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## HARVESTING ANOTHER TRADE WAR: AD HOC FARM SUBSIDIES AND OUR WTO COMMITMENTS

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### INTRODUCTION

Beginning in the 1930s the United States led the global charge toward a rules-based trading system.<sup>1</sup> The goals of this bipartisan policy were: to increase economic growth and promote international peace on the assumption that countries that engage in cross-border trade are less likely to go to war with one another.<sup>2</sup> However, this economic bipartisanship recently came under significant pressure with the election of Donald Trump as president. This is regrettable since trade liberalization, though imperfect, has largely been successful. A 2017 study from the Peterson Institute for International Economics found that globalization has increased “US GDP per capita and GDP per household. . .by \$7,015 and \$18,131 respectively (both

1. Douglas A. Irwin, *Clashing Over Commerce: A History of US Trade Policy* (University of Chicago Press, 2017), pp. 455-508.

2. Ibid.

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measured in 2016 dollars)” and that “disproportionate gains probably accrue to poorer households.”<sup>3</sup>

Upon taking office, President Trump began to unwind the bipartisan consensus that favored trade liberalization. One of his first acts in office was to withdraw the United States from the Trans-Pacific Partnership (TPP), which was later renamed the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) after the United States backed out.<sup>4</sup>

After withdrawing from the TPP, the Trump administration began a series of trade wars. First, the administration levied “national security” tariffs on imported steel and aluminum from virtually every country in the world, including longtime allies like Canada and members of the European Union (EU) in the North Atlantic Treaty Organization, a longstanding mutual defense pact.<sup>5</sup> On the heels of the steel and aluminum tariffs, the Trump administration began an aggressive trade war with China over a number of Beijing’s legitimately concerning trade policy practices, including the abuse of intellectual property, theft of trade secrets, cyber hacking into commercial networks and the enforced policy that made American firms transfer technology to Chinese joint venture

3. Gary Clyde Hufbauer and Zhiyao (Lucy) Lu, “The Payoff to America from Globalization: A Fresh Look with a Focus on Costs to Workers,” The Peterson Institute for International Economics, May 2017, p. 1. <https://www.piie.com/system/files/documents/pb17-16.pdf>.

4. See, e.g., Peter Baker, “Trump Abandons Trans-Pacific Partnership, Obama’s Signature Trade Deal,” *The New York Times*, Jan. 23, 2017. <https://www.nytimes.com/2017/01/23/us/politics/tpp-trump-trade-nafta.html>; James McBride et. al. “What’s Next for the Trans-Pacific Partnership,” Council on Foreign Relations, Feb. 1, 2021. <https://www.cfr.org/background/what-trans-pacific-partnership-tpp>.

5. Clark Packard, “The Fallout of Bailouts,” *R Street Policy Study No. 176*, July 2019, pp. 2-4. <https://www.rstreet.org/2019/07/02/the-fallouts-of-bailouts>.

partners as a condition of doing business in the country.<sup>6</sup> Instead of pursuing a more thoughtful strategy toward China, the Trump administration's tariffs have almost certainly failed to change Beijing's behavior and imposed enormous costs on American firms and families.<sup>7</sup> As predicted, other countries, including China, retaliated against American exports, particularly agricultural products.<sup>8</sup>

Agriculture in the United States is abundant. It is estimated that about 20 percent of agricultural products by volume are exported abroad.<sup>9</sup> Likewise, exports have traditionally accounted for about 25 percent of annual farm income.<sup>10</sup> Tariffs on American agriculture put downward pressure on commodity prices.<sup>11</sup> Farm bankruptcies skyrocketed and there is early evidence that the financial stress of the trade wars increased suicide rates among farmers.<sup>12</sup> To deal with the loss of market access abroad, the Trump administration dusted off a New Deal-era program called the Commodity Credit Corporation (CCC), to pay billions of dollars to farmers and in early 2020, signed the so-called "Phase One" deal with China, which obligates Beijing to purchase specific quantities of products, including agricultural products, in exchange for a détente in the tariff back-and-forth.

Under the Phase One deal, China committed to purchasing "an additional \$12.5 billion of purchases in 2020 above 2017 levels, implying an annual commitment of \$36.6 billion" worth of American agricultural products.<sup>13</sup> Beijing only imported \$23.6 billion in 2020.<sup>14</sup> Likewise, "China committed

to an additional \$19.5 billion of purchases in 2021 above 2017 levels, implying an annual commitment of \$43.6 billion."<sup>15</sup> Through July of 2021, Beijing's purchases of covered agricultural products are about \$23.2 billion with a target of \$25.9 billion.<sup>16</sup> In other words, China fell short of its agricultural purchase targets in 2020 and is falling short of the target for this year.

Likewise, in early 2020, the COVID-19 pandemic shutdown large sectors of the economy for a period of time. To date, the United States still has not fully recovered from the shock of the pandemic. To mitigate damage to farmers and ranchers, the federal government authorized additional ad hoc payments to the agriculture industry. In September 2021, the United States Department of Agriculture (USDA) forecasted that net farm income in 2021 will increase by \$18.5 billion—nearly 20 percent—over 2020 levels.<sup>17</sup> If all goes according to projections, net farm income would reach its highest level since 2013.<sup>18</sup>

These series of ad hoc payments raise serious questions about whether they comply with the United States' obligations under World Trade Organization (WTO) agreements. This paper will detail the structure of the bailout packages and the COVID-19 payments, and analyze whether the bailouts comply with the United States' WTO obligations.

## AD HOC SPENDING PROGRAMS

### Trade Retaliation Mitigation

The 2018 and 2019 trade mitigation payments made under the CCC and administered by the USDA were broken into three parts.

- **The Market Facilitation Program (MFP)**, which is administered by the USDA's Farm Service Agency. This program is designed to provide "direct financial assistance to those producers hurt by trade retaliation," including corn, cotton, sorghum, soybeans, wheat, dairy, hogs, cherries and almonds.<sup>19</sup> In 2018, the USDA directed \$8.6 billion into the MFP and \$14.5 billion in payments in 2019.<sup>20</sup>

6. Office of the United States Trade Representative, "Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974," Executive Office of the President of the United States, March 22, 2018. <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>.

7. Clark Packard, "Outcompeting Beijing: A Roadmap for Meeting China's Commercial Challenges," *R Street Policy Study No. 223*, March 2021. <https://www.rstreet.org/wp-content/uploads/2021/03/RSTREET223.pdf>.

8. See, e.g., Clark Packard "Testimony of Clark Packard: Section 301: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation," May 15, 2018. <https://www.rstreet.org/2018/05/15/testimony-of-clark-packard-section-301-chinas-acts-policies-and-practices-related-to-technology-transfer-intellectual-property-and-innovation>; Anita Regmi, *Retaliatory Tariffs and U.S. Agriculture*, Congressional Research Service, Sept. 13, 2019. <https://fas.org/sgp/crs/misc/R45903.pdf>.

9. Economic Research Service, "FAQs," United States Department of Agriculture, May 12, 2021. <https://www.ers.usda.gov/faqs>.

10. Economic Research Service, "2019 Data Overview," United States Department of Agriculture, May 11, 2021. <https://www.ers.usda.gov/data-products/agricultural-trade-multipliers/2019-data-overview>.

11. *Ibid.*, p. 11.

12. Mike Dorning, "U.S. Farm Bankruptcies Surge 24% on Strain from Trump Trade War," *Bloomberg*, Oct. 30, 2019. <https://www.bloomberg.com/news/articles/2019-10-30/u-s-farm-bankruptcies-surge-24-on-strain-from-trump-trade-war>; Mary Papenfuss, "Another Possible Toll of Donald Trump's Trade War: Farmer Suicides," *The Huffington Post*, Sept. 8, 2019. [https://www.huffpost.com/entry/farm-suicides-rural-trump-trade-war-national-farmers-union\\_n\\_5d74a976e4b07521022dcd0c](https://www.huffpost.com/entry/farm-suicides-rural-trump-trade-war-national-farmers-union_n_5d74a976e4b07521022dcd0c).

13. Chad P. Bown, "US-China phase one tracker: China's purchases of US goods," Peterson Institute for International Economics, July 26, 2021. <https://www.piie.com/research/piie-charts/us-china-phase-one-tracker-chinas-purchases-us-goods>.

14. *Ibid.*

15. *Ibid.*

16. *Ibid.*

17. Economic Research Service, "2021 Farm Sector Income Forecast," United States Department of Agriculture, Sept. 2, 2021. <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/farm-sector-income-forecast>.

18. *Ibid.*

19. Packard, "Fallouts of Bailouts," p. 4. <https://www.rstreet.org/2019/07/02/the-fallouts-of-bailouts>.

20. Randy Schnepf, "U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018-2020," Congressional Research Service, Oct. 21, 2020, p. 1. <https://crsreports.congress.gov/product/pdf/R/R46577>.

- **Food Purchase and Distribution Program.** Under this program, the USDA's Agricultural Marketing Service was directed to purchase certain commodities affected by trade retaliation and distribute them through nutrition programs. The commodities are distributed to low-income communities such as school lunch programs and food banks.<sup>21</sup> Over 2018 and 2019, the USDA spent about \$2.4 billion on this program.<sup>22</sup>
- **The Agricultural Trade Promotion Program,** which is administered by the USDA's Foreign Agricultural Service. The program is "typically used for consumer advertisements, public relations, point-of-sale demonstrations, participation in trade fairs and exhibits, market research and technical assistance."<sup>23</sup> The program received an additional \$300 million between 2018 and 2019.<sup>24</sup>

## COVID-19 Response

The federal government provided aggressive financial support to many industries affected by the outbreak of the COVID-19 pandemic. With respect to agriculture, policymakers provided three distinct programs. First, under the Coronavirus Food Assistance Program (CFAP-1), the federal government will

make payments of \$11.0 billion, including \$4.0 billion in product-specific payments on 138 different commodities based on farm inventories from the 2019 harvest (assigned to crop year 2019) and \$7.0 billion in product-specific payments to unsold inventories in 2020 of livestock (cattle, hogs, lamb, and sheep) and dairy (assigned to crop year 2020).<sup>25</sup>

Congress and the USDA provided a second round of funding under the Coronavirus Food Assistance Program (CFAP-2), which "is expected to make up to \$14.0 billion in product-specific payments on an expanded list (of at least 150 commodities) of 2020 crop and livestock purchases (assigned to crop year 2020.)"<sup>26</sup>

Finally, as part of The Coronavirus Aid, Relief, and Economic Security Act, Congress established the Paycheck Protection Program, which "provides forgivable loans to agricultural interests valued at \$7.3 billion [including] \$3.6 billion to product-specific production activities and \$3.7 billion to non-product-specific activities (assigned to crop year 2020)."<sup>27</sup> According to analysis by Taxpayers for Common Sense, "a conservative estimate is that federal income subsidies in 2020 will total at least \$63 billion and account for at least 50 and up to 75 percent of net farm income, the highest level ever recorded."<sup>28</sup>

In total, these ad hoc payments amounted to more than \$60 billion cumulatively over three years, which, as will be discussed, raised significant questions about their compliance with the United States' WTO commitments.<sup>29</sup>

## LIKELY WTO VIOLATIONS

Under the WTO's Agreement on Agriculture (AoA), members are required to notify the WTO of their domestic agriculture subsidies.<sup>30</sup> The United States' most recent WTO notification was for 2017, which was disclosed in July of 2020.<sup>31</sup> If domestic agriculture subsidies are non-compliant with WTO agreements, the United States could face litigation in the WTO's dispute settlement system. If the United States were to lose such a challenge, it would permit other countries to levy tariffs on American products. This could potentially ensnare unrelated industries into an unwanted trade skirmish if policymakers refuse to remove the offending subsidies.

The ad hoc domestic subsidies made by the Trump administration could run afoul of WTO agreements in two ways: first, the amounts could violate the AoA's Aggregate Measure of Support (AMS) and second, the subsidies could be actionable under the WTO's Agreement on Subsidies and Countervailing Measures (SCM).<sup>32</sup>

21. Packard, "Fallout of Bailouts," p. 5. <https://www.rstreet.org/2019/07/02/the-fallouts-of-bailouts>.

22. Joseph W. Glauber, "Agricultural Trade Aid: Implications and Consequences for US Global Trade Relationships in the Context of the World Trade Organization," American Enterprise Institute, Nov. 2019, p. 5. <https://www.aei.org/research-products/report/agricultural-trade-aid-implications-and-consequences-for-us-global-trade-relationships-in-the-context-of-the-world-trade-organization>.

23. Packard, "Fallout of Bailouts," p. 6. <https://www.rstreet.org/2019/07/02/the-fallouts-of-bailouts>.

24. Glauber, p. 5. <https://www.aei.org/research-products/report/agricultural-trade-aid-implications-and-consequences-for-us-global-trade-relationships-in-the-context-of-the-world-trade-organization>.

25. Schnepf, "U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018-2020," p. 6. <https://crsreports.congress.gov/product/pdf/R/R46577>.

26. Ibid.

27. Ibid., p. 7.

28. Josh Sewell, "Planting Permanent Subsidies in Response to COVID-19," Taxpayers for Common Sense, June 16, 2020, p. 2. <https://www.taxpayer.net/wp-content/uploads/2020/06/TCS-Agriculture-Planting-Permanent-Subsidies-COVID19-June-2020.pdf>.

29. Schnepf, "U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018-2020," p. 1. <https://crsreports.congress.gov/product/pdf/R/R46577>.

30. Glauber, p. 11. <https://www.aei.org/research-products/report/agricultural-trade-aid-implications-and-consequences-for-us-global-trade-relationships-in-the-context-of-the-world-trade-organization>.

31. Randy Schnepf, "Agriculture in the WTO: Rules and Limits on U.S. Domestic Support," March 3, 2021, p. 3. <https://fas.org/sgp/crs/row/R45305.pdf>.

32. Packard, "Fallouts of Bailouts," pp. 7-8. <https://www.rstreet.org/2019/07/02/the-fallouts-of-bailouts>.

## AoA

Detailed rules guide how WTO members classify their subsidies, including how to calculate costs, and how distortive the subsidies are.<sup>33</sup>

The WTO uses a traffic light system to classify domestic agricultural subsidies.

- **Green box** subsidies are those that do not distort trade or cause minor distortions.<sup>34</sup> Such programs tend to “include direct income supports for farmers that are not related to (or are ‘decoupled’ from) current production levels or prices.”<sup>35</sup> Environmental and conservation subsidies are classified as green box subsidies.<sup>36</sup> There is no limit to the amount of green box subsidies a WTO member may provide to agricultural producers.<sup>37</sup> In 2017, the United States notified the WTO that it provided \$118.2 billion in green box subsidies, which includes nearly \$100 billion in food assistance programs.<sup>38</sup>
- **Blue box** subsidies are market-distorting subsidies that “require farmers to limit production.”<sup>39</sup> Blue box payments “are based on either a fixed area or yield or a fixed number of livestock and are made on less than 85% of base production.”<sup>40</sup> There are no limits on blue box subsidies and the United States has no blue box programs.<sup>41</sup>
- **Amber box subsidies** are those domestic subsidies that have “more than minimal trade distorting effects.”<sup>42</sup> These are subsidies to producers that are “tied to current production levels, market price support programs, and other policies that make payments based on current output and current market prices such as crop insurance programs.”<sup>43</sup> Such subsidies are subject to an annual ceiling, which varies

among WTO members. The United States, for example, has set a \$19.1 billion annual cap (AMS) on amber box subsidies, which has been in place since 2000.<sup>44</sup> Amber box outlays can be reduced by de minimis exemptions, which is explained later in this paper. It is important to note that amber box subsidies fall into two categories:

- Product specific (PS), which are subsidies linked to a specific commodity. In its latest filing with the WTO—for the year 2017—the United States notified \$5.2 billion in product-specific exemptions.<sup>45</sup>
- Non-product specific (NPS), which are not linked to a specific commodity and they are “evaluated at a national level simultaneously.”<sup>46</sup>

Both product specific and non-product specific subsidies can be exempted from the AMS amber box ceiling if the “spending is sufficiently small. . . if they are below product- or non-product specific de minimis 5% spending thresholds.”<sup>47</sup> The two types of subsidies are

subject to different potential de minimis exemptions when calculating the total amber box outlay. [Product-specific] outlays are evaluated at the individual product level separately for each commodity, whereas non-product specific outlays are evaluated at the national level across all commodities simultaneously.<sup>48</sup>

If either product-specific or non-product specific “domestic support outlays exceed their de minimis thresholds by as much as a dollar, then the entire outlay is included as part of the amber box total that counts against the spending limit.”<sup>49</sup> To help explain how this works, the Congressional Research Service (CRS) provides a useful example:

[S]uppose that U.S. farm subsidy payments to corn producers were \$2.5 billion in a year, but that the value of total U.S. corn production was \$60 billion that same year. Then the PS de minimis threshold for corn would be \$3 billion (i.e., \$60 billion by 5%), and the \$2.5 billion in corn subsidies would be excluded from the AMS for that year.

Similarly, suppose that total NPS support for a year—including outlays under the Agricultural Risk Coverage (ARC), Price Loss Coverage (PLC) and other NPS programs—was \$19 billion. If the total value of U.S. agricultural output, across all of the

33. Schepf, “Agriculture in the WTO: Rules and Limits on U.S. Domestic Support,” p. 2. <https://fas.org/sgp/crs/row/R45305.pdf>.

34. World Trade Organization, “Domestic Support in Agriculture: The Boxes,” last accessed Oct. 7, 2021. [https://www.wto.org/english/tratop\\_e/agric\\_e/agboxes\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm).

35. Ibid.

36. Ibid.

37. Ibid.

38. Schepf, “U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020,” p. 4. <https://crsreports.congress.gov/product/pdf/R/R46577>.

39. “Domestic Support in Agriculture: The Boxes.” [https://www.wto.org/english/tratop\\_e/agric\\_e/agboxes\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm).

40. Schepf, “U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020,” p. 4. <https://crsreports.congress.gov/product/pdf/R/R46577>.

41. Ibid.

42. Glauber, p.11. <https://www.aei.org/research-products/report/agricultural-trade-aid-implications-and-consequences-for-us-global-trade-relationships-in-the-context-of-the-world-trade-organization>.

43. Ibid.

44. Schepf, “U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020,” p. 3. <https://crsreports.congress.gov/product/pdf/R/R46577>.

45. Ibid., p. 4.

46. Ibid.

47. Ibid., p. 3.

48. Ibid., p. 4.

49. Ibid.



various field and specialty crops and livestock activities, was at least \$380 billion, then the entire NPS subsidy value would be excluded because it would not exceed the NPS de minimis limit of \$19 billion (i.e., \$380 billion x 5%).<sup>50</sup>

There are five programs that may count against the \$19.1 billion AoA amber box ceiling.<sup>51</sup> First is ARC, which “pays subsidies to farmers if their revenue per acre, or alternatively their county’s revenue per acre, falls below a benchmark or guaranteed level.”<sup>52</sup> Second is PLC, which pays subsidies “when the effective rate of a covered commodity is less” than the reference price established by Congress.<sup>53</sup> Both ARC and PLC are NPS AMS.<sup>54</sup> Third, is the Crop Insurance Program, which provides premium subsidies to producers against potential losses from price and yield risks. The majority of crop insurance subsidies are classified as PS AMS.<sup>55</sup> The other two programs that may count against the \$19.1 billion AMS ceiling are the MFP trade bailouts and the COVID-19 payments.

- **Red box** subsidies are prohibited subsidies that are most distortive of trade. Such programs include export and import subsidies.<sup>56</sup>

Red box subsidies are the most problematic and thus banned by the WTO, whereas green box subsidies are permitted in unlimited quantities and the United States does not use any blue box subsidies. Practically speaking, it is amber box subsidies that are most likely to draw the ire of other WTO members.

## SUBSIDIES IN EXCESS OF SPENDING CAPS

Throughout 2017 (the last year of subsidies that the United States reported to the WTO), amber box outlays did not exceed the AoA’s \$19.1 billion ceiling.<sup>57</sup> That will almost certainly change in the coming years as the United States notifies the WTO of its ad hoc payments made due to the trade wars and the COVID-19 pandemic.

Research from the American Enterprise Institute found that in 2017 the value of agricultural production in the United States was \$370.4 billion and \$373.5 billion in 2018.<sup>58</sup> CRS determined that the total for 2019 was \$370.6 billion.<sup>59</sup> In the three years prior to the onset of the trade wars, the United States notified the WTO of an average of \$15.4 billion in annual traditional amber box subsidy programs (prior to exemptions).<sup>60</sup> To qualify for the NPS de minimis threshold (five percent of the total value of agricultural production), the total AMS would need to be under \$18.55 billion for 2019. Yet the CRS projects NPS spending would reach \$18.7 billion “primarily due to the expansion of direct payments under the 2019 MFP” but also ARC and PLC payments.<sup>61</sup> Therefore, because the NPS outlay exceeded the de minimis threshold of \$18.5 allowance, then “no NPS exemptions are allowed and the entire aggregate NPS (not just the excess above the threshold) will count against the U.S. spending limit of \$19.1 billion.”<sup>62</sup> In this case, CRS estimates that would make the total AMS \$30.2 billion, well above the \$19.1 billion threshold.<sup>63</sup> In other words, unless the United States engages in questionable accounting practices like reclassifying subsidies in a dishonest manner, it is likely out of compliance with its AoA AMS amber box ceiling for 2019.

Meanwhile, the 2020 subsidies are also problematic for WTO compliance. In 2020, crop prices and livestock prices fell due to the outbreak of the COVID-19 pandemic.<sup>64</sup> Therefore, it is reasonable to assume the overall value of economic production fell below the recent trends. At the same time, subsidies skyrocketed under CFAP-1, CFAP-2 and PPP.<sup>65</sup> CFAP-1 and CFAP-2 outlays of “\$7 billion and \$11 billion, respectively, [are] product-specific by design.”<sup>66</sup> CRS projected that PS spending (prior to de minimis exemptions) to be \$31.6 billion.<sup>67</sup> They then estimate that the PS de minimis exemptions “are projected at \$4.1 billion, thus leaving \$27.4 billion

50. Ibid.

51. Jared Hayes, “Farm Bailout Payments Could Ignite New Front in Trade War,” The Environmental Working Group, June 17, 2020. <https://www.ewg.org/news-insights/news/farm-bailout-payments-could-ignite-new-front-trade-war>.

52. Chris Edwards, “Agriculture Subsidies,” Downsizing the Federal Government, April 18, 2018. <https://www.downsizinggovernment.org/agriculture/subsidies>.

53. Farm Service Agency, “Agricultural Risk Coverage (ARC) & Price Loss Coverage (PLC) Fact Sheet,” August 2019. [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/arc-plc\\_overview\\_fact\\_sheet-aug\\_2019.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/arc-plc_overview_fact_sheet-aug_2019.pdf).

54. Schenpf, “U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020,” p. 5. <https://crsreports.congress.gov/product/pdf/R/R46577>.

55. Ibid.

56. Schenpf, “Agriculture in the WTO: Rules and Limits on U.S. Domestic Support,” March 3, 2021, p. 3. <https://fas.org/sap/crs/row/R45305.pdf>.

57. Schenpf, “U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020,” p. 11. <https://crsreports.congress.gov/product/pdf/R/R46577>.

58. Glauber, p. 16. <https://www.aei.org/research-products/report/agricultural-trade-aid-implications-and-consequences-for-us-global-trade-relationships-in-the-context-of-the-world-trade-organization>.

59. Schenpf, “U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020,” p. 12. <https://crsreports.congress.gov/product/pdf/R/R46577>.

60. Ibid., p. 1.

61. Ibid., p. 12.

62. Ibid.

63. Ibid.

64. Emma Newburger, “Coronavirus hits already struggling US Farmers: ‘We’ve stopped saying it can’t get worse,’” CNBC.com, March 28, 2020. <https://www.cnbc.com/2020/03/28/coronavirus-hits-already-struggling-us-farmers-with-drop-in-prices.html>.

65. Hayes. <https://www.ewg.org/news-insights/news/farm-bailout-payments-could-ignite-new-front-trade-war>.

66. Schenpf, “U.S. Farm Support: Outlook for Compliance with WTO Commitments, 2018 to 2020,” p. 12. <https://crsreports.congress.gov/product/pdf/R/R46577>.

67. Ibid.

in amber box spending.”<sup>68</sup> This is well above the \$19.1 billion AMS cap and thus out of compliance with the United States’ AoA obligations.

It is more likely that WTO members will find the trade aid bailout payments more objectionable than the steps the United States took in the face of the global pandemic. The former programs were established as a result of an erratic and damaging trade war brought on by the Trump administration’s misguided trade policies, while the latter measures were established during a global pandemic, beyond the control of the United States.

To date, no WTO members have challenged the United States’ ad hoc farm subsidies, but questions are being raised about their potential compliance with the AoA and SCM.<sup>69</sup> Given the lag in notifying the WTO of subsidies, the 2019 ad hoc trade bailout payments will be disclosed in late 2021. The Biden administration should be prepared for a WTO dispute.

## SCM

Even if the trade retaliation mitigation and COVID-19 measures are compliant with the AoA’s rules and payment ceilings, they could still be actionable under the WTO’s SCM and thus subject to dispute settlement challenges. If challenged and found non-compliant with the SCM’s anti-subsidy rules, the United States would face a choice: remove the non-compliant measures immediately or the WTO would license complaining countries to levy tariffs on American products, including unrelated products, which could trigger a new front in trade wars.

Under the SCM, the WTO determines the extent of market distortion.<sup>70</sup> The criteria used to determine if a subsidy “significantly” distorts markets are as follows:

- The subsidy constitutes a substantial share of farmer returns or covers a substantial share of production costs.
- The subsidized commodity is important to world markets because it forms a large share of either world production or world trade.
- A causal relationship exists between the subsidy and adverse effects in the relevant market.<sup>71</sup>

Likewise, the SCM requires an analysis of whether the policy

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68. Ibid., p. 13.

69. Tom Mills, “Trump and Modi’s lavish farm payouts prompt questions at WTO,” Reuters, June 17, 2019. <https://www.reuters.com/article/us-farm-payouts-wto/trump-and-modis-lavish-farm-payouts-prompt-questions-at-wto-idUSKCN1IIVZ>.

70. Ibid., p. 4.

71. Ibid.

in question distorted international markets on account of the following considerations:

- Did the subsidy displace or impede the import of a like product into the subsidizing member’s domestic market?
- Did the subsidy displace or impede the exports of a like product by another WTO member country other than the subsidizing member?
- Did the subsidy (via overproduction and resultant export of the surplus) result in significant price suppression, price undercutting, or lost sales in the relevant commodity’s international market?
- Did the subsidy result in an increase in the world market share of the subsidizing member?<sup>72</sup>

If the answer is yes to any of these questions, and it is likely that it is, other WTO members have a strong case against the United States under the SCM.

The SCM case against the United States’ ad hoc payments is less clear cut than the AoA case, but it is nevertheless real. It is highly likely that WTO members would challenge the trade mitigation payments under the SCM, but it is unlikely—though not impossible—that members would ignore potential violations from the COVID-19 subsidies given that they were implemented during a global pandemic. Nonetheless, the Biden administration should be prepared to answer for the Trump administration’s trade bailout programs.

## DOCUMENTING THE COSTS OF THE TRADE WARS

The Trump administration’s trade wars, which have been continued under the Biden administration, have been a failure. The harms to the agriculture sector from foreign retaliation have been documented in this paper, but it is worth noting the harms to the broader economy in order to correct our recent agricultural policies.

First, despite President Trump’s repeated assertions to the contrary, countless economic studies have found that Americans are paying the tariffs.<sup>73</sup> For example, the New York Federal Reserve has found that the average cost for a typical household is about \$830 per year, which accounts for direct costs and efficiency losses.<sup>74</sup> In fact, current Treasury Secre-

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72. Ibid.

73. Jeanna Smialek and Ana Swanson, “American Consumers, Not China, Are Paying for Trump’s Tariffs,” *The New York Times*, Dec. 31, 2020. <https://www.nytimes.com/2020/01/06/business/economy/trade-war-tariffs.html>.

74. Mary Amity et. al., “New China Tariffs Increase Costs to U.S. Households,” Federal Reserve Bank of New York, May 23, 2019. <https://libertystreeteconomics.newyorkfed.org/2019/05/new-china-tariffs-increase-costs-to-us-households>.

tary Janet Yellen recently acknowledged that the tariffs on imports from China have hurt American consumers.<sup>75</sup>

Not only have consumers been hurt by the tariffs, research shows that American firms lost about \$1.7 trillion in market capitalization as a result of the trade war with China.<sup>76</sup> Meanwhile, Moody's Analytics estimated that the trade war cost approximately 300,000 jobs.<sup>77</sup> Research done by other economists finds that the Trump administration's trade war cost about 175,000 manufacturing jobs as a result of higher production costs for imported inputs and foreign retaliation.<sup>78</sup> It is worth noting that even during an otherwise booming economy of 2019—before the outbreak of the COVID-19 pandemic—American manufacturing had slipped into a recession in large part because of the Trump administration's trade wars.<sup>79</sup> In other words, the harm to the economy from the trade wars was not limited to farmers and ranchers.

It could be argued that all of these costs to the American economy were worth it in the long run if the trade war caused the Chinese government to dramatically alter its troublesome economic policies. Yet that is almost certainly not the case. As mentioned previously, Beijing is not meeting its purchase targets under the Phase One Agreement, nor does it seem that the Chinese government is making structural reforms to its economic practices.<sup>80</sup>

## POLICY SUGGESTIONS

### Cut Ad Hoc Subsidies

First, policymakers should repeal the Trump administration's tariffs. As detailed, the steel and aluminum tariffs as well as the tariffs on imports from China have caused enormous pain for American consumers and triggered unnecessary retaliation against American exporters, particularly farmers and ranchers. Once these tariffs have been removed,

other countries will respond in kind by eliminating tariffs on American products, including agricultural products.

Once foreign countries remove their retaliatory tariffs, the United States should eliminate the ad hoc subsidies. The subsidies almost certainly violate the United States' commitments to the WTO since they are amber box subsidies above the \$19.1 billion annual, distort international markets and trade, and they are bad for the environment as well as for taxpayers.<sup>81</sup>

Though removing the tariffs and the subsidies is ideal, policymakers seem inclined to keep them in place, at least for the moment.<sup>82</sup> In light of this, policymakers should take steps to ensure that the subsidies comply with our WTO commitments and move them from amber box subsidies to more compliant forms of subsidies such as conservation subsidies, which are green box and thus permitted in unlimited quantities.

Specific conservation measures to bolster could include so-called "swampbuster" and "sodbuster" programs. Under such programs, "[i]n order to receive subsidies from the federal government, farmers and ranchers must ensure they will not plant or produce any agricultural commodity on converted wetlands, nor will they farm highly erodible land unless they develop a conservation plan in coordination" with the USDA.<sup>83</sup> There are other worthwhile conservation programs for policymakers to explore that do not run afoul of the United States' binding WTO commitments.

### Reform Traditional Programs and Liberalize Trade

Removing the recently enacted tariffs and ad hoc payments would be wise, but it is not sufficient. The pre-trade war status quo was broken and the current farm safety net is chock full of environmentally damaging subsidies that tend to favor large corporate farms over smaller farmers, all of which are extremely costly to taxpayers.<sup>84</sup> However, relevant to this paper are domestic farm subsidies non-tariff barriers that act as a major impediment to the United States' ability to open foreign markets.

In 2001, the United States helped launch the WTO's Doha Development Round negotiations. The goal of the Doha

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75. Alan Rappeport and Keith Bradsher, "Yellen Says China Trade Deal Has 'Hurt American Consumers,'" *The New York Times*, July 20, 2021. <https://www.nytimes.com/2021/07/16/us/politics/yellen-us-china-trade.html>.

76. Mary Amiti et. al., "The Investment Cost of the U.S.-China Trade War," The Federal Reserve Bank of New York, May 28, 2020. <https://libertystreeteconomics.newyorkfed.org/2020/05/the-investment-cost-of-the-us-china-trade-war>.

77. Rachel Layne, "Trump trade war with China has cost 300,000 jobs, Moody's estimates," *CBS News*, Sept. 12, 2019. <https://www.cbsnews.com/news/trumps-trade-war-squashed-an-estimated-300000-jobs-so-far-moodys-estimates>.

78. Lydia Cox and Kadee Russ, "The Trade War Has Cost 175,000 Manufacturing Jobs and Counting," *Econbrowser*, Sept. 19, 2020. <https://econbrowser.com/archives/2020/09/guest-contribution-the-trade-war-has-cost-175000-manufacturing-jobs-and-counting>.

79. Heather Long and Andrew Van Dam, "U.S. manufacturing was in a mild recession during 2019, a sore spot for the economy," *The Washington Post*, Jan. 17, 2020. <https://www.washingtonpost.com/business/2020/01/17/us-manufacturing-was-mild-recession-during-2019-sore-spot-economy>.

80. Tom Hancock et. al., "How China Won Trump's Trade War and Got Americans to Foot the Bill," *Bloomberg*, Jan. 11, 2021. <https://www.bloomberg.com/news/articles/2021-01-11/how-china-won-trump-s-good-and-easy-to-win-trade-war>.

81. Clark Packard, "Agricultural Policy for the 21st Century," R Street Policy Study No. 200, July 2020, pp. 3-7. <https://www.rstreet.org/wp-content/uploads/2020/07/No.-200-Ag-Policy-for-the-21st-Century.pdf>.

82. Jenny Leonard and Eric Martin, "U.S. Commerce Chief Sees Some Tariffs as 'Very Effective,'" *Bloomberg*, July 28, 2021. <https://www.bloomberg.com/news/articles/2021-07-28/u-s-commerce-chief-sees-some-tariffs-as-very-effective>.

83. Caroline Kitchens, "Oversight and Accountability of 2018 Farm Bill Conservation Programs," *R Street Short No. 75*, Sept. 2019, p. 1. <https://www.rstreet.org/2019/09/17/how-to-get-the-most-out-of-the-2018-farm-bill>.

84. Packard, "Agricultural Policy for the 21st Century." <https://www.rstreet.org/wp-content/uploads/2020/07/No.-200-Ag-Policy-for-the-21st-Century.pdf>.

Round was to bolster developing countries with a special emphasis on agriculture.<sup>85</sup> Though the Bush administration tried to make substantial cuts to trade distorting subsidies, it was deemed insufficient for our trading partners and Congress was skeptical of such measures.<sup>86</sup> By 2015, the Doha Round was officially ended after an impasse over agriculture, among other topics, had ground ongoing negotiation to a halt.

Despite this, agricultural liberalization, which would require the United States to curb domestic subsidies, holds enormous promise. A 2006 study from the Congressional Budget Office found that

If all policies worldwide that distort agriculture trade were phased out [between 2005-2015], the likely annual benefit to the world by 2015 would be roughly \$50 billion to \$185 billion, which is about 3 percent to 13 percent of the value added by world agriculture. . . . In studies that incorporate effects of productivity growth rates, the benefits are 50 percent to 100 percent larger.<sup>87</sup>

Likewise, the USDA recently released a study finding that if all global agricultural tariffs were removed, it would be a boon to consumers and producers around the world.<sup>88</sup> Under the authors' scenario, consumers would see about \$56 billion extra in income and "global trade would increase 11 percent and would grow in all regions other than the European Union."<sup>89</sup>

A pared back agricultural subsidy system is not unheard of among developing and developed countries. Within the WTO system, there is a group of 19 member countries known as The Cairns Group.<sup>90</sup> Members include Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand, Uruguay and Vietnam.<sup>91</sup> The Cairns Group has three main goals:

deep cuts to all tariffs (including tariff peaks) and removal of tariff escalation, the elimination of all trade-distorting domestic

subsidies; the elimination of export subsidies and clear rules to prevent circumvention of export subsidy commitments.<sup>92</sup>

In 2015, at the WTO's Ministerial Conference in Nairobi, Kenya, WTO members agreed to eliminate the use of all export subsidies, including agricultural export subsidies. There is much work to do, but that was a significant first step. Policymakers in the United States should join the Cairns Group as a sign of good faith and give the group the heft it needs to achieve its other goals.

The United States is the world's largest economy, but it too heavily subsidizes agriculture. Reforming such programs is the largest bargaining chip the United States has to jumpstart an otherwise stalled trade liberalization agenda.

## CONCLUSION

The Trump administration's trade wars constitute a catastrophic economic failure and their fallout has particularly affected American farmers and ranchers. The subsequent bailouts were costly for American taxpayers and the longer-term ability of farmers and ranchers to reach otherwise closed foreign markets. Not only that, they were made in violation of the United States' WTO commitments, which could trigger retaliatory trade restrictions against unrelated industries and initiate a new trade war. Though the CARES Act payments likely violated WTO agreements, it is less likely that WTO members would challenge those subsidies since they were made as part of the United States' response to the COVID-19 global pandemic. Either way, these programs were extraordinary and should be phased out as the United States emerges from COVID-19.

Over the longer term, policymakers should take steps to curb domestic agricultural subsidies. As the largest and most advanced economy in the world, it is unfathomable that agriculture is as heavily subsidized as it is. With 95 percent of global consumers outside the United States, opening markets abroad is paramount, and many of our domestic agricultural subsidies directly inhibit efforts to reach foreign consumers.

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85. Irwin, p. 676.

86. Ibid.

87. "Agricultural Trade Liberalization," Congressional Budget Office, Nov. 20, 2006. <https://www.cbo.gov/sites/default/files/109th-congress-2005-2006/reports/11-20-agtrade.pdf>.

88. Jayson Beckman and Sarah Scott, "How the Removal of Tariffs Would Impact Agricultural Trade," Economic Research Service, United States Department of Agriculture, June 7, 2021. <https://www.ers.usda.gov/amber-waves/2021/june/how-the-removal-of-tariffs-would-impact-agricultural-trade>.

89. Ibid.

90. The Cairns Group, "About The Cairns Group." <https://www.cairnsgroup.org/Pages/Introduction.aspx>.

91. Ibid.

92. Ibid.