

BACKGROUND

U.S. Trade Tools And Key Issues In Trade Policy



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OVERVIEW ON TRADE TOOLS AND TRADE POLICY

Trade Policy Versus Trade Tools: What's The Difference?

International trade — the movement of goods and services across national borders — is important for U.S. producers, exporters and importers to **find growth opportunities** through access to new customers and to **support job growth**. At its most basic, (commercial) supply and (consumer) demand shape cross-border trade flows. At the same time, actions taken by governments and private sector entities can impact trade and affect how open or closed a market is to foreign goods. In this Trade Backgrounder, we will cover various **trade tools** and **trade policy** mechanisms impacting U.S. exports of grain and grain products.

What are trade tools?

Trade tools are institutionalized methods available to governments trying to protect domestic industry. Just like picking the right screwdriver for the right task, the government has an assortment of tools ready to use when unfair trade practices harm U.S. commerce. However, other governments may also use the same tools against U.S. exporters. In the Backgrounder, we discuss how trade tools address market fluctuations and alleged unfair trade practices that hurt domestic producers and exporters. These topics include **anti-dumping and countervailing duties, special agricultural safeguards, and currency intervention**.

How is trade policy different?

Trade policy consists of laws, regulations, and principles that drive a government's approach to trade — including how it treats its trading partners. Just as U.S. politics and presidential administrations change, and issues in the global community evolve, trade policies advanced by governments may also shift. Here in the United States, with a change in U.S. administration or control of Congress, top policy issues may change. Knowing the platforms and priorities an administration is focused on will help in deciphering where trade policy is headed and what trade actions may be coming down the pike that could impact the competitive landscape and your export sales.

In this Backgrounder, we cover three influences on trade policy that have come to the forefront in recent months including: trade and **taxes**, trade and **environment**, and trade and **labor**. For instance, you may be thinking: what do climate change and environmental policy have to do with international trade? While these seem distinct, policy makers across the globe have been using trade policy to achieve their climate goals — linking environmental policy to trade policy, trade negotiations, and trade promotion activities. In the trade policy sections below, we provide you with information to understand ongoing debates impacting trade policy and why they are important to U.S. exporters.

TRADE TOOLS: RESOURCES USED BY GOVERNMENTS TO HELP LEVEL THE PLAYING FIELD

SECTION I: Governments may use various **TRADE TOOLS** to help level the playing field for their producers and exporters. In this section, we review three types and how they impact cross-border trade — **anti-dumping and countervailing duties**, **special agricultural safeguards**, and combating **currency manipulation**.

Understanding Anti-dumping and Countervailing Duties (AD/CVDs)

Some foreign products are priced below fair market value when exported to a market in an effort to hurt domestic producers in that market. Some companies sell exported products at unfairly low prices to gain market share and push out domestic producers.

Dumping is when a good is exported to another market at a price below “fair market value,” meaning the export price is lower than:

- cost of production, or
- price charged in the home market or other markets.¹

Companies that dump products into a country at below-market prices want to force domestic producers from selling in their own market. Once domestic competition is gone, the exporting company hikes up its prices in that market.

The World Trade Organization’s (WTO) Anti-Dumping Agreement sets out the legal framework for governments to apply **anti-dumping duties** to help protect importing countries from these deliberate and unfair trade practices. In the United States, the Department of Commerce and the U.S. International Trade Commission (USITC) are the two agencies that oversee anti-dumping investigations and determine (1) if an imported product is priced unfairly and (2) the extent of injury caused to U.S. producers.²

If the import is found to be priced unfairly and U.S. producers have been harmed as a result, additional tariffs – known as anti-dumping duties – may be applied to raise the price of imports closer to the fair market value.³

Anti-dumping (AD) duties

increase the import price of goods that companies export at less than fair value.

Countervailing duties

(CVD) increase the import price of goods governments subsidize to reduce industry losses or gain market share.

Some goods may be subject to anti-dumping and countervailing duties.

1 “[Anti-dumping](#).” Office of the U.S. Trade Representative (USTR).

2 “[U.S. Antidumping and Countervailing Duties](#).” International Trade Administration (ITA), U.S. Department of Commerce.

3 “[Antidumping and Countervailing Duties \(AD/CVD\) Frequently Asked Questions](#).” U.S. Customs and Border Protection (CBP).

Some governments subsidize production of exported goods to reduce industry losses and help their countries' companies gain market share.

A government subsidy can take many forms, such as:

- cash payment,
- tax break,
- extremely favorable loan, and/or
- currency manipulation.

Some governments subsidize enterprises or entire industries to lower the price of goods below market value, allowing exported goods to be cheaper than competitor products in the market to which they are exported.⁴

Commerce and USITC also investigate foreign governments' use of subsidies to determine injury to U.S. domestic producers. If an investigation determines harm to domestic producers, duties may be applied to subsidized products to raise their import price and offset — or “countervail” — the impact of the subsidy. These additional duties are called countervailing duties.⁵

Helpful Definitions

Producers: Includes farmers, manufacturers, and other companies producing the good in question

Petitioners: Producers that join in bringing the complaint alleging dumping or unfair subsidies to Commerce and USITC

How do governments mitigate the effects of these low-cost imports?

Investigations are the first step.

Prior to imposing AD/CVD duties, the WTO agreements on Anti-Dumping and Subsidies and Countervailing Duties require that WTO members investigate and demonstrate evidence of dumping or unfair subsidies, injury to domestic industry, and causation.⁶

In the United States, an investigation is initiated when a petition is filed with Commerce and USITC by domestic industry. Commerce investigates whether exporters are dumping or receiving unfair subsidies, and USITC investigates injury or threat of injury to U.S. industry.⁷

Petitioners may include multiple producers representing that industry. In order to file a petition in the United States, two criteria must be met — the “25% test” and the “50% test.”⁸

The “25% test” indicates the petitioners must represent at least one quarter of total domestic production, as calculated below:

$$\frac{(\text{Total U.S. production volume of all petitioners and supporters})}{(\text{Total U.S. production volume})}$$

4 [“Countervailing Duties.”](#) USTR.

5 [“Antidumping and Countervailing Duties \(AD/CVD\) Frequently Asked Questions.”](#) U.S. CBP.

6 [“Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994.”](#) World Trade Organization (WTO).

7 [“Antidumping and Countervailing Duty Handbook.”](#) U.S. Court of International Trade (CIT), 2015.

8 [“Get Relief from Unfair Trade: Industry Support.”](#) ITA, U.S. CBP.

The “50% test” indicates the petitioners must account for more than half of domestic production of the industry that formally supports or opposes the petition, as calculated below:

(Total U.S. production volume of all petitioners and supporters)

(Total U.S. production volume of those expressing an opinion)

U.S. industry sectors may file both anti-dumping and countervailing duty petitions for the same imported goods, and one petition may target imports from multiple countries. All petitions can be filed free of charge.⁹ However, industries will pay any legal costs and technical support needed to prepare a petition.

If the petition contains sufficient supporting information, an investigation is undertaken.¹⁰ Typically, in the United States and other countries, both AD and CVD petitions must include:

- contact information of all producers in the industry, their production volumes, and the percentage of total domestic production of the product they represent,
- the above parties’ stances on the petition,
- description of concerned goods,
- importers and foreign producers of the good including volume and value of imports, and
- description of material injury to domestic industry, including sales and revenues lost.^{11,12}

In addition, AD petitions must also include pricing information from the country(ies) in question both for

Identifying “producers” and production volumes for petitions is not necessarily an easy task and varies by industry. Information may be compiled from various sources. For instance, producers in the corn sector may be identified from related industry associations, state or regional trade groups, the U.S. Census Bureau, or USDA, as well as via trade journals, and/or surveys.

domestic consumption and for export. CVD petitions must also detail the law or authority through which the foreign government is providing a subsidy, including the value of the subsidy.^{11, 12}

Typically, petitioners must be producers of a good similar to the imported good they are alleging is dumped or subsidized. However, in cases of a processed agricultural good, producers of raw agricultural products involved in the making of the good can join the petition. The following criteria must be met for this to occur:

- the raw agricultural good is substantially devoted to production of the processed product.
- the processed agricultural product is produced substantially or completely from the raw agricultural good.
- there is a correlation between the price of the raw agricultural good and price of the processed product.
- the raw agricultural good constitutes a significant percentage of the market value of the processed product.¹³

Many countries investigate unfair trade practices.

Many countries investigate complaints about dumping and unfair subsidies and apply AD/CVD duties if they find harm to domestic interests. For example:

9 [“Get Relief from Unfair Trade: Industry Support.”](#) ITA, U.S. CBP.

10 [“Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994.”](#) WTO.

11 [International Trade Administration Department of Commerce Guidelines for Petitions Requesting Relief Under U.S. Antidumping Law.](#) ITA, U.S. Department of Commerce.

12 [International Trade Administration Department of Commerce Guidelines for Petitions Requesting Relief Under U.S. Countervailing Duty Law.](#) ITA, U.S. Department of Commerce.

13 [Tariff Act of 1930: Section 771\(4\)\(E\).](#) ITA, U.S. Department of Commerce.

- In 2020, the Trade Remedy Investigation Bureau of China's Ministry of Commerce launched an anti-dumping investigation into Australian wine at the request of the China Alcoholic Drinks Association.¹⁴ In the same year, China also investigated alleged dumping of barley from Australia, and upon the final results of the investigation, applied anti-dumping duties of 73.6% on imports from certain Australian grain producers.¹⁵
- In 2012, the EU applied countervailing duties on imports of olive oil, wheat gluten, and peaches from Argentina, citing subsidies from the Government of Argentina and imposing additional duties that nearly doubled total duties applied.¹⁶

As in the United States, domestic producers in other countries are responsible for submitting complaints requesting their governments launch investigations into dumping or subsidies. Again, using China and the EU as examples, foreign governments typically have criteria to launch investigations. For instance:

- The Chinese Ministry of Commerce requires the AD/CVD investigation applications be submitted in writing by a representative of the domestic industry and include evidence of dumping, damage to the domestic industry, and causality that the dumping is causing damage. An applicant must represent 50% or more of the domestic industry, either alone or combined with other producers in support of the investigation.¹⁷
- To launch AD/CVD investigations in the EU, complaints must provide evidence of dumping (in the form of invoices or other data) and be supported by at least 25% of EU companies that produce the product in question. The complaint cannot be

opposed by a larger percentage of EU producers than those who have launched it.¹⁸

What do AD/CVD investigations look for?

The main two things investigations into anti-dumping or countervailing subsidies look for are 1) harm to domestic producers and 2) pricing that seems to be less than fair value. If a company is exporting their product below market value but has similarly priced inputs and, therefore, a comparable cost to domestic producers, this is a red flag that dumping may be occurring. If an industry is found to be receiving government assistance in any of the forms noted above (cash payments, favorable loans, or tax breaks, for instance), this may be grounds for countervailing duties to be initiated.

In the United States, investigations evaluate material injury to U.S. industry. To determine material injury, the investigation examines three categories:

- volume of imports of subject goods,
- effect of imports of those goods on prices in the United States like domestic products, and
- impact of imports of such goods on U.S. domestic producers of similar products.¹⁹

Examples of "Material Injury"

- Low domestic prices
- Declining domestic production
- Lost sales and market share due to imports
- Declining profitability
- Reduced industry employment, plant/factory closures, and bankruptcy

International Trade Administration

14 Press Release. "[Brief on China's initiation of an anti-dumping investigation and possible countervailing duties investigation into Australian wine in China.](#)" Australian Grape and Wine Inc., August 2020.

15 [Ministry of Commerce Announcement No. 14 of 2020 on the Final Ruling of the Anti-dumping Investigation on Imported Barley Originating in Australia.](#) PRC Ministry of Commerce, 18 May 2020.

16 "[Countervailing duties on Olive Oil, Wheat Gluten and Peaches.](#)" WTO, 2012.

17 "[Guidelines for filing anti-dumping cases.](#)" PRC Ministry of Commerce, 5 September 2018.

18 "[Complaints.](#)" European Commission.

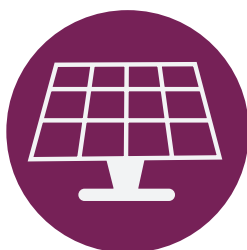
19 "[Antidumping and Countervailing Duty Handbook.](#)" U.S. CIT, 2015.

Other countries, like China and the European Union, take a similar approach, looking for goods that are imported below the normal value. For instance, the European Commission defines “normal value” as “either product’s price as sold on the home market of the exporter, or a price based on the cost of production and profit.”²⁰

What happens after an investigation?

In the United States, Commerce’s International Trade Administration (ITA) is responsible for the AD/CVD investigation protocol. If an investigation finds preliminary evidence of dumping or unfair subsidies, Commerce can direct U.S. Customs and Border Protection (CBP) to begin collecting anti-dumping and/or countervailing duties. These are called interim measures.²¹

If a final determination is made that dumping and/or unfair subsidies are causing material injury, ITA establishes the scope and level of duties in AD/CVD orders. CBP enforces these decisions and collects the additional AD/CVD amount assessed on the imported goods.²² Like all taxes, U.S. AD/CVD duties are ultimately directed to the U.S. Department of the Treasury.²³



There are more than **600 AD/CVD** orders in place for imports into the United States from over **50 COUNTRIES.**

One of the most notable, recent AD/CVD cases surrounds solar panels from China, in which additional duties of 18% to 30% are applied.

²⁰ [“Anti-dumping.”](#) European Commission.

²¹ [“Enforce and Protect Act \(EAPA\).”](#) U.S. CBP.

²² [“Antidumping and Countervailing Duties \(AD/CVD\) Frequently Asked Questions.”](#) U.S. CBP.

²³ [“Role of the Treasury.”](#) U.S. Department of Treasury.

While the U.S. government has argued against AD/CVDs on U.S. exports, there are some recent cases targeting U.S. grain products. See the chart below.

U.S. Products into China



DDGS

Type of Case: AD and CVD

Date Initiated: January 2016

Preliminary Duty: 33.8% preliminary AD/CVD duty implemented + 13% VAT reinstituted in September 2016

Final Duty: Varies by company:

- AD duties range from 42.2% to 53.7%
- CVD duties range from 11.2% to 12%

Duration: Five-year duty until January 2022



Sorghum

Type of Case: AD and CVD

Date Initiated: February 2018

Preliminary Duty: 178.6% implemented in April 2018

Final Duty: Cases were dropped in May 2018 before judgment could be rendered

U.S. Products into Peru

Ethanol



Type of Case: CVD

Date Initiated: April 2017

Preliminary Duty: 15¢/gallon

Duration: CVD on ethanol imported from the United States was reversed on February 2021, after appealing the decision of applying 14.8¢/gallon on November 2018



Corn

Type of Case: Self-initiated CVD by Government of Peru

Date Initiated: July 2018

Preliminary Duty: None

Final Duty: None, no injury found

Is there a time limit on AD/CVDs?

Under WTO rules, AD/CVDs are subject to a “sunset clause.” Countries must review AD/CVDs no later than five years after an order is issued to determine if the duties should continue or be revoked.²⁴ WTO rules also state that if the margin of dumping is insignificant, defined as 2% of export price or less, the investigation will end.

Who pays to fight back against unfair anti-dumping or countervailing duties or actions?

Whether fighting against dumped and subsidized products entering the United States or against AD/CVD action on U.S. exports, industry plays a significant

role. Industry associations and individual companies impacted by AD/CVD actions are key in compiling the information necessary to open an investigation into dumped or subsidized products, or to fight the imposition of such duties on U.S. exports. While U.S. industry does not pay the U.S. Trade Representative (USTR) or other government agencies to engage on their behalf, the data and other technical information compiled during investigations requires industry experts, producers, and legal teams to invest time and money.

For example, in 2018, when China announced an AD/CVD investigation on sorghum imported from the United States, USGC, National Sorghum Producers, the grain

²⁴ [“Understanding antidumping & countervailing duty investigations.”](#) U.S. CIT.

trade, and other producers and industry stakeholders cooperated with China's investigation, providing thousands of pages of data.²⁵

Beyond providing data during an investigation, industry may also be responsible for:

- engaging with U.S. government agencies like USTR, the U.S. Department of Agriculture (USDA), and U.S. lawmakers.
- paying for legal costs associated with consulting attorneys.
- research and time necessary to complete submissions alleging dumped or subsidized goods entering the United States.

Like other trade actions, AD/CVD actions can be disputed at the WTO.

WTO members that feel their products are subject to unfair AD/CVD can request a dispute settlement at the WTO. The WTO allows members to take actions against dumping and unfair subsidies. However, the WTO does not allow these tools to be used unfairly.

In the United States, Section 301 of the Trade Act of 1974 provides the USTR with a wide range of authority to deal with unfair practices by our trading partners including initiating WTO dispute settlement proceedings. Industry can request an issue be taken to the WTO, or USTR can act on its own.

AD/CVD AT THE WTO

In 1998, the United States requested a WTO dispute settlement panel, alleging that Mexico was imposing unfair anti-dumping duties on high-fructose corn syrup from the United States. The panel found Mexico's anti-dumping duties did not comply with the Agreement on Anti-dumping. Mexico appealed the panel findings unsuccessfully. The anti-dumping duty was removed in 2002.

U.S. Court of International Trade

If an industry petitions USTR to bring a dispute to the WTO, like above, that industry pays for the preparation of the petition, including necessary research into injury being caused to U.S. domestic industry and legal fees for preparing the petition.

Settlements start with consultations and continue to dispute panels if the issue is not resolved. This process can last a more than a year if decisions are appealed. U.S. Section 301 also provides that, if the defending WTO member does not comply with the WTO decision, USTR can take retaliatory action.²⁶


Notes:

²⁵ Crist, Delanie. "[Defending U.S. Sorghum From Trade Retaliations.](#)" National Sorghum Producers, 2018.

²⁶ "[Dispute Settlement in the World Trade Organization \(WTO\): An Overview.](#)" Congressional Research Service (CRS), 26 November 2012.

Anti-dumping and Countervailing Duties Cases

Trade cases impacting U.S. feed grain in all forms, as of September 2021

Active Cases	Past Cases
 China DDGS <p>TYPE OF CASE: AD and CVD DATE INITIATED: January 2016 PRELIM DUTY: Implemented in September 2016; 33.8% + 13% VAT reinstituted when preliminary duty was implemented FINAL DUTY: Varies by company. AD duties range from 42.2% to 53.7%; CVD duties range from 11.2% to 12%. DURATION: Five-year duty until January 2022 CURRENT IMPACT ON TRADE: Combination of AD/CVD duties and separate 301 retaliation stopped trade.</p>	 China Sorghum <p>TYPE OF CASE: AD and CVD DATE INITIATED: February 2018 PRELIM DUTY: 178.6% implemented in April 2018 FINAL DUTY: Cases were dropped in May 2018 before judgment could be rendered. CURRENT IMPACT ON TRADE: Effectively stopped while duty in place. This case was widely believed to be politically motivated, coming at the initial outset of the U.S.-China “trade war.”</p>
 Peru Ethanol <p>TYPE OF CASE: CVD DATE INITIATED: April 2017 PRELIM DUTY: None DURATION: The CVD on ethanol imported from the U.S. was reversed on February 2021, after appealing the decision of applying 14.8 cent/gallon on November 2018. CURRENT IMPACT ON TRADE: There are no longer duties applied and the investigation has concluded.</p>	 European Union Ethanol <p>TYPE OF CASE: AD expiry review DATE INITIATED: March 2018 PRELIM DUTY: None FINAL DUTY: \$83.03 per metric ton, 10-15% ad valorem, as of February 2013 (not renewed). DURATION: Sunset review occurred and duties were removed in May 2019. CURRENT IMPACT ON TRADE: Surveillance review was initiated in November 2020 but does not impact trade.</p>
 Colombia Ethanol <p>TYPE OF CASE: CVD DATE INITIATED: January 2019 PRELIM DUTY: 9.36%, expired September 2019 FINAL DUTY: 19.97 cents/gallon (\$0.066/kg) for 2 years CURRENT IMPACT ON TRADE: Depends on Colombian ethanol pricing and market dynamics.</p>	 Peru Corn <p>TYPE OF CASE: Self-initiated CVD DATE INITIATED: July 2018 PRELIM DUTY: None FINAL DUTY: None, no injury found CURRENT IMPACT ON TRADE: The investigating authority, INDECOPI, determined there was no injury. There are no duties applied and the investigation has concluded.</p>

Special Safeguard Tariffs On Agricultural Goods

Countries may use temporary tariff measures to protect domestic producers.

Special agricultural safeguards (referred to often as “SSGs”) are additional tariffs applied on certain agricultural products when import volumes exceed specific quantities or import values fall below specific minimum prices. SSGs are a contingency tool that allows governments to react to market disruptions quickly.²⁷

Unlike AD/CVD cases, special agricultural safeguards (a) are implemented automatically, and (b) do not require serious injury to domestic industry before the additional tariffs are applied.

SSGs are triggered by one of two events:

- When a surge in imports of a good occurs that threatens domestic producers of that same good — called a volume-based trigger, or
- If imports are cheaper than goods produced domestically, causing demand for imports to increase, and domestic producers to lose (or potentially lose) sales in their own market — called a price-based trigger.

When either of these thresholds is met, countries can immediately impose special agricultural safeguard tariffs on imports. Increased domestic demand, decreased domestic production, or increased global supply can cause import surges and thresholds to be met, triggering SSGs. Depending on the product, the United States has both price- and volume-based SSGs it can apply on imports.

When a safeguard is triggered, the SSG tariff is in addition to any other tariff rates in place. The table below notes several recent special agricultural safeguard actions and if the trigger was price-based or volume-based. In the examples provided, there are two tariffs noted for each product: the MFN tariff²⁸ plus the SSG tariff.

Examples Of Recent SSGs Applied (2018-2021)

Japan
Corn Starch
(HS code 1108.21)



Volume-based SSG

MFN Tariff: 25%
+
SSG tariff: 9.3%

USA
Malt Extract
(HS code 1901.90)



Volume-based SSG

MFN Tariff: 23.7¢/kg + 8.5%
+
SSG tariff: 2.6¢/kg - 20.7¢/kg depending on import price

Costa Rica
Brown Rice
(HS code 1006.20)



Volume-based SSG

MFN Tariff: 35%
+
SSG tariff: 11.67%²⁹

²⁷ SSGs are slightly different from “GATT safeguards” which are imposed primarily on industrial/non-ag goods.

²⁸ “MFN tariff rates” are the standard tariff rates applied to goods from countries that do not receive lower duty rates through trade agreements (such as the USMCA) or other programs (such as the U.S. Generalized System of Preferences for developing countries). MFN is short for “most-favored nation,” yet is a misnomer as MFN rates are not always the lowest tariffs available.

²⁹ SSG tariff was not applied to rice originating from the United States covered under the DR-CAFTA agreement.

SSGs are a helpful trade tool permitted by the WTO.

Safeguards are provided for under two WTO agreements — the Agreement on Safeguards and the Agreement on Agriculture.³⁰ The Safeguards Agreement provides the framework, and the Agriculture Agreement outlines how special agricultural safeguards work.

- Countries must reserve the right in advance to apply a safeguard to a product as part of their WTO commitments.
- Agricultural SSGs may only be applied in the form of additional tariffs. In other words, countries may not impose new or additional quotas to limit or ban imports.
- Countries must notify the WTO when volume-based SSGs are imposed and submit annual reports on special agricultural safeguards in place.³¹

I thought the WTO advocated free trade. Aren't SSGs just higher tariff barriers?

The WTO and its rules-based system encourage lower barriers to support market access and promote fair competition. The WTO permits safeguard provisions as a way to allow a country to quickly and easily put additional tariffs on a specific product due to market fluctuations while maintaining an open market for other products. As a result, domestic farmers, ranchers, and producers of that product can compete more fairly in their own market against low-cost imports or an import surge.

Which countries impose SSGs?

Of the 164 WTO members, less than 40 (representing 24% of WTO members) have reserved the right to implement special agriculture safeguards. While there are more than 6,000 agriculture tariff lines designated with SSGs among these countries, this does not mean there are that many SSGs actually in place.³² Countries are only able to apply SSG tariffs when they are triggered by price or volume thresholds.

Different agriculture products in each country may be protected by special agricultural safeguards. The table on the following page offers some examples of countries that have reserved the right to impose SSGs and on what types of products.

Notes:

³⁰ [“An Unofficial Guide to Agricultural Safeguards.”](#) WTO.

³¹ Ibid.

³² [“Market access: special agricultural safeguards \(SSGs\).”](#) WTO.

Market	SSGs reserved on grain products:	SSGs reserved on other ag products:
Canada	Corn flour, corn groats, flaked or hulled barley, flaked or rolled germ, malt, roasted malt, and malt extract	Dairy products, bread, and poultry
Colombia	Barley, corn, sorghum, corn flour, rye flour, corn groats and meal, oat groats and meal, cereal pellets, malt, roasted malt, corn starch, crude and refined corn oil, glucose, fructose, dextrins, and modified starches derived from corn	Dairy products, peas, and cotton
EU	Corn intended for processing, rye flour, corn flour, corn and oat groats, cereal pellets, rolled, flaked, or hulled oats, hulled corn, hulled barley, rolled or flaked germ, malt, roasted malt, corn starch, glucose, and fructose	Lambs, turkeys, dairy products, and tomatoes
Japan	Barley, rice flour, pellets of wheat, and corn starch	Butter, hams, and potato starch
Mexico	Corn, sorghum, corn flour, rye flour, other flour, corn groats and meal, oat groats and meal, cereal pellets, flaked or rolled oats, flaked or rolled barley, flaked or rolled grains, hulled oats, hulled corn, hulled barley, malt, roasted malt, crude or refined corn oil, glucose, fructose, and ethanol	Lamb, dairy products, potatoes, and beans
South Korea	Barley, corn, sorghum, barley flour, corn groats and meal, barley groats and meal, oat groats and meal, other groats and meal, cereal pellets, rolled or flaked oats, rolled and flaked barley, rolled and flaked grain, hulled oats, hulled corn, hulled barley, corn starch, and modified starches derived from corn	Cattle, fruit trees, chick-peas, and ginseng
United States	Glucose and fructose	Meat products, dairy products, cheeses, sugar and other sweeteners, cotton

Are there any SSGs currently in place against U.S. exports?

SSGs are not meant to specifically target exports from a certain country or countries. Instead, SSGs target any imports that are below the price threshold or above the volume threshold — no matter the country of origin. (One exception to this rule is that countries can exclude SSGs in trade agreement negotiations. For example, as part of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), the United States negotiated that SSGs may not be applied to imports of U.S.-origin brown rice into Costa Rica.)



















As an example, let's look at a price-based SSG: if certain rice products enter Japan below the minimum price level designated by Japanese government authorities, the safeguard tariff will apply to any imports of rice that enter below the minimum price threshold. There will be no additional SSG applied if the import value is above the minimum price threshold. This could mean some shipments of rice from China or the United States are hit with the SSG tariff in order to uplift the price at a level similar to domestic prices, while other shipments from China, the United States and other countries entering above the minimum price threshold are not subject to the SSG tariff. The SSG tariff is no longer applied when the import price is above the minimum threshold.

Now let's look at a volume-based SSG: if corn starch enters Japan above the maximum quantity threshold calculated by Japan's government authorities, the special safeguard tariff will apply to all imports through the period specified in the WTO notification. The additional tariff cannot exceed 30% of the normal tariff rate and can only be maintained until the end of the year in which it is imposed.³³ In this case, all corn starch — including U.S. corn starch — imported into Japan would be hit with the SSG.

SSGs and AD/CVD seem similar in that they are additional tariffs applied on imports. So, what's the difference?

Good question. Both AD/CVDs and SSGs are tools countries can use to protect domestic agriculture producers. However, there are key differences:

- WTO members have already reserved the right to apply SSGs to certain agricultural products to protect against market disruptions. In contrast, AD/CVDs can be applied to any good, but only after proper investigation shows injury or potential injury caused to a domestic industry — an extremely time consuming and expensive process.
- SSGs are primarily applied to mitigate oversupply that results in import surges or price drops, whereas AD/CVDs are applied to prevent intentional actions by companies or governments trying to gain market share or push out domestic competition.

	ADs	CVDs	SSGs
Right must be reserved by a country in advance			
Can be applied to agricultural products			
Can be applied to non-agricultural products			
Automatically triggered by value or volume thresholds			
Investigation required			
Can be challenged at the WTO			

³³ Hathaway, Dale E. "A Special Agricultural Safeguard (SAS): buttressing the market access reforms of developing countries." Food and Agricultural Organization, 2001.

Currency Intervention: Good Or Bad For Global Trade?

Currency intervention by other countries can impact the value of U.S. agriculture exports.

In order to understand currency intervention, we first need to review the fundamentals of exchange rates. An exchange rate is the price at which one currency can be expressed in terms of another.³⁴ For example, five of Currency A (e.g., Brazilian real or BRL) may be exchanged for one of Currency B (e.g., U.S. dollar or USD). In this example Currency B – the USD – holds greater purchasing power as 1 USD = 5 BRL. Exchange rate fluctuations impact exporters and importers of all goods, including agricultural goods. If a U.S. exporter agrees to sell a U.S. agriculture product at 10 BRL/kg and the exchange rate fluctuates, the Brazilian reals they receive may be worth either more or less in U.S. dollars than initially anticipated. It is the same for U.S. importers. If an agreement is made to buy a Brazilian good at 20 BRL/kg and exchange rates fluctuate, the importer could be paying more or less in U.S. dollars than initially anticipated.

Some governments and central banks take action to manipulate their currency and artificially change the exchange rate so their currency is cheaper than another country's currency. This makes their exports more competitively priced in overseas markets and raises the cost of their imports into their domestic market.³⁵

How does a country impact the price of currency?

Like much of economics, currency manipulation boils down to supply and demand. If Country A wants to devalue its currency in terms of Currency B, such as the U.S. dollar, to make their exported products cheaper, it

can do so in different ways:

1. Sell its own currency in the foreign exchange market, which increases supply in the global market, weakening Country A's currency.
2. Print more of its own currency, which also increases supply, weakening Country A's currency.
3. Buy U.S. dollars, which decreases supply and artificially increases the value of the U.S. dollar.

Imagine a corn shortage in the United States. When the supply of corn decreases, the remaining supply becomes more valuable, and its price goes up. As soon as the supply of corn increases, the price goes back down. Currency works the same way and is therefore easy to manipulate.³⁶

Why is currency manipulation a big deal in trade?

By devaluing its own currency, Country A can artificially lower the cost of their exports compared to products produced in other countries. As a result, demand will increase for the cheaper product made in Country A, and Country A has now provided exporters with an unfair competitive advantage.

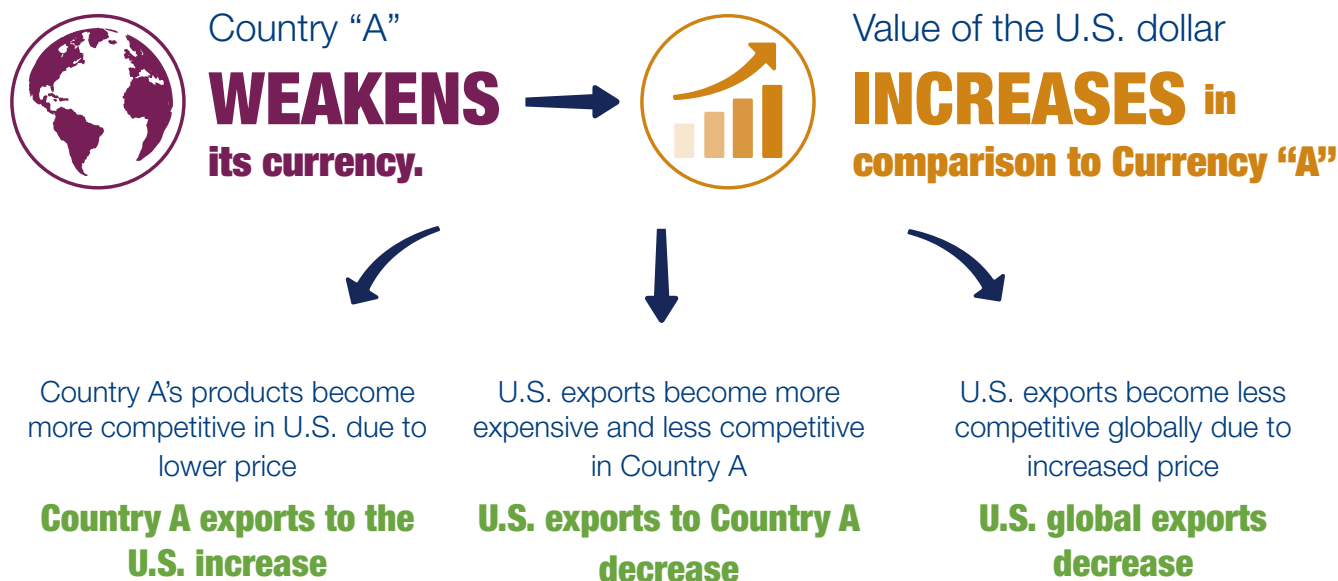
At the same time, currency devaluation means the cost of imports of foreign goods into Country A will be higher. As a result, demand for foreign goods will decrease, and Country A has now provided their domestic industry with an unfair competitive advantage.

34 Harvey, Campbell R. "Exchange Rate." Financial Glossary. 2011. 10 June 2021

35 Nelson, Rebecca M. "Exchange Rates and Currency Manipulation." CRS, 2020.

36 Setser, Brad W. and Dylan Yalbir. "Tracking Currency Manipulation." Council on Foreign Relations, 2020. "Currency Manipulation 101." American Automakers.

Three Impacts of Currency Manipulation³⁷



Let's demonstrate an export price comparison using cheese that is produced in Switzerland and the United States with domestically sourced milk. In our examples below, due to currency manipulation, Switzerland can gain an unfair competitive advantage that harms both U.S. domestic production and U.S. exporters of cheese.

In our scenario, one Swiss franc (1 CHF) can be exchanged for 1.50 USD:

- Switzerland produces cheese at a cost of 3 CHF/lb, which equals 4.50 USD/lb. Switzerland then devalues its currency so that 1 CHF is now equivalent to 1 USD. This means cheese produced in Switzerland is now equal to 3 USD/lb. Because cheese from Switzerland is now significantly cheaper in U.S. dollars, U.S. demand for cheese from Switzerland will increase, thereby impacting domestic cheese producers in the United States.
- U.S. cheese is produced at 6 USD/lb, which equals 4 CHF/lb. After Switzerland devalues its currency to 1 CHF equivalent to 1 USD, U.S. cheese would cost 6 CHF. This will now make U.S. exports of cheese (and any other U.S. product) more expensive in the Swiss market, decreasing demand for U.S. cheese.

Currency manipulation is not always so straightforward or beneficial to producers of value-added products. In the scenario above, the critical input (milk) was sourced domestically in both markets. If the milk used was imported, the cost of production in Switzerland would increase as a result of Switzerland's currency devaluation.

Some countries may at times inflate the value of their currency.

If Switzerland sells its holdings of U.S. currency, the Swiss franc will strengthen against the U.S. dollar. Some governments and central banks inflate their currency to artificially strengthen their exchange rate. This approach is not beneficial in terms of exports because it increases the cost of their products overseas. However, countries may do it to increase the purchasing power of their currency, decrease the price of imports, increase standard of living, and help meet consumer demand via global trade.³⁷

³⁷ "Fixed Exchange Rates and Floating Exchange Rates: What Have We Learned?" CRS, 6 June 2007.

How is currency manipulation addressed globally?

The International Monetary Fund (IMF) is an organization of 190 countries with a goal to “foster global monetary cooperation.” The IMF Articles of Agreement prohibit currency manipulation aimed at gaining an unfair trade advantage. However, the IMF is not able to enforce these rules.³⁸ Many countries, including the United States and partner countries in the G-7 and G-20, work to ensure currency actions and interventions do not impact cross-border trade unfairly. In May 2021, the G-7 reaffirmed its commitment not to use foreign exchange to gain a competitive advantage in trade.³⁹

The U.S. government has tools to monitor and address countries’ currency practices.

The United States has numerous ways — proactive and reactive — to address currency manipulation.

- **Monitoring and engagement:** to mitigate the impacts of currency manipulation, the U.S. Department of Treasury routinely monitors countries that may be manipulating currency. Treasury publishes a semiannual Report on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States, which covers U.S. trading partners that are being monitored, those under additional scrutiny, and those labeled currency manipulators.
- **Trade agreements:** trade negotiations give the United States the opportunity to proactively address currency manipulation by including provisions to prohibit this tactic in trade deals.
- **U.S. Section 301 of the 1974 Trade Act:** Section 301 permits USTR to address currency manipulation once it has occurred by imposing retaliatory action against the country.

We talk about each of these tools in more detail.

Monitoring and engagement are important tools for U.S. Treasury.

Treasury evaluates countries against three key criteria:

1. Significant bilateral trade surplus: a surplus occurs when the value of U.S. imports from the trading partner far exceeds the value of exports to that trading partner.
2. Material current account surplus: when a country’s current account, which is defined as trade surplus plus net income from other payments and investments (such as business ventures in foreign countries or income sent outside of the country), is greater than 2% of a country’s total GDP.
3. Persistent one-sided intervention: when a high percentage of a country’s total GDP is derived from net purchases of foreign currency.⁴⁰

If a country is found to have met all three criteria — a significant trade surplus, a material account surplus and persistent one-sided intervention — the United States considers this a red flag and will take a deeper dive into how the country is using exchange rates. Treasury will also engage bilaterally with the country to address their intervention in the foreign exchange market.

Countries Monitored by U.S. Treasury in 2021

- | | |
|-----------|-------------|
| • China | • India |
| • Japan | • Malaysia |
| • Korea | • Singapore |
| • Germany | • Thailand |
| • Ireland | • Mexico |
| • Italy | |

³⁸ “[About the IMF](#).” International Monetary Fund.

³⁹ [G7 financial leaders reiterate FX pledges, vow more cyber cooperation](#).” Reuters, 13 May 2017.

⁴⁰ “[Treasury Releases Report on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States](#).” U.S. Department of Treasury, 2021.

Trade agreements can address currency manipulation.

The U.S.-Mexico-Canada Agreement (USMCA) replaced and upgraded the NAFTA to maintain free trade in North America. USMCA is the first agreement that provides enforceable actions aimed at currency manipulation.⁴¹ Chapter 33 of USMCA provides that each country will follow the IMF Articles of Agreement; aim to improve transparency on currency actions; and elevate currency manipulation as a trade-distorting non-tariff barrier. In the agreement, each country commits to disclose any interventions in foreign exchange markets and other financial data to the IMF. If the U.S., Canada, or Mexico manipulate currency to their advantage, the other USMCA partners may take appropriate action to deal with manipulation. Chapter 33 also stipulates that each USMCA member can request bilateral consultations to address concerns or disputes. If these consultations are not successful, countries may request that the IMF undertake surveillance of a country's exchange rate policy or initiate and participate in formal consultations, as necessary.⁴²

Chapter 33 has some limitations, yet USMCA has set a precedent for future free trade agreements as the United States continues to find various ways to combat currency manipulation policies and practices.

USMCA is not the only trade agreement that addresses currency manipulation. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a trade agreement between 11 countries, including Australia, Canada, Japan, Mexico, Vietnam, and others. The CPTPP covers many different areas of trade including tariffs, intellectual property, labor, environmental standards, and currency manipulation. Like Chapter 33 of the USMCA, the Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries calls for transparency on

foreign exchange intervention and multilateral dialogue between member countries.⁴³ Unlike the USMCA, the Joint Declaration is a side agreement of the CPTPP and not legally enforceable.⁴⁴ Although this makes the agreement's commitments on currency manipulation less significant, currency manipulation provisions included in both the CPTPP and the USMCA show that this issue is becoming more important globally.

U.S. Section 301 investigations help with potential counter actions.

U.S. Section 301 investigations target unfair trade practices that impact trade in many goods, including agricultural goods. In addition to using Section 301 to investigate and address trade issues like intellectual property concerns in China and aircraft subsidies in the European Union, the United States has used Section 301 to investigate alleged currency manipulation by trading partners. USTR can self-initiate an investigation or accept a petition from an interested party, such as a U.S. company or industry group. If an investigation determines a country's alleged action unfairly restricts U.S. commerce or violates U.S. rights under a trade agreement, USTR is permitted to act, such as:

- imposing retaliatory duties or other import restrictions,
- withdrawing or suspending certain trade agreement concessions, and/or
- negotiating an agreement to address the conduct in question.⁴⁵

⁴¹ Segal, Stephanie. "[USMCA Currency Provisions Set a New Precedent.](#)" CSIS, 2018.

⁴² [US-Mexico-Canada Agreement Full Text: Article 33.7.](#) USTR.

⁴³ [Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries.](#) Australia Treasury, 6 November 2016.

⁴⁴ Segal, Stephanie. "[USMCA Currency Provisions Set a New Precedent.](#)" CSIS, 5 October 2018.

⁴⁵ Schwarzenberg, Andres B. "[Section 301 of the Trade Act of 1974.](#)" CRS, 2021.

Case Study: Vietnam And Currency Manipulation

Date of Initiation: October 2020 by USTR following decision in September 2020 by the Treasury Department to label Vietnam and Switzerland as currency manipulators

Focus of Investigation: Vietnam's policies/practices related to the valuation of its currency and that Vietnam's currency had been undervalued for the past three years

USTR Findings: On 15 January 2021, under the Trump Administration, USTR found that Vietnam's acts, policies, and practices — including excessive foreign exchange market interventions and other related actions — are unreasonable and burden or restrict U.S. commerce, and Vietnam's actions justify U.S. action under Section 301.

U.S. Actions Taken: USTR did not take immediate action in the final days of the Trump Administration. Under the Biden Administration, Vietnam is no longer labeled as a currency manipulator, given a bilateral agreement between the two central banks. Treasury will continue to monitor Vietnam's practices.⁴⁶



Understanding different U.S. agencies' roles in combating currency manipulation.

Exchange rates and currency valuation are in Treasury's wheelhouse. When USTR opens a Section 301 investigation into currency manipulation of a trading partner, it consults Treasury.⁴⁷ After completing its investigation, USTR decides whether and how to respond. USTR, not Treasury, can apply tariffs or implement other import restrictions to address the alleged currency manipulation's impact on U.S. commerce.

So, which countries are considered currency manipulators?

Currently, there are no trading partners labeled as currency manipulators by the United States. In 2021, three countries met all three criteria targeting them for additional scrutiny by the Treasury Department: Vietnam, Switzerland, and Taiwan.⁴⁸ Due to changes in their respective monetary policies, none of the three were designated by Treasury as currency manipulators in 2021.

	U.S. Treasury	USTR
Can investigate currency manipulation	✓	✓
Engages bilaterally with countries alleged to manipulate currency	✓	✓
Initiates U.S. Section 301 investigations	✗	✓
Can label countries as currency manipulators	✓	✗
Can impose tariffs or other import controls	✗	✓

⁴⁶ Ibid.

⁴⁷ Press Release. "[Section 301 Investigation Report on Vietnam's Acts, Policies, and Practices Related to Currency Valuation](#)." USTR, 15 January 2021.

⁴⁸ "[Treasury Releases Report on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States](#)," U.S. Department of Treasury, 2021.

In recent years, the United States has labeled four countries as currency manipulators or targeted them for engagement with the Treasury based on their currency interventions:

Year	Countries Labeled as Currency Manipulators	Countries Targeted for Bilateral Engagement
2021	None	Vietnam, Switzerland, and Taiwan
2020	Vietnam and Switzerland	Taiwan
2019	China	None
2018	None	None

Should we expect more countries to be labeled as currency manipulators going forward?

Under the Trump Administration there was more focus on currency manipulation than in prior administrations.⁴⁹ The Trump Administration undertook several trade actions to address currency manipulation concerns — bilateral engagement, currency manipulator designations, Section 301 investigations and threat of potential retaliatory tariffs. It is difficult to predict the level of priority addressing currency manipulation will be given with the current and future administrations. Given the many tools available to engage on currency manipulation policies and practices, we anticipate the issue will continue to be raised by exporters as needed.

Notes:

49 Goodman, Matthew P. “[No Currency Manipulators in Biden’s First FX Report](#).” CSIS, 16 April 2021.

TRADE POLICY: EVOLVING TOPICS AFFECTING TRADE POLICY AND TRADE OPERATIONS

SECTION II: Laws, regulations, and principles drive a government's approach to trade and **TRADE POLICY**. In this section we address three hot topics in trade policy and issues to be aware of as policies evolve — specifically trade and **taxes**, trade and **environment**, and trade and **labor issues**.

Trade And Taxes

Governments impose many different types of taxes and fees on goods crossing borders. In addition, there are ongoing discussions on whether there should be global minimum taxes to ensure multinational enterprises involved in the movement of goods and services around the world pay taxes wherever they operate.

Tariff Type	Description	Examples
MFN tariff	Standard, non-preferential tariff on imports from WTO member countries unless there is a trade agreement or special program in place to provide reduced tariffs.	U.S. MFN rate of 1.1% on quinoa from Brazil EU MFN rate of 93 EUR /1000 kg on U.S. barley
Preferential tariff	Reduced or zero-duty tariffs available to countries that have entered into trade agreements or, in some cases, to developing countries through special trade programs like the U.S. Generalized System of Preferences (GSP).	Duty-free for U.S. corn into Mexico under USMCA 1.8% reduced tariff on U.S. imports of soy sauce from Japan under the U.S.-Japan Trade Agreement Duty-free for U.S. imports of durum wheat from Ethiopia—a least developed country under U.S. generalized system of preferences (GSP)
Retaliatory tariff	Additional tariffs imposed on top of MFN or preferential tariffs as a countermeasure for trade actions taken by a trading partner	25% U.S. retaliatory tariff on EU-origin single malt whiskey in the U.S.-EU Airbus dispute 25% retaliatory duty on U.S. sorghum into China in response to U.S. Section 301 tariffs on Chinese goods

What trade-related taxes do I need to know about?

There are several taxes associated with importing goods into a country. One notable tax we have discussed repeatedly is a tariff, but importers and exporters also need to be aware of other taxes and fees. Governments may apply indirect taxes on imports like a value added tax (VAT), customs service fees, or product specific taxes.

Tariffs are an import tax.

Tariffs (also called duties) are a tax applied at national borders by customs authorities that increase the price of imported goods. Tariffs are typically passed on to the consumer in that market. Import tariffs have been around since at least 137 A.D.⁵⁰ There are several types of tariffs — all of which are taxes on imported goods — including standard most favored nation (MFN) tariffs, lower preferential tariffs, retaliatory duties, anti-dumping and countervailing duties, and special agriculture safeguard duties.

We discussed AD/CVDs and SSGs in great detail in earlier sections. Let's delve further into the other types of tariffs that can raise the cost of cross-border sales.

It is important to understand which tariff rate(s) will be applied to a good when entering new markets, assessing the impact of retaliatory tariffs, or optimizing sourcing and supply chain operations.

What other taxes are applied on imported goods?

Tariffs are not the only cost added to imported goods. Most countries around the world apply other additional taxes and fees at borders.

The most common tax imposed is a value-added tax (VAT), sometimes referred to as a goods and services tax (GST). Countries can set their VAT, calculated as a percentage of a good's value, at whatever rate they want, and sometimes as high as 27% in countries like Argentina and Hungary. Often developing countries or

Fun Fact: import tariffs have been around since at least 137 A.D. to provide revenue into government treasuries. The United States started collecting import tariffs in the summer of 1789.

countries with food insecurities may apply a reduced VAT to basic foodstuffs, like rice, milk, or baby formula, to encourage importation, reducing the end price to the consumer.

We are seeing more so called “junk food” taxes imposed on processed products to discourage consumption of certain foods. For instance, Mexico imposes an additional 8% tax at its border on products that are high in calories or sugar. The United Kingdom has implemented a sugar tax applied on soft drinks at a rate of 18-24p per liter, depending on the amount of sugar.

Some countries impose excise taxes, which are typically imposed on specific goods or activities such as on cigarettes, tobacco, and alcohol, rather than on all goods or services.⁵¹

Customs authorities may also collect other fees, such as port maintenance fees, customs inspection or processing fees, or even ecological fees. In the United States, CBP collects harbor maintenance fees for imported goods transported via ship and a merchandise processing fee for imports from non-free trade agreement partners.

Understanding that imports are subject to other indirect taxes and fees in addition to tariffs is important to market selection and pricing strategy. The full calculation of “landed costs” includes costs of product insurance + freight + tariffs + taxes + fees. See the table on the following page for an example of the impacts of tariffs and taxes on the cost of exporting U.S. barley to China. The table provides costs for barley, international shipping, and insurance, lists China's tariff, and taxes, and calculates the landed cost.

50 J.F. Mathews. “[The Tax Law of Palmyra: Evidence for Economic History in a City of the Roman East.](#)” The Journal of Roman Studies, 1984.

51 “[Key Elements of the U.S. Tax System.](#)” Tax Policy Center, 2021.

Example Of Tariff & Tax Impact On U.S. Barley (HS Code 1003.10) Into China

Product & Estimated Shipping Costs	China's Tariffs & Taxes	Landed Cost
\$220/ton for barley	20% MFN tariff applied on cost, insurance, and freight (CIF value)	\$220/ton + \$5/ton insurance + \$25/ton freight= \$250/ton
\$25/ton for freight		+
		20% MFN tariff on CIF value only = \$50
		+
\$5/ton for insurance	10% retaliatory tariff applied on CIF value in response to U.S. Section 301 tariffs	10% retaliatory tariff on CIF value only = \$25
		+
	13% VAT applied on CIF value and tariffs	13% VAT on CIF value and tariffs = \$42.25
		Landed cost = \$367.25
		Essentially, 67% higher than the cost of the barley in the United States.

New types of taxes which could impact cross-border operations

Negotiations on global taxes are in the works.

In recent years, countries have begun to negotiate a global framework for international tax reform to ensure multinational enterprises (MNEs) pay taxes where they are operating and earning profits. These negotiations have been happening within the Organization for Economic Cooperation and Development (OECD) since 2017. The resulting OECD framework includes two pillars. Pillar One covers countries' taxing rights on MNEs (such as digital services taxes on high-tech firms), and Pillar Two covers the global minimum corporate tax.⁵² We cover these two taxes in more depth below.

Digital services taxes matter to all industries, including agriculture.

Some countries apply digital services taxes (DSTs) on revenue earned from sales or services provided to their residents by multinational companies; think of a corporate tax, but on companies with a digital presence rather than a physical presence. Companies like

Amazon, Apple, and Google are targeted by these types of taxes, and since many of these companies are U.S. companies, the U.S. government is concerned many of these taxes will disproportionately hurt U.S. firms. In the recent past, the United States has investigated country-specific proposals to decide whether or not to apply retaliatory tariffs in cases where taxes:

- discriminate against U.S. companies,
- are unreasonable as tax policy, and
- burden or restrict U.S. commerce.⁵³

Corporate taxes are becoming more standardized.

Different countries apply different corporate tax rates. Pillar Two of the OECD framework seeks to standardize a minimum global corporate tax of 15%. This allows governments to tax companies with a physical presence in the country without losing business to countries that have very low or no corporate tax.⁵⁴ This will impact companies that avoid paying taxes by moving profits out of countries with high corporate taxes.

⁵² Press Release. "[130 countries and jurisdictions join bold new framework for international tax reform.](#)" Organization for Economic Cooperation and Development, 1 July 2021.

⁵³ [Section 301 Investigations Status Update on Digital Services Tax Investigations of Brazil, the Czech Republic, the European Union, and Indonesia.](#) USTR, 13 January 2021.

⁵⁴ Press Release. "[130 countries and jurisdictions join bold new framework for international tax reform.](#)" Organization for Economic Cooperation and Development, 1 July 2021.

Governments can use taxes to achieve environmental goals.

Carbon border taxes are in the works.

In the Trade and Environment section, we will discuss how governments are utilizing tools like trade agreements to achieve environmental goals. Carbon border taxes are another tool countries may use to further their commitments to reduce emissions. Carbon border taxes can be imposed on individual companies based on their emissions or on production carbon intensive products like steel, aluminum and fertilizer.⁵⁵ These can impact the cost of producing farming equipment, growing crops, and packaging goods.

If you tax us, we may put retaliatory tariffs on you!

As discussed above, if the United States finds that taxes — from DSTs to carbon border taxes — unfairly burden U.S. companies, it may propose countermeasures such as retaliatory tariffs on imports from the country in question. This could trigger tit-for-tat retaliation by our trading partners, which often impacts U.S. agriculture trade. For this reason, it is important to watch as tax policy develops domestically and through global negotiations to get a clearer sense of its impact.

Trade And Environment

Governments can use trade policy, such as trade agreements, to set expectations for themselves and their trading partners in many different areas, including environment, sustainability, and labor issues. Multilateral organizations like the United Nations are also facilitating discussion on environmental issues faced by the entire globe.

Let's talk green (and not just the kind in your wallet)

A global push towards combating climate change.

Sustainability and the human impact on the environment are certainly not new topics. However, in recent years, sustainability has moved beyond calls to recycle and lessen use of plastic, and governments and companies are looking to play their part in the global push to go green. This is where trade enters the sustainability discussion. Both the United States and its trading partners use policy tools to shape industries' environmental impact.

How can governments impact climate change?

Governments trying to advance sustainability goals can engage trading partners through trade agreement

negotiations and at the WTO, as well as impact demand for environmentally friendly goods and services through domestic regulations. We dive further into each of these approaches below.

The United States and many of its trading partners are seeking to add environmental provisions to trade agreements.

The USMCA, which entered into force in 2020, contains a chapter covering enforceable environmental provisions. USMCA Chapter 24 states that the parties to the agreement “recognize that a healthy environment is an integral element of sustainable development and recognize the contribution that trade makes to sustainable development.” The chapter commits each member to maintain obligations under multilateral agreements, such as the Montreal Protocol on Substances that Deplete the Ozone Layer. The USMCA also acknowledges the importance of investment in environmental goods and services, and reduction of trade barriers in this space. If a member country feels another member country is failing to enforce its environmental laws, they can request a fact-finding mission under USMCA towards resolving the issue.⁵⁶

⁵⁵ [“Carbon Tax Basics.”](#) Center for Climate and Energy Solutions.

⁵⁶ [USMCA Chapter 24](#), USTR.

The European Union (EU) is also using trade policy to further sustainability goals. In February 2021, the EU released “An Open, Sustainable and Assertive Trade Policy,” highlighting the importance of sustainability in meeting the European Green Deal objectives.⁵⁷ The EU plans to achieve these objectives through Trade and Sustainable Development (TSD) chapters in all bilateral trade agreements. TSDs address climate, biodiversity, chemicals/waste, sustainable management and conservation of forests, sustainable fishing, respect of labor rights, and responsible business conduct.⁵⁸

Multilateral organizations are also acting on climate change.

The “Paris Agreement” on climate change, which was signed at the Paris Climate Conference (COP21) in 2015, is a legally-binding international treaty focused on limiting global warming by reducing greenhouse gas emissions. The Agreement is aimed at achieving one of the many United Nations (UN) Sustainable Development Goals (SDGs). The 17 goals cover a wide array of topics, such as gender equality and food security. The box on the right provides a selection of SDGs focused on combating climate change.

The United States was an initial signatory to the Agreement under the Obama Administration, withdrew in 2017 under the Trump Administration, and rejoined in 2021 under the Biden Administration. Signatory nations submit “nationally determined contributions” (NDCs) that summarize their strategies for working towards climate action goals.⁵⁹ The 2021 NDC submitted by the United States sets out U.S. goals for achieving net-zero greenhouse gas emissions by 2050. A key part of the U.S. greenhouse gas reduction commitment includes “reducing emissions from forests and agriculture and enhancing carbon sinks” through nature-based solutions but does not provide specific details.⁶⁰

The 2021 United Nations Food Systems Summit is launching an action plan designed to deliver progress

Several climate and agricultural-related UN SDGs for 2030 focus on:

- Responsible consumption and production through sustainable food systems
- Innovations in climate smart agriculture
- Actions to combat climate change by lowering emissions of greenhouse gases
- Affordable and clean energy

These SDGs are used as a framework for environmental provisions in trade agreements, regulations at the WTO, and guidance for domestic regulations.

“Food Systems Summit x SDGs,” United Nations.

on the UN 2030 SDGs, which call for more sustainability and equity in food systems.⁶¹ The Summit is open to all, including member states and other interested parties like the U.S. agricultural industry. USGC has worked with other U.S. agricultural partners to engage in the Summit process and offer insights into the importance of technology and trade to global food security and sustainability gained over six decades of work developing global markets for U.S. feed grains. The Summit is intended to result in global action towards the 2030 SDGs, increased awareness and public discussion of SDGs, development of guiding principles for governments and other stakeholders, and system creation for reviewing and monitoring outcomes and progress towards SDGs related to food systems.⁶²

The UN isn’t the only multilateral organization concerned with climate change. Others include the World Bank Group and the World Trade Organization (WTO). Through the World Bank Group, countries can secure loans for “climate-smart projects” like a solar energy complex project in Morocco.⁶³ Through

57 “[Commission sets course for an open, sustainable and assertive EU trade strategy](#),” European Commission, 12 February 2021.

58 “[An open, sustainable and assertive trade policy](#),” European Commission.

59 “[The Paris Agreement](#),” United Nations (UN) Climate Change.

60 “[FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies](#),” White House, 22 April 2021.

61 “[Summit Vision](#),” UN Food Systems Summit 2021.

62 “[About the Summit](#),” UN Food Systems Summit 2021.

63 “[Climate Change: Overview](#)” The World Bank Group.

the WTO, members continue to pursue negotiations on environmentally focused topics, and the resulting agreements shape the trade rules member countries must follow.

For example, the WTO Environmental Goods Agreement (EGA) aims to reduce barriers to trade in environmental goods, such as lowering tariffs on a negotiated list. Environmental goods include products designed with environmental and climate protection goals in mind, like generating clean energy and reducing air pollution.⁶⁴ Australia, the United States, Canada, China, and the EU, among others, started EGA negotiations in 2014, but talks stalled in 2016. The EGA may be revisited in the future, as lawmakers have called on the Biden Administration to rejoin talks.⁶⁵ In addition to the EGA, ongoing fisheries negotiations at the WTO are focused on sustainability and protecting marine life.

As the WTO has committed to working towards the UN's 2030 Sustainable Development Goals, we can expect negotiations on agreements with an environmental focus to continue in coming years. The Biden Administration has centered sustainability and combating climate change in all administration policy, including trade, so we can expect increased engagement from the United States in this area in the near future.

Actions against climate change can impact environmental goods and services trade.

Domestic policies that impact production and imports through stringent regulations may promote trade of products that are environmentally friendly, and/or affect commodity prices and availability of certain products that are not environmentally friendly. As sustainability becomes more important to governments

and companies — and more well-defined in laws and regulations — demand for products that are less harmful to the environment will increase. This includes biofuels like ethanol and biodiesel.

The European Union offers a case study for how domestic environmental regulations can link with trade to increase demand for sustainable products. The European Green Deal encompasses many initiatives aimed at the EU reaching carbon neutrality. For example, the Renewable Energy Directive (RED) sets a goal for the EU to use 32% renewable energy by 2030. As the EU increases requirements for renewable energy use, demand for biofuels from top producers like the United States could increase.

The EU Farm to Fork framework is a key part of the EU Green Deal, which aims to make food systems “fair, healthy, and environmentally-friendly.” It sets out timelines for different targets by 2030, such as reducing pesticide use by 50% and increasing organic farming in the EU by 25%.⁶⁶ In 2020, in the absence of EU analysis, USDA released a report modeling the impact of Farm to Fork and its impact on the global market. Since increased regulations on EU farmers’ use of fertilizer and pesticides could mean decreased output, imports by the EU of agricultural products may significantly increase. This is a good or bad thing depending on who you ask. For U.S. farmers hoping to enter the EU market, this could be an opportunity, though barriers created by Farm to Fork standards could limit those trade possibilities. As other policies modeled after Farm to Fork develop globally, it’s important to think about how they will impact demand and what opportunities or challenges these policies will bring.

⁶⁴ [“Environmental Goods Agreement \(EGA\).”](#) WTO.

⁶⁵ [“Environmental Goods Agreement.”](#) USTR.

⁶⁶ [“From Farm to Fork.”](#) European Commission

Trade And Labor Issues

The global community is cracking down on labor violations in supply chains.

The U.S. and many of its trading partners are paying increasing attention to how products are made overseas. Globally, it is estimated that 25 million people work in forced or indentured labor, with even more individuals working in poor conditions.⁶⁷ The trade community is primarily focused on eliminating:

- forced or indentured labor, including forced child labor, and
- exploitative or poor working conditions.

Companies that use forced labor or countries that have low labor standards gain an unfair competitive advantage for their exports by exploiting workers. Both of these issues have been gaining traction recently and are being addressed through domestic regulations, in trade agreements, and multilaterally.

What does U.S. domestic enforcement look like?

All goods made in whole or in part with forced labor are banned from entering the United States. U.S. Customs and Border Protection (CBP) is the agency tasked with investigating alleged use of forced labor and enforcing U.S. laws at the border. Violators may be subject to fines, criminal investigation, and seizure of their products. If goods are suspected to have been produced from forced or child labor anywhere in the supply chain, CBP may detain the shipment and request information to trace back labor practices through the supply chain. In addition, CBP issues Withhold Release Orders (WRO) to detain specific goods from specific companies, regions, or countries when information “reasonably but not conclusively” indicates that forced labor exists in the supply chain. WROs have been applied to many agricultural goods in recent years. See the table on the following page for examples.

Do other markets have similar laws prohibiting forced labor?

Yes, including Canada, the European Union, and the United Kingdom. Australia is also considering a prohibition on goods produced using forced labor. However, none of these countries enforce forced labor bans at the border as the United States does.

As one example, in 2015, the UK passed the Modern Slavery Act to address forced labor and human trafficking. The act provides guidance on transparency in supply chains and requires companies “prepare a slavery and human trafficking statement for each financial year of the organization.”⁶⁸ Since the passage of this law, many other countries have followed suit. Exporters to countries with similar requirements must be prepared to provide documentation showing they have completed sufficient due diligence to ensure no forced labor has taken place at any point in the supply chain.

Trade agreements are being used to address labor standards.

USMCA set a precedent as the first U.S. free trade agreement to prohibit imports produced by forced labor and lay out commitments on worker protections and discrimination in the workplace. To facilitate compliance with the labor provisions, the agreement instituted a Labor Council made up of senior government officials from each country, which meets every two years. The USMCA also provides for enforcement of these commitments, including a rapid response mechanism to provide for independent investigations of labor complaints.⁶⁹

Section 307 of the Tariff Act of 1930 (19 U.S.C.

§ 1307) prohibits the importation of “merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured labor – including forced child labor.”

⁶⁷ Gianopoulos, Kimberly. “Federal Efforts to Prevent Imports Produced Using Forced Labor From Entering the U.S..” U.S. Government Accountability Office, 16 June 2021.

⁶⁸ [Modern Slavery Act 2015: Section 54](#). UK Public General Acts, 2015.

⁶⁹ Ibid.

These enforcement mechanisms were put into use very quickly. In 2020, USTR and the U.S. Department of Labor launched two labor complaints in the first year of USMCA's implementation, both alleging violation of workers' rights in Mexican auto plants.⁷⁰ Following the allegations, Mexico conducted reviews of the auto plants in question and then announced joint remediation plans with the United States.⁷¹

In the future, if a USMCA country refuses to investigate an allegation in their own country, another member country can instigate an independent inspection. Depending on the results of an inspection, the U.S. could retract preferential duties on the concerned products or reject goods from the factory committing the violation.⁷² These enforcement mechanisms give the United States, Mexico, and Canada significant authority to root out labor violations.

Multilateral organizations also engage in setting labor standards and labor enforcement.

The United Nations' International Labor Organization (ILO) has been instrumental in the fight against forced labor by providing widely accepted labor standards and informative data. The ILO works towards achieving the UN Sustainable Development Goal to eradicate forced labor and slavery by 2030 and end all child labor by 2025.⁷³ ILO data and insights help inform the global effort to eradicate forced labor. The ILO also provides internationally recognized labor standards including the 1998 Declaration on Fundamental Principles and Rights at Work, which was used as a standard for the USMCA labor provisions.

The World Trade Organization (WTO) does not yet play a significant role in combating forced labor. The United States, along with WTO members like the European Union, have called for the WTO to play a greater role in workplace abuses.⁷⁴ In May 2021, USTR submitted a proposal to the WTO urging members to address forced labor in the ongoing fisheries subsidies negotiations.

Recent Active WROs on Agricultural Imports in the United States



China

Cotton, tomatoes, and downstream products from Xinjiang region
Year Implemented: 2021



Malaysia

Palm oil and palm oil products from two companies
Year Implemented: 2020



Malawi

Tobacco and tobacco products from Malawi
Year Implemented: 2019

USTR Ambassador Katherine Tai has been vocal about the importance of using trade policy to address labor concerns.⁷⁵ In reference to concerns of forced labor on fishing vessels, she has asked WTO members to consider using a "full range of trade tools" to combat forced or exploitative labor conditions, including recognition of the forced labor issue and additional transparency on fishing vessels.⁷⁶ If this idea gains steam, the WTO may have more to say on forced labor in the future.

⁷⁰ ["First USMCA Labor Council meeting scheduled for this month."](#) Inside U.S. Trade, 10 June 2021.

⁷¹ ["U.S., Mexico announce remediation plan, new CBA vote for GM auto plant."](#) Inside U.S. Trade, 8 July 2021.

⁷² ["U.S. launches first USMCA complaint against GM plant in Mexico."](#) Inside U.S. Trade, 12 May 2021.

⁷³ ["U.N. Security Council approves tougher action on human trafficking."](#) Reuters, 21 November 2017.

⁷⁴ ["Trade and Labor Standards."](#) WTO.

⁷⁵ Press Release. ["Remarks from Ambassador Katherine Tai on Trade Policy, the Environment and Climate Change."](#) USTR, 15 April 2021.

⁷⁶ Press Release. ["United States Urges WTO Members to Address Forced Labor on Fishing Vessels in Ongoing Fisheries Subsidies Negotiations."](#) USTR, 26 May 2021.

NGOs, the media, and the private sector are working to combat forced labor.

Pressure from news outlets and NGOs reporting on alleged forced labor in supply chains as well as repercussions stemming from CBP investigations have brought labor concerns to the forefront of companies' sourcing and supply chain goals. By investigating, identifying, and removing forced labor from supply chains, companies directly decrease the supply of goods produced using forced labor.

In the coming years, importers and exporters will see further conversation, increased investigation and enforcement by U.S. CBP, more countries engaging, and a global push by the UN and potentially at the WTO to combat exploitative labor practices.

Notes:

HOW POLITICS IMPACT THE USE OF TRADE TOOLS AND TRADE POLICY

U.S. Domestic Policy Can Impact U.S. Trade Policy.

In this backgrounder, we have covered trade tools and trade policy. The utilization of trade tools and development of trade policies often change when political power shifts among partners, in the executive and/or legislative branches of government. For example, the Trump Administration was much more at ease labeling currency manipulators, while the Biden Administration has turned to bilateral engagement to address currency manipulation. While we saw less emphasis on environmental policy during the Trump Administration, Biden Administration officials have often stated climate change as a principal focus. This links to trade policy items like carbon border taxes.

As administrations change, policy priorities change, which means U.S. trade policy changes. In the 2016 election, then-candidate Donald Trump successfully ran on the promise of bringing jobs to the rust belt. To do this, the United States levied steel and aluminum duties on certain countries — including allies — with the hope of preventing domestic industry from being priced out. The United Steel Workers union has continued to urge President Biden to maintain steel duties. Domestic industry can be impactful in shaping the U.S. trade policy.

Geopolitics also impacts trade policy.

Regardless of a change in political leadership, geopolitics plays an important role in developing trade policy. U.S.-China foreign policy and trade relations are a key example of this. While the United States and China negotiated a trade pact, tensions are still high. In fact, the agreement was considered only a phase-one deal with more work to be done. U.S. exporters continue to watch how the deal is implemented and how the Biden Administration engages to avoid any setbacks if U.S.-China relations sour.

Further, the United States continues to apply Section 301 duties to most Chinese goods in response to intellectual property theft practices. As a result, China maintains its retaliatory duties on U.S. goods. And despite whoever is in power, each country continues to investigate AD/CVD cases against each other.

In short, when tensions are high, trade tools and trade policy are often used by governments to bolster foreign policy engagement, for better or worse. Understanding the mechanisms used to create and enforce these policies will help farmers and others in the agriculture sector better develop trade policy priorities and communicate their trade policy needs.