide financial assistance to workers to remain in their current occupations runs counter to the emphasis of these important readjustment programs." The Commerce TAA program for firms "provides opportunities for agriculture commodity producers who have been injured by lost sales and reduced the number of their employees due to increased imports to receive limited technical assistance, on a cost shared basis, that will help them regain their economic competitiveness." However, the program has funding limitations and "no authority to provide any direct financial assistance in the form of loans, loan guarantees, or income supplements, to trade injured firms."

USDA officials noted in the report that low commodity prices and reduced farm income are not due primarily to increased imports. "Thus, TAA-type programs with their linkage to increased imports would not help address low prices faced by agricultural commodity producers." The Labor report concluded:

> Should the [Senate Finance and House Ways and Means] Committees consider legislation designed to assist agricultural commodity producers and workers adversely affected by low prices as a result of imports who desire to remain in their current occupations, we recommend that it be enacted separately and apart from the current trade adjustment assistance for workers or firms programs.[25]

Concluding Observations

As agricultural trade grows, U.S. producers are exposed not only to new sales opportunities overseas, but also to stronger price competition at home as food and farm imports from other countries increase. Often, certain groups of commodity producers perceive such imports as a threat to their livelihoods, and seek relief from the government, either under existing statutes as described above, or through new legislative proposals, some of which have attracted congressional interest.

Generally, trade remedy legislation receives the most support from industries – whether agricultural or non-agricultural (e.g., steel, textiles, etc.) – that appear to be the most sensitive to foreign competition. However, opposition to such legislation often is found among other domestic interests, notably U.S. businesses that rely on imports, and consumers who face potentially higher prices due to import restrictions. Other possible costs of trade remedies are the extent, if any, to which they might

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[25]U.S. Department of Labor, *Report on Trade Adjustment Assistance for Agricultural Commodity Producers*, submitted October 26, 2000, to the Senate Finance and House Ways and Means Committees. The report noted that from FY1994 through FY2000, of 2,616 certifications of petitions filed with DOL for worker assistance, only 21 were in agriculture. The Commerce TAA program for firms between FY1994 and the first half of FY2000 certified 29 incorporated agricultural firms covering fresh flowers, pears, pineapples, carrots, maple syrup, oysters, crabs, salmon and other fish. Of the 29 firms, 21 actually submitted adjustment proposals, for which more than $750,000 in TAA funds had been allocated to 20 of them.

sustain economically inefficient U.S. producers, heighten international trade tensions, and/or increase government outlays.

Trade remedy laws already have come under scrutiny and challenge by the United States' major trading partners, and by the WTO itself. Noting that the United States has continued to make use of AD and CVD measures, the WTO recently stated: "Initiations of investigations may have a chilling effect on trade, with preliminary duties applied in most cases." Turning to the Continued Dumping and Subsidy Offset Act (the Byrd Amendment), the WTO quoted President Clinton as saying it would "provide select U.S. industries with a subsidy above and beyond the protection level needed to counteract foreign subsidies, while providing no comparable subsidy to other U.S. industries or to U.S. consumers, who are forced to pay higher prices on industrial inputs or consumer goods as a result of the anti-dumping and countervailing duties."[26]

However, the WTO also has pointed out that the United States is not alone in its use of various import protections for agriculture and other products. Regarding "special" agricultural safeguards in particular, the WTO reported that 38 of its member countries currently have reserved the right to use a combined total of 6,072 of them, which it defines as "contingency restrictions on imports taken temporarily to deal with special circumstances such as a sudden surge in imports." These are permitted generally under the UR Safeguards Agreement.[27]

With the United States in mind, the European Union and Japan, for example, have called for a review of the antidumping practices of WTO countries in the new round of multilateral trade negotiations, which are now getting under way. The United States had opposed such a review. However, U.S. negotiators subsequently agreed to language – in the November 2001 Doha declaration that began a new round of multilateral trade negotiations – that calls for "simplification and clarification" of countries' laws on antidumping and safeguard laws. USTR Zoellick recently told the Senate Finance Committee that the language is intended to encourage developing countries to bring their own trade relief measures up to U.S. standards (and to replace language that potentially would have been more unfavorable to the United States). However, several committee members sharply criticized the USTR for exposing the U.S. trade relief laws to potential weakening in the multilateral negotiations.[28]

Meanwhile, the U.S. position continues to be for further reductions in agricultural trade barriers. Some foreign governments might suggest that this position is inconsistent with the U.S. opposition to examining anti-dumping practices. Still, U.S. producers are likely to resist changes in U.S. law, and possibly to push for stronger protections, so long as they perceive foreign competitors engaging in unfair subsidization of their own agricultural producers.

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[26]September 17, 2001, WTO press release on the WTO Secretariat's sixth trade policy review of the United States. This document also noted prominently that the United States "maintains one of the world's most open trade and investment regimes."

[27]WTO. *WTO Agriculture Negotiations: The Issues, and Where We Are Now*, January 2002.

[28]See for example "Trade Laws, USTR Zoellick and Finance," in the February 7, 2002, *Washington Trade Daily*.

Appendix A. Dispute Settlement in Trade Agreements[29]

WTO Uruguay Round Agreements

Understanding on Rules and Procedures Governing the Settlement of Disputes. The Uruguay Round Agreements include a Dispute Settlement Understanding that sets out rules and timetables for resolving disputes. Disputes arise when one country adopts a trade policy measure or takes some action that one or more WTO members considers a violation of a WTO agreement or to be a failure to live up to obligations. A third group of countries can declare their interest in the case and enjoy some rights as well. Settling disputes is the responsibility of the Dispute Settlement Body (DSB).

The first stage in dispute settlement is consultation between the governments concerned. (Consultation is always a possibility even in later stages of dispute settlement.) Consultation can take up to 60 days. If consultations fail, the complaining country can ask for the appointment of a panel (up to 45 days). The other country can block the creation of a panel once, but when the DSB meets a second time, the panel can no longer be blocked. The panel reports to the parties within 6 months and makes a final report to all WTO members within 3 weeks. The DSB adopts the report within 60 days.

If there is no appeal, the process should take about 1 year. Either side, however, can appeal the panel's ruling on points of law. Appeals are heard by three members of a permanent seven-member Appellate Body. Appeals should not last more than 60 days, with a maximum of 90 days. The DSB has to accept or reject (by consensus) the appeals report within 30 days. With appeal, the process should take about 1 year and 3 months.

The losing country must follow the recommendations of the panel or appeals report and state its intention to do so within 30 days of the report's adoption. Countries can be given a reasonable period of time to comply. If a country fails to act within this period, it has to enter into negotiations to determine mutually acceptable compensation. If after 20 days, no satisfactory compensation is agreed, the complaining country may ask the DSB for permission to impose trade sanctions which the DSB should grant within 30 days or the expiration of the "reasonable period of time."

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[29] **Sources:** *Uruguay Round Trade Agreements, Text of Agreements Implementing Bill, Statement of Administrative Action, and Required Supporting Statements*, House Document 103-316, 103d Congress, 2 session, U.S. Government Printing Office, September 27, 1994; *North American Free Trade Agreement, Texts of Agreement Implementing Bill, Statement of Administrative Action, and Required Supporting Statements*, House Document 103-159, 103d Congress, 1st session, U.S. Government Printing Office, November 4, 1993; *United States-Canada Free Trade Agreement*, House Document 100-216, 100th Congress, 2d session, U.S. Government Printing Office, July 26, 1988.

North American Free Trade Agreement

Chapter 20 Dispute Settlement. Disputes arise when one NAFTA country complains that another NAFTA country has taken, or is proposing to take, action inconsistent with the Agreement or that nullifies or impairs benefits that the complaining country thinks would accrue under the Agreement. Complaints arising under both NAFTA and the WTO may be settled in either forum at the discretion of the complaining party (with some exceptions).

Consultation which can take from 15 to 45 days is the first stage of dispute settlement. If disputing parties cannot resolve the complaint, normally within 30 days, after consultations have begun, a country may refer the issue to the NAFTA Commission for resolution. The Commission must convene within 10 days to consider the issue. If the Commission is unable to resolve the dispute within 30 days, any country that participated in the dispute may convene an arbitral panel.

Panel members normally are selected from rosters maintained by each NAFTA country. Roster members must be experts in law, international trade, or matters covered by NAFTA or in dispute resolution. (Selection procedures are intended to ensure that NAFTA members can select experts in particular subject matters of a dispute to serve on panels.) A five-member panel is chosen by "reverse selection." A chairman is chosen by agreement or by lot. Then each "side" in the dispute selects two panelists from among citizens of the other "side." Experts or scientific review boards may be used where disputes require their advice, as for example, in matters concerning sanitary and phytosanitary or other scientific or technical matters. Panels must make their initial report, including findings and recommendations for resolution of the dispute, within 90 days of the selection of the last panelist. Disputing parties have 14 days to provide written comments on the panel's report. The panel has 30 days then to make its final report to the disputing parties.

When the disputing parties receive the final report, they must attempt to resolve the dispute according to the panel's recommendations. If no agreement is reached, the parties must agree on trade compensation for the complaining party. If a panel has found that a measure is inconsistent with NAFTA and no settlement has been reached within 30 days or an agreed period, the complaining party may suspend the application to the other party of NAFTA benefits. Suspension of benefits may remain in effect until the parties have resolved the dispute.

Settlement in Anti-dumping and Countervailing Duty Cases. Each NAFTA country retains its national antidumping (AD) and countervailing duty (CVD) laws and can amend them. In the case of amendments, NAFTA parties should notify and consult with the affected party in advance and also specify application to the goods of the other party where this is intended.

NAFTA governments may invoke a procedure whereby independent panels of experts (preferably judges or attorneys) review antidumping and countervailing duty determinations by the relevant administrative agencies in the NAFTA countries when those determinations concern products of a NAFTA country. Governments have agreed to seek review when interested persons wish to challenge an agency AD/CVD determination and who otherwise would have standing to challenge such a

determination in court. The panels apply exclusively the national law and standards of judicial review of the of the country whose AD or CVD determinations are under review.

Panels are chosen from rosters maintained by each country in a manner similar to Chapter 20 dispute settlement procedures.

NAFTA Governments may appeal a panel decision to a three-member extraordinary challenge committee (ECC) whose members are selected from rosters of judges maintained by NAFTA countries. If the ECC finds serious ethical violation, or serious legal or procedural error, and if it finds that such actions threaten the integrity of the binational panel process, then the ECC could vacate or remand the panel decision.

Appendix B. Antidumping and Countervailing Duty Cases for Food and Agricultural Products Initiated Since January 1, 1980

Date Filed	Product	Country	Case Number	Petitioner(s)
05/31/01	Quick Frozen Red Raspberries	Chile	A-337-806	IQF Red Raspberry Fair Trade Committee
05/31/01	Quick Frozen Red Raspberries	Chile	C-337-807	IQF Red Raspberry Fair Trade Committee
03/30/01	Spring Table Grapes	Chile	A-337-805	Desert Grape Growers League of California
03/30/01	Spring Table Grapes	Mexico	A-201-829	Desert Grape Growers League of California
03/28/01	Greenhouse Tomatoes	Canada	A-122-837	Carolina Hydroponic Growers Inc., Eurofresh, HydroAge, Sunblest Management LLC, Sunblest Farms LLC, Village Farms
03/12/01	Mussels	Canada	A-122-836	Great Eastern Mussel Farms
03/06/01	Paprika	India	A-533-822	Rezolex, Ltd.
09/29/00	Honey	Argentina	A-357-812	American Honey Producers Assn., Sioux Honey Assn.
09/29/00	Honey	China	A-570-863	American Honey Producers Assn., Sioux Honey Assn.
09/29/00	Honey	Argentina	C-357-813	American Honey Producers Assn., Sioux Honey Assn.
06/07/99	Nonfrozen Apple Juice Concentrate	China	A-570-855	Tree Top, Knouse Foods Cooperative, Inc., Green Valley Packers, Mason County Fruit Packers, Coloma Frozen Foods
11/12/98	Live Cattle	Canada	A-122-833	Ranchers-Cattlemen Action Legal Foundation
11/12/98	Live Cattle	Canada	C-122-834	Ranchers-Cattlemen Action Legal Foundation
11/12/98	Live Cattle	Mexico	A-201-824	Ranchers-Cattlemen Action Legal Foundation
02/06/98	Butter Cookies in Tins	Denmark	A-409-801	Hearthside Baking Company Inc, D/B/A Maurice Lenell Cooky Co.
02/06/98	Butter Cookies in Tins	Denmark	C-409-802	Hearthside Baking Company Inc, D/B/A Maurice Lenell Cooky Co.
01/06/98	Preserved Mushrooms	Chile	A-337-804	L.K. Bowman, Modern Mushroom Farms, Monterey Mushrooms, et al.
01/06/98	Preserved Mushrooms	China PRC	A-570-851	L.K. Bowman, Modern Mushroom Farms, Monterey Mushrooms, et al.
01/06/98	Preserved Mushrooms	India	A-533-813	L.K. Bowman, Modern Mushroom Farms, Monterey Mushrooms, et al.
01/06/98	Preserved Mushrooms	Indonesia	A-560-802	L.K. Bowman, Modern Mushroom Farms, Monterey Mushrooms, et al.
03/29/96	Fresh Tomatoes	Mexico	A-201-820	Florida Tomatoes Growers Exchange, Florida Fruit & Veg. Assn., et al.

Appendix B. Antidumping and Countervailing Duty Cases for Food and Agricultural Products Initiated Since January 1, 1980

Date Filed	Product	Country	Case Number	Petitioner(s)
05/12/95	Certain Pasta	Italy	A-475-818	Borden Foods, Hersey Foods, Gooch Foods
05/12/95	Certain Pasta	Turkey	A-489-805	Borden Foods, Hersey Foods, Gooch Foods
05/12/95	Certain Pasta	Italy	C-475-819	Borden Foods, Hersey Foods, Gooch Foods
05/12/95	Certain Pasta	Turkey	C-489-806	Borden Foods, Hersey Foods, Gooch Foods
10/03/94	Honey	China PRC	A-570-838	American Beekeeping Federation, Inc.; American Honey Producers Assn.
06/08/94	Canned Pineapple	Thailand	A-549-813	Maui Pineapple Company, LTD.
02/13/94	Fresh Cut Roses	Colombia	A-301-801	Floral Trade Council
02/13/94	Fresh Cut Roses	Ecuador	A-331-801	Floral Trade Council
01/31/94	Fresh Garlic	China PRC	A-570-831	Fresh Garlic Producers Association
03/19/91	Tart Cherry Juice & Concentrate	Germany	A-428-809	Cherry Marketing Institute
03/19/91	Tart Cherry Juice &Concentrate	Yugoslavia	A-479-803	Cherry Marketing Institute
01/05/89	Fresh Chilled and Frozen Pork	Canada	C-122-807	Various (22 Total)
05/21/86	Certain Fresh Cut Flowers	Canada	A-122-604	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Mexico	A-201-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Costa Rica	A-223-602	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Colombia	A-301-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Colombia	A-301-602	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Ecuador	A-331-602	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Chile	A-337-602	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Kenya	A-779-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Canada	C-122-603	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Costa Rica	C-223-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Colombia	C-301-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Colombia	C-301-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Ecuador	C-331-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Peru	C-333-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Chile	C-337-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Netherlands	C-421-601	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Israel	C-508-603	Floral Trade Council
05/21/86	Certain Fresh Cut Flowers	Kenya	C-779-602	Floral Trade Council
05/09/86	Frozen Concentrated Orange Juice	Brazil	A-351-605	Florida Citrus Mutual
09/26/85	In-Shell Pistachios	Iran	A-507-502	California Pistachio Commission, Blackwell Land Co., California Orchards
09/26/85	In-Shell Pistachios	Iran	C-507-501	California Pistachio Commission, Blackwell

Appendix B. Antidumping and Countervailing Duty Cases for Food and Agricultural Products Initiated Since January 1, 1980

Date Filed	Product	Country	Case Number	Petitioner(s)
				Land Co., California Orchards
09/24/85	Rice	Thailand	C-549-503	Rice Millers Association
09/18/85	Table Wine	France	A-427-504	American Grape Growers Alliance for Fair Trade, CA. Assn. of Grape Growers
09/18/85	Table Wine	W. Germany	A-428-501	American Grape Growers Alliance for Fair Trade, CA. Assn. of Grape Growers
09/18/85	Table Wine	Italy	A-475-501	American Grape Growers Alliance for Fair Trade, CA. Assn. of Grape Growers
09/18/85	Table Wine	France	C-427-505	American Grape Growers Alliance for Fair Trade, CA. Assn. of Grape Growers
09/18/85	Table Wine	W. Germany	C-428-502	American Grape Growers Alliance for Fair Trade, CA. Assn. of Grape Growers
09/18/85	Table Wine	Italy	C-475-502	American Grape Growers Alliance for Fair Trade, CA. Assn. of Grape Growers
07/18/85	Red Raspberries	Canada	C-122-504	Washington Red Raspberry Commission, Red Raspberry Commission of Oregon
03/26/85	Lamb Meat	New Zealand	C-614-503	American Lamb Company
11/02/84	Live Swine	Canada	C-122-404	National Pork Producers Council
07/03/84	Red Raspberries	Canada	A-122-401	Washington Red Raspberry Commission, Oregon Caneberry Commission, American Frozen Food Institute
04/19/84	Lamb Meat	New Zealand	A-614-401	American Lamb Company
01/27/84	Table Wine	India	A-427-401	Amer. Grape Growers Alliance for Fair Trade
01/27/84	Table Wine	France	C-427-402	Amer. Grape Growers Alliance for Fair Trade
01/27/84	Table Wine	Italy	C-475-402	Amer. Grape Growers Alliance for Fair Trade
01/27/84	Table Wine	Italy	C-475-403	Amer. Grape Growers Alliance for Fair Trade
09/30/83	Fresh Cut Flowers	Colombia	A-301-004	California Floral Trade Council and Roses Inc.
09/30/83	Fresh Cut Flowers	Mexico	C-201-016	California Floral Trade Council and Roses Inc.
03/14/83	Pork Rind Pellets	Mexico	C-201-014	Evans Food Products
11/03/82	Fresh Asparagus	Mexico	C-201-011	NA
04/28/81	Lamb Meat	Australia	A-602-003	NA
04/28/81	Lamb Meat	New Zealand	A-614-001	NA

Sources: U.S. International Trade Commission; International Trade Administration. Case numbers beginning with "A" are antidumping, and those with "C" are countervailing duty filings. NA: not readily available.