

Pacific Rim as a Future Market for U.S. Agricultural Trade

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INTRODUCTION

While the 1970s were an explosive time for world and U.S. agricultural trade, with global production down and world demand up, the 1980s brought a reversal to these trends. Various factors contributed to this reversal, including a rising dollar, increased competition from subsidized competitors, a global recession, and protective measures of many importing agricultural nations.¹ Worldwide demand for agriculture began contracting at a time when global production, spurred by domestic support policies, was expanding.

In the late 1970s the United States shifted its export emphasis to the Pacific Rim. The United States altered its export emphasis after being driven out of traditional export markets in Europe and after realizing the potential of agricultural markets in the growing economies of the Far East. This shift has allowed U.S. agriculture to remain competitive in the world marketplace despite contracting world markets. The Pa-

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¹ During the 1970s and 1980s the United States' importance in the world agricultural market and the importance of global markets to U.S. agriculture increased. With world agricultural trade expanding in the 1970s, the United States gained a greater share of the market at an unprecedented pace. World trade expanded four-fold, while U.S. exports increased six-fold. In the 1980s, however, these trends reversed. Shrinking demand essentially stopped world agricultural trade, and U.S. exports dropped more than one-third. The 40 million ton drop in exports, following the 95 million ton increase during the 1970s, relates to many problems that U.S. agriculture faces today and provides the major impetus for U.S. participation in multilateral agricultural trade negotiations. U.S. DEP'T OF AGRICULTURE, REP. NO. 229, GOVERNMENT INTERVENTION IN AGRICULTURE: MEASUREMENT, EVALUATION AND IMPLICATIONS FOR TRADE NEGOTIATIONS (1987) [hereafter GOVERNMENT INTERVENTION].

cific Rim countries present the brightest market prospects for U.S. agricultural export expansion into the 1990s. This region's economic performance is expected to continue at a robust pace.

This Article explores the boom of the Pacific Rim² as a market for U.S. agricultural exports. Section I examines the opportunities for U.S. agricultural trade presented by various Pacific Rim countries. Section II analyzes the barriers preventing full realization of these opportunities. Finally, Section III addresses the factors that will shape the Pacific Rim as the United States' leading agricultural export market in the near future.

I. THE IMPORTANCE OF THE PACIFIC RIM AS A MARKET FOR U.S. AGRICULTURAL EXPORTS

The European Economic Community's (EEC) protectionist measures led to recognition of the Pacific Rim's potential as a thriving market for U.S. agricultural exports. These protectionist measures forced U.S. farmers to find a new home for their crops. In the late 1970s, the European Community, traditionally the United States' largest export market, adopted aggressive measures to increase their market share of global agricultural trade and to protect their domestic markets from foreign competition.³ As a result, the United States quickly became a residual supplier of wheat, soybeans, and other key commodities, losing a sizeable market share to the EEC.⁴ With no market for many of its

² The term "Pacific Rim" refers to a variety of countries depending on the context of its use. The more widely used, but more restrictive sense of the term is the Asia-Pacific concept. This concept groups together the market economy nations on the Pacific slope of the Asian continent and the island states of the Asian side of the Pacific. *See* U.S. INT'L TRADE COMMISSION, PUB. NO. 2166, *THE PROS AND CONS OF ENTERING INTO NEGOTIATIONS ON FREE TRADE AREA AGREEMENTS WITH TAIWAN, THE REPUBLIC OF KOREA, AND ASEAN, OR THE PACIFIC RIM REGION IN GENERAL* 4-1 (1989) [hereafter *PROS AND CONS*]. For purposes of this Article, the Pacific Rim includes Japan, Korea, Taiwan, Hong Kong, China, Singapore, the Philippines, Malaysia, and Indonesia.

³ The EEC sanctioned the use of internal support programs aimed at increasing local production and export subsidies to dispose of surpluses created by internal support programs on commodities such as wheat and wheat flour. *See* M. NEWMAN, T. FULTON & L. GLASER, *A COMPARISON OF AGRICULTURE IN THE UNITED STATES AND IN THE EUROPEAN COMMUNITY* 37 (1987) [hereafter *COMPARISON OF AGRICULTURE*]. The EEC also initiated a complex legislative plan to phase out all internal barriers to trade between member states by 1992. This plan seeks to ensure the EEC's continued status as a leading world economic power.

⁴ Between 1980 and 1985 U.S. exports to the EEC fell by almost one-half, from \$9.6 billion to \$5.2 billion. U.S. imports from the EEC increased by three-fourths,

crops, the United States turned to the Pacific Rim as its new, unexplored market for agricultural products. The newly industrialized economies of Taiwan, Korea, Hong Kong, and Singapore,⁵ coupled with Japan's economic prosperity, offered a ripe market for U.S. agricultural goods.

In the late 1960s to mid-1970s the economies of Japan, Taiwan, and South Korea shifted from agricultural bases to industrial bases.⁶ As incomes improved, so did East Asian diets. The diets shifted from predominately rice to meats and other high-value products, such as fruits and vegetables.

In 1979 the Asian Pacific region replaced Western Europe as the leading regional market for U.S. farm products. Since then the percentage of U.S. agricultural exports to this region has risen steadily: from thirty-two percent, or \$12.8 billion in 1980, to an estimated forty-two percent, or \$15.8 billion in 1989.⁷ As the share of U.S. agricultural exports to the Pacific Rim versus total U.S. exports rose, the United States' share of total agricultural imports from those countries also increased. In 1983 U.S. exports accounted for twenty-six percent of the Asian Pacific countries' agricultural imports.⁸ By 1987 U.S. exports represented thirty-two percent of total imports for that region.⁹ Even more significant is the increase in value of U.S. agricultural goods exported to the Pacific Rim. The value of selected U.S. low-value agricul-

from \$2.1 billion to \$3.6 billion. U.S. exports to the EEC in 1986 recovered only slightly to \$5.6 billion. In 1986, EEC exports to the United States continued to climb to \$3.8 billion. *See id.* at 17-18.

⁵ Effective January 1989, the Reagan Administration graduated four Asian newly industrialized economies (NIE) (Taiwan, Korea, Hong Kong, and Singapore) from the list of beneficiaries eligible for duty-free treatment of imports under the U.S. Generalized System of Preferences (GSP). The Reagan Administration cited the economic successes of these countries as a basis for the move. *See PROS AND CONS, supra* note 2, at xi. For a detailed discussion of Taiwan's graduation from this program, see U.S. INT'L TRADE COMMISSION, PUB. NO. 1915, OPERATION OF THE TRADE AGREEMENT'S PROGRAM 4-41 (1987).

⁶ *See GOVERNMENTAL AND PUBLIC AFFAIRS, U.S. DEP'T OF AGRICULTURE, U.S. FARM EXPORTS IN 1988* (1988) [hereafter FARM EXPORTS].

⁷ *See Five Year Macroeconomic Outlook and Implications for U.S. Agricultural Trade, AGRICULTURAL TRADE HIGHLIGHTS*, Mar. 1989 at 9.

⁸ Subcommittee on Domestic and Foreign Marketing and Product Promotion, Senate Committee on Agriculture, Nutrition, and Forestry, Hearing on GATT Proceedings in Geneva as They Relate to Agriculture 2 (Apr. 12, 1989) (unpublished hearing transcript) (testimony of Ann M. Veneman, Associate Administrator of the Foreign Agricultural Service).

⁹ *Id.*

tural exports increased nearly seven-fold over the past twenty years.¹⁰ Additionally, the value of selected high-value agricultural exports increased almost nine-fold during this period.¹¹

A. *Japan: The United States' Leading Agricultural Export Market*

With nearly a \$2 trillion economy, Japan is the largest importer of agricultural products in the world and the largest single export market for the United States.¹² In 1988 Japan bought nearly twenty-one percent of the dollar value of U.S. agricultural exports. Japan imported \$7.6 billion of the \$37.1 billion total U.S. agricultural exports that year.¹³ Japan's purchases surpassed the total purchases of U.S. agricultural exports by the next three leading countries combined: South Korea at \$2.27 billion, USSR at \$2.25 billion, and Mexico at \$2.23 billion.¹⁴

In terms of total Japanese agricultural imports, U.S. exports account for more than forty percent of Japan's farm imports. Japan ranks as the first or second largest export market for U.S. wheat, corn, sorghum, soybeans, cotton, tobacco, cattle hides, citrus fruit, beef and veal, and pork and poultry meat.¹⁵ Although the United States has a negative total trade balance with Japan, the United States has a positive trade balance worth \$5.48 billion in agricultural trade.¹⁶ Various factors account for Japan's status as a leading agricultural importer. These factors include Japan's growing economy, the continued growth in Japanese consumer spending, the high value of the yen relative to the U.S. dollar, and Japan's heavy dependence on raw material imports.¹⁷

¹⁰ *Id.*

¹¹ *Id.*

¹² R. GOLDSTEIN, REP. NO. 88-755, U.S. AGRICULTURAL TRADE OPPORTUNITIES WITH PACIFIC RIM COUNTRIES 2 (1988) [hereafter TRADE OPPORTUNITIES]; GOVERNMENT INTERVENTION, *supra* note 1, at 13.

¹³ FARM EXPORTS, *supra* note 6. Over the last five years, U.S. agricultural exports to Japan have consistently accounted for 18% to 20% of all U.S. agricultural exports during each year. For a review of these trade statistics from 1982 to 1988, see TRADE OPPORTUNITIES, *supra* note 12, at 2, Table 1.

¹⁴ FARM EXPORTS, *supra* note 6.

¹⁵ *Id.*

¹⁶ This figure represents the agricultural trade balance for 1987. In 1986 the U.S. trade balance in agriculture with Japan was \$4.87 billion. TRADE OPPORTUNITIES, *supra* note 12, at 25.

¹⁷ In 1986 Japan had a gross domestic product (GDP) of over \$1,955 billion and a per capita GDP of \$16,095. *Id.* Japan's dependence on raw materials relates to its comparative advantage in manufacturing and its disadvantage in primary production. GOVERNMENT INTERVENTION, *supra* note 1, at 13.

These factors likely will endure and will continue to make Japan the top market for U.S. agricultural products.¹⁸ As discussed in Section III,¹⁹ the magnitude of future growth in this market will depend in large part on the United States' continued competitiveness in the world marketplace and success in achieving a relaxation of Japanese trade barriers.

B. Korea and Taiwan: Fast Growing Agricultural Markets

1. Korea

The Republic of South Korea, with its growing economy and need for agricultural imports, serves as the United States' second largest market for U.S. agricultural exports.²⁰ In 1988, U.S. agricultural exports to Korea (valued at \$2.27 billion) rose above U.S. exports to the Soviet Union (\$2.25 billion), Mexico (\$2.23 billion), and Canada (\$2.02 billion).²¹ Despite Korean trade barriers, the United States has been Korea's top supplier of agricultural products for nearly two decades.²² Principal U.S. exports include cotton, wheat, feed grains, soybeans, fruits and vegetables, and hides.

In the mid-1980s the appreciation of the dollar, high U.S. commodity prices, and competition from low-priced foreign competitors reduced the U.S. market share of Korean agricultural imports to forty-two percent. This figure represents the lowest market share level in twenty years. Since then U.S. agricultural exports to Korea have rebounded to an estimated forty-nine percent of that market. A depreciated dollar and more competitive U.S. prices largely account for this increase.²³ For the future, much will depend on price stability, a favorable won-dollar

¹⁸ In 1988 the U.S. Department of Agriculture (USDA) selected Japan as the top market prospect for the 1990s, followed by Taiwan. The USDA ranked Hong Kong and Korea fourth and fifth respectively. See Neubert, *Best Export Market Prospects into the 1990s*, FOREIGN AGRIC., Feb. 1988, at 4.

¹⁹ See *infra* notes 83-121 and accompanying text.

²⁰ Korea's GDP evidences its growing economy. Its economy increased by 1,016% between 1970 and 1987. TRADE OPPORTUNITIES, *supra* note 12, at 2.

²¹ See FARM EXPORTS, *supra* note 6.

²² Korean agricultural policy is based on a desire to achieve self-sufficiency in all major agricultural sectors and thus to impede access for most agricultural imports. See TRADE OPPORTUNITIES, *supra* note 12, at 33-34. Korea already has achieved self-sufficiency in rice, barley, chicken, and pork production. While Korea also has sought self-sufficiency in beef production, rapidly growing demand and limited potential for expanding pastures present problems. See *id.* at 34.

²³ See *id.*

exchange rate, and liberalized access to Korea's protected market.²⁴

2. Taiwan

Taiwan is the fastest growing market for U.S. agricultural exports in the Pacific Rim. U.S. exports to that market have risen nearly fourteen percent per year since 1968.²⁵ U.S. export sales of agricultural products to Taiwan have doubled from ten years ago and are more than ten times larger than they were twenty years ago.²⁶

In 1987 U.S. agricultural exports captured forty-one percent of Taiwan's agricultural imports.²⁷ The increase helped the United States' agricultural trade balance with Taiwan to reach a positive \$1.07 billion.²⁸ Major U.S. exports include high-value products such as beef, turkey meat, fruit and vegetable preparations, corn, wheat, soybeans, and cattle hide.²⁹ The growth experienced in Taiwan over the last two decades probably will continue. The U.S. Department of Agriculture (USDA) predicts that this market will become the second leading export market for U.S. agricultural exports in the 1990s, behind Japan and ahead of Canada.³⁰ Consumer demand for foods not produced domestically or produced in small quantities is expected to increase as personal incomes rise and the fast food industry grows. Key areas of opportunity include wine, feed grains, and high quality beef, with expanded fruit, vegetable, and nut exports dependent on tariff reductions.³¹ Because Taiwan's export-driven economy is highly dependent on U.S. markets, the threat of U.S. trade retaliation may spark further tariff and quota reductions

²⁴ Prospects for increased agricultural trade with Korea are encouraging, as U.S. exports of corn, soybeans, cotton, and hides are expected to increase. U.S. exports of fruits, vegetables, and nut sales also should expand if Korea lifts restrictive trade barriers. Beef imports will increase as Korea allows more imports under its quota. *See id.* at 33. For a more detailed explanation of Korea's access barriers, see *infra* notes 62-77 and accompanying text.

²⁵ 1988 exports totaled \$1.66 billion, making Taiwan the seventh largest market for U.S. agricultural exports. *See FARM EXPORTS, supra* note 6.

²⁶ *Id.*

²⁷ TRADE OPPORTUNITIES, *supra* note 12, at 56.

²⁸ *Id.* at 55.

²⁹ FARM EXPORTS, *supra* note 6.

³⁰ TRADE OPPORTUNITIES, *supra* note 12, at 56.

³¹ Like Korea, Taiwan's domestic policies focus on increasing farm income and productivity. High tariffs, levies, and quota restrictions protect domestic production of agricultural goods (particularly high-value products such as fruits, vegetables, and nuts) from imports. Price supports sustain domestic production. *See id.* at 55. For an explanation of the trade barriers facing U.S. agricultural exports in Taiwan, see *infra* notes 79-83 and accompanying text.

for U.S. agricultural exports.

C. Hong Kong, China, and the ASEAN Countries:³² Strong Export Opportunities

Although overshadowed by the export gains achieved in Japan, Korea, and Taiwan, exports to other Pacific Rim countries have benefited from the same trends. These countries include Hong Kong, China, and the ASEAN region.

1. Hong Kong

Over the years, Hong Kong has presented a strong market for a wide variety of U.S. agricultural products. In the past decade U.S. agricultural exports essentially have doubled and now are approaching the half-billion dollar mark. In 1988 U.S. agricultural exports totaled \$489 million.³³ Of the eighteen Asian nations, Hong Kong is the second largest importer of U.S. high-value foods.³⁴

Hong Kong's increasing per capita income, its preference for western food, and its dependence on food imports makes Hong Kong a particularly lucrative market for U.S. agricultural exports.³⁵ Increasing interest in U.S. fast food chains, American-style supermarkets, and expanding hotel and tourist trade also have spurred demand for U.S. agricultural exports.

Hong Kong is a free market with relatively few trade barriers. Hong Kong imposes tariffs on tobacco, cigarettes, alcohol, and soft drinks. For

³² The member-countries of the Association of Southeast Asian Nations (ASEAN) are: Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand.

³³ *Hong Kong: A User-Friendly Market for U.S. Exports*, AGEXPORTER, Nov. 1989, at 4 [hereafter AGEXPORTER] (interview with Phil Halloway, U.S. agricultural officer in Hong Kong).

³⁴ In 1987 poultry meat exports and primary chicken parts were the leading single export, valued at \$49 million. The United States faces competition primarily from China and heavily subsidized frozen birds from the EEC. Hong Kong represents the largest single market for U.S. shelled eggs, with U.S. exports reaching \$7.4 million in 1988. The United States is the leading supplier of fresh fruit to Hong Kong. Hong Kong is among the top three U.S. markets worldwide for oranges, apples, grapes, prunes, plums, melons, tomatoes, cabbage, celery, lettuce, peppers, sweet cherries, and onions. In 1988 U.S. exports of fresh fruits and vegetables were valued at \$125 million. *See id.* at 4-5.

³⁵ Hong Kong imports nearly 90% of its food requirements. TRADE OPPORTUNITIES, *supra* note 12, at 15-16.

all other items, no nontariff barriers or duties apply.³⁶ Government policies based on food safety³⁷ are the only real restrictions.

Since Australia, New Zealand, and other Asian nations have the advantage of lower freight cost to Hong Kong, U.S. exporters must rely on superior quality to compete against lower priced foreign imports.³⁸ The upward trend experienced since 1985 probably will continue if U.S. exports remain price competitive and quality conscious.

2. China

Despite its government control, China has offered a substantial market for U.S. agricultural goods. U.S. agricultural exports to that market, which surged between 1979 and 1982 and then declined steadily until 1986, have rebounded during the past three years. In 1987 the United States regained a positive agricultural trade balance with China.³⁹

Increased wheat sales under the Export Enhancement Program (EEP)⁴⁰ largely account for the recent resurgence in exports: from \$83 million in 1986 to \$759 million in 1988.⁴¹ Rising incomes, a growing population, and favorable U.S. prices will sustain the current trend in exports. It is still too soon to know whether U.S. policy decisions to restrict trade with China because of that government's actions against pro-democracy demonstrators last June will disrupt this current trend.⁴²

³⁶ See AGEXPORTER, *supra* note 33, at 5; TRADE OPPORTUNITIES, *supra* note 12, at 16.

³⁷ The government of Hong Kong bans the sale of chickens containing growth stimulating, synthetic hormones. TRADE OPPORTUNITIES, *supra* note 12, at 16.

³⁸ See *id.* at 15.

³⁹ *Id.* at 10.

⁴⁰ Congress established the EEP in May 1985 to help make U.S. agricultural exports more competitive in selected foreign markets. See *infra* notes 91-94 and accompanying text.

⁴¹ See FARM EXPORTS, *supra* note 6; TRADE OPPORTUNITIES, *supra* note 12, at 2, 10.

⁴² Future sanctions may result from the Chinese government's use of brutal force against students and workers demonstrating in Tiananmen Square in Beijing. President Bush ordered the immediate suspension of military sales and government arms transfers to China. The Senate and House passed a resolution on June 6, 1989, that urges the Administration to consult with allies to determine the necessity of multilateral trade sanctions. See S. Res. 142, 101st Cong., 1st Sess., 135 CONG. REC. 56195 (daily ed. June 6, 1989).

3. The ASEAN Countries

The ASEAN region countries (particularly Indonesia, Malaysia, the Philippines, and Singapore) hold some of the greatest potential for U.S. agricultural products in the next few decades. In 1988 U.S. agricultural exports to this region were valued at nearly one billion dollars.⁴³ Despite their debt problems,⁴⁴ Indonesia, Malaysia, and the Philippines are important U.S. trading partners. These countries benefit from a number of USDA food aid programs and from U.S. subsidized export sales.⁴⁵

Currently, access barriers restrict U.S. exports to Indonesia. Indonesia imposed access barriers to conserve foreign exchange and to improve balance-of-payments.⁴⁶ Future growth in exports will depend on the economic growth of this country and its ability to improve its debt status.

Malaysia has relatively few trade barriers. Malaysia's debt problems and low-priced competition from other Pacific Rim nations, however, will hinder Malaysia's short-term progress for future growth.⁴⁷

A heavy debt burden also limits the Philippines' ability to purchase greater quantities of U.S. agricultural products. In addition, the Philippine government restricts trade in high-value products as a means of conserving foreign exchange.⁴⁸ Fifty percent tariffs and a value-added tax recently replaced import bans on a variety of specialty crops. These specialty crops included oranges, lemons, limes, grapefruit, apples, grapes, peaches, and plums.⁴⁹ The tariffs and value-added tax will discourage imports by raising the price beyond the means of the average

⁴³ See TRADE OPPORTUNITIES, *supra* note 12, at 2, Table 1.

⁴⁴ The Philippines and Malaysia have debt-to-GDP ratios over 70, and Indonesia's ratio nears 50. The ratio gives a general indication of a country's relative indebtedness. Ratios exceeding 50 indicate serious debt problems. See *id.* at 3.

⁴⁵ In 1987 the Philippines received \$30.8 million in food aid under provisions of the Agricultural Trade Development and Assistance Act, 7 U.S.C. §§ 1691-1736bb-6 (1988). Indonesia received \$32.5 million. Food aid represented 12% of the value of total exports to the Philippines and 21% to Indonesia. In 1988, food aid to the Philippines totaled \$30 million. TRADE OPPORTUNITIES, *supra* note 12, at 3 n.5. For a description of these programs, see C. HANRAHAN, REP. NO. 88-493, THE EFFECTIVENESS OF FOOD AID: IMPLICATIONS OF CHANGES IN FARM, FOOD AID, AND TRADE LEGISLATION (1988).

⁴⁶ TRADE OPPORTUNITIES, *supra* note 12, at 20.

⁴⁷ See *id.* at 39, 47.

⁴⁸ See *id.* at 45-46.

⁴⁹ *Id.* at 47; see also OFFICE OF THE U.S. TRADE REPRESENTATIVE, 1989 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 149 [hereafter TRADE ESTIMATE REPORT] (describing Philippine import policies).

consumer. Future growth for these sectors will depend on gaining substantial tariff reductions. Growth for U.S. soybean and cotton exports will depend on the United States' ability to remain price competitive. Future exports of wheat, wheat flour, and barley will depend on the continued availability of U.S. government aid through the Export Enhancement Program.⁵⁰

International competition for a share of Singapore's agricultural market will continue intensely as Singapore's standard of living rises. Potential for U.S. products depends on good marketing and competitive prices.⁵¹ To date the U.S. market share of Singapore's agricultural imports has ranged from only five to ten percent. Since 1985, however, U.S. agricultural exports to Singapore have increased steadily.⁵² In 1988, exports valued at \$146.7 million exceeded 1985 exports of \$113 million.⁵³

With the exception of duties on alcohol and tobacco, Singapore has virtually no trade barriers. Singapore's growing economy and high per capita income are encouraging signs for increasing U.S. exports of high-value products such as fruits, vegetables, chicken, and pork.⁵⁴

II. ACCESS BARRIERS PREVENTING FULL REALIZATION OF THE POTENTIAL FOR U.S. AGRICULTURAL TRADE IN THE PACIFIC RIM

The United States has profited greatly from its larger market share of Pacific Rim agricultural trade. However, trade problems with the East Asian countries, particularly market access, have prevented full realization of the potential for trade in the Pacific Rim.

Japan has imposed protectionist measures on imports of rice, feed grains, beef, and citrus. Japan imposed these measures to achieve its primary objective of food self-sufficiency for selected products.⁵⁵ To implement this policy, Japan maintains quotas on a number of U.S. agricultural products, including rice, beef, wheat flour, and barley.⁵⁶

⁵⁰ See TRADE OPPORTUNITIES, *supra* note 12, at 46, 47.

⁵¹ *Id.* at 51.

⁵² *Id.* at 52.

⁵³ FOREIGN AGRICULTURAL SERVICE, U.S. DEP'T OF AGRICULTURE, INTERNATIONAL TRADE POLICY, EAST ASIA (1988).

⁵⁴ TRADE OPPORTUNITIES, *supra* note 12, at 51-52.

⁵⁵ Japan has a food self-sufficiency rate greater than 100% for rice; 95% for vegetables; and over 80% for poultry, pork, eggs, milk, and other dairy products. FOREIGN AGRICULTURAL SERVICE, U.S. DEP'T OF AGRICULTURE, 1988 ANNUAL REPORT, TRADE POLICIES AND MARKET OPPORTUNITIES FOR U.S. FARM EXPORTS 122 (1988) [hereafter TRADE POLICIES].

⁵⁶ *Id.* at 125.

Japan's Food Agency, an arm of the Ministry of Agriculture, Forestry and Fisheries, is the sole buyer of imported wheat, wheat flour, and barley. This agency purchases at the world market price and sells to Japanese consumers at a much higher domestic price.⁵⁷ Additionally, Japan maintains a strict prohibition on rice imports.⁵⁸ If Japan liberalizes access, U.S. rice exporters estimate exports of \$656 million over the long-term.⁵⁹

Recently, Japan has taken steps to internationalize and rationalize its domestic agricultural sector. These steps have opened historically restricted Japanese markets for U.S. agricultural exports. As a result of the 1988 Beef and Citrus Agreement with the United States, Japan has agreed to eliminate quotas on beef and oranges over a three-year period and on orange juice concentrate over a four-year period.⁶⁰ Additionally,

⁵⁷ TRADE ESTIMATE REPORT, *supra* note 49, at 99.

⁵⁸ The U.S. rice industry filed two § 301 petitions alleging that Japan's rice policy denies U.S. rice producers fair and equitable access to that market under the GATT. The U.S. Trade Representative (USTR) rejected both petitions. In June 1988, as part of the Beef-Citrus Agreement with the Japanese, the U.S. Administration promised not to pursue the rice issue on a bilateral basis. The United States continues to seek access for rice in the Uruguay Round Negotiations. See *Rice Millers Prepare Section 301 Case Against Japan, Taiwan for Autumn*, INSIDE U.S. TRADE, Aug. 12, 1988, at 1, 8-9.

⁵⁹ TRADE ESTIMATE REPORT, *supra* note 49, at 100.

⁶⁰ The agreement required Japan to commence the elimination of these quotas in 1988. The agreement resolved the long-standing bilateral dispute over Japan's restrictions on beef and orange imports. Under the agreement, Japan will increase its beef imports by 60,000 metric tons annually for three years, at which time Japan will eliminate the quotas. In return, Japan will raise its tariffs on beef from 25% to 70% in the first year of phase two. Japan then will reduce the tariffs to 60% in the second year and to 50% in the third year. The tariffs will remain at 50% until the Uruguay Round negotiations produce a resolution on tariffs. A safety net provision allows Japan to raise tariffs by 25% during the second transitional period if Japanese beef imports reach 120% of the previous year's import level.

For fresh oranges, Japan agreed to increase its quota by 22,000 metric tons annually. As of April 1, 1991, Japan will eliminate all quotas on fresh oranges. Orange juice concentrate quotas will increase from 8,500 metric tons to 15,000 metric tons the first year of phase two; to 19,000 metric tons the second year; to 23,000 metric tons the third year; and to 40,000 metric tons the fourth year, with total phase out by April 1, 1992. The tariffs on fresh oranges and orange juice will remain unchanged. Japan will eliminate the blending requirement on orange juice by April 1, 1990. Japan also agreed to reduce tariffs on a variety of food items, including grapefruit, lemons, frozen peaches, pears, and various nuts. The United States agreed to withdraw a case filed with an expert panel under GATT and to withdraw the Florida Citrus Industry's § 301 petition filed against Japan's import quotas and practices on orange juice imports. See *U.S., Japan Reach Beef-Citrus Accord, Beef Quotas to End Within Three Years*, 5 Int'l Trade Rep. (BNA) 908 (June 22, 1988); *Yeutter Lands Beef-Citrus Pact with*

on July 21, 1988, the United States and Japan signed an agreement on "GATT-12" quota categories. This agreement requires Japan to eliminate quotas on a number of agricultural products. These products include certain dairy and tomato products, fruit puree and paste, and noncitrus fruit juices.⁶¹

Despite these successes, Japan continues to prohibit the importation of many horticultural products for plant health reasons. Regulations dealing with the codling moth prohibit the importation of many products, including apples, pears, peaches, and plums. In 1988 Japan accepted methyl-bromide fumigation procedures⁶² which resolved previous codling moth problems relating to walnuts, cherries, and nectarines. The Ministry of Health and Welfare's highly restrictive policy on approval of food additives also limits exports of many high-value products to Japan. Many food additives commonly used in the United States, such as Red-40 food coloring, cannot be used in Japan. As a result, the United States cannot export foods containing such additives.

South Korea, the second largest market for U.S. agricultural products, maintains even more restrictive policies, particularly for high-value U.S. agricultural products. For example, South Korea's 1988 ag-

Japan as Beginning New Era of Trade, INSIDE U.S. TRADE, June 24, 1988, at 1, 9-10.

⁶¹ In 1986 the United States filed a complaint in the GATT and claimed that Japan imposed GATT-inconsistent import quotas on 12 categories of processed foods. A review panel was formed in October 1986 after Japan blocked its formation twice. In November 1987 the panel report found that the import quotas on 10 categories were GATT-illegal. The report allowed Japan to continue its import restrictions on two categories (peanuts and dried peas and beans) if Japan increased the quotas. The GATT Council adopted the panel report on February 2, 1988. Under the settlement agreement reached through bilateral negotiations, Japan agreed to eliminate import quotas on certain dairy products, such as ice cream and frozen yogurt, processed cheese, sugar syrups, fruit puree and paste, fruit pulp, noncitrus fruit juices, tomato juice, ketchup and sauce, and food preparations. Japan will eliminate these quotas in four different stages: October 1, 1988; April 1, 1989; July 1, 1989; and April 1, 1990. The agreement allows Japan to maintain import controls during this period on certain dairy products such as nonfat dried milk, starch, peanuts, and dried peas and beans. In return Japan agreed to reduce tariffs as of April 1, 1989, on a number of agricultural products, such as popcorn, breakfast cereals, and soup. Japan also agreed to increase its quota on peanuts from 55,000 metric tons to 75,000 metric tons over three years and to eliminate lentils and chick peas from the quota on dried peas and beans. The U.S.-Japan Beef and Citrus Agreement resolved the 12th category (prepared and preserved beef). Office of the U.S. Trade Representative, Yeutter Announces Resolution on Japan GATT Case, Press Release (July 20, 1988); *see also* Japan: Restrictions on Imports of Certain Agricultural Products (GATT Panel L/6353, Nov. 18, 1987).

⁶² *See* TRADE POLICIES, *supra* note 55, at 125.

ricultural policy stresses a national need to pursue all possible measures to suppress access and consumer demand for agricultural imports.⁶³ The policy encourages "when necessary, taking multi-counter measures such as changing tariff rates."⁶⁴ In line with this policy, in September 1989 Korea's National Pusan Quarantine Office established a twenty-five-day quarantine period for a thirty-item list of nonexclusive agricultural commodities.⁶⁵ The quarantine functions as a practical ban when applied to perishable commodities. The 1988 policy and quarantine restrictions conflict with the Korean government's purported liberalization in the area of agriculture.

Korea's most recent means of restricting access is the use of unjustified health and phytosanitary concerns. In April 1989 Korean officials made misleading statements which suggested that Alar, a growth chemical used on apples, tainted U.S. grapefruit. These misstatements literally stopped trade in this sector. Although the Korean government has clarified its statements, U.S. grapefruit trade has recovered slowly. U.S. exports have reached only ten percent of their normal sales volume.⁶⁶

In the last several months pressure on the Korean government to open its markets has resulted in a shift towards market liberalization in the area of agriculture. This pressure included threats of Super 301 sanctions,⁶⁷ attacks on Korean balance-of-payments justification in the

⁶³ See MINISTRY OF AGRICULTURE, FORESTRY AND FISHERIES, GOVERNMENT OF KOREA, 1988 POLICY DIRECTIONS FOR IMPORTS AND EXPORTS OF AGRICULTURE (1988). Because Korea has not released a 1989 policy, the 1988 document remains the operative policy.

⁶⁴ *Id.*

⁶⁵ See NATIONAL PUSAN QUARANTINE OFFICE, INFORMATION ON AGRIC-CHEMICALS TEST TO IMPORTED AGRICULTURAL PRODUCTS (Sept. 5, 1989).

⁶⁶ U.S. Trade Representative Carla Hills labeled the Korean boycott on U.S. grapefruit linked to Alar as "outrageous" and only another "means of preventing the sale of grapefruit in Korea." *Hills to Press Korea To Drop Special Treatment Under GATT Rules*, INSIDE U.S. TRADE, Oct. 6, 1989, at 1, 2.

⁶⁷ Congress adopted "Super 301" (19 U.S.C. § 2420 (1988)) as part of the Omnibus Trade & Competitive Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (codified in scattered sections of 7 U.S.C.). Super 301 requires the President to identify trade liberalization priorities to broaden access for U.S. exports to foreign markets. The statute requires the USTR to identify foreign trade practices, which if eliminated would significantly increase U.S. exports. The statute also directs the USTR to identify priority countries, taking into account the number and persuasiveness of significant barriers to U.S. exports. The statute requires USTR to initiate investigations of priority practices of identified priority countries. 19 U.S.C. § 2420(b) (1988). Super 301 provides negotiating leverage to remove trade barriers. The Administration plans to initiate § 302 investigations selectively, in situations in which the leverage provided by credible threats of retaliation will encourage its trading partners to honor existing agreements

GATT,⁶⁸ and pressures to adopt a GATT panel ruling on beef.⁶⁹

In 1989 the United States strongly considered placing Korea on the list of countries subject to the 1988 Trade Act's Super 301 provisions. Korea made major concessions to the United States to avoid sanctions. These trade concessions included an agreement between Korea and the United States on agriculture.⁷⁰ Under this agreement, Korea agreed to open its markets to 70 out of 140 products identified by the United States as a priority for U.S. agricultural exporters. Korea agreed to lift import restrictions⁷¹ in three stages: July 1, 1989; January 1, 1990; and January 1, 1991. In addition, Korea increased the quota on orange juice and agreed to reduce tariffs on seven products including almonds, raisins, avocados, and cherries. Korea also agreed to abolish its restrictive orange juice blending requirement and to remove phytosanitary barriers to the importation of cherries and papayas. Although the agreement helped Korea avoid trade sanctions under Super 301, the United States included Korea on a "priority watch list."⁷² The United States cited its continuing concern with Korea's remaining agricultural import restrictions that are GATT-inconsistent and unjustified on a balance-of-payments basis.⁷³

Additionally, the GATT Balance-of-Payments Committee ruled against Korea's justification of its import quotas on balance-of-payments difficulties. As a result, Korea agreed to phase out all of its import restrictions imposed for balance-of-payments reasons or "otherwise bring them into conformity" with international trading rules by July 1, 1997.⁷⁴ Under the agreement, Korea will lift the quotas over two three-year phases. These phases will begin once Korea completes its trade

and to abide by, or expand, GATT rules. 54 Fed. Reg. 24,438, 24,439 (1989).

⁶⁸ For an explanation of Korea's reliance on the balance-of-payments exemption in Article XVIII of the GATT for its import quotas, see *infra* notes 74-75 and accompanying text.

⁶⁹ For a discussion of the GATT ruling on Korea's beef imports, see *infra* notes 76-78 and accompanying text.

⁷⁰ See U.S.-Korean Agreement, May 19, 1989; Office of the U.S. Trade Representative, Hills Announces Agreement With Korea on Agriculture, Press Release (May 19, 1989).

⁷¹ For example, Korea will grant access for poultry parts, certain fresh fruits and nuts, soybean oil, and bourbon.

⁷² See OFFICE OF THE U.S. TRADE REPRESENTATIVE, FACT SHEETS ON M-1, M-5 (May 30, 1989).

⁷³ Korea historically has protected its quotas under Article XVIII of the GATT, which allows such quotas for countries facing balance-of-payments difficulties.

⁷⁴ Korea's Balance of Payments Agreement in the GATT (Oct. 29, 1989).

liberalization plan in 1991.⁷⁵

The dispute over Korea's restrictions on the import of beef also continues to generate concern.⁷⁶ Korea's quota system restricts beef imports to about thirty percent of total annual consumption. In April a GATT panel ruled that Korea's import ban violates the GATT, but Korea refused to adopt the panel's report.⁷⁷ Korea maintains that elimination of the quota system would collapse the Korean cattle industry and adversely impact U.S. producers since Australian beef exports maintain more competitive prices than U.S. beef exports.

The United States is expected to postpone any decision until April 1990 to impose trade sanctions against Korea for its refusal to eliminate its beef import quotas. Korea's decision to allow the consensus adoption of the GATT ruling against the beef quotas accounts for this delay.⁷⁸ The panel report recommends that Korea propose an acceptable plan to phase out its beef quotas within ninety days of GATT adoption of the panel report.

Taiwan's restrictions have been less disputed than those imposed by Korea. Nevertheless, Taiwan maintains similar access barriers.⁷⁹ In addition to high tariffs on most agricultural products (ranging from forty to fifty percent), Taiwan maintains an extensive import licensing system. Import licenses either tightly control or effectively ban access for agricultural items such as chicken, rice,⁸⁰ wheat flour, distilled spirits,

⁷⁵ Korea agreed to the liberalization plan to avoid sanctions under Super 301. See *supra* notes 70-73 and accompanying text.

⁷⁶ Currently, Korea's beef restrictions are a subject of a § 301 investigation under the 1974 Trade Act. The investigation stems from a complaint filed by the American Meat Institute on February 16, 1988. The complaint alleges that Korea's import policies violate the GATT. The USTR accepted the petition for investigation on March 28, 1988. 53 Fed. Reg. 10995 (1988). The original deadline for a retaliation decision was September 28, 1989. On September 29, 1989, the USTR delayed a decision on retaliation until mid-November. Recently, the USTR postponed taking action until April 1990. For a discussion of the § 301 trade remedy and further information on this case, see *infra* notes 99-108 and accompanying text.

⁷⁷ Under the GATT, a single contracting party, including a party to the dispute, can block the adoption of a GATT panel ruling.

⁷⁸ See INSIDE U.S. TRADE, Nov. 10, 1989, at 5.

⁷⁹ Taiwan is not a contracting party to the GATT and therefore not bound by the rules or disciplines of the GATT. Trade between the United States and Taiwan is subject to a bilateral trade agreement with provisions comparable to those in the GATT. See TRADE POLICIES, *supra* note 55, at 203.

⁸⁰ In 1983, the Rice Millers Association filed a § 301 petition against Taiwan. The complaint alleged that Taiwan disrupted world rice markets with subsidized rice exports. 48 Fed. Reg. 56,289 (1983). In 1986, the Association withdrew the petition after Taiwan agreed to an Orderly Marketing Agreement (OMA). Taiwan agreed to limit

and animal offal.⁸¹ Import licenses for fruit are subject to administrative control, which involves burdensome, nontransparent certification and registration procedures.

In anticipation of possible designation under Super 301, the Taiwanese government, in May 1989, presented a Trade Action Plan for Liberalization. This plan outlined a proposal for lowering tariffs, increasing demand, and offering buying missions for U.S. products.⁸² The United States responded with a priority list of items for which it sought lower tariffs and/or market access. This list included a number of agricultural items. Taiwan then offered modest tariff reductions, largely to the industrial sector. The United States will continue to pressure Taiwan for greater access for its agricultural exports. The next talks between the two countries are scheduled for January 1990.⁸³ At that time, U.S. negotiators will pursue tariff cuts for agricultural items.

III. FUTURE PROSPECTS FOR AGRICULTURAL TRADE IN THE PACIFIC RIM

Although the Pacific Rim clearly holds the brightest future for U.S. agricultural exports, the magnitude of future growth depends on several factors. These factors include the value of the U.S. dollar relative to foreign currency, the continued competitiveness of U.S. agricultural items, and the removal of market access barriers that presently restrict trade to the Pacific Rim.⁸⁴

A. *The Value of the U.S. Dollar*

During the last decade the decreased value of the U.S. dollar in relation to the currencies of Japan, Korea, and Taiwan has helped increase U.S. agricultural exports to those countries. This decreased value has kept the price of U.S. products down. Between 1985 and 1988, the value of the U.S. dollar as measured against the yen depreciated by fifty percent.⁸⁵ Similar depreciation of the dollar occurred relative to the

its subsidized rice exports to third country markets and to allow more imports. This agreement expires in 1989, and the Taiwanese have refused to negotiate a new agreement. This has prompted the Association to consider filing another § 301 case.

⁸¹ See TRADE ESTIMATE REPORT, *supra* note 49, at 163.

⁸² For a draft of the plan, see 7 INSIDE U.S. TRADE, No. 8, Feb. 24, 1989, at 3-4.

⁸³ See FOREIGN AGRICULTURAL SERVICE, U.S. DEP'T OF AGRICULTURE, INTERNATIONAL TRADE POLICY, EAST ASIA (1988).

⁸⁴ See TRADE OPPORTUNITIES, *supra* note 12, at 4.

⁸⁵ *Id.*

new Taiwan dollar and the Korean won.⁸⁶

Overall, the decreased value of the U.S. dollar has stimulated exports. U.S. officials, however, understand the need to stabilize the dollar's value at a rate that will continue to stimulate exports, but not damage the domestic economy. U.S. officials contend that the actions of the Japanese, Korean, and Taiwanese governments in undervaluing their currency to some extent controls the U.S. dollar's fluctuation in value.⁸⁷

The relative success achieved in the Philippines, Hong Kong, Singapore, and China illustrates that the U.S. dollar's value is only one factor affecting increased sales in this region. The value of the U.S. dollar has remained constant with the Hong Kong dollar. The Philippine and Chinese currencies have depreciated, whereas the Singapore dollar has appreciated slightly.

B. The Need to Remain Competitive as an Agricultural Exporter

The Pacific Rim nations likely will increase their demand for agricultural imports during the 1990s. The ability of U.S. farmers to take advantage of this demand will depend in part on their ability to remain competitive in price and quality relative to other nations sophisticated in agricultural production. The competitive success achieved by U.S. agricultural exporters over the last five years has been achieved with the support of federal programs. Congress created or continued these programs by enacting the 1985 Food Security Act⁸⁸ and providing trade remedy improvements under the 1988 Omnibus Trade Bill.⁸⁹ Future competitiveness will depend on continuing and strengthening these programs.

In late 1985 the United States embarked on a new strategy for achieving long-term goals of opening world markets and enhancing free trade. Congress designed the "fight fire with fire" programs of the 1985 Food Security Act to reduce the U.S. trade deficit by opening

⁸⁶ *Id.*; ANNUAL REPORT OF THE PRESIDENT OF THE UNITED STATES ON THE TRADE AGREEMENTS PROGRAMS 2 (1988) [hereafter ANNUAL REPORT].

⁸⁷ See TRADE OPPORTUNITIES, *supra* note 12, at 4.

⁸⁸ Pub. L. No. 99-198, § 1324, 99 Stat. 1354, 1539 (codified at 7 U.S.C. § 1631 (1988)). These programs include the Export Enhancement Program, 7 U.S.C. § 1736v (1988), and the Targeted Export Assistance Program, 7 U.S.C. § 1736s (1988). See *infra* notes 90-98 and accompanying text.

⁸⁹ Pub. L. No. 100-418, 102 Stat. 1388 (codified in scattered sections of 7 U.S.C.). For a discussion of the improvements made to § 301, see *infra* notes 100-102 and accompanying text.

foreign markets rather than closing domestic markets.⁹⁰ The Export Enhancement Program (EEP)⁹¹ is among the most significant of the export subsidy programs designed to increase U.S. trade competitiveness abroad. Congress enacted the EEP to help U.S. agricultural exports become more competitive in selected foreign markets in which U.S. agricultural exports lost out to subsidized exports from other countries. Congress extended the EEP through 1990 under the 1985 Food Security Act.

The EEP provides for 1.5 billion in government-owned surpluses to subsidize commercial sales of bulk commodities.⁹² A minimum of fifteen percent of the funds must be used for the export of poultry, beef, pork, and meat products.⁹³ The EEP has been used to increase exports of bulk commodities to the Pacific Rim. Increased exports have included wheat, wheat flour, barley malt, dairy cattle, and eggs to the Philippines, China, Indonesia, and Hong Kong.⁹⁴

Another export incentive program included in the 1985 Food Security Act was the Targeted Export Assistance (TEA) program.⁹⁵ Congress developed TEA as an export promotional program to provide eco-

⁹⁰ See ANNUAL REPORT, *supra* note 86, at 1. Title XI of the Food Security Act of 1985 authorized export programs. 7 U.S.C. § 1631 (1988) (commonly referred to as Public Law 99-198). Title XI reauthorizes food aid under the long-standing Public Law 480 program (Titles I, II, II and § 416) and continues support for newer programs such as short-term export credits (GSM-102) and the Export Enhancement Program. Title XI also provides for an intermediate credit guarantee program (GSM-103), a Targeted Export Assistance (TEA) program, and export assistance for red meat and dairy products. Government programs offering export credit, subsidies, or aid amounted to \$8 billion, or nearly 25% of total agricultural exports in 1988. This compares with only 10% at the beginning of the 1980s. These programs are used for a variety of exported products: grain and oil seed, dairy products, red meat, frozen poultry, eggs, rice, barley, cotton, dairy cattle, and processed foods. U.S. AGRICULTURAL POLICY GUIDE, WORLD PERSPECTIVES 155 (1988) [hereafter AGRICULTURAL POLICY GUIDE].

⁹¹ 7 U.S.C. § 1736v (1988). Congress adopted the EEP to counteract the export subsidy programs of the European Community, the United States' principal agricultural competitor. For the legislative history, see 1985 U.S. CODE CONG. & ADMIN. NEWS 1103, 1172.

⁹² For a further discussion of the EEP, see *supra* note 91.

⁹³ 7 U.S.C. § 1736v (1988); see AGRICULTURAL POLICY GUIDE, *supra* note 90, at 100.

⁹⁴ As of April 4, 1988, the EEP has provided total bonuses of \$193.54 million in wheat and \$201.37 million in dairy cattle to China; \$20.2 million in wheat, \$4.35 million in wheat flour, and \$4.82 million in barley malt to the Philippines; \$22.74 billion in cattle to Indonesia; and \$1.68 billion in eggs to Hong Kong. See AGRICULTURAL POLICY GUIDE, *supra* note 90, at 162-65.

⁹⁵ 7 U.S.C. § 1736s (1988).

conomic relief to aggrieved U.S. commodities and to directly counteract unfair practices overseas. TEA has become one of U.S. agriculture's most effective and cost-effective⁹⁶ weapons against unfair competition.

Of the export tools created or expanded in the 1985 Food Security Act, TEA has had one of the lowest funding authorizations: \$110 million for fiscal years 1986 through 1988 and \$200 million for fiscal years 1989 and 1990.⁹⁷ Nevertheless, TEA's export results have been among the most impressive. Exports of participating commodities, now covering all sectors of U.S. agriculture in all fifty states, increased by \$1.6 billion in the first two years of the program.

The TEA program has successfully promoted a variety of U.S. agricultural commodities in Japan, Hong Kong, Taiwan, Korea, and other Pacific Rim countries. The range of agricultural commodities has included poultry, beef, pasta, citrus, nuts, and other horticultural items. In Japan, the widely publicized "Grown in the U.S.A." promotional campaign involved nearly twenty TEA participants. The Japanese purchasing community praised the campaign for its creativity, cooperative spirit, and effective results. A number of commodities have been successful under TEA by achieving fundamental changes in foreign import policies.⁹⁸ TEA remains a creative and highly effective way of addressing concerns over enhancing U.S. agricultural gains, challenging unfair trade practices, relieving the U.S. trade deficit, and avoiding budgetary outlays. TEA is necessary to relieve and strengthen the U.S. export position pending global agricultural reform in the GATT and

⁹⁶ Congress did not need to authorize direct appropriations to launch the TEA program. The TEA enabling law provides that support may be in the form of either cash or commodities. To date, USDA has elected to fund the program through the sale of surplus commodities. The government has already paid for these commodities, and the Commodity Credit Corporation (CCC) stores these commodities. Eligible recipients receive "generic certificates" with a face value in dollars, which recipients sell to brokers or trading companies to pay for market promotion abroad. In addition, the TEA program requires private sector contributions to match U.S. government funds.

⁹⁷ Subsequent to the 1985 Food Security Act, § 5 of the Food Security Improvements Act of 1986 amended TEA to reduce the minimum required funding level from \$325 million to \$110 million for fiscal years 1986 through 1988. Funding for the last two fiscal years (1989 and 1990) was to remain at \$325 million. Last year, funding for fiscal years 1989 and 1990 decreased to \$200 million.

⁹⁸ For example, as a direct result of the U.S. wood industry's "Summit House" built with TEA funds in Japan, the Ministry of Construction revised Japan's National Building Code to include three-story, wood-framed construction. In Korea, the National Hay Association's TEA activities succeeded in gaining the support of Korean livestock producers and industry representatives to secure a bilateral agreement that increased the allowable quantity of exported alfalfa products from 10,000 to 90,000 tons.

the establishment of a level playing field.

Frustration over the ineffectiveness of GATT dispute settlement and the U.S. trade remedy law led to export programs established or enhanced under the 1985 Food Security Act. Among the most controversial trade remedy tools developed to open foreign markets is section 301 of the Trade Act of 1974.⁹⁹ Section 301 authorizes the U.S. Trade Representative (USTR), subject to specific direction of the President, to challenge unfair foreign trading practices. Section 301 also authorizes USTR to take all feasible and appropriate action, including retaliation, if necessary, to obtain the removal of unfair foreign trading practices.

The Omnibus Trade and Competitiveness Act of 1988¹⁰⁰ made some retaliatory actions mandatory under section 301 if certain foreign practices continued.¹⁰¹ The Act also added the "Super 301" provision.¹⁰² This provision requires the USTR to identify trade liberalization priorities (including priority countries and practices) and to take specified actions to address those priorities.

Since 1978 seventy-nine cases have been formally brought under section 301, and nearly forty percent concern agricultural products.¹⁰³ Several cases directly involve the Pacific Rim. Agricultural importers have filed section 301 cases against Japan on citrus;¹⁰⁴ against Korea on

⁹⁹ Trade Act of 1974, Pub. L. No. 93-618, § 301, 88 Stat. 2041 (codified at 19 U.S.C. §§ 2411-2412 (1988)).

¹⁰⁰ Pub. L. No. 100-418, 102 Stat. 1388 (codified in scattered sections of 7 U.S.C. (1988)).

¹⁰¹ As amended in 1988 by the Omnibus Trade and Competitive Act of 1988, § 301 requires the USTR to retaliate against certain § 301 cases, including cases that involve a violation of, or denial of benefits under, a trade agreement or any other agreement and that burden or restrict U.S. commerce. 19 U.S.C. § 2411(a)(1) (1988). Exceptions to the mandate for retaliation exist for national security and national economic interest reasons. 19 U.S.C. § 2411(a)(2) (1988). For a complete legislative history on the amendments to § 301, including the mandatory retaliation and Super 301 provisions, see Bello & Holmer, *The Heart of the 1988 Trade Act: A Legislative History of Amendments to Section 301*, 25 STAN. J. INT'L L. 1 (1988).

¹⁰² 19 U.S.C. § 2420 (1988).

¹⁰³ See ABA Seminar on GATT and U.S. Agricultural Programs (Oct. 24, 1989) (remarks of A. Jane Bradley, Deputy General Counsel to the U.S. Trade Representative and Chairperson of the Interagency Section 301 Committee). For a full list of § 301 cases filed, see CRS REPORT, ADDRESSING UNFAIR TRADE: AGRICULTURAL CASES UNDER SECTION 301 OF THE TRADE ACT OF 1974 61-65 (Sept. 1989).

¹⁰⁴ Florida Citrus Mutual filed a petition on May 6, 1988, alleging that Japan's import quotas on fresh oranges and orange juice violated Article XI of the GATT and that Japan's domestic content-mixing requirements violated Article III.5. The USTR initiated an investigation on May 25, 1988. The GATT Council authorized a panel under Article XXIII:2 on May 4, 1988. Under a July 5, 1988 settlement agreement

beef¹⁰⁵ and wine;¹⁰⁶ and against Taiwan on rice,¹⁰⁷ beer, wine, and tobacco.¹⁰⁸ Most of these cases resulted in expanded access. Given the wealth of trade barriers still impeding U.S. agricultural trade to the Pacific Rim, section 301 authority will remain a necessary and effective tool. Section 301 will continue to force market liberalization, particularly in sensitive and competitive product areas.

With the drafting of the 1990 Farm Bill close at hand, the fate of U.S. export programs substantially depends on progress made in the ongoing Uruguay Round negotiations. If prospects for a global agricultural agreement look dim, Congress surely will continue to strengthen the current export programs.¹⁰⁹ On the other hand, a successful Uru-

reached through bilateral consultations, Japan agreed to phase out its fresh orange and orange juice import quotas. The citrus industry withdrew its petition, and the USTR terminated the investigation on July 5, 1988. 53 Fed. Reg. 25714-15 (1988). For a more detailed explanation of the U.S.-Japan Beef and Citrus Agreement, see *supra* notes 60-61 and accompanying text.

¹⁰⁵ In 1988, the American Meat Institute filed a petition alleging that Korea maintained a restrictive licensing system on imports of all bovine meat in violation of Article XI of the GATT and § 301 of the Trade Act of 1974. A GATT panel was established under Art. XXIII.2 on May 4, 1988. In April the panel ruled that Korea's beef quota violated the GATT. For a further discussion of the § 301 investigation, see *supra* note 76.

¹⁰⁶ On April 27, 1988, the Wine Institute and the Association of American Vintners filed a petition against the policies and practices of the Korean government that unreasonably denied access to the Korean wine market and restricted U.S. commerce. The USTR initiated an investigation on June 11, 1988. 53 Fed. Reg. 22607 (1988). The USTR held consultations with Korea during October 1988. On January 18, 1989, Korea agreed to provide foreign manufacturers of wine and wine products with nondiscriminatory and equitable access to the Korean market. The USTR terminated the investigation the same day.

¹⁰⁷ For a discussion of the § 301 petition filed against Taiwan because of its subsidized rice exports, see *supra* note 80.

¹⁰⁸ On October 27, 1986, the President found that Taiwanese practices and policies on the distribution of U.S. beer, wine, and tobacco products were actionable under § 301. The President announced that he would take proportional counter-measures so long as Taiwan continued the practices. The President also directed the USTR to prepare appropriate retaliatory actions. 51 Fed. Reg. 39,639 (1988). On December 5, 1986, Taiwan agreed to lift its ban on beer imports; to drop the requirement that U.S. exporters mark-up foreign beer, wine, and tobacco above domestic products; and to allow U.S. exporters to sell products at all retail outlets which sell Taiwanese products. In response, the USTR announced that it would not take retaliatory action. 51 Fed. Reg. 44958 (1988).

¹⁰⁹ Legislation proposed for 1990 encourages the reauthorization and strengthening of these programs based on success in the Uruguay Round. See G. BECKER, ENVIRONMENTAL AND NATIONAL RESOURCES POLICY DIVISION, AGRICULTURAL ISSUES IN THE 100TH CONGRESS (Mar. 30, 1989). Senator Baucus of Montana has introduced a

guay Round agreement more than likely will produce calls for reductions or a termination of all export expansion and internal support programs that distort trade. Although the GATT considers programs such as the TEA program to be nontrade distortive, Congress may feel pressured to cut or suspend such programs under a GATT agreement.

C. Removal of Trade Barriers

EEP,¹¹⁰ TEA,¹¹¹ and section 301¹¹² have achieved some success in reducing access barriers and quotas. Nevertheless, access barriers, quotas, restrictive licensing, plant health restrictions, high tariffs, and state trading remain obstacles to free trade with the Pacific Rim. Currently, the United States' highest priority is to achieve liberalization through a successful Uruguay Round agreement. U.S. negotiators have cited global reform in agriculture as one of four priority areas to a successful GATT agreement.¹¹³

The Punta del Este Communique of September 22, 1986, launched the current round of multilateral trade negotiations. The Communique authorized the broadest mandate for agricultural reform in the history of the GATT. Pursuant to this mandate, GATT-member countries have agreed to work towards a global, market-oriented environment for trade in agricultural products. GATT-member countries will achieve this goal through "substantial, progressive reductions" in support and protection.¹¹⁴

In October the United States tabled the most comprehensive agricultural proposal of all proposals tabled by GATT-member countries to date. The U.S. proposal calls for reform in four areas: market access, export competition, internal support measures, and sanitary and phytosanitary measures.¹¹⁵ The United States proposes liberalization of market access barriers so that U.S. importers can sell agricultural goods. The U.S. proposal suggests the disciplining of export competi-

bill (Agricultural Trade Act of 1990) to extend the provisions of Super 301 to agricultural products alone through 1991 if a successful multilateral agreement in agriculture is not reached in the Uruguay Round by February 15, 1991. *See* S. 1746, 100th Cong., 2d Sess. (1989).

¹¹⁰ *See supra* notes 91-94 and accompanying text.

¹¹¹ *See supra* notes 95-98 and accompanying text.

¹¹² *See supra* notes 99-108 and accompanying text.

¹¹³ The other three priority areas would extend the coverage of the GATT to three new disciplines: investment, intellectual property rights, and services.

¹¹⁴ Submission of the United States on Comprehensive Long-Term Agricultural Reform (submitted to the GATT on Oct. 25, 1989).

¹¹⁵ *Id.*

tion so that member countries can eliminate gradually the billions of dollars spent on undercutting the price of agricultural commodities. The U.S. proposal also advances internal support reforms to restrain governmental policies that create surpluses and keep out products or distort trade. Finally, the proposal recommends harmonization of safety and phytosanitary standards to eliminate the possibility of trade barriers established under the guise of consumer health and safety.¹¹⁶

The greatest resistance to comprehensive global reform is coming from the European Economic Community (EEC). The EEC continues to support internal and external, large-scale subsidies, the cornerstone of its Common Agricultural Policy (CAP). The concept of "rebalancing" is the most objectionable part of the EEC's expanded agricultural proposal.¹¹⁷ Under rebalancing, all subsidies, both internal and external, would be converted to an Aggregate Measure of Support, and the overall level of support would be reduced gradually over a period of years. This approach would enable the EEC to increase support in certain sensitive sectors, as long as certain countries sufficiently reduce support in other sectors. The United States contends that the EEC should make substantial reductions across-the-board in export and internal subsidies.

The EEC's proposal also resurfaced its position that countries should use quantitative restrictions to control agricultural surpluses. This proposal continues the EEC's long-standing insistence that managed trade is preferable to free market forces. Finally, the EEC endorses "flexibility" for developing countries by proposing that the Uruguay Round commitments exempt certain countries. This differs from the U.S. proposal, which insists that the commitments exempt no country, but allow leeway for implementation.

Japan's proposal for agricultural reform, submitted in December

¹¹⁶ Under the U.S. proposal, countries would convert all nontariff barriers to bound tariffs (tariffication). Countries then would negotiate to decrease these tariffs over 10 years. Countries would use tariff rate quotas and safeguard measures to facilitate the transition period. The safety net provisions would allow countries to "snap-back" their tariffs in case of market disruption. Under export competition, countries would phase out all export subsidies over five years. The proposal divides internal support programs into three categories: a red one for policies to be eliminated, a yellow one for policies to be disciplined, and a green one for policies that can remain nontrade disruptive. The proposed sanitary and phytosanitary measures would bring regulations and barriers under an international process for dispute settlement and harmonization. *See id.*

¹¹⁷ *See* Global Proposal of the European Community on the Long-Term Objectives for the Multilateral Negotiations on Agricultural Questions (submitted to the GATT on Dec. 20, 1989).

1989, supports the U.S. call for elimination of export subsidies. Japan considers export subsidies as inherently trade distortive. However, Japan's insistence that countries be allowed to maintain import barriers for reasons of food security conflicts with the U.S. proposal. Japan's position will serve as a major point of negotiation in 1990.

The Korean government's proposal also emphasizes the need to maintain market access barriers for the purpose of ensuring food safety. Given the abuse of these countries in using manufactured health concerns as nontariff barriers, this exemption becomes particularly disturbing.¹¹⁸

With the Uruguay Round negotiations still a long way from reaching an acceptable agreement on agriculture, U.S. officials and Congress have recognized the need to maintain alternative avenues to increase U.S. agricultural competitiveness. Federal legislation reflects this need. The legislation includes continued authorization of the export incentive programs of the 1985 Food Security Act, the trade remedies available under section 301, and continued emphasis on bilateral negotiations.

U.S. officials and Congress have considered Free Trade Area (FTA) agreements as another form of leverage. Congressional interest in an FTA with Japan¹¹⁹ and with other Pacific Rim countries¹²⁰ has surfaced over the past two years. Congress, however, has tabled the idea of pursuing an FTA with these countries until the conclusion of the Uruguay Round negotiations.¹²¹ Nevertheless, FTAs remain a future possibility for expanding U.S. agricultural trade in the Pacific Rim.¹²²

¹¹⁸ For an example of this abuse, see *supra* note 66 and accompanying text (discussing Alar incident in Korea).

¹¹⁹ See U.S. INT'L TRADE COMMISSION, PUB. NO. 2120, PROS AND CONS OF INITIATING NEGOTIATIONS WITH JAPAN TO EXPLORE THE POSSIBILITY OF A U.S.-JAPAN FREE TRADE AREA AGREEMENT (1988) [hereafter NEGOTIATIONS WITH JAPAN].

¹²⁰ See PROS AND CONS, *supra* note 2.

¹²¹ The International Trade Commission's (ITC) report found that the United States should concentrate its energy and resources on successfully concluding the Uruguay Round before resorting to another FTA to achieve liberalization objectives. See *id.* Private sector and government participants cautioned that embarking on an FTA approach at this time could derail the Uruguay Round and weaken the multilateral systems. *Id.* at v. Similarly, another ITC report recommended that the United States obtain a better idea of the prospects for the Uruguay Round before undertaking a major trade policy initiative such as an FTA. See NEGOTIATIONS WITH JAPAN, *supra* note 119, at iv.

¹²² The idea of negotiating an FTA with Japan or other Pacific Rim countries resulted from frustrations over present methods of handling trade disputes with these countries. See PROS AND CONS, *supra* note 2, at v. Although the ITC did not reject the idea of an FTA, the ITC did note a number of concerns. With Japan, the ITC found that many barriers remain embedded in the Japanese economic system and culture, and thus, are difficult to address by a single comprehensive agreement such as an FTA. *Id.*

CONCLUSION

Contracting demand and expanding global overproduction continues to adversely affect the global market for agricultural trade. The Pacific Rim offers the best and possibly the only hope for U.S. agricultural expansion into the 1990s. Already, Japan is the leading export market for U.S. agriculture, with Korea and Taiwan close behind. The economic performance of these countries likely will continue at a robust pace in the near future.

The extent to which U.S. exports can take advantage of this market will depend on the ability of the United States to remain competitive relative to other agricultural exporting nations. The extent to which the Pacific Rim countries relax remaining access barriers also will determine future growth in these countries.

Congress can help U.S. agriculture take advantage of opportunities in the Pacific Rim. Congress should continue to support the export incentive programs developed or expanded in the 1985 Food Security Act. Additionally, pending the achievement of global agricultural reform, Congress should pursue fairer and freer trade through the use of section 301 and other trade remedies.

Moreover, the differences in industrial structure, business practices, legal systems, languages, and social customs would complicate the achievement of free trade between the United States and Japan. *Id.* With Taiwan, Korea, and other Pacific Rim countries, the ITC cautioned that an FTA between the United States and a country significantly less economically advanced could not fully achieve free trade because of economic and political reasons. *Id.*

