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Efforts to Address Seasonal Agricultural Import Competition in the NAFTA Renegotiation

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December 7, 2017

Congressional Research Service

7-5700

www.crs.gov

R45038

Summary

The United States has initiated renegotiations of the North American Free Trade Agreement (NAFTA) with Canada and Mexico. Among the Administration's agriculture-related objectives in the renegotiation is a proposal to establish new rules for seasonal and perishable products, such as fruits and vegetables, which would establish a separate domestic industry provision for perishable and seasonal products in anti-dumping and countervailing duties (AD/CVD) proceedings. This could protect certain U.S. seasonal fruit and vegetable products by making it easier to initiate trade remedy cases against (mostly Mexican) exports to the United States and responds to complaints by some fruit and vegetable producers, mostly in Southeastern U.S. states, who claim to be adversely affected by import competition from Mexico.

Mexico's production of some fruits and vegetables—tomatoes, peppers, cucumbers, berries, and melons—has increased sharply in recent years, in large part due to Mexico's investment in large-scale greenhouse production facilities and other types of technological innovations. Some claim that this investment is supported by government subsidies and should be addressed through higher countervailing duties (CVD) on U.S. imports of these products. They also claim that these imports are sold to the United States at prices below the cost of production and alternatively could be countered by higher anti-dumping (AD) duties. Concerns have mostly focused on U.S. imports of tomatoes, peppers, and berries.

The Administration's seasonal proposal is among the more contentious of the agricultural proposals reportedly considered by U.S. negotiators. The proposal would likely require changes to U.S. AD/CVD laws by allowing growers to bring an injury case by domestic region and draw on seasonal data. Under current law, an injury case must be supported by a majority (at least 50%) of the domestic industry. The Administration's proposal could reportedly allow regional groups—representing less than 50% of producer nationwide—to initiate an injury, even if the majority of producers within the industry, or in other regions, do not support initiating an injury case. Also, under current law, three years of annual data is necessary to prove injury, whereas the proposal would allow for the use of seasonal data to prove injury.

The seasonal proposal has divided the U.S. fruit and vegetable industry, and opinions are split between producers in some Southeastern states and producers in other states, such as California. Opinions in Congress are also divided. Some in Congress support the seasonal proposal, claiming that such a change is necessary to address perceived unfair trading practices by Mexican exporters of fresh fruits and vegetables. Others in Congress oppose including the proposal, contending that seasonal production complements rather than competes with U.S. growing seasons. They also worry that this change could open the door to retaliation by U.S. trading partners and to the imposition of similar regional and seasonal remedies against U.S. exports.

Mexican trade officials also do not support including a seasonal AVD/CVD proposal as part of the NAFTA renegotiations, nor do they support limiting access for some products. Some reports indicate that Mexico is considering retaliation by including its own list of protected products in response to the U.S. proposal. Such a list could include certain grain and pork products and other types of limitations to protect Mexican products in certain production areas.

The U.S. food and agriculture industries have much at stake in the current NAFTA renegotiations. Canada and Mexico are the United States' two largest trading partners, accounting for 28% of the total value of U.S. agricultural exports and 39% of its imports in 2016. Under NAFTA, U.S. agricultural exports to Canada and Mexico has increased sharply, rising from \$8.7 billion in 1992 to \$38.1 billion in 2016.

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The United States has initiated renegotiations of the North American Free Trade Agreement (NAFTA) with Canada and Mexico. The Administration’s agriculture-related objectives in the renegotiation include a contentious proposal to establish trade remedies for perishable and seasonal products.¹ The proposal would establish separate domestic provisions for seasonal products such as fruits and vegetables in anti-dumping and countervailing duties (AD/CVD) proceedings, making it easier to initiate a trade remedy case against (mostly Mexican) exports to the United States. While some in Congress support adding a seasonal AD/CVD proposal as part of NAFTA renegotiations, others in Congress and most U.S. food and agricultural groups—including U.S. fruit and vegetable producer groups—oppose the proposal. Some also worry that efforts to push for seasonal protections, among other U.S. proposals, could derail agricultural provisions in the NAFTA renegotiation.

USTR’s Agriculture-Related NAFTA Objectives

The Office of the U.S. Trade Representative’s (USTR) agriculture-related NAFTA negotiating objectives cover agricultural market access and regulatory cooperation, sanitary and phytosanitary (SPS)² measures (including agricultural biotechnology), geographical indications (GIs),³ and trade remedies for perishable and seasonal products in AD/CVD proceedings, among other general provisions addressing dispute settlement and regulatory harmonization.⁴ Selected USTR agriculture-related objectives are shown in the **text box** below. The Administration’s most recent market access objectives for U.S. agriculture specifically target remaining Canadian tariffs on imports of U.S. dairy, poultry, and egg products that are subject to tariff-rate quotas (TRQs)⁵ and certain technical barriers to U.S. grain and alcohol beverages.

Potential opportunities for the U.S. food and agriculture industries as part of the ongoing NAFTA renegotiation include the following: improve agricultural market access by liberalizing remaining dutiable agricultural products that were exempted from the original agreement; update NAFTA’s SPS provisions by “going beyond” existing World Trade Organization (WTO) obligations regarding risk assessment, transparency, notification, response and enforcement; and address certain outstanding agricultural trade disputes between the United States and its NAFTA partners, including concerns regarding dairy, fruits, vegetables, wine, and a range of SPS and GI concerns.⁶

¹ For more information on the renegotiation, see CRS Report R44981, *NAFTA Renegotiation and Modernization*, and CRS In Focus IF10047, *North American Free Trade Agreement (NAFTA)*.

² SPS measures are laws, regulations, and standards intended to “protect human, animal or plant life or health” from the risks associated with pests, diseases, or disease-carrying agents or from additives, toxins, or contaminants in food, beverages, or feed. For more information, see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*.

³ GIs refer to place names that identify specific products—usually food, wine, and spirits—based on their reputation or origin. For more information, see CRS Report R44556, *Geographical Indications (GIs) in U.S. Food and Agricultural Trade*. GIs are addressed as part of the negotiations on intellectual property provisions.

⁴ USTR, “Summary of Objectives for the NAFTA Renegotiation,” November 2017. Previous objectives released in July 2017 also included this provision (<https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAObjectives.pdf>).

⁵ TRQs allow imports of fixed quantities of a product either duty-free or at a lower tariff. Once the quota is filled, a higher tariff is imposed on additional imports. Canada’s TRQs cover a range of dairy, poultry, egg, and grain products. Mexico’s TRQs cover mostly beef and rice to non-NAFTA countries. TRQs in the United States cover sugar and sweeteners, cocoa-containing products, tea and coffee extracts, and certain dairy byproducts.

⁶ See CRS Report R44875, *The North American Free Trade Agreement (NAFTA) and U.S. Agriculture*.

Summary of USTR's Agriculture-Related NAFTA Negotiating Objectives

Agricultural Goods

- Maintain existing reciprocal duty-free market access for agricultural goods.
- Expand competitive market opportunities for U.S. agricultural goods in NAFTA countries—substantially equivalent to the competitive opportunities afforded foreign exports into the U.S. market—including by eliminating remaining Canadian tariffs on imports of U.S. dairy, poultry, and egg products.
- Eliminate and prevent non-tariff barriers to U.S. agricultural exports, such as restrictive administration of tariff rate quotas, and discriminatory barriers and unjustified technical barriers, including to U.S. grain and alcohol beverages.
- Eliminate unjustified measures that unfairly limit access to Canada's markets and unfairly decrease market access opportunities in third countries for U.S. dairy products, such as cross subsidization, price discrimination, and price undercutting.
- Provide reasonable adjustment periods for U. S. imports on sensitive agricultural products, engaging in close consultation with Congress on such products before initiating tariff reduction negotiations.
- Promote greater regulatory compatibility (including through regulatory cooperation where appropriate) to reduce burdens associated with unnecessary differences in regulation, including regulations and standards for processed foods and beverages.
- Establish specific commitments for trade in products developed through agricultural biotechnologies—including commitments on transparency, cooperation, and managing low-level presence issues—and a mechanism for exchange of information and enhanced cooperation on agricultural biotechnologies.

Sanitary and Phytosanitary Measures (SPS)

- Provide for enforceable SPS obligations that build upon WTO rights and obligations—including with respect to science-based measures, good regulatory practice, import checks, equivalence, regionalization, and certification and risk analysis—while ensuring that each country can set for itself the level of protection it believes to be appropriate to protect food safety and plant and animal health.
- Establish a mechanism to resolve expeditiously unwarranted barriers that block the export of U.S. food and agricultural products.
- Establish new and enforceable rules to ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner.
- Improve communication, consultation, and cooperation among governments to share information and work together on SPS issues in a transparent manner, including on new technologies.
- Provide for a mechanism for improved dialogue and cooperation to address SPS issues and facilitate trade.

Selected Provisions in Other Chapters

- **Intellectual Property.** Among other objectives, “prevent the undermining of market access for U.S. products through the improper use of a country's system for protecting or recognizing geographical indications, including such systems that fail to ensure transparency and procedural fairness, or adequately protecting generic terms for common use.”
- **Good Regulatory Practices and Transparency; Publication and Administration of Measures.** “Obtain commitments that can facilitate market access and promote greater compatibility among U.S., Canadian, and Mexican regulations” covering transparency, accountability, public comment, impact assessments, and good regulatory practices in the development, implementation, and review of regulations. Other objectives cover laws, regulations, administrative rulings, and procedures that affect trade and investment, including mechanisms to review and correct final administrative actions.
- **Trade Remedies.** “Preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws,” including seeking a separate domestic industry provision for perishable and seasonal products in AD/CVD proceedings.
- **Dispute Settlement.** “Encourage the early identification and settlement of disputes through consultation and other mechanisms to improve timeliness and effectiveness,” among other related objectives.

Source: CRS from USTR, “Summary of Objectives for the NAFTA Renegotiation,” November 2017.

USTR's Objectives Regarding Seasonal Protections

One of the more controversial agricultural proposals considered by U.S. negotiators would establish seasonal protections for U.S. agriculture in trade remedy cases. The U.S. proposal would “[s]eek a separate domestic industry provision for perishable and seasonal products in AD/CVD proceedings.”⁷ Although the precise text of the proposal is not publicly available,⁸ the proposal would reportedly protect certain U.S. fruit and vegetable producers by making it easier to initiate trade remedy cases against (mostly) Mexican seasonal exports to the United States. The proposal responds to complaints by some fruit and vegetable producers, mostly in Southeastern states, who claim to be adversely affected by import competition from Mexico.⁹

Antidumping (AD) and Countervailing Duties (CVD)

Antidumping (AD) and countervailing duties (CVD) address unfair trade practices by providing relief to U.S. industries and workers that are “materially injured,” or threatened with injury, due to imports of like products that are sold in the U.S. market at less than fair value (AD) or where production has been subsidized by a foreign government or public entity (CVD). Dumping refers to 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. Unfair subsidies refer to financial payments and other forms of government support to foreign manufacturers or exporters that might give them an unfair advantage over U.S. producers and comparable domestic goods.

At the end of an investigative process, in AD cases, the remedy is an additional duty placed on the imported merchandise to offset the difference between the price (or cost) in the foreign market and the price in the U.S. market. In CVD cases, a duty equivalent to the amount of subsidy is placed on the imports. The U.S. International Trade Commission (USITC) determines if a U.S. industry has suffered material injury, and, if so, the International Trade Administration (ITA) of the U.S. Department of Commerce then determines the existence and amount of dumping or subsidy.¹⁰

AD and CVD provisions in U.S. law are in Title VII of the Tariff Act of 1930 (19 U.S.C. 1671-1677n, as amended). U.S. laws and those of other WTO members must comply with obligations under the WTO Antidumping and Subsidies Agreements.¹¹ There are no seasonal provisions under current U.S. laws governing AD/CVD.

CVD law and regulation establish standards for determining when an unfair subsidy has been conferred by a foreign government and is intended to offset any unfair competitive advantage that foreign manufacturers or exporters might have over U.S. producers because of foreign countervailable subsidies. Such subsidies provide financial assistance to benefit the production,

⁷ USTR, “Summary of Objectives for the NAFTA Renegotiation,” November 2017. Previous objectives released in July 2017 also included this provision.

⁸ NAFTA parties have agreed that the information exchanged in the context of the negotiations—such as the negotiating text, proposals of each government, and other materials related to the substance of the negotiations—must remain confidential. Information on the proposal discussed in this report is based on information reported by the media and in industry reports.

⁹ Statements from Reggie Brown on behalf of the Florida Fruit and Vegetable Association at a House Agriculture Committee hearing, “Renegotiating NAFTA: Opportunities for Agriculture,” July 26, 2017.

¹⁰ For more information, see CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*.

¹¹ Ibid. See also ITA, “Frequently Asked Questions,” <https://www.trade.gov/faq.asp>.

manufacture, or exportation of goods (e.g., either through direct cash payments, export subsidies, import substitution subsidies, credits against taxes, or loans at terms below market rates). The amount of subsidies the foreign producer receives from the government is the basis for the subsidy rate by which the subsidy is offset, or “countervailed,” through higher import duties.

AD law and regulations authorize higher duties on imported goods if ITA determines that an imported product is being sold at less than its fair value and if the USITC determines that a U.S. producer is thereby being injured.

If an AD/CVD investigation results in final affirmative determinations by both agencies, the ITA issues an AD or CVD order directing U.S. Customs and Border Protection to collect duties on the imported merchandise.

Previous USITC investigations have highlighted the increased competitive market and trade pressures on U.S. fruit producers from lower-cost foreign fruit and vegetable producers (such as those in China, Thailand, Chile, Argentina, and South Africa) as well as from countries with subsidized fruit and vegetable production (such as in the European Union, including Spain).¹² Import injury investigations initiated by the United States further highlight concerns that some countries might be supplying imports at prices below fair market value. Since the 1990s, dumping petitions filed by the U.S. fruit and vegetable sectors have included charges against imports of fresh tomatoes (Canada, Mexico), frozen raspberries (Chile), apple juice concentrate (China), frozen orange juice (Brazil), lemon juice (Argentina, Mexico), fresh garlic (China), preserved mushrooms (China, Chile, India, Indonesia), canned pineapple (Thailand), table grapes (Chile, Mexico), and tart cherry juice (Germany, former Yugoslavia).¹³ Many of these petitions were decided in favor of U.S. domestic producers and resulted in higher tariffs being assessed on U.S. imported products from some of these countries.

In addition, seasonal tariffs—for example, higher import tariffs for certain fruits and vegetables imported during U.S. peak season—are already part of the U.S. tariff schedule for many fruits and vegetables imported from countries under most-favored-nation (MFN) status.¹⁴ In the United States, higher MFN seasonal tariffs apply to berries, melons, citrus, pears, stonefruit, tomatoes, cucumbers, asparagus, eggplant, cole crops,¹⁵ legumes, and tropical products.

USTR’s Seasonal AD/CVD Proposal

Specific details regarding USTR’s perishable and seasonal proposal for NAFTA are not publicly available. However, according to groups that are supporting such a provision, the proposal would establish new rules for seasonal and perishable products, such as fruits and vegetables, and ensure that producers who are susceptible to trade surges at certain times of the year have recourse to trade remedies.¹⁶ It would also address practices that adversely affect trade in perishable and

¹² USITC, “Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market,” Inv. 332-469, July 2006; USITC, “Canned Peaches, Pears, and Fruit Mixtures: Conditions of Competition Between U.S. and Principal Foreign Supplier Industries,” Inv.332-485, December 2007. Reports available at <http://www.usitc.gov>.

¹³ USITC, “Import Injury Investigations Case Statistics (FY 1980-2009),” February 2010.

¹⁴ MFN tariffs refer to normal non-discriminatory tariffs charged on imports, excluding preferential tariffs charged under a free trade agreement. In practice, MFN rates are the highest (most restrictive) rates countries charge each other on imported goods and services. The MFN principle is a cornerstone of the multilateral trading system and refers to the idea that if a country grants another country special treatment (e.g., such as a lower customs duty rate for traded products), that same treatment should apply to all other WTO member countries.

¹⁵ Crops in the mustard family, including broccoli, brussels sprouts, cabbage, cauliflower, collards, kale, and kohlrabi.

¹⁶ Letters from the Florida and Georgia Congressional Delegations to USTR, August 31, 2017, and September 1, 2017.

cyclical crops while also improving import relief mechanisms. Other reports indicate that the proposal seeks to modify U.S. AD/CVD laws by allowing growers to bring an injury case by domestic region and draw on seasonal data.¹⁷

This differs from current law, which requires that an injury case be supported by a majority (at least 50%) of the domestic industry, whereas USTR's seasonal proposal would allow regional groups representing less than 50% of nationwide seasonal growers to initiate an injury.¹⁸ This would make it easier for a group of regional producers to initiate trade remedy cases even if the majority of producers within the industry, or in other regions, do not support initiating an injury case. As will be discussed later, such a change to U.S. trade laws could further deepen divisions in the fruit and vegetable industry regarding the proposal. Also, under current law, three years of annual data are necessary to prove injury, whereas the proposal would allow for the use of seasonal data to prove injury.¹⁹ Although an industry can currently initiate an AD/CVD case under U.S. law, such efforts can often be costly to initiate, time-consuming, and difficult to prove. USTR's proposal would require a change in AD/CVD requirements, making it easier for a group of regional producers to initiate an injury case and make it easier to prove injury and thus institute higher tariffs on imported products.

Produce Imports from Mexico

Trends in U.S. Imports

Mexico's production of some fruits and vegetables—tomatoes, peppers, cucumbers, squash, berries, and melons—has increased sharply in recent years. Increased supplies have contributed to increased U.S. imports for many types of fruits and vegetables from Mexico, particularly for tomatoes, avocados, peppers, and berries (**Figure 1, Figure 2**). Researchers at the U.S. Department of Agriculture (USDA) report that Mexico is the largest foreign supplier of U.S. imports of vegetables and fruits (excluding bananas).²⁰

In large part, Mexico's increased production and export supplies are attributable to its investment in large-scale greenhouse production facilities and other types of technological innovations, among other factors.²¹ Studies have highlighted that Mexico's "protected agriculture" represents a "fast-growing activity in Mexico with a large potential to increase yield, quality, and market competitiveness."²² Over the years, USDA has conducted a series of studies regarding greenhouse tomato production. These studies also highlight how rapidly increased greenhouse production has impacted North American markets, resulting in a series of AD cases among the NAFTA

¹⁷ See, for example, B. Fortnum, "U.S. Expected to Table Text That Would Give Seasonal Growers Standing in Trade Remedy Cases," *Inside U.S. Trade*, August 17, 2017.

¹⁸ See USITC, *Antidumping and Countervailing Duty Handbook*, publication 4540, June 2015, p. I-6.

¹⁹ *Ibid.*, p. I-11. In general, data should cover the three most recent complete calendar years as well as the year-to-date period of the current year and the like period of the previous year.

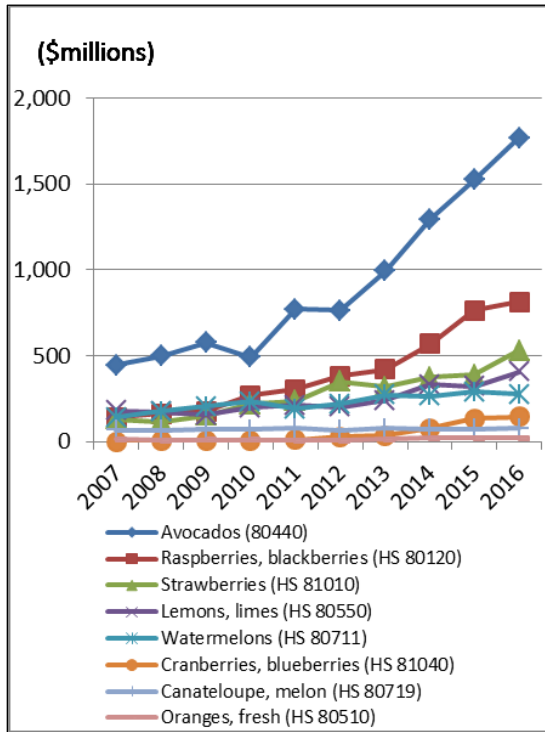
²⁰ L. Calvin and S. Zahniser, "Mexico-US Agricultural Trade," <https://migration.ucdavis.edu/farm-labor/>, presentation at "Farm Labor and Mexico's Export Produce Industry," Wilson Center, November 15, 2017.

²¹ *Ibid.*, among other comments from presenters at the Wilson Center Mexico event.

²² N. Garcia Victoria et al., "Mexican Protected Horticulture: Production and Market of Mexican Protected Horticulture Described and Analyzed," Wageningen University and Research, GTB-1126, 2011, <http://edepot.wur.nl/196070>. See also USDA, "Mexico Continues to Expand Greenhouse Tomato Production Continues to Grow," GAIN Report# MX6021, June 1, 2017.

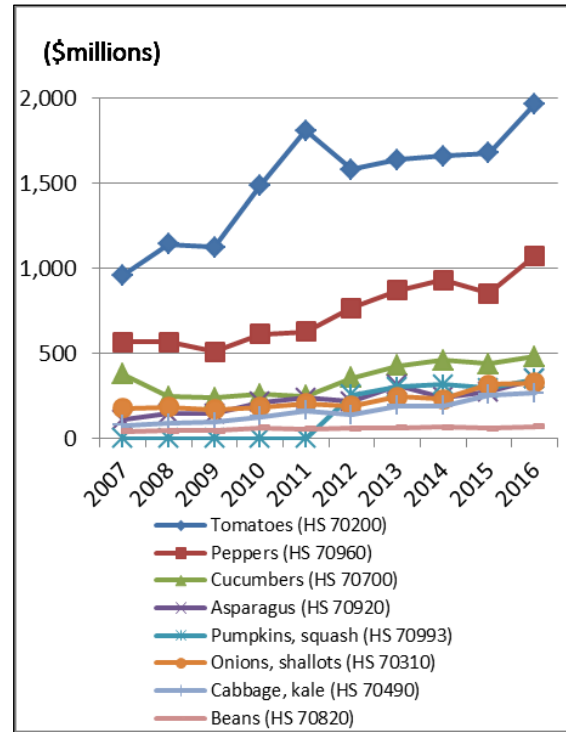
countries.²³ The most well-known case dates back to 1996, when the U.S. tomato industry filed an AD petition alleging that Mexican tomato producers/exporters were selling tomatoes in the United States at less than fair value, which lasted until 2013 under an agreement suspending the AD investigation on fresh tomatoes from Mexico.²⁴

Figure 1. Fruit Imports from Mexico



Source: CRS from import data from U.S. International Trade Commission. Imports for consumption, actual U.S. dollars.

Figure 2. Vegetable Imports from Mexico



Source: CRS from import data from U.S. International Trade Commission. Imports for consumption, actual U.S. dollars.

Rising imports from Mexico are generally regarded as supporting rising consumer demand for fruits and vegetables by ensuring year-round counter-seasonal supplies of products, including during the U.S. off-season (or winter months) for some products. Counter-seasonal fruit and vegetable imports are said to complement U.S. production and are generally considered to have a positive impact on U.S. consumer demand by ensuring year-round supply.²⁵ Fruit (**Figure 3**) and vegetable (**Figure 4**) imports from Mexico tend to be higher during the winter months (complementary). Counter-seasonal imports may also benefit consumers through lower costs, given a wider supply network, and may also stimulate additional demand by introducing new products and varieties. However, technological and production improvements may be further

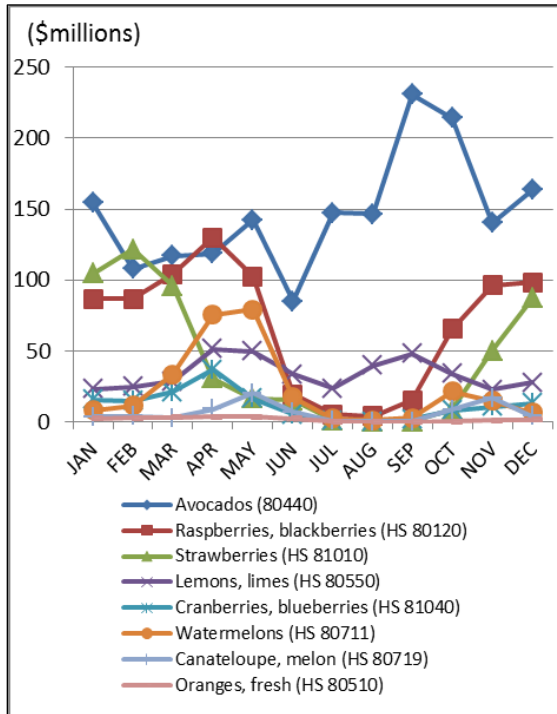
²³ See, for example, R. Cook and L. Calvin, “Greenhouse Tomatoes Change the Dynamics of the North American Fresh Tomato Industry,” April 2005.

²⁴ The basis for the agreement was a commitment by each signatory producer/exporter to sell the subject merchandise at or above the reference price. The complete text of the 2013 Suspension Agreement for Fresh Tomatoes from Mexico and related background information is available at <http://ia.ita.doc.gov/tomato/index.html>.

²⁵ Most counter-seasonal trade occurs between the Northern and Southern Hemisphere countries, which often have opposite production cycles.

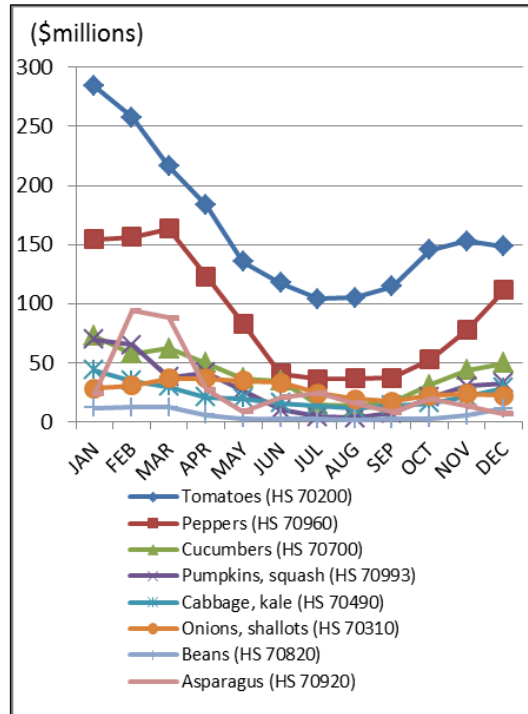
altering this trend. For example, greenhouse production may allow for year-round production, including during U.S. peak season. In addition, the development of early- and late-maturing varieties has expanded U.S. production seasons, allowing producers to grow many types of fruits and vegetables throughout the year. Improvements in transportation and refrigeration have also made it easier to ship fresh horticultural products.

Figure 3. Monthly Selected Fruit Imports from Mexico, 2016



Source: CRS from import data from U.S. International Trade Commission. Imports for consumption, actual U.S. dollars.

Figure 4. Monthly Vegetable Imports from Mexico, 2016



Source: CRS from import data from U.S. International Trade Commission. Imports for consumption, actual U.S. dollars.

As the U.S. production season has expanded, the winter window for some imports has narrowed, and imports of some fruits and vegetables are now directly competing with U.S. production. Across all countries importing to the United States, products facing steeper competition from imports include fresh tomatoes, peppers, potatoes, onions, cucumbers, melons, citrus, grapes, apples, and other tree fruits. Imports of processed fruit and vegetable products, including fruit juices, directly compete with U.S. processed products year-round.

With respect to U.S. imports from Mexico under NAFTA, analysis from USDA researchers suggest that although imports continue to supplement U.S. supplies during the year, imports from Mexico may be outcompeting certain Florida-grown crops, particularly for tomatoes, cucumbers, peppers, raspberries, and blueberries, particularly of greenhouse-grown crops.²⁶ Rising imports also exacerbate an already sizeable and widening trade deficit in U.S. fruit and vegetable trade.²⁷

²⁶ Calvin and Zahniser, "Mexico-US Agricultural Trade."

²⁷ For more information, see CRS Report RL34468, *The U.S. Trade Situation for Fruit and Vegetable Products*.

Imports as a Share of Total U.S. Supplies

As imports have risen, so have imports as a share of total U.S. domestic supplies and consumption for some fresh and processed fruits and vegetables, according to data from USDA (**Table 1**). Total imports from all U.S. suppliers accounted for 32% of all U.S. fresh fruit supplies (excluding bananas) in 2007, rising to 38% in 2016. Fresh vegetable imports accounted for 20% of all U.S. supplies in 2007, rising to 31% in 2016. These averages mask even larger import shares for some fruits and vegetables. For example, imports of fresh cucumbers accounted for 52% of U.S. supplies in 2007, rising to 74% in 2016. Imports of fresh tomatoes rose from 41% of supplies in 2007 to 57% in 2016. Imports of avocados accounted for 86% in 2016, up from 65% a decade earlier. Imports of asparagus now account for nearly all U.S. supplies.

Table 1. Imports as a Share of Total Supplies, 2007-2016 (Select Years)

	2007	2010	2013	2016
	(Import percentage)			
All fresh fruit, excluding bananas	32	32	36	38
Avocados, fresh	65	73	83	86
Blueberries, fresh	44	49	52	57
Raspberries, fresh	48	51	58	48
Strawberries, fresh	8	9	13	14
Oranges, fresh	11	8	9	12
All fresh vegetables	20	24	27	31
Asparagus, fresh	78	89	90	96
Broccoli, fresh	11	15	17	19
Cucumbers, fresh	52	62	69	74
Bell peppers, total	48	53	59	60
Tomatoes, fresh	41	53	53	57

Source: CRS from USDA data: Fruit and Tree Nut Yearbook Tables (<https://www.ers.usda.gov/data-products/fruit-and-tree-nut-data/fruit-and-tree-nut-yearbook-tables/>) and other Yearbook Tables covering fresh and processed vegetables (<https://www.ers.usda.gov/data-products/vegetables-and-pulses-data/yearbook-tables/>).

Notes: Calculated from available import data compared to either total supplies or commercial disappearance.

Support for Mexico's Protected Agriculture²⁸

The Florida Fruit and Vegetable Association (FFVA) claims that Mexico's investment in its greenhouse production has been supported by government subsidies that should be addressed through higher CVDs on U.S. imports of some products.²⁹ Concerns have mostly centered on U.S. imports of tomatoes, peppers, strawberries, raspberries, and blueberries.

Limited information is available regarding support or incentives for Mexico's fruit and vegetable sectors. Available information indicates that Mexico's agricultural ministry, SAGARPA, does not provide direct financial support to its produce growers. SAGARPA's primary agricultural support program, PROAGRO Productivo, comprises most of its agricultural budget. In general, Mexico's

²⁸ Protected agriculture refers to agricultural activities conducted under cover, such as in a greenhouse or under shade.

²⁹ Comments from FFVA to USTR regarding negotiating objectives to modernize NAFTA (docket No. 2017-0006), June 12, 2107.

farm programs support rural and/or entrepreneurial development, including production by new farmers and women, and also domestic feeding programs.³⁰ Overall, Mexico's producers of sugar, corn, and milk receive the highest level of support across all programs.³¹ (The **Appendix** provides additional information regarding the Mexican government's support for its agricultural sectors.) However, available support may be part of Mexico's overall support geared to rural and business development and other productivity improvements in Mexico's horticultural sectors.³² Such support may be assisting the cost of investments in Mexican greenhouses and shade houses but cannot be confirmed based on publicly available information.

FFVA claims that SAGARPA spent \$50 million from 2001 to 2008 on 1,220 hectares of greenhouses and other forms of protected agriculture and spent \$189.2 million from 2009 to 2010 on 2,500 hectares of protected agriculture.³³ FFVA claims that expenditures for 2009-2010 covered greenhouses (65%), shade houses (25%), macro-tunnels (7%), and micro-tunnels (3%). FFVA claims this support focused on production of tomatoes, cucumbers, bell peppers, berries, zucchini, grapes, brussels sprouts, habanero peppers, and green peppers, among other specialty products. Another 2010 study also highlights that support for greenhouse tomatoes was available from the Mexican government's Alianza program, which is still in operation.³⁴

FFVA claims that SAGARPA has continued to provide support for its protected agriculture sectors. It contends that existing "regulations specifically authorize greenhouse 'incentives' of up to \$48,000 per hectare" while "subsidies for new greenhouse installations are as high as \$162,000 per agricultural project."³⁵ FFVA claims that greenhouse funds can cover up to 50% of the investment costs and may be used to purchase materials, equipment, and infrastructure and for the management, conservation, and processing of greenhouse products.

In addition, FFVA also claims that Mexico's fruit and vegetable imports are sold to the United States at prices below the cost of production and alternatively could be countered by imposing higher AD duties. FFVA further claims that Mexico's labor cost advantage in fruit and vegetable production gives Mexico additional competitive advantage over U.S. produce growers.³⁶

Support and Opposition for a Seasonal Provision

The perishable and seasonal provisions in USTR's NAFTA objectives have divided the U.S. fruit and vegetable industry, and opinions are split between producers in some Southeastern states and

³⁰ See, for example, USDA, "2016 Grain and Feed Annual Mexico," *GAIN* report MX6009, March 12, 2016. Also, CRS communication with officials at Centro de Estudios para el Desarrollo Rural Sustentable y la Soberanía Alimentaria (CEDRSSA), September 4, 2017.

³¹ Organization for Economic Co-operation and Development (OECD), Producer and Consumer Support Estimates database, <http://www.oecd.org/tad/agricultural-policies/producerandconsumersupportestimatesdatabase.htm#country>.

³² See, for example, reported investments in agricultural product assets, as part of spending on fixed capital formation, reported in OECD's Producer and Consumer Support Estimates database. In 2016, reported "Investments in productive assets: Agriculture" totaled nearly \$620 million across all sectors (converted from reported total in Mexican pesos).

³³ Comments from FFVA to USTR, June 12, 2107. FFVA cites the 2011 Wageningen University study (pp. 55-56) and various USDA *GAIN* reports.

³⁴ Luz E. Padilla Bernal et al., "Competitiveness of Zacatecas (Mexico) Protected Agriculture: The Fresh Tomato Industry," *International Food and Agribusiness Management Review*, vol. 13, no. 1 (2010).

³⁵ Comments from FFVA to USTR, June 12, 2107. FFVA cites information from SAGARPA and other official government of Mexico documents.

³⁶ FFVA cites a report that is not publicly available (Florida Department of Agriculture and Consumer Services, "An Examination of International Competitive Impacts on Florida Agriculture," March 2017).

producers in other states, such as California. Opinions in Congress are also divided. For example, at a House Agriculture Committee hearing in July 2017, producer groups representing FFVA broadly claimed that import competition from Mexico of fruits and vegetables under NAFTA is affecting producers across the United States, claiming that “all the specialty crop producers in this country are having a problem with the current NAFTA trade relationship.”³⁷ This claim was in part countered by a committee member, Representative Jimmy Panetta, who stated that NAFTA is benefitting fruit and vegetable producers in California and that countercyclical production between California and Mexico is complementary, as some producers have production facilities in both the United States and Mexico.³⁸ Information on the extent that U.S. companies may be engaged in fruit and vegetable production in Mexico is not available.

Some in Congress support USTR’s seasonal proposal, claiming that it is necessary to address perceived unfair trading practices by Mexican exporters of fresh fruits and vegetables.³⁹ Others in Congress oppose including the proposal, contending that seasonal production complements rather than competes with U.S. growing seasons. They also worry that it could open the door to an “uncontrolled proliferation of regional, seasonal, perishable remedies against U.S. exports.”⁴⁰ Most U.S. food and agricultural groups, including some U.S. fruit and vegetable producer groups, also oppose seasonal proposals.⁴¹ Some worry that efforts to push for seasonal protections, among other U.S. proposals, could derail agricultural provisions in the NAFTA renegotiation. Some claim that the proposal is intended to favor a few “politically-connected, wealthy agribusiness firms from Florida” at the expense of others in the U.S. produce industry⁴² and at the expense of both consumers and growers in other fruit and vegetable producing states, such as California and Washington.⁴³ In general, the U.S. agricultural sectors have not broadly supported proposals that could potentially damage existing export markets under NAFTA.⁴⁴

Mexican trade officials do not support seasonal proposals, nor do they support limiting access for some products.⁴⁵ Reports indicate that the United States intended to table the proposal during the first round of the negotiations, but pushback forced it to hold the proposal back.⁴⁶ Other reports indicate that Mexico is considering retaliation by including its own list of protected products in response to the U.S. proposal. Such a list could include certain grain and pork products and other types of limitations to protect Mexican products in certain production areas. Some U.S.

³⁷ Statements from Reggie Brown on behalf of FFVA at a House Agriculture Committee hearing, “Renegotiating NAFTA: Opportunities for Agriculture,” July 26, 2017 (see minute 29:00).

³⁸ Statements from Representative Jimmy Panetta at a House Agriculture Committee hearing, “Renegotiating NAFTA: Opportunities for Agriculture,” July 26, 2017 (see minute 1:28:00). See also H. Bottemiller Evich and C. Boudreau, “U.S. Produce Growers Deeply Divided Over NAFTA,” *Politico*, August 25, 2017.

³⁹ Letters from the Florida and Georgia congressional delegations to USTR, August 31, 2017, and September 1, 2017.

⁴⁰ Letter from eight congressional members to USTR, August 17, 2017.

⁴¹ Letters from U.S. agricultural, including produce industry, groups, to USTR, USDA, Department of Commerce, and the National Economic Council, August 30, 2017, and August 31, 2017.

⁴² Fresh Produce Association of the Americas, “To Favor a Few Agribusiness, U.S. NAFTA Objective Would Hurt All Consumers,” press release, August 9, 2017.

⁴³ G. C. Hufbauer and E. Jung, “NAFTA Mischievous in Fruits and Vegetables,” Peterson Institute for International Economics, July 26, 2017.

⁴⁴ *Hagstrom Report*, “U.S., Mexican Farm Leaders Spar with Floridians over NAFTA,” October 13, 2017.

⁴⁵ M. Cassella, “NAFTA Countries Enter Round 5 with Hardened Stance Back,” *PoliticoPro*, November 15, 2017; and B. Fortum, “Mexico to Aim Retaliation at U.S. Grains, Meats If Seasonal Proposal Makes It into NAFTA,” *Inside U.S. Trade*, October 14, 2017.

⁴⁶ J. Leonard, “NAFTA Parties Tout Ambitious Time Line After Avoiding Contentious Issues During the First Round,” *Inside U.S. Trade*, August 20, 2017.

agricultural groups have expressed concerns about “negotiating at the edges” and carving out certain products for special treatment as part of the NAFTA renegotiation.⁴⁷ Former U.S. trade officials have also expressed skepticism about whether efforts to limit imports would benefit U.S. producers.⁴⁸

American food and agricultural producers continue to express concerns about the Trump Administration’s threats to withdraw from the agreement. A broad coalition of U.S. agricultural groups claim that “withdrawal from NAFTA would result in substantial harm to the U.S. economy generally, and U.S. food and agriculture producers, in particular.”⁴⁹ Agriculture groups also remain concerned about growing uncertainty in U.S. trade policy and the potential for the ongoing NAFTA renegotiation to disrupt U.S. export markets.⁵⁰ Economic studies commissioned by some U.S. agriculture groups claim that 43.3 million jobs—about one-fourth of all U.S. employment—are connected to the food and agriculture industries.⁵¹ Some in Congress continue to support maintaining U.S. agricultural export markets under most preferential trade agreements, including NAFTA.

The U.S. food and agriculture industries have much at stake in the current NAFTA renegotiations. Canada and Mexico are the United States’ two largest trading partners, accounting for 28% of the total value of U.S. agricultural exports and 39% of its imports in 2016. Under NAFTA, U.S. agricultural exports to Canada and Mexico have increased sharply, rising from \$8.7 billion in 1992 to \$38.1 billion in 2016.⁵² The United States supplies 58% of Canada’s and 71% of Mexico’s agricultural imports.⁵³

⁴⁷ D.A. Garcia, “Mexico Mulls Pork as Response to U.S. NAFTA Produce Proposal: Sources,” *Reuters Business News*, September 15, 2017. Comments attributed to a Cargill executive. Comments also by speakers at “North America’s Fresh Produce Industry and NAFTA 2.0,” Wilson Center, September 18, 2017.

⁴⁸ Comments by Darci Vetter, former USTR Chief Agricultural Negotiator, Mexican Cultural Institute, November 15, 2017.

⁴⁹ Letter from a coalition of agriculture groups to U.S. governors, November 14, 2017. See also a letter from U.S. agriculture groups to U.S. Department of Commerce Secretary Wilbur Ross, October 25, 2017.

⁵⁰ Comments by pork and wheat growers and other agriculture support industries at “The Future of NAFTA: The Stakes for American Agriculture and Business,” U.S. Chamber of Commerce, October 31, 2017; and statements from industry representatives at a House Agriculture Committee hearing, “Renegotiating NAFTA: Opportunities for Agriculture,” July 26, 2017, and at a USTR public hearings, “Renegotiation of NAFTA,” June 27-29, 2017.

⁵¹ Feeding the Economy, “What Is the Food and Ag Industries’ Impact in Your Community?,” <http://www.feedingtheeconomy.com/>. See also Informa Economic IEG, “How Much Do Exports Matter? Evaluating the Economic Contributions of U.S. Grain Exports on State and Congressional District Economies,” prepared for U.S. Grains Council/National Corn Growers Association, September 2017.

⁵² For more information, see CRS Report R45018, *Potential Effects of a U.S. NAFTA Withdrawal: Agricultural Markets*, and CRS Report R44875, *The North American Free Trade Agreement (NAFTA) and U.S. Agriculture*.

⁵³ For information, see CRS Report R45018, *Potential Effects of a U.S. NAFTA Withdrawal: Agricultural Markets*.

Appendix. Government Support for Mexico's Agricultural Sectors

Mexico's agricultural policies have undergone a series of changes in the past few decades. Previously, Mexico's policies were a combination of price support and general consumption subsidies. Starting in the 1980s, Mexico initiated unilateral reforms to its agricultural sector, eliminating its state enterprises related to agriculture and removing price supports and subsidies for staple commodities.⁵⁴ In addition, as part of reforms to Mexico's agrarian laws, lands that had been distributed to rural community groups following the 1910 revolution were allowed to privatize. Additional domestic reforms in agriculture coincided with negotiations under NAFTA beginning in 1991 and continued beyond the implementation of NAFTA in 1994. Another major reform was the 1999 abolishment of CONASUPO, Mexico's primary agency for government intervention in agriculture.⁵⁵

In 1993, Mexico introduced PROCAMPO (now named PROAGRO Productivo), a domestic agricultural support program with a budget of about U.S. \$1 billion (2013 data) across all agricultural sectors.⁵⁶ According to USDA:

The program was created to facilitate the transition under NAFTA to more market oriented policies from the previous system of guaranteed prices. It provides direct cash payments at planting time on a per hectare basis to growers of many crops, including feed grains as well as oilseeds. Initially, PROCAMPO was designed to be in place until the 2008-2009 fall-winter crop cycles. However, the Felipe Calderon administration (2006-2012) decided to extend the program until 2012 with some minor changes.⁵⁷

PROAGRO Productivo continues to target rural development and poverty alleviation and is intended to help producers cope with lower trade protections and the removal of direct price supports through direct payments to rural producers.⁵⁸ The program grants direct supports to growers with farms in operation that are appropriately registered in the PROAGRO directory. It provides a flat rate payment to farmers with production areas based on the size of their production unit as follows:⁵⁹

- **Subsistence growers** with up to five hectares (about 12.4 acres) of non-irrigated land and 0.2 hectares (about 0.5 acres) of irrigated land, as well as subsistence growers with up to three hectares (about 7.4 acres) of non-irrigated land for units located within specific municipalities;

⁵⁴ For more information, see Agriculture and Agri-Food Canada, "Mexico Agriculture Policy Review," 2008; and J. E. Taylor et al., "Transition Policy and the Structure of the Agriculture of Mexico," May 2004.

⁵⁵ CONASUPO (National Company of Popular Subsistence) purchased food staples from farmers at guaranteed prices and processed the products or sold them at low prices to processors and consumers. For more historical information on Mexico's agricultural policies, see Canada's Agriculture and Agri-Food Canada, "Mexico Agriculture Policy Review," http://publications.gc.ca/collections/collection_2008/agr/A38-4-13-1-2008E.pdf.

⁵⁶ USDA, "PROCAMPO 2013 Subsidy Program Changes," *GAIN* report MX3012, February 14, 2013. Mexico's Secretariat of Agriculture (SAGARPA) website on the program is at <http://www.sagarpa.gob.mx/agricultura/Programas/proagro/procampo/Paginas/procampo.aspx>.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* See also Agriculture and Agri-Food Canada, "Mexico Agriculture Policy Review," 2008. The Mexican government made changes to the program in 2013 (including changing its name) and in 2015, modifying the operational rules of the program.

⁵⁹ USDA, "2016 Grain and Feed Annual Mexico," *GAIN* report MX6009, March 12, 2016.

- **Transition growers** with more than five hectares and up to 20 hectares (about 50 acres) of non-irrigated land and more than 0.2 hectares and up to five hectares of irrigated land; and
- **Commercial growers** with more than 20 hectares non-irrigated land and more than five hectares irrigated land.

“Subsistence” growers located within specific municipalities with up to three hectares of non-irrigated land receive the largest amount of support payment per hectare for their production units at 1,500 pesos (about \$82/hectare or \$33/acre). Others outside these municipalities get about 1,300 pesos (about \$71/hectare or \$29/acre). “Transition” production units receive 800 pesos per hectare (about \$44/hectare or \$18/acre) and “commercial” production units receive 700 pesos per hectare (about \$38/hectare or \$15/acre). The maximum subsidy amount that a grower can receive under PROAGRO Productivo cannot exceed 100,000 pesos (roughly U.S. \$7,750) per crop cycle.

Available information indicates that PROAGRO mostly supports corn, sorghum, wheat, and rice production.⁶⁰ Other information further indicates that, overall, Mexico’s producers of sugar, corn, and milk receive the highest level of support across all programs.⁶¹

As a member of the WTO, Mexico has committed to abide by WTO rules and disciplines, including those that govern domestic farm policy. The WTO’s Agreement on Agriculture spells out the rules for countries to determine whether their policies for any given year are potentially trade-distorting, how to calculate the costs of any distortion, and how to report those costs to the WTO in a public and transparent manner. As part of each member’s obligations and commitments, each country is required to file periodic notifications of its agricultural domestic support measures and export subsidies for review by the relevant bodies of the WTO.⁶²

Mexico’s most recent notification to the WTO of its domestic farm program spending lists the following agricultural support measures:⁶³

- Food Support Programme;
- Rural Supply Programme;
- Milk Supply Programme;
- PROMUSAG: Programme for Women Working in the Agricultural Sector;
- PROMETE: Programme in Support of Production Projects by Women Entrepreneurs;
- FAPPA: Support Fund for Production Projects in Agrarian Clusters;
- Young Rural Entrepreneur Programme;
- COUSSA: Conservation and Sustainable Use of Soil and Water;
- Small-Scale Hydraulic Works Construction Programme;
- Native Mexican Maize (Corn) Conservation Programme;

⁶⁰ See, for example, USDA, “2016 Grain and Feed Annual Mexico,” *GAIN* report MX6009, March 12, 2016.

⁶¹ OECD, Producer and Consumer Support Estimates database, <http://www.oecd.org/tad/agricultural-policies/producerandconsumersupportestimatesdatabase.htm#country>.

⁶² For more information, see CRS In Focus IF10192, *WTO Disciplines of Domestic Support for Agriculture*, and CRS Report RS20840, *Agriculture in the WTO: Rules and Limits on Domestic Support*.

⁶³ WTO, Committee on Agriculture, “Domestic Support: Mexico,” G/AG/N/MEX/33, November 22, 2016. Reports are available at https://www.wto.org/english/thewto_e/countries_e/mexico_e.htm.

- PRODEZA: Arid Zone Development Programme;
- PESA: Strategic Food Security Programme; and
- PROAGRO Productivo (formerly PROCAMPO).

In general, these programs provide support for rural and/or entrepreneurial development focused on poverty alleviation, domestic feeding programs, and production by new farmers and women.

Mexico identifies each of these programs to be non-trade-distorting (i.e., “green box” programs that are considered to be minimally or non-trade distorting and are not subject to any spending limits under WTO rules). Overall, Mexico’s producers of sugar, corn, and milk receive the highest level of support across all programs.⁶⁴ There do not appear to be domestic farm programs that provide direct support to Mexico’s fruit and vegetable growers among the notified programs listed above. Limited other information is available regarding support or incentives for Mexico’s fruit and vegetable sectors. Available information indicates that Mexico does not provide direct financial support to its produce growers, which is similar to the situation that prevails in the United States.

Mexico’s notification of its agricultural export subsidies covers only maize (corn), beans, wheat, sorghum, and sugar.⁶⁵ Available information does not indicate existing export subsidies benefitting Mexico’s fruit and vegetable growers.

For purposes of comparison with U.S. government support for its fruit and vegetable sectors, see CRS Report R42771, *Fruits, Vegetables, and Other Specialty Crops: Selected Farm Bill and Federal Programs*, and also CRS Report R43632, *Specialty Crop Provisions in the 2014 Farm Bill (P.L. 113-79)*.

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⁶⁴ OECD, Producer and Consumer Support Estimates database, <http://www.oecd.org/tad/agricultural-policies/producerandconsumersupportestimatesdatabase.htm#country>.

⁶⁵ WTO, Committee on Agriculture, “Export Subsidies: Mexico,” G/AG/N/MEX/32, September 1, 2016. For more information on Mexico’s trade policy, see WTO, “Trade Policy Review: Mexico,” WT/TPR/S/352, February 15, 2017, https://www.wto.org/english/tratop_e/tp_r_e/s352_e.pdf.