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# New Challenges for California Agriculture in World Export Markets

by

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# ARTICLES

# NEW CHALLENGES FOR CALIFORNIA AGRICULTURE IN WORLD EXPORT MARKETS

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## INTRODUCTION

The importance of exports for United States (U.S.) and California agriculture is widely recognized.[1] American agricultural producers cur-

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[1] There are numerous studies examining the importance of international trade to American agriculture, including Heron and Walther, *Pacific Rim as a Future Market*

rently export close to one quarter of the value of their annual output, well above the average ratio of exports to production for the economy as a whole.[2] Agriculture developed a trade surplus for the United States of over $18 billion in 1989.[3] Agricultural trade has become a focus of American trade policy and played a prominent role in the General Agreement on Tariffs and Trade (GATT) negotiations known as the "Uruguay Round."[4]

The growing internationalization of world agricultural trade is usually discussed in terms of the interests of countries as a whole, or even of groups of countries, such as the European Community (EC), which are competing in global markets. But internationalization affects differently discrete agricultural exporting regions of each country. These regions may well have divergent interests from other parts of their respective nations because they produce unique products, rely on different overseas markets for exports, or face extensive import competition.

This article discusses the growing divergence between California and U.S. agricultural trade interests in Asian and Latin American markets. The focus will be on Japan, the state's most significant Pacific Rim (and world wide) market, and Mexico, America's largest Latin Ameri-

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*for U.S. Agricultural Trade*, 23 U.C. DAVIS L. REV. 525 (1990); Smith, *United States-Mexico Agricultural Trade*, 23 U.C. DAVIS L. REV. 431 (1990); THE POLITICAL ECONOMY OF AGRICULTURAL PROTECTION (K. Anderson and Y. Hayami, eds. 1986); CALIFORNIA STATE WORLD TRADE COMMISSION, CALIFORNIA AGRICULTURE: BARRIERS TO TRADE (1986); D. JOHNSON, K. HEMMI, AND P. LARDINOIS, AGRICULTURAL POLICY AND TRADE: ADJUSTING DOMESTIC PROGRAMS IN AN INTERNATIONAL FRAMEWORK (1985); J. HOUCH, ELEMENTS OF AGRICULTURAL TRADE POLICIES (1986); *California's Classy Crop Cornucopia*, FORTUNE, June 6, 1988 at 91.

[2] The statistical analysis presented in this Article is compiled from the following sources of agricultural trade and production statistics: UNITED STATES DEPARTMENT OF AGRICULTURE, FOREIGN AGRICULTURAL TRADE OF THE UNITED STATES (1989 Supp.) (hereinafter FATUS); UNITED STATES DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1990 (1990) (hereinafter STATISTICAL ABSTRACT); CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, CALIFORNIA AGRICULTURE STATISTICAL REVIEW 1989 (1990) (hereinafter CALIFORNIA AGRICULTURE); CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, EXPORTS OF CALIFORNIA AGRICULTURAL PRODUCTS - ANNUAL 1989 (1990) (hereinafter EXPORTS OF CALIFORNIA PRODUCTS); UNITED STATES DEPARTMENT OF AGRICULTURE, AGRICULTURAL STATISTICS 1989 (1989) (hereinafter AGRICULTURAL STATISTICS). Overall U.S. export information is compiled from FATUS, *supra*, at 4, Table 1 and STATISTICAL ABSTRACT, *supra*, at 426, Table No. 691, and at 651, Table No. 1129.

[3] FATUS, *supra* note 2 at 4.

[4] *See* Heron and Walther, *supra* note 1 at 546-47 for a general description of the Uruguay Round.

can trading partner.[5] Unlike the United States more generally, California is particularly dependent on Asian and Japanese markets.[6] Therefore, it has a much stronger interest than many other agricultural exporting states to preserve and foster its access to Asia. In contrast, while U.S. policy and many growers enthusiastically support expanded Latin American trade, California currently has limited prospects of significant exports to Latin America.[7] California also faces direct competition from Latin American imports to an extent not experienced by the rest of the country.[8] Consequently, as world agricultural trade advances, U.S. and California interests with respect to crucial Asian and Latin American markets may not be congruent. California growers and processors must therefore develop the ability to identify their own interests in the world agricultural economy, and must consider effective methods for fostering these interests in world markets directly.

Part I presents a statistical profile of U.S. and California agricultural trade. California is shown to export much more to Asian markets and much less to Latin America than the rest of the country. Latin American imports are shown to be directly competitive with California's agricultural production.

Part II discusses California's independent strategic interests in fostering trade with Asia and Latin America in light of its unique production and export patterns. Unlike other regions of the country, California has a much stronger interest in preserving and enhancing access to Pacific Rim markets. In Latin America, however, the state has a significant interest in assuring that trade continues to be beneficial.

Part III examines current political and economic trends harming California's Asian and Latin American trade interests. The increasing friction between Japan and the United States, the breakdown of the GATT talks, and the current impetus toward a U.S.-Mexico Free Trade Agreement (FTA) may tend to reduce the state's ability to export to Asia, while increasing its exposure to Latin America. Consequently, the United States' posture in the world economy may generate policies which systematically weaken California agriculture.

Part IV considers how California agriculture might independently protect its interests relative to Asia and Latin America in light of developing adverse market and political trends. California agriculture must

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[5] FATUS, *supra* note 2 at 28; EXPORTS OF CALIFORNIA PRODUCTS, *supra* note 2 at 1.

[6] *See* notes 34 to 37, *infra*, and the accompanying text.

[7] *See* notes 38 to 41, *infra*, and the accompanying text.

[8] *See* notes 42 to 45, *infra*, and the accompanying text.

develop a comprehensive, collective strategy to relieve tensions with Japan, build direct and enduring ties with major importing countries, and ensure that Latin American imports occur in a manner benefitting the state.

Part V concludes with a thought on the future of California agricultural trade.

## I. A Profile of U.S. and California Agricultural Trade

### *A. U.S. Aggregate Agricultural Trade Patterns*

In recent decades, American agricultural exports have markedly shifted from Europe towards Latin America and Asia. As Table 1 illustrates, during 1970-1980, as the total value of U.S. agricultural exports grew 468%, the growth rate of exports to Latin America (617%) and Asia (520%) greatly exceeded the growth rate of exports to Europe (210%).[9] From 1980-1988, burgeoning trade restrictions in Europe and the rise in the dollar caused the total value of U.S. agricultural exports to drop by 10%. The rate of decrease in exports to Europe was over 33%, while exports to Asia actually increased by 13%.[10] Exports to Latin America fell 20%, a significant drop, but less than the decrease in exports to Europe.[11]

Table 1
Value of U.S. Agricultural Exports and Rates of Growth
1970-1988

| U.S. Exports To— | 1970-1988 | 1980-1988 | 1970-1988 |
|---|---|---|---|
| World | 468% | (10%) | 411% |
| Asia | 448% | 13% | 520% |
| Latin America | 794% | (20%) | 617% |
| Europe | 363% | (33%) | 210% |
| Japan | 392% | 25% | 516% |
| Mexico | 1492% | ( 9%) | 1341% |

Source: Statistical Abstract, *supra* note 9.

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[9] Statistics compiled from Statistical Abstract, *supra* note 2 at 657, Table No. 1144.

[10] *Id. See also* for discussion of EC agricultural subsidies, M. Newman, T. Fulton and L. Glaser, A Comparison of Agriculture in the United States and the European Community (1987).

[11] Compiled from Statistical Abstract, *supra* note 9.

The growth rate of U.S. exports to Japan and Mexico as shown in Table 1 is consistent with these trends. Japan absorbed a growing amount of American exports from 1970-1988. During 1980-1988, when total U.S. agricultural exports were in decline, the value of exports to Japan rose 25%.[12] The value of Mexican exports grew at a very high rate from 1970-1980, approximately 1500%, but declined by 9% when total U.S. exports stagnated in 1980-1988.[13]

Latin America and Asia have therefore emerged as the principal expanding markets for U.S. agricultural exports. As Table 2 shows, during 1970-1989, while the value of U.S. exports to Europe fell from 35% to 17% of total exports,[14] the value of U.S. exports to Asia rose from 37% to 47%, and exports to Latin America increased from 9% to 14% of total U.S. exports.[15] These aggregate changes were reflected in Japanese and Mexican trade. In 1970, the value of U.S. exports to Japan was 17% of U.S. total exports, or $1.24 billion. By 1989, exports to Japan were 21% of the U.S. total, or $8.15 billion.[16] During this same period, the value of exports to Mexico rose from $155 million to $2.76 billion, or from 2% to 7% of the U.S. total.[17]

Table 2
Percent of U.S. Agricultural Exports to Selected Regions
1970-1989 (Value Basis)

| U.S. Exports To— | 1970 | 1989 |
|---|---|---|
| Asia | 17% | 47% |
| Latin America | 9% | 14% |
| Europe | 35% | 17% |
| Japan | 17% | 21% |
| Mexico | 2% | 7% |

Sources: FATUS and STATISTICAL ABSTRACT, *supra* note 14.

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[12] *Id.*

[13] *Id.* The high rate of Mexican export growth during 1970-1980 is partially explained by the fact that in 1970 exports to Mexico were extremely low, just $155 million. By 1980, U.S. agricultural exports to Mexico had increased to $2.46 billion, and thereafter varied widely from a low of about $1 billion in 1986 to a high of $2.23 billion in 1988. *See* STATISTICAL ABSTRACT, *supra* note 9.

[14] Compiled from FATUS, *supra* note 2 at 40-211, Table 9 and STATISTICAL ABSTRACT, *supra* note 9.

[15] *Id.*

[16] *Id.*

[17] *Id.*

The shift in American export markets also profoundly affected the pattern of United States agricultural imports. As Table 3 demonstrates, imports from Latin America greatly increased, amounting to 34% of the value of total U.S. agricultural imports in 1989.[18] These imports generated an American agricultural trade deficit with Latin America (the only major regional trade deficit in agriculture experienced by the U.S.) of close to $2 billion in 1989.[19] Trade with Latin America therefore led to an increase in offsetting imports from the region. As the value of American exports to Mexico rose steadily, imports from Mexico also rose, amounting to 75% of the value of U.S. exports to Mexico in 1989.[20]

An increase in imports offsetting traditional U.S. agricultural trade surpluses is also evident in European trade. By 1989, although Europe declined in importance as a U.S. export market, U.S. imports from Europe increased substantially. As Table 3 shows, while America still maintained a net trade surplus relative to the EC, by 1989, the value of U.S. imports from the EC had risen to almost 70% (from 55% in 1988) of the value of American exports to the EC.[21]

Table 3
U.S. Agricultural Import and Export Trade, 1989
($ Million)

| Region/Country | US Imports From— | US Exports To— | Ratio, Imports/Exports |
|---|---|---|---|
| World | $21,476 | $39,652 | 54% |
| Asia | $ 3,679 | $18,672 | 19% |
| EC | $ 4,555 | $ 6,564 | 69% |
| Latin America | $ 7,414 | $ 5,445 | 136% |
| Japan | $ 215 | $ 8,151 | 3% |
| Mexico | $ 2,092 | $ 2,763 | 75% |

Source: Compiled from FATUS, *supra* note 19.

Unlike trade with Latin America or Europe, U.S. exports to Asia have not been significantly offset by imports. Table 3 demonstrates that, overall, the value of imports from Asia amounted to less than 20%

[18] Compiled from FATUS, *supra* note 2 at 267-380, Table 18.

[19] Compiled from FATUS, *supra* note 2 at 40-211, Table 9 and at 267-380, Table 18. If noncompetitive imports (such as coffee or cocoa which are not significantly produced in the U.S.) are excluded, the U.S. still maintained a net trade surplus of about $1.3 billion with Latin America. *See id.*

[20] *Id.*

[21] *Id.*

of U.S. Asian exports in 1989.[22] The ratio of imports to exports is especially low in the case of northern Asian countries along the Pacific Rim. Japanese agricultural exports to the U.S. were only 3% of the value of its imports from America, generating an $8 billion trade surplus in favor of the U.S.[23] Similar ratios of import to export values exist for South Korea and Taiwan.[24] Consequently, the rapid increase in agricultural exports to Asia has not generated similar imports from the region to the U.S.

American agricultural trade has therefore been in significant transition. Exports to Europe, America's traditional market, declined, while heavily subsidized imports from the region rose. Latin America became a major, growing market for U.S. producers, but exports to the region have been offset by a greater volume of imports. Trade with Asia is the most advantageous for U.S. agriculture. While the value of exports to Asia has grown dramatically, making it the largest market for U.S. production, the region does not generate significant, competitive, offsetting imports to America.

### *B. California Agricultural Trade Compared*

California agricultural trade is, in significant ways, different from the aggregate U.S. trade pattern. California is the largest producing state in the nation, generating 11% of the value of total U.S. agricultural marketings in 1989.[25] California also accounted for approximately 10.1% of the value of total U.S. exports in the same year.[26]

California's agricultural products, however, differ greatly from U.S. agricultural output overall. Vegetables, cotton, fruits, and nuts accounted for over 65% of the value of California's production in 1989.[27] These same crops amounted to just 11% of the value of U.S. production (excluding California) in 1988.[28] Conversely, animal products, dairy production and field crops made up 69% of the value of American output in 1988, while the same products accounted for just 46% of Califor-

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[22] *Id.*

[23] *Id.*

[24] In 1989, the ratio of U.S. imports to U.S. exports for South Korea was 3%, and 9.7% for Taiwan. *Id.*

[25] CALIFORNIA AGRICULTURE, *supra* note 2 at 19.

[26] Compiled from FATUS, *supra* note 2 at 40 and EXPORTS OF CALIFORNIA PRODUCTS, *supra* note 2 at 21.

[27] Compiled from CALIFORNIA AGRICULTURE, *supra* note 2 at 4-7.

[28] Compiled from AGRICULTURAL STATISTICS, *supra* note 2 at 411, Table No. 579.

nia production in 1989.[29]

The fact that California's agricultural production is so distinct from the U.S. norm is also reflected in the products the state exports. Excluding California, wheat, grains, oilseeds, feeds and meat accounted for 59% of the value of total exports from the United States in 1989.[30] Such products amounted to only 9% of the value of California's exports.[31] In contrast, cotton, fruits, vegetables and nuts comprised 71% of the value of California's overseas sales, but just 9.5% of the value of exports from the rest of the country in the same year.[32] Indeed, in 1989, California accounted for 85% or more of the value of American exports of each of 25 major agricultural products.[33]

Partially due to this unique character of California's products, its export trade pattern is different from the aggregate American agricultural trade. Pacific Rim exports are much more important to California growers. As Table 4 illustrates, in 1988, North and South-East Asian exports[34] amounted to close to 52% of the value of California exports, but just 30% of exports from the rest of the U.S.[35] The Japanese share of California exports was almost 50% more (29% of the state's total) than Japan's share of non-California U.S. exports as a whole (19.62%

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[29] Statistics compiled from CALIFORNIA AGRICULTURE, *supra* note 27 and AGRICULTURAL STATISTICS, *supra* note 28. The categories of vegetables, cotton, fruits and nuts somewhat overlap with the categories of animal products, dairy production and field crops that are used in the comparison presented in this section. As a result, the sum of both categories is greater than 100%. While vegetables, cotton, fruits and nuts accounted for 65% of the value of California's production in 1989 and animal products, dairy production and field crops made up 46% of California output, due to the significant overlap between the categories of "cotton" and "field crops," the sum of all categories is 111%.

[30] Compiled from FATUS, *supra* note 2 at 28-9, and EXPORTS OF CALIFORNIA PRODUCTS, *supra* note 2 at 12-19, Table No. 5.

[31] *Id.*

[32] *Id.*

[33] These crops are broccoli, cauliflower, celery, garlic, strawberries, processing tomatoes, clover seed, safflower, almonds, apricots, avocados, dates, figs, grapes, raisins, kiwifruit, lemons, olives, oranges, peaches, pistachios, plums, prunes, sweet cherries and walnuts. Jointly, the value of California exports of such crops amounted to $1.673 billion in 1988, or 42% of the state's total exports. California also has a number of crops grown primarily for export, including cotton lint (70% exported), safflower (80%), wheat (51%), almonds (68%), kiwifruit (50%) and sweet cherries (51%). Compiled from EXPORTS OF CALIFORNIA PRODUCTS, *supra* note 2 at 5-6, Table No. 2.

[34] *See* note 37, *infra*, for a discussion of differences between Asian trade statistics in general and the data employed here.

[35] Compiled from FATUS, *supra* note 2 at 40-211, Table 9, and EXPORTS OF CALIFORNIA PRODUCTS, *supra* note 2 at 1.

of total U.S. exports).[36]

Table 4
California and U.S. Exports, 1988
(Percent)

| Region/Country | California Exports To— | US Exports (Exclusive of California) To— |
|---|---|---|
| North and S.E. Asia[37] | 51.80% | 30.25% |
| EC | 30.60% | 20.00% |
| Latin America | 1.30% | 13.98% |
| Japan | 28.20% | 19.62% |
| Mexico | 0.90% | 8.71% |

Sources: FATUS, *supra* note 35, and EXPORTS OF CALIFORNIA PRODUCTS, *supra* note 35.

Table 4 also demonstrates the sharp distinction between aggregate U.S. and California trade with Latin America. California exports to Latin America are negligible compared to those of other American farmers. United States exports to Latin America in 1988, less California's share, accounted for nearly 14% of the value of total American exports.[38] United States exports to Mexico alone were 8.7% of the American total.[39] In contrast, California exported just 1.3% of its 1988 total to Latin America, and just 0.9% of its 1988 total to Mexico.[40] In general, Latin America and Mexico import bulk commodities or animal products which are not significant components of California exports.[41]

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[36] *Id.*

[37] United States statistics for Asian trade typically include the Middle East and western Asia in the total figures. The figures in Table 4 are exclusive of such amounts and reflect California and U.S. trade with North and Southeast Asia alone.

[38] Compiled from FATUS, *supra* note 35, and EXPORTS OF CALIFORNIA PRODUCTS, *supra* note 35.

[39] *Id.*

[40] *Id.*

[41] Table 4 also shows that California exports more to Europe (30% of the state's total) than does the rest of America (20% of the non-California U.S. total). Much of this reliance, however, is accounted for by large almond, walnut and dried fruit exports to Europe. Such products are comparatively expensive and require refined tastes; traditionally European consumers had both the desire to purchase and the ability to pay for them. Nevertheless, as is the case more generally, the European market has become more limited for California nut and dried fruit exports. In 1988-1989 alone, for instance, the value of almond exports from California to the EC (56% of all almond exports) fell 19%, while almond exports to Asia rose 13% (30% of total almond ex-

The changing pattern of U.S. imports, described in Table 3, also affects California differently than other producers in America. Imports from Latin America directly compete with California products, but are not as competitive with crops or products produced in the rest of the country. Vegetables comprised 23% of California production in 1989 but just 4% of the rest of the nation's output.[42] That same year, 75% of total U.S. competitive imports, or $10.3 billion, were vegetables and related products, and Latin America was the single largest supplier of such goods (34% of the total) to the U.S.[43] Mexico alone generated 13% of the value of total U.S. vegetable imports, and 60% of all competitive Mexican exports were vegetables, fruits or nuts, crops which comprise the heart of California agricultural production.[44] In addition, the 1989 imports from Latin America included those crops most directly competitive with California's high-value, specialty crops, such as grapes (98% of total imports) and with the state's processed and fresh vegetable operations (45% of total imports).[45]

California trade patterns therefore diverge from the rest of the country. California produces high value, specialty crops that generally are sold to countries with rapidly rising incomes and sophisticated tastes, such as North and South East Asia. Trade from California is much more focused on Asia than are exports originating from the rest of America. Further, while the volume of California's exports to Latin America is insignificant, overall American trade with Latin America and with Mexico has grown in importance. However, U.S. exports to Latin America have been offset by increased imports from the region which compete with California's crops and processed products but not, for the most part, with the output of the rest of the nation.

## II. California's Interests in the Global Economy

The development of world agricultural markets has also affected California and the rest of the United States differently. This section considers California's independent interests in Asian and Latin Ameri-

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ports). California's exports of high value nut and dried fruit crops are gradually shifting away from the EC towards increasingly wealthy, sophisticated consumers in Asia. *See* FATUS, *supra* note 2 at 141-42.

[42] Compiled from AGRICULTURAL STATISTICS, *supra* note 27, and CALIFORNIA AGRICULTURE, *supra* note 27.

[43] Compiled from FATUS, *supra* note 2 at 220-25, Table 14 and at 267-380, Table 18.

[44] *Id.*

[45] *Id.*, *See also* FATUS, *supra* at 322, 335.

can markets, and shows that overall American policy may not adequately reflect those interests.

### *A. Asian Markets*

Trade statistics show that California is much more dependent on Japanese and Pacific Rim markets than the rest of the U.S.[46] California's diverse specialty crops are generally more expensive than bulk commodities and appeal primarily to sophisticated, adaptable consumers. As incomes in Japan and the rest of the Pacific Rim have risen rapidly, Asian consumers have dramatically increased their demand for new foods such as California fruits, nuts and vegetables.[47] California also enjoys both geographic and political advantages in marketing its agricultural products to the Asia-Pacific region, and experiences little or no import competition from the region.[48] As a result, Japan and the Pacific Rim will likely remain the dominant export market for California agriculture in the foreseeable future. California's interest is to ensure that its market access to this region is unimpaired.

The United States has more ambiguous interests in the Asia-Pacific region. The region is a significant agricultural market for many non-California crops, but it is not as important as for California growers.[49] Furthermore, nonagricultural trade issues tend to overwhelm the fact that America enjoys a huge agricultural trade surplus with the Asian-Pacific region. While Asia accounted for 83% of the $18 billion agricultural trade surplus the U.S. enjoyed in 1989, the region also generated close to 69% of America's $138 billion nonagricultural trade deficit in that year.[50] The prevalence of nonagricultural deficits weighs heavily against perceptions of the benefits of trade with Japan and the Pacific Rim, and has stimulated national efforts to restrain, or even to sever, commerce with Asia.[51] Consequently, the U.S. overall may not share

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[46] *See* notes 35-37, *supra*, and the accompanying text.

[47] For a discussion of the factors which make the Pacific Rim attractive as an export market for the United States, *see* Heron and Walther, *supra* note 1 at 528-34.

[48] *See California's Classy Crop Cornucopia*, *supra* note 1.

[49] *See* notes 35-37, *supra*, and the accompanying text.

[50] Compiled from FATUS, *supra* note 2 at 40-211, Table No. 9 and at 267-380, Table No. 18, and STATISTICAL ABSTRACT, *supra* note 2 at 806-09, Table No. 1406.

[51] There is an extensive and growing literature critical of Japanese trade and investment practices and urging the United States to adopt mercantilist or other restrictive responses which would limit Japanese access to American markets. *See e.g.*, M. TOLCHIN AND S. TOLCHIN, BUYING INTO AMERICA: HOW FOREIGN MONEY IS CHANGING THE FACE OF OUR NATION (1988); C. PRESTOWITZ, TRADING PLACES: HOW WE ALLOWED JAPAN TO TAKE THE LEAD (1988); and J. Fallows, *Containing*

California's clear interest in maintaining and expanding Asian agricultural markets.

### *B. Latin American Trade*

California and the U.S. also have sharply differing interests with respect to trade with Mexico and Latin America. California currently exports only about 1% of its products to Latin America.[52] Imports from the region may directly threaten the state's producers, absent comprehensive trade policies. Currently, seasonal tariffs, phytosanitary regulations, and Food and Drug Administration standards assist California growers during peak harvest periods.[53] In some commodities, such as avocados, imports of competitive products are banned for phytosanitary reasons.[54] Imports of vegetables are limited to seasonal periods when California production is slack.[55] As a result of these policies, California agriculture has flourished in domestic and world markets despite Mexican and Latin American advantages in land and labor costs and the limited environmental constraints on the region's growers.[56]

Based on current production, most California agricultural producers can expect little export growth to Latin America, but could experience severe dislocation in the event imports rise from the region. Consequently, the state has a clear interest in assuring that Latin American agricultural trade generally, and trade with Mexico in particular, continues in a favorable manner. Absent present rules and tariffs, California's agricultural production and exports may be significantly harmed. In addition, the state's food processing industry may relocate to Mexico to take advantage of lower labor costs.[57] If these developments occur, it

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*Japan*, THE ATLANTIC MONTHLY, May 1989, at 40.

[52] *See* notes 38-41, *supra* and the accompanying text.

[53] For a comprehensive discussion of the regulations and other policies which currently restrain direct agricultural imports from Mexico, *see* Smith, *U.S. Mexico Agricultural Trade*, *supra* note 1 at 438-43.

[54] *Id.* at 442.

[55] CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, CSIS CONGRESSIONAL STUDY GROUP ON MEXICO BRIEFING PAPER, U.S.-MEXICO FREE TRADE SERIES: AGRICULTURE, October 2, 1990 at 3.

[56] For a brief review of the labor and regulatory advantages of Mexican producers compared to American farmers, *see* CSIS CONGRESSIONAL STUDY GROUP ON MEXICO, *supra* note 55 at 2.

[57] *See id.* for a discussion of the potential negative effects of U.S.-Mexico Free Trade, although not specifically addressed to California. The overall analysis, however, clearly applies directly to California since California is more deeply involved in the production of fruits and vegetables than any other region of the United States. Such products are identified by the study as the most highly vulnerable to import competition

is questionable whether all California producers could find adequate substitute crops or markets to replace lost production.

In contrast, many other American agricultural producers, and the national government, favor expanded trade with Latin America.[58] The U.S., unlike California, ships bulk food commodities and animal products to Latin America.[59] Analyses of the proposed U.S.-Mexico FTA have generally anticipated that enhanced trade with Mexico, and other southern hemisphere countries, will lead to a net increase in the value of such exports. This is true even though some regions, such as California, may suffer net losses.[60] Further, contemporary American leaders view expanded trade with Latin America as essential for promoting political and economic stability in the region.[61] They must discount possible negative effects as incidental or unavoidable consequences of their policies. The U.S., therefore, does not share California's interest in cautiously approaching Latin American agricultural trade.

## III. Current Trends Adversely Affecting California's Interests in Asian and Latin American Markets

Since California does have interests which are distinct from overall U.S. objectives in Asia and Latin America, several trends in the global economy could adversely affect those interests. These trends include: (1) increasing bilateral friction with Japan, (2) inadequate resolution of GATT agricultural trade issues, and (3) an imminent Free Trade Agreement with Mexico, possibly followed by similar agreements with

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from Mexico.

[58] A clear statement of the current American position on the U.S.-Mexico FTA is provided by the Office of the Press Secretary's press release from the White House on June 10, 1990, Joint Statement by the Presidents of Mexico and the United States on Negotiation of a Free Trade Agreement. The release states in part that "the Presidents share a commitment to forge a vigorous partnership for sustained economic growth and opportunity — one which will open markets so that trade and investment can expand further. The two Presidents have determined that a comprehensive Free Trade Agreement is the best vehicle to achieve these ambitious objectives. . . . They are convinced that free trade between Mexico and the United States can be a powerful engine for economic development, creating new jobs and opening new markets." *Id.* Additional evidence of America's favorable position towards the potential U.S.-Mexico FTA may be observed in the popular press. *See e.g., A Salinas Serenade: Free Trade With the U.S.*, Business Week, April 9, 1990 at 38. The CSIS Congressional Study Group on Mexico, *supra* note 55, was also generally favorable on the notion of free trade with Mexico. *See Id.* at 1-2, and 6.

[59] CSIS Congressional Study Group on Mexico, *supra* note 55 at 1-2.

[60] *Id.*

[61] *See* note 58, *supra*.

the rest of Latin America. These three trends do not exhaust the range of possible developments which may affect California agriculture, but they are the major current issues. Further, forecasting how future events may shape a specific industry is hazardous. Nevertheless, each trend is so important to California agriculture that the state's growers and processors would be ill-advised not to devise strategies to protect their interests as these trends develop.

### *A. Increased U.S.-Japan Bilateral Friction*

The most serious threat to California's access to Asian agricultural markets is the mounting hostility between the U.S. and Japan, the state's largest Asian market. The current level of bilateral criticism has led observers on both sides of the Pacific to conclude that the countries' relations are at a crisis stage. If the climate of U.S.-Japan relations does not improve, economic transactions, including agricultural trade, will be severely restrained.[62] Consequently, California growers may be denied access to Japanese markets, or Japan may shift its imports of agricultural products to other nations. These developments, should they occur, would be welcomed by other world producers which have surpluses.[63]

U.S.-Japan relations have worsened as the result of several factors, including the following:

#### 1. Competitive Reversals and Trade Deficits in Industrial Sectors

The competitive decline of many American industries and the concurrent rise of Japanese manufacturing is the primary source of bilateral friction. Unlike agriculture, where U.S. producers enjoy an overwhelming advantage and generate huge annual trade surpluses, American manufacturing industries have suffered significant losses attributable in large part to Japanese production advances and Japanese import penetration of the U.S. market. To many, Japanese industrial successes are the result of discriminatory national policies or unfair practices, a perspective which provokes bitter bilateral trade disputes, extensive domestic and international litigation, and vituperative diplo-

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[62] *See* note 51, *supra*, and the authorities cited therein.

[63] The most likely beneficiary of a shift in Japanese agricultural imports would be Europe, which has chronic, and extensive, agricultural surpluses resulting in part from internal support programs on several agricultural commodities. *See generally* M. NEWMAN, T. FULTON AND L. GLASER, *supra*, note 10.

matic exchanges.[64] U.S.-Japan industrial disputes have become so contentious that they threaten to overwhelm positive developments in other areas, such as agriculture, where the American and Japanese positions are largely the reverse of the conditions in industrial sectors.

2. Japanese Direct Foreign Investment

Investment by Japan in U.S. real estate, and industrial and agricultural production has stimulated significant friction between the countries. Many Americans argue that such investment unfairly favors the Japanese in light of apparent barriers to reciprocal U.S. investments in Japan.[65] Others believe that Japanese investment "strips" certain technologies or industries from America and transfers them to Japan.[66] The Japanese view such criticisms as unfair or racially motivated, particularly in light of the higher historical levels of total Dutch and British investment in America, which have not generated U.S. opposition.[67] The result is that Japanese investments in the U.S. often deepen bilateral controversy.

There have been well-publicized examples of foreign investment generating U.S.-Japan friction in agriculture. In 1989, after protracted negotiations led Japan to phase out beef quotas by April 1991, several Japanese food concerns purchased or invested in American beef ranches

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[64] Prominent examples of recent critical analyses of Japanese trade practices include Fallows, *supra*, note 51; Prestowitz, *supra*, note 51; P. DRUCKER, THE NEW REALITIES: IN GOVERNMENT AND POLITICS, IN ECONOMICS AND SOCIETY, IN BUSINESS TECHNOLOGY AND WORLD VIEW (1989); TOLCHIN AND TOLCHIN, *supra*, note 51; and D. BURSTEIN, YEN! JAPAN'S NEW FINANCIAL EMPIRE AND ITS THREAT TO AMERICA (1988). Litigation concerning manufacturing reversals due to Japanese imports is extensive. An excellent account of the most famous dispute brought by a Florida machine tool firm, Houdaille Industries, against Japanese machinery producers alleging in effect that Japan inherently practices unfair trade may be found in M. HOLLAND, WHEN THE MACHINE STOPPED: A CAUTIONARY TALE FROM INDUSTRIAL AMERICA (1989) at 171-243. The bitterness of the Japanese position concerning American criticism has been best articulated by S. ISHIHARA, THE JAPAN THAT CAN SAY NO (1989).

[65] The best articulated attack on Japanese direct foreign investment in the United States is found in TOLCHIN AND TOLCHIN, *supra*, note 51.

[66] The best statement of the view that Japanese investment results in the transfer of technology development out of the United States may be found in Reich and Mankin, *Joint Ventures with Japan Give Away Our Future*, 64 HARVARD BUS. REV. 2 (1986) at 78-79 and R. REICH, TALES OF A NEW AMERICA (1987), Chapters 5-6.

[67] *See* ISHIHARA, *supra*, note 64. For comprehensive statistics demonstrating what Japan had, as of 1988, only a 16.2% share of total foreign direct investment in the United States, *see* E. GRAHAM AND P. KRUGMAN, FOREIGN DIRECT INVESTMENT IN THE UNITED STATES (1989), at 18-26.

or packinghouses. These investments were broadly criticized, largely due to the perception that the Japanese were attempting to prevent Americans from realizing the anticipated benefits of increased beef exports by directly purchasing beef operations to dominate sales back to Japan. After a brief uproar, fanned by major media coverage, concern dissipated.[68]

### *B. The GATT Deadlock on Agricultural Issues*

In early December, 1990, the Uruguay Round of the GATT negotiations collapsed in Brussels without agreement. Although the causes of this collapse were complex, and included disagreements about services, intellectual property and investments, the major area of dispute concerned the reduction of agricultural export subsidies, especially by the EC. Efforts to revive the negotiations are in progress, but a specific date for new talks had not been set by the time this article went to press.[69]

The failure to achieve a new, comprehensive GATT protocol would affect California's interests in Japanese and Mexican markets in several ways:

#### 1. Increased Reluctance by the Japanese to Reduce Import Barriers

Japan tends to follow the EC's lead in negotiating over additional market access demands made by agricultural exporters. When Europe refuses to bargain, as was the case in the GATT negotiations in Brussels, Japanese negotiators frequently take a similar, uncompromising stance. For example, during the latter stages of the Uruguay Round, when EC concessions on export subsidies were expected, Japan was considering a relaxation of its near total ban on rice imports. When the

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[68] Representative of the media attention focused on Japanese purchases of beef production capacity in the U.S. after Japanese beef quota relaxation include Eisenstadt, *Bouef a la Orange Japonaise*, FORBES, November 28, 1988 at 37; Atchison, *Head 'Em Up, Move 'Em Out — To Japan: Big Demand for U.S. Beef is Making Cowboys of the Japanese*, BUSINESS WEEK, August 21, 1989 at 52; Keppel, *Buying the Farm: Japanese Boost Stake in State's Agriculture*, Los Angeles Times, part IV, page 1, November 28, 1988; Gorman, *Roundup Time for Teriyaki Beef: Japanese Investors Buy Prime U.S. Ranches and Packinghouses*, TIME, March 13, 1989 at 47; Ray, *Paradise Valley Neighbors Raising a Stink About Japanese Cattlemen*, Los Angeles Times, part II, page 1, August 6, 1989.

[69] The following discussion of the Uruguay Round and the collapse of the GATT negotiations in December in Brussels draws on the experiences of one of the authors of this Article, Mr. Heron, who was, and continues to be, directly involved in the GATT negotiations.

EC would not make significant concessions on export subsidies, the Japanese delegation took a much more intransigent stance against further rice or other import liberalization measures.[70] If GATT continues to weaken and protectionist sentiment grows, the further relaxation of Japanese agricultural import restraints will be more difficult to achieve.

2. Development of Regional Trading Blocs

Absent a GATT agreement, world trade may break into three principal groups: the EC, the Asian-Pacific region, and the Americas.[71] The regionalization of world trade in this manner may restrict California's access to Asia, reducing sales to its most lucrative export markets. A united Asian market may turn away from the U.S., which is strongly critical of the region, and instead fulfill its agricultural needs elsewhere.

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[70] The Japanese position on rice imports in the latter part of the Uruguay Round was communicated informally to many participants as part of the negotiations. The analysis presented here is based on the experiences of Mr. Heron as a participant in those negotiations.

[71] Current concern over the possibility of global trading blocs has been stimulated by United States bilateral free trade agreements and the imminent economic integration of Europe in 1992. *See e.g.*, Galuszka, *Is A Grand Alliance in the Making on the Pacific Rim?*, BUSINESS WEEK, November 6, 1989 at 70; Silk, *Economic Scene: Concerns Grow on "Europe 1992"*, The New York Times, section D, page 2, February 10, 1989; The Heritage Foundation, *Critical Issues: Reshaping Europe, Strategies for a Post-Cold War Europe*, HERITAGE FOUNDATION REPORTS, January 1, 1990 at 105; Elsner, *Asian Nations Call for Free Trade, No Fortress Europe*, THE REUTER BUSINESS REPORT, July 30, 1990. This concern is largely based on patterns of trade and the incipient political union of Europe. In 1988, 59% of the EC's exports were to itself, a strong indication that internal European trade is well advanced. The completion of the Canadian FTA, and the fact that 28% of U.S. exports in 1988 went to Mexico and Canada, more than to all of the Asian-Pacific nations combined, also lends some support to the idea of an Americas bloc. The notion of an Asian-Pacific bloc exclusive of the Americas, however, is more difficult to support. While Asian-Pacific countries, excluding Japan, internally exchanged about 26% of their exports in 1988, they relied much more on the U.S. (26%) than on Japan (15%) for additional markets. In the same year Japan exported 34% of its products to the U.S. and just 27% to the rest of the Asian-Pacific countries, while the U.S. exported 11% of its total exports to Japan, and approximately 14% to the other Asian-Pacific countries. *See*, YEH, SZE AND LEVIN, THE CHANGING ASIAN ECONOMIC ENVIRONMENT AND U.S.-JAPAN TRADE RELATIONS, RAND study R-3986-CUSJR (1990) at 17-18. Such patterns do not suggest an internally coherent Asian market like Europe or the Americas. Further, significant historical and political frictions exist between many of the Asian-Pacific nations. It is not clear that an Asian-Pacific trading bloc is likely to appear, or that the Americas would not include some or all of the countries in the Asian region within any formal trade regime it may generate.

At the same time, the formation of a Latin American FTA would open new markets for the U.S. to which California exports little, and increase imports from Latin America, many of which compete directly with the state's products. Regionalized world trade will harm California's interests.

3. Protectionism and the Restriction of California Exports to Foster Bilateral Trade Agreements

The breakdown of GATT will lead to world agricultural protectionism, a result that would restrict California and U.S. export markets in general. The lack of success in the Uruguay Round is forcing the U.S. to pursue bilateral or regional negotiations with its trading partners. Such bilateral agreements will likely require concessions by both sides, which will involve limiting certain U.S. agricultural exports in exchange for favorable treatment of other products.

California producers may be especially vulnerable as a target for such bilateral trade-offs. As previously noted, many California exports such as fruits, vegetables and nuts are unique to the region.[72] The U.S., for political reasons, may agree to restrict exports of products grown primarily in California as opposed to products which are produced in several states. California may therefore bear a disproportionate share of the costs of forming bilateral trade agreements in a post-GATT world.

### *C. Mexican and Latin American FTA's*

Both Mexico and the United States have committed publicly to the execution of an FTA similar to the U.S.-Canada FTA.[73] In general, an FTA provides for the exchange of goods across the participants' borders free from tariff, non-tariff, or other restraints which normally regulate international trade between nations.[74]

An FTA with Mexico would undoubtedly spur agricultural imports from Mexico and impose severe pressure on many California products. Some vegetable crops, in particular, may be completely displaced. In addition, food processing facilities, like manufacturing operations in other industries, may well be relocated to the Mexican border due to the low labor and factory costs in Mexico.[75] This would further reduce

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[72] *See* notes 34-37, *supra*, and the accompanying text.

[73] *See* note 58, *supra*, and the authorities cited therein.

[74] A recent account of the basic structure of the proposed United States-Mexico free trade agreement negotiations is found in Smith, *supra*, note 1 at 456-58.

[75] One of the few attempts to discuss, however briefly, the effects of a potential free

California's agricultural output and share of world trade.

The potential for a Latin American FTA also presents a greater long-range challenge to California agriculture. In addition to Mexico, produce and processed foods from Brazil, Chile and Argentina are directly competitive with California agriculture, although less so with the rest of American output.[76] Unrestricted Latin American trade and investment would likely enhance the displacement of California crops and processing operations to the South. This process may cause a significant decline in the state's exports and overall production.

## IV. Protecting California's Interests in World Agricultural Markets

To protect their interests in light of the current world political and economic developments considered above, California producers need to develop independent strategies for coping with the world economy. This section describes several possible initiatives which California agriculture may implement to achieve this goal. Identifying strategic responses to future trends is an inherently uncertain undertaking, and the suggestions that follow are not intended to be exhaustive in scope. Nevertheless, if there are challenges to California agriculture in Asian and Latin American markets, California producers need to focus on specific strategic responses to those challenges. The following discussion is intended to assist that process.

### *A. Reduce Bilateral Tensions with Japan*

An important strategy for California agriculture in protecting its Asian markets is to reduce tensions between the U.S. and Japan. Absent an effort to establish a separate agricultural trade dialogue concerning Asia, U.S.-Asian relations may be preempted, or shaped by conflicts between the countries based on experiences in other sectors where the American advantage is not so pronounced. Basic strategies for achieving this goal should include the following:

#### 1. Distinguish Agriculture from Other Manufacturing Sectors

U.S.-Japan economic relations have been predominantly shaped by manufacturing industry disputes. The perspectives typical of the manu-

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trade agreement with Mexico is CSIS Congressional Study Group on Mexico, *supra*, note 55 at 1-2.

[76] *See* notes 42-45, *supra*, and the accompanying text.

facturing context tend to be applied to relations in other areas, such as agriculture. California growers should instead emphasize the significant Japanese concessions and benefits to the state, and the U.S. as a whole, which characterize agricultural trade.

Although well-publicized trade disputes over citrus, beef, rice and other imports suggest that Japan has resisted agricultural trade with the same fervor which purportedly exists in other sectors, U.S.-Japan agricultural trade is almost the complete reverse of trade in manufacturing or finance. America clearly enjoys an overwhelming economic and trade advantage in agriculture, while the Japanese appear to have significant advantages in many, if not most, manufacturing or financial sectors. The American agricultural advantage has translated into enormous trade surpluses with Japan which reached $8 billion in 1989 alone. On the average, for each dollar of agricultural exports to Japan, the U.S. imports just 3 cents of foodstuffs, among the highest export/import ratios of all U.S. trading partners.[77]

Advantageous U.S. agricultural trade with Japan (and other Northern Asian countries) has been achieved despite significant domestic political opposition from farmers, retailers and conservative political factions with extensive influence on the ruling Liberal Democratic Party in Japan.[78] Over the past three decades the Japanese have, to an extent not approached by any other industrial nation, become dependent on imported food supplies. Japanese agricultural imports were $27 billion in 1988, twice as much as the next largest food importer, with American products accounting for close to 30% of such imports.[79] Since 1955, Japan's food imports grew at an annual rate of 13%, three times as fast as the world average, and in 1981-87, the rate of increase was 18% annually.[80] Rising imports have reduced the number of Japanese full-time farms from 2 million to 600,000 since 1960. Consequently, where the world's countries on average grow or raise 90% of the calories their domestic populations consume, the Japanese now depend on imports for approximately 50% of their caloric intake, the lowest ratio of self-sufficiency among industrialized nations.[81] To appreciate this number, consider that U.S. crude oil imports in 1989 were just 40% of total

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[77] *See* notes 22-24, *supra*, and the accompanying text.

[78] The following discussion of Japanese agricultural imports is based on Paarlberg, *The Upside Down World of U.S.-Japanese Agricultural Trade*, 13 THE WASHINGTON QUARTERLY, No. 4 at 131.

[79] *Id.*

[80] *Id.*

[81] *Id.*

American consumption, less than Japanese food import dependence, but still widely viewed as placing American strategic interests in an overly risky posture.[82]

As a result, despite a surface veneer of trade disputes reminiscent of experiences in other industries, the Japanese have been more accommodating to agricultural imports than any other U.S. trading partner. California growers must emphasize and reinforce the public perception of this fact. If manufacturing or other industrial disputes color the entire bilateral trade agenda, then the Japanese will have little incentive to maintain or expand imports of U.S. agricultural products. Should Japan obtain positive public and political support for its extensive California and U.S. food purchases, then agriculture may emerge as one area of positive relations between the countries to counterbalance disputes elsewhere. Characterized in this fashion, U.S.-Japan agricultural trade could well expand as the Japanese perceive that, in addition to fulfilling its food consumption needs, imports of American agricultural products earn significant political dividends which help ease its increasingly difficult relationship with the U.S. California's advantage is to promote agriculture as a positive part of the U.S.-Japan and U.S.-Asian relationship, and to provide positive political incentives for expanded agricultural trade with the region.

2. Resist Inflammatory Responses to Japanese Investment in the U.S.

Investments in U.S. agriculture have, as previously noted, provoked extremely damaging anti-Asian incidents, most of which fade in importance on more thoughtful reflection. California growers should be aware of challenges that investors such as the Japanese present when purchasing assets in the state. This awareness should be the same for any investments by any capable, cash-rich entity. Japanese investments therefore deserve prudent scrutiny in a competitive market. However, bilateral relations with Asia are put at risk when Japanese (or other Asian) investment in the U.S. provokes a thoughtless spasm of suspicion and resentment.

At present, despite widespread academic and professional study, no consensus exists on whether direct foreign investment by the Japanese harms or hurts U.S. producers.[83] California growers have an interest in

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[82] Compiled from STATISTICAL ABSTRACT, *supra* note 2 at 571, Table No. 961.

[83] Although there are works which purport to demonstrate the profound negative effects of Japanese and other foreign direct investment in the United States, the most careful analyses are far more ambivalent. Many demonstrate that there are both nega-

tempering unfounded public resentment over Japanese foreign investments where clear evidence of harm does not exist. Efforts to reduce such tension could generate several benefits. Japan could well be favorably disposed towards increasing trade with parties such as California that restrain unwarranted criticism of their investments. Further, urging careful analysis in place of unthinking condemnation on the issue of foreign investment could help heal the growing rift between the two countries or at least establish California as a less hostile environment for Japanese trade. Finally, moderation by California producers could lead to beneficial investments in the state, joint ventures with California producers, or to a more conciliatory position by the Japanese when bona fide problems concerning their investments are actually demonstrated.

3. Resist Symbolic, Inflammatory Issues with Little Economic Substance

California agriculture should also oppose highly visible initiatives that are plainly targeted against Japan or the Asian-Pacific region, but which are based on inadequate, emotionally charged rationales. A good example is the recent, unsuccessful effort by Congress to prohibit the export of logs from private lands in California and the West. The legislation was aimed primarily at Japan, which bitterly resented the measure, and was apparently premised on the belief that exports of unprocessed logs transferred manufacturing jobs from the U.S. to Asia.[84]

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tive and positive effects, and convincingly show that, at the present time, there is no readily available, widely accepted means for evaluating the overall benefits or detriments of foreign direct investment in America. *See e.g.*, E. GRAHAM & P. KRUGMAN, *supra*, note 67; N. GLICKMAN & D. WOODWARD, THE NEW COMPETITORS: HOW FOREIGN INVESTORS ARE CHANGING THE U.S. ECONOMY, (1989); and JAPANESE INVESTMENT IN THE UNITED STATES: SHOULD WE BE CONCERNED? (K. Yamamura, ed. 1989), at 27-40.

[84] The unsuccessful legislation was introduced in the House as H.R. 5651 on September 18, 1990 and was popularly titled the "Timber Fair Trade and Forest Conservation Act of 1990". The timber industry on the West Coast was largely split on the issue. Owners of timberland generally oppose the notion of a ban on exports from privately held timberlands, while timber interests which had invested in processing facilities in the U.S. were more favorable. In addition, strategies to reduce political pressures to ban private land log exports were diverse. One part of the timber industry supported a more limited ban in the belief that such a measure would placate the proponents of a ban without blocking exports altogether. Others believe that any export bans would have to be opposed altogether. Consequently, not only did the measure antagonize Asian trading partners (and possibly suggested that California and the United States were unreliable sources of supply) but it also badly split and antagonized

In fact, the effects of log exports on domestic job-creation are far from clear despite considerable study.[85] As a result, the only enduring consequence of the measure was to contribute further to the decline in U.S.-Japan relations. A unified California agricultural position on matters such as the log export ban would likely be viewed as a positive effort by Asian trading partners and would enhance the state's relations with the region.

### *B. Create Direct Ties with Major Trading Partners to Counterbalance Possible Trade Regionalization*

The breakdown of GATT, with the absence of any alternative trade regime, may stimulate the creation of closed trading blocks which may, as previously discussed, harm California agriculture. In response, California agricultural producers should consider forging direct, long-term ties with related businesses in their primary export markets, which can counterbalance political trends towards trade closure. Potential strategies to accomplish this result might include:

#### 1. Long-Term Supply Contracts

California exporters should attempt to obtain long-term supply contracts with importers in major overseas markets. Such contracts would help prevent (for the reasons discussed below) the exclusion of the state's growers from markets such as Japan or Europe, which might increase trade restrictions with the state or the U.S. as a whole, if world markets regionalize into discrete trade blocks.

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California timber interests.

[85] An example of the counter arguments which have yet to be resolved in the log export dispute is the July 19, 1990 press release from Fruit Growers Supply Co., a major timber interest in California, entitled Exporting Logs from California — The Facts. The release notes that only about 2% of the total timber harvested in California is exported, that the logs exported are generally the lowest quality fir logs which have no ready market in the United States, and that there appears to be no net loss of jobs as a result of whole log exports. While the press release is clearly a partisan document, the fact that serious arguments have yet to be resolved with respect to any of these claims strongly indicates the paucity of clear evidence which might have supported the log export ban. *See also Business Wire*, Weyerhauser Co. Response to Statement by Representative De Fazio at Eugene Press Conference, August 30, 1990; McDermott, *At Loggerheads — The "Marriage" of Japan and the Northwest Pits Environmental Issues Against Tough Economics*, The Seattle Times, page J1, August 19, 1990.

2. Create Trade Organizations to Coordinate California Exports

In many Asian markets, importers, absent some form of restraint, tend to make excessive purchases of agricultural imports at the start of a season, which generates a domestic glut of the product, and then purchase too little product later, as crops ripen in the exporting countries.[86] To avoid the disruption of markets in this fashion, many Asian importers place a premium on dealing with large scale exporters who can, by virtue of their control of the supply of a product, regulate the pace and allocation of imports.

California growers should consider means for fostering such coordination since the ability to regulate imports may make the state's products more attractive even if trade frictions increase. Importers may prefer to deal with large scale export groups to preclude excessive competition. One effort some growers have pursued is to obtain certification under the Export Trading Company Act of 1982 (ETCA) to operate jointly in foreign markets.[87] Acting under the aegis of an ETCA entity, the growers attempt to facilitate joint exports of their products among selected importers so that export prices and the rate of exports are stabilized throughout the harvest period.[88] The effectiveness of such ETCA trade organizations is not yet clear, but the effort sug-

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[86] Information regarding the import practices of major Asian nations was obtained by the authors in private communication with several California exporting organizations and companies.

[87] The Export Trading Company Act of 1982, Pub. L. No. 97-290, 96 Stat. 1233 (1982); Title I codified at 15 U.S.C. § 4001 (1982); Title II codified at 12 U.S.C. § 1843 (1982); Title III codified at 15 U.S.C. § 4011 (1982); Title IV codified at 15 U.S.C. § 6(a) (1982). The primary operation of the Export Trading Company Act is for the Department of Commerce to issue to applicant firms or groups of firms a Certificate of Review which immunizes the applicants from antitrust challenges based on their purely foreign business operations. Consequently, by obtaining a Certificate of Review, exporters can cooperate in overseas markets in a way that might normally be subject to domestic U.S. antitrust challenge. *See* Golden and Kolb, *The Export Trading Company Act of 1982: An American Response to Foreign Competition*, 58 NOTRE DAME L. REV. 743 (1983); Bruce & Pierce, *Understanding the Export Trading Company Act and Using (or Avoiding) Its Antitrust Exemptions*, 38 BUS. LAW. 975 (1983); Acheson, *The Export Trading Company Act: A Year Downstream*, 18 INT'L. LAW. 389 (1984); and Norton, *The Efficacy of Export Trading Companies and Related Legislation and Regulations*, 50 J. AIR L. & COM. 865 (1985).

[88] The Department of Commerce is required under the ETCA to publish in the Federal Register each Certificate of Review which it approves. Two groups which have received ETCA certificate approval are kiwifruit and sweet cherry marketing associations. *See* Export Trade Certificate of Review, 55 F.R. 33740 (1990) (California Kiwifruit Association certificate approval); Export Trade Certificate of Review, 52 F.R. 33465 (1987) (California Cherry Export Association certificate approval).

gests the creative approach that California agriculture ought to consider in building enduring ties with Asian importers.

3. Direct Investment

Another means for protecting key markets, in the event regionalized trade blocks emerge, is for California growers and processors to form direct joint ventures with foreign agricultural interests. One form of this strategy would be to invest directly in processing or distribution facilities in overseas markets, or to encourage such investment by foreign entities in California enterprises.

The purpose of fostering mutual direct investment is to create a commonality of interests among California and foreign agricultural entities that would cut across international political divisions between the U.S. and its trading partners, should divisions develop. The extensive multinational investment by foreigners in the United States and by American firms in Europe and elsewhere, while sometimes generating conflict, may also create cross-border interests which help preclude the erection of trade barriers along national political lines.[89] For instance, if a firm like Sony or Toyota owns plants, equipment, or other assets worth hundreds of millions of dollars in the United States, or if General Motors has extensive investments in Europe, debilitating trade wars may become less likely since such ownership patterns give influential companies an interest in free trade and investment throughout the world. Similarly, agricultural multi-national investments could help preserve market access to countries which receive capital from or invest capital in the United States. Foreign direct investment may well be an effective strategy for California producers to pursue in response to anticipated trade frictions should the GATT regime deteriorate further.

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[89] The literature on multi-national investment is extensive and includes such seminal works as R. BARNET & R. MILLER, GLOBAL REACH: THE POWER OF THE MULTINATIONAL CORPORATIONS (1974); R. VERNON, SOVEREIGNTY AT BAY: THE MULTINATIONAL SPREAD OF U.S. ENTERPRISES (1971); C. KINDLEBERGER, AMERICAN BUSINESS ABROAD (1969); Caves, *International Corporations: The Industrial Economics of Foreign Investment*, 38 ECONOMICS 5 (1971); and Reich, *Corporation and Nation*, THE ATLANTIC MONTHLY, May 1988 at 76-81. While these works have many dissimilarities, they are unified in their view that multinational investments create extensive economic interests which may or may not be congruent with the interests of the individual countries in which such investments take place. This suggests that multinational investments may create a commitment to maintaining international trade at the level of international companies or financial institutions which can be distinct from growing mercantilist tendencies which might be expressed by domestic politicians in nation states.

4. Formation of Federated Co-ops or Joint Ventures with Foreign Market Interests

Agricultural cooperatives are particularly suited to the allocation of revenues from business transactions to a diverse group of members according to varying, and often changing, criteria.[90] As such, they may be especially appropriate vehicles for forming joint ventures with foreign agricultural interests directly or through the creation of federated cooperatives. The members of such federated cooperatives would be cooperatives in the overseas country and cooperatives in California.[91]

Although forming cooperatives or joint ventures with foreign interests would be highly unusual, such arrangements could reduce potential trade friction in several ways. First, such ventures could ensure that should trade relations generally worsen between the U.S. and another country, California growers would have domestic allies in favor of maintaining trade, especially with respect to the products which the venture produces and distributes. Second, federated cooperatives or joint ventures may encourage domestic interests in countries which import

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[90] There is a paucity of perceptive analyses of American cooperatives and how they function. A comprehensive introduction may be obtained from the U.S. DEPARTMENT OF AGRICULTURE, LEGAL PHASES OF FARMER COOPERATIVES, (1976); G. MCBRIDE, AGRICULTURAL COOPERATIVES: THEIR WHY AND THEIR HOW (1986); and K. MEYER, D. PEDERSEN, N. THORSON, AND J. DAVIDSON, AGRICULTURAL LAW: CASES AND MATERIALS (1985) at 569-679. In general, in a cooperative, groups of growers collectively engage in the marketing or the purchase of supplies for their operations. The cooperative returns to the growers all of its proceeds less reasonable amounts necessary for operating expenses. One of the key benefits of a cooperative is that, unlike the usual corporation, amounts earned by the cooperative directly related to its members' patronage are not taxed at the entity level but rather only when distributed to the members. In addition, the members of a cooperative are afforded certain antitrust protections. Many California cooperatives, which have been in existence for decades, have extremely complicated membership structures which attempt to provide each member with an appropriate share of the cooperative's earnings based on patronage with the cooperative. It is this experience with facilitating cooperation among often widely diverse groups of growers that may make a cooperative a particularly useful entity for fostering multinational ties with overseas agricultural interests.

[91] The discussion in this section assumes that the overseas interests would be groups of growers in the importing country which were capable of forming a cooperative. Where agricultural interests in the importing company were not groups of growers, but rather distributors or processors, then the more natural form for creating relationships between California growers and such overseas interests would be to form joint ventures. Cooperatives, by their nature, require that each member has some basic interest in the growing or production of agricultural commodities. Consequently, it would ordinarily not be possible to form a federated cooperative with producers in the U.S. and overseas distributors alone.

California products to resist protectionist sentiments. Third, federated cooperatives or joint ventures would create binding obligations between California and foreign entities which could be upset by national governments only with some difficulty.[92]

Finally, federated cooperatives or joint ventures may greatly increase the per unit yield of California export sales. Through elaborate distribution networks, particularly in Asian markets, products imported from California are marked-up significantly and sell at retail for many times the import price.[93] If producer cooperatives in California formed joint ventures (or, where appropriate, federated cooperatives) with distributors in Asian markets, the joint entity might be able to market California produce at a more advanced point in the distribution chain, thus securing a greater price per unit of product imported. Both the Asian distributors and the California exporters would benefit from such an arrangement through the distribution of the enhanced earnings to each other.

California producers should also consider forming federated cooperatives with each other for the purpose of improving the overall export expertise of the state. Frequently, the most significant barrier to exporting California agricultural products is the inability of growers or processors to comprehend foreign markets or to find suitable importers or business contacts. Different parts of California agriculture are more experienced in export operations than others, and the more advanced producers could assist others which have yet to effectively enter overseas markets. A federated cooperative scheme would permit the revenues earned from such joint ventures to be allocated according to the contri-

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[92] For example, if citrus, beef, or rice producers in California were to form federated cooperatives with their counterparts in Asian importing nations, and therefore give the Asian agricultural interests a stake in the overall expansion of California exports to their country, it is possible that the Asian interests would actually support, rather than oppose, such expansion of exports. This would be particularly true where, as is usually the case, California exporters have a clear economic advantage in exporting and producing the product in question, such that strong economic considerations exist in favor of expanded exports. If bilateral relationships continue to worsen in the near future, fostering indigenous Asian interests in favor of expanding exports in this manner may well prove to be an effective means for California growers to continue to expand exports to Asian nations.

[93] For example, in 1987, California cherry producers formed an ETCA entity which exported 171,151 lugs of cherries to Japan for the first time. The lugs wholesaled in Japan for as much as $65 apiece, which is more than triple the price in the U.S. The retail price of the cherries was several times the amount of the wholesale price, suggesting the degree of the markup in Asian markets. *See California's Classy Crop Cornucopia*, *supra*, note 1.

butions of the product for sale and of the marketing expertise contributed by each member. Such an arrangement would permit both advanced and less experienced exporters to share collectively in the development of new markets.

Federated cooperatives and joint ventures may well represent a novel solution to preserving and enhancing California's access to foreign markets in an unsettled global economy. The question is whether or not California farmers can overcome their political objections to forming such cooperatives or ventures.

### *C. Defend California's Interests in FTA Negotiations and Prepare for Collaborative Investments with Latin America*

California growers must develop a comprehensive strategy for dealing with the competitive pressures that the imminent U.S.-Mexico FTA, or a U.S.-Latin American FTA, will bring. Most likely, Latin American agricultural trade will not be maintained in its present form. In general, most states, many manufacturing industries, the U.S. financial community and the federal government favor expanded trade with the region.[94] Groups which might oppose liberalized Latin American trade, such as growers in border states like California or organized labor, have widely diverse positions on other issues and any coalition of such groups would be inherently unstable. California agriculture must therefore assume that a major modification of the current trade regime with Mexico, and possibly with other Latin American countries, will occur in the near future.

There are two basic strategies California growers might consider in response to this challenge:

#### 1. Clearly Articulate and Promote California's Interests as Part of the FTA Negotiations

In light of the divergence between overall U.S. and California interests, California growers cannot assume that their concerns will be adequately addressed in bilateral FTA negotiations. In response, California must assess and publicize the risks to the state's production, and to its exports, that unregulated agricultural trade might bring. California growers should attempt to ensure that some form of protection, such as restraints triggered in the event of significant threshold harm to California agriculture, be built into any FTA with Mexico or other agricultural nations which export to the U.S. To the extent possible, the

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[94] *See* note 58, *supra*, and the authorities cited therein.

extensive transfer of production and processing out of the state should be addressed. This development would create unacceptable harm to California and to the nation.

One particular problem for California growers is that overall U.S. analysis of the economic effects of trade initiatives is frequently inadequate.[95] This failure may be especially pronounced in the U.S.-Mexico FTA context because the primary motivation for the initiative is geopolitical rather than economic. Consequently, the U.S. government may be more prone to accept regional economic dislocations or to rely on superficial studies to avoid detailed discussion of the negative effects of an FTA. California agriculture would be well-served by sponsoring careful analysis of the comparative costs to the state and the nation of the U.S.-Mexico or a U.S.-Latin America FTA. Such studies should

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[95] *See*, for an example of the cursory analysis to which free trade legislation is frequently subject, CSIS CONGRESSIONAL STUDY GROUP ON MEXICO, *supra*, note 10. Another illuminating example is the continuing dispute as to whether the American effort to roll back Japanese import quotas on such items as beef, citrus and wheat in Asia will actually benefit American consumers and producers as opposed to producers in Australia, Canada or New Zealand. Agricultural economists have noted that, especially in the case of wheat and beef, Japanese consumers would most likely have imported less expensive beef from either Australia or New Zealand, or premium red wheat from Canada, in the absence of quotas. Instead, Japanese quotas, apparently to promote good relations with the United States, were utilized to artificially increase imports from the United States. During 1960-1988, when quotas were in effect, American exports to Japan rose 30% per year even though America exported relatively little beef to any other country, and was in fact a net beef importer. Similarly, during the same period, Canadian red wheat imports by Japan fell from 50% of the Japanese market in the early 1960's to less than 25% by the late 1980's, while the U.S. share increased from 35% to close to 60%. Canadian red wheat, however, was greatly preferred by Japanese millers. Statistics such as these suggest to agricultural economists that the United States may actually lose market shares in Japan or other Asian markets if it insists on the reduction of highly favorable quotas consistent with the country's overall free trade ideology. *See e.g.*, Alston, Carter & Jarvis, *Discriminatory Trade: The Case of Japanese Beef and Wheat Imports*, 38 CANADIAN JOURNAL OF AGRICULTURAL ECONOMICS, 197-214 (1990); Alston, Carter & Jarvis, *Our Beef With Government Beef Trade Experts*, CHOICES, 34-35 (1990), and Alston, Carter & Jarvis, *Japanese Beef Trade Liberalization: It May Not Benefit Americans*, CHOICES (1989) 26-30. For a contrary view of the beef liberalization initiatives, *see* Coyle & Dyck, *It Will Benefit American Agriculture*, CHOICES (1989) at 27-31 and Coyle & Dyck, *Our Beef With University Beef Trade Experts*, CHOICES (1990) at 35. That such disputes concerning the effectiveness of extremely contentious, and politically expensive, policy disputes between the United States and Japan still exist further illustrates the ineffective character of much of American international trade analyses. California agriculture must insure that, whatever the outcome of the U.S.-Mexico free trade agreement negotiations, the final shape of the agreement is determined by the best available policy analyses.

emphasize the domestic costs of agricultural dislocations, potential export reductions, and possible food import dependence that could be generated by the proposed agreements.

2. Prepare for Investment and Joint Ventures in Mexico and Latin America

Even if California growers and processors effectively present their concerns during the FTA negotiations, many of the policies now protecting the state from imports from or outflows of investment to the South will be weakened or eliminated. Therefore, California agricultural enterprises should consider direct participation in Mexican and Latin American ventures to minimize, and to profit from, the anticipated shift of production and processing to Mexico or other Latin American countries. Grower organizations should consider investing in production in the region to supplement their output with lower-cost produce from Mexico. Processors may wish to invest in plants along the border to facilitate the employment of lower wage labor.[96]

One possible strategy to implement such participation may be to create federated cooperatives or joint ventures with Latin American producers which may assist trans-border agricultural trade for the collective benefit of the participants. Another is to make direct investments in Mexico. Regardless of the form ultimately selected, California agriculture must begin to identify and pursue potential expansion opportunities into Mexico. Absent such foresight, investors from other states, or other countries such as Japan, may dominate post-FTA agricultural trade.

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[96] In fact, southwestern and California agricultural interests have begun investing in Mexico to widely varying degrees. Some industries are extremely well represented, such as vegetables and fruits, and therefore may be better situated to weather the economic dislocations which might be created by the imminent FTA. Others have yet to make such substantial investments, and may be more exposed. One potential effect of the FTA could be to shift the economic benefits of a joint U.S.-Mexico agricultural market away from California and toward other regions or even foreign countries which have heavily invested in Mexican production. While precise statistics are not available, it appears for example that southwestern investors, largely from Texas, New Mexico or Arizona, have dominated Mexican direct foreign investment in agriculture. If the free trade agreement dislocated California's vegetable industry, it is possible that the ultimate beneficiaries would be American southwestern investors operating in Mexico. For a general discussion of the relationship between American investment and Mexican agricultural exports, *see* Smith, *United States-Mexico Agricultural Trade*, *supra*, note 1 at 438-40.

## Conclusion

California agriculture faces unprecedented challenges due to a changing world order and its increasing reliance on international agricultural trade. The state, and the country as a whole, have been affected differently by the globalization of the agricultural industry. As a result, California has significantly different interests than the United States with respect to the maintenance and expansion of Asian and Latin American markets. Trade friction with Japan, the breakdown of GATT, and the impending free trade agreement with Mexico (and possibly with the rest of Latin America) all may adversely affect California's interests in the world economy. To protect its interests, California producers need to develop independent strategies, including strengthening positive ties with Japan, forming direct links with major overseas agricultural interests, and preparing politically and economically for the completion of the U.S.-Mexico FTA. By preparing now to respond to global market challenges which will develop, California agriculture should be able to reduce the potential adverse affects of current world economic and political trends, and continue to flourish in the coming decades. The question remains whether the farmers and food processors of California are ready to do so.