U.S. FARM POLICY AND FREE TRADE

THE HERITAGE FOUNDATION'S FARM POLICY PROPOSALS:

HARMFUL TO U.S. FARMERS AND RANCHERS AND INEFFECTIVE IN ADVANCING FREE TRADE

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Introduction and Executive Summary

This paper is written in response to the Heritage Foundation's *Farms and Free Enterprise: A Blueprint for Agricultural Policy*, specifically section 7 of Part II, "Promoting Free Trade in Agriculture."

The Heritage Foundation's view that trade is beneficial and trade agreements are important is undeniably true and shared by the author of this paper. However, it is not true – as the Heritage Foundation also asserts – that U.S. farm policy stands in the way of further liberalization and that U.S. farmers would be better off if U.S. policy were unilaterally eliminated. To the contrary, the U.S. agriculture community has been a reliable and crucial supporter of greater trade liberalization. Further, U.S. farm policy is generally consistent with U.S. international obligations. Its unilateral elimination would devastate farm communities across the country and, in the process, eviscerate support among U.S. farmers for continued membership in the World Trade Organization (WTO), as well as for further trade liberalization.

About the Author

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Overview

The United States is one of the most open agriculture economies in the world, with low tariff and non-tariff barriers. Moreover, U.S. farm policy has undergone significant reform over the last two decades. U.S. farmers and ranchers are generally competitive and technologically advanced. This is a major reason why the U.S. farm community has long been, and should continue to be, a staunch and reliable supporter of U.S. trade liberalization.

Support from the U.S. farm community was crucial to the launch in 1986 of the Uruguay Round Agreement (URA) negotiations, which created the World Trade Organization (WTO), and to its approval by Congress in 1994. The support of U.S. agriculture has similarly been important to the negotiation and approval of every major U.S. free trade agreement (FTA). U.S. producers have supported the WTO and new FTAs even though they have brought greater disciplines on U.S. farm policy and greater competition from foreign imports.

It is doubtful the U.S. Congress would have approved either the URA or many of the largest FTAs over the past twenty-five years – such as the North American Free Trade Agreement

(NAFTA), the Dominican Republic-Central America Free Trade Agreement (CAFTA), or Korea FTA – without the vocal and sustained lobbying support of the U.S. farm community.

It is thus demonstrably false that U.S. farm policy stands in the way of market liberalization. To the contrary, the U.S. agriculture sector has been – and remains – a leader in the push for new trade agreements and greater market liberalization.

However, unilaterally eliminating U.S. farm policy and reducing all U.S. tariffs to zero would devastate the U.S. farm economy, and greatly diminish any practical leverage the United States would have to secure reforms from its trading partners at the negotiating table. While such a dramatic act might be welcome news in many foreign capitals, prospects for a new multilateral agreement in the WTO would remain dim for a host of reasons unrelated to the U.S. position on agriculture.

Moreover, eliminating farm policy in the name of advancing the WTO would destroy support among farmers for U.S. membership in the WTO. It would be seen as a betrayal of the support farm groups have given to the WTO and further energize the growing popular movement against trade liberalization.

It is true that U.S. farm policy is unpopular among its largest trading rivals. But numerous non-agriculture U.S. policies are also unpopular. The United States has faced – and lost – numerous challenges in the WTO against a wide assortment of U.S. laws and measures, most of them unrelated to agriculture.

More generally, hundreds of WTO disputes have been filed between various member countries. Since 1995, when the WTO and its binding dispute settlement system was established, more than 500 disputes have been filed, and over 350 rulings have been issued.[1] Sixty-six countries, more than a third of the WTO's membership, have participated as either a complainant or a respondent.[2] Together with those countries that participated in challenges as a third-party, more than 100 countries have been involved in the dispute settlement system – almost two-thirds of the WTO's membership.[3]

The United States has been a responding party in 130 disputes,[4] suffering an adverse outcome in approximately 75% of the cases that produced a ruling.[5] The United States has filed

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[1] World Trade Organization. https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm. Web. Accessed April 28, 2017; *see also* World Trade Organization. *Annual Report 2016*, p. 102. https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep16_e.pdf. Web. Accessed May 5, 2017.

[2] *Id.*, p. 104.

[3] World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. Web. Accessed May 5, 2017.

[4] *Id.*

[5] *See* Mayeda, Andrew. "America Wins Often With Trade Referee That Trump Wants to Avoid." *Bloomberg Politics*. March 26, 2017. https://www.bloomberg.com/politics/articles/2017-03-27/trump-isn-t-a-fan-of-the-wto-but-u-s-lawyers-often-win-there. Web. Accessed May 5, 2017. The *Bloomberg* analysis excludes those cases that were settled or remain unresolved.

as complaining party in 114 disputes,[6] winning favorable outcomes in more than 85% of those cases,[7] and filed as a third-party in another 140 cases.[8]

In contrast, during that same period, the United States has faced and lost only two challenges to prominent agriculture policies.[9] Though it was threatened, neither of the two cases resulted in retaliation against the United States.[10]

The threat of litigation is always present in the WTO; that is, in fact, the value of binding dispute resolution. But this is no reason for the United States to abandon its right to legislate for its own domestic purposes.

Agriculture is a unique sector of any economy. Even today, in developed and developing countries, alike, no other industrial endeavor retains the same degree of social and cultural – and hence, political – potency.

U.S. farm exports confront a dizzying complex of market distortions. The most effective and fairest way to address these distortions is at the negotiating table. Trade negotiations proceed in a uniquely transactional environment. Member countries give defensive concessions in order to secure offensive gains.

To succeed in this environment, the United States needs bargaining power – tangible, offensive leverage that will convince other countries to come to the table. Negotiating from the pretense of "moral" superiority – demonstrated in the form of unilaterally eliminating U.S. farm policy – would be an ineffective tool in securing global free trade in agriculture.

A much more practical approach is necessary, especially given the nearly paralyzed state of the WTO's negotiating agenda. To better understand the U.S. perspective, it is first useful to consider how U.S. farm and market access policies actually stack up and then review the role of U.S. agriculture in supporting trade liberalization. We can then turn to questions about specific U.S. policies and whether unilateral disarmament would be helpful.

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[6] *See* note 3, *supra*.

[7] See note 5, *supra*.

[8] *See* note 3, *supra*.

[9] The first dispute was brought by Brazil against U.S. cotton policy, *see* note 43, *infra*. The second was brought against U.S. country-of-origin labeling (COOL) laws affecting meat products, *see* note 52, *infra*. Each dispute is discussed in greater depth, below. This paper does not address Mexico's challenge of U.S. "dolphin-safe" labeling requirements for tuna products (*United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products,* WT/DS381), since the U.S. policies challenged in that dispute are not a part of U.S. domestic farm programs. A WTO arbitrator recently ruled that the United States remains out of compliance and authorized retaliation by Mexico of up to $163 million per year.

[10] Retaliation was authorized in the Brazil *Upland Cotton* dispute but a settlement was reached, averting retaliation.

Putting Agriculture in Global Perspective

Farm supports are maintained in the United States and around the world for a number of reasons, aside from trade. Agriculture is the one major industry available to every country in the world. No matter how small, poor, rich, or technologically advanced, every country in the world is home to a farmer and virtually every country views food and fiber production as a matter of national and civil security. Many countries subsidize farm production, but nearly all maintain a regime of tariff and non-tariff barriers.

No other sector of the U.S. economy faces a greater variety of government-sanctioned competitive challenges. This is not the sole reason why the United States maintains domestic support for farmers, but it is an important factor.

Eliminating the farm safety net and already low U.S. agriculture tariffs would further expose U.S. farmers to the manifold distortions of dozens of foreign governments. Merely having access to a suite of litigation options – whether at the WTO or through traditional trade remedy measures – would be woefully inadequate to force the kind of global reform U.S. farmers and ranchers would need to remain competitive.[11] The U.S. farm economy is strong, innovative, and competitive. But it is not invulnerable against foreign treasuries and high market access barriers.

That said, the United States has already reformed its farm policy in a number of ways since the URA went into force.

The 1996 Federal Agriculture Improvement and Reform (FAIR) Act was enacted to implement promises the United States made in the URA to limit trade-distorting support (reported as its Total Aggregate Measurement of Support, or AMS), to $19.1 billion per year. It included reforms designed to shift U.S. spending toward non-trade distorting policies. Successive farm bills in 2002, 2008, and 2014 made further changes toward market-oriented policies. As a result of these reforms, U.S. trade-distorting support fell significantly.

For 2014, the first year under the current farm bill, the United States reported AMS of only $3.809 billion, roughly a fifth of the amount it *could* spend without violating its WTO limit. This was the most recent year, as of this writing, for which the United States has submitted a formal notification, but subsequent years will likely show similarly low levels of AMS.

It is also worth noting the U.S. Secretary of Agriculture retains the authority[12] to pare back farm spending, in the unlikely event it exceeds U.S. AMS limits. This authority is granted to the Secretary expressly to ensure the United States remains in compliance with its WTO obligations.

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[11] Even so, the Heritage Foundation nevertheless recommends the unilateral elimination of U.S. domestic trade remedy laws, which are a cornerstone of trade policy in the United States and in most of the industrialized world.

[12] 7 U.S.C. § 8781(d)(1) directs the Secretary to adjust expenditures to ensure U.S. spending does not exceed the allowable level in the applicable reporting period.

The 2014 Farm Bill made extensive reforms to U.S. policy, including the repeal of the direct payment, which had accounted for $5 billion in federal outlays per year.[13] Among other reforms, the counter-cyclical payment and the Average Crop Revenue Election (ACRE) were also repealed and replaced with a producer election between Price Loss Coverage (PLC) and Agriculture Risk Coverage (ARC) options. Cotton fiber was excluded from PLC and ARC and was instead made eligible for an additional crop insurance policy (more on that, below).

The United States also maintains relatively low tariffs on imported agriculture products, further reflecting the openness of its markets. According to the WTO, the simple average U.S. bound tariff rate on imported agriculture products is only 4.8%, with an average applied rate of only 5.2%.[14] By comparison, the averages in the largest U.S. trading partners are all higher: Canada has a simple average bound rate of 16.6% and an average applied rate of 16.7%;[15] Mexico has an average bound tariff rate of 45.0% and an average applied rate of 15.6%;[16] while the European Union's averages are 10.9% and 10.7%, respectively.[17] Average tariff rates among developing countries are also generally much higher.[18]

A closer look at the levels of subsidies maintained by key U.S. trade partners further demonstrates just how favorably the United States compares.

Each year, the Organization for Economic Cooperation and Development (OECD) measures a Producer Support Estimate (PSE) provided to farmers in developed countries and in a select list of developing countries.[19] The PSE attempts to measure the transfers granted to producers individually, including conservation and other non-trade distorting forms of support.[20] In this way, it captures a broad estimate of support that is helpful in comparing support levels from country to country. It also facilitates a better comparison between countries not all of which may provide clear and updated notifications to the WTO.

[13] It is ironic the direct payment was targeted for repeal by pro-trade critics of U.S. farm policy. The U.S. Congress enacted decoupled direct payments in 1996, as part of the FAIR Act's trade-friendly reforms, to allow U.S. farmers to plant commodities in response to market signals rather than government rules.

[14] World Trade Organization. *World Tariff Profiles 2016*, p. 18. Bound tariffs are the maximum duties a country may charge, according to its WTO commitments. Applied tariffs are the duties actually charged on imports and may be lower than the bound rates. Note the bound tariff rate for a given product may be higher (or lower) than the average bound rate for *all* products that may be imported into a particular country. The average applied rate on all imported products for an importing country can vary from year to year, depending on actual import flows. Thus, in some years, high import volumes of products facing relatively high tariffs can result in an average applied rate that is higher than the importing country's average bound rate commitment.

[15] *Id.*, p.14.

[16] *Id.*, p. 16.

[17] *Id.*, p. 14.

[18] *Id.*, pp. 14-18.

[19] *See* Organization for Economic and Cooperation and Development. https://data.oecd.org/agrpolicy/agricultural-support.htm. Web. Accessed May 2, 2017.

[20] *Id.*

For 2015, the most recent year of evaluation, the OECD estimated total U.S. PSE support at a little under $38.785 billion.[21] For the EU, the estimate was just under $89.99 billion.[22] For China, the number was $307.39 billion – up from less than $136 billion in 2010.[23]

The increase in China's spending reflects a general surge in spending by the larger developing countries. DTB Associates, a U.S.-based international trade and agriculture policy consulting firm, has closely tracked the domestic support levels in China, India, Brazil, Turkey, and Thailand. Its report documents increasing subsidization rates over a ten-year period in all of the countries.[24] For the 2013/2014 and 2014/2015 crop year, DTB compared the price support levels in three staple commodities – wheat, corn, and long-grain rice.[25] In all three commodities, DTB estimated support price levels in all of the relevant countries, except for Brazil, that are higher than in the United States.[26] Even in the case of Brazil, the price support for wheat was greater.[27]

Most importantly, DTB concluded that the estimated support levels of these three crops, alone, violate the WTO commitments of all five countries.[28] Overall, DTB estimated that China's price support for these three crops amount to between $48.4 – $109.8 billion per year.[29] For India, the estimate (which included other forms of support) ranged between $36.1 – 93.4 billion.[30]

It is difficult to overstate the growing influence of the largest developing countries, especially China and Brazil, on global agriculture markets.

When China joined the WTO, it committed not to provide trade-distorting domestic support in excess of 8.5% of the value of its agriculture production on an annual basis.[31] At the time, much of the political attention was focused on its manufacturing power and its readiness to meet the demands of WTO membership. But China's economic growth has prompted extraordinary government investments in its farming sector, even as China maintains high market

[21] http://www.oecd-ilibrary.org/agriculture-and-food/data/oecd-agriculture-statistics/agricultural-support-estimates-edition-2016_83ff9179-en. Web. Accessed May 2, 2017.

[22] *Id.*

[23] *Id.*

[24] DTB Associates, LLP. *Agricultural Subsidies in Key Developing Countries; November 2014 Update*, (2014), p. 2.

[25] For Thailand, DTB only estimated the support price level for long-grain rice.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] China's *de minimis* exemption for product-specific support is equivalent to 8.5% of the total value of production of an agriculture product in any given year. Further, China's de minimis exemption for non-product specific support is also equivalent to 8.5% of the total value of all agricultural production in any given year. *See* World Trade Organization. *Report of the Working Party on the Accession of China*. 1 October 2001 (WT/ACC/CHN/49), para. 235.

access barriers, including high tariffs and opaque import restrictions that are exceedingly difficult for U.S. exporters to navigate.

These subsidies and high market access walls have led to gluts in several staple commodities, including corn, rice, wheat, and cotton (more on this, below), exerting a stubbornly depressing effect on global prices and undermining exporters around the world.

In 2016, the United States filed challenges in the WTO over China's domestic support[32] for corn, rice, and wheat, and over its administration of TRQs[33] on U.S. shipments of the same commodities. Both cases are in the very early stages.[34]

Brazil is a highly competitive farm exporter, and its farmers benefit from an array of government programs aimed at sustaining and expanding its agricultural industry. Its sugar producers still benefit from decades of government subsidies in ethanol production on the basis of which the Brazilian sugar industry was mostly built.[35] The enormous ethanol industrial structure this program created persists and has helped drive the expansion of Brazilian sugar production to the point where Brazil is now the largest producer and overwhelmingly the largest exporter.

<u>Agreeing on Trade</u>

Trade is the engine for growth in U.S. farm income and constantly revitalizes the U.S. farm economy. Export markets account for approximately 20% of U.S. agriculture output,[36] thereby supporting farm revenue, encouraging rural investment, and helping sustain a diversified and growing U.S. economy. For some commodities and subsectors, access to export markets is typically even more critical. For example, between 2011-2013, over 70% of U.S. raw cotton and tree nut production were exported, while exports accounted for over half of rice and wheat production.[37]

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[32] *China – Domestic Support Agricultural Producers*, WT/DS511. The United States alleged that China's trade-distorting support for these products exceeded China's 8.5% *de minimis* spending levels by nearly $100 billion. *See* U.S. Trade Representative. "United States Challenges Excessive Chinese Support For Rice, Wheat, and Corn." Web. Accessed May 23, 2017.

[33] *China – Tariff Rates Quotas for Certain Agricultural Products*, WT/DS517.

[34] Both cases follow rising tensions over China's import barriers against U.S. agricultural exports. In 2011, the United States filed an ultimately successful challenge against China's imposition of antidumping and countervailing duties against U.S. poultry exports, and now awaits a panel's report on China's compliance (*China – Antidumping and Countervailing Duty Measures on Broiler Products from the United States*, WT/DS427/13). In September 2016, China imposed antidumping duties on U.S. exports of dried distillers grain.

[35] A study by Patrick Chatenay for the U.S. sugar industry has estimated that Brazil's various government programs amount to an annual subsidy of $2.5 billion for its sugar industry. *See* Chatenay, Patrick. "Government Support and the Brazilian Sugar Industry" Canterbury, England. April 2013.

[36] *See* McMinimy, Mark. U.S. Congressional Research Service. *Agricultural Exports and 2014 Farm Bill Programs: Background and Current Issues* (R43696, May 9, 2016), p.2. Homeland Security Digital Library. Accessed May 2, 2017. Estimate is for 2013, the most recent year for which USDA data were available at the time the report was prepared.

[37] *See* U.S. Department of Agriculture, Economic Research Service. https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58396. Web. Accessed May 5, 2017.

Import competition is important, too. It benefits U.S. consumers and forces innovation that is crucial to U.S. farm productivity. None of this is debatable, especially when considered for the general effects on the U.S. economy.

All of this helps explain why U.S. farmers and ranchers have long been enthusiastic supporters of reducing barriers to trade in each of the major U.S. free trade agreements – from the bilateral U.S.-Canada agreement, signed in 1988, which led to the NAFTA, to the Trans-Pacific Partnership (TPP) in 2016. They have supported free trade agreements in the past and they will likely continue to support free trade agreements in the future, whether bilaterally, regionally, or in the WTO.

Most of the largest farm organizations, representing the largest U.S. commodities have long articulated a belief in expanded global trade. Just as a general example, the issue platform and trade policy objectives of the American Farm Bureau Federation,[38] which represents the interests of virtually every commodity in all fifty states, reflect the broad support among U.S. farmers and ranchers for trade liberalization. This posture assumes an expectation of competition from foreign rivals, especially when given the opportunity to do so in markets governed by transparent, predictable, and uniform rules. There is even a ubiquitous name for it – a "level playing field."

Hackneyed though the phrase may have become, a belief in its centrality to sound trade policy is deep and widely held in the United States. This is why the U.S. farm community pushed for the creation of the WTO, even though the final agreement meant much tighter, binding disciplines on the United States than on rival producers in Europe and subjected major developing producers in Argentina, Brazil, India, and elsewhere throughout Latin America, Asia, South America, and Africa to much milder disciplines.

Every President in the modern FTA era has come to rely on the political support of farm groups. The larger U.S. business community relies on it, too. Each new U.S. trade negotiation now sees the launch of a parallel, ad hoc advocacy campaign designed to secure the agreement's support in Congress, and U.S. farm leaders are at the front every time.

It is thus puzzling to consider the Heritage Foundation's argument that U.S. agriculture stands in the way of new trade agreements, or that U.S. agriculture is to blame for the WTO Doha Round's negotiating paralysis.

U.S. farmers and ranchers urged the launch of the WTO's Doha Development Agenda round in 2001, even though they knew it would require further cuts in U.S. farm policies and tariffs below the caps they had accepted only seven years earlier. In 2003, in advance of a crucial Cancun Ministerial, President Bush submitted an ambitious proposal to slash U.S. farm policy in the United States and other developed countries, asking only that major developing countries also accept disciplines, albeit at much milder terms.

[38] http://www.fb.org/issues/. Web. Accessed May 2, 2017.

In short, President Bush's proposal would have reduced the U.S. AMS limit by more than half and imposed severe tariff cuts through a non-linear formula, in which higher tariff rates are reduced most precipitously, with a cap on individual lines at 25% ad valorem. Moreover, export subsidies would be eliminated. In an effort to advance the negotiations, the Bush Administration later collaborated with the European Union on a joint negotiating framework. Though moderated in order to secure the support of the EU, this framework sought the same general goals of significant cuts in domestic support, harmonized and linear tariff reductions, and new disciplines on export subsidies, export credits, and state trading enterprises.

In exchange, the largest developing countries such as Brazil, China, and India would need to accept commitments of their own. The poorest nations known as the Least Developing Countries (LDC) would be exempt.

President Bush issued this proposal in spite of an aggressive WTO challenge filed against U.S. cotton policy by Brazil the year before, and which was proceeding at the panel stage. The offer also came on the heels of three devastating years for U.S. farmers from 1999-2001, a period when commodity prices and farm income both collapsed, forcing Congress to enact three successive economic disaster bills. The fact that U.S. farm groups were willing to endorse the ambitious U.S. offer, in spite of the restrictions it might arguably have placed on their eligibility for future economic disaster assistance, reflected their abiding support for trade liberalization.

Unfortunately, the U.S. proposals were rejected by other countries, for a variety of reasons. In part, the rejection reflected a fundamental difference in perspective over the concept of "special and differential treatment" for developing nations. Beyond that, many other countries – developed and major developing producers, alike – simply were not willing to accept new disciplines on their own domestic farm policies.

In 2008, the United States tried again. The U.S. offer added a cap on overall trade-distorting domestic support (OTDS)[39] at $14.5 billion, and proposed cuts in developed country tariffs over five years, with minimum cuts of at least 54% from current rates. But again, the talks failed.

From the outset, the language of the Doha Round Declaration pointed the negotiations toward major concessions from developed countries, while asking for much lesser concessions – or none – from developing countries. As the Round progressed, though, the burgeoning influence of the large developing countries in global trade, and especially in agriculture, became increasingly apparent.

Since the Doha Round's launch, the United States has sought a comprehensive agreement that would include disciplines in a number of sensitive negotiating areas, not just in agriculture but also in non-agriculture market access, trade in services, and government procurement. Intellectual property remains a sensitive area for many countries, as well. A comprehensive agreement would involve meaningful commitments from both developed countries and major developing countries. While agriculture is certainly a core area, serious tensions stemming from

[39] OTDS includes *de minimis* and blue box spending, the latter of which includes support programs that require farmers to limit production.

the resistance of major developing countries blocked progress in each of these other sectors of negotiation and collectively undermined chances for an agreement.

The major developing countries saw the Doha Round's primary purpose as developmental – as expressed in the Round's formal name, the *Doha Development Agenda*. To these countries, Doha was launched with the goal of spreading the benefits of increased trade to that vast majority of the world that lives outside of a developed country. From their perspective, the rules of global trade had been written to benefit developed countries, where the costs of new disciplines and the loss of tariff revenue are more easily borne. Food security and the need for a stable domestically-produced supply were also important concerns for many developing countries, large and small.

These are existential questions about the purpose and direction of the WTO. They touch on every aspect of the modern, rapidly changing global economy, and they reflect a pervasive anxiety around the world about the global trading system. They also help explain why a new WTO agreement has been elusive.

Simply put, the Doha Round has struggled not because the U.S. farm community is unprepared for new disciplines, but because the WTO and its largest members are facing profound questions about the organization's role in the global economy.

<u>Bilateral and Regional Free Trade Agreements</u>

It has been an article of faith among many economists and trade lawyers that liberalization is best achieved in a multilateral agreement, where the benefits can be aggregated and optimized across as many markets and consumers as possible. Moreover, there is a related concern that bilateral or regional FTAs can have adverse effects on countries outside of the FTA area, undermining the WTO's most-favored nation (MFN) principle of seeking non-discriminatory trade among all member states.

For many years, with the notable exceptions of NAFTA and the Israel FTA, the United States focused its negotiating resources primarily on the advancement of the GATT/WTO. For example, the Clinton administration devoted considerable attention to China's WTO accession, which brought one-fifth of the world's consumers into the new and improved global system of rules.

Many of the United States' largest trading partners, such as the European Union (EU), pursued a number of their own FTAs. The EU's FTA model liberalized trade with specific partners in several important areas but, at least in the eyes of many U.S. observers, only lightly touched agriculture trade. This meant that the EU's relatively high tariffs and non-tariff barriers on agriculture imports often remained in place, even against its own FTA partners.

The United States began pursuing a new slate of FTAs during the George W. Bush administration. But the United States – with the vocal support of the U.S. farm community –

insisted that agriculture would be comprehensively included. From 2001 – 2010, the United States concluded and implemented twelve FTAs with seventeen countries.[40]

Some of these countries, like Korea, offered vastly improved access for U.S. farm exports. Others, like Australia, are highly competitive agriculture exporters in their own right and promised competition for a share of the U.S. market.

In nearly each case the United States agreed to the elimination of nearly all of its own agriculture tariffs.[41] Most agriculture tariffs were eliminated immediately or after short phase-out periods, while some are being phased out more gradually. Regardless, support for FTAs among the U.S. agriculture community has been strong and vocal.

Support for the negotiations toward both the TPP and the Transatlantic Trade and Investment Partnership (TTIP) were also strong among U.S. farm groups, led by the largest commodity associations. The new Trump administration has since withdrawn from the TPP and indicated a desire to focus on bilateral negotiations with Japan and the United Kingdom. The U.S. farm community will undoubtedly support these initiatives, as well.

The new administration has formally notified Congress of its intention to renegotiate NAFTA. Many farm groups have already begun expressing their support for the preservation of the open markets achieved in the current NAFTA and their opposition to the resurrection of old barriers.

It is fair to point out that none of these FTAs addressed domestic support. But to understand why, it is important to consider again the value of the WTO's multilateral forum. Whereas FTAs have always been focused primarily on expanded market access between a limited number of partners, the WTO provides the broad, aggregating platform necessary to establish common rules on domestic support across the global marketplace. For example, it would be fruitless – if not impossible – for Korea and the United States to tailor an agreement on farm support in a way limited to each other. Other large countries with domestic support programs, such as China or the European Union, would benefit from the reductions of farm support in Korea and the United States without having to concede any reductions of their own. Clearly, domestic support reform can only be dealt with effectively in a multilateral context.

Moreover, a U.S. plan to put domestic support on the FTA negotiating table might even *block* a trade agenda focused on the negotiation of bilateral FTAs. Consider this counterintuitive notion in the context of the Trump administration's reported desire to negotiate bilateral FTAs with Japan and the United Kingdom, two large and developed markets.

Both countries are home to politically potent farm sectors and, not coincidentally, maintain domestic agriculture support levels of their own. In Japan, domestic support for farmers is politically cherished as a rural policy, a way of preserving Japan's traditional rural

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[40] Australia, Bahrain, Chile, Colombia, Jordan, Korea, Morocco, Oman, Panama, Peru, Singapore, and the six countries of the Central America-Dominican Republic FTA (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua).

[41] The U.S.-Australia FTA made no changes to the U.S. tariff rate quotas for sugar.

society. Prime Minister Shinzo Abe took on considerable political risk in merely getting his country to the negotiating table for the purpose of reducing tariffs, without any guarantee of success. Imagine the controversy Abe would have faced if his voters knew *going in* that the United States would insist on the elimination of Japan's farm supports.

Farmers in the UK have enjoyed relatively high farm support through the EU's Common Agriculture Policy (CAP), which together with other EU and environmental subsidies is responsible for as much as 60% of British farm income.[42] An agreement with the United States will occur only after the UK has renegotiated a new relationship with the European Union. The political value to Prime Minister Theresa May of a new FTA with the United States would be almost certainly diminished if, like Japan, she knew she would meet a U.S. insistence that UK farm support be eliminated.

In both cases, a de facto U.S. precondition to eliminate – or even just to reduce – farm support could have a chilling effect on prospects for an agreement. And in all three cases, the diverse and comprehensive benefits of an FTA to the rest of the U.S. economy – manufacturing, financial services, retail, small business, as well as U.S. farmers and consumers – would be lost.

A Closer Look at Specific Concerns

Cotton

Since 2002, when Brazil launched a WTO challenge[43] against U.S. cotton policy, the U.S. cotton industry has been in the cross hairs of a debate within the WTO over developed country farm support. Lost in this debate is the rise of China and India as the largest producers and consumers of raw cotton.

The Brazil challenge focused on several U.S. cotton support policies, including the use of a marketing loan, counter-cyclical payments, the GSM-102 export credit guarantees, and "Step 2" user marketing payments that had been utilized by cotton exporters. Panel proceedings began in March 2003, five months before the WTO's Cancun Ministerial. The United States fought the case for twelve years but Brazil prevailed at the panel and Appellate Body stages, with the parties reaching a settlement without the imposition of retaliatory action by Brazil.

By then, the United States had repealed Step 2 and counter-cyclical payments, and reformed GSM-102 export credits. In the 2014 Farm Bill, the United States also excluded cotton fiber from eligibility for the new PLC and ARC options, which succeeded counter-cyclical payments and ACRE. Instead, Congress created a separate, area-wide revenue insurance policy for cotton, known as the Stacked Income Protection Plan (STAX), though without the inclusion

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[42] *See* Pritchard-Evans, Ambrose. "Brexit is a life or death matter for Britain's farmers," *The Telegraph*, November 1, 2015. http://www.telegraph.co.uk/finance/economics/11967049/Brexit-is-a-life-or-death-matter-for-Britains-farmers.html. Web. Accessed May 2, 2017; *see also* Robertson, Jamie, "After Brexit: What happens next for the UK's farmers?" *BBC News*, January 5, 2017. http://www.bbc.com/news/business-38510423. Web. Access May 5, 2017.

[43] *United States – Subsidies on Upland Cotton*, WT/DS267.

of a reference price, which would have made the policy much more effective for U.S. farmers during prolonged periods of depressed prices.

U.S. cotton acreage and production declined over the ensuing years. Despite the U.S. production decline, global cotton prices have also fallen from their historic highs in 2010. These coincident declines should cast doubt over the extent of U.S. cotton policy's influence on global markets and prices.

The fall in global prices makes more sense, though, when one notes that in 2010 China began to implement a set of domestic subsidy and stock-building programs, along with high, opaque market access barriers. In the meantime, China also began increasing its imports of cotton yarn, much of it from India. Together, these measures spurred significant growth in cotton production in China and India, and sparked a massive oversupply of raw cotton – all of which led to increased production and exports of textile and apparel products. According to the U.S. Department of Agriculture, for 2016/2017 China's share of global stocks are projected to be approximately 54% of global cotton stocks while India will be the world's largest producer of cotton.[44] Together, India and China account for 46% of global production.[45]

China also greatly increased its production and consumption of manmade fibers (MMF), which are substitutable with cotton fibers. By 2014, China's MMF mill use had increased by two-thirds, compared to 2008 levels, and was now five times greater than its world-leading mill use of cotton fiber.

It is difficult to determine the extent of China's subsidy programs, since China's most recent formal WTO notification on domestic support covers 2009-2010. But it is clear that China's massive subsidization and stock-building programs have exerted a significant influence on global cotton prices, to the detriment of farmers in the United States, Africa, and elsewhere.

Reductions in U.S. cotton support in the 2008 and 2014 Farm Bills did little if anything to help poor farmers in Africa, and any "moral" high ground U.S. farmers gained from the repeal of their farm support had virtually no impact on China's willingness to devote billions of dollars in new subsidies for its own cotton industry or India's consistent increases in cotton support prices.

Nonetheless, despite litigation losses in the WTO, and despite the rise of international Chinese subsidies, U.S. cotton farmers remain vocal supporters of further liberalization in the WTO as well as through U.S. FTAs. Far from standing in the way of new trade agreements, U.S. farmers are advocating for them.

Sugar

The global market in sugar is widely misunderstood, and as a result U.S. sugar policy is often mischaracterized. First, it is important to understand that sugar, unlike most other crops,

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[44] Meyer, Leslie. U.S. Department of Agriculture, Economic Research Service. *Cotton and Wool Outlook*, p. 1. Release date April 13, 2017. https://www.ers.usda.gov/webdocs/publications/cws17d/cws-17d.pdf?v=42838. Web. Accessed May 2, 2017.

[45] *Id*., p.5.

can be produced in virtually every region of the world. Farmers in more than 100 countries produce sugar. It can be cultivated as sugarcane in poor tropical countries, and as sugar beets in more temperate climates, such as the developed countries of northern Europe. It is also extensively subsidized around the world, making the global sugar market one of the most heavily distorted, and subject to chronic dumping at prices well below production costs.

Second, the existence of a volatile "dump" market, and its comparison to the domestic U.S. market, often misleads casual observers into thinking that U.S. consumers pay considerably more for sugar than consumers outside the United States. In fact, U.S. consumers pay less for sugar than most consumers in nearly all other countries, developing and developed, alike. World average retail prices for sugar are 20% higher than in the United States, and prices in other developed countries are 29% higher.[46]

Finally, it is important to note that U.S. sugar farmers receive no direct support from the U.S. Treasury. Moreover, the United States is a much more open market than its critics generally acknowledge, with imports equal to more than 28% of U.S. consumption.[47]

Nonetheless, U.S. farmers are competitive when compared on an equal footing with the average foreign sugar farmer. This helps explain why the U.S. sugar industry has proposed a zero-for-zero approach to multilateral negotiations.

It must be puzzling for U.S. sugar farmers that proponents of free trade would deride a zero-for-zero proposal that targets the complete elimination of domestic subsidies and tariffs. Is this not essentially what the Heritage Foundation would consider as the desirable outcome for all U.S. commodities? Is this not what the United States proposes to do on tariffs in every FTA it negotiates?

Granted, a zero-for-zero approach would take time to accomplish in a multilateral forum. Yet, in the face of entrenched foreign subsidies and an endemic global oversupply, a multilateral agreement to reduce supports in a coordinated fashion is perhaps the most equitable approach. Any other approach – such as an incremental agreement that only partially reduces tariffs and subsidies – would perpetuate the artificial advantages created by decades of government intervention. Farmers who do not have the benefit of direct income support would eventually be eclipsed by those who do, as tariffs on the most heavily distorted commodities are lowered to an ineffective level.

Access for the Poorest Countries

LDC exporters may generally face challenges in securing U.S. market access, but critics of U.S. farm policy seem to overlook the fact that such access from the developing world is

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[46] *See* U.S. House of Representatives, Committee on Agriculture. *Hearing on Foreign Subsidies: Jeopardizing Free Trade and Harming American Farmers*. October 21, 2015. 114th Cong. 1st sess. (testimony of Jack Roney and Don Phillips). http://agriculture.house.gov/uploadedfiles/10.21.15_roney_testimony.pdf. U.S. House Committee on Agriculture. Accessed May 2, 2017.

[47] U.S. Department of Agriculture, Foreign Agriculture Service. *Sugar: World Markets and Trade*, November 2016. https://apps.fas.usda.gov/psdonline/circulars/Sugar.pdf. Web. Accessed May 2, 2017.

dominated by the largest producers, whose production and export competitiveness often crowd out opportunities for the poorest countries.

For example, the United States offers duty-free access through the Generalized System of Preferences (GSP) on a range of agriculture goods, including sensitive products such as sugar-containing goods, dairy, and fresh fruit and vegetables.[48] Agriculture accounted for 15% of all U.S. GSP imports in 2015, worth approximately $2.6 billion.[49] Not surprisingly, though, most of these imports came from the largest developing producers, with two-thirds coming from Brazil, India, Indonesia, Thailand, and Turkey.[50]

Like other developed countries, the United States has struggled to find ways to encourage trade development in the poorest countries. In 2015, following the WTO's Bali Ministerial, the United States designated five additional new cotton product tariff lines as eligible under GSP, but as of late 2016 no imports had yet entered.

The new WTO Trade Facilitation Agreement holds promise in assisting poor countries to take advantage of market access opportunities. The barriers to success are complex. More can – and should – be done. But it is facile to pin the blame for lagging trade development on a failure of the United States to open up its market.

The Threat of Retaliation

Since the WTO's binding dispute system was created, the United States has never suffered retaliatory action as a result of its farm policies. The United States has faced and lost only two serious challenges to its domestic farm policy, one by Brazil, involving U.S. cotton support,[51] and the other by Canada and Mexico, concerning the 2008 U.S. country-of-origin labeling (or, COOL) law affecting livestock and meat products.[52] In both cases, the United States repealed the offending measures.

It should be noted that the United States has been challenged in other cases affecting agricultural products. In 2007, Canada and Brazil separately requested consultations with the United States concerning U.S. domestic support and export credit guarantees.[53] The WTO established a single panel to consider both cases, but shortly thereafter both countries agreed to

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[48] *See* U.S. Congressional Research Service. *Generalized System of Preferences: Agricultural Imports* (RS22541, December 8, 2016), p.1. https://www.everycrsreport.com/files/20161208_RS22541_15dd75cfdd9a7c4d9f1417e692f049107af6c79c.pdf everyCRSReport.com. Accessed May 2, 2017.

[49] *Id.,* p.1.

[50] *Id.*, p.2.

[51] *See* note 43, *supra*.

[52] *United States – Certain Country of Origin Labelling Requirements (Canada)* (WT/DS384); and, *United States – Certain Country of Origin Labelling Requirements (Mexico)*, WT/DS386.

[53] *United States – Subsidies and Other Domestic Support for Corn and Other Agricultural Commodities*, WT/DS357; and, *United States – Domestic Support and Export Credit Guarantees for Agricultural Products*, WT/DS365.

postpone the proceedings and no further formal action was taken.[54] The postponement occurred during a period when WTO members were attempting to advance the Doha Round's agriculture negotiations and as the United States was proposing further cuts in agriculture subsidies and tariffs. The United States enacted the 2008 Farm Bill that same year, and the cases were never resumed.

The United States has also been challenged on various import-related measures, including the use of trade remedy orders, affecting a variety of agricultural and food products.[55] But none attacked the underlying foundation of U.S. domestic farm policy.

In other words, in more than two decades of WTO jurisprudence, after the initiation of more than 500 cases between WTO members, covering a very broad array of issues, the United States has only suffered two major adverse rulings by the WTO's Appellate Body that required a change in domestic farm policy. During that same period, the U.S. Congress has enacted four major reauthorizations of its domestic farm policies and numerous economic and weather-related disaster measures.

Understood in this light, it is hard to see the United States as a rogue actor, flouting its international obligations and ceding its status as a leader on the multilateral stage. This characterization by the Heritage Foundation simply does not square with the facts.

It is also worth noting that the United States has suffered numerous challenges against a variety of non-agriculture measures. As explained earlier, overall, the United States has been a respondent in 130 cases, and lost approximately 75% of those cases that went to a ruling. The basis of these challenges covers an array of U.S. laws and policies touching broadly across the U.S. economy, affecting the manufacturing and services sectors, tax policy, environmental policy, intellectual property, measures to protect human health, the use of trade remedies, and even actions taken by state governments.

The threat of litigation is an integral part of the WTO. The United States – and every other WTO member – exposes itself to the risk of retaliation every time it enacts a measure that impacts the U.S. or global economy, whether that measure affects a domestic exporter or a foreign manufacturer. The entire breadth of the U.S. economy is potentially subject to our WTO obligations. Yet, no reasonable policymaker suggests the United States – or any other country – should cede its right to legislate in its own domestic interests for fear of WTO challenge.

Finally, it is important to remember that the losing party in a WTO dispute is required only to bring its policy into compliance prospectively. The WTO's dispute settlement system does not provide for retroactive damages. In other words, if the United States were to lose a dispute over some aspect of its farm policy, it could avoid retaliation simply by repealing that particular policy – just as it did in the *Upland Cotton* and *COOL* disputes. This fact should not

[54] *See* World Trade Organization. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds357_e.htm (Accessed May 2, 2017) and https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds365_e.htm (Accessed May 2, 2017) for a summary of the proceedings for each dispute.

[55] For a list of WTO challenges against the United States, *see* https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. Web. Accessed May 2, 2017.

be used cynically to justify the enactment of laws that clearly violate WTO commitments, but it belies the argument that a potentially non-compliant policy necessarily becomes some sort of legal trap from which the United States cannot escape punishment.

The United States bargained in good faith in the Uruguay Round Agreement to maintain domestic farm policy. It would be folly to eliminate an entire body of law preemptively and unilaterally simply to obviate the fear of a WTO dispute.

Would Unilateral Disarmament Do Any Good in the WTO?

The WTO's membership is wracked by deep divisions over numerous non-agriculture issues. These include the role of large developing countries such as China and India; pressures for reform of intellectual property standards; the push by developed countries for greater market access in services and industrial goods; differences of opinion over the need for new investment rules; and the need to enhance trade between the poorest countries. It is fanciful to think the elimination of U.S. farm policy and already low U.S. tariffs would, alone, resolve these other problems, or that the 163 other member states of the WTO would set aside these questions and conclude a new WTO agreement simply because the United States changed its farm policies.

The WTO is a living body. Its members are in a constant state of negotiation. Members secure access to export markets by offering access to their own. This same bargaining dynamic applies to the agriculture negotiations. The U.S. farm bill and tariff schedule constitute the assets of U.S. negotiating leverage, and they exist in a constant state of tension with U.S. bargaining goals. Giving up that leverage without securing corresponding concessions in the hope that others will nobly follow suit would be naïve and self-defeating, certainly in the near term and probably in the long-term, as well.

Under the Heritage Foundation's approach, the United States would unilaterally eliminate its farm policy and tariffs without securing a corresponding benefit from other countries. Subsidies in other developed and major developing countries would remain in place, because they exist for their own reasons. High tariff walls around the world would persist, as well, since countries use tariffs to protect their farmers from all exports, not just American exports.

Reform of global agriculture markets will take years, perhaps decades, unfortunately. In the meantime, if Congress were to follow the Heritage Foundation's proposal, U.S. farmers would face a long, difficult period trying to survive as they wait for the rest of the world to meet them in the aspirational free market.