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NAFTA Renegotiations Should Not Harm Agriculture and Consumers with the “Seasonality Poison Pill”

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Agricultural trade provides significant benefits to farmers, ranchers, and consumers.¹ The North American Free Trade Agreement (NAFTA) plays a central role in creating many of those benefits.² However, U.S. trade negotiators are pushing a provision in the current NAFTA renegotiations, the “seasonality provision,” which could significantly increase trade disputes, leading to higher prices for agricultural products and reducing export opportunities for farmers and ranchers.

The Seasonality Provision

Domestic industries can seek help from the federal government to address alleged economic harms from dumping (selling at “unfair” low prices) by foreign producers or countervailable subsidies (unfair subsidies) provided to foreign competitors by their home countries. This help can come in the form of the U.S. imposing duties on foreign imports.

For the government to intervene, petitioners must show that harm has been done to the entire industry³ over multiple years⁴ and the petition is on behalf of the industry—e.g., it is supported by producers accounting for at least 25 percent of total production of the domestic product.⁵

U.S. trade negotiators are proposing to allow a sub-category of an industry (seasonal or perishable products) to bring cases against foreign imports, thus effectively creating an end-run around the current requirement for an action to be on behalf of an *entire* industry.

One objective in the Office of the U.S. Trade Representative’s “Summary of Objectives for the NAFTA Renegotiation” is: “Seek a separate domestic industry provision for perishable and seasonal products in AD/CVD [anti-dumping/countervailing duty] proceedings.”⁶ The primary push for this seasonal exemption is coming from southeastern produce growers, especially tomato growers in Florida,⁷ who are concerned with competition with Mexico.⁸

This provision would allow agricultural producers by state or region⁹ of seasonal or perishable commodities such as tomatoes to bring cases. For example, Florida tomato growers could bring a case that would be analyzed based on their experience alone, regardless of whether producers of tomatoes in other states have the same concerns or suffered any harm.

In fact, the entire domestic tomato industry except for one state’s growers could be flourishing and have no concerns. This appears to be a concern not of whether a foreign country or its producers are taking inappropriate actions, but of whether a small set of growers within an industry are able to effectively compete in the marketplace.

Florida tomato growers have pointed to Florida’s less friendly weather conditions for growing tomatoes as compared to that of Mexico.¹⁰ This is an agricultural production problem, not a trade problem,

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and one that other U.S. tomato growers in general do not seem to have.

In addition to this sub-category problem, the seasonality provision may not require harm to be established over multiple years but it *may* only require a time period as short as a few months.¹¹ This would be hardly enough time to identify whether there are dumping or countervailing subsidy problems.

This provision sets a bad precedent. It would lead to other businesses that are not effectively competing within their industry to try and repackage themselves together to get protection from foreign competition. This means more trade disputes and almost certainly retaliatory action in one form or another by

Canada and Mexico, thus creating higher consumer prices for goods and obstacles for American producers to export their goods.

The Harm to Agriculture

Agricultural groups in general are significantly opposed to the seasonality provision.¹² They are properly concerned about possible retaliation by Mexico and even the collapse of NAFTA, which has been so beneficial for the agricultural sector.

Mexico is an extremely important country when it comes to U.S. exports, including for produce growers. In 2016, exports to Mexico were \$18 billion, making it the third-largest agricultural export market for the U.S.¹³

1. See, for example, U.S. Department of Agriculture, Economic Research Service, "U.S. Agriculture Trade," <https://www.ers.usda.gov/topics/international-markets-trade/us-agricultural-trade.aspx> (accessed November 7, 2017).
2. See, for example, U.S. Department of Agriculture, Economic Research Service, *NAFTA at 20: North America's Free Trade Area and Its Impact on Agriculture*, February 2015, https://www.ers.usda.gov/webdocs/publications/40485/51265_wrs-15-01.pdf?v=42038 (accessed November 7, 2017).
3. The U.S., by its efforts to create a carve-out from existing law, is rightfully acknowledging that a "sub-category" of an industry would not be sufficient to meet the definition of industry. Looking only at seasonal produce, such as Florida tomatoes, would be ignoring the other producers in the domestic industry. The International Trade Commission states: "The statute defines the 'industry' as 'the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.' The 'domestic like product' in turn is defined in the Act as a 'product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.'" U.S. International Trade Commission, *Antidumping and Countervailing Duty Handbook*, June 2015, II-33, https://www.usitc.gov/trade_remedy/documents/handbook.pdf (accessed November 7, 2017). Note that there are various factors in determining whether something is a domestic like product.
4. In general, this covers three years plus interim periods. See U.S. International Trade Commission, *Antidumping and Countervailing Duty Handbook*, I-11, footnote 20.
5. *Ibid.*, I-6.
6. Office of the U.S. Trade Representative, *Summary of the Objectives for NAFTA Renegotiation*, July 17, 2017, <https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAOBJECTIVES.pdf> (accessed November 7, 2017).
7. Under a suspension agreement between the U.S. and Mexico, there is a minimum price that must be charged for Mexican tomatoes; this market-distorting policy is insufficient for the Florida tomato growers. See, for example, U.S. Department of Agriculture, Economic Research Service, "Tomatoes," <https://www.ers.usda.gov/topics/crops/vegetables-pulses/tomatoes.aspx> (accessed November 7, 2017), and Catherine Boudreau and Helena Bottemiller Evich, "U.S. Produce Growers Deeply Divided Over NAFTA," *Politico*, August 25, 2017, <https://www.politico.com/story/2017/08/25/nafta-us-produce-growers-242031> (accessed November 8, 2017).
8. See, for example, Caitlin Dewey, "How a Group of Florida Tomato Growers Could Help Derail NAFTA," *The Washington Post*, October 16, 2017, https://www.washingtonpost.com/business/economy/how-a-group-of-florida-tomato-growers-could-help-derail-nafta/2017/10/16/e1ec5438-b27c-11e7-a908-a3470754bbb9_story.html?utm_term=.b20ccc0057b4 (accessed November 7, 2017).
9. Under U.S. law, the federal government in very narrow circumstances will analyze anti-dumping and countervailing cases as it applies to regional industries. For there to be a regional industry, specific criteria must be met: "(i) the producers within such market [a regional market] sell all or almost all of their production of the domestic like product in question in that market, and (ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States." None of these criteria are met with the Florida tomato industry. See U.S. International Trade Commission, *Antidumping and Countervailing Duty Handbook*, II-36-37.
10. Dewey, "How a Group of Florida Tomato Growers Could Help Derail NAFTA."
11. Gary Clyde Hufbauer and Euijin Jung, "NAFTA Mischief in Fruits and Vegetables," Peterson Institute for International Economics, July 26, 2017, <https://piie.com/blogs/trade-investment-policy-watch/nafta-mischief-fruits-and-vegetables> (accessed November 8, 2017).
12. See, for example, David Alire Garcia, "Mexico Mulls Pork as Response to U.S. NAFTA Produce Proposal: Sources," Reuters, September 15, 2017, <https://www.reuters.com/article/us-trade-nafta-agriculture/mexico-mulls-pork-as-response-to-u-s-nafta-produce-proposal-sources-idUSKCN1BQ24A> (accessed November 7, 2017), and "U.S., Mexican Farm Leaders Spar with Floridians Over NAFTA," *The Fence Post*, October 13, 2017, <http://www.thefencepost.com/news/u-s-mexican-farm-leaders-spar-with-floridians-over-nafta/> (accessed November 7, 2017).
13. Office of the U.S. Trade Representative, "Mexico," <https://ustr.gov/countries-regions/americas/mexico> (accessed November 7, 2017).

Mexico has various ways to respond to the seasonality provision, including: simply walking away from NAFTA renegotiations; bringing their own poison pill-type of proposals; looking to other countries for their products; or accepting a seasonality provision and then applying it themselves in a way that would hurt U.S. agricultural producers and consumers.

Regardless of how Mexico responds, it has clearly indicated that there will be repercussions. Those repercussions will also certainly be designed to inflict financial harm on agriculture. The seasonality provision could help a very narrow agricultural interest, but only at the expense of many agricultural producers and agricultural exports.

As reported in *Inside Trade*, Bosco de la Vega, the President of Mexico's National Agricultural Council—Mexico's largest agricultural organization—said “the U.S. seasonal proposal would cause Mexico to ‘replicate’ that approach to the detriment of U.S. meats and grains.”¹⁴ According to Reuters, Mexico was reportedly looking into limiting U.S. pork imports in response to the U.S. proposal.¹⁵ This is just one of the commodities that could be on Mexico's radar screen.

The Harm to American Families

It was not long ago when it was unusual to get fruit such as plums all year round. Trade has made all-year access to a variety of fruits and vegetables at affordable prices a reality. If there is a tit-for-tat between Canada, Mexico, and the U.S. as a result of this seasonality provision, American families would also suffer. Additional tariffs on commodities will drive up food prices. The importation of Mexican fruits and vegetables has been especially beneficial to families; the U.S. imports more fruits and vegetables from Mexico than any other country: In 2011, the share of total import value of Mexican fruits and vegetables was 36 percent; Canada was a distant second at 12 percent.¹⁶

The benefit of agricultural imports for Americans, including fruits and vegetables, is explained in The Heritage Foundation's *Farms and Free Enterprise*:

Imports give U.S. consumers improved access to food that was once considered seasonal or cost-prohibitive and help them to eat more healthfully without the need for top-down government intervention. Between 1999 and 2014, for example, U.S. imports of fish, vegetables, fruit, and nuts increased by approximately 32 percent, 50 percent, 35 percent, and 44 percent, respectively. The Congressional Research Service notes that agricultural imports benefit Americans by “lowering costs (given a wider supply network), improving eating quality, assuring food safety, conducting promotions, and reducing product losses.”¹⁷

Recommendation: Eliminate the Seasonality Provision

U.S. trade negotiators should end any consideration of the seasonality provision. The provision would be extremely harmful to agriculture and American families if actually adopted.

Risking agricultural export markets, especially Canada and Mexico, the U.S.'s first and third largest agricultural export markets respectively,¹⁸ could be devastating to farmers and ranchers. The U.S. Department of Agriculture stated, “With the productivity of U.S. agriculture growing faster than domestic food and fiber demand, U.S. farmers and agricultural firms rely heavily on export markets to sustain prices and revenues.”¹⁹

Conclusion

The impact of the seasonality provision is not connected only to NAFTA and agriculture. Analyzing anti-dumping and countervailing cases by look-

14. “Mexico to Aim Retaliation at U.S. Grains, Meats If Seasonal Proposal Makes it into NAFTA,” *Inside Trade*, October 14, 2017, <https://insidetrade.com/daily-news/mexico-aim-retaliation-us-grains-meats-if-seasonal-proposal-makes-it-nafta> (accessed November 7, 2017).
15. Garcia, “Mexico Mulls Pork as Response to U.S. NAFTA Produce Proposal.”
16. See Daren Bakst, ed., *Farms and Free Enterprise: A Blueprint for Agricultural Policy* (Washington, DC: The Heritage Foundation, 2016), <http://www.heritage.org/agriculture/report/farms-and-free-enterprise-blueprint-agricultural-policy>.
17. Ibid.
18. Office of the U.S. Trade Representative, “Canada,” <https://ustr.gov/countries-regions/americas/canada> (accessed November 7, 2017).
19. U.S. Department of Agriculture, Economic Research Service, “U.S. Agriculture Trade.”

ing at sub-categories of industries would set a terrible precedent that could ripple through future trade negotiations across the economy and make trade disputes and tariffs a far too common occurrence. Such a change would not give Americans more consumer choices and better prices, or promote exports, but would create new ways to promote protectionism.

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