Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated April 13, 2026

Farm Bill Primer: Conservation Title

The conservation title of a farm bill generally contains reauthorizations, amendments, and new programs that encourage farmers and ranchers to voluntarily implement resource-conserving practices on private land. Starting in 1985, farm bills broadened the conservation agenda to include addressing multiple natural resource concerns. Although the number of conservation programs has increased and techniques to address resource problems continue to emerge, the basic approach has remained unchanged: provide financial and technical assistance to farmers and ranchers to implement conservation systems supported by education and research programs.

As Congress considers authorizing the next farm bill, areas of possible interest in the conservation title may include funding, status of program authorization, and policy changes for conservation programs.

Conservation Program Portfolio

Farm bill-authorized conservation programs are administered by the U.S. Department of Agriculture (USDA) and can be grouped into the following categories: working lands programs, land retirement programs, easement programs, partnership and grant programs, and conservation compliance (see the **text box** below and CRS Report R47478, *Agricultural Conservation and the Next Farm Bill*).

Selected Farm Bill Conservation Programs

Working lands programs allow private land to remain in production while agriculture producers implement various conservation practices to address natural resource concerns specific to the area.

- Environmental Quality Incentives Program (EQIP), Conservation Stewardship Program (CSP), and Agricultural Management Assistance (AMA)

Land retirement programs provide payments to private agricultural landowners for temporary changes in land use and management to achieve environmental benefits.

- Conservation Reserve Program (CRP)—includes Conservation Reserve Enhancement Program (CREP); Farmable Wetland Program; Clean Lakes, Estuaries, and Rivers (CLEAR30) Pilot; Soil Health and Income Protection Program (SHIPP); and Transition Incentives Program (TIP)

Easement programs voluntarily impose a permanent or long-term restriction on land use in exchange for a payment.

- Agricultural Conservation Easement Program (ACEP) and Healthy Forests Reserve Program (HFRP)

Partnership and grant programs use partnership agreements and grants to leverage program funding with nonfederal funding.

- Regional Conservation Partnership Program (RCPP), Conservation Innovation Grants (CIG), On-Farm Conservation Innovation Trials, Feral Swine Eradication and Control Pilot Program (Feral Swine), and Voluntary Public Access and Habitat Incentive Program (VPAHIP)

Conservation compliance prohibits or limits a producer from receiving selected federal farm program benefits (including crop insurance premium subsidies) when conservation program requirements for highly erodible lands, wetlands, and production on native sod are not met.

- Highly erodible lands conservation ("Sodbuster"), wetland conservation ("Swampbuster"), and "Sodsaver"

Other types of agricultural conservation programs—such as watershed programs, emergency land rehabilitation programs, and technical assistance—have been authorized outside the farm bill. Most of these programs have permanent authorities and receive appropriations annually through the discretionary appropriations process. These programs generally are not addressed in farm bill legislation unless amendments to the program are proposed.

Title II (Conservation) of the Agricultural Improvement Act of 2018 (2018 farm bill; P.L. 115-334) reauthorized and amended portions of most farm bill-authorized conservation programs, although there was a focus on the large-cost programs, namely the Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), and Conservation Stewardship Program (CSP). Most farm bill conservation programs are authorized to receive mandatory funding (i.e., do not require an appropriation).

Status and Recent Changes

In August 2022, Congress passed a budget reconciliation law (P.L. 117-169, 2022 law). As part of this 2022 law, Congress provided additional funding to EQIP, CSP, the Agricultural Conservation Easement Program (ACEP), and the Regional Conservation Partnership Program (RCPP) and extended the authority for those programs through FY2031. Conservation programs not included in the 2022 law had authorities that expired with other farm bill programs at the end of FY2023. Congress enacted three one-year extensions through FY2026 and crop year 2026 (P.L. 118-22, Division B, §102; P.L. 118-158, Division D, §4101; and P.L. 119-37, Division E, §5002). In July 2025, Congress passed another budget reconciliation law (P.L. 119-21, 2025 law), which repealed unobligated funds from the 2022 law for EQIP, CSP, ACEP, and RCPP and redistributed the funds provided to the four programs. The 2025 law gave a greater percentage to EQIP, CSP, and ACEP and a lower percentage to RCPP than those provided under the 2022 law. P.L. 119-21 also repurposed some of the rescinded conservation funding to other conservation programs that did not receive funding in the 2022 law, such

as the Watershed Protection and Flood Prevention Operations program. For additional information, see CRS In Focus IF13114, *Agricultural Conservation After Enactment of the FY2025 Budget Reconciliation Law (P.L. 119-21)*.

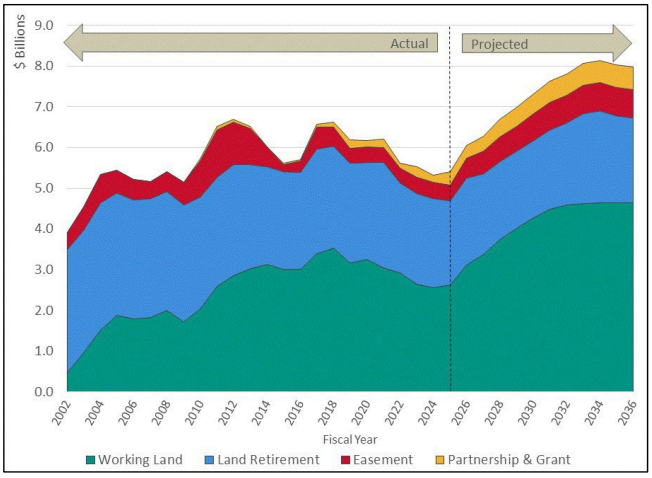
In the 119th Congress, the House Committee on Agriculture ordered reported a farm bill—the Farm, Food, and National Security Act of 2026 (H.R. 7567). The bill would reauthorize many of the expiring conservation programs, authorize new programs and initiatives, and alter funding for some programs, namely EQIP.

Funding for Conservation

The conservation title is one of the larger non-nutrition titles of the farm bill, accounting for over $73.0 billion in projected 11-year mandatory funding (FY2026-FY2036), according to the Congressional Budget Office (CBO). Spending for agricultural conservation programs generally has increased from $2.3 billion in FY2002 ($3.9 billion when adjusted for inflation) to an estimated $5.2 billion in total outlays in FY2025 (**Figure 1**).

Figure 1. Farm Bill Conservation Program Actual and Projected Mandatory Spending, FY2002-FY2036

Outlays in billions of dollars (actuals adjusted for inflation)



Sources: CRS, using Congressional Budget Office (CBO) baseline data, FY2003-FY2026, and Office of Management and Budget, Table 10.1: "Gross Domestic Product [GDP] and Deflators Used in the Historical Tables: 1940-2031," April 2026.

Notes: FY2002-FY2023 are actual spending levels; FY2024 and FY2025 are estimates. FY2002-FY2024 are adjusted for inflation to 2025 dollars using the GDP price deflator. FY2026-FY2036 are projected spending levels in current-year dollars. Figure does not include sequestration or supplemental funding.

The majority of the funding increase has occurred in the working lands programs, specifically EQIP and CSP. Changes made to these programs in P.L. 119-21 result in a projected increase over the next 11 years (through FY2036). Funding for land retirement programs, namely CRP, has remained relatively constant over time when adjusted for inflation and is projected to continue at similar levels. Funding for easement programs and partnership and grant programs has historically fluctuated; however, P.L. 119-21 provided additional and increasing funding authority for both program types through FY2036. As Congress considers the next farm bill, there could be continued discussion around how conservation funding is allocated between different program types.

Expiring Programs and Provisions

Authorities for conservation programs not included in the 2022 or 2025 reconciliation laws expired with other farm bill programs at the end of FY2023 and subsequently were extended through FY2026. The largest conservation program set to expire at the end of FY2026 is the Conservation Reserve Program (CRP). CRP provides financial compensation for landowners to voluntarily remove land from agricultural production for multiple years, for the benefit of soil and water quality and wildlife habitats. CRP enrolls land based on a total, nationwide acreage cap (27 million acres in FY2026, as extended). CRP outlays are approximately $2.0 billion annually, according to CBO. If authority expires, CRP cannot enroll new acres or reenroll expiring acres.

Other provisions contained within the conservation title of the 2018 farm bill have expired or will expire in FY2026, which could affect the function of agricultural conservation programs, regardless of their funding. For example, the 2018 farm bill limited the total amount of funding a producer may receive under both EQIP and CSP for the duration of the farm bill authorization (FY2019-FY2023). When the 2018 farm bill first expired and was extended through FY2024, the extension applied to the payment limits for both programs. This created a longer window of time that total payments would be calculated, thus possibly excluding producers at or near the limit. With each subsequent farm bill extension, the EQIP and CSP payment limit has been excluded, resulting in both programs having no payment limit for FY2025 and FY2026. Some advocacy groups have expressed concern that without payment limits, EQIP and CSP contracts may shift toward larger farming operations. Others counter that all farms, regardless of size, should be allowed access to conservation programs.

Policy Changes for Conservation

While P.L. 119-21 amended many conservation programs authorized to receive mandatory spending, the reconciliation process was limited to changes to mandatory spending that resulted in a budgetary effect and excluded policy changes to discretionary spending programs. As such, Congress may consider a number of policy amendments for conservation programs that previously could not be addressed as part of reconciliation. These could include issues related to eligibility requirements for programs, payment levels received by participants, and program limitations. Additional prioritization could be placed on specific resource concerns (e.g., greenhouse gas emission, wildlife habitat, water availability), practices (e.g., precision technology, organic certification), or applicants (e.g., beginning or limited-resource farmers or ranchers). As all conservation programs are funding- or enrollment-limited, any change in prioritization, eligibility, or payment level can effectively shift who may or may not receive a contract, easement, or grant under these programs.

Megan Stubbs, Specialist in Agricultural Conservation and Natural Resources Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated March 16, 2026

Farm Bill Primer: Energy Title

Omnibus farm bills have been enacted periodically to address agricultural and food programs. The most recent farm bill—the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334)—contains 12 titles, including Title IX, Energy. It has been extended three times, most recently through FY2026 by P.L. 119-37, §5002. The 2018 farm bill is the fourth farm bill to contain an energy title. In preparation for another farm bill, Congress may examine funding and oversight of the energy title programs as well as (1) the effects of related requirements provided under non-agriculture legislation (e.g., the Renewable Fuel Standard [RFS]), (2) market activity for conventional energy (e.g., the price of oil), and (3) the opportunity to use biofuels in aircraft (e.g., sustainable aviation fuel) and in ships (e.g., sustainable maritime fuel).

This In Focus summarizes the 2018 farm bill energy title, energy title funding for the last four farm bills, legislative support for agriculture-related energy, and legislative issues as background and context for upcoming discussions about authorizing another farm bill. This In Focus reviews all sections of 7 U.S.C. Ch. 107, Renewable Energy Research and Development, as well as sections enacted under other titles of the 2018 farm bill.

2018 Farm Bill Energy Title

The 2018 farm bill energy title primarily focused on support for renewable energy—particularly agriculture-related energy—as well as energy efficiency and bioproducts (e.g., bio-based cleaning supplies). The 2018 farm bill authorized 12 energy programs and initiatives. This total included reauthorization of 11 activities and establishment of one new program—the Carbon Utilization and Biogas Education Program. The law repealed one program and one initiative—the Repowering Assistance Program and the Rural Energy Self-Sufficiency Initiative, respectively. The 12 authorized programs and initiatives are

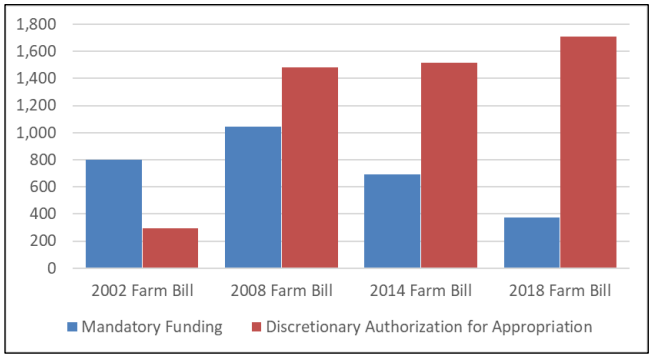
- 7 U.S.C. §8102: Biobased Markets Program;
- 7 U.S.C. §8103: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance (Program);
- 7 U.S.C. §8105: Bioenergy Program for Advanced Biofuels;
- 7 U.S.C. §8106: Biodiesel Fuel Education Program;
- 7 U.S.C. §8107: Rural Energy for America Program (REAP);
- 7 U.S.C. §8107a: Rural Energy Savings Program;
- 7 U.S.C. §8108: Biomass Research and Development (Initiative);
- 7 U.S.C. §8110: Feedstock Flexibility Program for Bioenergy Producers;
- 7 U.S.C. §8111: Biomass Crop Assistance Program;
- 7 U.S.C. §8113: Community Wood Energy and Wood Innovation Program;
- 7 U.S.C. §8114: Sun Grant Program; and
- 7 U.S.C. §8115: Carbon Utilization and Biogas Education Program.

Of the 11 reauthorized activities, seven programs and one initiative were amended under the 2018 farm bill (§8102, §8103, §8105, §8107, §8107a, §8108, §8111, and §8113), and three programs generally were unchanged (§8106, §8110, and §8114). For more discussion of the energy title programs, see CRS In Focus IF10288, *Overview of the 2018 Farm Bill Energy Title Programs*, by Kelsi Bracmort.

Energy Title Funding

Like previous bills, the 2018 farm bill addresses funding for Title IX programs. The five-year FY2019-FY2023 total mandatory funding and the total discretionary funding authorized to be appropriated are $375 million and $1.7 billion, respectively (see **Figure 1**). The mandatory funding for the energy title comprises approximately 0.1% of the Congressional Budget Office's 2018 farm bill total mandatory program estimate of $428 billion over the same five-year period.

Figure 1. Energy Title Funding in 2002-2018 Farm Bills
(in millions of dollars, nominal)



Sources: P.L. 107-171, P.L. 110-246, P.L. 113-79, P.L. 115-334.
Note: Mandatory funding for the 2002 farm bill covered a six-year period, whereas the other farm bills covered a five-year period.

Mandatory funding for the energy title has varied in each bill—with the largest amount, approximately $1 billion (nominal) over five years, provided in the 2008 farm bill (P.L. 110-246). Nominal mandatory funding has declined in each farm bill since. Under the 2018 farm bill, five programs received mandatory funding, fewer than before. The §8103 and §8107 programs combined constitute close to 87% of the total mandatory funding in Title IX.

Nominal discretionary authorizations for appropriations increased over the last three farm bills. Under the 2018 farm bill, discretionary funding is authorized for all but one

of the energy title programs—the §8110 program. For most of the programs receiving both mandatory and discretionary funding, the discretionary authorization is almost equivalent to or exceeds the mandatory funding amount. However, total discretionary appropriations after the 2018 farm bill have been lower than the amounts authorized to be appropriated. Four programs have received discretionary funding under the 2018 farm bill: §8107, §8107a, §8113, and §8114.

Agriculture-Related Energy

Agriculture-related energy is defined, for the purposes herein, as energy derived from agricultural or forestry feedstocks (e.g., crops, woody biomass, food waste, manure). Agriculture-related energy, or *bioenergy*, may be in the form of liquid transportation fuels, electric power, or heat. The most prevalent form is ethanol—a liquid fuel commonly blended with gasoline for use in motor vehicles.

There are opportunities and challenges associated with bioenergy production. Bioenergy often is viewed as renewable and as having fewer detrimental environmental effects than many conventional energy sources. However, disagreement exists about the environmental effects of certain types of bioenergy (e.g., greenhouse gas emission impacts of cornstarch ethanol, land-use changes, water quality impacts). Some view bioenergy as having the potential to stimulate economic development in rural areas. However, there can be limitations—primarily infrastructure and economic—to the production, distribution, and consumption of bioenergy.

Legislative Support for Agriculture-Related Energy

Congress has supported agriculture-related energy for more than 40 years through energy, agriculture, and tax laws. One of Congress's initial measures to support agriculture-related energy was the Energy Security Act of 1980 (P.L. 96-294). This act established a biomass energy program, including an Office of Alcohol Fuels within the Department of Energy, a municipal waste biomass energy program, and several initiatives for forestry energy. Congress created an energy title in the 2002 farm bill (P.L. 107-171), which assisted farmers with purchasing renewable energy systems and increasing energy efficiency. This agricultural legislation was followed by the Energy Policy Act of 2005 (P.L. 109-58), which established the RFS that mandates U.S. transportation fuel contain a minimum volume of biofuel, and by the Energy Independence and Security Act of 2007 (P.L. 110-140), which expanded the mandate. Congress subsequently passed the 2008 farm bill (P.L. 110-246), which renewed authorization for and expanded renewable energy programs established in the 2002 farm bill, and the 2014 farm bill (P.L. 113-79), which extended most of the renewable energy provisions of the 2008 farm bill. Congress then passed the 2018 farm bill, which extended most of the 2014 renewable energy provisions.

Congress established tax incentives for biofuels, including the Volumetric Ethanol Excise Tax Credit (which expired in 2011) and the Biodiesel Tax Credit (which expired in 2024) in the American Jobs Creation Act of 2004 (P.L. 108-357). P.L. 117-169, commonly known as the Inflation Reduction Act of 2022 (IRA), extended certain tax incentives for biofuels, including biodiesel and renewable diesel, through the end of 2024. The law also established a sustainable aviation fuel tax credit that would, after 2024, have been absorbed into a new clean fuel production credit (CFPC), available through 2027. The 2025 reconciliation act (P.L. 119-21) modified the CFPC in significant ways and extended it through 2029. The act also reinstated the small agri-biodiesel producer credit through the end of 2026, doubled its value from 10 cents to 20 cents per gallon, and allowed fuel producers to claim both that credit and the CFPC for the same fuel.

Legislative Issues

As Congress prepares for another farm bill, it may assess agriculture-related energy in at least three domains—agriculture, the environment, and economic development. Potential issues for Congress include (1) the amount of discretionary and mandatory funding provided for 2018 farm bill energy title programs, (2) the impact of the IRA's financial support on energy title programs, and (3) the impact of energy title programs on other legislative efforts (e.g., the RFS, fuel tax incentives).

Congress may consider a few points specific to the energy title programs when addressing the aforementioned issues. First, with the exception of REAP, many of the energy title programs lack a budget baseline—a projection at a particular point in time of what future federal spending on mandatory programs would be under current law. Thus, a reauthorization of some of the energy title programs in the 2018 farm bill could be scored as new mandatory spending and may require budgetary offsets to pay for it.

Second, in the past, authorizations have exceeded discretionary appropriations for the energy title programs. Going forward, some may assert that Congress does not need to provide discretionary funding because some of the energy title programs receive mandatory funding. Others may contend that the programs cannot be fully effective if Congress does not appropriate the discretionary funding.

Third, the relationship between other policy mechanisms (e.g., consumption mandates, tax incentives) and the energy title programs remains an issue. To date, the discussion about agriculture-related energy has mostly focused on liquid transportation fuels (e.g., ethanol) for vehicles. Tax policy and energy policy have maintained this focus with the RFS and certain credits. In addition, some in Congress advocate to expand the use of higher blends of ethanol, such as E15. Congress may debate whether to direct support to other types of agriculture-related energy.

Lastly, supplies of oil and natural gas, along with both energy and agricultural commodity prices, are a consideration when discussing the energy title programs. The energy title programs were established and expanded partly in response to high energy prices and concerns about energy independence. Given current economic conditions and the priorities of the Trump Administration, it is not clear what the interplay will be between agriculture-related energy prices and oil and natural gas prices.

Kelsi Bracmort, Specialist in Natural Resources and Energy Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated April 15, 2026

Farm Bill Primer: SNAP and Nutrition Title Programs

The Nutrition title of the farm bill typically reauthorizes a number of nutrition or domestic food assistance programs, including the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp program). These programs were last reauthorized by the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334) through September 30, 2023, and then were subsequently extended to September 30, 2026, via three one-year extensions (P.L. 118-22, P.L. 118-158, P.L. 119-37). The 2025 budget reconciliation bill (H.R. 1, P.L. 119-21) made changes to SNAP's financing as well as eligibility (work and citizenship specifically) and benefit calculation rules. The 119th Congress has begun work on a 2026 farm bill that would reauthorize farm bill nutrition programs through September 30, 2031 (see H.R. 7567).

The child nutrition programs (e.g., the National School Lunch Program and the Special Supplemental Nutrition Program for Women, Infants, and Children [WIC]) are typically reauthorized in a child nutrition reauthorization bill—not a farm bill.

Nutrition Programs Typically Reauthorized in a Farm Bill

The major programs, included in several different permanent statutes, reauthorized in the 2018 farm bill were

- **SNAP** and related grant programs (e.g., SNAP Employment & Training);
- Programs in lieu of SNAP: **Food Distribution Program on Indian Reservations** (FDPIR), **Nutrition Assistance Program** grants for several territories;
- **The Emergency Food Assistance Program** (TEFAP);
- **Commodity Supplemental Food Program** (CSFP);
- **Community Food Projects**;
- **Senior Farmers' Market Nutrition Program** (SFMNP); and
- **Gus Schumacher Nutrition Incentive Program** (GusNIP) grants.

These programs are administered by the U.S. Department of Agriculture's (USDA's) Food and Nutrition Service (FNS), (except for GusNIP, administered by USDA's National Institute of Food and Agriculture [NIFA]). SNAP is the largest of USDA's domestic food assistance programs, in both participation and spending. (See **Table 1** for statistics and program summaries.)

Funding

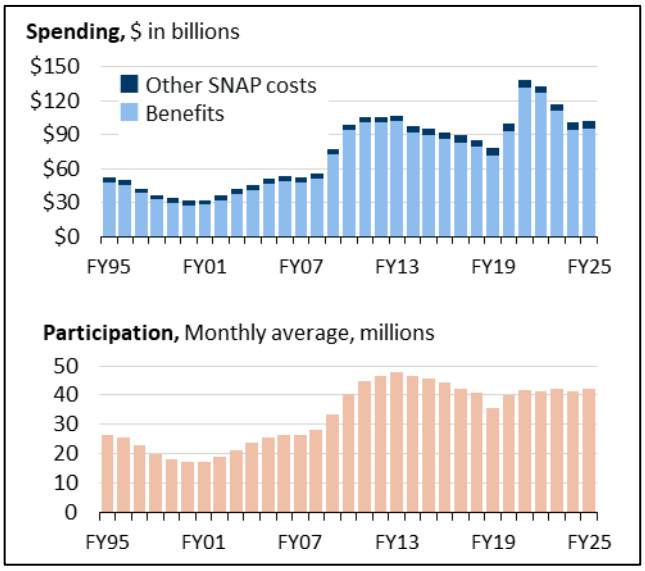
According to the Congressional Budget Office's (CBO's) February 2026 estimate of projected costs for farm bill programs for FY2027-FY2036, the Nutrition title makes up approximately 72% of farm bill mandatory spending.

SNAP is authorized as open-ended mandatory spending and is funded through appropriations laws. As such, amending SNAP eligibility, benefits, or other program rules can have a budgetary impact. At the same time, the availability of appropriated funding also affects SNAP's operation.

SNAP's spending is generally driven by program participation, which can fluctuate due to economic conditions and program rules (see **Figure 1**). In recent years, during and after time-limited pandemic-era benefit increases, federal spending declined while participation was steady. In FY2025, 93% of SNAP spending was for the benefits themselves. Administrative costs of eligibility determination and benefit issuance are shared between the state/territory and federal government. Other SNAP spending includes funds for nutrition education and Employment and Training (E&T).

Figure 1. SNAP Participation and Federal Spending, FY1995-FY2025

Constant (inflation-adjusted) FY2025 dollars



Source: CRS, using USDA, FNS administrative data. Spending amounts in FY2025 dollars: "Benefits" adjusted using CPI-U Food at Home index; "Other SNAP costs" adjusted using CPI-U for All Consumers index. Spending includes additional amounts provided in Great Recession and COVID-19 response laws.

The programs in lieu of SNAP (except for a small amount of FDPIR) are also mandatory spending. TEFAP's "entitlement commodity" funds for food are mandatory spending, while the program's administrative costs are discretionary. CSFP is discretionary spending. SFMNP and GusNIP receive mandatory funding from sources outside of annual appropriations bills.

Nutrition in Recent Farm Bills

Congressional consideration of the 2018 (Agriculture Improvement Act of 2018; P.L. 115-334) and 2014 farm bills (Agricultural Act of 2014; P.L. 113-79) included debate centered on SNAP's work requirements and other eligibility rules. The enacted 2018 farm bill reconciled

significant differences between the House- and Senate-passed SNAP provisions, ultimately making few eligibility changes. Among other policies, the 2018 law required periodic re-evaluations of the Thrifty Food Plan (the basis of the maximum SNAP benefit). The Biden Administration's 2021 implementation of this provision (increasing SNAP benefit amounts by approximately 21%) has been a recent point of contention. Aside from SNAP policies, recent farm bills increased federal resources for emergency feeding organizations (through TEFAP) and low-income households' purchase of fruits and vegetables (through GusNIP).

Related CRS Reports:

CRS Report R48552, *Supplemental Nutrition Assistance Program (SNAP) and Related Nutrition Programs in P.L. 119-21: An Overview*

CRS Report R42505, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*

CRS Report R45408, *The Emergency Food Assistance Program (TEFAP): Background and Funding*

Table 1. Major Nutrition Programs in the 2018 Farm Bill

Program	Authorizing Statute	Program Summary	FY2026 Funding	FY2025 Participation
Supplemental Nutrition Assistance Program (SNAP) (formerly, Food Stamp program)	Food and Nutrition Act of 2008 (§§1 et seq.)	Provides to low-income households electronic benefits redeemable for SNAP-eligible foods at SNAP-eligible retailers. Benefit amounts vary by household size and benefit calculation rules. Non-benefit SNAP funding for matching states' administrative costs, Employment & Training, nutrition education, and other SNAP-related costs. Operates in 50 states, District of Columbia, Guam, and U.S. Virgin Islands.	$103.955 billion	42.38 million in an average month
Nutrition Assistance Program (NAP) Block Grants	Food and Nutrition Act of 2008 (§28)	Puerto Rico, American Samoa, and Commonwealth of the Northern Mariana Islands (CNMI) receive capped funding to administer respective nutrition programs under terms negotiated with Memoranda of Understanding with USDA.	$3.035 billion	1.25 million
The Emergency Food Assistance Program (TEFAP)	Food and Nutrition Act of 2008 (§27); Emergency Food Assistance Act (§204(a))	Provides USDA-purchased food commodities (and cash support for storage and distribution costs) through states to local emergency feeding organizations (e.g., food banks).	$552 million[a]	Not available
Commodity Supplemental Food Program (CSFP)	Agriculture and Consumer Protection Act of 1973 (§4(a))	Provides supplemental monthly food packages to low-income seniors.	$460 million	700,700 in an average month
Food Distribution Program on Indian Reservations (FDPIR)	Food and Nutrition Act of 2008 (§4(b)); Agriculture and Consumer Protection Act of 1973 (§4(a))	Provides, in lieu of SNAP benefits, food commodities to low-income households on Indian reservations and to Native American families residing in Oklahoma or in designated areas near Oklahoma.	$239 million	58,000 in an average month
Senior Farmers' Market Nutrition Program (SFMNP)	Farm Security and Rural Investment Act of 2002 (§4002)	Provides vouchers/coupons to low-income seniors to purchase fresh produce at farmers' markets and other direct-to-consumer venues.	$21 million[b]	758,000 (FY2022)
Community Food Projects (CFP)	Food and Nutrition Act of 2008 (§25)	Competitive grants to nonprofit organizations for programs that improve access to locally produced food for low-income households.	$5 million	Not available
Gus Schumacher Nutrition Incentive Program (GusNIP)	Food Conservation and Energy Act of 2008 (§4405)	Competitive grants for projects that increase low-income consumers' purchase of fruits and vegetables by providing incentives at SNAP points of purchase and (added by 2018 farm bill) providing produce prescriptions to SNAP/Medicaid participants.	$56 million[c]	Not available

Source: Funding for SNAP, FDPIR, TEFAP, CFP, and CSFP are FY2026 appropriations from P.L. 119-37 and the accompanying explanatory statement. SNAP and FDPIR funding amounts are largely based on the demand for the programs' benefits and services, so appropriations figures usually overestimate those programs' annual cost. Funding for GusNIP, FFVP, and SFMNP are based on the mandatory funds authorized by the programs' authorizing laws. Participation data are from USDA, FNS, "September 2025 Keydata Report," December 23, 2025, https://www.fns.usda.gov/pd/overview/keydata-sept2025, unless otherwise noted. NAP data are from the FNS FY2027 congressional budget justification and a CRS request to FNS (https://www.usda.gov/sites/default/files/documents/FY-2027-Chapter-34-FNS.pdf). Data are preliminary for FY2025 and may be revised in future releases as reporting agencies finalize data. SFMNP participation data are from the FNS program website (2022 data are the most recent available).

a. TEFAP appropriation is for entitlement foods and administrative funds; does not include the value of bonus foods distributed through TEFAP, which has ranged from $1 billion to $2 billion since FY2019.
b. SFMNP funding is provided by a transfer from the Commodity Credit Corporation; the transfer is authorized by the program's authorizing language. Amount shown is the authorized transfer for FY2026.
c. GusNIP's mandatory funding is provided by a transfer from the Commodity Credit Corporation; the transfer is authorized by the program's authorizing language. Amount shown is the authorized transfer for FY2026.

Randy Alison Aussenberg, Specialist in Nutrition Assistance Policy

Gene Falk, Specialist in Social Policy

Kara Clifford Billings, Analyst in Social Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated April 21, 2026

Farm Bill Primer: Trade and Export Promotion Programs

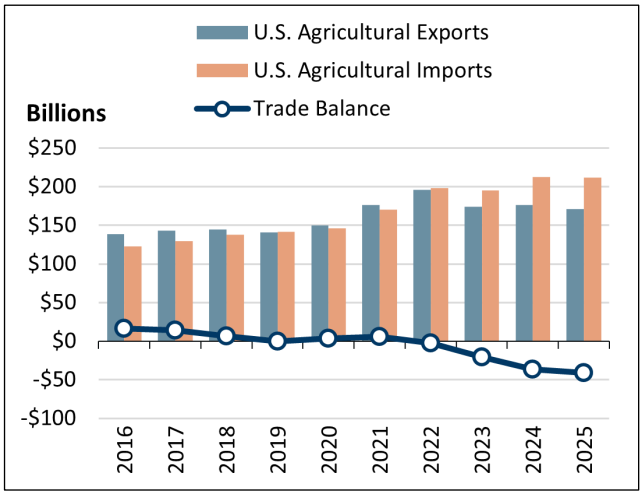
Agricultural exports are significant to farmers and the U.S. economy. With the productivity of U.S. agriculture growing faster than domestic demand, farmers and agriculturally oriented firms rely on export markets to sustain prices and revenue. The trade title of the Agricultural Improvement Act of 2018 (2018 farm bill; P.L. 115-334) authorized export market development programs and export credit guarantee programs from FY2019 to FY2023 to expand foreign markets for U.S. farmers and food manufacturers. Subsequent legislation extended the authorizations through FY2026 (P.L. 119-37). These market expansion programs derive their statutory authorities from the Agricultural Trade Act of 1978 (P.L. 95-501), as amended. The trade title of the 2018 farm bill also includes international food assistance programs and international technical assistance and exchange programs and provisions, which are not addressed in this In Focus.

Trade Situation Overview

In 2025, U.S. food and agricultural exports totaled $171 billion, and U.S. imports totaled $212 billion, resulting in a trade deficit of $41 billion (**Figure 1**), according to U.S. Department of Agriculture (USDA) data. Bulk commodities, such as corn, soybeans, wheat, cotton, and rice, are the leading U.S. farm exports. Leading consumer-oriented exports include tree nuts, dairy, meat and poultry, fruits, and vegetables. In 2025, about 50% of U.S. agricultural exports were destined for the top four U.S. export markets: Mexico, Canada, the European Union, and Japan.

Figure 1. Value of U.S. Agricultural Trade

Figure is interactive in the HTML version of this report.



Source: CRS from USDA's Global Agricultural Trade System data. Data are not adjusted for inflation. Trade balance constructed as imports subtracted from exports.

The U.S. agricultural trade surplus peaked at $40.1 billion in 2011. It has since fallen and was a trade deficit in 2019 and between 2022 and 2025. Many attribute the rise in U.S. food and agricultural imports to increasing domestic demand for imported, consumer-oriented goods, such as fruits, vegetables, alcoholic beverages, beef, and coffee products.

Trade Provisions in the Farm Bill

The trade title of a farm bill generally contains reauthorizations and amendments for agricultural export programs and other trade-related provisions.

Export Market Development Programs

Export promotion programs are authorized under a single Agricultural Trade Promotion and Facilitation (ATPF) umbrella program administered by USDA. Programs are authorized to receive mandatory funding of $255 million annually through FY2026, as extended (7 U.S.C. §5623, P.L. 119-37).

- **Market Access Program (MAP)** provides cost-sharing of overseas marketing and promotional activities that help build commercial markets for U.S. agricultural exports (no less than $200 million per year).
- **Foreign Market Development (FMD) Cooperator Program** funds projects that address long-term opportunities to reduce foreign import constraints or expand export growth opportunities (no less than $34.5 million per year).
- **E. (Kika) de la Garza Emerging Markets Program** provides cost-sharing for technical assistance to support generic U.S. agricultural exports (no more than $8 million per year).
- **Technical Assistance for Specialty Crops** funds projects addressing sanitary and phytosanitary (SPS) and technical trade barriers to U.S. specialty crop exports ($9 million per year).
- **Priority Trade Fund** supports activities to access, develop, maintain, and expand markets for U.S. agricultural exports ($3.5 million per year).

The farm bill authorizes USDA to fund MAP and FMD activities in Cuba, which otherwise would be prohibited (7 U.S.C. §5623(f)(4)).

Export Credit Guarantee Programs

The farm bill authorizes $1 billion in export credit guarantees annually through FY2026, as extended, for

exports to emerging markets (7 U.S.C. §5622 note, P.L. 119-37). Additionally, $5.5 billion is available annually with no funding expiration date (7 U.S.C. §5641(b)). Export credit guarantees are carried out under two programs.

- **GSM-102 Program** provides credit guarantees to finance commercial U.S. agricultural exports mainly to developing countries.
- **Facility Guarantee Program (FGP)** provides payment guarantees to improve or establish agriculture-related facilities in emerging markets.

Under these programs, the Commodity Credit Corporation (CCC) provides payment guarantees on commercial financing and assumes the risk of default on payments by the foreign purchasers on loans to facilitate U.S. exports.

Other Export-Related Provisions

The farm bill authorizes appropriations for the Biotechnology and Agricultural Trade Program with discretionary funding of $2 million through FY2026, as extended (7 U.S.C. §5679, P.L. 119-37). The program funds grants for public and private sector projects that address nontariff regulatory barriers (e.g., SPS) to U.S. agricultural exports.

Administrative Actions

For FY2024 and FY2025, USDA allocated $300 million annually for a new export promotion program called the Regional Agricultural Promotion Program (RAPP). In November 2025, USDA announced $285 million in funding availability for the America First Trade Promotion Program (AFTPP), a new export promotion program that runs through FY2028 and operates under RAPP regulations (7 C.F.R. §1489). AFTPP and RAPP are authorized and funded by the CCC Charter Act (15 U.S.C. §714c(f)).

USDA uses the same CCC authority to fund the Quality Samples Program (QSP), which promotes U.S. agricultural products. QSP is annually funded at $2.5 million.

FY2025 Budget Reconciliation Law

The FY2025 budget reconciliation law (P.L. 119-21) is to provide USDA $285 million annually from mandatory CCC funding for a supplemental agricultural trade promotion program indefinitely starting in FY2027 (7 U.S.C. §5623a).

Issues and Options

As Congress considers a next farm bill and issues related to U.S. agricultural trade promotion, it may evaluate, reauthorize, modify, or end existing programs or establish new programs and initiatives. Congress may also evaluate U.S. agricultural trade policy and objectives.

Export Promotion Programs. Critics of export promotion programs claim the programs provide federal support for activities that private firms could otherwise fund. Supporters claim the programs keep U.S. agricultural products competitive overseas, diversify market opportunities, help generate additional farm income, and increase farm and food sector jobs. Some U.S. agricultural trade and producer groups have sought increased funding for export promotion and market development programs.

Trade Policy. Some U.S. government officials and industry stakeholders have expressed interest in addressing certain policies of U.S. trading partners that may be impeding U.S. agricultural exports; others seek to address foreign export and import competition. The Office of the U.S. Trade Representative's (USTR's) annual *National Trade Estimate Report on Foreign Trade Barriers* for 2026 highlights a range of tariff and nontariff trade barriers.

Overview of H.R. 7567 Trade Provisions

In the 119th Congress, the trade title of H.R. 7567, the farm bill as ordered reported by the House Committee on Agriculture, addresses some of the issues mentioned above. Several provisions in H.R. 7567 incorporate aspects of stand-alone bills on export promotion and agricultural trade policy (e.g., H.R. 1086, H.R. 2322/S. 1119, and H.R. 5620).

H.R. 7567 would nearly double mandatory CCC funding for ATPF programs beginning in FY2027 for a total of $500 million and further increase to $533 million annually for FY2028 through FY2031. Another provision would create an FMD subprogram that would address infrastructure deficiencies in foreign markets that could damage U.S. agricultural exports. The bill would repeal the export program established by P.L. 119-21 and repeal the provision prohibiting MAP from assisting the U.S. mink industry (7 U.S.C. §5623 note).

H.R. 7567 would require USDA and USTR to negotiate with foreign governments to ensure the right to use common names for U.S. agricultural and food products in foreign markets that might otherwise be prohibited due to geographical indication protections. Another provision would establish an interagency agricultural trade enforcement task force to identify agricultural trade barriers that are "vulnerable to dispute settlement" under trade agreements and to enforce trade agreement violations, with a particular focus on India's agricultural subsidies. The bill also would create an interagency working group to monitor and assess trade-related information about seasonal and perishable fruits and vegetables and coordinate on trade actions and investigations.

The trade title in H.R. 7567 also proposes reporting requirements. For example, the Government Accountability Office would be required to submit a report to Congress on policy options for USDA to support the competitiveness of U.S. seafood producers in global and domestic markets. Other provisions would require USDA along with USTR to submit a report to Congress on how potential changes to or termination of the United States-Mexico-Canada Agreement may affect U.S. agriculture and a report on the effect on U.S. beef and cattle markets due to changes to U.S. tariff-rate quotas on Argentine beef imports.

Benjamin Tsui, Analyst in Agricultural Policy

IF12155

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Congressional Research Service
Informing the legislative debate since 1914

INSIGHT

Year-Round Sale of E15

Updated April 9, 2026

E15—a fuel blend of up to 15% ethanol and 85% gasoline—generally cannot be sold during the summer driving season (June 1–September 15) because it does not meet gasoline Reid vapor pressure (RVP) requirements, which limit fuel volatility under the Clean Air Act (CAA). The statute allows the U.S. Environmental Protection Agency (EPA) Administrator to issue a temporary fuel waiver of these requirements (42 U.S.C. §7545(c)(4)(C)(ii)) under certain conditions. On March 25, 2026, EPA issued the first nationwide fuel waiver for the 2026 summer driving season. The waiver allows E15 to be sold during the summer driving season, in part, to address extreme and unusual fuel circumstances that EPA states are "the result of ongoing issues in the Middle East, among other events." EPA also states its "intention to issue new waivers effectively extending (renewing) these waivers until such time as the … circumstances described in this action are no longer present."

President Trump's January 20, 2025, Executive Order (E.O.) 14156, "Declaring a National Energy Emergency," included a provision about the year-round sale of E15. The order (Section 2(b)) states,

> Consistent with 42 U.S.C. 7545(c)(4)(C)(ii)(III), the Administrator of the Environmental Protection Agency, after consultation with, and concurrence by, the Secretary of Energy, shall consider issuing emergency fuel waivers to allow the year-round sale of E15 gasoline to meet any projected temporary shortfalls in the supply of gasoline across the Nation.

The statutory provision referenced in the E.O. is the third of three factors the EPA Administrator must consider when determining whether to issue a temporary fuel waiver: whether the waiver is "in the public interest." The E.O. directs the EPA Administrator to consider issuing—but does not require the Administrator to issue—temporary fuel waivers that would allow for the year-round sale of E15. In light of the statutory limit that requires waivers to be effective for a period of 20 calendar days or shorter, to achieve the year-round sale of E15, the EPA Administrator would have to issue a series of consecutive waivers as was done for prior summer driving seasons.

Congress has explored legislative options pertaining to the year-round sale of E15. In January 2026, the House passed H.Res. 375, which established an E-15 Rural Domestic Energy Council and directed the council to investigate the sale of E15, to develop legislative solutions, and to submit those solutions to Congress, among other things. Bills in the 119th Congress propose permanent year-round sales of E15 (S. 593 and H.R. 1346). Some Members of Congress request that "[a]ny legislative movement on E15 must be conditioned upon meaningful reforms to the Renewable Fuel Standard (RFS)." E15 legislation was included in a short-term FY2025 spending bill introduced in the House in December 2024 (H.R. 10445,

Congressional Research Service
https://crsreports.congress.gov
IN10979

118th Congress) but was not included in the FY2025 continuing resolution package that became law (P.L. 118-158).

Clean Air Act RVP Requirements

The CAA authorizes the EPA Administrator to regulate fuels and fuel additives. The act regulates (among other pollutants) precursors for ground-level ozone, a primary component of smog, which has been found to negatively impact human health and welfare, among other effects. One of the requirements intended to reduce smog is a limit on gasoline volatility because volatile organic compounds within gasoline evaporate more readily at higher temperatures (e.g., during the summer months) and can contribute to smog formation. RVP is a common metric of volatility—the lower the RVP, the less the substance will evaporate. RVP requirements in Section 211(h) of the CAA—which apply to the 48 contiguous states and the District of Columbia—generally prohibit the sale of gasoline with an RVP greater than 9.0 pounds per square inch (psi) during the high-ozone season (i.e., the summer months). In 2012, the National Renewable Energy Laboratory (NREL; renamed the National Laboratory of the Rockies [NLR] in December 2025) reported that the addition of 10% ethanol to gasoline increases the RVP of the blend by about 1.0 psi.

The CAA provides some exceptions, including a waiver—the "one-pound waiver"—stipulating that ethanol-gasoline fuel blends containing 10% ethanol (E10) are subject to an RVP limit that is 1.0 psi greater than what would otherwise apply given certain conditions (e.g., the 9.0 psi standard for certain areas would subject E10 to a 10.0 psi limit). The waiver does not apply to reformulated gasoline (RFG); there is a 7.4 psi RVP standard for RFG. EPA reports that about 25% of gasoline sold in the United States is RFG. In addition, according to EPA, the waiver "does not apply in areas where EPA has approved a regulation into a state implementation plan (SIP) that limits the applicability of the 1.0 psi allowance." States may petition EPA to remove the 1-psi waiver for gasoline-ethanol blends containing 10% ethanol (E10) (42 U.S.C. §7545(h)(5)). Some states have taken advantage of this option. The regulations for gasoline RVP standards are available at 40 C.F.R. §1090.215.

Congressional Issues

NREL reported in 2012 that "the RVP impact of 15% ethanol is indistinguishable from that of 10% ethanol in gasoline for all volatility seasons and base hydrocarbon vapor pressures," and "there is no technical reason for treating E10 differently from E15." In general, it appears that greater substitution of E10 with E15 may not lead to material emissions changes; however, there could be other market impacts associated with E15. Thus, the sale of E15 year-round involves other concerns that Congress may consider, including the following:

- How much consumer demand is there for E15?
- Would the additional use of ethanol for E15 reduce consumer gasoline prices?
- Who pays to install E15 fueling infrastructure (e.g., blender pumps)?
- Would the rural economy benefit from year-round sale of E15?
- What impact might additional sales of E15 have on the RFS program?
- Would the additional use of ethanol for E15 raise environmental concerns?
- What effect, if any, will California's October 2025 authorization of the sale of E15—while state entities review whether E15 can meet California's clean air requirements—have on national markets for ethanol and other transportation fuels?

Author Information

Kelsi Bracmort
Specialist in Natural Resources and Energy Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated April 28, 2026

Committee on Foreign Investment in the United States (CFIUS)

The Committee on Foreign Investment in the United States (CFIUS) is an interagency body chaired by the Secretary of the Treasury. It serves the President in overseeing the potential national security risks of certain foreign direct investment (FDI) in the U.S. economy. CFIUS jurisdiction includes the review of mergers, acquisitions, and takeovers that could result in foreign control of a U.S. business; certain noncontrolling investments in businesses involved in critical technologies, critical infrastructure, or sensitive personal data (so-called "TID U.S. businesses"); and certain real estate transactions. At the recommendation of CFIUS, the President may suspend or prohibit transactions that threaten to impair U.S. national security.

The United States is the world's largest foreign investor and recipient of FDI. U.S. policy has supported a rules-based and open investment environment domestically and globally to promote U.S. economic growth and ensure the U.S. position as a premier FDI destination. Amid this backdrop, CFIUS has reviewed a small subset of foreign investment with an exclusive focus on national security. The focus of CFIUS's national security actions has evolved over time in response to emerging issues and concerns. Congressional focus on CFIUS has intensified since 2016 amid growing attention to the potential national security ramifications of investments by firms directed, controlled, or funded by a foreign government, notably the People's Republic of China (PRC), and in strategic sectors. Members are engaged in oversight of CFIUS reforms that Congress mandated in 2018 and some have introduced legislation to address perceived gaps in CFIUS's jurisdiction and actions.

CFIUS Authorities and Composition

CFIUS derives its authorities from Section 721 of the Defense Production Act (DPA), as amended (50 U.S.C. §4565), and implementing regulations (31 C.F.R. Chapter VIII). CFIUS initially was created and operated through a series of executive orders. In 1988, Congress passed the "Exon-Florio" amendment to the DPA (50 U.S.C. App. §2170), which codified the review process, at the time largely driven by concerns over Japanese firms' acquisitions of U.S. defense-related firms. In 2007, amid concerns over the proposed purchase of commercial operations of six U.S. ports by a firm based in the United Arab Emirates, Congress passed the Foreign Investment and National Security Act of 2007 (P.L. 110-49), which formally gave CFIUS statutory authority.

In 2018, Congress passed the Foreign Investment Risk Review Modernization Act (FIRRMA, Title XVII, P.L. 115-232), which expanded CFIUS's jurisdiction and review process in key ways. FIRRMA was intended to "strengthen and modernize" CFIUS and enhance its ability to address concerns involving nonpassive, noncontrolling investments (e.g., minority stake) in TID business and real estate transactions (e.g., land purchases) in proximity to military installations, or part of maritime ports or airports. Foreign investors with ties to countries that are part of the "five eyes" alliance—Australia, Canada, New Zealand, and the United Kingdom—may be exempt from some of the rules.

CFIUS consists of nine members: Secretary of the Treasury (chair); Secretaries of State, Defense, Homeland Security, Commerce, and Energy; Attorney General; U.S. Trade Representative; and Director of the Office of Science and Technology Policy. The Secretary of Labor and Director of National Intelligence (DNI) are nonvoting, ex officio members. Five White House offices observe or participate in CFIUS, as appropriate (e.g., the Council of Economic Advisers and National Security Council). The President can appoint other officials to serve on a case-by-case basis.

CFIUS Review Process

The review process begins with notification to CFIUS by the parties to the transaction, which is a voluntary step except in certain cases. Even when notification is not mandatory, firms have an incentive to do so to receive potential "safe harbor" from CFIUS, which limits future CFIUS action on a transaction after it is cleared. Non-notified transactions remain subject indefinitely to future CFIUS review and possible divestment or other actions mandated by the President. As directed by FIRRMA, CFIUS has increased attention and resources to monitoring non-notified transactions of concern. CFIUS may also unilaterally initiate a review.

> The President can exercise authority to suspend or prohibit a foreign investment, subject to a CFIUS review, if he/she finds that (1) credible evidence exists that the foreign person might take action that threatens to impair national security, and (2) no other laws provide "adequate and appropriate authority" to protect the national security risks.

Notification. A party's filing of a transaction can be submitted as (1) a declaration (an abbreviated, short-form filing (30-day CFIUS assessment) or (2) a traditional written notice (45-day CFIUS review). Declarations and notices are distinguished by submission length, timeline for CFIUS' consideration, and CFIUS's options for disposition of the submission. Filing is mandatory in select cases where a transaction involves (1) a foreign government acquiring a "substantial interest" in a TID U.S. business, and (2) a TID U.S. business that produces, designs, manufactures, etc. a critical technology subject to export licensing/controls. In 2026, Treasury proposed a Known Investor Program (KIP) that may streamline filing processes and offer benefits for certain foreign investors that frequently file with CFIUS.

National Security Review. Treasury and a co-lead agency conduct a 45-day review (30-day review for declarations) to determine the effects of the transaction on U.S. national security, informed by a DNI threat analysis. CFIUS's "risk-based assessment" considers the threat, vulnerabilities, and

consequences to national security related to the transaction. In its assessment, CFIUS is to consider an illustrative list of national security factors. Factors for consideration in statute include the domestic production needed for national defense; control of domestic industries and commercial activity by foreign citizens; effects on sales of military goods or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; U.S. technological leadership in areas affecting national security; and effects on U.S. critical infrastructure and critical technologies. In 2022, President Biden issued E.O. 14083 to elaborate and expand on such factors. These include effects on the resilience of critical supply chains and technological leadership; aggregate industry investment trends; cybersecurity risks; and risks to U.S. sensitive data.

National Security Investigation. The initial review proceeds to a 45-day investigation if CFIUS finds that a transaction threatens U.S. national security and the risk has not been mitigated; is foreign-government controlled; or would result in foreign control of any U.S. critical infrastructure. A 15-day extension is allowed in "extraordinary circumstances." CFIUS can negotiate and impose mitigation conditions on the parties to address its concerns; a lead agency is tasked with monitoring compliance with such agreements. CFIUS Enforcement and Penalty Guidelines, issued in 2022, and regulatory updates in 2024, emphasize monitoring and compliance with mitigation measures as priorities.

Presidential Decision. If CFIUS determines a transaction poses unresolved concerns, it may recommend to the President that the deal be prohibited, unless the parties abandon the transaction. The President has 15 days to act. Presidents have prohibited 11 transactions to date, most in the past decade (**Table 1**). President Trump issued orders in 2025 and 2026 to block two PRC acquisitions of U.S. firms. Trump also reopened a CFIUS review and reversed a Biden order that prohibited Japan's Nippon Steel from acquiring U.S. Steel Corp. A national security agreement gives the U.S. government some rights in U.S. Steel.

Table 1. Presidential Blocks of Foreign Transactions

Year	U.S. Business	Acquirer	Sector
1990	MAMCO	CATIC	Aerospace
2012	4 wind farms	Ralls Corp. (Sany Group)	Renewables
2016	Aixtron SE	Grand Chip (China IC Fund)	Semiconductor
2017	Lattice	Canyon Bridge Capital Partners	Semiconductor
2018	Qualcomm	Broadcom	Semiconductor
2020	StayNTouch, Inc.	Shiji Info mation Technology Co.	Software
2020*	Musical.ly	ByteDance	Digital platform
2024	Real estate	MineOn	Crypto mining
2025*	U.S. Steel	Nippon Steel	Steel
2025	Jupiter Systems	Suirui Int'l	AV equipment
2026	EMCORE	HieFo Corp.	Semiconductor

Source: Presidential orders and *Federal Register*.
Note: * Orders ultimately were not enforced.

Recent Activity

CFIUS must report annually to Congress on its activities (**Table 2**). In most years since FIRRMA was enacted, there has been an increase in transactions reviewed. In 2024, CFIUS reviewed 325 filings (116 declarations, and 209 notices). CFIUS cleared 91 declarations and requested parties submit a subsequent notice in 15% of cases. Six declarations involved real estate. Over half of total notices proceeded to an investigation. In 49 cases, parties withdrew the notice during the investigation to address issues, and the majority refiled. CFIUS adopted mitigation measures for 25 notices (12% of total). In 7 cases, parties abandoned the deal after CFIUS was unable to resolve its concerns, or after the parties refused proposed measures. In 2024 CFIUS assessed four penalties for breaches of mitigation terms.

Table 2. Transactions Reviewed by CFIUS, 2019-2024

	2019	2020	2021	2022	2023	2024
Declarations	94	126	164	154	109	116
Notices	231	187	272	286	233	209
Investigations	113	88	130	163	128	116
Withdrawals	30	28	72	87	57	49
Presidential Decision*	1	1	0	0	0	2

Source: CFIUS Annual Report to Congress for CY2024, Aug. 2025.
Note: * Reported based on the year review was initiated. Filing numbers are greater than the number of distinct transactions, for example, due to the withdrawal and refile process.

Issues for Congress

Congress remains engaged in oversight of implementation of FIRRMA and CFIUS activities. Some Members say that PRC state-directed investments require a proactive and strategic approach. Some say that PRC investments in new operations and emerging technologies may evade or fall outside current authorities. Some Members have introduced bills to expand CFIUS jurisdiction over agricultural land; ban some investments by the PRC and foreign adversaries; and add the Secretary of Agriculture as a CFIUS member. These efforts stem in part from reports of PRC land buying and Treasury's 2022 decision that CFIUS did not have jurisdiction to review a PRC firm's land purchase in North Dakota near a U.S. Air Force base. (Treasury since has added some military bases subject to CFIUS' real estate jurisdiction.) Congress also enacted legislation on outbound investment to China (P.L. 119-60). Other issues include

- How well is CFIUS balancing an open U.S. investment posture with the aim to protect national security? How should CFIUS protect critical technologies in ways that promote competitiveness and a market-driven economy?
- Post FIRRMA, how sufficient are CFIUS's authorities to achieve current and emerging policy objectives? How has E.O. 14083 affected CFIUS reviews in practice?
- There may be incentives to file declarations instead of notices due to their fast turnarounds. What types of transactions is CFIUS clearing through declarations?
- How is the Commerce Department's role in identifying emerging technologies for export controls affecting CFIUS reviews?
- In what ways has CFIUS improved coordination with U.S. allies and partners in information sharing and in investment screening efforts as mandated by FIRRMA?
- How will KIP reforms affect CFIUS decisionmaking and review outcomes?

Cathleen D. Cimino-Isaacs, Specialist in International Trade and Finance
Karen M. Sutter, Specialist in Asian Trade and Finance

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated April 21, 2026

Farm Bill Primer: Trade and Export Promotion Programs

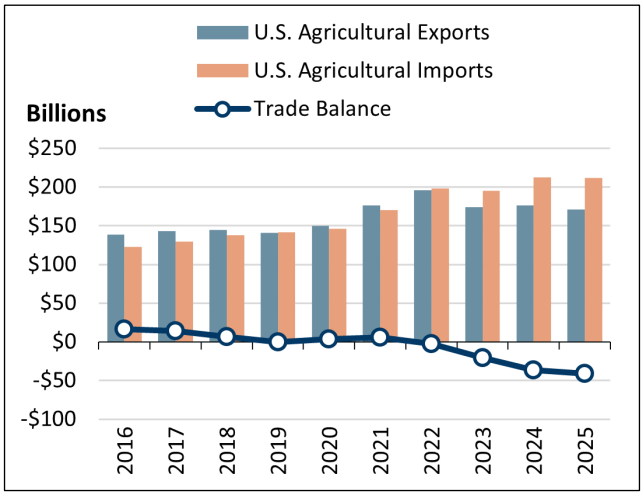
Agricultural exports are significant to farmers and the U.S. economy. With the productivity of U.S. agriculture growing faster than domestic demand, farmers and agriculturally oriented firms rely on export markets to sustain prices and revenue. The trade title of the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334) authorized export market development programs and export credit guarantee programs from FY2019 to FY2023 to expand foreign markets for U.S. farmers and food manufacturers. Subsequent legislation extended the authorizations through FY2026 (P.L. 119-37). These market expansion programs derive their statutory authorities from the Agricultural Trade Act of 1978 (P.L. 95-501), as amended. The trade title of the 2018 farm bill also includes international food assistance programs and international technical assistance and exchange programs and provisions, which are not addressed in this In Focus.

Trade Situation Overview

In 2025, U.S. food and agricultural exports totaled $171 billion, and U.S. imports totaled $212 billion, resulting in a trade deficit of $41 billion (**Figure 1**) according to U.S. Department of Agriculture (USDA) data. Bulk commodities, such as corn, soybeans, wheat, cotton, and rice, are the leading U.S. farm exports. Leading consumer-oriented exports include tree nuts, dairy, meat and poultry, fruits, and vegetables. In 2025, about 50% of U.S. agricultural exports were destined for the top four U.S. export markets: Mexico, Canada, the European Union, and Japan.

Figure 1. Value of U.S. Agricultural Trade

Figure is interactive in the HTML version of this report.



Source: CRS from USDA's Global Agricultural Trade System data. Data are not adjusted for inflation. Trade balance constructed as imports subtracted from exports.

The U.S. agricultural trade surplus peaked at $40.1 billion in 2011. It has since fallen and was a trade deficit in 2019 and between 2022 and 2025. Many attribute the rise in U.S. food and agricultural imports to increasing domestic demand for imported, consumer-oriented goods such as fruits, vegetables, alcoholic beverages, beef, and coffee products.

Trade Provisions in the Farm Bill

The trade title of a farm bill generally contains reauthorizations and amendments for agricultural export programs and other trade-related provisions.

Export Market Development Programs

Export promotion programs are authorized under a single Agricultural Trade Promotion and Facilitation (ATPF) umbrella program administered by USDA. Programs are authorized to receive mandatory funding of $255 million annually through FY2026, as extended (7 U.S.C. §5623, P.L. 119-37).

- **Market Access Program (MAP)** provides cost-sharing of overseas marketing and promotional activities that help build commercial markets for U.S. agricultural exports (no less than $200 million per year).
- **Foreign Market Development (FMD) Cooperator Program** funds projects that address long-term opportunities to reduce foreign import constraints or expand export growth opportunities (no less than $34.5 million per year).
- **E. (Kika) de la Garza Emerging Markets Program** provides cost-sharing for technical assistance to support generic U.S. agricultural exports (no more than $8 million per year).
- **Technical Assistance for Specialty Crops** funds projects addressing sanitary and phytosanitary (SPS) and technical trade barriers to U.S. specialty crop exports ($9 million per year).
- **Priority Trade Fund** supports activities to access, develop, maintain, and expand markets for U.S. agricultural exports ($3.5 million per year).

The farm bill authorizes USDA to fund MAP and FMD activities in Cuba, which otherwise would be prohibited (7 U.S.C. §5623(f)(4)).

Export Credit Guarantee Programs

The farm bill authorizes $1 billion in export credit guarantees annually through FY2026, as extended, for

exports to emerging markets (7 U.S.C. §5622 note, P.L. 119-37). Additionally, $5.5 billion is available annually with no funding expiration date (7 U.S.C. §5641(b)). Export credit guarantees are carried out under two programs.

- **GSM-102 Program** provides credit guarantees to finance commercial U.S. agricultural exports mainly to developing countries.
- **Facility Guarantee Program** provides payment guarantees to improve or establish agriculture-related facilities in emerging markets.

Under these programs, the Commodity Credit Corporation (CCC) provides payment guarantees on commercial financing and assumes the risk of default on payments by the foreign purchasers on loans to facilitate U.S. exports.

Other Export-Related Provisions

The farm bill authorizes appropriations for the Biotechnology and Agricultural Trade Program with discretionary funding of $2 million through FY2026, as extended (7 U.S.C. §5679, P.L. 119-37). The program funds grants for public and private sector projects that address nontariff regulatory barriers (e.g., SPS) to U.S. agricultural exports.

Administrative Actions

For FY2024 and FY2025, USDA allocated $300 million annually for a new export promotion program called the Regional Agricultural Promotion Program (RAPP). In November 2025, USDA announced $285 million in funding availability for the America First Trade Promotion Program (AFTPP), a new export promotion program that runs through FY2028 and operates under RAPP regulations (7 C.F.R. §1489). AFTPP and RAPP are authorized and funded by the CCC Charter Act (15 U.S.C. §714c(f)).

USDA uses the same CCC authority to fund the Quality Samples Program (QSP), which promotes U.S. agricultural products. QSP is annually funded at $2.5 million.

FY2025 Budget Reconciliation Law

The FY2025 budget reconciliation law (P.L. 119-21) is to provide USDA $285 million annually from mandatory CCC funding for a supplemental agricultural trade promotion program indefinitely starting in FY2027 (7 U.S.C. §5623a).

Issues and Options

As Congress considers a next farm bill and issues related to U.S. agricultural trade promotion, it may evaluate, reauthorize, modify, or end existing programs or establish new programs and initiatives. Congress may also evaluate U.S. agricultural trade policy and objectives.

Export Promotion Programs. Critics of export promotion programs claim the programs provide federal support for activities that private firms could otherwise fund. Supporters claim the programs keep U.S. agricultural products competitive overseas, diversify market opportunities, help generate additional farm income, and increase farm and food sector jobs. Some U.S. agricultural trade and producer groups have sought increased funding for export promotion and market development programs.

Trade Policy. Some U.S. government officials and industry stakeholders have expressed interest in addressing certain policies of U.S. trading partners that may be impeding U.S. agricultural exports; others seek to address foreign export and import competition. The Office of the U.S. Trade Representative's (USTR's) annual *National Trade Estimate Report on Foreign Trade Barriers* for 2026 highlights a range of tariff and nontariff trade barriers.

Overview of H.R. 7567 Trade Provisions

In the 119th Congress, the trade title of H.R. 7567, the 2026 farm bill that Congress has begun work on, addresses some of the issues mentioned above. Several provisions in H.R. 7567 incorporate aspects of stand-alone bills on export promotion and agricultural trade policy (e.g., H.R. 1086, H.R. 2322/S. 1119, and H.R. 5620).

H.R. 7567 would nearly double mandatory CCC funding for ATPF programs beginning in FY2027 for a total of $500 million and further increase to $533 million annually for FY2028 through FY2031. Another provision would create an FMD subprogram that would address infrastructure deficiencies in foreign markets that could damage U.S. agricultural exports. The bill would repeal the export program established by P.L. 119-21 and repeal the provision prohibiting MAP from assisting the U.S. mink industry (7 U.S.C. §5623 note).

H.R. 7567 would require USDA and USTR to negotiate with foreign governments to ensure the right to use common names for U.S. agricultural and food products in foreign markets that might otherwise be prohibited due to geographical indication protections. Another provision would establish an interagency agricultural trade enforcement task force to identify agricultural trade barriers that are "vulnerable to dispute settlement" under trade agreements and to enforce trade agreement violations, with a particular focus on India's agricultural subsidies. The bill also would create an interagency working group to monitor and assess trade-related information on seasonal and perishable fruits and vegetables and coordinate on trade actions and investigations.

The trade title in H.R. 7567 also proposes reporting requirements. For example, the Government Accountability Office would be required to submit a report to Congress on policy options for USDA to support the competitiveness of U.S. seafood producers in global and domestic markets. Other provisions would require USDA along with USTR to submit a report to Congress on how potential changes to or termination of the United States-Mexico-Canada Agreement may affect U.S. agriculture and a report on the effect on U.S. beef and cattle markets due to changes to U.S. tariff-rate quotas on Argentine beef imports.

Benjamin Tsui, Analyst in Agricultural Policy

IF12155

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Congressional Research Service
Informing the legislative debate since 1914

USDA's Foreign Agricultural Service: An Overview

November 16, 2023

Congressional Research Service
https://crsreports.congress.gov
R47836

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

USDA's Foreign Agricultural Service: An Overview

SUMMARY

R47836

November 16, 2023

Benjamin Tsui
Analyst in Agricultural Policy

The United States is one of the top exporters of agricultural and food products. In 2022, the United States exported $196 billion in agricultural and food products, which accounted for about 20% of total U.S. agricultural and food production by value. Exports to foreign markets contribute to the overall health of the U.S. agricultural and food sectors. However, U.S. exports face challenges from foreign competition and trade barriers imposed by foreign governments. The United States is also a top importer of agricultural and food products, with imports reaching $198 billion in 2022.

Many federal government agencies are involved in matters related to U.S. agricultural trade. Created in 1953, the U.S. Department of Agriculture's (USDA's) Foreign Agricultural Service (FAS) is the lead federal agency tasked with promoting exports of U.S. agricultural products and carrying out the agricultural trade and international cooperation policies of the United States. FAS consists of staff in its Washington, DC, headquarters and in nearly 100 field offices covering approximately 180 countries and territories around the world.

Several statutes direct the U.S. agricultural trade policy that FAS carries out, including supporting free and fair trade and working to reduce foreign trade barriers. FAS's trade policy mission is to expand and maintain "access to foreign markets for U.S. agricultural products by removing trade barriers and enforcing U.S. rights under existing trade agreements" by working with other U.S. government agencies, industry stakeholders, foreign governments, and international organizations. FAS also represents U.S. agricultural interests in multilateral and international organizations. The agency coordinates engagement with U.S. public- and private-sector interests through agricultural trade advisory committees to gather input from stakeholders on agricultural trade policy. FAS administers programs for imported dairy and sugar products and two trust funds that provide payments to U.S. manufacturers in certain circumstances.

As part of its duty to acquire and disseminate information about agricultural trade, FAS produces international market intelligence and analysis that inform U.S. policymakers and stakeholders. The agency publishes and contributes to public-facing reports and maintains databases related to trade statistics, commodities, and foreign markets.

Additionally, FAS administers several programs that aim to support U.S. agricultural exports. The 2018 farm bill reauthorized and provided mandatory funding for several agricultural export promotion programs. These programs provide funds for U.S. organizations to conduct activities that expand, maintain, and develop overseas markets for U.S. agricultural products. FAS administers export credit guarantee programs that assist in the export of U.S. agricultural products mainly to developing countries. As part of its market promotion and development activities, the agency is also involved in trade missions and shows by supporting U.S. companies and organizations.

FAS carries out programs related to food assistance and agricultural technical assistance as part of its mission to support global food security and trade capacity. Food assistance programs include using proceeds from donated U.S. agricultural commodities to support overseas agricultural development activities and addressing issues of hunger, literacy, and health for school-age children. The agency also administers several fellowship and exchange programs that promote international technical assistance.

Congress has maintained an interest in international agricultural trade and food security. As an agency that carries out the policies and programs for agricultural trade and international cooperation on behalf of the United States, FAS presents a number of issues that Congress could consider. Examples for congressional consideration may include priorities for U.S. agricultural trade policy, reporting requests or requirements on agricultural trade-related issues, and the modification of existing programs or establishment of new ones that may be administered by FAS. With several 2018 farm bill authorized and mandatorily funded FAS-administered programs expiring, Congress may consider how to address the expiration of these programs.

Contents

Introduction 1
Importance of U.S. Agricultural Trade 1
USDA's Foreign Agricultural Service: Creation and Background 2
FAS's Overseas Footprint 4
Role of FAS in U.S. Trade Policy 6
Multilateral Engagements 8
Agricultural Trade Advisory Committees 9
Dairy Import Licensing and Sugar Import Programs 10
Dairy Import Licensing 10
Sugar Import Programs 10
Cotton and Wool Trust Funds 11
Market Intelligence and Analysis 12
Export Programs 13
Market Development and Trade Promotion Programs 13
Export Credit Guarantees 15
Trade Missions and Shows 15
Food and Technical Assistance 16
Food Assistance 16
Technical Assistance 17
Considerations for Congress 19
Farm Bill Considerations 20

Figures

Figure 1. U.S. Agricultural Exports and Imports, 2013-2022 2
Figure 2. FAS Offices and Global Coverage 5

Tables

Table 1. Foreign Agricultural Service Funding 3
Table 2. Selected FAS Fellowship and Exchange Programs 18

Contacts

Author Information 20

Introduction

The U.S. Department of Agriculture's (USDA's) Foreign Agricultural Service (FAS) is a key federal government agency involved in shaping U.S. agricultural trade policy. Agricultural trade plays an important role for U.S. agriculture that relies on overseas markets and consumers. Congress has provided direction for U.S. policies in agricultural trade and international cooperation. This includes establishing related programs administered by FAS through legislation, particularly through the farm bill, an omnibus and multiyear law that governs agricultural and food programs.[1]

This report provides first an overview of the importance of U.S. agricultural trade. It then addresses FAS's creation, structure, and global footprint. It further identifies FAS's roles in implementing U.S. agricultural trade policy, international agricultural market intelligence and analysis, export promotion, and food and technical assistance programs. It then provides potential considerations for Congress in the context of programs authorized in the farm bill.

Importance of U.S. Agricultural Trade

The United States is one of the top exporters of agricultural and food products, with exports reaching $196 billion in 2022 (see **Figure 1**).[2] Exports to foreign markets contribute to the overall health of the U.S. agricultural and food sectors, accounting for approximately 20% of total U.S. agricultural and food production by value annually since 2001.[3] Agricultural and food product exports represent about 10% of total U.S. merchandise exports by value.[4] Although the United States is a major exporter of agricultural products throughout the world, U.S. exports face challenges from foreign competition and trade barriers imposed by foreign governments. U.S. exports of agricultural and food products are varied, as are their destinations. In addition, in 2022, the United States imported $198 billion in agricultural products, which provided U.S. consumers more choice, variety, and product availability as well as more competition for certain U.S. producers.

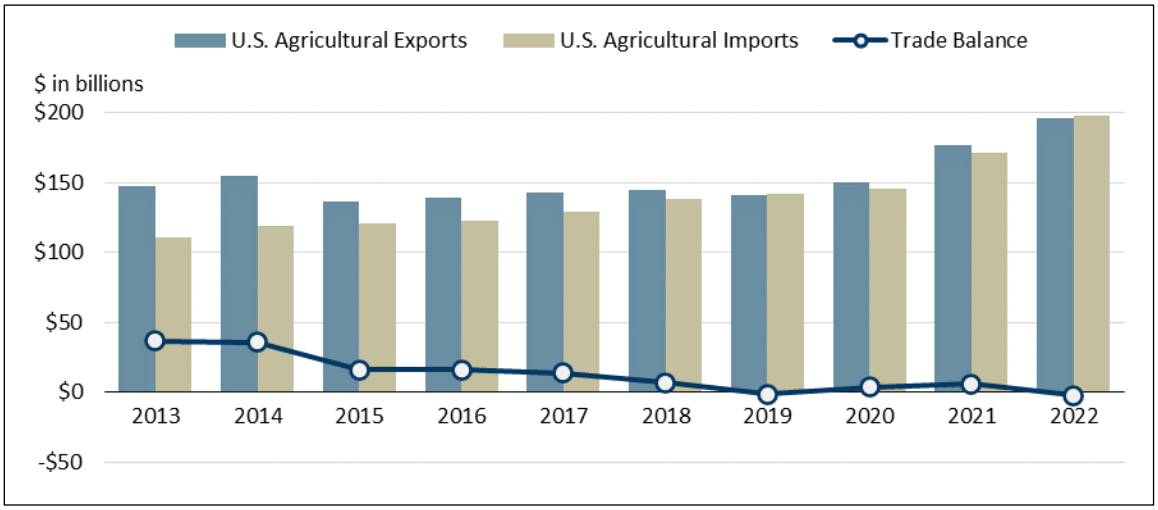
[1] For more information about the farm bill, see CRS In Focus IF12047, *Farm Bill Primer: What Is the Farm Bill?*.

[2] U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), "Global Agricultural Trade System Online: GATS Home," https://apps.fas.usda.gov/gats/default.aspx. USDA's definition of *agricultural products* follows the World Trade Organization (WTO) definition of the term to harmonize U.S. trade reporting practices with the international community. WTO's definition includes most food products but excludes products such as seafood and forestry products. USDA tracks these as agricultural-related products. FAS defines *U.S. agricultural commodity* for its export promotion programs as "any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and fish harvested from a U.S. aquaculture farm or harvested by a vessel in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof." See USDA, FAS, "Agricultural Products," https://apps.fas.usda.gov/gats/AgriculturalProducts.aspx. The European Union (EU) is the largest exporter of agricultural products by value.

[3] USDA, Economic Research Service (ERS), "Exports expand the market for U.S. agricultural products," February 22, 2023, https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58396. ERS estimates total production as the sum of total farm cash receipts and value added by food manufacturers. For further details, see USDA, ERS, "U.S. Export Share of Production, Import Share of Consumption (2008-2021)," https://www.ers.usda.gov/media/ftepuq5i/export_import_value_shares_final.xlsx.

[4] U.S. International Trade Commission, *U.S. Trade by Industry Sector and Selected Trading Partners*, June 2023, p. 2.

Figure 1. U.S. Agricultural Exports and Imports, 2013-2022



Source: U.S. Census Bureau Trade Data via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), "Global Agricultural Trade System Online: GATS Home," BICO-10, August 2023, https://apps.fas.usda.gov/gats/default.aspx.

Note: Data are not adjusted for inflation.

USDA's Foreign Agricultural Service: Creation and Background

FAS is the agency within USDA that carries out the agricultural trade policy of the United States, and it is the lead U.S. agency tasked with promoting exports of U.S. agricultural products.[5] The Secretary of Agriculture established FAS on March 10, 1953.[6] FAS falls under USDA's Trade and Foreign Agricultural Affairs mission area, which has "the primary responsibility of ensuring USDA speaks with a unified voice on international agricultural issues domestically and abroad."[7]

The Agricultural Trade Act of 1978 (P.L. 95-501, §503; 7 U.S.C. §5693), as amended, instructs FAS to assist the Secretary of Agriculture to carry out the agricultural trade and international cooperation policies of the United States by

- acquiring information pertaining to agricultural trade;
- carrying out market promotion and development activities;
- providing agricultural technical assistance and training; and

[5] USDA, FAS, *Foreign Agricultural Service Strategic Plan FY2023-2027*, p. 4.

[6] USDA, *2023 USDA Explanatory Notes – Foreign Agricultural Service*, 2022, p. 36-4. The Secretary of Agriculture's Memorandum 1320, supplement 1, established FAS. Prior to Memorandum 1320, predecessor agencies within USDA carried out functions related to foreign agricultural matters. For further background, see National Archives and Records Administration, *RG 166: Records of the Foreign Agricultural Service Narrative Reports, 1904-1994*, July 2020; and Ryan Swanson, "The History of the Foreign Agricultural Service: Helping U.S. Producers Feed, Clothe and House the World," USDA, FAS, *AgExporter*, vol. XV, no. 3 (March 2003), https://permanent.fdlp.gov/lps19216/www.fas.usda.gov/info/agexporter/2003/March/pgs4-11.pdf.

[7] In the Agricultural Act of 2014 (P.L. 113-79, §3208), Congress required USDA to create a position focused on agricultural trade. The Secretary of Agriculture established Trade and Foreign Agricultural Affairs (TFAA) and the position of Under Secretary for TFAA in May 2017.

- carrying out the programs authorized under this act, the Food for Peace Act (7 U.S.C. §§1691 et seq.),[8] and other acts.

The current FAS organizational structure has four main units that carry out policies and programs for agricultural trade and international cooperation:

1. Trade Policy and Geographic Affairs carries out trade policy functions.
2. Global Market Analysis conducts international market, trade, and production analysis.
3. Global Programs administers market development and export promotion programs as well as food and technical assistance programs.
4. Foreign Affairs supports FAS policies overseas.[9]

In September 2022, FAS reported 614 permanent full-time employees, 147 temporary and term employees, and an additional 360 locally employed staff (foreign nationals).[10] Congress funds FAS and its programs through annual discretionary appropriations and mandatory funding (see **Table 1**).[11]

Table 1. Foreign Agricultural Service Funding

$ in millions

	FY2019	FY2020	FY2021	FY2022	FY2023
Discretionary on the Basis of Appropriations					
Salaries and Expenses	213.9	215.5	221.8	228.6	237.3
Commodity Credit Corporation (CCC) Export Credit Guarantee Program Transfer[a]	6.4	6.1	6.1	6.1	6.1
McGovern-Dole[b]	210.3	220.0	230.0	237.0	248.3[c]
Discretionary Subtotal[d]	430.5	441.6	457.9	471.7	491.7
Mandatory on the Basis of Outlays[e]					
Market Access Program	195	158	157	191	225
Foreign Market Development Program	33	28	23	35	35

[8] The Food for Peace Act (P.L. 83-480), commonly referred to as "P.L. 480," provides statutory authority for most international food assistance programs administered by USDA and the U.S. Agency for International Development (USAID). For more information about P.L. 480 programs, see CRS Report R45422, *U.S. International Food Assistance: An Overview*; CRS In Focus IF12067, *Farm Bill Primer: U.S. International Food Assistance Overview*; and CRS In Focus IF12081, *Farm Bill Primer: International Food Aid Programs, McGovern-Dole and Local and Regional Procurement*.

[9] More details on FAS policies can be found at USDA, FAS, "About FAS," https://fas.usda.gov/about-fas.

[10] USDA, *2024 USDA Explanatory Notes – Foreign Agricultural Service*, 2023, p. 36-4.

[11] Mandatory funding for FAS programs is from the Commodity Credit Corporation (CCC), a wholly U.S. government-owned entity that serves as a funding mechanism for agricultural programs. For more information, see CRS Report R44606, *The Commodity Credit Corporation (CCC)*. Many mandatory programs are authorized by the farm bill. For more information, see CRS In Focus IF12047, *Farm Bill Primer: What Is the Farm Bill?* Some FAS mandatory programs include funding authority that expired at the end of FY2023. For more information, see CRS Report R47659, *Expiration of the Farm Bill*.

	FY2019	FY2020	FY2021	FY2022	FY2023
Emerging Markets Program	6	3	1	1	8
Technical Assistance for Specialty Crops	6	4	4	5	9
Priority Trade Fund	—	—	—	—	4
Quality Samples Program[f]	3	1	1	1	3
Agricultural Trade Promotion Program[g]	17	67	58	59	100
Food for Progress	165	205	384	127	245
Pima Agriculture Cotton Trust Fund	15	15	15	15	15
Agriculture Wool Apparel Manufacturers Trust Fund	27	26	20	20	33
Export Credit Guarantee Program (GSM-102)[h] [Loan Commitments]	-4 [2,024]	-5 [2,224]	-4 [2,224]	-9 [3,403]	-4 [5,000]
Facility Guarantee Program [Loan Commitments]	—[—]	—[—]	—[—]	—[—]	—[500]
Mandatory Subtotal[i]	463	502	659	445	673

Source: CRS from annual appropriations texts and reports, President's budget appendices, USDA budget summaries, and FAS and Commodity Credit Corporation (CCC) explanatory notes.

Notes: Funds are not adjusted for inflation. The Food for Peace Title II program grants, which are under the FAS appropriations section but administered by the U.S. Agency for International Development, are not included. For more information about FAS-administered programs in this table, see "Export Credit Guarantees," "Food Assistance," "Market Development and Trade Promotion Programs," and "Cotton and Wool Trust Funds."

a. The CCC Export Credit Guarantee Program funds are transferred to FAS for administrative and overhead expenses.

b. The McGovern-Dole International Food for Education and Child Nutrition Program. For more information about the program, see "Food Assistance."

c. P.L. 117-328 appropriated funding for the McGovern-Dole Program under Division A – Agriculture Appropriations Act and Division M – Additional Ukraine Supplemental Appropriations Act.

d. Discretionary subtotal calculations are based on original figures from appropriations.

e. FY2023 outlays are estimates. Outlays are rounded to the nearest million dollar from available data.

f. The Quality Samples Program was established by USDA using the authorities of the CCC Charter Act (15 U.S.C. §714c(f)).

g. The Agricultural Trade Promotion Program was established by USDA using the authorities of the CCC Charter Act (15 U.S.C. §714c(f)). The Secretary of Agriculture created this temporary program in 2018 in response to foreign tariff retaliation and trade disruptions. It is similar to FAS's Market Access Program and Foreign Market Development Program. The last notification of funding opportunity closed in June 2019.

h. GSM stands for General Sales Manager, which refers to the FAS official administering the GSM-102 program. Outlays are negative from program fees and interest from rescheduled debts that exceed the cost of defaults.

i. Mandatory subtotals based on rounded data.

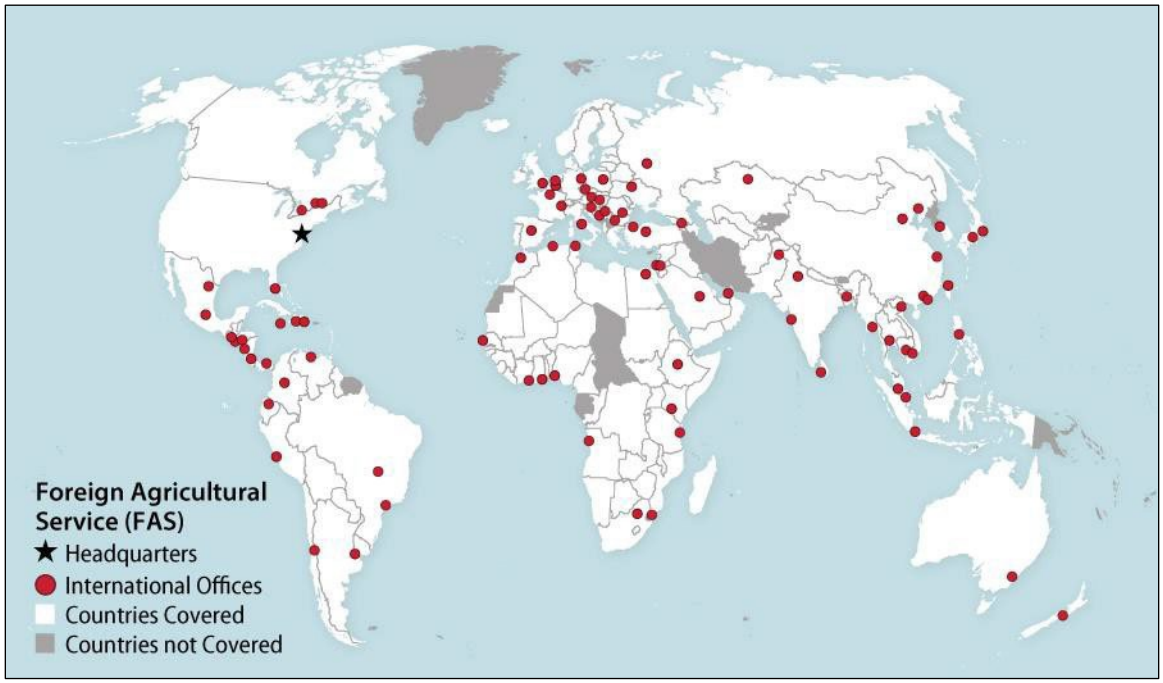
FAS's Overseas Footprint

FAS's overseas presence can be traced to the Agricultural Act of 1954 (P.L. 83-690, Title VI; 7 U.S.C. §§1761 et seq.), which authorized the Secretary of Agriculture to appoint and oversee

agricultural attachés in cooperation with the Secretary of State.[12] The Foreign Service Act of 1980 (P.L. 96-465, 22 U.S.C. §3922) authorized USDA to use the Foreign Service personnel system to consolidate and simplify the authorities of U.S. foreign affairs agencies.[13]

FAS has over 100 U.S. employees and 360 locally employed staff based in approximately 95 field offices globally that cover more than 170 countries and territories around the world (see **Figure 2**).[14] Most of the overseas FAS offices are designated Offices of Agricultural Affairs (OAAs) within U.S. embassies or consulates. OAAs carry out the mission of FAS overseas, which could include advocating U.S. agricultural trade policy interests by engaging with host foreign governments; reporting on developments in foreign agricultural sectors; supporting FAS export promotion and capacity-building programs; assisting U.S. exporters in foreign markets or foreign importers seeking U.S. suppliers; and supporting congressional delegation visits.[15]

Figure 2. FAS Offices and Global Coverage



Source: Figure created by CRS based on USDA, FAS, "International Offices Directory," October 2023, https://www.fas.usda.gov/international-offices.

[12] The House Committee on Agriculture expressed concerns over communication problems between USDA and agricultural attachés, who were previously directly controlled by the Department of State. See U.S. Congress, House Committee on the Whole on the State of the Union and Committee on Agriculture, *Agricultural Act of 1954*, report to accompany H.R. 9680, 83rd Cong., 2nd sess., H.Rept. 83-1927, June 26, 1954, pp. 3, 28-29. The 1930 Foreign Agricultural Service Act (P.L. 71-304) established USDA's first agricultural attachés. In 1939, USDA's agricultural attachés were transferred to the Department of State following the President's Reorganization Plan No. II pursuant to the provisions of the Reorganization Act of 1939 (P.L. 76-19).

[13] U.S. Congress, Senate Foreign Relations, *Foreign Service Act of 1980*, report to accompany S. 3058, 96th Cong., 2nd sess., August 22, 1980, S.Rept. 96-913, pp. 1-3.

[14] USDA, *2024 USDA Explanatory Notes–Foreign Agricultural Service*, 2023, p. 36-4; and USDA, FAS, "International Offices Directory," https://fas.usda.gov/international-offices.

[15] Examples of the role of Offices of Agricultural Affairs can be found on U.S. Embassy and USDA websites. See, for example, U.S. Embassy & Consulate in Thailand, "Doing Business in Thailand (Agro-Food Products)," https://th.usembassy.gov/business/getting-started-thailand/business-thailand-agro-food-products/; and USDA, FAS, "About USDA Brazil," https://usdabrazil.org.br/en/about-usda-brazil/.

Title IV of the Agricultural Trade Act of 1978 (P.L. 95-501, 7 U.S.C. §§1765a et seq.) established overseas Agricultural Trade Offices (ATOs) for the purpose of export promotion and market development. ATOs aid in connecting U.S. suppliers and foreign buyers, and they organize export promotion activities, such as trade shows.[16] Currently, there are 13 ATOs located in the Americas and East Asia.[17]

Role of FAS in U.S. Trade Policy

The executive branch's overall trade policy is the responsibility of the Office of the United States Trade Representative (USTR), which works with other executive branch departments and agencies, including with FAS on agricultural trade matters.[18] FAS conducts the functions of USDA related to laws affecting international agricultural trade, which include programs designed to reduce foreign tariffs and other trade barriers (7 C.F.R. §2.601(a)(2)).

FAS's trade policy mission is to expand and maintain "access to foreign markets for U.S. agricultural products by removing trade barriers and enforcing U.S. rights under existing trade agreements" by working with other U.S. government agencies, industry stakeholders, foreign governments, and international organizations.[19] Several statutes direct the U.S. agricultural trade policy that FAS supports in carrying out, including the following examples:

- The Food Security Act of 1985 (P.L. 99-198, 7 U.S.C. §§1736p et seq.), as amended, declares the agricultural trade policy of the United States, as follows: (1) be the premier world supplier of agricultural and food products; (2) support free and fair trade; (3) negotiate further reductions of foreign tariff and nontariff barriers (NTBs), including sanitary and phytosanitary (SPS) measures (for more background on agricultural trade-related terminology, see text box, below); and (4) aggressively counter unfair foreign trade practices.[20] P.L. 99-198, as amended, also established goals for future agricultural trade negotiations, including eliminating foreign tariff and NTBs to trade, eliminating foreign trade-distorting export subsidies, and disciplining state-trading entities from dumping agricultural products to foreign markets.[21] Additionally, the Trade and Development Act of 2000 (P.L. 106-200, 7 U.S.C. §1736r note) sets out agricultural trade negotiating objectives for the United States with respect to the World Trade Organization (WTO).
- Trade Promotion Authority (TPA) legislation expedites the congressional procedures to approve and implement trade agreements negotiated by the President and sets negotiating objectives and trade policy.[22] For example, the

[16] Agricultural Trade Office (ATO) activities are described in U.S. Embassy and USDA websites. See, for example, USDA, FAS, "Agricultural Trade Office - Seoul," https://www.atoseoul.com/; and USDA, FAS Mexico, "Welcome to the Foreign Agricultural Service in Mexico," https://mexico-usda.com.mx/about-en/.

[17] USDA, FAS, "International Offices Directory," https://www.fas.usda.gov/international-offices.

[18] For more information about U.S. trade policy, see CRS Report R45148, *U.S. Trade Policy Primer: Frequently Asked Questions*; and CRS In Focus IF11016, *U.S. Trade Policy Functions: Who Does What?*.

[19] For more information, see USDA, FAS, "About FAS," https://fas.usda.gov/about-fas; and USDA, *2024 USDA Explanatory Notes – Foreign Agricultural Service*, p. 36-3.

[20] U.S. Congress, House Committee on Agriculture, *Federal Agriculture Improvement and Reform Act of 1996*, conference report to accompany H.R. 2854, 104th Cong., 2nd sess., March 25, 1996, H.Rept. 104-494, pp. 371-372.

[21] Ibid., pp. 372-373.

[22] For more information about the Trade Promotion Authority, see CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*; and CRS In Focus IF10038, *Trade Promotion Authority (TPA)*.

Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, 19 U.S.C. §2901(b)(7) and 7 U.S.C. §5202) set specific U.S. agricultural negotiating objectives and policy during the Uruguay Round multilateral trade negotiations.[23] The most recent TPA authorized, the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26, 19 U.S.C. §4201(b)(3)), set specific trade negotiating objectives, such as securing market access through robust rules on SPS measures and addressing foreign countries' misuse of geographical indication (GI) protections (for more background on GI protections, see text box, below).

FAS addresses foreign trade barriers to U.S. agricultural goods in numerous ways. These can include government-to-government engagements involving staff-level officials discussing issues at a detailed technical level. Unresolved issues that further escalate may involve more senior government officials, such as at the cabinet and ambassador levels. Bilateral engagements addressing trade barriers can be conducted on an ad hoc basis or within established mechanisms and venues, such as through bilateral trade agreements or multilateral forums.[24]

FAS may work with other U.S. government agencies to address trade barriers, including USTR, the Department of Commerce's International Trade Administration, and regulatory agencies (e.g., USDA's Animal and Plant Health Inspection Service and Food Safety Inspection Service or the Food and Drug Administration). Along with engaging directly with foreign governments on trade issues, FAS and U.S. organizations with agricultural export interests can use FAS-administered export promotion and technical assistance programs to assist in addressing trade barriers (see "Market Development and Trade Promotion Programs" and "Food and Technical Assistance"). If a trade barrier and dispute cannot be resolved with a foreign trading partner by government-to-government engagements and the United States considers the trade barrier to violate trade rules and obligations under a specific trade agreement, the United States could initiate the dispute settlement process under the WTO or a free trade agreement.[25]

[23] The Uruguay Round negotiations occurred from 1986 to 1994 and resulted in the establishment of the WTO, an international organization that administers trade rules and agreements. For more background about the WTO, see CRS Report R45417, *World Trade Organization: Overview and Future Direction*. For more background on FAS's role in the WTO, see the text box in the "Multilateral Engagements" section of this report.

[24] Agricultural trade issues may be raised in a number of venues, including within existing free trade agreements (FTAs) and trade and investment framework agreements (TIFAs), the WTO, and on the margins of other multilateral government gatherings. For a list of FTAs and TIFAs the United States is party to, see USTR, "Free Trade Agreements," https://ustr.gov/trade-agreements/free-trade-agreements; and USTR, "Trade & Investment Framework Agreements," https://ustr.gov/trade-agreements/trade-investment-framework-agreements.

[25] For more background, see USDA, FAS, "Trade Agreements," https://www.fas.usda.gov/topics/trade-policy/trade-agreements; and USDA, FAS, "World Trade Organization," https://www.fas.usda.gov/topics/world-trade-organization. For more information about the dispute settlement process, see CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*.

Selected Terminology for Agricultural Trade

Trade Barriers. The Office of the United States Trade Representative (USTR) broadly defines *trade barriers* as "government laws and regulations or government-imposed measures, policies, and practices that restrict, prevent, or impede the international exchange of goods and services; protect domestic goods and services from foreign competition; artificially stimulate exports of particular domestic goods and services…." (see USTR, *2023 National Trade Estimate Report on Foreign Trade Barriers*, March 2023, p. 1). Section 181 of the Trade Act of 1974 (P.L. 93-618, 19 U.S.C. §2241), as amended, directs USTR to annually prepare a report known as the National Trade Estimate, which lists the trade barriers of foreign countries. Section 203(e)(7) of the Agricultural Trade Act of 1978 (P.L. 95-501, 7 U.S.C. §5623(e)(7)), as amended, directs USDA to annually submit to appropriate committees of Congress a report that includes significant and emerging sanitary and phytosanitary (SPS) issues and trade barriers affecting U.S. exports of specialty crops (i.e., fruits, vegetables, tree nuts, dried fruits, horticultural crops, wine, and nursery crops).

Nontariff Barriers (NTBs). NTBs to trade are government measures with the intent to restrict trade. Examples may include laws and regulations to protect human, animal, or plant life or health, commonly known as SPS measures, and measures known as technical barriers to trade (TBT) that are related to mandatory compliance with regulatory requirements, voluntary standards, and conformity assessment procedures required by regulations or standards. Although SPS and TBT measures can have legitimate aims, such as ensuring product safety and informing consumers, these measures may be hidden trade barriers or may go beyond what is necessary to meet a government's objective. General examples of SPS and TBT measures that can be construed as NTBs to trade include imposing SPS measures that ban imported agricultural products with insufficient scientific evidence or imposing regulatory requirements on imported products while exempting those requirements for similar domestically produced products.

SPS Measures. "Sanitary" refers to human and animal health, including food safety, and "phytosanitary" refers to plant health. SPS measures are laws, regulations, standards, and procedures that governments enforce to protect human, animal, or plant life or health. For more information about SPS measures and NTBs to agricultural trade, see CRS In Focus IF11903, *Addressing Nontariff Barriers to Agricultural Trade at the WTO*.

Geographical Indication (GI). GIs identify goods that originate from a certain place where a given quality, reputation, or other characteristic is attributable to that place. The U.S. government and food manufacturers are particularly concerned about the European Union's (EU's) broad protection of GIs that the United States considers a generic or common name. For more information about GIs, see U.S. Patent and Trademark Office (USPTO), "Geographical indications," https://www.uspto.gov/ip-policy/trademark-policy/geographical-indications.

FAS's role in U.S. agricultural trade policy also involves working in a number of multilateral forums, coordinating engagement with U.S. public- and private-sector input on agricultural trade policy through the agricultural trade advisory committee system, administering dairy and sugar import programs, and administering trust funds for domestic apparel and textile manufacturers harmed by import tariffs on cotton and wool fabrics.

Multilateral Engagements

FAS represents U.S. agricultural interests in many multilateral forums. These forums provide venues for the United States to cooperate with other forum members as well as address disputes and differences about international agricultural issues (see the following text box for more information).

FAS Involvement in Multilateral and International Organizations

World Trade Organization (WTO). The WTO was established in 1995 as an international organization dealing with international trade rules with the "objective to help its members use trade as a means to raise living standards, create jobs and improve people's lives." It succeeded the post-World War II General Agreement on Tariffs and Trade. Several WTO committees provide forums for members to discuss trade issues that affect agricultural trade and matters related to WTO agreements. FAS is part of the U.S. Permanent Mission to the WTO in Geneva, Switzerland, along with USTR and the Department of Commerce.

United Nations (U.N.). FAS supports the U.S. Mission to the U.N. Agencies in Rome along with the Department of State and USAID. In addition, FAS works to advance U.S. policies and support to the U.N. Food

and Agriculture Organization (FAO) and World Food Programme (WFP). The FAO's goals are to end hunger, food insecurity, malnutrition, and poverty while sustainably managing and using natural resources. WFP is the leading humanitarian organization that provides emergency food assistance and promotes economic and social development. WFP is a partner with FAS for food assistance projects under the McGovern-Dole International Food for Education Program. Additionally, FAS has supported USDA's engagement with the U.N. Food Systems Summit addressing issues related to sustainable development as well as the recent U.N. Climate Change Conferences. For more information about the U.N. Food Agencies and the McGovern-Dole Program, see CRS In Focus IF12434, *Global Food Security: Selected Multilateral Efforts*; and CRS In Focus IF12081, *Farm Bill Primer: International Food Aid Programs, McGovern-Dole and Local and Regional Procurement*.

Organisation for Economic Cooperation and Development (OECD). OECD is an intergovernmental economic organization with the stated goal of shaping "policies that foster prosperity, equality, opportunity and well-being for all." OECD consists of 38 countries with a secretariat based in Paris, France. FAS supports the United States' participation in OECD on agricultural and food policy issues, including its role in the OECD Committee for Agriculture and Global Forum on Agriculture.

Asia-Pacific Economic Cooperation (APEC). APEC is a regional economic forum consisting of 21 member economies with the aim to "create greater prosperity for the people of the region by promoting balanced, inclusive, sustainable, innovative and secure growth and by accelerating regional economic integration." FAS is involved in several APEC working groups related to agricultural and food policy, including the Policy Partnership on Food Security and the High Level Policy Dialogue on Agricultural Biotechnology. In 2023, the United States was the host economy and held the APEC Food Security Ministerial meeting.

Inter-American Board on Agriculture/Inter-American Institute for Cooperation on Agriculture (IABA/IICA). IABA is the governing board of IICA, a 34-member organization recognized under the Organization of American States' (OAS's) Charter. IICA specializes in agriculture with the mission to encourage and promote the efforts of its members to "achieve agricultural development and rural well-being through international technical cooperation of excellence."

International Standard-Setting Bodies. FAS coordinates with other lead USDA and relevant U.S. government agencies involved in the three international standard-setting organizations recognized by the WTO: the Codex Alimentarius Commission, which concerns food safety; International Plant Protection Convention; and World Organization for Animal Health.

Group of Seven (G-7) and Group of Twenty (G-20). FAS supports USDA's participation in the meetings of the G-7 and G-20 ministers responsible for agriculture. Both are forums for members of the world's largest economies to discuss and address issues related to agriculture, such as food security, sustainability, and rural development. For more information about the G-7 and G-20, see CRS Report R40977, *International Economic Policy Coordination at the G-7 and the G-20*.

Agricultural Trade Advisory Committees

The Trade Act of 1974 (P.L. 93-618, §135; 19 U.S.C. §2155) created an advisory committee system for the public and private sectors to convey its views to the U.S. government and for U.S. trade negotiators to seek information and advice from the public and private sectors related to trade agreement negotiation objectives and trade policy matters.[26] The Agricultural Policy Advisory Committee (APAC) for Trade and six commodity-specific Agricultural Technical Advisory Committees (ATACs, see text box, below) provide advice to the USTR[27] and the Secretary of Agriculture concerning U.S. agricultural trade policy. The APAC and ATAC membership consists of the U.S. agricultural industry, for-profit and nonprofit organizations, as well as academia.[28] Under the current APAC and ATAC charters, the committees meet

[26] For more information about the advisory system's role in forming overall U.S. trade policy, see CRS Report R45148, *U.S. Trade Policy Primer: Frequently Asked Questions*; and CRS In Focus IF11016, *U.S. Trade Policy Functions: Who Does What?*.

[27] The USTR refers to the Cabinet-level official who heads the USTR agency.

[28] List of Agricultural Policy Advisory Committee (APAC) for Trade and Agricultural Technical Advisory Committee (ATAC) members can be found at USDA, FAS, "Trade Advisory Committees," https://www.fas.usda.gov/topics/trade-advisory-committees.

approximately twice per year at the call of the Secretary of Agriculture and the USTR and dependent on other factors, such as level of activity in trade policy and needs of the agency heads.[29] FAS staff serve as designated federal officers that chair or attend, call, adjourn, and approve agendas for advisory committee meetings.

Agricultural Trade Advisory Committees (ATACs)

- ATAC for Trade in Animals and Animal Products
- ATAC for Trade in Fruits and Vegetables
- ATAC for Trade in Grains, Feed, Oilseeds, and Planting Seeds
- ATAC for Trade in Processed Foods
- ATAC for Trade in Sweeteners and Sweetener Products
- ATAC for Trade in Tobacco, Cotton, and Peanuts

Dairy Import Licensing and Sugar Import Programs

FAS administers import programs for certain dairy and sugar products. These trade-related programs are parts of broader federal government dairy and sugar support programs. For more information about the other support programs, see CRS Report R45730, *Farm Commodity Provisions in the 2018 Farm Bill (P.L. 115-334)*, CRS In Focus IF11163, *2018 Farm Bill Primer: The Farm Safety Net*, and CRS In Focus IF12202, *Farm Bill Primer: Support for the Dairy Industry*.

Dairy Import Licensing

FAS issues one-year licenses to importers of certain foreign dairy products as a means to administer the U.S. dairy tariff rate quota (TRQ) system.[30] Chapter 4 of the U.S. Harmonized Tariff Schedule (HTS) indicates which dairy imports require an FAS-issued license to be subject to the low-tier tariff rate, the maximum annual quantity allowed under the low-tier tariff rate, and any country-specific quantity allocations for the low-tier tariff rate.[31] FAS issues three types of licenses: renewable historical licenses that are carried over annually, nonrenewable nonhistorical licenses issued annually through a lottery system, and designated licenses for cheese importers that meet qualification standards and are designated by the government of the exporting country (7 C.F.R. §§6.23-6.25).[32]

Sugar Import Programs

FAS administers sugar import TRQs and a sugar reexport program.[33] USDA determines the annual quantity allowed under the in-quota, low-tier tariff rate for sugar imports every fiscal year

[29] APAC and ATAC charters are available at https://www.facadatabase.gov and https://www.fas.usda.gov/topics/trade-advisory-committees.

[30] Tariff-rate quotas (TRQs) are two-tiered applications of tariffs for an imported product. A specified quantity of imports (in-quota) enters into the importing country at a reduced tariff rate. Imports that exceed the quantity (out-of-quota or over-quota) typically face higher tariffs. For background about the WTO and agricultural TRQs, see WTO, *The WTO Agreements Series: Agriculture*, 3rd ed. (Geneva: WTO, 2016), pp. 15-16. Dairy Tariff-Rate Quota Import Licensing (7 C.F.R. Part 6 Subpart B) are the regulations for administering the U.S. dairy TRQ program, and 7 C.F.R. §2.601(12) notes the delegation of authority to FAS to administer the program. See USDA, FAS, "Dairy Import Licensing Program," https://www.fas.usda.gov/programs/dairy-import-licensing-program.

[31] The U.S. Harmonized Tariff Schedule (HTS) can be accessed at https://hts.usitc.gov/.

[32] Additional descriptions of the dairy import licensing system can be found in WTO, "Replies to Questionnaire on Import Licensing Procedures," G/LIC/N/3/USA/19, September 28, 2022, pp. 9-12 (hereinafter WTO, "Replies to Questionnaire").

[33] Allocation of Tariff-rate Quota on Imported Sugars, Syrups and Molasses (15 C.F.R. Part 2011) are the regulations for the sugar TRQ program. The Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, and the Polyhydric Alcohol Program (7 C.F.R. Part 1530) are the regulations for the sugar reexport program. See USDA, FAS, "Sugar Import Program," https://www.fas.usda.gov/programs/sugar-import-program.

while USTR allocates the in-quota quantities to supplying countries based on historical shipments to the United States.[34] FAS issues certificates of quota eligibility (CQE) for the sugar TRQ to countries allocated to supply the United States. The CQE must be returned with the sugar shipment for the sugar to be subject to the in-quota tariff rate. Under the commitments of the Uruguay Round, the United States allows for in-quota access not less than 1,117,195 metric tons of raw sugar and not less than 22,000 metric tons of refined sugar.[35] The Secretary of Agriculture may modify the TRQs if there is a determination that domestic supplies are inadequate to meet domestic demand at reasonable prices.[36] FAS also issues certificates for in-quota imports of specialty sugar under the refined sugar TRQ.[37] The purpose of the certificate is to allow import of certain refined sugar not widely available in the United States at the lower in-quota tariff rate.[38] CQEs are required for sugar imported under TRQs established by the U.S. free trade agreements with Colombia, Panama, and Peru if USTR determines the trading partner has a trade surplus in these goods.[39] FAS also issues specialty sugar certificates for Panama and Peru for the TRQs established under the U.S. free trade agreements with the respective countries.[40]

FAS administers a sugar reexport program not subject to the sugar TRQ limitations by issuing import licenses to eligible refiners, manufacturers, or producers importing raw sugar to be further processed and reexported in refined form; in refined form in sugar-containing products; or used for the production of certain polyhydric alcohol (7 C.F.R. Part 1530).

Cotton and Wool Trust Funds

The Miscellaneous title of the Agricultural Act of 2014 (2014 farm bill; P.L. 113-79) established the Pima Agriculture Cotton Trust Fund and the Agriculture Wool Apparel Manufacturers Trust Fund within USDA.[41] The 2018 farm bill (Agriculture Improvement Act of 2018, P.L. 115-334, 7 U.S.C. §§2101 note and 7101 note) amended the programs. The purpose of the trust funds is to allocate payments to reduce injury to domestic manufacturers resulting from domestic tariffs on imported cotton or wool fabrics that are higher than tariffs on certain apparel articles made of

[34] Additional U.S. note 5 for the HTS Chapter 17 explains USDA and USTR's roles in the U.S. sugar import program. The United States outlines the sugar import program in WTO, "Replies to Questionnaire," pp. 6-9.

[35] Subheading note 1 of Chapter 17 of the HTS defines raw sugar, otherwise it is considered refined sugar. In-quota raw sugar has a lower duty rate than in-quota refined sugar.

[36] See additional U.S. note 5(a)(ii) of the HTS Chapter 17.

[37] 15 C.F.R. Part 2011 Subpart B. Also see additional U.S. note 5(a)(i) of the HTS Chapter 17.

[38] WTO, "Replies to Questionnaire," p. 6.

[39] USDA, FAS, "Notice of a Request for Extension of a Currently Approved Information Collection," 87 *Federal Register* 79274, December 27, 2022; and USTR, "Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products," 87 *Federal Register* 78185, December 21, 2022.

[40] USTR, "Implementation of United States-Panama Trade Promotion Agreement Tariff-Rate Quota for Imports of Sugar," 77 *Federal Register* 65439-65440, October 26, 2012; and U.S. Customs and Border Protection (CBP), *Fact Sheet: Sugar Quota Import Program*, April 12, 2022, https://www.cbp.gov/document/fact-sheets/sugar-quota-import-program.

[41] Prior to FAS's administration of the Pima Agriculture Cotton Trust Fund, the Tax Relief and Health Care Act of 2006 (P.L. 109-432, §407) established the Cotton Trust Fund authorizing distribution of funds for FY2007 and FY2008 by CBP to eligible manufacturers and spinners of certain pima cotton and a nationally recognized association for the promotion of pima cotton grown in the United States for use in textile and apparel goods. Prior to FAS's administration of the Agriculture Wool Trust, the Miscellaneous Trade and Technical Corrections Act of 2004 (P.L. 108-429, §4002(c)(6)), as amended, authorized the Department of Commerce to administer payments to manufacturers for certain worsted wool fabrics through calendar year 2014. Additionally, Title V of the Trade and Development Act of 2000 (P.L. 106-200), as amended, established temporary TRQs for certain wool fabrics, and CBP administered a duty refund program for certain wool imported by manufacturers and processors, which is a basis for payments for one of the programs under the current Agriculture Wool Trust.

cotton or wool fabrics.[42] A prior bill that attempted to establish the trust funds argued that U.S. apparel and textile manufacturers faced inverted tariffs because tariffs for imported finished cotton shirts and wool suits are lower than the tariffs for imported fabric inputs, which affects the competitiveness of U.S. manufacturers that use the inputs.[43]

The 2018 farm bill allocates Commodity Credit Corporation (CCC) mandatory funds of $16 million per year through 2023 to the Pima Agriculture Cotton Trust Fund (7 U.S.C. §2101 note) and an amount equal to the lesser of either an amount determined by the Secretary of Agriculture as necessary or $30 million each year to the Agriculture Wool Apparel Manufacturers Trust Fund (7 U.S.C. §7101 note). FAS is delegated to administer both trust funds in coordination with USDA's Farm Service Agency.[44] Payments are available to nationally recognized associations that promote pima cotton for the domestic use in textile and apparel goods, yarn spinners of pima cotton that produce ring spun cotton yarns, manufacturers of men's and boys' cotton shirts that imported cotton fabric, and manufacturers that produced or imported certain wool fabrics.

Market Intelligence and Analysis

When USDA was established in 1862, its intended purpose was to acquire and disseminate information about agriculture (12 Stat. 387; 7 U.S.C. §2201).[45] Among FAS's statutory duties is "acquiring information pertaining to agricultural trade" (7 U.S.C. §5693(1)). FAS produces international market intelligence and analysis that informs U.S. policymakers and stakeholders involved in agricultural trade. The agency publishes and contributes to public-facing reports and maintains databases related to trade statistics, commodities, and foreign markets.[46] FAS uses a variety of resources to develop agricultural market intelligence and analysis, including satellite imagery, reports from FAS overseas offices, weather data, news reports, and official U.S. and foreign government data, among other sources.

[42] USDA, FAS, "Pima Agriculture Cotton Trust Fund," https://www.fas.usda.gov/programs/pima-agriculture-cotton-trust-fund; and USDA, FAS, "Wool Apparel Manufacturers Trust Fund," https://www.fas.usda.gov/programs/wool-apparel-manufacturers-trust-fund.

[43] U.S. Congress, Senate Committee on Finance, *A Bill to Create a Citrus Trust, to Renew and Modify the Cotton Trust Fund, and to Modify and Extend the Wool Trust Fund*, report to accompany S. 3568, 112th Cong., 2nd sess., September 20, 2012, S.Rept. 112-227, p. 4.

[44] 7 C.F.R. §2.601(a)(50). FSA administers a number of agricultural support programs, including credit and loan, commodity, ad hoc disaster, and conservation programs. Regulations for the trust funds are located at 7 C.F.R. Part 1471.

[45] The Department of Agriculture Organic Act of 1862 established what is now USDA.

[46] 7 C.F.R. §§2.601(a)(3), 2.601(a)(23), 2.601(a)(38), and 2.601(a)(49). Access to FAS reports and databases are available at USDA, FAS, "Data and Analysis," https://www.fas.usda.gov/data.

FAS Market Intelligence and Analysis Selected Products

World Agricultural Supply and Demand Estimates (WASDE): monthly report published by USDA that includes estimates and forecasts for the U.S. and world supply and use of major agricultural commodities. FAS contributes information on foreign production and trade to the WASDE. The World Agricultural Outlook Board within USDA's Office of the Chief Economist coordinates with key USDA agencies in preparing the WASDE.

Production, Supply, and Distribution Online (PS&D): database of the global supply and use of selected agricultural commodities. Grains, oilseeds, and cotton are updated simultaneously with the WASDE report, and other commodities are updated biannually or annually.

World Agricultural Production Report and World Markets and Trade Report: regularly published reports on major agricultural commodities. The World Agricultural Production reports provide grains, oilseeds, and cotton crop acreage, as well as yield and production in major countries worldwide. World Markets and Trade reports provide U.S. and global trade, production, consumption, and stocks for grains, oilseeds, cotton, citrus, dairy, livestock and poultry, coffee, certain fruits, and tree nuts.

Global Agricultural Information Network (GAIN): reports produced by FAS overseas offices that contain analyses on topics such as foreign market agricultural production and trade developments and forecasts, foreign market exporting guides, and foreign food and agricultural import requirements.

Global Agricultural Trade System (GATS): database of current and historical trade data organized by agricultural commodity and agricultural related product groups. Monthly U.S. agricultural trade data are from the U.S. Census Bureau. GATS also contains trade statistics from the United Nations.

Export Sales Report: daily and weekly U.S. export sales reports for 40 U.S. agricultural commodities. All exporters of the 40 commodities are required to report to FAS on a weekly basis, or daily basis if a sales activity reaches a certain quantity. Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. §5712), as amended, requires exporters of specified commodities to report export sales to the Secretary of Agriculture.

International Agricultural Trade Report: periodic reports focused on developments or outlook of foreign markets or specific commodities.

Geospatial Assessment Applications: geospatial applications that provide data such as crop and vegetation conditions, weather, and water level variations of lakes and reservoirs.

Export Programs

Market Development and Trade Promotion Programs

FAS administers several market development programs that aim to support "U.S. industry efforts to build, maintain, and expand overseas markets for U.S. food and agricultural products."[47] The 2018 farm bill (P.L. 115-334, 7 U.S.C. §5623) reauthorized export promotion programs with mandatory funding from FY2019 to FY2023 of $255 million annually through USDA's CCC with funds remaining available until expended. These programs, consolidated by the 2018 farm bill and categorized collectively as the Agricultural Trade Promotion and Facilitation Program (ATPFP), are the following:

- **Market Access Program (MAP).** MAP provides funds to share the cost of marketing and promotion activities to "encourage the development, maintenance, and expansion of commercial export markets" for U.S. agricultural commodities.[48] Eligible participants include nonprofit U.S. agricultural trade organizations, nonprofit state regional trade groups, U.S. agricultural cooperatives, and state government agencies. Small-sized private U.S. commercial entities may participate in a branded program through a MAP

[47] USDA, *2024 USDA Explanatory Notes–Foreign Agricultural Service*, 2023, p. 36-22.

[48] 7 U.S.C. §5623(b)(2). Regulations for MAP are covered by 7 C.F.R. Part 1485 Subpart B.

participant. The 2018 farm bill funded MAP not less than $200 million annually from FY2019 to FY2023.

- **Foreign Market Development (FMD) Program.** Similar to MAP, FMD provides funds to share the cost of overseas marketing and promotion activities. However, only nonprofit U.S. agricultural trade organizations are eligible to participate in FMD, and it is focused on the generic promotion of U.S. commodities rather than branded products.[49] The 2018 farm bill funded FMD not less than $34.5 million annually from FY2019 to FY2023.
- **Emerging Markets Program (EMP).** EMP provides funds for technical assistance activities to U.S. private or government entities with a demonstrated role or interest in U.S. agricultural exports. The program was established "to develop agricultural markets in emerging markets" and "promote cooperation and exchange of information between agricultural institutions and agribusinesses in the United States and emerging markets."[50] The 2018 farm bill funded EMP not more than $8 million annually from FY2019 to FY2023.
- **Technical Assistance for Specialty Crops (TASC).** TASC funds U.S. organizations with a demonstrated role or interest in exporting U.S. agricultural specialty crops, which include most cultivated plants and the products of cultivated plants except for wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.[51] Eligible activities for TASC funding involve addressing existing or potential SPS or technical barriers that prohibit or threaten the export of U.S. specialty crops. The 2018 farm bill funded TASC $9 million annually from FY2019 to FY2023.

An additional Priority Trade Fund supplements the other ATPFP programs "for authorized activities to access, develop, maintain, and expand markets" for U.S. agricultural products.[52] The 2018 farm bill provided $3.5 million annual mandatory funding for the Priority Trade Fund from FY2019 to FY2023. In general, these programs provide reimbursable matching or cost-share funds for U.S. organizations to conduct activities that expand and develop foreign markets for U.S. agricultural products.

The Quality Sample Program (QSP) is another program with the objective to develop and expand U.S. agricultural exports. Unlike the ATPFP programs, which are authorized and funded by the farm bill, QSP is authorized under the CCC Charter Act (P.L. 80-806; 62 Stat. 1070; 15 U.S.C. §714c(f)), as amended, which allows CCC to use its powers to aid in the development of foreign markets for commodities. QSP is designed to assist U.S. entities in providing commodity samples to potential foreign importers to help develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product rather than promote the substitution of an established U.S. product.[53]

[49] Regulations for FMD are covered by 7 C.F.R. Part 1484.

[50] 7 U.S.C. §5623(d)(2). 7 U.S.C. §5623(d)(1) defines *emerging market* as "any country, foreign territory, customs union, or other economic market" determined by USDA that "is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of its economy" and "has the potential to provide a viable and significant market for" U.S. agricultural commodities.

[51] Regulations for TASC are covered in 7 C.F.R. Part 1487.

[52] 7 U.S.C. §5623(f)(3)(A)(v).

[53] Grants.gov, *USDA-FAS-QSP-2024: Quality Samples Program*, March 17, 2023, https://www.grants.gov/web/grants/view-opportunity.html?oppId=346794. For additional information, see USDA, FAS, "Quality Samples Program (QSP)," https://www.fas.usda.gov/programs/quality-samples-program-qsp.

For more background on these programs, see CRS Report R46760, *U.S. Agricultural Export Programs: Background and Issues*, and CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*.

Export Credit Guarantees

The 2018 farm bill reauthorized export credit guarantee programs for exports to emerging markets through FY2023 with funding from CCC of not less than $1 billion each fiscal year (7 U.S.C. §5622 note). Additionally, $5.5 billion is available each fiscal year from CCC (7 U.S.C. §5641(b)) with no funding expiration date. FAS administers two export credit guarantee programs:[54]

- **Export Credit Guarantee Program (GSM-102).** GSM-102 provides payment guarantees for the commercial export of U.S. agricultural products mainly to developing countries.[55] In FY2022, $3.4 billion in loan commitments were made under GSM-102.[56] CCC does not provide financing but assumes the default risk in case the foreign financial institution involved fails to make any payment covered by the guarantee.[57] If the foreign financial institution fails to make any payment as agreed, the participating exporter of U.S. agricultural products or participating U.S. financial institution that takes assignment of the payment guarantee may submit a claim to CCC for payment.[58]
- **Facility Guarantee Program (FGP).** FGP provides credit guarantees for financing the establishment or improvement of facilities or provides services or goods in emerging markets primarily to promote the export of U.S. agricultural products.[59] No loan commitments were made for FGP in FY2022.[60]

For further background on these programs, see CRS Report R46760, *U.S. Agricultural Export Programs: Background and Issues*, and CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*.

Trade Missions and Shows

FAS is involved in international trade missions and trade shows to support U.S. companies and organizations as part of its duties to carry out market promotion and development activities. U.S. companies, state departments of agriculture, and other organizations with U.S. agricultural export interests may participate in FAS-organized overseas trade missions, known as "Agribusiness Trade Missions" (ATMs). These trade missions, led by senior USDA officials, are meant to connect U.S. businesses with potential customers and educate participants about the "economic

[54] Regulations for the export credit guarantee programs are covered by 7 C.F.R. Part 1493.

[55] USDA, FAS, "Export Credit Guarantee Program (GSM-102)," https://www.fas.usda.gov/programs/export-credit-guarantee-program-gsm-102.

[56] USDA, *2024 USDA Explanatory Notes–Commodity Credit Corporation*, 2023, p. 30-43.

[57] Office of Management and Budget, *Appendix, Budget of the U.S. Government, Fiscal Year 2024*, 2023, p. 105.

[58] Ibid.

[59] USDA, FAS, "Facility Guarantee Program," https://www.fas.usda.gov/programs/facility-guarantee-program.

[60] USDA, *2024 USDA Explanatory Notes–Commodity Credit Corporation*, 2023, p. 30-43.

conditions and regulatory environments in host-country markets."[61] USDA also uses the overseas visit to engage with the foreign host-government on trade policy and cooperative issues.[62]

FAS endorses international trade shows and works with trade show organizers and other organizations to create a "USA Pavilion" to showcase U.S. products. FAS provides additional services and assistance to participating U.S. companies.[63] Cooperators,[64] state regional trade groups, and state departments of agriculture also participate as exhibitors.[65]

Food and Technical Assistance

The Agricultural Trade Act of 1978 (P.L. 95-501; 7 U.S.C. §5693), as amended, instructs FAS to assist the Secretary of Agriculture to carry out agricultural trade and international cooperation policy by providing agricultural technical assistance and training and carrying out programs authorized under P.L. 95-501, the Food for Peace Act (FFPA; P.L. 83-480, 7 U.S.C. §1691), and other acts.

Food Assistance

Current food assistance programs originated from FFPA, commonly known as "P.L. 480." Section 2 of FFPA (7 U.S.C. §1691), as amended, identifies five objectives in enhancing food security in developing countries:

- combat world hunger and malnutrition and their causes;
- promote broad-based, equitable, and sustainable development, including agricultural development;
- expand international trade;
- foster and encourage the development of private enterprise and democratic participation in developing countries; and
- prevent conflicts.

USDA and the U.S. Agency for International Development (USAID) are the main agencies that administer food assistance programs. FAS administers the following nonemergency food assistance programs that were reauthorized by the 2018 farm bill (P.L. 115-334) through FY2023:

- **Food for Progress** (7 U.S.C. §1736o)**.** The program's two principal objectives are to improve agricultural productivity and expand trade of agricultural products in developing countries. Donated U.S. agricultural commodities are sold, usually to the local market of target countries, and the proceeds are used to support agricultural development activities.
- **McGovern-Dole International Food for Education and Child Nutrition Program** (7 U.S.C. §1736o-1)**.** The program's objectives are to "reduce hunger, increase literacy, and improve the health and dietary practices of school-age

[61] USDA, *2024 USDA Explanatory Notes–Foreign Agricultural Service*, 2023, p. 36-22. For more information about upcoming and past Agribusiness Trade Missions (ATMs), see USDA, FAS, "Trade Missions," https://www.fas.usda.gov/topics/trade-missions.

[62] Ibid.

[63] USDA, FAS, "Trade Shows," https://www.fas.usda.gov/topics/trade-shows.

[64] *Cooperators* are nonprofit commodity or trade associations that represent U.S. agricultural producers and processors.

[65] USDA, *2024 USDA Explanatory Notes–Foreign Agricultural Service*, 2023, p. 36-21.

children, with an emphasis on girls" by funding school meals and education and nutrition programs implemented by private-voluntary organizations and other international organizations in countries with high food insecurity.[66]

- **Local and Regional Food Aid Procurement Program** (7 U.S.C. §1726c). The program supplements the McGovern-Dole Program by providing locally and regionally procured food.

For more information on U.S. international food assistance programs, see CRS Report R45422, *U.S. International Food Assistance: An Overview*, CRS In Focus IF12067, *Farm Bill Primer: U.S. International Food Assistance Overview*, and CRS In Focus IF12081, *Farm Bill Primer: International Food Aid Programs, McGovern-Dole and Local and Regional Procurement*.

Technical Assistance

The National Agricultural Research, Extension, and Teaching Policy Act of 1977 (P.L. 95-113, 7 U.S.C. §3291) authorizes USDA to carry out research, extension, and teaching activities with foreign institutions, departments and ministries of agriculture, and individuals. FAS administers several fellowship programs related to agricultural technical assistance, including specific programs authorized by farm bills and funded by appropriation acts:

- **Cochran Fellowship Program** (7 U.S.C. §3293)**.** The Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624) formally authorized and expanded an existing international agricultural fellowship program.[67] The program trains individuals from middle-income countries, emerging markets, and emerging democracies for the purposes of developing eligible countries' agricultural systems and strengthening trade linkages with the United States.[68] Congress authorized without fiscal year limitation such sums as may be necessary to carry out the program except for certain criteria. Funds are not to exceed in any fiscal year $4 million for eligible middle-income countries that no longer qualify for U.S. bilateral foreign aid assistance due to per capita income levels; $3 million for eligible middle-income countries that never qualified for U.S. bilateral foreign aid assistance but with an ongoing mutually beneficial relationship with the United States; and $6 million for eligible countries that are transforming to a more democratic system of government. USDA may also receive outside sources to fund the program. Authorization for the program is permanent.
- **Borlaug International Agricultural Science and Technology Fellowship Program (Borlaug Fellowship Program)** (7 U.S.C. §3319j)**.** The Food, Conservation, and Energy Act of 2008 (P.L. 110-234) established a fellowship program to provide scientific training and study in the United States for individuals from eligible countries for the purposes of promoting food security and economic growth and supporting scientific exchanges.[69] Congress authorized

[66] USDA, *Fiscal Year 2021 International Food Assistance Report*, p. 1.

[67] U.S. Congress, Senate Agriculture, Nutrition, and Forestry, *Food, Agriculture, Conservation, and Trade Act of 1990*, report to accompany S. 2830, 101st Cong., 2nd sess., July 6, 1990, S.Rept. 101-357, p. 198.

[68] Program web page is located at USDA, FAS, "Cochran Fellowship Program," https://www.fas.usda.gov/programs/cochran-fellowship-program. Eligible countries are determined by a gross national income per capita test as determined by USDA.

[69] Program web page is located at USDA, FAS, "Borlaug Fellowship Program," https://www.fas.usda.gov/programs/borlaug-fellowship-program. USDA originally established the program in 2004.

appropriations of such sums as necessary to remain available until expended. Authorization for the program is permanent.

- **International Agricultural Education Fellowship** (7 U.S.C. §3295)**.** The 2018 farm bill (P.L. 115-334) established a fellowship program for U.S. citizens to assist eligible countries for the purposes of developing "globally minded" U.S. agriculturalists, focusing on meeting the food and fiber needs of the eligible countries, and strengthening trade linkages between eligible countries and the U.S. agricultural industry.[70] Congress authorized appropriations of $5 million each fiscal year from 2019 to 2023 for the program.

In addition to the specific fellowship programs codified in statute, FAS administers other programs providing international fellowships and exchanges as well as projects with other U.S., foreign, and international government agencies, research institutions, and agricultural industry organizations to improve the agricultural systems and trade capacity of developing countries.[71] **Table 2** lists selected FAS fellowship and exchange programs.

Additionally, FAS carries out technical assistance and other activities overseas through reimbursable agreements on behalf of USAID, foreign governments, and international organizations that are funded by other agencies.[72]

Table 2. Selected FAS Fellowship and Exchange Programs

Program	Description	Year Established
Scientific Cooperation Exchange Program (SCEP) with China	Supports collaborative relationships between scientific and technical exports from the United States and China	1979
Scientific Cooperation Research Program (SCRP)	Supports joint research, extension, and education projects between researchers from the United States and emerging market economies	1980
Faculty Exchange Program (FEP)	Assists participants from developing countries with one-semester training at a U.S. Land Grant Agricultural University to improve the institutions of their home countries	1995
Embassy Science Fellows Program (ESFP)	Places USDA technical exports at overseas U.S. embassies to provide technical expertise and advice	2002
Scientific Exchanges Program (SEP)	Supports collaborative programs between agricultural professionals from the United States and eligible countries through education and collaborative research	Pilot program announced in 2019

Source: CRS from FAS, "Programs," https://www.fas.usda.gov/programs and notification of funding opportunities shared at https://www.grants.gov/.

[70] Program web page is located at USDA, FAS, "International Agricultural Education Fellowship Program," https://www.fas.usda.gov/programs/international-agricultural-education-fellowship-program. Eligible countries are determined by a gross national income per capita test as determined by USDA.

[71] Further information can be found at USDA, FAS, "Fellowships & Exchanges," https://fas.usda.gov/topics/fellowships-and-exchanges; and USDA, FAS, "Capacity Building & Economic Development," https://fas.usda.gov/topics/capacity-building-and-economic-development.

[72] USDA, *FY 2024 Budget Summary*, 2023, p. 44.

Considerations for Congress

Congress has maintained an interest in international agricultural trade and food security. As an agency that carries out the policies and programs for agricultural trade and international cooperation on behalf of the United States, FAS presents numerous issues that Congress could consider. Congress may use a number of tools available, including legislation, appropriations, report language, oversight, and direct communication, to influence, direct, or evaluate FAS and its programs.[73]

Congress established the overall agricultural trade policy of the United States in response to the international trade environment through various acts, including declarations of agricultural trade policies and objectives.[74] As foreign trade barriers affecting U.S. agricultural exports arise or require greater attention, Congress may consider directing or influencing USDA and FAS to address or prioritize such issues.[75]

FAS publishes and provides a suite of reports and data related to agricultural trade. Congress may consider if there is specific, additional reporting needed that FAS could produce or discontinue existing reporting requirements.[76]

FAS administers several programs related to U.S. agricultural exports and international food and technical assistance. As Congress considers various issues and its priorities related to foreign agricultural affairs, such as promoting U.S. export competitiveness and foreign market share, improving international trade linkages, and ensuring food security, it may evaluate,[77] modify,[78] or provide guidance to existing programs as well as establish new programs to be administered by FAS.[79] Congress may also consider requesting USDA to use its broad authorities under the CCC

[73] Although Congress directs the President or Secretary of Agriculture to carry out certain authorized trade and agricultural programs, some programs are delegated to FAS given its roles and responsibilities pertaining to foreign agricultural affairs.

[74] See example legislation on agricultural trade policy in this report's section "Role of FAS in U.S. Trade Policy."

[75] For example, in S.Rept. 118-44 for the FY2024 agriculture appropriations bill (S. 2131), the Senate Committee on Appropriations encourages FAS and USDA's Animal and Plant Health Inspection Service to engage with trading partners, international organizations, and others in addressing issues related to the trade of forest products. Also, see an example of congressional and executive agencies coordinating to address a tariff trade barrier in USDA, FAS, *India Reduces Import Duty Tariff Levied on Pecans - Cracking Open the Door for the American Nut*, GAIN Report IN2023-0016, February 22, 2023.

[76] For example, FAS publishes weekly summary U.S. export sales for certain agricultural commodities as required by 7 U.S.C. §5712. This was in response to concerns about the lack of information about large exports sales, including a 1972 grain sale to the Soviet Union that greatly affected domestic supplies. For background, see U.S. Congress, House Committee on Agriculture, *Agriculture and Consumer Protection Act of 1973*, report on H.R. 8860, 93rd Cong., 1st sess., June 27, 1973, H.Rept. 93-337, pp. 35-36.

[77] For example, see U.S. Government Accountability Office, *International Food Assistance: Agencies Should Ensure Timely Documentation of Required Market Analyses and Assess Local Markets for Program Effects*, GAO-17-640, July 13, 2017, as requested by the Chairman of the House Committee on Agriculture to review FAS and USAID food assistance programs and their provisions of in-kind food aid.

[78] For example, the Fortifying Refrigeration Infrastructure and Developing Global Exports Act of 2023 (FRIDGE Act of 2023, H.R. 4612) would authorize an additional $1 million for the Foreign Market Development Program to specifically provide technical assistance related to infrastructure in new and developing foreign markets for U.S. agricultural commodities.

[79] For example, the 2018 farm bill (P.L. 115-334; 7 U.S.C. §3295) established the International Agricultural Education Fellowship Program for U.S. citizens to assist developing countries in establishing school-based agricultural education and youth extension programs; in S.Rept. 118-44, the Senate Committee on Appropriations encourages USDA to avoid limiting eligibility of applicants to specific countries or regions.

Charter Act to establish programs related to international agricultural trade and assistance initiatives.[80]

Farm Bill Considerations

The farm bill traditionally has been the main legislative vehicle to modifying policies and programs for U.S. agriculture, including programs related to international agricultural trade and assistance. With the authorization and mandatory funding expirations of a number of 2018 farm bill programs administered by FAS, Congress may take into consideration how to address this either through enacting temporary extensions or through enacting a new farm bill. FAS programs affected by the 2018 farm bill expiration include the following:

- Export promotion programs under the ATPFP are unable to fund program applicants for FY2024.
- The Pima Agriculture Cotton Trust Fund and the Agriculture Wool Apparel Manufacturers Trust Fund are unable to make payments to applicants after December 31, 2023. Although the 2018 farm bill provided mandatory funding for the trust funds, they are programs without a budget baseline after 2023.[81]
- Food for Progress is set to terminate after December 31, 2023.
- Authorizations of appropriations for the McGovern-Dole International Food for Education and Child Nutrition Program, Local and Regional Food Aid Procurement Program**,** and International Agricultural Education Fellowship expired at the end of FY2023.

Author Information

Benjamin Tsui
Analyst in Agricultural Policy

[80] For example, see United States Senate Committee on Agriculture, Nutrition, and Forestry, "Stabenow, Boozman Urge Secretary Vilsack to Support American Farmers by Making Investments in Trade Promotion and Food Assistance," press release, September 6, 2023; and USDA, "USDA Bolsters Investments in International Trade and Food Aid," press release, October 24, 2023.

[81] For more information about programs without a budget baseline beyond the 2018 farm bill, see CRS In Focus IF12115, *Farm Bill Primer: Programs Without Baseline Beyond FY2024*.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

THE SECRETARY OF AGRICULTURE
WASHINGTON, D.C.
20250-0100

July 24, 2025

Secretary Memorandum: SM 1078-015

Subject: Department of Agriculture Reorganization Plan

Section I. **Purpose:** This Secretary Memorandum authorizes and directs the actions necessary to effectuate the consolidation, unification, and optimization of functions within the Department of Agriculture (USDA) to achieve improved effectiveness and accountability, enhanced services, reduced bureaucracy and cost savings for the American people. These actions constitute the USDA Department Reorganization Plan.

Section 2. **Authority:** This Memorandum is issued under the authority of Reorganization Plan No. 2 of 1953 (5 U.S.C. app.; 7 U.S.C. 2201 note) and The Department of Agriculture Reorganization Act of 1994 (Pub. L. I 03-354).

Section 3. **Background:** Since its legislated establishment in 1862, USDA has been known as "The People's Department," a title reflecting its mission to serve farmers, ranchers, landowners, and rural communities, and perform critical public services that benefit all Americans. The Department is reverting to its core mission to ensure:

- American agriculture feeds all across the United States and the world.
- American farmers, ranchers, and producers compete on a world stage that is fair, just, and on terms that put America First.
- Confidence in our programs to fight disease, feed the needy, manage our land and forests, and work for all of American agriculture.
- That Make America Great Again and Make America Healthy Again exist not in opposition to one another, but as complements to a common mission for our country.

Section 4. **Key Pillars:** USDA is committed to preserving critical public safety and other public services the American public relies upon. Reductions and impacts to wildland firefighting, inspection, and farmer and rural community front-line facing positions will be minimized. The USDA Reorganization Plan will be guided by four key pillars:

Principle 1: Ensure the Size of USDA's Workforce Aligns with Financial Resources and Priorities

Over the last four years, USDA's workforce grew by approximately 8% and employees' salaries increased by 14.5%. Many of these salaries were funded by temporary funding. As part of this reorganization, USDA is not conducting a large-scale workforce reduction. To make certain USDA can afford its workforce, this reorganization is another step of the Department's process ofreducing its workforce. Much of this reduction was through voluntary retirements and the Deferred Retirement Program (DRP), a completely voluntary tool. As of today, 15,364 individuals voluntarily elected deferred resignation. This re-alignment will be undertaken to mitigate adverse consequences to those agencies which rely upon temporary workforces that increase at different times of the year. Examples include Forest Service increases during the spring and summer months due to wildland firefighting, Agricultural Marketing Service increases due to agricultural product grading activities during harvest time, and field-based agricultural activities involving the Fann Production and Conservation Mission Area.

USDA has and will continue to fully leverage voluntary programs such as the Deferred Resignation Program (DRP), Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIPs). The Department will also leverage directed and voluntary reassignments to ensure the workforce is aligned with mission priorities. Focused and limited Reductions in Force will be implemented only if needed and only after approval by USDA's Deputy Secretary.

Principle 2: Bring USDA Closer to Its Customers by Relocating Resources Outside of the National Capital Region

The Department currently employs approximately 4,600 individuals that work within the National Capital Region (NCR). This Region has one of the highest costs of living in the country, with a federal salary locality rate of 33.94%. To ensure USDA is located closer to the people it serves while achieving savings to the American taxpayer, USDA will relocate much of its Agency headquarters and NCR staff from the Washington, D.C. area to five hub locations. The selection of these hub locations takes into consideration existing concentrations of USDA employees and the cost of living for USDA employees. At the conclusion of implementation, it is USDA's goal to retain no more than 2,000 employees within the NCR.

The five hub locations and current Federal locality rates are:

I) Raleigh, North Carolina (22.24%)
2) Kansas City, Missouri (18.97%)
3) Indianapolis, Indiana (18.15%)
4) Fort Collins, Colorado (30.52%)
5) Salt Lake City, Utah (17.06%)

In addition to these five hubs, USDA will maintain two additional core administrative support locations: Albuquerque, New Mexico and Minneapolis, Minnesota. These two locations have substantial concentrations of human resources staff that support the delivery of critical public safety

functions. USDA will continue to maintain critical service centers and laboratories including agency service centers in St. Louis, Missouri; Lincoln, Nebraska; and Missoula, Montana.

Regarding existing facilities within the NCR:

Whitten Building: this facility will be retained as USDA's headquarters.

Yates Building: this facility will be retained for use and USDA will fully leverage available office space for USDA mission areas and staff offices.

National Agricultural Library: retained for use, and the Department will fully leverage available office space for USDA mission areas and staff offices.

South Building: this facility will be vacated.

Braddock Place: this facility will be vacated.

Beltsville Agricultural Research Center (BARC): this facility will be vacated over multiple years to avoid disruption of critical USDA research activities.

George Washington Carver Center (GWCC): this facility will be sold or transferred upon conclusion of its use as a temporary location for USDA personnel during the re-alignment of USDA offices and personnel

Principle 3: Eliminating Management Layers and Bureaucracy

The Department will reduce or eliminate stand-alone regional offices and other similar bureaucratic management layers. To promote coordination across USDA, regional offices and other similar management layers will be co-located in the hub locations to the greatest extent possible.

- The Agriculture Research Service will eliminate its Area Offices. Residual functions will be perfonned by its Office of National Programs.
- The National Agricultural Statistics Service will consolidate its 12 existing regions into five USDA Hubs over a multi-year period.
- The Food and Nutrition Service will reduce its number of regions from seven to five and align locations with the USDA Hubs and Service Centers over a two-year period
- The Forest Service will phase out the nine Regional Offices over the next year and implementation activities will take into consideration the ongoing fire season. The Forest Service will maintain a reduced state office in Juneau, Alaska and an eastern service center in Athens, Georgia. The current stand-alone Research Stations will be consolidated into a single location in Fort Collins, Colorado. The Forest Service will retain the Fire Sciences Lab and Forest Products Lab - the former, vital for protection from forest fires and the latter, critical for assessing market development opportunities for timber and other forest products and related industries.
- The Natural Resources Conservation Service will align its regional structure with the five USDA hub locations.
- Animal and Plant Health Inspection Service centers will remain at current locations as they are located in USDA hub locations.

Principle 4: Consolidate Support Functions

To reduce duplication and provide consistency across USDA, support functions will be consolidated. Mission area and agency resources will be realigned to the consolidated functions.

The Department will:

- Consolidate civil rights functions into the Office of the Assistant Secretary for Civil Rights, which will deliver all statutorily required civil rights functions.
- Consolidate Freedom of Infonnation Act and related information management functions within the Office of General Counsel.
- Consolidate Legislative Affairs functions into the Office of Congressional Relations.
- To the maximum extent practicable, consolidate communication and public affairs functions within the Office of Communication.
- Eliminate the duplication and redundancy between the Office of Budget and Program Analysis and the Office of the Chief Financial Officer and streamline budget and financial operations across USDA.
- Where possible and appropriate, complete information technology consolidation activities with services fully provided by the Office of the Chief Information Officer.
- Consolidate tribal relations functions within mission areas and ensure the Office of Tribal Relations delivers all statutorily required tribal relations functions.
- Consolidate human resources functions in the Office of the Assistant Secretary for Administration (ASA). Although human resources will be consolidated, agencies will still have focused hiring support including a dedicated team for wildland firefighting hiring.
- Consolidate contracting functions in the ASA. Although contracting resources will be consolidated, dedicated teams for commodity procurement and wildland firefighting incident support will continue to exist. The Department will transfer contracting for common goods and services to the General Services Administration during FY 2026. To eliminate redundancy, the Office of Small and Disadvantaged Business will be reduced to a single position that focuses on statutory requirements.
- Consolidate lease administration and management functions in the ASA.
- Consolidate grants and financial assistance to provide better controls and promote efficiency. This consolidation will include, where feasible, the transfer of grant making and administration functions from USDA offices and agencies that currently have limited capacity to perform such duties to other offices and agencies.
- Eliminate the redundancy in student programs in the Office of Partnerships and Public Engagement (OPPE) and the Agricultural Research Service (ARS) by realigning OPPE student programs to ARS.

Section 5. **Implementation:**

a. **Deputy Secretary.** The Deputy Secretary will lead the implementation of the USDA Reorganization Plan and may make changes or adjustments to the plan as needed.

b. **The Office of the General Counsel and the ASA.** The Office of the General Counsel and the Office of the ASA are directed to take all necessary steps to support the Deputy Secretary in implementation of the USDA Reorganization Plan

c. **The Office of the Assistant Secretary for Congressional Relations.** The Office of the Assistant Secretary for Congressional Relations is directed to work with the Office of General Counsel on all necessary Congressional notifications.

d. **Agency Heads and Department Officials.** Under Secretaries, Agency Heads, and Department Officials are directed to take all necessary actions to implement the USDA Reorganization Plan as directed by the Deputy Secretary.

Section 6. **Effect of the Memorandum:** The implementation of this Secretary Memorandum will improve the internal management of the Department. This Secretary Memorandum and any resulting actions do not confer any right or benefit (substantive or procedural) to any party. To the extent there is any inconsistency between the provisions of this Secretary Memorandum and any Federal law or regulation, the provisions of such law or regulation will control.

Section 7. **Delegation:** This Memorandum delegates to the Deputy Secretary all authorities necessary to implement the USDA Reorganization Plan.

Section 8. **Expiration Date:** This Secretary Memorandum is effective immediately and will remain in effect until the earlier of the completion of the US [illegible]anization Pl [illegible] or the revocation of this memorandum.

BROOKE L. ROLLINS
Secretary of Agriculture

Congressional Research Service
Informing the legislative debate since 1914

Next Farm Bill Primer Series

Updated April 29, 2025

Congressional Research Service
https://crsreports.congress.gov
R47313

CRS REPORT
Prepared for Members and
Committees of Congress

Contents

Introduction 1
Overview and Budget 2
CRS In Focus IF12047, *Farm Bill Primer: Background and Status*, by Jim Monke and Megan Stubbs 2
CRS In Focus IF12233, *Farm Bill Primer: Budget Dynamics*, by Jim Monke 2
CRS In Focus IF12115, *Farm Bill Primer: Programs Without a Budget Baseline*, by Jim Monke 2
Animal Health 3
CRS In Focus IF12934, *Farm Bill Primer: Animal Disease Management and Prevention*, by Lia Biondo 3
Commodity Programs and Farm Support 3
CRS In Focus IF12218, *Farm Bill Primer: Farm Safety Net Programs*, by Stephanie Rosch 3
CRS In Focus IF12114, *Farm Bill Primer: PLC and ARC Farm Support Programs*, by Stephanie Rosch 3
CRS In Focus IF12140, *Farm Bill Primer: MAL and LDP Farm Support Programs*, by Stephanie Rosch 3
CRS In Focus IF12195, *Farm Bill Primer: Support for Cotton*, by Stephanie Rosch 4
CRS In Focus IF12202, *Farm Bill Primer: Support for the Dairy Industry*, by Christine Whitt 4
CRS In Focus IF12201, *Farm Bill Primer: Federal Crop Insurance Program*, by Stephanie Rosch 4
CRS In Focus IF12101, *Farm Bill Primer: Disaster Assistance*, by Christine Whitt 4
Conservation 5
CRS In Focus IF12024, *Farm Bill Primer: Conservation Title*, by Megan Stubbs 5
Energy 5
CRS In Focus IF10639, *Farm Bill Primer: Energy Title*, by Kelsi Bracmort 5
Forestry 5
CRS In Focus IF12054, *Farm Bill Primer: Forestry Title*, by Anne A. Riddle 5
Horticulture, Specialty Crops, and Organic Farming 5
CRS In Focus IF12017, *Farm Bill Primer: Horticulture Title and Related Provisions*, by Renée Johnson 5
CRS In Focus IF12278, *Farm Bill Primer: Hemp Industry Support and Regulation*, by Renée Johnson 6
New, Beginning, Underserved, and Veteran Farmers and Ranchers 6
CRS In Focus IF12096, *Farm Bill Primer: Beginning and Underserved Producers*, by Jim Monke 6
CRS In Focus IF12160, *Farm Bill Primer: Support for Tribal Food and Agriculture*, by Jim Monke 6
Nutrition Assistance 6
CRS In Focus IF12255, *Farm Bill Primer: SNAP and Nutrition Title Programs*, by Randy Alison Aussenberg and Kara Clifford Billings 6
Research, Extension, and Related Matters 7
CRS In Focus IF12023, *Farm Bill Primer: Agricultural Research and Extension*, by Eleni G. Bickell 7

CRS In Focus IF12275, *Farm Bill Primer: USDA Support for Aquaculture Operations*, by Eleni G. Bickell....7
Rural Development....7
CRS In Focus IF12038, *Farm Bill Primer: Rural Development Title*, by Lisa S. Benson....7
CRS In Focus IF12041, *Farm Bill Primer: Rural Broadband Provisions*, by Lisa S. Benson....7
Trade and Export Promotion....8
CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*, by Benjamin Tsui....8

Contacts

Author Information....8

Introduction

This report constitutes a guide to a series of two-page "primers" examining the various programs and policies that comprise periodic omnibus legislation on farm and food policy, commonly known as "the farm bill." The President signed the 2018 farm bill, the Agriculture Improvement Act of 2018 (P.L. 115-334), into law on December 20, 2018. The 2018 farm bill generally authorizes programs for five years. Congress enacted a one-year extension in November 2023 for 2024 (P.L. 118-22, Division B, §102) and a second one-year extension in December 2024 to cover FY2025 and the 2025 crop year (P.L. 118-158, Division D). Many farm bill programs will expire in 2025 unless Congress extends their authorization through a new farm bill or other legislation.

The 2018 farm bill authorized a broad array of programs and policies across 12 titles that define much of the federal government's role in the agricultural sector. It also established the parameters for key domestic and foreign nutrition assistance programs. The 2018 farm bill authorizes a wide range of agriculture and food programs and policies that address commodity support; conservation; trade; foreign and domestic nutrition assistance; farm credit and rural development; research, extension, and education; forestry; energy; horticulture; crop insurance; and livestock-related matters, among others

There are 23 primers summarized in this report and organized under descriptive headings rather than by farm bill titles to facilitate accessibility for those who are not familiar with the 2018 farm bill. The concept behind these primers is to provide relevant information on key programs and policy initiatives authorized by the 2018 farm bill in a concise format that serves as a quick reference resource for Members of Congress and congressional staff. To this end, the primers describe many of the leading programs and policies within the 2018 farm bill. They also identify some of the higher-profile policy issues that may arise as Congress engages in the process of writing a new farm bill and highlight some policy options that Congress could consider as it undertakes this task. The titles of the primers are hyperlinked for easy access.

The primers listed herein also identify CRS subject matter analysts and provide references to related CRS reports for those who want to explore a specific topic area within the 2018 farm bill in greater depth or who seek additional analysis on an individual program or policy. For an overview of the entire 2018 farm bill, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*. For a history of farm bill legislation, see CRS Report R45210, *Farm Bills: Major Legislative Actions, 1965-2024*. For a discussion of the consequences of farm bill expiration, see CRS Report R47659, *Expiration of the 2018 Farm Bill and Extension for 2025*. For analysis of the farm bill markup in 2024, see CRS Report R48167, *The 2024 Farm Bill: H.R. 8467 Compared with Current Law*.

This report summarizes the farm bill primers listed below. The headings of the summaries contain hyperlinks to the full CRS In Focus products.

- *Farm Bill Primer: What Is the Farm Bill?*
- *Farm Bill Primer: Budget Dynamics*
- *Farm Bill Primer: Programs Without Baseline Beyond FY2024*
- *Farm Bill Primer: Animal Disease Management and Prevention*
- *Farm Bill Primer: Farm Safety Net Programs*
- *Farm Bill Primer: PLC and ARC Farm Support Programs*
- *Farm Bill Primer: MAL and LDP Farm Support Programs*
- *Farm Bill Primer: Support for Cotton*
- *Farm Bill Primer: Support for the Dairy Industry*

- *Farm Bill Primer: Federal Crop Insurance Program*
- *Farm Bill Primer: Disaster Assistance*
- *Farm Bill Primer: Conservation Title*
- *Farm Bill Primer: Energy Title*
- *Farm Bill Primer: Forestry Title*
- *Farm Bill Primer: Horticulture Title and Related Provisions*
- *Farm Bill Primer: Selected Hemp Industry Issues*
- *Farm Bill Primer: Beginning and Underserved Producers*
- *Farm Bill Primer: Support for Native Agricultural Producers*
- *Farm Bill Primer: SNAP and Nutrition Title Programs*
- *Farm Bill Primer: Agricultural Research and Extension*
- *Farm Bill Primer: USDA Support for Aquaculture Operations*
- *Farm Bill Primer: Rural Development Title*
- *Farm Bill Primer: Rural Broadband Provisions*
- *Farm Bill Primer: Trade and Export Promotion Programs*

Overview and Budget

CRS In Focus IF12047, *Farm Bill Primer: Background and Status*, by Jim Monke and Megan Stubbs

This CRS In Focus provides an overview of the multiyear, omnibus legislation known as the farm bill. In particular, it describes the breadth of agriculture and nutrition policy that the farm bill authorizes while providing a brief history of the evolution of the farm bill to the present day. It further reviews estimated costs of the 2018 farm bill by title at the time of enactment and an updated estimate of the budget baseline for mandatory programs for a next farm bill. The House markup of a farm bill in 2024 is discussed in the context of current issues.

CRS In Focus IF12233, *Farm Bill Primer: Budget Dynamics*, by Jim Monke

Congress may consider a new farm bill in 2025 because provisions authorized in the 2018 farm bill (P.L. 115-334) begin expiring at the end of FY2025. From a budgetary perspective, many farm bill programs are assumed to continue. This report discusses the two types of funding—mandatory spending and discretionary authorizations—and the implications of each for farm bill budgeting and program continuity. Farm bill programs have nearly $1.4 trillion of mandatory funding available for the next 10 years. The In Focus also addresses supplemental funding in recent years, which may influence policy expectations for a new farm bill.

CRS In Focus IF12115, *Farm Bill Primer: Programs Without a Budget Baseline*, by Jim Monke

In preparation for a next farm bill, Congress may consider a subset of 21 programs in the 2018 farm bill that do not have a budget baseline for funding beyond FY2024. This In Focus identifies these 21 programs, which received a total of $906 million of mandatory funding during the five years (FY2019-FY2023) of the 2018 farm bill and $177 million in FY2024 for the first one-year extension. The second one-year extension for FY2025 did not provide additional funding for these programs. Programs that receive mandatory funding do not require annual discretionary appropriations. Reauthorizing farm bill programs without baseline would have a positive score (cost) and therefore would likely need to be offset by reductions elsewhere.

Animal Health

CRS In Focus IF12934, *Farm Bill Primer: Animal Disease Management and Prevention*, by Lia Biondo

Animal agriculture accounts for about half of the total value of U.S. agricultural products. The current highly pathogenic avian influenza outbreak illustrates how animal diseases can be costly to control, disrupt domestic supply and international trade of animal products, and affect human health. USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for protecting and improving animal health in the United States. Congress provides APHIS approximately $400 million annually to administer several programs to prevent and respond to animal disease. This CRS In Focus describes those APHIS programs and identifies selected issues of potential interest to Congress.

Commodity Programs and Farm Support

CRS In Focus IF12218, *Farm Bill Primer: Farm Safety Net Programs*, by Stephanie Rosch

The so-called federal "farm safety net" is a collection of programs administered by the U.S. Department of Agriculture (USDA) that provide risk protection and income support to farmers in the United States who experience natural disasters, adverse growing conditions, and/or low market prices. Farm safety net programs fall into three categories: the federal crop insurance program (FCIP), standing agricultural disaster programs, and agricultural commodity support programs. The FCIP and standing agricultural disaster programs are permanently authorized under various laws. The commodity support programs are authorized through the 2025 crop year.

CRS In Focus IF12114, *Farm Bill Primer: PLC and ARC Farm Support Programs*, by Stephanie Rosch

The Price Loss Coverage (PLC) and the Agriculture Risk Coverage (ARC) programs provide income support to producers of certain eligible commodities. The amount of support varies by commodity and from year-to-year based on program enrollments and market conditions. These programs are authorized through the 2025 crop year. The 2018 farm bill reauthorized these programs with relatively minor changes that expanded support available to producers. This CRS In Focus addresses significant features of these programs and identifies selected issues that Congress could consider as it debates a next farm bill.

CRS In Focus IF12140, *Farm Bill Primer: MAL and LDP Farm Support Programs*, by Stephanie Rosch

The Marketing Assistance Loan (MAL) program has been a significant feature of U.S. farm policy since the 1930s. The MAL program provides loans to farmers that are collateralized by eligible stored commodities and provides price support to borrowers when market prices drop below levels specified in statute. Congress has authorized the Loan Deficiency Payment (LDP) program since the 1980s. The LDP program provides payments to farmers eligible to receive price support under the MAL program. Farmers must meet eligibility requirements for these programs and cannot receive both MAL and LDP benefits for the same commodity. These programs are authorized through the 2025 crop year.

CRS In Focus IF12195, *Farm Bill Primer: Support for Cotton*, by Stephanie Rosch

The United States is the world's third-largest cotton producer and the leading cotton exporter, accounting for nearly one-third of global trade in raw cotton. Between 2000 and 2020, U.S. cotton production decreased by more than 15%, and U.S. textile mill usage decreased by more than 80%. Title I of the 2018 farm bill reauthorized commodity support for domestic producers of cotton, including support that had been previously eliminated in the Agricultural Act of 2014 (2014 farm bill; P.L. 113-79). Titles I and XII of the 2018 farm bill reauthorized support for domestic users of cotton for various periods. Certain programs are authorized through the 2025 crop year. In addition, the Secretary of Agriculture has taken measures, outside of the farm bill programs, to support cotton producers.

CRS In Focus IF12202, *Farm Bill Primer: Support for the Dairy Industry*, by Christine Whitt

The 2018 farm bill provides support to the dairy industry through a variety of programs. The Dairy Margin Coverage (DMC), enacted in the 2018 farm bill, is the primary program that provides income support to milk producers. The DMC allows milk producers to buy a guaranteed margin—calculated as the all milk price minus feed costs—for their milk production. Each year, participating dairy producers choose a margin coverage level and the share of their milk production history to cover. They receive DMC payments for months in which the margin is triggered based on USDA's calculation of the milk-feed margin. This program is authorized through December 31, 2025.

CRS In Focus IF12201, *Farm Bill Primer: Federal Crop Insurance Program*, by Stephanie Rosch

The federal crop insurance program (FCIP) helps make insurance coverage available to farmers from private sector insurers to help mitigate potential financial consequences of adverse growing and market conditions. USDA regulates the policies offered and subsidizes the premiums that farmers pay in order to encourage farmer participation in the program. Premium subsidies covered about 60% of the total premium on average for all policies sold in 2024. Since its inception in 1938, the FCIP has grown from an ancillary program with low participation to a central pillar of federal farm support, with more than 543 million acres and $192 billion in crop and livestock value insured in 2024. The FCIP is permanently authorized, but Congress has modified it in various ways in periodic farm bills.

CRS In Focus IF12101, *Farm Bill Primer: Disaster Assistance*, by Christine Whitt

A number of federal programs help agricultural producers recover from the effects of natural disasters, including federal crop insurance, the Noninsured Crop Disaster Assistance Program, livestock and fruit tree disaster programs, and emergency disaster loans. All programs are permanently authorized, and most receive "such sums as necessary" through mandatory spending authority. As such, these programs did not require reauthorization in the 2018 farm bill.

Conservation

CRS In Focus IF12024, *Farm Bill Primer: Conservation Title*, by Megan Stubbs

The conservation title of a farm bill generally contains a number of reauthorizations, amendments, and new programs that encourage farmers and ranchers to implement resource-conserving practices on private land. Starting in 1985, farm bills have addressed a broader range of topics as "conservation." Conservation programs administered by USDA can be grouped into the following categories based on similarities: working land programs, land retirement programs, easement programs, partnership programs, conservation compliance, and other overarching provisions.

Energy

CRS In Focus IF10639, *Farm Bill Primer: Energy Title*, by Kelsi Bracmort

The 2018 farm bill contains 12 titles that address agricultural and food programs and Title IX, the energy title. The 2018 farm bill was the fourth farm bill to contain an energy title. The energy title is primarily focused on support for renewable energy—particularly agriculture-related energy, energy efficiency, and bioproducts (e.g., cleaning supplies). This In Focus summarizes the 2018 farm bill energy title, including mandatory versus discretionary funding amounts, as a basis for informing discussions on a next farm bill while identifying issues that Congress could consider as part of that process.

Forestry

CRS In Focus IF12054, *Farm Bill Primer: Forestry Title*, by Anne A. Riddle

Forest management generally, as well as forest research and forestry assistance, is often considered by the agriculture committees in Congress. Although most forestry programs are permanently authorized, forestry is often addressed in the periodic farm bills to reauthorize many agriculture programs. The 2018 farm bill included a separate forestry title, and this In Focus summarizes some of the forestry provisions addressed in the 2018 farm bill and related issues that Congress may debate as it considers a next farm bill.

Horticulture, Specialty Crops, and Organic Farming

CRS In Focus IF12017, *Farm Bill Primer: Horticulture Title and Related Provisions*, by Renée Johnson

The 2018 farm bill reauthorized and expanded funding for many of the existing USDA programs supporting fruits, vegetables, and other specialty crops while providing support for many locally sourced products (not limited to crops) and hemp cultivation. Support for these sectors is not limited to the horticulture title; it is also contained within other farm bill titles, covering a range of programs administered by USDA. This In Focus provides an overview of selected 2018 farm bill provisions and issues for a next farm bill related to specialty crops, organically produced and locally sourced products, and hemp.

CRS In Focus IF12278, *Farm Bill Primer: Hemp Industry Support and Regulation*, by Renée Johnson

The 2018 farm bill legalized hemp by removing *hemp* from the definition of marijuana in the Controlled Substances Act. It also directed USDA to create a framework to regulate hemp cultivation under federal law and facilitate commercial cultivation, processing, marketing, and sale of hemp and hemp-derived products. Other 2018 farm bill provisions made hemp producers eligible for federal crop insurance and agricultural research programs. A number of hemp stakeholders are advocating for additional changes via a next farm bill, such as relaxing some USDA regulatory requirements and reducing the Drug Enforcement Administration's role in regulating hemp.

New, Beginning, Underserved, and Veteran Farmers and Ranchers

CRS In Focus IF12096, *Farm Bill Primer: Beginning and Underserved Producers*, by Jim Monke

Beginning farmers and ranchers—generally defined as having operated a farm or ranch for no more than 10 years—comprise a significant part of the U.S. agricultural sector. They contribute to rural and non-rural economies and are considered to be critical given ongoing concerns about the aging U.S. farm population, the "disappearing middle" (i.e., mid-sized farms both in terms of farm numbers and value of sales), and general trends toward increasing consolidation and fewer, larger farms. The 2018 farm bill reauthorized and expanded programs administered by USDA that support new farmers and ranchers. These programs targeted new farmers within specific farm demographic groups based on age, race, and gender, as well as socially disadvantaged (underserved) farmers and farmers who are military veterans.

CRS In Focus IF12160, *Farm Bill Primer: Support for Tribal Food and Agriculture*, by Jim Monke

In 2017, Native agricultural producers accounted for 2% of all U.S. producers. The 2018 farm bill (P.L. 115-334) expanded federal farm program support for Native agricultural producers and tribal communities. Congress further enhanced community and economic development for tribes in the Indian Community Economic Enhancement Act of 2020 (P.L. 116-261) and provided additional support for historically underserved agricultural producers, including Native producers, in the American Rescue Plan Act of 2021 (P.L. 117-2).

Nutrition Assistance

CRS In Focus IF12255, *Farm Bill Primer: SNAP and Nutrition Title Programs*, by Randy Alison Aussenberg and Kara Clifford Billings

The nutrition title of a farm bill typically reauthorizes a number of nutrition or domestic food assistance programs, including the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program). These programs were reauthorized by the 2018 farm bill and extended by P.L. 118-22. They are authorized through September 30, 2025. In a subsequent farm bill's nutrition title, policymakers might revisit 2018 debates and decisions and consider new challenges and questions, including temporary changes made during the COVID-19 pandemic.

Research, Extension, and Related Matters

CRS In Focus IF12023, *Farm Bill Primer: Agricultural Research and Extension*, by Eleni G. Bickell

The research title addresses research, extension, and education at land-grant universities and other nonfederal institutions, as well as departmental policies, programs, and research within USDA. Most of the research title programs require annual discretionary appropriations; a few programs receive mandatory spending. This In Focus provides background information and discusses selected 2018 farm bill provisions and issues for a next farm bill related to agricultural research, extension, and education, including funding.

CRS In Focus IF12275, *Farm Bill Primer: USDA Support for Aquaculture Operations*, by Eleni G. Bickell

Aquaculture facilities that grow aquatic animal and plant species in controlled or selected environments are generally eligible for the same support from USDA that is available to all U.S. farmers, ranchers, and producers. The 2018 farm bill reauthorized and expanded provisions specifically related to USDA's aquaculture research and assistance programs. Aquaculture producers are also eligible for other USDA competitive grants available to all U.S. agricultural producers. Aquaculture stakeholders have identified a number of policy recommendations in support of the industry, some of which Congress could address in a next farm bill.

Rural Development

CRS In Focus IF12038, *Farm Bill Primer: Rural Development Title*, by Lisa S. Benson

Omnibus farm bills are the major modern legislative vehicle for addressing many rural development issues. Since 1973, omnibus farm bills have included a rural development title, which has included USDA Rural Development programs focused on rural utility systems (i.e., water, waste disposal, electricity, and broadband), rural business, and rural housing. The USDA Rural Business-Cooperative Service, USDA Rural Utilities Service, and USDA Rural Housing Service administer these programs. Most USDA Rural Development programs rely on discretionary funding, which Congress authorizes in farm bills and funds through the annual appropriations process.

CRS In Focus IF12041, *Farm Bill Primer: Rural Broadband Provisions*, by Lisa S. Benson

Congress has included provisions addressing rural broadband (i.e., high-speed internet access) in the rural development title of omnibus farm bills since 2002. The 2018 farm bill amended and reauthorized many of the rural broadband programs administered by USDA. This In Focus provides background information on USDA rural broadband programs and an overview of selected rural broadband provisions in the 2018 farm bill and identifies some issues that Congress could consider as it debates a next farm bill.

Trade and Export Promotion

CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*, by Benjamin Tsui

Agricultural exports are significant to farmers and the U.S. economy. With the productivity of U.S. agriculture growing faster than domestic demand, farmers and agriculturally oriented firms rely on export markets to sustain prices and revenue. The trade title of the 2018 farm bill (P.L. 115-334) authorizes programs to expand foreign markets for U.S. farmers and food manufacturers through export market development programs and export credit guarantee programs. These programs are authorized through FY2025.

Author Information

Jim Monke, Coordinator
Specialist in Agricultural Policy

Megan Stubbs, Coordinator
Specialist in Agricultural Conservation and Natural Resources Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Congressional Research Service
Informing the legislative debate since 1914

Retaliatory Tariffs on U.S. Agriculture and USDA's Responses: Frequently Asked Questions

May 27, 2025

Congressional Research Service
https://crsreports.congress.gov
R48548

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

Retaliatory Tariffs on U.S. Agriculture and USDA's Responses: Frequently Asked Questions

SUMMARY

R48548

May 27, 2025

Benjamin Tsui
Analyst in Agricultural Policy

Stephanie Rosch
Analyst in Agricultural Policy

In 2025, the Trump Administration imposed several rounds of tariffs against trading partners under the under the International Emergency Economic Powers Act (IEEPA) and Section 232 of the Trade Expansion Act of 1962, commonly referred as "Section 232." The first IEEPA tariffs targeting Canada, the People's Republic of China, and Mexico were in response to what President Trump identified as the "failures" of the three countries to address issues such as drug and human trafficking and transnational crime. Subsequently, under IEEPA, the Trump Administration imposed a 10% tariff on most trading partners, imposed additional tariffs on China, and proposed country-specific "reciprocal tariffs" addressing bilateral trade deficits. The Trump Administration also expanded steel and aluminum tariffs and imposed new tariffs on automobile and automobile parts under Section 232.

In response to these U.S. tariffs, some countries have imposed or announced potential retaliatory tariffs on U.S. goods, including U.S. agricultural products. In March 2025, Canada imposed retaliatory tariffs that included U.S. agricultural goods. In March 2025, China imposed retaliatory tariffs that included U.S. agricultural goods and, in April 2025, further increased tariffs on all U.S. goods. In May 2025, China temporarily decreased its retaliatory tariffs on U.S. goods following an agreement with the United States. In April 2025, the European Union released a list of U.S. products targeted for retaliatory tariffs effective June 2025.

During the first Trump Administration, beginning in 2018, certain trading partners imposed retaliatory tariffs on U.S. agricultural products in response to tariffs imposed by the United States. In response to the retaliatory tariffs, the U.S. Department of Agriculture (USDA) used administrative authorities to provide approximately $25.7 billion in direct income support payments to farmers, for purchases for agricultural commodities, and in additional support for trade promotion activities.

This report discusses frequently asked questions about retaliatory tariffs on U.S. agriculture and USDA's response to the retaliatory tariffs since 2018. It addresses the agricultural context of recent tariff actions by the United States and subsequent retaliatory tariffs by trading partners, what retaliatory tariffs were imposed on U.S. agriculture in 2018 and 2019 and their effects on trade flows for select agricultural commodities, rationales why foreign trading partners target U.S. agricultural products for retaliation, and the agricultural provisions of the U.S.-China Phase One Agreement. The report also discusses the 2018 and 2019 USDA responses to retaliatory tariffs and the views of these responses.

Contents

Introduction 1
Background 1
What Are Tariffs? 1
What Agricultural Products Does the United States Export and Import? 2
Why Would Trading Partners Target U.S. Agricultural Products with Retaliatory Tariffs? 4
2025 Trade Actions 5
What U.S. Trade Actions Precipitated Retaliatory Tariffs in 2025? 5
International Emergency Economic Powers Act (IEEPA) Tariffs 5
Section 232 Steel, Aluminum, and Automotive Tariffs 8
What Retaliatory Tariffs Have Been Imposed on U.S. Agriculture in 2025? 9
Canada's Retaliatory Tariffs 9
Mexico's Retaliatory Tariffs 9
China's Retaliatory Tariffs 10
European Union Retaliatory Tariffs 11
2018 Through 2023 Trade Actions 12
What Retaliatory Tariffs Were Imposed on U.S. Agriculture in 2018 and 2019? 12
Were U.S. Agricultural Exports Affected by Retaliatory Tariffs? 14
Soybeans 14
Corn 15
Tree Nuts 16
Pork 17
Were U.S. Farm Sector Sales Affected by Retaliatory Tariffs? 18
What Were the Economic Losses to the U.S. Agricultural Sector from Retaliatory Tariffs in 2018 and 2019? 19
What Were the U.S.-China Phase One Agreement Provisions for Agriculture? 22
USDA's Response to Retaliatory Tariffs 23
How Did USDA Respond to Retaliatory Tariffs in 2018 and 2019? 23
How Were Market Facilitation Program Funds Distributed? 24
How Were Food Purchase and Distribution Program Funds Distributed? 26
How Were Agricultural Trade Promotion Program Funds Distributed? 29
How Have Agricultural Stakeholders and Oversight Agencies Assessed USDA's Response to Retaliatory Tariffs Imposed in 2018 and 2019? 29
For More Information 31

Figures

Figure 1. Value of U.S. Agricultural Exports and Imports, 2015-2024 3

Tables

Table 1. U.S. Agricultural Exports to Top Five Markets, 2015 to 2024 3
Table 2. U.S. Agricultural Imports from Top Five Suppliers, 2015 to 2024 4

Table 3. U.S. Agricultural Exports to Retaliating and Non-Retaliating Trading Partners, 2017 to 2020 14
Table 4. U.S. Soybean Exports, 2017 to 2020 15
Table 5. U.S. Corn Exports, 2017 to 2020 16
Table 6. U.S. Tree Nut Exports, 2017 to 2020 17
Table 7. U.S. Pork and Pork Product Exports, 2017 to 2020 18
Table 8. Value of Crops, Livestock, and Animal Products Sold, 2017 to 2020 18
Table 9. Marketing Year Average Prices for Selected Agricultural Commodities, 2017 to 2020 19
Table 10. Funds Available and Program Outlays for USDA Programs Responding to Retaliatory Tariffs 24
Table 11. Distribution of Market Facilitation Program Payments, by Commodity Type 25
Table 12. Distribution of 2018 Market Facilitation Program Payments 25
Table 13. Food Purchase and Distribution Program Targeted Commodities, 2018 and 2019 27

Contacts

Author Information 31

Introduction

In March 2025, Canada and the People's Republic of China (hereinafter China) imposed retaliatory tariffs on a range of U.S. exports, including agricultural products, in response to U.S. tariffs imposed in February and March 2025 under the International Emergency Economic Powers Act (IEEPA; 50 U.S.C. §§1701 et seq.).[1] The U.S. tariffs were a response to what President Trump identified as "failures" on the part of Canada, China, and Mexico to address issues such as drug and human trafficking and transnational crimes.[2] Many Members of Congress have an interest in the impact that foreign retaliatory tariffs have on the U.S. agricultural and food sectors, which rely on export markets for additional revenue and economic activity. In addition to the February and March 2025 IEEPA tariffs, the United States has taken other tariff actions that faced retaliatory or threats of retaliatory tariffs on U.S. agricultural exports.

In 2018 and 2019, during the first Trump Administration, China, the European Union (EU), Canada, Mexico, Turkey, and India responded to U.S. tariff actions with retaliatory tariffs on U.S. imports that included agricultural products. In response, the U.S. Department of Agriculture (USDA) used administrative authorities to distribute about $25.7 billion through three programs that, respectively, provided direct income support payments to farmers, purchased agricultural commodities, and supported trade promotion activities. In April 2025, Secretary of Agriculture Brooke Rollins indicated that it would take months to determine whether payments for producers are needed in response to retaliatory tariffs but that USDA is "setting up the infrastructure" to address trade damages.[3]

This report addresses some frequently asked questions (FAQs) grouped into four categories: background, trade actions in 2025, trade actions in 2018-2023, and USDA's response to retaliatory tariffs.

Background

What Are Tariffs?

Tariffs are taxes or duties levied on imported goods. Foreign retaliatory tariffs on U.S. exports make U.S. goods less competitive in foreign markets compared to goods not subject to tariffs, such as substitutable goods produced in the foreign country and goods from other suppliers. Tariffs on agricultural products are commonly applied either at an ad valorem basis (i.e., a

[1] For purposes of this report, *agricultural product* refers to the U.S. Department of Agriculture's (USDA's) definition, which follows the World Trade Organization's (WTO's) definition. The WTO's definition includes most food products but excludes those such as seafood and forestry products. For more information about U.S. tariff authorities and policies in general and the International Emergency Economic Powers Act (IEEPA), see CRS Report R48435, *Congressional and Presidential Authority to Impose Import Tariffs*; CRS In Focus IF11030, *U.S. Tariff Policy: Overview*; CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*; and CRS Insight IN11129, *The International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and Tariffs: Historical Background and Key Issues*.

[2] Executive Order 14193 of February 1, 2025, "Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border," 90 *Federal Register* 9113, February 7, 2025; Executive Order 14194 of February 1, 2025, "Imposing Duties to Address the Situation at Our Southern Border," 90 *Federal Register* 9117, February 7, 2025; and Executive Order 14195 of February 1, 2025, "Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China," 90 *Federal Register* 9121, February 7, 2025.

[3] Secretary Rollins is quoted in Marcia Brown, "'We Just Haven't Seen Anything Like This': Farmers Brace for Trump's Trade War," *Politico*, April 4, 2025; see also Andy Castillo, "USDA Says Farm Impact of New Tariffs Unknown Until Fall," *Farm Progress*, April 4, 2025.

percentage of the value of the imported goods) or at a specific basis (i.e., assessed at a fixed amount of money per unit of an imported good).

What Agricultural Products Does the United States Export and Import?

The United States is one of the top exporters of agricultural products in the world, with exports totaling $176.0 billion in 2024. Exports account for about 20% of total U.S. agricultural and food production by value.[4] The USDA Foreign Agricultural Service groups agricultural products into three broad categories:

- Bulk: raw and unprocessed commodities sold in large quantities that are mostly used as inputs (e.g., corn, wheat, cotton, soybeans)
- Intermediate: processed commodities used as inputs in the manufacturing of other products (e.g., soybean meal, ethanol, vegetable oils, essential oils, hides and skins)
- Consumer oriented: a larger collection of agricultural and food products for consumers and retailers (e.g., fruits, vegetables, meat, poultry, dairy, alcoholic beverages)

Bulk commodities are the leading U.S. farm exports. In 2024, over 60% of U.S. agricultural exports by value were to Mexico, Canada, China, the EU, and Japan.

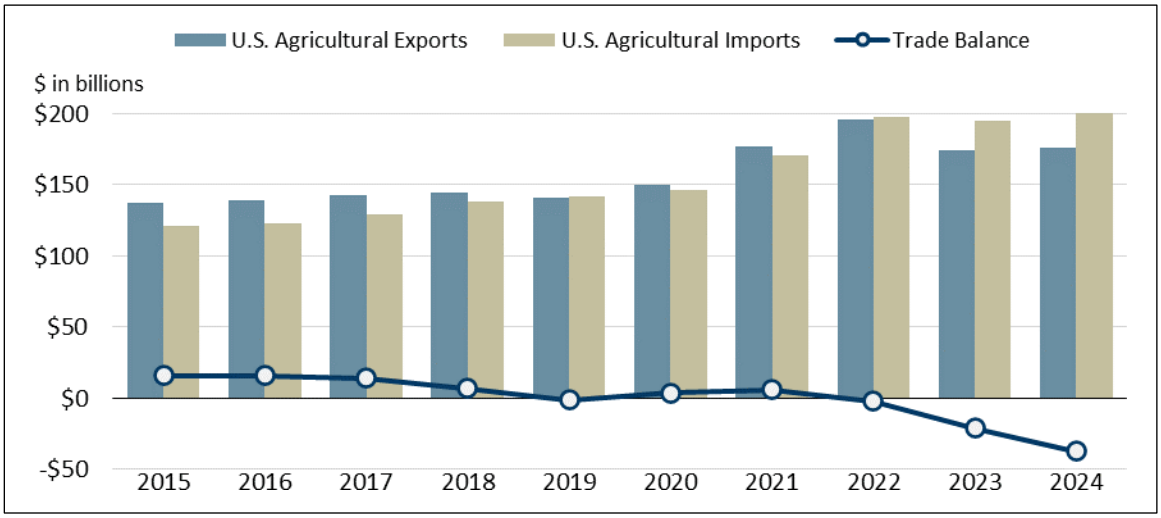
The share of U.S. production that is exported varies by year and type of agricultural product. On average, for the past decade on a quantity basis, for bulk commodities, the United States exported 15% of corn, 46% of rice, 47% of soybeans and wheat, 55% of sorghum, and 84% of cotton produced. For meat products, about 11% of beef and veal, 16% of chicken meat, and 23% of swine meat produced were exported.[5] For tree nuts, the United States exported on average nearly 70% of almonds and walnuts and 64% of pistachios produced. For fresh fruits, the United States exported on average 5% of tangerines/mandarins, 17% of apples, 19% of cherries, and 33% of table grapes produced.

In 2024, the United States imported $213.0 billion in agricultural products, which provided U.S. consumers more choice, variety, and product availability year-round as well as increased competition for certain U.S. producers. Leading imports included fruits, vegetables, vegetable oils, alcoholic beverages (e.g., distilled spirits, wine, beer), beef, and coffee. The top sources of U.S. agricultural imports were Mexico, Canada, and the EU, which accounted for 60% of total agricultural imports. Comparing the value of U.S. agricultural trade exports with imports reveals that the U.S. agricultural trade surplus peaked at $40.1 billion in 2011 and has since fallen, becoming trade deficits in 2019, 2022, 2023, and 2024. In 2024, the agricultural trade deficit was $37.0 billion. See **Figure 1** for U.S. agricultural trade trends in the past decade. See **Table 1** and **Table 2** for trade statistics for the top five U.S. agricultural export markets and top five U.S. agricultural import suppliers for the past decade.

[4] USDA, Economic Research Service (ERS), "U.S. Agricultural Trade – U.S. Agricultural Trade at a Glance," January 7, 2025, https://www.ers.usda.gov/topics/international-markets-us-trade/us-agricultural-trade/us-agricultural-trade-at-a-glance.

[5] Calculated by CRS from USDA production, supply, and distribution quantity data at USDA, Foreign Agricultural Service (FAS), "PSD Online," https://apps.fas.usda.gov/psdonline/app/index.html#/app/home.

Figure 1. Value of U.S. Agricultural Exports and Imports, 2015-2024



Source: Figure created by CRS using U.S. Census Bureau international trade data via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), "Global Agricultural Trade System Online: GATS Home," https://apps.fas.usda.gov/gats/default.aspx. See Bulk, Intermediate, and Consumer-Oriented Harmonized System-10 (BICO-10) groupings.

Notes: Data are not adjusted for inflation. Trade balance is calculated as imports subtracted from exports.

Table 1. U.S. Agricultural Exports to Top Five Markets, 2015 to 2024

In Billions of Dollars (nominal)

Trading Partner	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Mexico	17.9	18.0	18.8	19.3	19.4	18.3	25.5	28.5	28.4	30.3
Canada	22.2	21.4	21.7	22.0	21.9	22.3	25.3	28.7	28.4	28.4
China	20.4	21.7	19.6	9.2	13.9	26.4	32.8	38.1	28.8	24.7
EU-27	11.0	10.2	10.5	12.5	10.8	10.4	11.0	12.3	12.6	12.8
Japan	11.6	11.4	12.1	13.1	12.0	11.7	14.2	14.7	11.9	12.0
Rest of world	54.2	56.2	60.1	68.5	63.1	60.5	67.9	73.4	64.1	67.8
World total	**137.2**	**138.9**	**142.9**	**144.7**	**141.1**	**149.7**	**176.6**	**195.7**	**174.2**	**176.0**

Source: CRS from USDA, Global Agricultural Trade System (GATS) data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-27 = the European Union customs union and its 27 member countries.

Table 2. U.S. Agricultural Imports from Top Five Suppliers, 2015 to 2024

In Billions of Dollars (nominal)

Trading Partner	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Mexico	22.2	24.1	25.9	27.5	30.2	32.9	38.0	43.3	45.4	48.6
Canada	22.4	22.2	22.9	23.7	24.4	25.3	31.2	37.5	40.1	41.0
EU-27	22.8	23.6	25.1	27.1	28.4	27.4	32.0	35.8	32.9	36.4
Brazil	4.0	3.8	3.9	3.9	4.1	4.0	4.7	6.2	6.2	7.9
China	4.3	4.3	4.5	4.9	3.7	3.8	4.1	4.7	4.7	5.8
Rest of world	45.4	44.6	46.9	50.8	50.8	52.7	60.6	70.6	65.6	73.2
World total	**121.1**	**122.6**	**129.2**	**138.0**	**141.6**	**146.3**	**170.6**	**198.2**	**194.8**	**213.0**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-27 = the European Union customs union and its 27 member countries.

All states export agricultural products, but a fraction of states account for the majority of farm export sales. For calendar year 2023, USDA estimated that over half of total U.S. agricultural exports based on value came from the eight leading agricultural exporting states, which were California, Iowa, Illinois, Minnesota, Nebraska, Texas, Indiana, and Missouri.[6]

Why Would Trading Partners Target U.S. Agricultural Products with Retaliatory Tariffs?

Foreign governments may target U.S. agricultural products for any of several reasons. The United States is one of the largest exporters of agricultural products, and these products represent a large target for retaliation for many trading partners. The value of agricultural products exported to U.S. trading partners that imposed retaliatory tariffs on U.S. agricultural products during the first Trump Administration was more than $76 billion in 2017.

Another reason U.S. trading partners may target U.S. agriculture is because agricultural commodities may be sourced globally from multiple suppliers. Trading partners could source agricultural imports from suppliers other than the United States. Australia, Brazil, Canada, and the EU are examples of major agricultural exporters that compete with the United States for foreign markets.

Retaliating trade partners may consider U.S. domestic politics when determining tariff targets, choosing products from specific regions or states to maximize political pressure. For example, some observers assert that bourbon whiskey was targeted in the 2018 retaliatory tariffs because it was produced in the then-Senate Majority Leader's home state of Kentucky.[7]

[6] USDA, ERS, "State Agricultural Trade Data," January 9, 2025, https://www.ers.usda.gov/data-products/state-agricultural-trade-data.

[7] Thiemo Fetzer and Carlo Schwarz, "Tariffs and Politics: Evidence from Trump's Trade Wars," *The Economic Journal*, vol. 131, no. 636 (May 2021), pp. 1717-1741; and Rob Gillie, "Canada Announces Billions in Retaliatory Tariffs Against US," Associated Press, June 30, 2018.

2025 Trade Actions

What U.S. Trade Actions Precipitated Retaliatory Tariffs in 2025?

Beginning in 2025, the United States has imposed tariffs under IEEPA and Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862), commonly referred as "Section 232."[8] These trade actions provoked foreign retaliatory tariffs that targeted U.S. agriculture as well as other sectors of the U.S. economy. The United States has also proposed additional trade actions under these and other statutory authorities that, if implemented, may lead to further retaliatory actions from U.S. trading partners.

International Emergency Economic Powers Act (IEEPA) Tariffs

Addressing Drug Trafficking and Illegal Immigration

On February 1, 2025, President Trump signed three executive orders imposing tariffs of 25% on imports from Canada (with a lower 10% tariff on energy resources) and Mexico, and a 10% tariff on imports from China, all beginning February 4, 2025.[9] These executive orders cited IEEPA as the underlying authority to impose tariffs. The executive orders cited the "failure" of the three governments in addressing issues such as drug trafficking and other criminal activities. On February 3, President Trump issued executive orders delaying the duties until March 4, citing steps taken by Canada and Mexico to address U.S. concerns on illegal migration and illicit drugs.[10] On March 3, President Trump increased the tariff on imports from China from 10% to 20% effective March 4, stating that China had not adequately addressed the illicit drug crisis.[11]

On March 6, President Trump issued executive orders further amending the original February 1 executive orders for Canada and Mexico by not imposing the additional 25% duties on goods that claim and qualify for preferential treatment under the U.S.-Mexico-Canada Agreement (USMCA) and lowering tariffs for potash imports to 10%.[12] Potash, the main source of potassium in

[8] For more background, see CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*; CRS Report R48549, *Presidential 2025 Tariff Actions: Timeline and Status*; CRS Insight IN11129, *The International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and Tariffs: Historical Background and Key Issues*; CRS Infographic IG10012, *The International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act: Key Facts*; and CRS Insight IN12519, *Expanded Section 232 Tariffs on Steel and Aluminum*. For more information about U.S.-China tariff actions, see CRS In Focus IF12990, *U.S.-China Tariff Actions Since 2018: An Overview*.

[9] Executive Order 14193 of February 1, 2025, "Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border," 90 *Federal Register* 9113, February 7, 2025; Executive Order 14194 of February 1, 2025, "Imposing Duties to Address the Situation at Our Southern Border," 90 *Federal Register* 9117, February 7, 2025; and Executive Order 14195 of February 1, 2025, "Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China," 90 *Federal Register* 9121, February 7, 2025. For more information about U.S.-Canada relations and the IEEPA tariffs, see CRS Insight IN12533, *U.S.-Canada Relations amid Tariffs Under the International Emergency Economic Powers Act*.

[10] Executive Order 14197 of February 3, 2025, "Progress on the Situation at Our Northern Border," 90 *Federal Register* 9183, February 10, 2025; and Executive Order 14198 of February 3, 2025, "Progress on the Situation at Our Southern Border," 90 *Federal Register* 9185, February 10, 2025.

[11] Executive Order 14228 of March 3, 2025, "Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China," 90 *Federal Register* 11463, March 7, 2025.

[12] Executive Order 14231 of March 6, 2025, "Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border," 90 *Federal Register* 11785, March 11, 2025; and Executive Order 14232 of March 6, 2025, "Amendment to Duties to Address the Flow of Illicit Drugs Across Our Southern Border," 90 *Federal Register* 11787, March 11, 2025.

fertilizer, is a key input for U.S. farmers. The United States imports about 97% of its potash fertilizer used each year, with Canada accounting for about 85% of imports by quantity.[13] U.S. tariff rates on fertilizer are generally duty-free, including under the United States' USMCA tariff schedule.[14]

China (in February) and Canada (in March) initiated World Trade Organization (WTO) dispute consultations with the United States in response to the IEEPA tariff actions.[15] In the March 24-25, 2025, WTO Committee on Agriculture meeting, Canada questioned whether the United States had considered the negative effects of the tariffs on factors such as food security, economic growth, agricultural sector supply chains, and inflation for food prices.[16] For more information about the WTO and the Agreement on Agriculture, see the text box below.

What Is the World Trade Organization and Agreement on Agriculture?

The World Trade Organization (WTO) is an international organization that administers the rules and agreements negotiated among its members to eliminate trade barriers and govern trade. The WTO provides for a "common institutional framework" to address multilateral trade relations among WTO members and to facilitate trade agreement negotiations, resolve trade disputes, administer trade rules, monitor trade policies, and provide technical assistance. The United States was a leading force behind the WTO's establishment in 1995.

As part of the results of the multilateral negotiations that established the WTO, several agreements covering trade in goods were agreed to among negotiating members. The WTO Agreement on Agriculture's main objective is to "reform agricultural trade so that it is closer to competitive market conditions." Under the Agreement on Agriculture, national agricultural policies—including domestic farm support, agricultural export subsidies, and restrictive import controls—were placed under a multilaterally agreed-upon set of disciplines. WTO members agreed to reform their domestic agricultural support policies, increase access to imports, and reduce export subsidies. The agreement also established a Committee on Agriculture. The Committee on Agriculture oversees and monitors the implementation of the agreement and provides a forum for members to consult with each other on agricultural trade issues as well as raise and address questions related to the agreement.

Source: WTO, *The WTO Agreements Series: Agriculture*, 3rd ed. (WTO, 2016).

Note: For more background on the WTO, see CRS In Focus IF10002, *World Trade Organization*.

"Reciprocal Tariffs" Addressing Trade Deficits

On April 2, 2025, President Trump signed an executive order imposing additional tariffs of 10% on most imports from most U.S. trading partners effective April 5, 2025, and additional country-specific tariffs on 57 trading partners effective April 9, 2025.[17] The April 2 executive order also

[13] Potassium fertilizer usage data from USDA, FAS, "Global Fertilizer Dashboard," September 10, 2024, https://www.fas.usda.gov/data/visualization-global-fertilizer-trade-dashboard. Potassium fertilizer import data from USDA, FAS, Global Agricultural Trade System Online, "Foreign Agricultural Trade of the United States" product grouping.

[14] United States International Trade Commission, "Chapter 31: Fertilizers," in *Harmonized Tariff Schedule (2025)*, March 14, 2025, https://hts.usitc.gov/; and Office of the U.S. Trade Representative (USTR), "Tariff Schedule of the United States," agreement between the United States of America, the United Mexican States, and Canada, July 1, 2020.

[15] WTO, "DS633: United States—Additional Tariff Measures on Goods from China," https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds633_e.htm; and WTO, "DS634:United States—Additional Import Duties on Goods from Canada," https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds634_e.htm.

[16] WTO, "View Question & Answer," in *Agriculture Information Management System*, accessed March 17, 2025, https://agims-qna.wto.org/public/Pages/en/ViewQnA_Validated.aspx?officialID=111129&caller=https://agims-qna.wto.org/public/Pages/en/SearchResult.aspx.

[17] Executive Order 14257 of April 2, 2025, "Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits," 90 *Federal Register* 15041, April 7, 2025. A list of the country-specific tariffs (inclusive of the 10% imposed on most other trading partners) can be found at https://www.whitehouse.gov/wp-content/uploads/2025/04/Annex-I.pdf.

cited IEEPA as the underlying authority to impose tariffs. The executive order declared a national emergency due to

> underlying conditions, including a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and [nontariff] barriers, and U.S. trading partners' economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits.[18]

The April 2 executive order's additional tariffs do not apply to Canada or Mexico. If the February 1 executive orders that imposed the drug-trafficking and illegal-immigration-related IEEPA tariffs on both countries are terminated, then both countries' imports would face a 12% tariff as a result of the April 2 executive order. The April 2 executive order excludes some key agricultural inputs such as potash, peat, veterinary vaccines, and certain pesticides.[19] Tariffs on China are cumulative to previous tariffs imposed. On April 8, 2025, President Trump signed an executive order increasing the "reciprocal tariff" on China from the original 34% to 84% effective April 10 in response to China's April 4 announcement of 34% retaliatory tariffs that went into effect April 10.[20] On April 9, President Trump signed another executive order raising the "reciprocal tariffs" on China to 125% effective April 10 in response to the April 9 announcement by China that it was increasing its retaliatory tariffs from 34% to 84% effective April 10.[21] See "China's Retaliatory Tariffs" for further background.

The April 9 executive order also suspended the country-specific tariffs effective April 10 until July 9, 2025, a total of 90 days. The additional 10% tariff for most trading partners is still in effect.

The Trump Administration applied a novel methodology to calculate the tariffs imposed in accordance with the April 2 executive order. Although the April 2 executive order cites nontariff barriers, including technical barriers to trade (TBT) and "sanitary and phytosanitary [SPS] measures that unnecessarily restrict trade without furthering safety objectives," as factors contributing to the persistent U.S. trade deficit, the methodology of calculating the country-specific "reciprocal tariffs" is not based on estimates of tariff and nontariff barriers implemented by countries on U.S.-specific or broader categories of products.[22] Instead, the "reciprocal tariff" calculations are based on the 2024 bilateral trade deficit with a country divided by the 2024 value of that country's imports into the United States, divided by two, making the assumption that the resulting tariff rate would "offset" any tariff and nontariff policies applied by the foreign country.[23] Many economists have questioned both the use of this methodology to calculate

[18] Executive Order 14257 of April 2, 2025, "Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits."

[19] Oliver Ward, "Some Key Ag Inputs Exempt from Sweeping New Duties," April 4, 2025; and Ryan Hanrahan, "Key Ag Inputs Exempt from New Reciprocal Tariffs," *Farm Policy News*, April 7, 2025. A full list of products exempt from the April 2 tariffs can be found at https://www.whitehouse.gov/wp-content/uploads/2025/04/Annex-II.pdf.

[20] Executive Order 14259 of April 8, 2025, "Amendment to Reciprocal Tariffs and Updated Duties as Applied to Low-Value Imports from the People's Republic of China," 90 *Federal Register* 15509, April 14, 2025.

[21] Executive Order 14266 of April 9, 2025, "Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment," 90 *Federal Register* 15625, April 15, 2025.

[22] USTR, "Reciprocal Tariff Calculations," accessed May 27, 2025, https://ustr.gov/sites/default/files/files/Issue_Areas/Presidential%20Tariff%20Action/Reciprocal%20Tariff%20Calculations.pdf. *Technical barriers to trade (TBT) measures* are related to mandatory compliance with regulatory requirements, voluntary standards, and conformity assessment procedures required by regulations or standards. *Sanitary and phytosanitary (SPS) measures* are laws, regulations, standards, and procedures that governments enforce to protect human, animal, or plant life or health.

[23] USTR, "Reciprocal Tariff Calculations," accessed April 4, 2025, https://ustr.gov/issue-areas/reciprocal-tariff-calculations.

country-specific tariffs and the Administration's claim that the tariff rates capture barriers to U.S. exports.[24] In the past, USDA's Economic Research Service (ERS) and other researchers have estimated the tariff equivalent of TBT and SPS measures for specific agricultural products or product groups, such as in a 2015 study on nontariff measures between the United States and EU.[25]

On May 12, 2025, the United States and China issued a joint statement that reduced U.S. "reciprocal tariffs" to 10% and China's retaliatory tariffs to the "reciprocal tariffs" to 10% effective May 14 for 90 days.[26]

Section 232 Steel, Aluminum, and Automotive Tariffs

On February 10, 2025, President Trump issued proclamations effective March 12, 2025, that modified tariffs on steel and aluminum, authorized under Section 232 of the Trade Expansion Act of 1962.[27] These tariffs were originally imposed during the first Trump Administration. The changes included eliminating country exemptions from tariffs negotiated during the Biden and first Trump Administrations. Effective April 4, 2025, certain beer products as aluminum derivative products were added to the list of imports subject to a Section 232 tariff of 25%.[28]

[24] Glenn Kessler, "Trump White House Cited Economists for Its Tariff Formula. They Pan It," *Washington Post*, April 4, 2025; Robert Farley and D'Angelo Gore, "Fact Check: Trump's Misleading Tariff Chart," *Roll Call*, April 4, 2025; Peter Foster and Sam Fleming, "Donald Trump Baffles Economists with Tariff Formula," *Financial Times*, April 3, 2025; Kevin Corinth and Stan Veuger, "President Trump's Tariff Formula Makes No Economic Sense. It's Also Based on an Error," American Enterprise Institute, April 4, 2025; Brent Neiman, "The Trump White House Cited My Research to Justify Tariffs. It Got It All Wrong," *New York Times*, April 7, 2025; Anjali V. Bhatt, "PIIE Experts React to Trump's Tariffs Announced April 2," Peterson Institute for International Economics, April 3, 2025; and Alan Cole, "Trump's Reciprocal Tariff Calculations Are Nonsense, Will Punish Mutually Beneficial Trade," Tax Foundation, April 3, 2025.

[25] Shawn Arita et al., *Estimating the Effects of Selected Sanitary and Phytosanitary Measures and Technical Barriers to Trade on U.S.-EU Agricultural Trade*, USDA, ERS, November 10, 2015. Other examples of studies estimating tariff equivalents on on-tariff measures include Olivier Cadot et al., *Estimating Ad Valorem Equivalents of Non-Tariff Measures: Combining Price-Based and Quantity-Based Approaches*, Organisation for Economic Co-operation and Development (OECD), OECD Trade Policy Papers No. 215, May 16, 2018; Xin Ning and Jason H. Grant, "New Estimates on the Ad-Valorem Equivalents of SPS Measures: Evidence from Specific Trade Concerns," selected paper prepared for presentation at the International Agricultural Trade Research Consortium's 2019 Annual Meeting, Washington, DC, December 2019; and Rui Mao et al., "Economic and Environmental Impacts of Agricultural Non-Tariff Measures: Evidence Based on *Ad Valorem* Equivalent Estimates," *International Food and Agribusiness Management Review*, vol. 26, no. 3 (2023), pp. 379-396.

[26] White House, "Joint Statement on U.S.-China Economic and Trade Meeting in Geneva," May 12, 2025, https://www.whitehouse.gov/briefings-statements/2025/05/joint-statement-on-u-s-china-economic-and-trade-meeting-in-geneva/.

[27] Proclamation 10896 of February 10, 2025, "Adjusting Imports of Steel into the United States," 90 *Federal Register* 9817, February 18, 2025; and Proclamation 10895 of February 10, 2025, "Adjusting Imports of Aluminum into the United States," 90 *Federal Register* 9807, February 18, 2025. For more information on Section 232 steel and aluminum tariffs, see CRS Insight IN12519, *Expanded Section 232 Tariffs on Steel and Aluminum*.

[28] Department of Commerce, Bureau of Industry and Security, "Implementation of Duties on Aluminum Derivatives Beer and Empty Aluminum Cans Pursuant to Proclamation 10895 Adjusting Imports of Aluminum into the United States," 90 *Federal Register* 14786, April 2025; and U.S. Customs and Border Protection (CBP), *Cargo Systems Messaging Service # 64639013—Guidance: Section 232 Additional Aluminum Derivative Products*, April 3, 2025, https://content.govdelivery.com/bulletins/gd/usdhscbp-3da5025?wgt_ref=usdhscbp_widget_2. CBP indicated that beer classified under the Harmonized Tariff Schedule of the United States not in glass containers would be subject to the 25% tariff under Section 232.

Separately, on March 26, 2025, President Trump announced Section 232 tariffs on U.S. imports of automobiles effective April 3 and certain automobile parts effective May 3.[29]

Some U.S. trading partners, such as Canada and the EU, announced retaliatory tariffs in response to Section 232 steel, aluminum, and automotive tariffs. To date, only the EU retaliatory tariffs have stated plans to target U.S. agricultural exports.[30]

What Retaliatory Tariffs Have Been Imposed on U.S. Agriculture in 2025?

In 2025, Canada, China, and the EU announced and/or imposed retaliatory tariffs that targeted U.S. agriculture.[31]

Canada's Retaliatory Tariffs

On March 4, 2025, Canada implemented retaliatory tariffs of 25% on select U.S. imports in response to the IEEPA tariffs on Canadian imports that went into effect the same day.[32] According to analysis of 2024 Canadian import statistics, these tariffs targeted approximately $5.9 billion in U.S. agricultural goods.[33] By value, about 90% of the U.S. products facing retaliatory tariffs were consumer-oriented goods, including coffee, tea, orange juice, alcoholic beverages (i.e., beer, wine, distilled spirits), pasta, fruits (e.g., oranges, peaches), vegetables (e.g., tomatoes, preserved cucumbers), pecans, poultry, sausages, condiments (e.g., ketchup, mayonnaise, soy sauce), confections, dairy products (e.g., whey, cheese, milk), and tobacco products.

Canada announced its intention to implement a second round of tariffs on a proposed list of additional U.S. goods to be subject to a 25% tariff.[34] Products proposed for additional retaliation include meat (e.g., beef, pork, poultry), additional dairy products (e.g., butter, cheese), baked goods (e.g., toasted bread, waffles), nonbeverage ethanol, additional fruits (e.g., apples, cherries, strawberries), additional vegetables (e.g., onions, asparagus, lettuce), and tree nuts (e.g., almonds, walnuts).

Mexico's Retaliatory Tariffs

President of Mexico Claudia Sheinbaum reportedly planned to announce tariff and nontariff measures in response to the IEEPA tariffs on March 9 but instead held a "festival" to celebrate the

[29] Proclamation 10908 of March 26, 2025, "Adjusting Imports of Automobiles and Automobile Parts into the United States," 90 *Federal Register* 14705, April 3, 2025. For more background, see CRS Insight IN12545, *Section 232 Automotive Tariffs: Issues for Congress*.

[30] In May 2025, the United Kingdom and India notified the WTO of a proposed increase in tariffs on U.S. imports in response to the U.S. Section 232 steel and aluminum tariffs. Similarly, Japan notified the WTO of a proposed increase in tariffs on U.S. imports in response to the U.S. Section 232 tariffs on steel, aluminum, automobiles, and automobile parts. Neither country has released a list of products targeted for retaliation nor imposed retaliatory tariffs.

[31] For more background, see CRS Report R48549, *Presidential 2025 Tariff Actions: Timeline and Status*.

[32] Government of Canada, "List of Products from the United States Subject to 25 Per Cent Tariffs Effective March 4, 2025," March 4, 2025, https://www.canada.ca/en/department-finance/news/2025/03/list-of-products-from-the-united-states-subject-to-25-per-cent-tariffs-effective-march-4-2025.html. Canada originally planned to implement retaliatory tariffs on February 4, 2025, but delayed for another month after the United States delayed its 25% tariffs on Canada.

[33] CRS calculations from Trade Data Monitor and Statistics Canada.

[34] Government of Canada, "Notice of Intent to Impose Countermeasures in Response to United States Tariffs on Canadian Goods," March 7, 2025, https://www.canada.ca/en/department-finance/programs/consultations/2025/notice-intent-impose-countermeasures-response-united-states-tariffs-on-canadian-goods.html.

suspension of U.S. tariffs.[35] On March 7, President Sheinbaum stated that Mexico "would like to avoid imposing reciprocal tariffs" on U.S. goods and continue its dialogue with the United States but also would not rule out retaliatory tariffs.[36]

China's Retaliatory Tariffs

On February 10, China imposed retaliatory tariffs on certain U.S. goods in response to the 10% IEEPA tariffs on imports from China. These included a 10% tariff on U.S. agricultural machinery.[37] On March 10, China imposed additional tariffs of 10% or 15% in response to the United States' March 3 announcement of a 10% increase of tariffs on imported goods from China.[38] These tariffs included mostly agricultural products. According to 2024 import statistics of China, these tariffs targeted about $21.2 billion worth of U.S. agricultural imports.[39] By value, about 80% of the products facing retaliatory tariffs are bulk commodities, such as soybeans, cotton, sorghum, wheat, corn, and pulses. Consumer-oriented products targeted for retaliatory tariffs include beef, pork, poultry, dairy products (e.g., milk albumin, ice cream, cheese), fruit (e.g., cherries, oranges, apples), and tree nuts (e.g., pistachios, almonds, walnuts). Most of these products had faced retaliatory tariffs imposed by China during the first Trump Administration.

On April 4, 2025, in response to the United States' 34% IEEPA "reciprocal tariff" on imports from China, China announced an additional 34% tariff on all U.S. goods effective April 10.[40] On April 9, following the U.S. announcement that the "reciprocal tariff" on imports from China was increasing from 34% to 84%, China announced that it was increasing its original additional 34% tariff on U.S. goods to 84% effective April 10.[41] On April 11, China further increased tariffs on U.S. goods from 84% to 125% effective April 12 in response to the United States' April 10 increase of "reciprocal tariffs" on imports from China from 84% to 125%.[42] On May 12, 2025,

[35] Fabiola Sánchez, "Tens of Thousands of Mexicans Rally with President to Celebrate US Decision to Delay Tariffs," Associated Press, March 9, 2025.

[36] Government of Mexico, "Versión estenográfica. Conferencia de prensa de la presidenta Claudia Sheinbaum Pardo del 7 de abril de 2025 [Stenographic Version. Press Conference of President Claudia Sheinbaum Pardo]," April 7, 2025, https://www.gob.mx/presidencia/articulos/version-estenografica-conferencia-de-prensa-de-la-presidenta-claudia-sheinbaum-pardo-del-7-de-abril-de-2025?idiom=es; and Raul Cortes and Kylie Madry, "Mexico Seeks to Avoid Retaliatory Tariffs Against US, but Not Ruling Them Out," Reuters, April 7, 2025.

[37] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于对原产于美国的部分进口商品加征关税的公告 [Announcement of the Customs Tariff Commission of the State Council on Imposing Additional Tariffs on Certain Imported Goods from the United States]," February 4, 2025, https://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202502/t20250204_3955222.htm. For more information about U.S.-China tariff actions, see CRS In Focus IF12990, *U.S.-China Tariff Actions Since 2018: An Overview*.

[38] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于对原产于美国的部分进口商品加征关税的公告 [Announcement of the Customs Tariff Commission of the State Council on Imposing Additional Tariffs on Certain Imported Goods from the United States]," March 4, 2025, https://gss.mof.gov.cn/gzdt/zhengcefabu/202503/t20250304_3959228.htm.

[39] CRS calculations from Trade Data Monitor and China Customs Statistics.

[40] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于对原产于美国的进口商品加征关税的公告 [Announcement of the Customs Tariff Commission of the State Council on Imposing Additional Tariffs on Imported Goods from the United States]," April 4, 2025, https://gss.mof.gov.cn/gzdt/zhengcefabu/202504/t20250404_3961451.htm.

[41] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于调整对原产于美国的进口商品加征关税措施的公告 [Announcement of the Customs Tariff Commission of the State Council on Adjusting Tariff Measures on Imported Goods from the United States]," April 9, 2025, https://gss.mof.gov.cn/gzdt/zhengcefabu/202504/t20250409_3961684.htm.

[42] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于调整对原产于美国的进口商 (continued...)

China and the United States issued a joint statement that reduced China's retaliatory tariffs to the U.S. "reciprocal tariffs" to 10%, while the United States reduced its "reciprocal tariffs" to 10% effective May 14, 2025, for 90 days.[43] See ""Reciprocal Tariffs" Addressing Trade Deficits" for further background.

European Union Retaliatory Tariffs

On March 12, 2025, the EU announced that it would allow the suspension of its 2018 and 2020 tariff countermeasures against the United States to lapse on April 1, in response to U.S. steel and aluminum tariffs.[44] These tariffs targeted about $1.3 billion worth of U.S. agricultural imports, according to 2024 EU import data.[45] Whiskey products, which were targeted with a 50% tariff, accounted for nearly half of the value of targeted imports. Other products targeted included corn, rice, tobacco products, peanut butter, cranberries, kidney beans, and peanut butter, all of which were subject to a 25% tariff, and essential oils, subject to a 10% tariff.

Additionally, the EU announced that it would gather information from stakeholders to determine which additional U.S. imports to target with tariffs.[46] Proposed additional targets include agricultural products such as poultry, beef, tree nuts, alcoholic beverages (e.g., beer, wine), dairy products, fruits, and vegetables.[47]

On March 20, the European Commissioner for Trade and Economic Security announced that the EU would postpone the first set of tariffs set to be imposed on April 1 to mid-April.[48] The commissioner explained that the EU is considering aligning the timing of the two sets of countermeasures to consult with EU member states on both lists simultaneously in light of proposed additional U.S. tariffs for April 2.

On April 7, 2025, President of the European Commission Ursula von der Leyen stated that the EU is ready to negotiate with the United States and offered "zero-for-zero tariffs for industrial goods."[49] In past trade negotiations, agriculture has been a contentious issue between the two trading partners because of key differences in agricultural regulatory issues (e.g., EU

品加征关税措施的公告 [Announcement of the Customs Tariff Commission of the State Council on Adjusting Additional Tariff Measures on Imported Goods from the United States]," April 11, 2025, https://gss.mof.gov.cn/gzdt/zhengcefabu/202504/t20250411_3961823.htm.

[43] Ministry of Commerce of the People's Republic of China, "中美日内瓦经贸会谈联合声明 [Joint Statement on China-U.S. Economic and Trade Meeting in Geneva]," May 12, 2025, https://www.mofcom.gov.cn/xwfb/ldrhd/art/2025/art_8055948aadb5450598bf73d1aae6828e.html.

[44] European Commission (EC), "Commission Responds to Unjustified US Steel and Aluminium Tariffs with Countermeasures," March 12, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_740.

[45] CRS calculations from Trade Data Monitor and Eurostat.

[46] EC, "Information Gathering Notice Under Regulation (EU) No 654/2014 on the New US Tariffs on Steel and Aluminium Products, and Possible EU Rebalancing Measures in Response," March 12, 2025, https://policy.trade.ec.europa.eu/consultations/information-gathering-notice-under-regulation-eu-no-6542014-new-us-tariffs-steel-and-aluminium_en.

[47] EC, "EU Countermeasures on US Steel and Aluminium Tariffs Explained," March 11, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_25_750/QANDA_25_750_EN.pdf.

[48] EC, "Remarks by Commissioner Šefčovič at the Joint Hearing of the Committee on International Trade on Trade Relations with the United States and a Structured Dialogue," March 20, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_25_840/SPEECH_25_840_EN.pdf.

[49] EC, "Press Statement by President von der Leyen with Norwegian Prime Minister Støre," April 7, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_25_996/STATEMENT_25_996_EN.pdf.

biotechnology approval process, use of growth promotants in U.S. meat production, and geographical indications).[50]

On April 10, following the 90-day postponement of the United States' country-specific "reciprocal tariffs," President von der Leyen announced a hold for 90 days on retaliatory tariffs that were set to go into effect April 15.[51] On April 14, the EU released a list of U.S. products to be subject to retaliatory tariffs and suspended all planned tariff measures until July 14, 2025.[52] Bulk commodities targeted include soybeans, corn, durum wheat, and rice. Consumer-oriented products targeted include almonds, beef, processed cranberries, tobacco products, cranberry and orange juices, spices, peanut butter, dried egg yolk, bakery goods and pasta, and ice cream. Tariff rates for agricultural products listed are 25%, except for essential oils, which would face a 10% tariff. The EU-proposed tariffs targeted about $5.3 billion worth of U.S. agricultural products, according to 2024 EU import data.[53]

On May 8, 2025, the EU launched a public consultation on a list of U.S. agricultural and industrial imports that would be subject to retaliatory tariffs.[54] The consultation is in response to U.S. "reciprocal tariffs" and U.S. tariffs on automobiles and certain automobile parts.

2018 Through 2023 Trade Actions

What Retaliatory Tariffs Were Imposed on U.S. Agriculture in 2018 and 2019?

In response to U.S. tariff actions in 2018, certain trading partners of the United States responded with retaliatory tariffs on U.S. goods, including agricultural products.[55] In April 2018, China responded to U.S. Section 232 steel and aluminum tariffs with retaliatory tariffs on certain U.S. imports, including agricultural products (e.g., fruit, ginseng, pork, tree nuts, wine). In June 2018, Mexico, the EU, and Turkey responded to Section 232 tariffs with retaliatory tariffs. The agricultural products targeted included pork products, cheese, apples, potatoes, cranberries, and whiskey by Mexico; corn, rice, sweet corn, kidney beans, certain breakfast cereals, peanut butter, orange juice, cranberry juice, whiskey, cigars, tobacco products, and essential oils by the EU; and tree nuts, rice, and tobacco by Turkey. In July 2018, Canada responded with retaliatory tariffs on U.S. products, including dairy, poultry, and beef products; coffee, chocolate, sugar, and

[50] For more background about U.S.-European Union agricultural trade relations, see CRS Report R47095, *U.S.-EU Trade Relations*; and CRS Report R46241, *U.S.-EU Trade Agreement Negotiations: Trade in Food and Agricultural Products*.

[51] EC, "Statement by President von der Leyen," April 10, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_25_1036/STATEMENT_25_1036_EN.pdf; and EC, "Commission Proposal to Impose Trade Countermeasures Against US Obtains Necessary Support from EU Member States," April 9, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_25_1025/STATEMENT_25_1025_EN.pdf.

[52] EC, "EU Pauses Countermeasures Against US Tariffs to Allow Space for Negotiations," April 14, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1058. The EU originally planned to implement tranches of retaliatory tariffs effective April 15, May 16, and December 1, 2025, prior to the April 14 postponement announcement.

[53] CRS calculations from Trade Data Monitor and Eurostat.

[54] EC, "Commission Consults on Possible Countermeasures and Readies WTO Litigation in Response to US Tariffs," May 8, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_25_1149/IP_25_1149_EN.pdf.

[55] For background, see CRS Report R45903, *Retaliatory Tariffs and U.S. Agriculture*; and CRS Report R45929, *China's Retaliatory Tariffs on U.S. Agriculture: In Brief*.

confectionery; prepared food products; condiments; bottled water; and whiskies. India imposed retaliatory tariffs in June 2019 targeting U.S. chickpeas, almonds, walnuts, apples, and lentils.

Separate from the Section 232 tariffs and retaliatory tariffs, the United States also imposed tariffs on China under Title III of the Trade Act of 1974 (19 U.S.C. §§2411-2420), commonly referred as "Section 301," starting in July 2018. Between 2018 and 2019, the United States and China imposed several rounds of tariffs and retaliatory tariffs. Nearly all U.S. agricultural products faced retaliatory tariffs. In September 2019, China announced a tariff exclusion list for certain U.S. products subject to Section 301 retaliatory tariffs, including agricultural products such as alfalfa and whey for feed use.[56] In February 2020, China announced a tariff exclusion process for Chinese companies impacted by the Section 301 retaliatory tariffs on U.S. imports.[57]

According to one analysis, during the 2018/2019 trade conflict, agricultural products accounted for 68% of China's Section 232 retaliation, 22% of China's Section 301 retaliation, 33% of the EU's retaliation, 20% of Canada's retaliation, 79% of Mexico's retaliation, nearly 20% of Turkey's retaliation, and 61% of India's retaliation.[58]

In May 2019, the United States removed Section 232 tariffs on Canada and Mexico, and in turn, Canada and Mexico removed retaliatory tariffs on the United States to facilitate the ratification of USMCA.[59]

Following an October 2021 agreement between the United States and the EU on the Section 232 tariffs, the EU suspended retaliatory tariffs that included U.S. agricultural products from January 2022 to the end of December 2023, and later extended the suspension to the end of March 2025.[60] The EU postponed imposing retaliatory tariffs in order to assess the planned U.S. April 2, 2025, "reciprocal tariffs" announcement and postponed again in response to the U.S. 90-day pause of country-specific "reciprocal tariffs."[61] EU retaliatory tariffs are suspended until July 14, 2025. See "European Union Retaliatory Tariffs" for further background.

The United Kingdom (UK) suspended Section 232 retaliatory tariffs effective June 2022.[62] The UK inherited the original EU retaliatory tariffs when the UK separated from the EU customs union in January 2021.

---

[56] USDA, FAS, *Outcome of Batch One of China's Tariff Exclusion Process*, GAIN Report CH19061, September 18, 2019, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Outcome%20of%20Batch%20One%20of%20China%E2%80%99s%20Tariff%20Exclusions%20Process%20_Beijing_China%20-%20Peoples%20Republic%20of_9-17-2019.

[57] USDA, FAS, *China Announces a New Round of Tariff Exclusions*, GAIN Report CH2020-0017, February 26, 2020, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=China%20Announces%20a%20New%20Round%20of%20Tariff%20Exclusions_Beijing_China%20-%20Peoples%20Republic%20of_02-18-2020.

[58] Jason H. Grant et al., "Agricultural Exports and Retaliatory Trade Actions: An Empirical Assessment of the 2018/2019 Trade Conflict," *Applied Economic Perspectives and Policy*, vol. 43, no. 2 (June 2021), p. 18.

[59] Ana Swanson and Dan Bilefsky, "United States Reaches Deal to Lift Metal Tariffs on Canada and Mexico," *New York Times*, May 17, 2019.

[60] EC, "EU Prolongs Tariff Suspension for US Products Related to the Steel and Aluminium Dispute," December 19, 2023, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_6713/IP_23_6713_EN.pdf.

[61] EC, "EU Countermeasures on US Steel and Aluminium Tariffs Explained," March 11, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_25_750/QANDA_25_750_EN.pdf; and EC, "EU Pauses Countermeasures Against US Tariffs to Allow Space for Negotiations," April 14, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1058.

[62] Government of the United Kingdom, "UK and US Resolve Steel and Aluminium Tariffs Issue," March 22, 2022, https://www.gov.uk/government/news/uk-and-us-resolve-steel-and-aluminium-tariffs-issue.

In September 2023, India removed retaliatory tariffs on U.S. almonds, apples, chickpeas, lentils, and walnuts following a June 2023 resolution between the United States and India that terminated six nonagricultural WTO disputes.[63]

Were U.S. Agricultural Exports Affected by Retaliatory Tariffs?

The retaliatory tariffs were one of many factors that influenced agricultural exports. **Table 3** displays U.S. agricultural exports to retaliating and non-retaliating trading partners from 2017 to 2020 in nominal values. Although China, Canada, Mexico, the EU, and Turkey imposed retaliatory tariffs in the spring and summer of 2018, total U.S. agricultural exports from 2017 compared to 2018 increased by 1%. While exports to China declined by 53%, other U.S. agricultural export markets (e.g., the EU, Vietnam, South Korea, Egypt) saw an increase of exports that offset the decline in exports to China. The total value of U.S. agricultural exports declined in 2019 and 2020 relative to 2018 levels and remained similar to 2017 levels. Although foreign tariffs impact the competitiveness of U.S. agricultural exports in relation to other foreign suppliers, other factors may contribute to U.S. trade flows because of unique dynamics of specific commodities. This section provides a snapshot of select major U.S. agricultural exports between 2017 and 2020 that were impacted by retaliatory tariffs, to illustrate the role of tariffs and nontariff factors on agricultural trade flows.

Table 3. U.S. Agricultural Exports to Retaliating and Non-Retaliating Trading Partners, 2017 to 2020

In Billions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
U.S. exports to retaliating trading partners				
China	19.6	9.2	13.9	26.4
Canada	21.7	22.0	21.9	22.3
Mexico	18.8	19.3	19.4	18.3
EU-28	12.4	14.5	12.6	12.1
India	1.9	1.8	2.1	1.7
Turkey	1.8	1.5	1.3	1.2
U.S. exports to non-retaliating trading partners	66.7	76.4	69.9	67.6
Total U.S. agricultural exports	**142.9**	**144.7**	**141.1**	**149.7**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-28 = the European Union customs union and its 28 member countries, which included the United Kingdom until it left in January 2021.

Soybeans

Table 4 presents annual total U.S. soybean exports from 2017 to 2020, broken down by major markets (i.e., China, the EU, Mexico, and Egypt) and the rest of the world combined. China imposed retaliatory tariffs on U.S. soybeans starting in 2018, which is reflected in a 74% decline

[63] USDA, FAS, *Success Story – India Cuts Retaliatory Tariffs on US Almonds-Apples-Walnuts-Chickpeas-Lentils*, GAIN Report IN2023-0066, September 12, 2023 and USTR, "United States Announces Major Resolution on Key Trade Issues with India," June 22, 2023.

in exports by value in 2018 compared to 2017. Between 2009 and 2017, nearly 60% of U.S. soybean exports by value on average were destined for China. Other U.S. trading partners such as the EU, Mexico, and Egypt increased imports of U.S. soybeans but not at levels to replace the shortfall from the decline of China's imports. USDA attributed the increased imports of U.S. soybeans from trading partners other than China to factors such as more competitive prices of U.S. soybeans following China's retaliatory tariffs, Brazil-sourced soybeans commanding a price premium, and tighter supplies from Argentina because of drought.[64] Another factor that may have affected China's imports for soybeans from the United States and other suppliers was dampened demand for animal feed because of the spread of African swine fever in China beginning in the summer of 2018 and the culling of 750,000 to 1.1 million swine.[65]

Table 4. U.S. Soybean Exports, 2017 to 2020

In Millions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
China	12,224.4	3,119.2	8,004.9	14,065.7
EU-28	1,636.7	3,077.5	1,953.2	1,970.8
Mexico	1,574.2	1,818.0	1,878.1	1,879.8
Egypt	364.5	1,163.5	994.7	1,486.2
Rest of world	5,656.5	7,879.8	5,862.8	6,113.7
Total U.S. soybean exports	**21,456.3**	**17,058.1**	**18,693.6**	**25,516.2**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not adjusted for inflation. Values may not sum to totals shown because of rounding. EU-28 = the European Union customs union and its 28 member countries, which included the United Kingdom until it left in January 2021.

Corn

Annual total U.S. corn exports from 2017 to 2020 are displayed in **Table 5**, broken down by select markets and the rest of the world. China and the EU imposed tariffs on U.S. corn in 2018. In 2018, EU imports initially surged prior to the imposition of June 2018 retaliatory tariffs and dwindled afterward, which resulted in a total of about $320 million of U.S. corn exported to the EU in 2018, which dropped to about $510,000 in 2019. U.S. corn exports to China also saw declines in 2018 and 2019 compared to 2017. Historically, U.S. corn exports to China varied from year to year even before the implementation of retaliatory tariffs. The United States has cited past issues affecting U.S. corn market access into China, including China's biotechnology policy, policy in liquidating domestic corn stocks, and lack of transparency in how China administers its tariff-rate quota for corn (as well as rice and wheat).[66] According to USDA, multiple factors

[64] USDA, FAS, *EU-28: Oilseeds and Products Update – Lowest Rapeseed Crop in Over a Decade*, GAIN Report AU1907, September 12, 2019; USDA, FAS, *Mexico: Oil Seeds and Products Annual: Lack of Supports to Slow Oilseed Production, While Meal and Oil Remain Stable*, GAIN Report MX9014, April 1, 2019; and USDA, FAS, *Egypt: Oilseeds and Products Annual 2019: U.S. Soybean Exports to Egypt Skyrocket, Volume Likely to Continue Through 2020*, GAIN Report EG19004, March 31, 2019.

[65] Stephen Morgan et al., *The Economic Impacts of Retaliatory Tariffs on U.S. Agriculture*, USDA, ERS, January 2022, p. 25; and Fred Gale et al., *How China's African Swine Fever Outbreaks Affected Global Pork Markets*, USDA, ERS, November 2023, p. 12.

[66] USTR, *2019 Report to Congress on China's WTO Compliance*, March 2020, p. A-69; and USTR, *2022 Report to Congress on China's WTO Compliance*, February 2023, pp. 31-32. Tariff-rate quotas (TRQs) are two-tiered (continued...)

contributed to the decline in U.S. corn exports in 2019, including higher U.S. prices due to reduced production and strong domestic use for feed and ethanol, and export competition from Argentina, Brazil, and Ukraine.[67] In 2020, U.S. corn exports to China increased 2,136% from the previous year following the U.S.-China Phase One Agreement and China's exclusions for Section 301 retaliatory tariffs on agricultural products.[68]

Table 5. U.S. Corn Exports, 2017 to 2020

In Millions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
Mexico	2,645.5	3,060.8	2,735.9	2,685.2
Japan	2,163.4	2,813.0	2,011.2	1,855.5
China	142.0	50.2	55.5	1,240.5
Colombia	784.7	927.3	682.5	879.2
South Korea	705.4	1,355.7	358.7	548.1
EU-28	113.2	319.8	0.5	0.4
Rest of world	2,576.4	3,945.5	1,826.4	2,037.1
Total U.S. corn exports	**9,130.6**	**12,472.4**	**7,670.6**	**9,245.9**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-28 = the European Union customs union and its 28 member countries, which included the United Kingdom until it left in January 2021.

Tree Nuts

Table 6 displays U.S. tree nut exports, broken down by top export markets in addition to Turkey and the rest of the world. Starting in mid-2018, China and Turkey imposed retaliatory tariffs on U.S. tree nuts (e.g., almonds, cashews, pistachios, walnuts). In June 2019, India imposed retaliatory tariffs on U.S. almonds and walnuts. Generally, from 2017 to 2020, U.S. exports of tree nuts by value increased yearly despite the imposition of retaliatory tariffs. USDA attributed strong domestic demand in China and India for tree nuts as driving U.S. export growth.[69] Other factors that favored U.S. tree nut export growth were the United States' share in world production and trade, particularly for almonds and walnuts, as well as a steep drop-off in Iranian pistachio production and exports because of a weather shock in marketing year 2018/2019.[70] Despite Turkey's retaliatory tariffs, the United States was still a major source of almond and walnut imports for Turkey but with decreasing market share after 2018.[71]

applications of tariffs for an imported product. A specified quantity of imports (in-quota) enters the importing country at a reduced tariff rate. Imports that exceed the quantity (out-of-quota or over-quota) typically face higher tariffs.

[67] USDA, FAS, *2019 United States Agricultural Export Yearbook*, July 22, 2020, pp. 5-6.

[68] USDA, FAS, *2020 United States Agricultural Export Yearbook*, April 5, 2021, p. 6; and USDA, FAS, *China: Grain and Feed Annual*, GAIN Report CH2020-0048, April 6, 2020.

[69] USDA, FAS, *2019 United States Agricultural Export Yearbook*, pp. 27-28; and USDA, FAS, *2020 United States Agricultural Export Yearbook*, pp. 29-30.

[70] USDA, FAS, *2019 United States Agricultural Export Yearbook*, p. 28; and USDA, FAS, *2020 United States Agricultural Export Yearbook*, p. 30; and USDA, FAS, *Tree Nuts: World Markets and Trade*, February 2019.

[71] USDA, FAS, *Turkey: Tree Nuts Annual*, GAIN Report TU2020-0031, September 23, 2020.

Table 6. U.S. Tree Nut Exports, 2017 to 2020

In Millions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
EU-28	2,707.2	2,768.5	3,114.9	2,877.8
India	738.0	662.5	823.2	913.6
China	242.9	328.3	605.4	747.2
Canada	642.7	695.8	697.4	738.2
Turkey	308.4	278.9	340.4	249.8
Rest of world	3,840.0	3,781.3	3,493.2	2,873.0
Total U.S. tree nut exports	**8,479.4**	**8,515.5**	**9,074.5**	**8,399.6**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-28 = the European Union customs union and its 28 member countries, which included the United Kingdom until it left in January 2021.

Pork

Table 7 displays U.S. pork and pork product exports, broken down by the top five export markets and the rest of the world. China and Mexico imposed tariffs on U.S. pork and pork product exports in mid-2018, with Mexico lifting tariffs in mid-2019. U.S. pork exports to China dropped 14% by value between 2017 and 2018. In 2019, U.S. pork exports to China rebounded despite the retaliatory tariffs, which USDA attributes to decreased domestic pork production in China caused by African swine fever outbreaks.[72] U.S. pork exports to Mexico declined 13% by value from 2017 to 2018, while Canada gained market share in 2018.[73] Despite Mexico lifting its tariffs, U.S. pork exports declined from 2018 to 2020, which USDA attributes to strong domestic production, a weak Mexican economy, and depreciation of the peso.[74]

[72] USDA, FAS, *China: Livestock and Products Annual*, GAIN Report CH2019-0205, August 7, 2020; Fred Gale et al., *How China's African Swine Fever Outbreaks Affected Global Pork Markets*, pp. 20-21; and Frank Kyekyeku Nti et al., "Impact of Retaliatory Tariffs on the U.S. Pork Sector," *Choices* (Quarter 4, 2019).

[73] USDA, FAS, *Mexico: Livestock and Products Annual: Higher Pork Consumption Drives Production as Mexico Increases Exports of Pork and Beef*, GAIN Report MX9027, August 15, 2019; and Frank Kyekyeku Nti et al., "Impact of Retaliatory Tariffs on the U.S. Pork Sector."

[74] USDA, FAS, *2019 United States Agricultural Export Yearbook*, p. 17; and USDA, FAS, *2020 United States Agricultural Export Yearbook*, p. 17.

Table 7. U.S. Pork and Pork Product Exports, 2017 to 2020

In Millions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
China	662.3	570.9	1,300.2	2,279.8
Japan	1,625.9	1,630.5	1,523.4	1,622.9
Mexico	1,514.1	1,310.7	1,278.4	1,162.3
Canada	792.8	764.8	801.8	854.0
South Korea	475.1	670.3	592.9	452.6
Rest of world	1,415.0	1,455.4	1,454.8	1,347.8
Total U.S. pork and pork products	**6,485.1**	**6,402.8**	**6,951.5**	**7,719.6**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding.

Were U.S. Farm Sector Sales Affected by Retaliatory Tariffs?

The retaliatory tariffs were one of many factors that influenced U.S. farm sector sales. The farm sector earns revenue from the sales of crops, livestock, and animal products. The total value of these commodities was approximately $370 billion in 2017, $372 billion in 2018, $369 billion in 2019, and $368 billion in 2020 (**Table 8**). Compared to 2017 levels, the total value of crops, livestock, and animal products sold was approximately $1.6 billion higher in 2018, $1.1 billion lower in 2019, and $2.9 billion lower in 2020.

Table 8. Value of Crops, Livestock, and Animal Products Sold, 2017 to 2020

In Billions of Dollars (nominal)

Commodity Type	2017	2018	2019	2020
Crops				
Cotton	$7.57	$7.48	$6.82	$6.81
Feed crops	$53.92	$57.29	$58.42	$57.52
Food grains	$11.20	$12.13	$11.51	$11.78
Fruits and nuts	$30.59	$29.35	$29.19	$27.83
Oil crops	$41.09	$39.47	$36.22	$43.84
Tobacco	$1.38	$1.22	$0.96	$0.82
Vegetables and melons	$20.50	$18.70	$19.11	$21.06
All other crops	$28.62	$30.35	$31.53	$32.83
Livestock and animal products				
Dairy products	$37.94	$35.24	$40.55	$40.36
Cattle and calves	$66.94	$67.18	$66.19	$63.32
Hogs	$21.04	$20.77	$21.76	$19.16
Miscellaneous livestock	$6.86	$6.94	$7.06	$7.00
Poultry and eggs	$42.79	$45.96	$40.00	$35.17
Total	**$370.44**	**$372.07**	**$369.32**	**$367.50**

Source: CRS calculations using USDA, Economic Research Service, "Farm Income and Wealth Statistics—Value Added by the U.S. Agricultural Sector, 2016-2025F," updated February 2025, https://data.ers.usda.gov/reports.aspx?ID=4047.

Notes: Feed crops include barley, corn, hay, oats, and grain sorghum. Food grains include rice, rye, and wheat. Dairy products includes milk.

While the total value of crops, livestock, and animal products sold remained relatively level from 2017 to 2020, sales were variable for all categories of commodities over this period. In 2018, the value of feed grains, food grains, cattle and calves, poultry and eggs, and all other crops increased relative to 2017 levels; the total value of other agricultural commodities sold declined in 2018 relative to 2017 levels (**Table 8**). In 2019, the value of feed grains, food grains, all other crops, dairy, hogs, and miscellaneous livestock increased relative to 2017 levels, while the total value for other agricultural commodities declined relative to 2017 levels.

Changes in market prices between 2017 and 2020 contributed to the changes in the values of commodities sold each year. For example, retaliatory tariffs imposed in 2018 targeted specific agricultural commodities, including almonds, fresh sweet cherries, corn, cotton, hogs, milk, sorghum, soybeans, and wheat. Compared to 2017, 2018 marketing year average prices were higher for corn, upland cotton, sorghum, and wheat and lower for the other targeted commodities (**Table 9**). Compared to 2017, 2019 marketing year average prices were higher for corn, milk, and sorghum and lower for the other targeted commodities. Compared to 2017, 2020 marketing year average prices were higher for fresh sweet cherries, corn, milk, sorghum, soybeans, and wheat and lower for the other targeted commodities.

Table 9. Marketing Year Average Prices for Selected Agricultural Commodities, 2017 to 2020

In Dollars per Unit (Nominal)

Commodity	Unit	2017	2018	2019	2020
Almonds	Pound	$2.53	$2.50	$2.45	$1.71
Cherries (fresh sweet)	Ton	$2.06	$1.83	$1.93	$2.92
Corn	Bushel	$3.36	$3.61	$3.56	$4.53
Cotton (extra long staple)	Pound	$1.39	$1.15	$1.06	$1.19
Cotton (upland)	Pound	$0.69	$0.70	$0.60	$0.66
Hogs	Hundredweight	$53.10	$50.20	$51.40	$46.90
Milk	Hundredweight	$17.69	$16.28	$18.65	$18.16
Sorghum	Hundredweight	$5.75	$5.82	$5.96	$9.00
Soybeans	Bushel	$9.33	$8.48	$8.57	$10.80
Wheat	Bushel	$4.72	$5.16	$4.58	$5.05

Source: CRS using USDA, National Agricultural Statistics Service, "Quick Stats," accessed March 14, 2025.

What Were the Economic Losses to the U.S. Agricultural Sector from Retaliatory Tariffs in 2018 and 2019?

Various studies have estimated losses to the U.S. agricultural sector associated with retaliatory tariffs; these studies employ different methodologies and provide differing estimates of losses

attributable to retaliatory tariffs.[75] Estimates of economic losses made by USDA's Office of the Chief Economist (OCE) in 2018 and 2019 had extra significance for policymakers as they were used to inform USDA's responses to retaliatory tariffs in 2018 and 2019 (see "USDA's Response to Retaliatory Tariffs").[76]

USDA OCE estimated that the 2018 economic losses were between $11 billion and $12 billion.[77] According to USDA figures reported by the Government Accountability Office (GAO), $10.2 billion of the estimated $11 billion to $12 billion were for losses to almonds, fresh sweet cherries, corn, cotton, dairy, hogs, sorghum, soybeans, and wheat.[78] According to USDA figures reported by GAO, USDA OCE estimated that the 2019 economic losses for agricultural and related commodities were approximately $16.9 billion.[79]

In January 2022, USDA ERS published updated estimates of trade losses. ERS reported estimates of approximately $27 billion in trade losses between July 2018 and December 2019.[80] ERS reported that China's retaliatory tariffs reduced the value of U.S. agricultural trade by approximately $25.7 billion, and retaliatory tariffs imposed by other countries reduced the value of U.S. agricultural trade by approximately $1.5 billion. ERS reported estimated annualized losses for some commodities, including $9.35 billion for soybeans, $854 million for sorghum, $646 million for pork, $618 million for fruits, $391 million for dairy, $366 million for cotton, $309 million for wheat, $219 million for tree nuts, $198 million for corn, and $46 million for rice.

USDA OCE estimated economic losses in 2018 and 2019 by projecting hypothetical scenarios of world trade that could have occurred had retaliatory tariffs not been imposed on U.S. agricultural products. USDA OCE made those projections before data on actual exports were available for the year as part of USDA's efforts to "craft a short-term relief strategy to protect agricultural producers" in accordance with Presidential directives.[81] Updating such projections with subsequently available data suggests that USDA OCE may have overestimated trade losses in 2018 and 2019. Actual agricultural exports were approximately $145 billion in 2018 and approximately $141 billion in 2019 (**Table 3**). These values compare to agricultural exports in 2015, 2016, and 2017 of $137 billion, $139 billion, and $143 billion, respectively. USDA's

[75] See, for example, USDA, ERS, *The Economic Impacts of Retaliatory Tariffs on U.S. Agriculture*, ERR-304, January 2022.

[76] USDA, *Cost Benefit Analysis: Market Facilitation Program*, July 24, 2018; USDA, "USDA Announces Support for Farmers Impacted by Unjustified Retaliation and Trade Disruption," press release, May 23, 2019; USDA Office of the Chief Economist (OCE), *Trade Damage Estimation for the Market Facilitation Program and Food Purchase and Distribution Program*, September 13, 2018; and USDA OCE, *Trade Damage Estimation for the 2019 Market Facilitation Program and Food Purchase and Distribution Program*, August 22, 2019.

[77] USDA, "USDA Assists Farmers Impacted by Unjustified Retaliation," press release, July 24, 2018, https://www.usda.gov/about-usda/news/press-releases/2018/07/24/usda-assists-farmers-impacted-unjustified-retaliation. In the press release, USDA stated that they were authorizing "up to $12 billion in programs, which is in line with the estimated $11 billion impact of the unjustified retaliatory tariffs on U.S. agricultural goods."

[78] CRS calculations using data in GAO, "Appendix III: 2018 MFP and 2019 MFP Trade Damage Estimate and Payment Methodologies," in *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*, GAO-22-468, November 2021, https://www.gao.gov/assets/gao-22-468.pdf.

[79] CRS calculations using data in GAO, "Appendix III: 2018 MFP and 2019 MFP Trade Damage Estimate and Payment Methodologies," in *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*. Related commodities included distiller's dried grains with solubles, ethanol, peanut butter, infant formula, ice cream, casein, and lactose.

[80] USDA, ERS, *The Economic Impacts of Retaliatory Tariffs on U.S. Agriculture*, ERR-304, January 2022.

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

estimated economic losses imply that USDA effectively projected agricultural exports in 2018 and 2019 to be approximately $157 billion in the absence of retaliatory tariffs.[82]

USDA ERS reported estimated trade losses for 2018 and 2019 at levels similar to USDA OCE's estimates. To calculate these estimated trade losses, USDA ERS used estimates published in an academic study with a different methodology than had been used by USDA OCE in 2018 and 2019.[83] This methodology is one of many that are commonly used in the academic literature to estimate economic losses from retaliatory tariffs. Other commonly used methodologies may estimate different losses. For example, a different academic study found that total 2018 and 2019 economic losses for soybeans were $3.2 billion;[84] USDA OCE estimated soybean losses at $3.6 billion for 2018 alone.[85] That study found that USDA overcompensated the agricultural sector by $5.4 billion for soybean losses in 2018 and 2019.[86]

Methods used to estimate trade losses from retaliatory tariffs can produce different estimates depending on the data used. USDA OCE produced estimates in 2018 after spring planting was complete but before 2018 commodities were harvested. In 2019, USDA OCE produced estimates before farmers had finished spring planting. USDA OCE acted at those times in support of the Administration's goal of providing expedited assistance to farmers who experienced trade disruptions with major export markets. Some policymakers may agree with the Administration's decision to provide expedited assistance to farmers in 2018 and 2019. Other policymakers may question the need for expedited assistance in 2018 and 2019 given the availability of other farm support programs.[87]

In addition, methods used to estimate trade losses can produce different estimates depending on the assumptions applied. In their 2021 analysis of the Market Facilitation Program (MFP), GAO found that USDA OCE's 2018 estimates of economic losses "used a justifiable baseline" to model what trade would have been in the absence of retaliatory tariffs.[88] GAO also found that USDA OCE's 2019 estimates of economic losses "used baselines that did not best represent what trade would be absent the retaliatory tariffs, and that increased trade damage estimates." In their response to GAO's 2021 analysis, USDA OCE stated that

> [t]he draft report's finding that the 2019 baseline is not representative and increased trade damage estimates does not take into account that the decision on what is the appropriate baseline depends on the policy goals and that there is not one single most representative baseline. OCE provided alternatives that reflected different options based on the direction of senior USDA decision makers under the previous administration and selection of the baseline was part of the program design and not made by OCE.[89]

---

[82] CRS calculations. Actual 2018 trade of $145 billion plus $12 billion in estimated trade losses is $157 billion. Actual 2019 trade of $141 billion plus $16 billion in estimated trade losses is $157 billion.

[83] USDA ERS used estimated product-specific changes in the value of exports as published in Jason H. Grant et al., "Agricultural Exports and Retaliatory Trade Actions: An Empirical Assessment of the 2018/2019 Trade Conflict," *Applied Economic Perspectives and Policy*, vol. 43, no. 2 (June 2021).

[84] Michael Adjemian et al., "Estimating the Market Effect of a Trade War: The Case of Soybean Tariffs," *Food Policy*, vol. 105 (December 2021).

[85] USDA, *Cost Benefit Analysis: Market Facilitation Program*, July 24, 2018.

[86] Michael Adjemian et al., "Estimating the Market Effect of a Trade War: The Case of Soybean Tariffs."

[87] For background on other farm support programs, see CRS In Focus IF12218, *Farm Bill Primer: Farm Safety Net Programs*.

[88] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

[89] GAO, "Appendix VIII: Comments from the Department of Agriculture," in *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*, p. 86.

USDA OCE also noted that their 2018 and 2019 economic analyses adhered to departmental and Office of Management and Budget requirements for economic analyses. Some policymakers may support USDA's senior decisionmakers' reliance on USDA OCE to estimate economic losses in order to be timely and responsive to decisionmakers' requirements. Other policymakers may support the use of independent feedback on USDA OCE's economic analyses used to inform USDA policymaking.

What Were the U.S.-China Phase One Agreement Provisions for Agriculture?

In January 2020, President Trump and China's Vice Premier Liu He signed the "Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China" (U.S.-China Phase One Agreement) to reduce U.S.-China trade tensions that escalated in 2018 when the United States imposed several rounds of tariffs on imports from China under Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974 authorities.[90] The Phase One Agreement included purchase commitments of U.S. imports by China of no less than $12.5 billion and $19.5 billion above a 2017 baseline in agricultural and seafood products total for 2020 and 2021, respectively.[91] Other provisions in the agreement included China abiding by its WTO obligations by improving its tariff-rate quota administration for wheat, corn, and rice and greater transparency of its domestic support programs.[92] China also agreed to implement a "transparent, predictable, efficient, science- and risk-based regulatory process" for evaluating and authorizing agricultural biotechnology products. The agreement contains SPS-measures-related provisions to facilitate trade for agricultural and food products. Additionally, in March 2020, China implemented a new Section 301 retaliatory tariff exclusion process for imported U.S. agricultural products, although this was not directly associated with the Phase One Agreement.[93] Prior to the March 2020 exclusion process, only certain enumerated products were considered for tariff exclusions.

U.S. export and China's import data show that China did not meet its purchase commitments of U.S. agricultural and seafood products listed in the Phase One Agreement for the years 2020 and 2021, falling short by an estimated total of $13.1 billion (based on U.S. trade data) or $18.1 billion (based on China's trade data) over the two years.[94] Subsequent reports from the Office of

[90] For background, see CRS In Focus IF12125, *Section 301 and China: The U.S.-China Phase One Trade Deal*; and CRS In Focus IF11412, *U.S.-China Phase I Deal: Agriculture*. For the agreement text and agriculture-related fact sheets of the U.S.-China Phase One Agreement, see USDA, FAS, "China Phase One Agreement," https://www.fas.usda.gov/topics/china-phase-one-agreement.

[91] The U.S.-China Phase One Agreement does not explicitly state the 2017 baseline amount. The agreement specifies that both U.S. and Chinese trade data will be used to determine whether the purchase commitment provisions have been implemented. The 2017 baseline amount of approximately $20.9 billion is based on CRS calculations from Trade Data Monitor and U.S. Census Bureau data of U.S. agricultural and seafood product exports to China identified in Annex 6.1 of the U.S.-China Phase One Agreement. The 2017 baseline amount would be approximately $24.1 billion based on CRS calculations from Trade Data Monitor and China Customs Statistics' import data of U.S. agricultural and seafood products. For background on differences in U.S. and China's trade data, see CRS Report RS22640, *What's the Difference?—Comparing U.S. and Chinese Trade Data*.

[92] Separate from and prior to the Phase One Agreement, the United States initiated and won two WTO disputes against China's administration of its TRQs for wheat, corn, and rice and agricultural domestic support policies for rice and wheat. TRQs are two-tiered applications of tariffs for an imported product. A specified quantity of imports (in-quota) enters into the importing country at a reduced tariff rate. Imports that exceed the quantity (out-of-quota or over-quota) typically face higher tariffs.

[93] USDA, FAS, *China Announces a New Round of Tariff Exclusions*, GAIN Report CH2020-0017, February 26, 2020.

[94] CRS calculations from Trade Data Monitor, U.S. Census Bureau, and China Customs Statistics data.

the U.S. Trade Representative assert that China did not fully implement its obligations under the Phase One Agreement, including provisions related to agricultural trade.[95]

USDA's Response to Retaliatory Tariffs

How Did USDA Respond to Retaliatory Tariffs in 2018 and 2019?

In response to foreign trade retaliation targeting U.S. agricultural products in 2018 and 2019, the Secretary of Agriculture used the authorities and funds of the Commodity Credit Corporation (CCC) to provide additional assistance to the farm sector.[96] USDA made available up to $12.0 billion in CCC funding in 2018 and up to $16.0 billion in CCC funding in 2019. USDA determined how much funding to make available each year on the basis of its modeling of economic losses resulting from foreign countries imposing retaliatory tariffs (see "What Were the Economic Losses to the U.S. Agricultural Sector from Retaliatory Tariffs in 2018 and 2019?").

The funds made available in 2018 and 2019 were distributed through three ad hoc programs: the Market Facilitation Program (MFP), the Food Purchase and Distribution Program (FPDP), and the Agricultural Trade Promotion Program (ATP). These programs provided direct income support payments to farmers, purchased agricultural commodities, and supported trade promotion activities, respectively. Support from MFP, FPDP, and ATP supplemented direct income support, commodity purchases, and trade promotion activities authorized by the farm bill and other legislation.[97]

The bulk of the CCC funds were distributed through MFP (**Table 10**). MFP made direct payments to producers of eligible crops, dairy, and hogs. USDA made significant changes to MFP between the first and second rounds of funding, including expanding the commodities eligible for support, increasing payment limits for producers, and shifting from commodity-specific payments to county-specific payments, among other changes.[98]

[95] See USTR, *2024 National Trade Estimate Report on Foreign Trade Barriers*, March 2024, pp. 51-60; and USTR, *2024 Report to Congress on China's WTO Compliance*, January 2025.

[96] For background on the authorities and funds of the Commodity Credit Corporation, see CRS Report R44606, *The Commodity Credit Corporation (CCC)*.

[97] For additional background on income support authorized through the farm bill, see CRS In Focus IF12218, *Farm Bill Primer: Farm Safety Net Programs*. For additional background on USDA's commodity purchasing authorities, see CRS In Focus IF12193, *Farm and Food Support Under USDA's Section 32 Account*. For additional background on trade promotion authorized through the farm bill, see CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*.

[98] For background on the implementation of MFP in 2018 and 2019, see CRS Report R45310, *Farm Policy: USDA's 2018 Trade Aid Package*; CRS Report R45865, *Farm Policy: USDA's 2019 Trade Aid Package*; and CRS In Focus IF11289, *Farm Policy: Comparison of 2018 and 2019 Market Facilitation Programs*.

Table 10. Funds Available and Program Outlays for USDA Programs Responding to Retaliatory Tariffs

In Millions of Dollars

Program	Funds Available	Program Outlays
USDA trade assistance announced in 2018		
Market Facilitation Program	$10,600	$8,617
Food Purchase and Distribution Program	$1,200	$1,100
Agricultural Trade Promotion Program	$200	$200
2018 subtotal	**$12,000**	**$9,917**
USDA trade assistance announced in 2019		
Market Facilitation Program	$14,500	$14,368
Food Purchase and Distribution Program	$1,400	$1,264
Agricultural Trade Promotion Program	$100	$100
2019 subtotal	**$16,000**	**$15,732**
Grand total	**$28,000**	**$25,650**

Sources: Compiled by CRS using USDA, "USDA Assists Farmers Impacted by Unjustified Retaliation," press release, July 24, 2018, https://www.usda.gov/about-usda/news/press-releases/2018/07/24/usda-assists-farmers-impacted-unjustified-retaliation; USDA, "USDA Announces Details of Assistance for Farmers Impacted by Unjustified Retaliation," press release, August 27, 2018; USDA, "USDA Launches Second Round of Trade Mitigation Payments," press release, December 17, 2018; USDA, "USDA Announces Details of Support Package for Farmers," press release, July 25, 2019; USDA, *USDA Explanatory Notes – Agricultural Marketing Service*, 2022; USDA, Agriculture Marketing Service, "Food Purchase and Distribution Program," https://www.ams.usda.gov/selling-food-to-usda/trade-mitigation-programs; USDA, Office of Inspector General, *Oversight of the Agricultural Trade Promotion Program*, Audit Report 07601-0001-24, August 2022; and Government Accountability Office (GAO), *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, GAO-22-104259, February 2022.

Note: Values in the "program outlays" column do not sum to total shown because of rounding applied by CRS.

How Were Market Facilitation Program Funds Distributed?

USDA allocated $25.1 billion for the Market Facilitation Program (MFP) and outlaid approximately $23.0 billion in MFP payments. According to GAO, USDA distributed 2018 MFP payments to 582,596 farms (excluding farms in Puerto Rico) and 2019 MFP payments to 643,965 farms (including farms in Puerto Rico).[99] The average 2018 MFP payment per farm was $14,791 in 2018 and the average 2019 MFP payment per farm was $22,312. In each year, payments varied across farms depending on the commodities produced on the farm, the way 2018 and 2019 MFP payments were structured, and other factors.

MFP payments were available to producers of certain crops and livestock commodities. Eligible livestock commodities for 2018 and 2019 MFP payments included dairy and hogs. Eligible crops varied for 2018 and 2019 MFP, with more commodities of each type eligible for 2019 MFP payments compared to those eligible for 2018 MFP payments. In each year, more than 90% of

[99] GAO, *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, GAO-22-104259, January 2022. GAO's report does not discuss 2018 payments to farmers in the U.S. territories in 2018 or 2019 payments to farmers in the U.S. territories excluding Puerto Rico.

MFP payments were distributed to producers of non-specialty crops (**Table 11**).[100] Livestock commodities received about 4% of total MFP payments each year, and specialty crops received about 1% of 2018 MFP payments and 2% of 2019 MFP payments.

Table 11. Distribution of Market Facilitation Program Payments, by Commodity Type

In Millions of Dollars

Commodity Type	2018 MFP Payments	2019 MFP Payments	Total
Non-specialty crops	$8,194	$13,529	$21,723
Livestock commodities	$351	$566	$917
Specialty crops	$72	$274	$346
Total	**$8,617**	**$14,368**	**$22,986**

Source: CRS calculations using GAO, *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, GAO-22-104259, January 2022.

Notes: MFP = Market Facilitation Program. Non-specialty crops eligible for 2018 MFP payments were corn, cotton, sorghum, soybeans, and wheat. Non-specialty crops eligible for 2019 MFP payments were alfalfa hay, barley, canola, chickpeas (large and small), corn, cotton (extra long staple and upland), crambe, dried beans, dry peas, flaxseed, lentils, millet, mustard seed, oats, peanuts, rapeseed, rice (long grain, medium grain, and temperate japonica), rye, safflower, sesame seed, sorghum, soybeans, sunflower seed, triticale, and wheat. Livestock commodities eligible for 2018 and 2019 MFP payments were hogs and dairy. Specialty crops eligible for 2018 MFP payments were shelled almonds and fresh sweet cherries. Specialty crops eligible for 2019 MFP payments were almonds, cranberries, cultivated ginseng, fresh grapes, fresh sweet cherries, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts.

In 2018, MFP made payments separately for each commodity.[101] According USDA, about 82% of 2018 MFP payments were for soybeans, 6% for cotton, and 3% each for sorghum and wheat (**Table 12**). Corn, dairy, and hogs each received about 2% of total payments. Fresh sweet cherries and shelled almonds each received less than 1% of total payments.

Table 12. Distribution of 2018 Market Facilitation Program Payments

Commodity	Payment (in $ million)	Share of Total
Corn	$133.52	2%
Cotton	$484.08	6%
Dairy	$182.35	2%
Fresh sweet cherries	$42.69	< 1%
Hogs	$155.59	2%
Shelled almonds	$21.92	< 1%

[100] Statute defines specialty crops as fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture) (7 U.S.C. §1621 note). For additional background on specialty crops, see CRS In Focus IF11317, *2018 Farm Bill Primer: Specialty Crops and Organic Agriculture*; and CRS In Focus IF12017, *Farm Bill Primer: Horticulture Title and Related Provisions*.

[101] In 2018, the Market Facilitation Program (MFP) had payment limits of $125,000 for non-specialty crops, $125,000 for specialty crops, and $125,000 for animal products (dairy and hogs). The maximum possible payment for a producer of all three types of commodities was $375,000. Eligibility for 2018 MFP was restricted to (1) applicants whose average adjusted gross income (AGI) was less than $900,000 and (2) applicants whose AGI exceeded $900,000 and at least 75% of the AGI was derived from farming, ranching, or forestry-related activities.

Commodity	Payment (in $ million)	Share of Total
Sorghum	$244.56	3%
Soybeans	$7,069.34	82%
Wheat	$241.62	3%
Total	$8,575.65	**100%**

Source: CRS calculations using USDA *Report to House and Senate Committees on Appropriations and Agriculture*, October 31, 2019.

Notes: USDA reported outlays for 2018 Market Facilitation Program (MFP) payments of approximately $8.576 billion as of October 31, 2019. As of January 2022, program outlays were $8.617 billion. Equivalent data by commodity for the 2019 MFP are not available.

For 2019 MFP for non-specialty crops, USDA made payments separately by county. All non-specialty crops within a county received a common payment rate that varied across counties from $15 per acre to $150 per acre. Payments for non-specialty crops were capped at $250,000.[102]

According to GAO, USDA chose to change its payment calculations to avoid distorting farmers' planting decisions in 2019.[103] County-specific payment rates meant that compensation for the same commodity varied by county. For example, GAO found that corn producers in the Midwest received $61 per acre on average, while corn producers in the South received $69 per acre on average. GAO concluded that USDA's use of the new methodology resulted in 2019 MFP payments that exceeded USDA's estimated trade damages for corn and were less than USDA's estimated trade damages for soybeans, sorghum, and cotton.[104]

For specialty crops, dairy, and livestock, USDA calculated 2019 MFP payments by commodity, similar to its 2018 method. Maximum payments were capped at $250,000 total for all specialty crops and $250,000 total for dairy and hogs. GAO concluded that USDA's use of a single payment rate for tree nuts resulted in 2019 MFP payments that exceeded USDA's estimated trade damages for almonds and pecans and were less than USDA's estimated trade damages for hazelnuts, macadamia nuts, pistachios, and walnuts.[105]

How Were Food Purchase and Distribution Program Funds Distributed?

USDA allocated $2.6 billion for the Food Purchase and Distribution Program (FPDP) and outlaid more than $2.3 billion on purchased commodities. Approximately 136 vendors were awarded

[102] In 2019, MFP had payment limits of $250,000 for non-specialty crops, $250,000 for specialty crops, and $250,000 for animal products (dairy and hogs). The maximum possible payment for a producer of all three types of commodities was $750,000. Eligibility for 2019 MFP was restricted to (1) applicants whose average AGI was less than $900,000 and (2) applicants whose AGI exceeded $900,000 and at least 75% of the AGI was derived from farming, ranching, or forestry-related activities.

[103] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

[104] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

[105] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

contracts under 2018 FPDP.[106] USDA has not released the number of vendors awarded contracts for 2019 FPDP.

Most of the commodities purchased were distributed to states for further distribution to food banks and food pantries that participate in The Emergency Food Assistance Program.[107] Other recipients eligible to receive FPDP commodities included states, for use in the Commodity Supplemental Foods Program; tribes that operate the Food Distribution Program on Indian reservations; and the National School Lunch Program.[108] Additionally, if domestic feeding programs were unable to use commodities purchased through FPDP, USDA had the option to distribute surplus commodities to approved nonprofit entities for distribution to low-income individuals.[109]

Data on actual FPDP purchases in 2018 or 2019 are not available. USDA announced targets for FPDP purchases in 2018 and 2019 (**Table 13**). The selection of targeted commodities varied in 2018 and 2019. In some instances, USDA targeted FPDP purchases of commodities that were also eligible for MFP payments. For example, FPDP targeted $919.70 million worth of dairy products and pork in 2018 and 2019. Producers of milk and hogs also received $917 million in 2018 MFP and 2019 MFP payments (**Table 11**). USDA ceased targeting FPDP purchases for some commodities that were also made eligible for MFP payments in 2019. USDA targeted 12 commodities—cranberries, grapes, hazelnuts, kidney beans, lentils, macadamia nuts, navy beans, peas, pecans, pistachios, rice, and walnuts—for 2018 FPDP purchases but not for 2019 FPDP purchases; these commodities were ineligible for 2018 MFP payments and eligible for 2019 MFP payments. USDA has not provided data that would allow for comparison of the amount of support provided from FPDP and MFP separately for each these commodities. Total FPDP targeted purchases for specialty crops were $390.42 million in 2018 and $282.60 million in 2019 ($673.02 million total). Total 2018 MFP and 2019 MFP payments for specialty crops were $346 million (**Table 11**).

Table 13. Food Purchase and Distribution Program Targeted Commodities, 2018 and 2019

In Millions of Dollars

Commodity	2018 Targeted Purchases	2019 Targeted Purchases	Total
Apples	$93.40	$88.00	$181.40
Apricots	$0.20	$0.10	$0.30
Beef	$14.80	$151.00	$165.80
Blueberries	$1.70	$5.00	$6.70
Citrus	$83.70	$104.00	$187.70
Cranberries	$32.80	$0.00	$32.80
Dairy products	$84.90	$68.00	$152.90

[106] USDA, "Report to House and Senate Committees on Appropriations and Agriculture," October 31, 2019.

[107] USDA, Agricultural Marketing Service, "Food Purchase and Distribution Program," https://www.ams.usda.gov/selling-food-to-usda/trade-mitigation-programs.

[108] USDA, "USDA Announces Details of Support Packaged for Farmers," press release, July 25, 2019.

[109] On July 29, 2019, USDA published a final rule creating the Expanded Domestic Commodity Donation Program, which allowed for disposal of surplus commodities acquired as part of USDA's trade mitigation response to outlets not currently used in existing USDA Food and Nutrition Service programs.

Commodity	2018 Targeted Purchases	2019 Targeted Purchases	Total
Figs	$0.02	$0.10	$0.12
Grapes	$48.20	$0.00	$48.20
Hazelnuts	$2.10	$0.00	$2.10
Kidney beans	$14.20	$0.00	$14.20
Lamb	$0.00	$17.00	$17.00
Lentils	$1.80	$0.00	$1.80
Macadamia nuts	$7.70	$0.00	$7.70
Navy beans	$18.00	$0.00	$18.00
Onions	$0.00	$0.40	$0.40
Peanut butter	$12.30	$0.00	$12.30
Pears	$1.40	$4.00	$5.40
Peas	$11.80	$0.00	$11.80
Pecans	$16.00	$0.00	$16.00
Pistachios	$85.20	$0.00	$85.20
Plums/prunes	$18.70	$22.00	$40.70
Pork	$558.80	$208.00	$766.80
Potatoes	$44.50	$22.00	$66.50
Poultry	$0.00	$432.00	$432.00
Processed foods	$0.00	$200.00	$200.00
Raisins	$0.00	$24.00	$24.00
Rice	$48.10	$0.00	$48.10
Strawberries	$1.50	$2.00	$3.50
Sweet corn	$2.40	$11.00	$13.40
Walnuts	$34.60	$0.00	$34.60
Total	**$1,238.82**	**$1,358.60**	**$2,597.42**

Source: CRS calculations using USDA, "USDA Announces Details of Assistance for Farmers Impacted by Unjustified Retaliation," press release, August 27, 2018; and USDA, "USDA Announces Details of Support Packaged for Farmers," press release, July 25, 2019.

Notes: Citrus includes grapefruit, lemons, limes, oranges, and orange juice. Processed foods include canned tomatoes, pasta, prepared cereals, soups and broths, tomato sauces, and other products. Cranberries, grapes, hazelnuts, kidney beans, lentils, macadamia nuts, navy beans, peas, pecans, pistachios, rice, and walnuts were purchased in 2018 but were not eligible in 2019.

USDA administered FPDP under the rules of USDA's Commodity Procurement Program and required commodities supplied to be sourced from American producers on American farms. For FPDP, the USDA Office of Inspector General (OIG) found no reportable issues related to the type and quantify of commodities purchased but did find reportable issues related to verifying the domestic origin of purchased commodities and other aspects of contract management.[110] In

[110] USDA, Office of Inspector General, *Food Purchase and Distribution Program*, Audit Report 01601-0003-41, August 2023.

response to a congressional directive, USDA noted that six vendors awarded contracts under 2018 FPDP had substantial foreign ownership but that the products purchased for the 2018 FPDP were "100 percent domestically produced and processed."[111] In 2018, the six foreign-owned vendors supplied approximately $459 million in pork, $107 million in potatoes, $1.8 million in blueberries, and $1.4 million in strawberries.

How Were Agricultural Trade Promotion Program Funds Distributed?

USDA allocated $300 million for the Agricultural Trade Promotion Program (ATP) and spent $300 million on trade promotion activities. ATP provided cost-share funds to 59 organizations that support activities to develop new markets for U.S. agricultural and agriculture-related products (e.g., forestry and seafood products).[112] ATP-eligible activities included consumer advertising, public relations, point-of-sale demonstrations, participation in trade fairs and exhibits, market research, and technical assistance. ATP participants were required to contribute 10% for generic promotion activities and 50% for branded promotion activities.[113]

ATP was similar to the Market Access Program (MAP) authorized through the farm bill, which receives annual appropriations of $200 million.[114] Using results from prior analyses of MAP, an academic study estimated that these additional ATP funds could expand U.S. agricultural exports by $8.5 billion and U.S. farm sector cash receipts by $4.8 billion.[115]

USDA OIG audited ATP in 2022. USDA OIG found that USDA awarded funding to applicants "who may not have been the most meritorious based on the announced criteria and program regulations."[116] USDA OIG said they were "unable to attest to the merits of the 59 ATP grants awarded [by USDA Foreign Agricultural Service] in fiscal year (FY) 2019, totaling $300 million."

How Have Agricultural Stakeholders and Oversight Agencies Assessed USDA's Response to Retaliatory Tariffs Imposed in 2018 and 2019?

USDA's ad hoc programs in response to retaliatory tariffs on U.S. agricultural products provided support to the agricultural sector with the goals of increasing farm incomes, increasing domestic

[111] USDA, "Report to House and Senate Committees on Appropriations and Agriculture," October 31, 2019, p. 15. Section 119 of the Continuing Appropriations Act, 2020, and Health Extenders Act of 2019 (P.L. 116-59) required the Secretary of Agriculture to provide an accounting of commodity purchases from substantially foreign-owned companies or their subsidiaries, among other provisions.

[112] For a list of Agricultural Trade Promotion Program (ATP) awardees, see USDA, FAS, "ATP Funding Allocations," https://www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp/atp-funding-allocations.

[113] USDA, Commodity Credit Corporation, "Agricultural Trade Promotion Program," 83 *Federal Register* 4417, August 30, 2018.

[114] For additional background on farm-bill-funded trade promotion programs, see CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*.

[115] Gary Williams, "The Overlooked Agricultural Trade Promotion Program of the USDA Trade Aid Packages," *Choices* (Quarter 4, 2019).

[116] USDA Office of Inspector General, *Oversight of the Agricultural Trade Promotion Program*, Audit Report 07601-0001-24, August 2022, https://usdaoig.oversight.gov/sites/default/files/reports/2024-11/07601000124FRredactedpublic.pdf.

prices through purchases of agricultural commodities, and diversifying export markets. Farmers reported that MFP helped them manage cash flow on their operations.[117]

In response to congressional requests, GAO published analyses of MFP in 2020, 2021, and 2022.[118] In their 2021 analysis, GAO found that USDA OCE's 2018 estimates of economic losses "used a justifiable baseline" to model what trade would have been in the absence of retaliatory tariffs. GAO also found that USDA OCE's 2019 estimates of economic losses "used baselines that did not best represent what trade would be absent the retaliatory tariffs, and that increased trade damage estimates."[119] GAO also found that USDA's methodology for calculating 2019 MFP payments "addressed some limitations of its 2018 methodology but resulted in (1) producers of the same nonspecialty crop (such as corn and soybeans) being paid differently in different counties, and (2) total payments for a nonspecialty crop different from USDA's estimate of trade damage to the crop."

In their response to GAO's 2021 analysis, USDA OCE stated that

> [t]he draft report's finding that the 2019 baseline is not representative and increased trade damage estimates does not take into account that the decision on what is the appropriate baseline depends on the policy goals and that there is not one single most representative baseline. OCE provided alternatives that reflected different options based on the direction of senior USDA decision makers under the previous administration and selection of the baseline was part of the program design and not made by OCE.[120]

USDA OCE also noted that their 2018 and 2019 economic analyses adhered to departmental and Office of Management and Budget requirements for economic analyses.

In their 2022 analysis, GAO found that USDA's compliance methodology for MFP was not designed to identify high-risk payments for auditing.[121] GAO noted that USDA conducted multiple compliance reviews for MFP eligibility requirements and that the reviews identified significant improper payments in 2018 and 2019. GAO found that the review of 2018 MFP payments was "limited in its usefulness for several reasons" and that USDA discontinued its review of 2019 MFP payments because of competing agency priorities.

USDA OIG audited FPDP in 2023. USDA OIG found no reportable issues related to the type and quantity of commodities purchased but did find reportable issues related to verifying the domestic origin of purchased commodities and other aspects of contract management.[122]

USDA OIG audited ATP in 2022. USDA OIG found that USDA awarded funding to applicants "who may not have been the most meritorious based on the announced criteria and program

---

[117] See, for example, witness testimony provided to the House Committee on Agriculture Subcommittee on Livestock and Foreign Agriculture during the hearing "U.S. Agricultural Trade: Stakeholder Perspectives" on March 10, 2020, https://democrats-agriculture.house.gov/uploadedfiles/116-33_-_42601.pdf.

[118] GAO, *USDA Market Facilitation Program: Information on Payments for 2019*, GAO-20-700R, August 2020; GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*; and GAO, GAO-22-104259, *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, January 2022.

[119] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

[120] GAO, "Appendix VIII: Comments from the Department of Agriculture," *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*, p. 86.

[121] GAO, GAO-22-104259, *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, January 2022.

[122] USDA, Office of Inspector General, *Food Purchase and Distribution Program*, Audit Report 01601-0003-41, August 2023.

regulations."[123] USDA OIG said they were "unable to attest to the merits of the 59 ATP grants awarded by [USDA Foreign Agricultural Service] in fiscal year (FY) 2019, totaling $300 million."

For More Information

Congressional staff seeking additional information on any of the key terms, concepts, and answers to the FAQs in this report may contact the authors and/or refer to CRS reports on trade authorities, agricultural trade, and farm support in general, which have been identified in the relevant sections above.

Author Information

Benjamin Tsui
Analyst in Agricultural Policy

Stephanie Rosch
Analyst in Agricultural Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

[123] USDA, Office of Inspector General, *Oversight of the Agricultural Trade Promotion Program*, Audit Report 07601-0001-24, August, 2022.

Federal Court Strikes Down 2019 & 2024 ESA Regulations (published 4.16.26)

On March 30, 2026, a federal court in California issued a ruling to overturn several Endangered Species Act ("ESA") regulations adopted by the Trump administration in 2019 and the Biden administration in 2024. The plaintiffs in ***Ctr. for Biological Diversity v. U.S. Dep't of Interior*, No. 24-cv-04651 (N.D. Cal. Mar. 30, 2026)** challenged six rules in total with the court ultimately concluding that four violated the statutory text of the ESA. Earlier this year, the United States Fish and Wildlife Service ("FWS") together with the National Marine Fisheries Service ("NMFS") proposed a slate of new ESA regulations intended to restore the rules established under the first Trump administration. While those rules have yet to be finalized, it is possible that the recent court ruling may offer some insight into how courts may ultimately treat those regulations.

ESA Overview

The ESA was enacted in 1973 for the purpose of conserving species at risk of extinction and the habitats upon which those species depend. 16 U.S.C. § 1531(b). The statute is jointly administered by FWS and NMFS (collectively, "the Services") which are responsible for creating and maintaining a list of species that are classified as either "threatened" or "endangered" depending on the level of risk those species face. 16 U.S.C. § 1533. Once a species is added to that list, it becomes protected under the ESA.

When the Services list a species for protection under the ESA, they must also designate critical habitat for the species. 16 U.S.C. § 1533(a)(3)(A)(i). The ESA defines critical habitat as specific geographical areas which are "occupied by the species, at the time it is listed […] on which are found those physical or biological features essential to the conservation of the species" or areas which are not occupied by the species at the time of listing but the Services have determined are "essential for the conservation of the species." 16 U.S.C. § 1532 (5)(A).

Along with requiring the Services to list species under the ESA and designate critical habitat for those species, the ESA also requires all other federal agencies to consult with the Services to avoid harming listed species or designated critical habitat. Specifically, the ESA requires each federal agency to ensure that any action it "authorize[s], fund[s], or carrie[s] out" is "not likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of" critical habitat. 16 U.S.C. § 1536(a)(2). To initiate this process, the agency taking action will determine whether its action "may affect" listed species. 50 C.F.R. § 402.13. If the agency concludes that its action "may affect" a listed species, it must reach out to the Services to determine whether the action is

"likely to adversely affect" the species. 50 C.F.R. § 402.13 If so, then the Services must engage in formal consultation, a process which requires the consulting Service to prepare a document known as a Biological Opinion ("BiOp"). 50 C.F.R. § 402.13 The BiOp will evaluate more thoroughly the expected impacts of the agency's action and if it concludes that the action is likely to jeopardize the continued existence of a protected species or result in the destruction or adverse modification of critical habitat, it must also include mitigation measures the agency can take to avoid causing such negative impacts. 50 C.F.R. § 402.13. When making a determination about the impacts an agency action may have on listed species, the Services must base their conclusions on "the best scientific and commercial data available." 16 U.S.C. § 1536(a)(2).

Background to the Case

Since 2019, the ESA has experienced several rounds of regulatory changes. In August 2019, the Services issued final rules to change the procedures related to the listing of species under the ESA and the consultation process between the Services and other federal agencies. A closer look at those changes is available here. The plaintiffs in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* filed a lawsuit to challenge those 2019 regulations. However, following a change in Presidential administration, the court sent the matter back to the Services for review, bringing that lawsuit to an end. In 2024, the Services adopted new regulations which, according to the plaintiffs, resolved some of their concerns with the 2019 regulations but ultimately retained certain issues while introducing others. More information on the 2024 regulatory changes can be found here.

After the new regulations were finalized in 2024, the plaintiffs filed the current lawsuit to challenge six specific provisions that had been either introduced in 2019 and retained in 2024 or introduced for the first time in 2024. Following another change in Presidential administration in 2025, the Services sought to have the case either paused or dismissed, citing another round of updated ESA regulations that had been proposed in 2025 which the Services expect to finalize before the end of 2026. However, the court concluded that neither pausing or dismissing the case would be appropriate, noting that it would be better for the court to "provide the [Services] with its reading" before the new regulations are final so that the Services can take into account any "problems" the court might find.

Many of the regulatory changes proposed in 2025 were identical to those that had been made in 2019 before being modified in 2024. Although various lawsuits were filed to challenge the 2019 rules, they were largely paused or dismissed after the Services announced that they would revisit those regulations following the transition from the Trump administration to the Biden administration. For that reason, no court ever fully considered whether the 2019 rules complied with the ESA. The recent decision in *Ctr. for Biological*

Diversity v. U.S. Dep't of Interior represents the first time a court has considered the legality of those regulations and may provide some insight into how the rules proposed in 2025 may be viewed by courts after they are finalized.

Recent Court Decision

The plaintiffs in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* asked the court to review six ESA regulations and consider whether they violated the statutory requirements of the ESA. Four of those regulations are related to the consultation process while the other two are concerned with the designation of critical habitat. Of those six, the court found that four violated the ESA and should be overturned. The other two were upheld.

"Effects of the Action"

During agency consultation with the Services, the ESA requires the Services to evaluate the effects of the agency action on listed species and critical habitat to determine whether jeopardy of a species or the destruction or adverse modification of critical habitat is likely to occur. 16 U.S.C. § 1536. Before 2019, the ESA regulations defined "effects of the action" as "the direct and indirect effects of an action on the species or critical habitat." 50 C.F.R. § 402.02 (2018). The 2019 rules changed the definition of "effects of the action" to "all consequences to listed species or critical habitat that are caused by the proposed action" and clarified that a "consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur." 50 C.F.R. § 402.02 (2019). The Services left this definition in place when it amended the regulations in 2024.

The plaintiffs argue that this violates the ESA's requirement that the Services rely on the best scientific data available when considering the impacts an agency's action may have on listed species and that it the phrase "reasonably certain to occur" conflicts with the ESA requirement that the Services consider whether jeopardy of a species is "likely" to occur. The court agreed with the plaintiffs on both arguments. First, the court concluded that the 2019 rule violates the ESA's "best available data" requirement because the ESA "imposes a mandatory duty on the Services to analyze the likelihood of jeopardy or harm to habitat using the best available data." According to the court, the best scientific data available may not be the same as impacts that are "reasonably certain to occur." Next, the court concluded that the provision of the 2019 regulation that requires the Services to only consider those impacts to species and habitat which are "reasonably certain to occur" is contrary to the ESA requirement that Services consider whether jeopardy of a species or harm to habitat is "likely." Because what is "likely" may not necessarily include what is "reasonably certain to occur," the court held that this regulation violated the ESA and should be overturned.

Consideration of Mitigation Measures

When drafting a BiOp, the ESA regulations require the Services to take into account "any beneficial actions" taken or proposed to be taken by the action agency. 50 C.F.R. § 402.14(g)(8). The purpose of this rule is to ensure that the Services consider any activities that are beneficial to listed species that the consulting agency plans to include as part of its proposed action when determining what the impacts of that action could be to protected wildlife. In 2019, the Services amended the ESA rules to clarify that the Services should take such beneficial activities into consideration without "any additional demonstration of binding plans." 50 C.F.R. § 402.14(g)(8). In other words, the 2019 rules require the Services to give proposed beneficial activities the same consideration as any other portion of the agency action even if the agency has not committed to carrying out those activities.

The plaintiffs argued that this violates the ESA's requirement that the Services "insure" against jeopardy of listed species by "forcing them to consider amorphous, non-binding mitigation plans in making no-jeopardy findings." In it's opinion, the court agreed with the plaintiffs, concluding that the 2019 rule violated the ESA because it does not satisfy the statutory requirement that the Services "insure" against harm to species or habitat. According to the court, the ESA requires beneficial activities to be excluded from consideration unless they are binding.

Definition of "Destruction or Adverse Modification"

Under the ESA, the Services must "insure" that federal agency actions will not cause jeopardy to listed species or "destruction or adverse modification" to designated critical habitat. 16 U.S.C. § 1536(a)(2). Prior to 2019, the ESA regulations defined "destruction or adverse modification" as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species." 50 C.F.R. § 402.02 (2018). In 2019, that definition was amended to "a direct or indirect alteration that appreciably diminishes the value of critical habitat *as a whole* for the conservation of a listed species." 50 C.F.R. § 402.02 (2019). That definition was retained in the 2024 regulations.

The plaintiffs argue that introducing the language "as a whole" violates the ESA by replacing the statutory requirement to avoid all destruction or adverse modification of critical habitat with a regulatory provision that allows at least some destruction or adverse modification of critical habitat. The court agreed, concluding that the text of the ESA "prohibits adverse modification entirely" and that the 2019 rule violated that requirement by permitting at least some adverse modification to critical habitat.

Duty to Request Reinitiation of Consultation

Before 2024, the ESA regulations concerning agency consultation required both the agency taking action or the consulting Service to request reinitiation of consultation under certain circumstances. 50 C.F.R. § 402.16(a) (2023). In 2024, the Services amended their regulations so that only the agency taking action is required to request reinitiation of consultation. The plaintiffs claim that the Services unlawfully rescinded their duty to request reinitiation of consultation, arguing that the Services failed to provide adequate reasons to support amending the regulations. In 2024, the Services stated that they were amending the regulation to clarify that only the action agency has the authority and responsibility to initiate or reinitiation consultation. The court was not persuaded by that reasoning. According to the court, while the text of the ESA does not allow the Services to compel any federal agency to engage in consultation, nothing in the pre-2024 rule gave the Services that authority. The rule required the Services to request reinitiation in certain circumstances but did not grant the Services the authority to require the federal agency to reinitiate consultation. Because the Services failed to provide a persuasive reason for changing a rule that had been in place for 25 years, the court found the change to be unlawfully arbitrary and concluded that it should be overturned.

Rules Upheld

Finally, the court considered the last two regulations challenged by the plaintiffs. While the court overturned the first four regulations it considered, it upheld the last two after concluding that they did not violate the ESA.

The ESA defines "threated species" as "any species which is likely to become an endangered species within the foreseeable future[.]" 16 U.S.C. § 1532(20). Before 2024, the ESA regulations required the Services to defined "foreseeable future" as extending "only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely." 50 C.F.R. § 424.11(d) (2023). In 2024, the Services amended that definition to "as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species' responses to those threats." 50 C.F.R. § 424.11(d) (2025). In making this change, the Services replaced language requiring that they "reasonably determine" that threats to a species are "likely" with language that the Services make "reasonably reliable predictions" about those same threats. The plaintiffs argued that the new language contradicts the ESA requirement that the Services base their conclusions on the "best available data," but the court disagreed. In its ruling, the court concluded that the two phrases "appear synonymous" and that to determine whether an effect is "likely" requires making a "reliable prediction" about that effect. Because the court determined that the pre-2024 rule and the amended rule are functionally equivalent, it concluded that the rule should be upheld.

Finally, the court considered the plaintiffs' challenge to an ESA regulation concerning the designation of critical habitat. The text of the ESA requires the Services to designate critical habitat at the same time it lists a species "to the maximum extent prudent and determinable." 16 U.S.C. § 1533(a)(3). Before 2024, the ESA regulations identified two limited circumstances where designating critical habitat at the same time a species is listed would not be prudent and determinable. In 2024, the Services modified the regulation to include two other circumstances where designating critical habitat would not be necessary. The plaintiffs argue that the new rule violates the ESA by unlawfully expanding the conditions under which the Services may find that designating critical habitat is not prudent and determinable. However, the court disagreed, citing previous court decisions which held that the Services could only make a not-prudent finding with respect to critical habitat would be beneficial to the species. Because the two additional circumstances outlined in the 2024 ruling described situations where reaching a not-prudent finding would be beneficial to the species, the court found that the regulation complied with the ESA and should be upheld.

Going Forward

Since 2019, the ESA has seen several rounds of regulatory updates. So far, this is the first time a court has reviewed any of the updated rules on the merits to consider whether they comply with the statutory requirements of the ESA. In 2025, the Services launched a new round of regulatory changes, many of which mirror the changes made in 2019. While those rules have yet to be finalized, the ruling in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* may offer some insight into how courts will treat those regulations once they are final. For those who are regulated under the ESA, remaining informed on regulatory changes is helpful to understand how the law will be implemented going forward.

To view the court's decision in *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, click here.

To view the text of the ESA, click here.

For more NALC resources on the ESA, click here.

Supreme Court Agrees to Hear Pesticide Preemption Lawsuit (published 1.27.26)

The United States Supreme Court has announced that it will hear oral arguments in *Durnell v. Monsanto*, a case filed by a Missouri plaintiff who claims that exposure to the herbicide Roundup and its active ingredient glyphosate caused him to develop non-Hodgkin's lymphoma. The case is one of thousands that have been filed over the last decade against Monsanto Company (now owned by Bayer) by plaintiffs who claim that using Roundup caused them to develop cancer and that Monsanto failed to warn consumers about the alleged health risk. For its part, Bayer has argued that the state law claims raised by plaintiffs in these cases are preempted by federal pesticide law and should be dismissed. After years of litigation, that question will now be presented to the Supreme Court. However, the Court rules in this case will have an impact not only on ongoing litigation involving Roundup and glyphosate but may set a precedent for lawsuits involving other pesticide products.

Background: Roundup Lawsuits and *Durnell*

Roundup is one of the most widely used herbicides in the United States. It was developed in the 1970s and has been available in the United States for decades. Glyphosate, the active ingredient in Roundup, was first approved by the Environmental Protection Agency ("EPA") since 1974. Roundup is used both in agricultural and non-agricultural settings. Since the 1990s, Roundup has been an essential part of Monsanto's Roundup Ready system which paired use of the herbicide with glyphosate-resistant crop seeds to allow direct applications during the growing seasons. Commercial formulations of Roundup have been used in home and municipal landscaping for years.

Since 2015, tens of thousands of lawsuits have been filed against Bayer by plaintiffs claiming that the use of Roundup caused them to develop cancer. These cases have been filed in state courts and raise what products liability claims that arise out of state law, specifically the civil tort of failure to warn. In response, Bayer has argued that federal pesticide law preempts state law products liability claims and that such claims should be dismissed. While only a handful of the cases filed against Bayer have gone to trial, juries and judges alike have been split on the issue. While some juries have issued verdicts in favor of Bayer, finding that the pesticide manufacturer complied with the law and is not liable for a plaintiff's injuries, others have returned verdicts in favor of the plaintiffs and awarded damages in amounts exceeding $2 billion. Similarly, of the three circuit courts that have been asked to determine whether federal pesticide law preempts the plaintiffs' state law claims, the Third Circuit has held that the claims are preempted while the Ninth and Eleventh Circuits have held that they are not.

The plaintiff in *Durnell* originally filed his lawsuit against Bayer in 2019. He filed his case in state court in Missouri where he lives and where Monsanto is headquartered. Like other plaintiffs in pesticide liability cases, the plaintiff in *Durnell* raised several state law products liability claims including failure to warn. At trial, the jury concluded that Monsanto had failed to warn the plaintiff of possible health risks of using Roundup and awarded him $1.25 million. Bayer appealed that verdict to the Missouri Court of Appeals which affirmed the jury order and held that the plaintiff's failure to warn claim was not preempted by federal law. Bayer then attempted to appeal that ruling to the Missouri Supreme Court which declined to hear the case. Now, the matter comes before the United States Supreme Court.

Arguments Before the Supreme Court

Both the plaintiff and Bayer have made arguments to the Supreme Court that have become familiar to those keeping up with how pesticide liability cases have evolved in recent years. Each argument focuses on the text of the Federal Insecticide, Rodenticide, and Fungicide Act ("FIFRA") and a previous Supreme Court case to either support or refute the argument that federal pesticide law preempts state law claims of failure to warn.

FIFRA is the primary federal law regulating pesticide use in the United States. Under FIFRA, a pesticide cannot be sold or distributed in the United States until it has been approved for use by the Environmental Protection Agency ("EPA"). To approve a pesticide, EPA must determine that the product will not cause "unreasonable adverse effects" on the environment when used as intended. 7 U.S.C. § 136a(c)(5)(C). FIFRA defines "unreasonable adverse effects" as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide[.]" 7 U.S.C. § 136(bb). To meet this standard, EPA will assess the human health impacts of pesticides it is seeking to register, including assessing the carcinogenicity of the product and its active ingredients.

Along with providing for the registration of pesticide products, FIFRA also describes the authority that states have to regulate approved pesticides. Under FIFRA, a state may "regulate the sale or use of any federally registered pesticide[.]" 7 U.S.C. § 136v(a). However, FIFRA also provides that states "shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from" those required by federal law. 7 U.S.C. § 136v(b). In other words, while FIFRA allows states to regulate the sale and use of federally registered pesticides, it does not allow states to set requirements for the labeling or packaging of a registered pesticide that differs from the labeling and packaging approved by EPA. Additionally, FIFRA prohibits the sale and distribution of any pesticide which is "misbranded." 7 U.S.C. § 136j(a)(1)(E). Under FIFRA, a pesticide is

considered misbranded if its label does not include a warning statement which may be necessary to protect health and the environment. 7 U.S.C. § 136(q)(1)(G).

Failure to warn is a type of civil tort that is typically raised in products liability cases. As with most civil torts, failure to warn arises out of state law and is enforced at the state level. When a plaintiff raises a claim of failure to warn, they are not arguing that a product they used was defective, but rather that the product manufacturer failed to provide adequate warnings or instructions about the safe use of the product. To succeed on failure to warn, a plaintiff will generally need to demonstrate two things. First, that the manufacturer did not adequately warn consumers about a particular risk, and second that the risk was either known or knowable in light of the best available knowledge at the time the product was manufactured and distributed.

In the past, the Supreme Court has only once addressed FIFRA's prohibition on states to impose labeling requirements that differ from those approved by EPA and how it interacts with products liability claims that arise under state law. In ***Bates v. Dow Agrosciences LLC*, 544 U.S. 431**, the Supreme Court held that a pesticide labeling requirement imposed by state law would be preempted by FIFRA if the requirement is "in addition to or different from" the labeling and packaging requirements imposed under FIFRA. The Court noted that a state law requiring a pesticide label to include the word "DANGER" when its federally registered label is required to include the word "CAUTION" would be preempted by FIFRA. However, the Court also noted that a state requirement for pesticide labeling would not be preempted if it was "equivalent to, and fully consistent with, FIFRA's misbranding provisions."

In appealing *Durnell* to the Supreme Court, Bayer asked the Court to consider whether FIFRA preempts the plaintiff's state law failure to warn claim. Bayer argues that the claim is preempted. It first cites FIFRA's requirement that states may not require a pesticide's label to bear language that is "in addition to or different from" federal labeling requirements. According to Bayer, the only way it could fully resolve the plaintiff's claims would be to amend the label for Roundup products sold in Missouri to include a cancer warning which is not required by the federal label. Not only does the federal label for Roundup not include a cancer warning, but Bayer also notes that EPA has never made a finding that either Roundup or glyphosate are carcinogenic to humans. Relying on the ruling in *Bates*, Bayer argues that the plaintiff's failure to warn claims should be preempted because to resolve them, Bayer would be required to put a cancer warning on its Roundup labels which would differ from the labeling language required under federal law.

The plaintiff argues exactly the opposite. According to the plaintiff, his failure to warn claims are not preempted by FIFRA because they run parallel to FIFRA's misbranding

provisions. Also relying on *Bates*, the plaintiff in *Durnell* argues that Supreme Court precedent has already established that a state law products liability claim will not be preempted by FIFRA if it is equivalent to and consistent with FIFRA's prohibition on the sale of misbranded pesticides. According to the plaintiff, his failure to warn claim is consistent with FIFRA's misbranding prohibitions because FIFRA considers a pesticide to be misbranded if it does not include a warning necessary to protect health and the claim of failure to warn was raised to argue that Bayer failed to provide a necessary health warning to users of Roundup. Because failure to warn raises a claim that is consistent with FIFRA's misbranding provisions, the plaintiff asks the Supreme Court to rule that the claim is not preempted.

While these arguments directly mirror claims raised by Bayer and other plaintiffs in other cases involving federal preemption of failure to warn claims in pesticide liability cases, *Durnell* adds a twist that slightly differentiates it from those cases. Unlike other plaintiffs, the plaintiff in *Durnell* asserts that his failure to warn claims were not brought over the labels affixed to each individual unit of Roundup, but rather to the marketing materials that Monsanto used to advertise Roundup in the 1990s and 2000s. The plaintiff claims that he bought and used Roundup based on commercials and print advertising that stated using Roundup was completely safe and featured people applying Roundup while wearing only tee shirts and shorts. Because FIFRA applies only to pesticide labeling, not marketing materials, the plaintiff argues that his lawsuit differs from previous litigation where the question of whether FIFRA preempts failure to warn has been raised. Bayer maintains that there is no difference between *Durnell* and prior preemption cases because it would still need to update labels for units of Roundup sold in the state of Missouri to include a cancer warning to fully redress the plaintiff's claim.

Going Forward

As of the publication of this article, the Supreme Court has not scheduled a date to hear oral arguments in *Durnell*. It is not yet clear when a final ruling in the case can be expected. Whatever the outcome, whether the Court agrees with the plaintiff and finds that FIFRA does not preempt the state law claim of failure to warn or sides with Bayer and finds that FIFRA does preempt such claims, the final decision in this lawsuit will affect not only the thousands of currently pending pesticide liability cases but is also likely to affect any such lawsuits filed in the future. While the bulk of pesticide liability cases filed over the last decade have involved Roundup and glyphosate, other pesticides such as paraquat and chlorpyrifos have also been the focus of such lawsuits. Despite settling thousands of pesticide liability lawsuits, Bayer still has thousands more actively pending against it. The

company has indicated that if the matter is not resolved, it could threaten the future availability of Roundup for agricultural uses.

Although it is too early to predict how the Supreme Court will rule, prior to agreeing to hear *Durnell*, the Court asked the federal government to weigh in. In December, the Solicitor General filed an amicus brief both urging the Supreme Court to take up the case and clarifying that the federal government believes that FIFRA preempts the plaintiff's failure to warn case.

The National Agricultural Law Center will provide in-depth updates as this case proceeds.

To view Bayer's petition to the Supreme Court, click here.

To view the plaintiff's response, click here.

To view the Solicitor General's amicus brief, click here.

For more information on pesticide liability lawsuits from the National Agricultural Law Center, click here.

WOTUS Update: EPA & Corps Propose New Definition (published 12.02.25)

On November 17, 2025, the Environmental Protection Agency ("EPA") together with the United States Army Corps of Engineers ("the Corps") announced a proposed rule to redefine the term "waters of the United States" under the Clean Water Act ("CWA"). The intent of the proposal is to bring the definition of waters of the United States, commonly referred to as WOTUS, in line with the United States Supreme Court 2023 decision ***Sackett v. EPA*, 566 US 120 (2023)**. This proposal marks the sixth time since 2015 that the regulatory definition of WOTUS has changed and is likely to prompt litigation after it is formally finalized. The proposal has been published the Federal Register and is currently open for public comment through January 5, 2026.

Background CWA, Current WOTUS Rule, and *Sackett*

The CWA of 1972 is the leading federal water pollution statute in the United States. The purpose of the Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To achieve this goal, the CWA has established permitting programs to limit the amount of pollution discharged into waters and wetlands. Under the National Pollution Elimination System ("NPDES") program, it is illegal for anyone to discharge a pollutant from a discernable, concrete source into "navigable waters" without first receiving a permit from EPA. 33 U.S.C. § 1342. Similarly, the 404 permitting program prohibits the discharge of "dredged or fill material" into "navigable waters" without a permit from the Corps. 33 U.S.C. § 1344. Crucially, both the NPDES and 404 permitting programs cover activities that occur within "navigable waters." Although the term "navigable waters" is a legal term of art which is generally understood to refer to waters which can be used to facilitate interstate or foreign commerce, the CWA defines the term as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7). However, the CWA does not define the term "waters of the United States." Instead, it has been left up to EPA and the Corps to define the term.

In the decades since the CWA was passed, crafting a lasting definition of WOTUS has been a struggle for the agencies and courts, and the formal regulatory definition has changed several times. A full timeline of the different definitions of WOTUS is available here. Most recently, the definition of WOTUS was revised in 2023, first through a finalized rulemaking conducted by EPA during the Biden administration, and then again following the Supreme Court's ruling in *Sackett v. EPA*. Under the initial 2023 final rule, the definition of WOTUS included five categories of waters: (1) traditional navigable waters that could be used in interstate for foreign commerce, the territorial seas, and interstate waters including interstate wetlands; (2) impoundments of waters otherwise identified as WOTUS; (3) tributaries of traditionally navigable waters or impoundments that met either the relatively

permanent standard or significant nexus test articulated by the Supreme Court in ***Rapanos v. US*, 547 US 715 (2006)**; (4) wetlands adjacent to any WOTUS with "adjacent" understood to mean neighboring, bordering, or contiguous; and (5) all other lakes, ponds, streams, and wetlands that satisfied either the relatively permanent standard or significant nexus test. Further information on the initial 2023 WOTUS definition can be found here.

The initial 2023 WOTUS rule fully incorporated both the relatively permanent standard and the significant nexus test which stem from the Supreme Court's decision in *Rapanos v. US*. In that case, the Supreme Court was asked to consider the degree to which wetlands could be included in the definition of WOTUS. The Court was unable to reach a majority opinion, instead issuing a plurality opinion and a concurring opinion. The plurality opinion articulated the relatively permanent standard which would extend the definition of WOTUS to those waters which are "relatively permanent, standing or continuously flowing" and then to those wetlands which share a "continuous surface connection" with such waters. The concurring opinion, on the other hand, crafted the significant nexus test which extended the WOTUS jurisdiction to those wetlands that share a "significant nexus," with a water that is already recognized as a WOTUS. A significant nexus would exist if a wetland "significantly affect[s] the chemical, physical, and biological integrity" with a recognized WOTUS.

Weeks after the first 2023 definition of WOTUS was finalized, the Supreme Court released its decision in *Sackett v. EPA*. Like in *Rapanos v. US*, the Court in *Sackett v. EPA* was asked to consider to what extent wetlands should be included in the WOTUS definition. Specifically, the plaintiffs specifically asked the Supreme Court to formally overturn the significant nexus test and adopt the relatively permanent standard. Ultimately, the Court did just that, concluding that the term "waters" in "waters of the United States" refers to "only those relatively permanent, standing or continuously flowing bodies of water […] described in ordinary parlance as streams, oceans, river, and lakes" and to wetlands that are "indistinguishable" from such waters due to a continuous surface connection.

Following the Supreme Court's decision in *Sackett v. EPA*, EPA issued what is known as the Conforming Rule to revise the WOTUS definition in light of the Court's ruling. Issued in August 2025, the Conforming Rule cut references to the significant nexus test from the WOTUS definition and clarified that the word "adjacent" with respect to adjacent wetlands meant "having a continuous surface connection." The rule also noted that only those tributaries of navigable waters which satisfy the relatively permanent standard would be considered WOTUS. To learn more about the Conforming Rule, click here.

When the Trump administration took office in 2025, it announced an intention to revisit numerous environmental regulations, including the definition of WOTUS. After holding a

series of listening sessions with stakeholders across the county, EPA and the Corps have released their latest proposal to redefine the term.

Proposed WOTUS Definition

According to EPA, its latest WOTUS proposal has two primary goals: to bring the definition in line with *Sackett v. EPA* and to provide more clarity to landowners and the public as to which waters fall under the CWA's permitting jurisdiction. To that end, it is proposing to include five categories of waters in the definition of WOTUS and is introducing new definitions intended to clarify when a water is relatively permanent and what constitutes a continuous surface connection.

Under the proposal, the following categories of waters would be considered WOTUS:

(1) Traditionally navigable waters which may be used to facilitate interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and the territorial seas.
(2) Impoundments of waters otherwise identified as WOTUS.
(3) Tributaries of traditionally navigable waters which are relatively permanent, standing or continuously flowing.
(4) Wetlands adjacent to a traditionally navigable water or tributary.
(5) Lakes and ponds that do not fall into the above categories but which are relatively permanent, standing or continuously flowing and share a continuous surface connection with a traditionally navigable water or tributary.

Importantly, the proposal would not include interstate waters as a category of WOTUS. This is a departure from previous WOTUS definitions, almost all of which have included interstate waters as WOTUS. These categories also differ from previous WOTUS definitions by specifying that waters which fall under category five must not only be relatively permanent but must also share a continuous surface connection with a traditionally navigable water or tributary to be considered WOTUS. Under past definitions, the continuous surface connection standard was applied only to wetlands.

Along with making changes to the categories of waters considered WOTUS, the proposed rule also includes new definitions for the terms "relatively permanent," "continuous surface connection," and "tributary." Under the proposed rule, "relatively permanent" would be defined as "standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season." EPA notes that "the wet season" would refer to a predictable and extended period of time when surface water is present in a geographical feature in response to an annual wet season when precipitation is greater than average. However, that would not include what are

known as “ephemeral waters” which are geographic features that contain surface water only in direct response to precipitation. Under this definition of relatively permanent, a river which periodically dries out in the late summer months, but which flows during the winter and spring after increased rain and snowmelt could be considered a WOTUS, while a creek that is dry most of the time and flows only after a heavy rain would likely not be considered a WOTUS.

The proposed rule would define “continuous surface connection” as “having surface water at least during the wet season and abutting (*i.e.*, touching) a jurisdictional water.” EPA clarifies that this definition presents a two-pronged test which requires a wetland or waterbody to both: (1) abut, as in directly touch, a traditionally navigable water or tributary; and (2) have surface water at least during the wet season. Wetlands or waters with a sub-surface connection to a recognized WOTUS – meaning connected to a WOTUS by water that is not on the surface but is not deep enough underground to be considered groundwater – would not be considered a WOTUS under this definition. Additionally, EPA notes that CWA permitting jurisdiction would only be extended to the portion of a wetland which retains surface water at least during the wet season.

Finally, the proposal would define “tributary” as “a body of water with relatively permanent flow, a bed and bank, that connects to a downstream traditional navigable water or the territorial seas, either directly or through one or more waters or features that convey relatively permanent flow.” Under this definition, a tributary to a traditionally navigable water that has a discernable bank and bed, and which has surface water at least during the wet season could be considered a WOTUS. However, a water without a bank and bed, such as a grassed waterway, would likely not be considered a WOTUS even if it held surface water year-round.

Besides defining what a WOTUS is, the proposal also strengthens language describing what a WOTUS is not. Particularly relevant to agriculture, the proposal would strengthen existing exclusions for prior converted cropland. The term “prior converted cropland” comes from the Wetland Conservation provisions of the 1985 Farm Bill, better known as Swampbuster. Prior converted cropland refers to wetland areas which were converted to agricultural land capable of producing a crop prior to December 23, 1985. Although prior converted cropland is currently excluded from the definition of WOTUS, the proposed rule would clarify that such land would only lose that exclusion and become subject to CWA jurisdiction if it were abandoned and reverted to a wetland that met the definition of “adjacent wetland” under WOTUS.

Next Steps

The proposed rule was published in the Federal Register on November 20, 2025, formally initiating a period of public comment that is currently set to end on January 5, 2026. While public comments may address any part of the proposal, EPA is specifically requesting comment on the following: whether WOTUS should be limited to only traditionally navigable waters and those wetlands that share a continuous surface connection with such waters; whether "relatively permanent" should include only those waters that contain surface water year-round instead of waters that contain surface water at least during an annual wet season; and whether a wetland must have a continuous surface connection with a navigable water or tributary year-round to be considered a WOTUS.

After the period of public comment concludes, EPA and the Corps will review the comments it receives before drafting and issuing a final rule. Once the rule becomes finalized, it is very likely that it will be challenged in court. Since 2015, all final regulations defining WOTUS have led to lengthy legal battles that often result in separate WOTUS definitions being applied across the country as the court cases proceed. Importantly, the last time a court was asked to consider whether the regulatory definition of WOTUS complied with the text of the CWA, the doctrine of *Chevron* deference was still the law of the land. Under *Chevron* deference, courts were instructed to defer to agency interpretations of ambiguous statutory language so long as the interpretation was reasonable. However, in 2024, the Supreme Court overturned *Chevron* deference in its landmark decision ***Loper Bright Enters. v. Raimondo*, 603 US 369 (2024)**. According to the Supreme Court, judges should not defer to agency statutory interpretations but should themselves state what the law is. This means that judges asked to consider whether a future WOTUS definition complies with the CWA may rely on judicial interpretations of the statute rather than agency interpretations.

The new proposed WOTUS definition has kicked off another cycle of attempting to define a crucial, but ambiguous term that determines when someone needs a CWA permit and when they do not. Whether the final definition will satisfy EPA's goals of crafting a durable definition remains to be seen.

To view the proposed WOTUS rule and learn how to submit a comment, click here.

To view the current definition of WOTUS, click here.

To view the text of *Sackett v. EPA*, click here.

To view the text of the CWA, click here.

For more CWA resources from the National Agricultural Law Center, click here.

Preliminary Injunction Halts Enforcement of West Virginia's Food Dye Ban (published 2.3.26)

On December 23, 2025, a District Judge in the Southern District of West Virginia ruled that the state is temporarily prohibited from enforcing its synthetic food dye ban while the law is being challenged in court. This law, enacted as HB 2354 and codified at W. Va. Code § 16-7-2, 4; 18-5D-3A, is being challenged by the International Association of Color Manufacturers (IACM). While the litigation remains ongoing, this article will discuss the court's most recent ruling.

Background on HB 2354

In 2025, West Virginia enacted HB 2354, a bill that addressed synthetic color dyes. Specifically, this bill was two-fold and included both a provision banning the use of certain synthetic color dyes statewide and prohibiting foods with these ingredients from being included in a "meal served in a school nutrition program." The bill had a two-step implementation scheme with the school portion going into effect last year, and the statewide ban going into effect in 2028.

The statewide ban portion included language that declared foods with ingredients that are "poisonous or injurious" to health to be adulterated. W. Va. Code § 16-7-2(b)(7). This language is followed by an enumerated list of "poisonous or injurious" ingredients that includes, "butylated hydroxyanisole, propylparaben, FD&C Blue No.1, FD&C Blue No.2, FD&C Green No.3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6." In West Virginia, adulterated foods are prohibited from being sold and violators are guilty of a misdemeanor and will be fined upon conviction. W. Va. Code § 16-7-4. However, this law includes an exception for sellers of foods with the enumerated ingredients if the seller makes less than $5,000 in aggregate of food per month. This portion of the law is set to go into effect on January 1, 2028.

The second part of the law, codified at W. Va. Code § 18-5D-3A, bans the following color dyes from being served in school nutrition program meals – Red Dye No. 3, Red Dye No. 40, Yellow Dye No. 5, Yellow Dye No. 6, Blue Dye No. 1, Blue Dye No. 2, and Green Dye No. 3. This provision did not prohibit the sale of food items with these ingredients as part of a school fundraiser off school premises or on school premises at least one-half hour after the end of the school day. The school meal portion of the law went into effect on August 1, 2025.

Background of color additives

The Food and Drug Administration (FDA) defines color additives as "a dye, pigment or other substance, which is capable of imparting color when added or applied to a food, drug, or cosmetic to the human body." They are distinguished from food additives by the Federal Food, Drug and Cosmetic Act (FDCA), and must be approved by FDA before they can be used in food. Color additives are classified into two categories – naturally occurring and synthetic. A synthetic color dye is manmade and is required by the FDA to be certified as safe before it is included in food. While a naturally occurring color additive must also be approved by the FDA before it is used, it is exempted from the safety certification process that synthetic dyes must undergo.

There are nine synthetic color dyes approved for use in foods by the FDA – three of which the agency is in the process of revoking. The approval for the nine can be found at 21 CFR § 74.101-706. Seven of the nine approved synthetic dyes are included in the enumerated list of prohibited ingredients in West Virginia's law. The other two enumerated ingredients are not classified as color additives by the FDA. Butylated hydroxyanisole is classified as a food additive, and propylparaben is an ingredient classified under the "Generally Recognized As Safe" pathway. To learn more about the federal government's current color dye scheme, click here to read NALC article "FDA Announces Plan to 'Phase Out' Synthetic Dyes."

The Case

Two months after the school meal provision of HB 2354 went into effect, the trade association, International Association of Color Manufacturers (IACM), challenged its constitutionality. IACM has been the singular association "representing the interests of the color additives industry, both natural and synthetics," since 1972. Its members include manufacturers, producers, and users in the color industry. The case is *International Association of Color Manufacturers v. Singh.*

In its complaint, IACM is claiming HB 2354's unconstitutionality in three ways. First, IACM claims the law is a violation of the Equal Protection Clause because it "targeted color additives without any rational basis for finding that they are . . . unsafe in any way." Second, they claim the law is a prohibited bill of attainder that "singl[es] out for prohibition and criminal sanction the named color additives" without a proper judicial proceeding. Last, the complaint claims that the law is unconstitutionally vague in violation of the Due Process Clause.

This litigation is ongoing, and the merits of IACM's challenge remain undecided. However, this article will further discuss a recent decision in the case – the Judge's ruling on IACM's request for a preliminary injunction.

A preliminary injunction is a motion that may be granted before or during a trial with the goal of preserving the status quo before a final judgement. For a preliminary injunction to be issued, a plaintiff must satisfy four factors: 1) that the plaintiff is likely to succeed on the merits, 2) that he is likely to suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in his favor, and 4) that an injunction is in the public interest. However, when the defendant is the government, the last two factors are combined.

Success on the Merits

The Court first looked at IACM's three claims to see if they would be likely to succeed on the merits. For the equal protection claim, the Court determined that IACM was not likely to succeed because "there was at least a debatable question regarding the safety of the named color additives" brought before the West Virginia legislature. An equal protection claim arises from the Fourteenth Amendment to the U.S. Constitution and provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of law." Specifically, this clause requires equal treatment for individuals in similar situations. However, unless a law burdens a fundamental right or a suspect class, it will be upheld if "it bears a rational relation to some legitimate end." Through looking at the legislative history, the Court determined that enough discussion about the potential safety risks of color additives occurred to create a rational basis for HB 2354's enactment.

Next, the Court determined that IACM was also unlikely to succeed on their bill of attainder claim. An unconstitutional bill of attainder occurs when a legislative act singles out an individual or narrow group of people for punishment without a judicial proceeding. There are three elements that must be met for a legislative act to be considered a bill of attainder: 1) the law must impose punishment, 2) it must target specific individuals or identifiable groups, and 3) it must do so in a manner that bypasses judicial protections. Here, the Court found that HB 2354 is not an unconstitutional bill of attainder. The Court determined that the law applies to anyone who adulterates food, and not just the specific manufacturers or users of the enumerated color additives. Further, the Court found the bill does not impose punishment without judicial protection because it includes language that clarifies a punishment will not be levied until after conviction.

Last, the Court looks to IACM's claim of unconstitutional vagueness and determines that IACM would be successful. Specifically, the Court finds that HB 2354 is unconstitutionally vague because it fails to define "poisonous and injurious" and does not prohibit other color additives not included in the enumerated list from being classified as such. The doctrine of void for vagueness applies when a statute fails to "give a person of ordinary intelligence adequate notice of what conduct is prohibited" or does not "include sufficient standards to prevent arbitrary and discriminatory enforcement." Manning v. Caldwell for City of

Roanoke, 930 F.3d 264, 272 (4th Cir. 2019). Thus, a statute that does not clearly state what actions it is prohibiting would be considered vague because it does not give adequate notice to the public and might lead to unfair enforcement.

Here, along with its lack of definition for poisonous or injurious, the Court took issue with the following language in HB 2354, "poisonous or injurious to the health, *including* butylated hydroxyanisole, propylparaben, FD&C Blue No. 1 . . ." (emphasis added). In particular, the Court found that a failure to define "poisonous or injurious" paired with the insertion of a "nonexclusive" enumerated list of FDA-approved color additives would "leave the door open for arbitrary enforcement." In other words, the Court believes HB 2354 is vague because it does not make clear what color additives would be classified as "poisonous and injurious." Further, since there is no standard that clarifies which color additives are prohibited, additional color additives could be considered "poisonous and injurious" without the public having adequate notice.

Though this ruling analyzed the claims of IACM and made assertions of their likely outcomes, it is not a ruling on the merits. However, a ruling like this is often an indicator of the direction a judge might go later when the merits are actually being decided.

Irreparable Harm

Next, the Court looked at a preliminary injunction's second factor, irreparable harm. For an injunction to succeed, the person seeking it must prove that it is likely to suffer irreparable harm in its absence. Harm that cannot be fully rectified by the trial's final judgement is considered irreparable, and economic harms will only be deemed irreparable if they are unrecoverable. Here, the Court finds that IACM has made sufficient showing that its members will suffer irreparable economic harm if this injunction fails. The Court specifies that the uncertainty surrounding HB 2354, because of its likely unconstitutional vagueness, is sufficient to establish irreparable harm. The Court explains that IACM's members would suffer harm if they spent significant resources changing their processes, updating equipment, or developing new products for a law that is likely unconstitutional.

Balance of Equities and Public Interest

Last, the court considers the third and fourth factors of a preliminary injunction – the balance of equities and public interest. In a case where the defendant is the government, these two factors are merged, thus the Court analyzes them together. The goal of a preliminary injunction is to "keep the status quo," and this factor will consider if the hardships imposed on the plaintiff outweighs the public's interest in having the law enforced. Here, the Court determines that it would be unfair to require IACM's members to comply with HB 2354 given that it is likely unconstitutional. Further, because the statewide

ban portion of HB 2354 is not yet being enforced by West Virginia's Department of Health, the Court believes that granting this injunction will not harm the public and will not disturb the status quo.

Impacts of the injunction

Because of the factors discussed, the Court grants IACM the preliminary injunction. This means that while the litigation remains ongoing, West Virginia's Department of Health will not be able to enforce the statewide ban portion of HB 2354. However, the Court notes in a footnote of its decision that the injunction will not apply to the school meal portion of the law. They make clear that this distinction is because IACM only "demonstrated that Section 16-7-2(b)(7)," the statewide ban portion, "is likely unconstitutionally vague." Thus, the West Virginia Board of Education will be permitted to continue enforcing the school meal portion of the law.

Conclusion

This case remains ongoing, and at this time, no trial date has been set. As more state legislatures consider passing similar legislation to West Virginia's, it is likely that this will not be the only litigation pertaining to the matter. To stay up to date on this case and the actions of state legislatures nationwide, click here to subscribe to NALC's biweekly newsletter, "The Feed."

Texas Food Law Litigation Updates: Part 2 (published 3.3.26)

Though 2026 is young, the year has already seen a few interesting judicial rulings related to food law coming out of the state of Texas. Specifically, courts in the Western District of Texas have issued two decisions on preliminary injunctions – granting one and denying the other. This article is the second in a two-part series covering recent litigation updates in Texas. The first article can be read here.

Cell-cultured Protein Ban

The first case involves a challenge to a Texas law that sought to temporarily ban the sale of "cell-cultured proteins" in Texas. SB 261, passed in the 2025 Texas legislative session, defined cell-cultured protein as "a food product derived from harvesting animal cells and artificially replicating those cells in a growth medium to produce tissue." Per the law, the prohibition on selling cell-cultured meat went into effect on September 1, 2025, and will last until September 1, 2027. The law is codified into the Texas code at Tex. Health & Safety Code §§ 431.002(5-a), 431.02105(a). Texas is one of seven states to have passed a ban on the sale of cell-cultured meat. To learn more about other state alternative protein laws, click here to view NALC's Alternative Protein Laws State Compilation.

The day after SB 261 went into effect, it was challenged in court. The plaintiffs are Wild Type, Inc. d/b/a Wildtype (Wildtype) and UPSIDE Foods, Inc. (Upside) – two companies based out of California who produce and sell cultivated meat. Wildtype produces cultivated salmon, and Upside produces cultivated chicken. The plaintiffs claim that SB 261 violates the Dormant Commerce Clause and the Supremacy Clause of the US Constitution.

January 2026 Ruling

On January 16, 2026, the court heard oral arguments on a number of motions in this case. Following the arguments, the court orally ruled on all motions; however, it also released an order explaining the decisions. The motions that were heard included Defendant Garza's Motion to Dismiss for Lack of Jurisdiction; Defendants Paxton, Young, and Shuford's Motion to Dismiss for Lack of Jurisdiction and for Failure to State a Claim; and Plaintiffs' Motion for Preliminary Injunction. Specifically, the judge granted Defendant Garza's Motion to Dismiss and Granted in-part the Motion to Dismiss from Defendants Paxton, Young, and Shuford. This means that Defendant Garza, the County Attorney for Travis County, will no longer be a party in this case. As for the other defendants, the court granted in-part their motion to dismiss. This means that while it dismissed part of the claims against them, the case will still be allowed to continue on some of the Plaintiff's claims. Specifically, the court dismissed Upside's claims that SB 261 is preempted by the federal poultry laws, but found

that both plaintiffs may still bring their claim that SB 261 violated the Dormant Commerce Clause.

In determining these rulings, the court specifically looked to Upside's claim that the Poultry Product Inspection Act (PPIA) preempted SB 261. The PPIA is the federal law that "regulates the processing, inspection, distribution, labeling, and sale of poultry products sold in interstate commerce," and it is administered by the US Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS). Specifically, the PPIA includes an express preemption clause that states "requirements within the scope of this chapter with respect to premises, facilities and operations of any official establishment which are in addition to, or different than those made under this chapter may not be imposed by any State."

Express preemption claims will be evaluated by looking to the scope of the express preemption clause and determining if the challenged state law falls within the scope. Here, the court determined that the scope of the PPIA's express preemption claim extended to food safety activities and any behaviors that would cause the adulteration of a product. Under that standard, the court finds that SB 261 does not fall within the scope of the PPIA's clause because SB 261 is a "complete sales ban" that has no impact on food safety nor behaviors that might adulterate a chicken product. Thus, the court found that the PPIA would not preempt SB 261 and that claim should be dismissed.

Last, the court turned to the Plaintiff's motion for a preliminary injunction. In making this motion, Upside and Wildtype were asking the court to prohibit Texas from enforcing this law while the litigation is ongoing. A preliminary injunction will have four elements: 1) moving party must show they are likely to succeed on the merits, 2) that they will suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in their favor, and 4) that an injunction is in the public interest. Here, the court determined that the Plaintiffs do not meet the irreparable harm element because Plaintiff's do not have significant "contractual business already in place in Texas." Additionally, the court finds that it would not be in the balance of equities to grant this preliminary injunction for two companies with very little business in Texas. Further, since two of the four elements are not met, the court declines the opportunity to analyze all four and denies the preliminary injunction.

Effect of the ruling

The court's decision to deny plaintiff's motion for preliminary injunction does not mean the case is resolved, nor is it a determination on the case's merits. This decision's effect is that the state of Texas will have the ability to enforce the ban on cell-cultured proteins while the litigation remains ongoing. Further, because of the court's decision to deny Defendants

Paxton, Young, and Shuford's motion to dismiss against the Dormant Commerce Clause claim, the case will continue on that claim. However, Upside and Wildtype have appealed the denial of a preliminary injunction to the 5th Circuit. While it remains unclear at this time how the 5th Circuit will rule, it is likely that no judgement on the merits will occur until the preliminary injunction issue is first settled.

MAHA Law

Also, in its 2025 legislative session, Texas passed SB 25, which has been referred to as Texas' "MAHA bill." This name is referencing the fact that many of the policy changes included in this legislation are aligned with priorities of the "Make America Healthy Again" movement. This law includes a section that requires food manufacturers to bear a particular disclosure statement if their food product contains any of 44 listed ingredients. Tex. Health & Safety Code § 431.0815. Specifically, the disclosure must say, "WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom." This portion of SB 25 will not go into effect until January 1, 2027, and its scope is limited to food product labels developed or copyrighted after the effective date. To learn more about the legislation itself, click here to read NALC article "'MAHA' Movement: New Texas and Louisiana Laws."

On December 5, 2025, a group of nonprofit associations that represent food and beverage manufacturers brought a lawsuit challenging the constitutionality of SB 25's labeling provision. Specifically, the plaintiffs make four claims 1) that SB 25's labeling requirement is a violation of the First Amendment, 2) that it is preempted by federal law, 3) that it is unconstitutionally vague, and 4) that it violates the Dorman Commerce Clause.

Like the litigation on Texas' cell-cultured meat ban, this case remains ongoing. However, the court recently published an order that ruled on the plaintiff's request for a preliminary injunction. As previously mentioned, a preliminary injunction is a pretrial motion that can order a party to cease or begin doing a specific action. For a preliminary injunction to be successful, the moving party must satisfy four elements: 1) that they are likely to succeed on the merits, 2) that they will suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in their favor, and 4) that an injunction is in the public interest.

Likelihood of Success on the Merits

To determine if the first element of a preliminary injunction is met, the court first looked to see if plaintiffs would be likely to succeed on their claim that SB 25's labeling requirement violates the First Amendment. The First Amendment of the US Constitution prohibits laws

that abridge the freedom of speech and includes protections against content-based regulations. A content-based regulation is one that will compel a particular message and require an individual or entity to alter the content of their speech. These laws are presumed to be unconstitutional unless the government can prove "they are narrowly tailored to serve compelling state interests" under the standard of strict scrutiny.

Here, the court notes that SB 25 compels the manufacturers of foods and beverages to convey a word-for-word, government-scripted message on their food labels. As a result, the court finds that strict scrutiny is likely to be the standard applied. When strict scrutiny is applied, the burden shifts, and now the government must prove that its actions were constitutional (as opposed to the plaintiffs having to show that the actions were unconstitutional). The court noted that the government failed to meet its burden, instead focusing almost entirely on a different argument. Because the government did not meet its burden under that analysis, if the strict scrutiny standard is applied, the statute would be unconstitutional on First Amendment grounds.

Instead, the government primarily focused its argument on a claim that the court should consider the case under the intermediate scrutiny argument. Intermediate scrutiny would be applied here if a court classified SB 25's labeling provision as commercial speech rather than content-based regulation. While the court does not assess whether it is commercial speech or content-based here, it walks SB 25 through an intermediate scrutiny analysis by applying the four-part test established in *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). It's four elements include 1) is the speech misleading or does it concern unlawful activity, 2) is there a substantial government interest, 3) does the regulation advance the government interest asserted, and 4) is it narrowly tailored to achieve the interest.

Here, the court determines that there is a substantial government interest in promoting the consumption of better food ingredients by citizens of Texas. However, the court does not believe that SB 25's labeling provision asserts this interest in a "narrowly tailored" way. It finds there are less restrictive ways Texas could accomplish this goal. As an example, the court states that Texas could have conducted a public advertising campaign warning of these dangers. Thus, the four elements of *Central Hudson* are not met, and the court determines SB 25's labeling provision would likely not pass intermediate scrutiny. Since the court found that the provision would likely not pass either a strict scrutiny or intermediate scrutiny evaluation, it concludes that the plaintiffs have shown a substantial likelihood of success on their First Amendment claim.

Before moving on to the other elements though, the court also evaluates the likelihood of success on plaintiff's vagueness and preemption claims. Both of these claims are related

to a portion of SB 25's labeling provision that would make the provision ineffective if the US Food and Drug Administration or the USDA issued a law or regulation that prohibited the use, imposed conditions of use, or determined the safety of one of the 44 listed ingredients. Tex. Health & Safety Code § 431.0817. The court determines that plaintiffs have not shown they are likely to succeed on their vagueness challenge because they have not produced enough evidence to show that food or beverage manufacturers would be unclear on what triggers the preemption clause. Further, the court finds that the plaintiffs would likely not succeed on their claim that SB 25's labeling provision is preempted by *current* federal laws because neither the Food, Drug, and Cosmetics Act nor the Nutrition Labeling and Education Act "directly conflict" with the Texas law. Though the court finds that success on the merits is not likely with the claims of vagueness and preemption, the first element of a preliminary injunction is met through the likelihood of success on the First Amendment claim.

Irreparable Harm

Next, the court looked to the second factor of a preliminary injunction, irreparable harm. To meet this element, the person seeking a preliminary injunction must prove they are likely to suffer irreparable harm if the law is enforced. In cases involving the First Amendment, courts recognize that the loss of free speech constitutes an irreparable injury, even if the injury only occurs for a short period of time. Here, since the court found it was likely that plaintiffs would succeed on their First Amendment claim, the court determines that irreparable harm is satisfied. Thus, the second element of a preliminary injunction is met.

Balance of Equities and Public Interest

Last, the court looked to the third and fourth elements of a preliminary injunction. In cases where the government is the defendant, these two factors merge. This element will consider whether the hardships imposed on the moving party outweigh the public's interest the law's enforcement. Here, since the hardship suffered is a likely infringement upon First Amendment freedoms, the court determines that this outweighs any public interest in SB 25's enforcement. Accordingly, the court finds that the third and fourth factors of a preliminary injunction are met.

Effects of the ruling

Since the four factors were satisfied, the court grants the plaintiffs a preliminary injunction and the state of Texas will be prohibited from enforcing the labeling provisions of SB 25 while the litigation is ongoing. A decision on a preliminary injunction is not a ruling on the merits, but might be an indicator of the direction a court might go in the future. A trial date has not yet been set for this case, and it currently sits in the discovery phase of the lawsuit.

Conclusion

Since neither of the court's most recent rulings on SB 261 or SB 25 were final judgements, there will likely continue to be noteworthy updates in both cases. To stay up-to-date on these lawsuits and other issues related to food law, click here to subscribe to NALC's biweekly newsletter, "The Feed."

'MAHA' Movement: Defining Ultra-processed Foods (published 10.21.25)

This month California Governor Gavin Newsom signed AB 1264 into law. This landmark legislation creates a statutory definition of ultra-processed foods (UPF) and makes California the first state in the nation to ban certain UPFs from being served in schools. AB 1264's enactment follows recent announcements from the US Department of Agriculture (USDA) and the Food and Drug Administration (FDA) that the federal agencies are collaborating to create a definition for UPFs. This article will discuss both the California law and compare it with another popular food classification system.

Background of UPFs and NOVA

The new California enactment is the first time UPFs have been officially defined by law. This is noteworthy because there is no otherwise universally accepted definition of UPF, whether in law or in science. However, there are several food classification systems that attempt to define it. The system most applied in scientific literature is called Nova, the Portuguese translation for the word "new." Nova was created by researchers at the University of Sao Paulo, Brazil in the format of a 2010 publication titled, "A new classification of foods based on the extent and purpose of their processing." It expanded on work published the year before by Brazilian epidemiologist Carlos Monteiro, a collaborator on the Nova publication, in which Monteiro first termed the phrase UPF. The 2010 publication extended the concept of UPFs into the Nova system and further classified foods into three categories based on "the extent and purpose of the industrial processing applied to them."

In 2019, Monteiro further expanded Nova in a publication for the UN Decade of Nutrition. Now, Nova recognizes four categories of food. The categories include unprocessed or minimally processed; processed culinary ingredients; processed foods; and UPFs. Unprocessed or minimally processed includes edible parts of plants or animals, fungi, algae and water. Food can be still be classified in this category if it underwent minimal processing such as roasting, boiling, non-alcoholic fermentation, or pasteurization. Processed culinary ingredients include oils, butter, lard, sugar, and salt. These are substances that are derived from group 1 foods or else from nature by processes like pressing, refining, grinding, milling, and drying. Processed foods are foods that are made by adding a group 2 substance to a group 1 food and are generally recognized as modified versions of the group 1 food. This could include canned vegetables, tinned fish preserved in oil, whole fruit preserved in syrup, and most freshly baked breads. Under the Nova system, UPFs are defined as "formulations made mostly or entirely from substances derived from foods and additives, with little if any intact group 1 food." Examples of UPF food under the

Nova system include soft drinks, sweet or savory packaged snacks, and pre-prepared frozen dishes.

As mentioned before, Nova is not the only food classification system that defines UPFs, but it was the first and is the most applied in scientific literature. Food and Agriculture Organization of the United Nations' publication titled "Ultra-processed foods, diet quality, and health using the NOVA classification system" contains a helpful chart in Annex 1 that outlines some of the different systems.

California's AB 1264

With a goal of making school meals healthier, California enacted AB 1264. This law, along with creating a legal definition for UPFs, prohibits certain foods meeting the definition from being served in California's public schools. This is the first time a state has both sought to statutorily define UPFs and ban their use in schools. However, this is not the first time California has passed landmark legislation related to the ingredients of food served in schools. In 2024, California was the first state to prohibit the sale of food and beverages containing synthetic color additives in schools. In 2025, several states passed similar legislation, many of whom did so under the mantle of "Make America Healthy Again" (MAHA). Though the California initiatives were not enacted under the "MAHA" mantle, AB 1264, in a way similar to the synthetic dye ban, might serve as a model for how other states attempt to define UPFs. To learn more about California's school synthetic dye prohibition, click here to read NALC article "State Food Laws Enacted in 2024." To lean more about other state "MAHA" actions, click here to read NALC article, "'MAHA' Movement: New Texas and Louisiana Laws."

Definition of UPFs

Along with defining UPFs, AB 1264 bans certain foods that meet that definition from being served in school meals. Specifically, the law bans "restricted school foods" and "UPFs of concern" from being served in elementary, middle, or high schools after July 1, 2035. The classification of foods as being "restricted school foods" or "UPFs of concern" depends on whether the foods meet the definition of UPFs laid out in the California law. Thus, to understand which foods are prohibited, this article will first discuss California's definition of UPFs.

AB 1264 will codify the following definition of UPFs at Cal. Health & Safety Code § 104661. UPFs are food or beverages that contain:

- A substance available in FDA's Substances Added to Food database that has a FDA-defined technical effect, and

- *Either* 1) high amounts of saturated fat, sodium, or added sugar, *or* 2) a non-nutritive sweetener

FDA's Substances Added to Food is a searchable database that includes many of the types of ingredients regulated by the FDA. For example, the database includes food additives, color additives, and Generally Recognized as Safe substances that are listed in FDA regulations. California's new UPF definition applies to a substance found in the database that is designed to have any of the following technical effects, surface-active agents; stabilizers and thickeners; propellants, aerating agents, and gases; colors and coloring adjuncts; emulsifiers and emulsifier salts; flavoring agents and adjuvants (excluding spices and other natural seasonings and flavorings); flavor enhancers (excluding spices and other natural seasonings and flavorings); and nonnutritive sweeteners. The definitions of these technical effects can be found in 21 CFR § 170.3(o).

To meet the UPF definition, a food or beverage must contain one of the substances with a defined technical effect and contain *either* 1) high amounts of saturated fats, sodium, or added sugar *or* 2) a nonnutritive sweeter. Specifically, the law defines a product with a high amount of saturated fat as a food or beverage deriving 10 percent or greater of its total energy from saturated fat. Similarly, high sodium food or beverages contain a ratio equal to or greater than 1:1 milligrams of sodium to calories. Finally, added sugar products meeting the definition include food or beverages with at least 10 percent of total energy derived from added sugars. Thus, under California's UPF definition, a food containing a substance with a defined technical effect that derives 12 percent of its total energy from added sugars would be a UPF.

Further, California's definition would also include a food that contains 1) a substance with a defined technical effect and 2) a non-nutritive sweetener. A non-nutritive sweetener is defined as a substance with less than 2 percent of the caloric value of sucrose per equivalent unit of sweetening capacity. 21 CFR § 170.3(o)(19). California lists several examples of a non-nutritive sweetener including sucralose, steviol glycosides, and lactitol.

The law clarifies that raw agricultural commodities, unprocessed locally grown or raised agricultural products, minimally processed prepared foods, class 1 milk, alcoholic beverages, medical foods, infant formula, and commodity foods specifically made available by the USDA do not qualify as UPFs. Additionally, the law explains that salt, sodium chloride, spices or other natural seasonings or flavorings, nor natural color additives "shall not by themselves cause a food or beverage to be categorized as a UPF."

"Minimally processed prepared foods" is defined in Cal. Food & Agri. Code § 49015(a)(4) as food that prepared using 1) traditional processes to make food edible, to preserve it, or to

make it safe for human consumption, or 2) physical processes that do not fundamentally alter the raw product or that only separate a whole, intact food into component parts. Traditional processes could include smoking, roasting, freezing, drying, and fermenting. Physical processes could include grinding meat, separating eggs, and pressing fruits to produce juice. Thus, under California law, foods that undergo these processes do not meet the standard of "ultra-processed."

Examples of UPFs

Using California's definition, this article will evaluate the following foods and beverages to determine if they would classify as UPFs.

- Goldfish – Pepperidge Farm's Goldfish backed snack crackers would be considered a UPF because the product contains 1) Riboflavin, a database substance that functions as a color or coloring adjunct and flavor enhancer, and 2) has a 250mg of sodium and 140 calories – a ration greater than 1:1.
- Dino Nuggets – Tyson Foods' Frozen (chicken) Dino Nuggets would be considered a UPF under the California standard because the product contains food starch, a stabilizer or thickener, a high amount of sodium with 430mg of sodium and 210 calories.
- Mac & Cheese – Based on the nutrition facts of Kraft's Original Mac & Cheese Macaroni and Cheese Dinner, it would qualify as an UPF. The ingredient list contains Sodium Triphosphate, a substance designed as an emulsifier or emulsifier salt, and contains greater than a 1:1 sodium to calorie ratio with 530mg of sodium and 220 calories in a serving.
- Corn Dogs – Based on the nutrition facts of State Fair's Classic Corn Dogs, this food would qualify as an UPF. The product contains Sodium Diacetate which is a substance designed as a flavoring agent and adjuvant, and the product contains more than 10% of total energy from saturated fat.
- Gatorade – The lemon-lime flavor of Gatorade would qualify as a UPF because it contains 1) FD&C Yellow 5, a substance designed to function as a color or coloring adjunct, and 2) more than 10% of its total energy from added sugars.
- Apple Juice – Mott's 100% Original Apple Juice would not meet the California definition of a UPF because as juice produced from the pressing of a fruit, it falls under the "minimally processed prepared food" exception. However, regardless of the exception, it would still not be a UPF because it does not meet the definition's two-part test. While the apple juice contains ascorbic acid, a substance designed to function as a stabilizer or thickener, it has 0 percent added sugars and saturated

fats, has a sodium to calorie ratio under 1:1, and does not contain a non-nutritive sweetener.

Prohibiting specific UPFs from schools

Along with creating a definition for UPFs, the California law also prohibits "restricted school foods" and "UPFs of concern" from being served in schools. UPFs of concern include food that 1) meets the law's outlined UPF definition and 2) is classified as "of concern" through regulations adopted by the California Department of Public Health (CDPH). Restricted school foods are defined very broadly by the law as a food or beverage that contains one or more of the listed substances with a defined technical effect and is also restricted from service or sale in schools via CDPH regulations.

The law directs the CDPH to define both UPFs of concern and restricted school foods after considering several factors. Seven factors are listed in the law and include questions like, "whether the substance or group of substances are banned or restricted in other state, federal, or international jurisdictions due to concerns about adverse health consequences," "whether the food has been modified to be high in saturated fat, added sugar, or salt," and "whether the food meets the requirements of [FDA's] final rule . . . titled 'Food Labeling: Nutrient Content Claims; Definition of Healthy.'" CDPH's consideration of the listed factors must be "guided by a rigorous examination of available reputable peer-reviewed scientific evidence" and must be completed by June 1, 2028. By July 1, 2029 schools must begin to phase out both restricted school foods and UPFs of concern, and by July 1, 2032 a vendor shall not offer restricted school foods or UPFs of concern to a school.

CDPH is required to review the regulations and update definitions every five years. Additionally, the law creates reporting requirements for vendors of food products sold to a school. The vendor reporting requirements will go into place on February 1, 2028 and must be submitted yearly until February 1, 2032.

CA vs Nova

California's definition of UPFs is different from the standard created in Nova because it outlines tangible characteristics that a food must possess to be classified as a UPF. For instance, California's definition classifies food as an UPF is it contains a specific substance with a defined technical effect or if it contains a certain amount of added sugars. Conversely, Nova categorizes food based on a broad spectrum of the type and extent of processing it underwent. However, Nova is vague about what level of processing crosses into the UPF threshold. For example, in the UN Decade of Nutrition article UPFs are classified as those with "additives that imitate or enhance the sensory qualities of foods." However, the article also blurs the line between UPFs and processed foods by stating that

"additives in UPFs include some also used in processed foods, such as preservatives, antioxidants and stabilizers." While Nova is a helpful tool in categorizing foods into four groups, it is not a nuanced definition like the California law.

Federal Agencies Seek to Define UPFs

The timing of the enactment of AB 1264 is significant because the USDA and FDA are currently collaborating to establish a definition of UPFs. On July 23, 2025, the agencies published a press release announcing a joint Request for Information to "gather information and data to help establish a federally recognized uniform definition for UPFs." This initiative follows statements in the Make Our Children Healthy Again Assessment, published by the Make America Healthy Again Commission, that UPF overconsumption is one of the driving factors of what the assessment calls the "childhood chronic disease crisis." The agencies have not indicated that they plan to prohibit UPFs in school meals, as California has done, but they have stated a uniform definition will "allow for consistency in research and policy." The RFI is publicly available for comments until Oct. 23, 2025.

Though California's law and the state's initiative is not categorized under the mantle of "MAHA," its enactment might have an effect on the definition USDA and FDA create. Further, as other state legislatures begin their 2026 sessions in the upcoming months, they might model California's law in their own UPF definitional attempts.

To learn more about the FDA's Final "Healthy" Rule, click here to read NALC article "FDA Releases Final 'Healthy' Rule."

Solar Smarts for Landowners: An Overview

By Rusty Rumley

While not a new subject, solar leasing is a topic that will garner increased attention because of the additional funds from the Inflation Reduction Act (IRA) becoming available at the beginning of 2023. The IRA incentivizes the adoption of solar through several mechanisms such as the 30% solar tax credit for installing solar on a residence, but the primary one affecting solar leasing on a commercial scale is the 30% business investment tax credit. This credit is expected to spur demand for more commercial solar projects over the next decade and landowners can expect to be approached by representatives of these future projects for leasing opportunities.

What is a solar lease?

The typical commercial solar lease is where an outside party approaches a landowner to negotiate placing solar panels, substations, power lines, roads and other necessary infrastructure on their property for a significant period of time (twenty-five to thirty-five years with optional extensions are common) for a specified rental rate per acre per year or with some form of revenue sharing much like a royalty payment for an oil or gas lease.

These leases tend to be complicated and due to the length of the lease it is important to have an experienced attorney look over any potential contract before signing. While the leases tend to be long, twenty to forty pages is not uncommon, there are some clauses that need to be reviewed carefully.

Typical Clauses and Things to be Aware of in Solar Leases

Different companies use different lease agreements; however, there are similarities between the various contracts. Understanding these clauses can help when consulting with an experienced attorney about potential lease options.

Signing a lease agreement does not guarantee a solar lease.

Signing a solar lease guarantees that the solar developer has the option to go forward with the construction of a solar project, but it does not guarantee that they will build it. Solar companies may approach many landowners and sign lease agreements that lock the landowner into an initial agreement where the solar company can gather data and decide which site will best fit their needs. During the initial period the landowner typically has to grant them access to the property and refrain from signing any other agreements that might interfere with the solar lease. If by the end of the initial period the company has not started construction then the agreement typically expires, the landowner is able to keep any payments that have already been made, and the landowner can sign new lease agreements with other solar companies.

Income from the Solar Lease

What have your neighbors been offered? Many leases have a confidentiality clause, but those are typically only binding after the contract has been signed. Rental rates can vary dramatically so researching current rates is critical before signing a solar lease. Another issue this often not thought of is how will your rental rate increase over time? Remember that these agreements can last for

more than three decades. The revenue you receive might be adequate in 2023, but will that same sum be a fair rental rate in 2037? Escalation clauses address this issue by building into the agreement an orderly increase in the rental rate over the life of the lease agreement.

Property taxes

Property that is assessed and tax as agricultural property generally has a lower property tax rate than residential or commercial property. If a solar project is developed on your property then a county assessor may determine that the property is in commercial energy production rather than agricultural production which could significantly increase your annual property tax. This should be an area that is addressed in a lease agreement. Does the solar company pay the increase in taxes due to the solar development or will the landowner bear this cost?

Liability for Damage to the Solar Equipment

What about protecting the solar panels and other equipment on the leased property? Some leases make the landowner liable for any damages to equipment on the leased property. Can you guarantee that nobody will damage the equipment? Many solar projects construct fencing around the perimeter and it may be prudent to make the company responsible for any damage that occurs on their leased property.

Decommissioning the Project

Solar projects can easily last twenty-five to thirty-five years; however, at some point the project will no longer be economically viable. Who will pay for cleanup at the end of the lease period? Many contracts are silent as to which party bears the cost of removing the solar equipment and restoring the land to its prior condition. A good lease agreement should specify which party will be responsible for decommissioning the project and some ever require the solar company to establish a bond to pay for cleanup at termination. A lawyer can be extremely helpful in negotiating these types of arrangements.

Conclusion

There are numerous things that a landowner should think about before signing a solar lease and this article covers some of the important things to consider. Having an experienced attorney go through the lease is crucial because the time to negotiate is before signing the contract. For more information on the subject of solar leases click **here**.

To read the Inflation Reduction Act of 2022, click **here**.

To read Understanding Solar Energy Agreements by Shannon Ferrell, click **here**.

To read about Land Use Conflicts between Wind and Solar Renewable Energy and Agricultural Uses, click **here**.

Solar Leasing for Landowners: Payment Structures

Rusty Rumley

Senior Staff Attorney

&

Grace Henson

Research Fellow

Solar leasing is the practice of renting tracts of land to install solar panels and infrastructure to generate electricity from sunlight. The typical commercial solar lease is where an outside party approaches a landowner to negotiate placing solar panels, substations, power lines, roads and other necessary infrastructure on their property for a significant period of time (twenty-five to thirty-five years with optional extensions are common) for a specified rental rate per acre per year or with some form of revenue sharing much like a royalty payment for an oil or gas lease.

Because landowners and solar companies are free to negotiate terms, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that all leases contain. Available commercial solar leases were gathered and analyzed to create this blog series about common clauses and to layout the variety of terms within those common clauses. The following post details common components of the payment structure of solar leases.

Common Payment Structures

Solar companies establish payment structures in their proposed lease agreements, and this is typically one of the first sections that a landowner will review. Many solar companies exist across the country resulting in diverse payment structures. While most lease agreements will vary, there are some common approaches that most companies follow. A very common approach to solar leases is to divide the lease into separate phases and pay different rates or through different calculations according to the phase of the solar lease. Some leases may pay a fixed rate based on the potential megawatts of power that the project could generate or even pay a royalty payment of some percentage of the power actually produced while many leases pay a fixed amount per acre per year. Other factors, such as state laws can also impact lease agreements. For example, both Tennessee and Florida statutorily require solar

lease agreements to include statements of the lease's compensation structure.[1] It is critical to carefully examine the lease and understand what compensation you are entitled to either during the life of the lease or if payment depends on the current phase of the lease agreement.

Simple Payment Structure

Simple payment structures may focus on one phase, such as the production phase, to compensate the property owner. For example, one lease agreement we reviewed requires payment based on the potential amount of energy produced:

> "… the annual rent of Seventy-five hundred dollars ($7,500) per megawatt (AC) of Installed Power (as defined herein) payable to Landlord, in advance, in annual installments."

This type of payment structure exposes the landowner to a major potential risk. Not all lease agreements turn into a completed solar project. There may be years after signing the initial agreement before a final decision on a project is made. Will the landowner be compensated for this time period? Simple payment structures may not take into account the time and complexity of building a solar project, so landowners need to ensure that they are adequately compensated for what they provide even if the project is never completed.

Payments Based on Lease Phases

Solar leases, and the developments themselves, are complicated projects that will take years to start producing power. It is common to break up lease agreements into different phases and the compensation methods and amount for the phases may differ dramatically. Common phases are the option phase, the construction phase, the operations phase and the decommissioning phase. Lease agreements may use some, or all, of the phases above. Exact names may differ from lease to lease, but the practical effects are similar.

The Option Phase

An option phase is the time period between the signing of the agreement and the beginning of the construction phase. Some of these phases can be as short as six months, while others may last for years. During the option phase, most leases contain no guarantee that the leased land will actually be used for a solar project.

[1] *See* Tenn. Code Ann. § 66-9-204; *see also* Fla. Stat. § 520.23 (2023).

The company may enter into contracts with several landowners while they decide which land to initiate their project on. The company will also need to sort out many practical issues such as permits, loans, power purchase agreements and a myriad of other things necessary for a successful solar project. Because rental payments in the future are unknown, it is beneficial to require rent payments during the option period. Example:

> "As consideration for the Option, during the Option Period, Grantee shall pay to Landowner option payments (collectively, the "Option Payments" and each an "Option Payment") in the amount of (i) US $2,500 (the "Initial Option Payment"), due and payable on the date that is forty-five (45) days after the Effective Date and (ii) thereafter, US $625 per calendar quarter, due and payable on the first day of the applicable calendar quarter."

Construction Phase

This phase of construction typically begins when they start bringing in construction equipment and materials and will last until solar project is actively producing power. During the option phase there may be minimal disruption to the landowner's use of their property, but during the construction phase the landowner may have very limited access to a significant portion of their property. Payments for this phase tend to be more substantial than the payments from the option phase because of the loss of access to the property. Examples:

- Payment is to begin when construction begins, and payment is to be made per acre.
- Landowner shall be paid $20,000 annually during Construction period.

Operations Phase

This phase begins when the construction is complete and the project begins producing power commercially. This phase can last for decades and ends when the project goes into the decommissioning phase. It is important to carefully review the contract to see how long it can last. Many contracts also include language where a specified period of time is guaranteed (20 years) and the company is entitled to extend this phase at their own discretion (company has an option to extend the agreement by five or ten years at their sole discretion). Payment calculations during the operations phase can also vary substantially. Many contracts pay on a per acre per year basis, but other contracts are paid on installed megawatts or a royalty payment based on the actual amount of power generated. Because of the length of this phase in the lease it is a common practice build in an escalation clause to keep up with inflation. Examples:

- $2,200 per acre of Easement Area per year during the Operations Period, escalating at a rate of 2% per annum.
- …$1,000 per acre per year for the Rent Payment of the leased property. Starting on the third (3rd) anniversary of the first Rent Payment Date, and for each annual anniversary thereafter, the annual Rent shall be increased by three percent (3%) over the Rent otherwise then in effect.

Decommissioning Phase

This phase begins at the end of the operations phase and, hopefully, concludes when all of the solar project infrastructure has been removed from the property and the premises has been returned to the state that it was in before the construction phase began. Many older agreements do not address the decommissioning phase and landowners may need to negotiate for payment and additional security to ensure proper decommissioning. Because of the length of these leases the original parties that signed the agreement may no longer be available (or the project could be sold to another company) so it is critical to document each party's responsibilities in the contract. One common approach to ensure that funds are available to pay for decommissioning is to require a bond from the solar company that can cover cleanup at the end of the lease. It also may be a wise idea to have payments for the property to continue through the decommissioning phase to incentivize the company to move forward. Example:

- Rental Payment of $1,500 per acre per year shall continue until all solar infrastructure has been removed from the premises at the conclusion of the agreement.

Conclusion

Overall, it is important that the solar lease agreement accurately encapsulates the terms agreed on by the parties. It is important to have an attorney that is knowledgeable about solar leases to thoroughly review the agreement for the landowner because once the contract is signed it is very difficult to make any changes. The long lease period means that anything left out of the agreement is something that the landowner, and potentially their heirs, will have to deal with for years to come.

To see more articles in this series click here.

To read the Inflation Reduction Act of 2022, click **here**.

To read the Farmland Owner's Guide to Solar Leasing, click here.
To read Understanding Solar Energy Agreements, click here.

Solar Smarts for Landowners: Property Owner Rights/Use

Rusty Rumley, Senior Staff Attorney

Grace Henson, Research Fellow

Solar leasing is the practice installing solar panels on large areas of land leased from a third party to generate electricity from sunlight. Commercial solar leasing is a topic that has garnered increasing attention because of the high rental rates in many areas of the country. Large-scale commercial solar leases include several unique aspects that make them differ from the typical residential solar contract. Because landowners and solar companies are free to enter a contract containing whatever terms the parties agree on, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that many leases contain. We gathered and analyzed many available commercial solar leases to create this blog series about the most common clauses and layout the variety of terms found within those common clauses. The following post details common clauses involving the landowner's rights and use of the land during the lease; however, it is important to have an attorney thoroughly review any contract before it is signed. To read the overview post on Solar Smarts for Landowners click here.

Access and Use of the Property Clauses

Land carries an intrinsic value for farmers that is often difficult to put into words. Protecting the land and farming land that is not being used under a solar lease is often a priority when negotiating any lease. This makes it important to consider whether the lease agreement significantly limits the landowner's access to, or use of, their property. Many leases contain an "owner access" or property use restriction clause that specifies what actions can be taken by both the solar developer and the landowner. Having clear expectations from both sides of the agreement can limit potential conflicts in the future. In our research, some solar leases may adequately address many of these issues while others are lacking in detail. If there are specific uses and activities that the landowner wishes to continue, the lease agreement should expressly include those rights before anything is signed. Below are sample clauses from various solar leases that we have selected to use as examples as well as commentary about the clauses:

- Landlord shall not make any material changes to the property that would impact the soil quality of the Easement area or block the sunlight.

This clause provides very little guidance to the lease parties and is written entirely in favor of the solar developer. What impacts soil quality and what should be avoided to not block sunlight? Adding clear expectations with specific descriptions of prohibited activities would help to clarify this clause. The landowner will also want assurances on how they can continue to use their property in a way that does not violate the lease agreement. These issues will be addressed as we look at different clauses. Example two:

- "During the Development Term, owner shall have the right to continue to use the Property for agricultural, ranching, timber harvesting, and/or other reasonable purposes so long as the Property is maintained substantially in accordance with its current condition and in compliance with all applicable laws."

This clause allows the property owner to continue using the property for normal farming activities during the development term of the lease. It is important to note that this clause only applies to the development term, not the entire lease. Once construction begins the landowner will lose access to some property but notice that the exact property at issue is not described in this clause. To learn more about the different phases of a solar lease read our guide to Understanding Solar Energy Agreements here.

If a landowner wishes to retain rights to use the land in these ways throughout the entirety of the lease term, the lease agreement should reflect that and include a similar clause applicable to the construction and operation terms. One issue that frequently arises is that due to the nature of the construction phase, the project may need more of the land than when the project moves into the operation phase. The solar developer will need extra space to store equipment and supplies during the construction phase, and the landowner should make sure that they will be compensated for this additional temporary usage. During this phase the landowner is unlikely to be able to continue farming this property. Because the development phase can take years to complete the landowner would like to be able to farm their property in the meantime and receive sufficient notice before the solar lease moves into the construction phase. For pasture this notice may be short, but for row crops the landowner should negotiate for a longer notice period so that they do not lose

a growing crop. Regardless of the notice period, it is important to include language specifying damages when a solar lease moves into the construction phase.

A lease may also include an owner access clause that specifies the process to be followed for the landowner to access the leased premises.

For example:

- "During the Construction and Operation Term and any Extended Term with respect to any Property, Owner shall have the right to reasonably access such Property at reasonable intervals and at reasonable times and upon at least forty-eight hours' prior advance written notice to Lessee to inspect such Property. Any such access shall not materially interfere with Lessee's use of such Property for Solar Energy Purposes and occupancy of such Property in any manner."

This clause clarifies the steps to be taken for the landowner to access the property and also places a restriction on the actions taken by the landowner while on the property. The property owner may want to inspect their property to make sure that the property is being taken care of, but this is also a potentially dangerous place to be with either construction equipment during the construction phase or dangerous amounts of electricity during the operation term so the solar developer will want to protect themselves as well.

Ultimately, a solar lease also grants access to the land to many individuals who are likely strangers to the landowner. Employees from the solar company, maintenance workers, and others will be accessing the land over the course of several decades. This is likely unfamiliar to rural landowners and can cause additional stress and impose increased liability. A lease may specifically limit what can be grown on the land (timber is typically prohibited since it may create shade), what can be built on the land (barns, houses or other structures that could create shade) and other uses, such as hunting rights, may be restricted or significantly limited.

It is important to negotiate the access and usage of the property that the landowner will feel comfortable with before signing any agreement. Once the agreement is signed then it is very difficult to change the agreement in the future.

Maintenance of the Property

Most leases establish which party is responsible for maintenance of the property. Some leases require the tenant to maintain the property, while others hold the landowner responsible for keeping the land in proper order.

For example:

- "Landlord shall maintain its property adjacent to the Leased Premises in good condition and state of repair to avoid interference with Tenant's use of the Leased Premises and the Easement. Landlord shall not construct or permit to be constructed structures or plant or permit to be planted trees adjacent to the Leased Premises that will impede solar access to Solar Farm."
- Landlord shall maintain the property in a good condition, including the property in the immediate vicinity of the System.
- Operator (tenant) shall maintain the property in a neat and clean condition. Operator shall repair any cattle guards, fences, or gates damaged in connection to the Operator's activities on the property.

Many solar agreements split the duty for maintenance of the property. The solar developer is often responsible for the property that is being actively used by the project (this land is almost aways fenced in to limit access) and the property owner is responsible for maintaining the property outside the fence. Many solar developers will also reserve the right to maintain land immediately outside of the project so that they can cut down vegetation that could create shade or a fire hazard. Specifying responsibilities between the parties can make relations better over the life of the lease agreement.

Conclusion

A property owner should consider how the lease terms impact their ability to use their land. Issues such as use of the surrounding land and maintenance of the property may seem like far away concepts during the lease negotiation, but the terms created during these negotiations will dictate how the land will be used and maintained for decades to come.

To read other articles in the Solar Smarts for Landowners series click **here.**

To read Understanding Solar Energy Agreements by Shannon Ferrell, click **here**.

To read about Land Use Conflicts between Wind and Solar Renewable Energy and Agricultural Uses, click **here**.

Solar Smarts for Landowners: Miscellaneous Clauses

Solar leasing is the practice of installing solar panels on large areas of land leased from a third party to generate electricity from sunlight. Commercial solar leasing is a topic that has garnered increasing attention because of the high rental rates in many areas of the country. Large-scale commercial solar leases include several unique aspects that make them differ from the typical residential solar contract. Because landowners and solar companies are free to enter a contract containing whatever terms the parties agree on, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that many leases contain. We gathered and analyzed many available commercial solar leases to create this blog series about the most common clauses and layout the variety of terms found within those common clauses. The following post details common clauses regarding miscellaneous topics such as assignment/subleasing provisions, confidentiality clauses, binding arbitration clauses, insurance requirements, and oil, gas, and mineral rights.

Assignment/Subleasing

Most, if not all, of these leases include a clause that allows the developer to assign, transfer, or sublease their interest in the property without the consent of the landowner. Some leases require limited or no notice to sublease or assign the developer's interest to another party. Landowners may be able to negotiate for more notice on an assignment or sublease, but it is doubtful that the developer will forego this ability. Solar leases are long-term contracts that can last for decades and developers will want, or need, the flexibility to transfer the project to another party. What does this practically mean for the landowner? Other than negotiating for more notice potentially, this type of clause illustrates the importance of capturing the full agreement in writing. A landowner may have a wonderful relationship with the initial developer, but subsequent operators may not be so accommodating. The landowner's success in navigating future challenges with the solar company depends on the language that is negotiated before the lease is executed.

Confidentiality Clauses

Solar companies often ask that landowners not discuss the details of their agreements with their neighbors or nearby landowners. Some leases specifically include confidentiality clauses that prohibit either party from disclosing to a third party the financial details of the agreement, especially during the option period. Landowners are also often prohibited from revealing the lessee's product design,

methods of operation and construction to any third party. These clauses are included to protect the unique features of a solar company's business model from competing companies and potentially in negotiating different pay rates with different neighbors. There are several different issues that landowners and their attorneys should be aware of with confidentiality clauses.

First, this does not stop the landowner from seeking legal advice on the lease. In fact, a landowner may be able to use this clause to negotiate with the developer on paying some, or all, of the landowner's attorney fees for reviewing the lease because they are creating legal liability for the landowner. In some parts of the country developers may be willing to reimburse attorney fees for the landowners and not in other parts, but it is an issue that your attorney should explore.

Second, the landowner should be able to consult with other people such as family members, accountants, tenants and lenders before signing the agreement as the contract needs to be executed for the confidentiality clause in the lease to come into force. Some developers may have other types of documents, such as Non-Disclosure Agreements (NDAs), that are introduced earlier in the negotiations and those agreements should be carefully reviewed by the landowner's attorney before they are signed.

It is important to be aware of any confidentiality requirements in your agreement to avoid liability for breach of contract.

Arbitration and Venue

Ideally, lease agreements would sufficiently encapsulate the agreement of the parties, and the parties would not have any issues that lead to disputes. However, no contract can address all potential problems that may arise during a lease that is likely to last more than a quarter of a century. Leases often include arbitration clauses that require parties to resolve any disputes through binding arbitration rather than in court. Before entering a lease agreement that requires arbitration, a landowner should consider whether they are willing to surrender their right to have the case heard in court. These binding arbitration clauses are often more favorable to the solar companies because a landowner is much more likely to win a jury trial in his or her hometown against a large solar corporation.

Here is an example of a binding arbitration clause:

> "Any Dispute that is not settled to their mutual satisfaction within the applicable notice or cure periods provided in this Agreement shall be settled by arbitration between the Parties."

Venue, or forum selection, is another clause that your attorney should carefully review. Venue clauses decide the location where a contract dispute will be litigated. If the solar lease does not specify where venue should occur, then the default answer is where the breach of contract happened. This is usually going to be the county or parish where the solar lease is located which typically favors the landowner. Developers that do not have an arbitration clause will usually want to have any court actions held in a location that is more favorable to them. The landowner's attorney should carefully review these sections of the agreement to fully protect the landowner's interests as much as practicable in case of a later dispute.

Insurance/Indemnification

It is important to ensure that, in the case of an accident that causes loss, both parties are protected. The most common lease requires the developer to maintain an insurance policy that covers injury to person and property. These clauses typically include a minimum policy amount. For example, a $2 million minimum for each individual occurrence and $5 million in umbrella liability insurance. This requirement ensures that the solar developer will be able to pay for any damages that arise from its actions or injuries on the property.

Additionally, landowners are subject to premises liability and owe a certain duty of care to those who enter their land. This duty of care would extend to employees of the solar company, maintenance workers, and any other individual who enters the land in relation to the solar project. Solar leases should include indemnity clauses in which the developer agrees to indemnify and hold harmless the landowner for any losses caused by injury to another person or piece of property. This is important because it is possible that an accident may occur in the 30+ year span these agreements typically last, and the landowner does not want to be held liable for personal injury in relation to the project. Some early solar leases have indemnity clauses that protect the developer at the landowner's expense and those should be avoided whenever possible. The landowner should not be held responsible if, for example, teenagers shoot at solar panels from the road and cause damage. A well drafted lease will put the risk of liability on the developer since they are the ones with control over that property during the life of the solar lease.

Mineral Rights and Solar Leases

It is very common in some states that both mineral developments (usually oil and gas exploration) and solar development are happening in the same area at the

same time. Solar developers will want the exclusive right to use the property for their solar project and may ask landowners for some form of assurance in the lease that they will have sole rights to the property. This may not be something that the landowner can guarantee. People that own the surface estate (the landowners) may not own the mineral estate (the valuable minerals underneath the surface) if those rights have been severed. In many states the mineral estate is the dominant estate over the surface estate, and they may use a "reasonable amount" of the surface as necessary to extract their minerals. This means that if the landowner has only the surface rights to their property, then they cannot, and should not, guarantee that the solar developer will have exclusive rights to the surface because they cannot exclude a mineral owner from extracting those minerals. With modern drilling techniques there is more flexibility on where the wellhead can be located, but the landowner should not agree to clauses that they may not be able to honor. Developers in states with active mineral exploration should be aware of this issue; however, the landowner's attorney should also seek to minimize the risk by recognizing this risk in the lease agreement.

Conclusion

Ultimately, landowners and solar companies may include any clauses they wish in a lease agreement. It is best to enter into a comprehensive agreement that addresses all material issues and topics in order to protect both the landowner and the developer. Any term that is written in the lease is enforceable against both parties, and it will be more difficult, if not impossible to enforce terms that are not included in the written agreement. Landowners spend much of their time looking at the payment clause of a solar lease, but the other miscellaneous clauses can impact the overall success of the lease agreement.

To read other articles in the Solar Smarts for Landowners series click **here**.

To read Understanding Solar Energy Agreements by Shannon Ferrell, click **here**.

To read about Land Use Conflicts between Wind and Solar Renewable Energy and Agricultural Uses, click **here**.

IEEPA Tariffs Challenged in Supreme Court (published 10.16.25)

Introduction

On August 29, a federal appeals court **ruled** that the International Emergency Economic Powers Act (IEEPA) does not provide the Trump Administration authority to impose retaliatory tariffs. In its ruling, the appeals court held that President Trump exceeded the authority granted by the IEEPA when he signed five Executive Orders imposing tariffs on "nearly all goods from nearly every country in the world." The court's ruling permitted the Trump Administration to appeal the judgment to the United States Supreme Court, which agreed to hear arguments during the first week of November. Trump is the first and only President to rely on the IEEPA to implement tariffs, so this case will cover new ground. With the challenged tariffs playing a large role in international trade, the outcome of this case will certainly impact U.S. agricultural markets. This article will discuss the background of the case, the decision of the appeals court, and what comes next.

Background

The IEEPA was established in 1977 to grant the President the authority to exercise a variety of economic powers in response to a declared national emergency, while also limiting other economic powers granted to the President by earlier statutes like the Trading with the Enemy Act (TWEA). Functionally, the IEEPA allows the President to "investigate, regulate, or prohibit any transactions in foreign exchange." **50 U.S.C. §1702(a) (1977)**. However, the President's authority under the IEEPA is available only "to deal with any unusual and extraordinary threat . . . if the President declares a national emergency with respect to such threat." **50 U.S.C. §1701(a) (1977)**.

In January of this year, President Trump **declared** a national emergency at the U.S.- Mexico Border, citing national security concerns. This national emergency was later expanded to include Canada and China. Executive Orders Nos. **14193**, **14194**, **14195**, **14257**, and **14266** imposed tariffs on Mexico, Canada, and China in response to these national emergencies. The tariffs instituted by these executive orders are referred to in the court's opinion as the "Trafficking and Reciprocal Tariffs." The Trump Administration cited the President's IEEPA authority to regulate foreign trade in the event of a national emergency as the legal basis for instituting the tariffs. At issue in ***V.O.S. Selections, Inc. v. Trump,* No. 2025-1812 (Fed. Cir. 2025)**, are the five Executive Orders issued by President Trump to impose trade duties on foreign trading partners.

The Case

On April 14, 2025, a group of five businesses filed suit in the Court of International Trade (CIT), challenging the reciprocal tariffs instituted by President Trump following the declared national emergency. In the complaint, the plaintiffs alleged that the IEEPA did not grant President Trump the authority to levy the challenged tariffs. The complaint asserted that the authority to impose tariffs, "must be granted clearly and unmistakably" and not "through some implication so vague and indeterminate that it went unnoticed by every other President for nearly five decades."

The plaintiffs additionally claimed that even if the IEEPA did confer this authority to the President, then it is an unconstitutional delegation of legislative authority. On this point, the plaintiffs alleged that interpreting the IEEPA as allowing the challenged tariffs would constitute a "sweeping delegation of legislative power." According to the complaint, this "sweeping delegation" would violate the nondelegation doctrine, which exists to prevent Congress from giving its legislative power to entities not vested with such authority under the Constitution. At the CIT, the court held that the IEEPA did not authorize these tariffs and that the challenged orders would be permanently enjoined. Because the CIT found that the IEEPA did not authorize the tariffs, the CIT did not address whether it was an unconstitutional delegation of authority. The government appealed that decision to the U.S. Court of Appeals for the Federal Circuit.

On appeal, the court limited its discussion to "whether the Trafficking and Reciprocal Tariffs imposed by the Challenged Executive Orders are authorized by IEEPA." The court held that they were not. In reaching this conclusion, the appeals court relied on the text of the IEEPA, the IEEPA's history, and similar trade statutes. The court held that the IEEPA's authority, which permits the President to "regulate . . . importation," does not include the ability to impose sweeping tariffs. The court noted that the IEEPA does not include the word "tariff" or any of its synonyms like "tax" or "duty." However, in a variety of other statutes that do confer tariff authority on the President, Congress has used "clear and precise terms to delegate tariff power."

The court reasoned that the history and purpose of the IEEPA conflicted with President Trump's tariffs. The court pointed out that since the IEEPA was enacted, "not once before has a President asserted his authority . . . to impose tariffs." The court noted that the IEEPA was specifically enacted to "cabin the President's authority" and further reasoned that, "it seems unlikely that Congress intended, in enacting IEEPA, to depart from its past practice and grant the President unlimited authority to impose tariffs." This, coupled with the explicit grants of authority found in similar statutes, led the court to conclude that, "whenever Congress intends to delegate to the President the authority to impose tariffs, it does so

explicitly." Because the court found that IEEPA did not authorize these tariffs, the court did not address whether IEEPA violated the nondelegation doctrine.

Moving Forward

Despite finding that the IEEPA did not authorize the tariffs implemented by President Trump, the appeals court declined to affirm the CIT's decision to overturn and block the challenged tariffs. For now, the challenged tariffs will stand. In reaching this decision, the court relied on **Trump v. CASA, Inc., 606 U.S. 831 (2025).** There, the Supreme Court held that the injunctions sought were "broader than necessary to provide complete relief to each plaintiff with standing to sue." Rather than granting the injunction, the Supreme Court in **CASA** instructed the lower courts to "move expeditiously to ensure that, with respect to each plaintiff, the injunctions comport with this rule and otherwise comply with principles of equity."

The appeals court here took the same approach. On sending the decision back to the CIT for further review, the appeals court instructed the CIT to "consider in the first instance whether its grant of a universal injunction comports with the standards outlined by the Supreme Court in *CASA.*" This refusal to grant the injunctions have preserved the tariffs and will allow the Trump Administration to continue collecting tariff revenue for the time being. The government has appealed the CIT's decision to the Supreme Court, which decided to hear the case.

At the Supreme Court, two questions have been presented for review. First, whether the IEEPA allows a President to institute tariffs after declaring a national emergency. Second, if IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President, a question that was left unanswered in the lower courts. The Trump Administration has urged the Supreme Court to hear the case and issue a decision quickly. In a document published on September 9, the Supreme Court granted a motion to expedite the case and set oral arguments for November 5, 2025.

The Supreme Court's decision will have major political and economic implications, regardless of the outcome. Siding with the President would likely allow further tariffs to be enacted under the IEEPA and would expand the statute's authority for future administrations. Siding with the plaintiffs would likely result in the challenged tariffs being completely vacated. Given the impacts of the tariffs so far, this option would have a major effect on the U.S. economy. A final decision is not likely to come soon, but the outcome of this case will have major implications for the U.S. agriculture industry.

Overview of Recent Ag Trade Announcements (published 11.20.25)

Background

Following President Trump's three-leg journey across Asia in October of 2025, the White House has released details of new trade agreements that seek to increase U.S. agricultural exports. Additionally, agreements executed earlier this year with the United Kingdom (U.K.) and the European Union (E.U.) mark a similar attempt to increase exports to various European nations. This article will briefly discuss the details of the various trade developments announced by the White House throughout 2025.

Mutual Responsibilities & Consequences

It is important to note that the trade deals discussed below are still preliminary and in some cases are merely agreed upon "frameworks" meant to guide negotiations as they progress. As a result, they are not (and are not yet intended to be) binding on either country. Given the unpredictability of international trade, the final agreements could potentially vary greatly from these initial framework agreements, depending on future negotiations.

Article I of the Constitution gives Congress the exclusive power to "regulate commerce with foreign nations." In the past, when the President exercised their power to negotiate trade agreements, they were considered "congressional-executive agreements" and would ultimately require Congress' approval under trade promotion authority (TPA) enacted by Congress. However, the most recent TPA authority expired in 2021, creating uncertainty in whether foreign trade agreements would require congressional authorization. For example, when President Biden executed the Indo-Pacific Economic Framework for Prosperity (IPEF), no agreements under this trade deal were submitted to Congress for approval.

With the expiration of the TPA, it is unclear whether President Trump's "framework agreements" will require Congressional approval, creating yet another area of uncertainty in the future of these agreements. The Congressional Research Service has recently published a report that may be helpful for more information on the interplay between executive and legislative authority.

China

Following a meeting in South Korea between President Trump and Chinese President Xi Jinping, the White House published details of a new trade deal agreed upon by the U.S. and China. In a fact sheet recently published on the White House website, the trade deal is referred to as a "historic agreement" that will "open China's market to U.S. soybeans and other agricultural exports." The trade deal stipulates that China will suspend its retaliatory

tariffs implemented throughout 2025. These include tariffs on U.S. chicken, wheat, corn, cotton, sorghum, soybeans, pork, beef, aquatic products, fruits, vegetables, and dairy products. Further, China has agreed to purchase at least 12 million metric tons of U.S. soybeans during the final two months of 2025. China has also committed to purchase at least 25 million metric tons of U.S. soybeans in 2026, 2027, and 2028. Finally, China has agreed to resume purchasing U.S. sorghum, hardwood, and softwood logs.

China is a major purchaser of U.S. soy, so this can have a significant impact on production and market values. For example, in 2024 China purchased 26.81 million metric tons of U.S. soybeans. Between January and May of 2025, before trade tensions escalated, figures **indicate** China had imported 6 million metric tons of U.S. Soybeans. It has been **reported** by the USDA that since the summit in South Korea, China has purchased 792,000 metric tons of U.S. soybeans.

As of the time of writing, China **has not** publicly issued a confirmation of its commitment to purchase the specified amounts of U.S. soybeans. However, in regards to some other components of the deal, China has **confirmed** its suspension of its retaliatory tariffs on U.S. imports. It will, however, leave in place a 13% tariff on imported U.S. soybeans.

Japan

During the trip to Asia, President Trump met with Japan's Prime Minister Sanae Takaichi to reconfirm the Framework Agreement entered by the U.S. and Japan on July 22, 2025. The framework contained provisions intended to bolster agricultural trade between the U.S. and Japan. Details of this agreement were outlined in an **Executive Order** signed by President Trump on September 4, 2025, titled "Implementing the United States-Japan Agreement." The Executive Order states that Japan will be "working toward an expedited implementation of a 75 percent increase of United States rice procurements within the Minimum Access rice scheme." Additionally, Japan will be investing $8 billion per year towards "purchases of United States agricultural goods, including corn, soybeans, fertilizer, bioethanol (including for sustainable aviation fuel)." Japan has reconfirmed its commitments in a recently published **Joint Statement** between Japan and the U.S..

The United Kingdom

On May 8, 2025 President Trump and Prime Minister Keir Starmer **announced** the U.S.-UK Economic Prosperity Deal (EPD). Per the **general terms** of this agreement, the United Kingdom will be removing its 20% tariff on U.S. beef exports, which currently impacts beef exports within a quota of 1,000 metric tons. The U.K. has also agreed to create a preferential duty-free quota of 13,000 metric tons for U.S. beef. A preferential-duty free agreement is a form of trade agreement that allows products to be imported with reduced

import costs and fees. The trade deal between the U.S. and the U.K. also stipulates that the two nations will "commit to working together to improve market access for agricultural products." However, the trade deal does not go into detail on how exactly market access will be improved. An **update** recently published by the U.K. government states, "We will execute the legislative process to create a preferential duty-free quota for US beef of 13,000 metric tonnes (MT) per calendar year." Similar to the above agreements, at this point this is a voluntary and mutual decision, rather than a binding legal commitment.

The E.U.

On July 27, 2025, President Trump **announced** a new "Framework Agreement" with the E.U.. The **Framework Agreement** stipulates that the E.U. provide preferential market access for U.S. agricultural goods including tree nuts, dairy products, fresh and processed fruits and vegetables, processed foods, planting seeds, soybean oil, and pork and bison meat. Like the agreement with the U.K., this trade deal states that the E.U. and U.S. "commit to work together to address non-tariff barriers affecting trade in food and agricultural products" which includes "streamlining requirements for sanitary certificates for pork and dairy products." In a **Joint Statement** between the U.S. and the E.U., the Framework Agreement is referred to as "a first step in a process that can be further expanded over time to cover additional areas and continue to improve market access and increase their trade and investment relationship."

Malaysia

On October 26, 2025, the U.S. and Malaysia executed the "**Agreement on Reciprocal Trade**." According to a **fact sheet** published by the Office of the U.S. Trade Representative, Malaysia has committed to provide significant preferential market access for U.S. agricultural products. This includes dairy, horticultural products, poultry, pork, rice, and fuel ethanol. Malaysia has also committed to address "non-tariff" barriers to U.S. agricultural exports. To accomplish this, Malaysia has pledged to: (1) recognize the U.S. food safety system for U.S. meat, poultry, and dairy products; (2) streamline halal certification of U.S. food and agricultural products; (3) open market access for U.S. sorghum; and (4) adopt regionalization approaches to facilitate U.S. exports of pork and poultry. Malaysia has confirmed these commitments via a **Joint Statement** between the U.S. and Malaysia. According to that joint statement, the two nations will "undertake domestic formalities in advance of the Agreement entering into force." The agreement is additionally confirmed in a **post** by the National Trade Promotion Agency of Malaysia, which claims the agreement "strengthens regulatory certainty and supply-chain resilience through deeper cooperation in trade facilitation."

Cambodia

On the same day that the Malaysia agreement was formalized, a **new trade agreement** with Cambodia was also announced. Under this agreement, Cambodia has agreed to eliminate tariffs on all U.S. food and agricultural product imports. Further, the agreement contains language indicating Cambodia's intent to promote the importation of U.S. agricultural products. Specifically, Cambodia says it will recognize U.S. regulatory oversight, U.S. sanitary and phytosanitary measures, and accept certificates issued by U.S. regulatory authorities for food and agricultural products. U.S. **sanitary and phytosanitary measures** are a set of testing and inspection methods used to ensure the safety of agricultural products. This language in the trade agreement indicates that when importing U.S. agricultural products, Cambodia will defer to safety determinations already made by U.S. regulatory agencies. This, in theory, should reduce non-tariff barriers to trade between the U.S. and Cambodia. While this agreement is not yet finalized, the two countries **have committed** to "undertake domestic formalities" to make it so.

Ongoing Negotiations

The negotiations discussed in this section are even more nebulous, as they are merely attempts to negotiate the terms of a potential agreement. However, they are still an indication that the following countries are at least at the negotiating table with the U.S.

Indonesia and the U.S. are still negotiating details of a trade deal that was first discussed in a **joint statement** issued on July 22, 2025. Per the joint statement, Indonesia would eliminate "approximately 99 percent" of tariff barriers currently placed on a "full range" of imported U.S. food and agricultural products. The proposed agreement also stipulates that the U.S. and Indonesia will cooperate to exempt U.S. food and agricultural products from all import licensing regimes, provide Fresh Food of Plant Origin designation for all applicable U.S. plant products, and to recognize listing of all U.S. meat, poultry, and dairy facilities. The joint statement provides that Indonesia will also accept certificates issued by U.S. regulatory authorities.

Further, the U.S. and Vietnam have announced a **framework** for a trade agreement, but are still in the process of finalizing details of a more comprehensive agreement. The framework states that Vietnam will provide preferential market access for "substantially all" U.S. agricultural exports to Vietnam.

On October 26, 2025, the White House posted a **joint statement** discussing an agreed-upon framework for a new trade deal between the U.S. and Thailand. The framework states that Thailand will eliminate tariff barriers on "approximately 99 percent of goods" covering a full range of U.S. food and agricultural products. Similar to other agreements, the U.S. and

Thailand trade deal would require Thailand to accept safety certifications of food and agricultural products issued by U.S. regulatory authorities. This joint statement also "takes note" of "the forthcoming commercial deals between U.S. and Thai companies" for the purchase of U.S. feed corn, soybean meal, and dried distiller grains with solubles at an estimated 2.6 billion dollars per year.

Finally, on November 14, 2025, the White House published a **fact sheet** outlining the framework for new U.S. trade deals with Switzerland and Liechtenstein. Negotiations are ongoing, but a recently published **press release** indicates that Switzerland and Liechtenstein have in fact signed a "non-binding memorandum of understanding" with the U.S. At this time, only the "non-binding memorandum of understanding" has been signed, so the specific details of the agreement have not been finalized and may be subject to change. Per the fact sheet, this new trade deal will "lock in the largest expansion ever of U.S. exporter access to Swiss markets, creating new opportunities for U.S. manufacturers, farmers, ranchers, fishermen, and other producers." To accomplish this expansion, Switzerland and Liechtenstein will remove "a range of tariffs" on U.S. agriculture products including fresh and dried nuts, fish and seafood, and fruits. Additionally, Switzerland will establish tariff rate quotas for American poultry, beef, and bison. Finally, the fact sheet discusses Switzerland and Liechtenstein's intent to address non-tariff barriers which have historically prevented certain U.S. goods from being imported. To remove these barriers, the nations will address "restrictive measures" on U.S. poultry and attempt to streamline requirements for U.S. dairy products.

Conclusion

Trade relationships between countries are complicated. Until binding agreements are reached, negotiations may continue. While more time will be needed to determine the ultimate impact, the language recognizes the importance of international trade to U.S. agriculture and indicates an intent to improve exports of U.S. agricultural products.

Supreme Court Vacates IEEPA Tariffs (published 3.5.26)

Introduction

In January 2025, President Trump declared national emergencies at the U.S. borders, citing an influx of "poisonous fentanyl" and "the extraordinary threat posed by illegal aliens". According to the Trump Administration, these emergencies authorized the President to impose tariffs under the International Emergency Economic Powers Act (IEEPA). IEEPA grants the President authority to undertake specific economic actions in response to a national emergency. Using IEEPA, the Trump Administration imposed tariffs on Mexico, Canada, and China. These tariffs were challenged in federal courts and ultimately struck down by the Supreme Court on February 20, 2026, in *Learning Resources, Inc. v. Trump*. To learn more about the IEEPA tariffs and the Court's decision, click here.

Following that decision, certain questions remained unanswered. Will there be refunds for the IEEPA tariffs? How will those refunds be issued? Will the Trump Administration impose new tariffs, and if so, how? Recent developments have provided some clarity on these issues and what importers can expect moving forward. This article will discuss refunds, new tariffs implemented by the Trump Administration, and an investigation by the United States Trade Representative that could potentially lead to new tariffs.

Refunds & The CAPE System

Reportedly, approximately $133.5 billion was collected on IEEPA tariffs by December 2025. With those tariffs now vacated by the Supreme Court, American importers are seeking refunds. Because the Court's decision did not mention refunds, importers were left uncertain about whether refunds would be issued. Recent developments at the Court of International Trade (CIT) have provided some clarity, but background is needed to understand those actions.

When a good that is subject to tariffs enters the United States, one of two collection processes applies: formal and informal entries. Formal entry is required when the value of imported goods exceeds $2,500. In a formal entry, the importer must pay the estimated tariff rate and post a bond with Customs and Border Protection (CBP). CBP later calculates the final tariff rate. This is known as "liquidation." Under federal law, liquidation must occur within one year of the entry. Informal entries generally do not require a bond and are considered liquidated once the importer pays the estimated tariffs.

Under the Tariff Act of 1930, the Secretary of the Treasury is authorized to offer tariff refunds when "it is ascertained on liquidation or reliquidation . . . that more money has been deposited or

paid as duties than was required by law." In those situations, refunds are required if the discrepancy exceeds $20.00. Additionally, refunds may be mandated after a court orders reliquidation.

On March 4, 2026 the Court of International Trade (CIT) issued an order stating that, "all importers of record whose entries were subject to IEEPA duties are entitled to benefit from the *Learning Resources* decision." To facilitate this, the CIT ordered that any liquidated entries "for which liquidation is not final" be reliquidated without regard to the IEEPA tariffs. Unliquidated entries were likewise ordered to be liquidated. In other words, the CIT ordered CBP to pretend as if the IEEPA tariffs never existed and begin issuing refunds. As discussed above, liquidation is a crucial step in the refund process, as it determines the amount owed by the importer.

On March 6, the CIT issued a subsequent order temporarily suspending CBP's obligation to issue refunds, after CBP indicated it needed additional time to liquidate or reliquidate all entries. CBP asserted that the "volume of entries" made each year prevent it from being able to "affirmatively review and liquidate each entry." CBP is still responsible for collecting and liquidating all non-IEEPA tariffs, which seems to have initially caused CBP to doubt its ability to comply with the CIT's order. However, CBP then filed a subsequent declaration which outlined its plans to implement a new online system to process IEEPA refunds.

CBP plans to implement the Consolidated Administration and Processing of Entries (CAPE) claims portal. According to CBP, CAPE will be a web-based resource allowing importers and brokers to submit IEEPA refund requests. CAPE will use information submitted by importers to determine refund eligibility. If eligible, tariff rates will be liquidated or reliquidated "as if the IEEPA duties had never been declared." After liquidation or reliquidation, CAPE will automatically issue refunds to eligible importers. It is important to note that CAPE is not yet finalized. Accordingly, CBP will be implementing a phased development of CAPE, with basic system functionality being activated first. To ensure eligibility for refunds, importers must first enroll in the Automated Clearing House (ACH) program. ACH is a system used by CBP to process and transmit electronic credit and debit transfers and will be used to distribute IEEPA refunds. For more information on the CAPE system, click here.

Refunds have been a looming issue since the Court's decision in *Learning Resources*. Given the amount collected under the IEEPA tariffs, many U.S. importers are likely seeking to recover refunds. When the Court did not address refunds in its opinion, those importers were left with uncertainty. However, with its introduction of the CAPE system, CBP has provided at least one potential avenue for producer refunds under IEEPA.

Section 122 Tariffs

On February 20, 2026, President Trump announced a new 10% global tariff rate under Section 122 of the Trade Act of 1974 (Section 122). The initial announcement came the same day the Supreme Court invalidated the IEEPA tariffs. Since its enactment, no tariffs had previously been implemented under Section 122. Because no tariffs have been imposed under Section 122 before, many importers may be unclear about Section 122's purpose and how it relates to the newly announced tariffs.

Section 122 was implemented to address "fundamental international payments problems." More specifically, Section 122 allows the president to impose tariffs to: 1) deal with large and serious United States balance-of-payments deficits; 2) prevent an imminent and significant depreciation of the dollar in foreign exchange markets; or 3) cooperate with other countries in correcting an international balance-of-payments disequilibrium.

A balance-of-payments refers to a record detailing all transactions made between a country's entities and international trading partners. It includes a current account, a capital account, and a financial account. The current account tracks a nation's trade of goods and services, its earnings on foreign investments, and its foreign money transfers. The capital account covers transactions in foreign financial institutions and central bank reserves. The financial account records deposits, ownership of investment securities, and direct investment between U.S. residents and foreign entities. A balance-of-payments deficit means that the United States is sending more money out than it is taking in.

Unlike IEEPA, Section 122 explicitly grants the President authority to impose tariffs. However, Section 122 also places limitations on any tariffs enacted under its authority. To address one of the above-mentioned payments problems, the President may enact a temporary tariff. The tariff cannot exceed 150 days, unless approved by Congress. 19 U.S.C. § 2132(a)(3). The tariff rate may not exceed 15% *ad valorem*. An *ad valorem* tariff is calculated based on the total value of the goods, rather than their quantity or weight. In other words, the tariff may not exceed 15% of the total value of the imported goods. Section 122 requires that the tariff rate be applied "consistently with the principle of nondiscriminatory treatment." 19 U.S.C. § 2132(d)(1). This means that the rate must generally apply equally to all countries. However, when a country has "large or persistent balance-of-payments surpluses," the President may target them specifically.

Using the authority granted by Section 122, the Trump Administration announced a 10% *ad valorem* import duty on articles being imported into the United States. The administration asserts that the Section 122 tariffs are necessary to correct "a large and serious balance-of-payments deficit." The announcement explains that the United States is currently in an overall account deficit and running a deficit in each component of the current account. To support this claim, the Trump Administration asserts that: 1) the annual U.S. goods trade deficit reached 40% during 2024; 2) the U.S. made less on exported capital and labor than other countries made by exporting capital

and labor to the U.S. and; 3) more money is currently being transferred out of the United States than is being transferred in. According to the announcement, these issues "endanger U.S. economic and national security."

The announcement additionally lists certain exemptions from the Section 122 tariff rate. The exemptions include but are not limited to: certain critical minerals; natural resources unavailable in the United States; beef, tomatoes, and oranges; pharmaceuticals; certain electronics; certain aerospace products; and informational materials. Additionally, goods traded according to the agreement between the United States, Mexico, and Canada will be exempted. As discussed above, the Section 122 tariffs face a 150-day statutory-limit, which could potentially be extended by Congress. This means that the tariffs could at least be active until July 20, 2026.

The Section 122 tariffs have already faced legal challenges. A coalition of twenty-four states filed a lawsuit challenging the Section 122 tariffs on March 5, 2026. The suit, filed in the CIT, argues that Section 122 does not authorize the Trump Administration's tariffs. The complaint argues that a trade deficit is not a balance-of-payments deficit, and therefore Section 122 does not apply. According to the states, the administration is "contorting" the term balance-of-payments and "cherry-picking only the negative components." They argue that when foreign capital and financial investments into the United States are included, the actual balance-of-payments is only 0.2% of the United States' gross domestic product, which the states characterize as "essentially a rounding error." The states claim that Section 122 does not authorize tariffs based on a trade deficit and that the administration cannot "redefine" the term balance-of-payments to justify the Section 122 tariffs. The plaintiffs conclude by requesting the CIT to declare the Section 122 tariffs unlawful, vacate them, and order refunds of tariffs already collected.

Whether the Section 122 tariffs will survive this challenge remains to be seen. As of the time of writing, the tariffs have been in effect for just over a month, and many questions remain unanswered. Section 122 imposes a 150-day limit, but Congress could extend that period. Even if Congress were to extend the deadline, the tariffs could be overturned by the courts. Further, President Trump has indicated that the rate will be increased to 15%. Whether Section 122 authorized the recent tariffs is an issue for the federal courts to decide, which could take some time.

Potential Section 301 Tariffs

On March 17, 2026, the Office of the United States Trade Representative (USTR) initiated an investigation of foreign countries under Section 301 of the Trade Act of 1974 (Section 301). According to a USTR press release, the investigation focuses on "acts, policies, and practices of various economies" related to structural excess capacity in manufacturing sectors. Structural excess capacity occurs when production capacity exceeds domestic and global demand. The USTR

claims that this excess capacity will lead to "overproduction and large or persistent trade surpluses, as well as underutilized and unused capacity, in manufacturing sectors." According to the USTR, this poses "a serious challenge to U.S. efforts to re-shore supply chains and provide good-paying jobs for American workers." While the USTR has explained why it launched the investigation, many may still be unclear about how Section 301 works and what could come next.

Section 301, at its core, is designed to address "unfair" foreign trade policies and enforce international trade agreements. Section 301 applies when the USTR determines that "the rights of the United States under any trade agreement are being denied." Section 301 also applies when "an act, policy, or practice of a foreign country violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or is unjustifiable and burdens or restricts United States commerce."

A Section 301 investigation can be initiated by the USTR itself or by a private party. Private parties must file a petition describing the unfair trade practice and how it is harming the U.S. economy. Once filed, the USTR has 45 days to decide whether to begin a formal investigation. The USTR must publish a notice in the Federal Register when self-initiating an investigation. The USTR is also required to seek public comment on proposed actions. For non-trade agreement investigations, a final determination will generally be issued 12 months after an investigation begins.

If the USTR finds through investigation that a country has violated a trade agreement or implemented an act, policy, or practice that is unjustifiable, Section 301 authorizes certain actions. Most notably, the USTR may impose tariffs. Under Section 301 the USTR is authorized to impose duties or "other import restrictions" on the goods of a foreign country for "such time as the Trade Representative determines appropriate."

The USTR announced that it has self-initiated a Section 301 investigation. The USTR will investigate China, the European Union, Singapore, Switzerland, Norway, Indonesia, Malaysia, Cambodia, Thailand, Korea, Vietnam, Taiwan, Bangladesh, Mexico, Japan, and India for the above-mentioned structural excess capacity concerns. If the USTR determines that the policies or practices of the countries under investigation are actionable under Section 301, it may act under the statute, including imposing tariffs.

This is a broad investigation, and it will likely be some time before any official action is announced. However, any actions taken could have significant economic consequences. Individuals interested in submitting a public comment on the investigation may do so here. The deadline to submit written comments is April 15, 2026.

Conclusion

In the aftermath of the *Learning Resources* decision, many questions remained unanswered. However, some answers have emerged in the weeks since. While not finalized, the CAPE system may provide an avenue for importers seeking IEEPA refunds. Despite ongoing legal challenges, President Trump's Section 122 tariffs suggest that tariffs remain a central part of the administration's trade strategy. This is further reinforced by the USTR's decision to initiate a broad Section 301 investigation against U.S. trading partners. It remains to be seen what the investigation will ultimately find and what actions may follow. Regardless, importers and consumers should stay informed about these developments and monitor further changes in U.S. trade policy.

To learn more about the IEEPA tariffs, click here.

To read the full text of the Trade Act of 1974, click here.

To learn more about enrolling in the ACH program, click here.