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CALIFORNIA AGRICULTURE IN WORLD EXPORT MARKETS – TWENTY YEARS LATER

Editor's Note: For the 20th Anniversary Volume of the San Joaquin Agricultural Law Review, *Julian B. Heron, Jr., accepted our invitation to pen an update to an Article written by himself and David B. Friedman for Volume 1 of the* San Joaquin Agricultural Law Review. *The original Article is included as a counterpoint to this update in the Appendix.*

I. INTRODUCTION

Upon review of the Article, *New Challenges for California Agriculture in World Export Markets*, from the 1991 *San Joaquin Agricultural Law Review*, it is visible that while the facts substantiating this Article have been significantly altered over the past two decades, the basic premise remains true: "California agriculture faces challenges today due to a continually changing world order and its increasing reliance on international agricultural trade. The state, and the country as a whole, has been affected . . . by this globalization of the agricultural trade industry."[1] Twenty years ago, the United States' ("U.S.") trade interests focused on the Japanese and European markets and an imminent Free Trade Agreement ("FTA") with Mexico.[2]

Today, the agricultural trade interests of California and the United States concern China, the preeminent Asian-Pacific market, as well as Canada and Mexico, under the North American Free Trade Agreement ("NAFTA"), and the proposed FTA with Korea. Vast changes over the

[1] David B. Friedman & Julian B. Heron, *New Challenges for California Agriculture in World Export Markets*, SAN JOAQUIN AGRIC. L. REV. 1, 31 (1991).

[2] *Id.* at 3.

past two decades, including the United States' participation in FTAs, participation in the Trans-Pacific Partnership and involvement in the World Trade Organization ("WTO") Doha Round, have impacted U.S. and California agriculture, and their role in world export markets.

The importance of participation in the world export market by the United States and California is widely recognized. Agricultural exports for the United States reached over $108 billion in fiscal year ("FY") 2010[3] with California agricultural exports totaling over $15 billion.[4] Agriculture remains a major focus of U.S. and California trade policy.

Part I demonstrates the agricultural trade relationship between the United States and China, as the leading Asian-Pacific market. While twenty years ago Japan stood as the preeminent Pacific Rim market, today China has taken that role. Since rising to this prominent economic position, China's agricultural industry has been both advantageous and problematic for the stability of California agriculture.

Part II discusses NAFTA and its effect on U.S. and California agricultural trade markets. NAFTA has been an advantageous agreement for all member countries, and a positive development for U.S. agricultural trade. Trade relations between Canada, as the number one agricultural export destination for the United States,[5] and Mexico as the third,[6] have clearly developed over the past twenty years as a result of NAFTA.[7] While this trade agreement has mainly been beneficial for U.S. and California agricultural industries, recent tensions with Mexico pose obstacles for the success of California agriculture.

Part III analyzes the transformation of the United States' involvement in international trade over the past two decades. The United States is now engaged in numerous agreements that are slowly removing tariff and non-tariff barriers to trade.[8] The Trans-Pacific Partnership is being

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[3] *Foreign Agricultural Trade of the United States (FATUS): Monthly Summary*, WWW.ERS.USDA.GOV, http://www.ers.usda.gov/Data/FATUS/MonthlySummary.htm (last visited Feb. 7, 2011).

[4] Global Agricultural Trade System Query – BICO (HS-6) (California/World Total/Agricultural Total), WWW.FAS.USDA.GOV, http://www.fas.usda.gov/gats/expressquery1.aspx (last visited Feb. 7, 2011).

[5] U.S. DEP'T OF AGRIC., TOP 15 U.S. AGRICULTURAL EXPORT DESTINATIONS, BY FISCAL YEAR (2010) [hereinafter TOP 15], *available at* http://www.ers.usda.gov/data/fatus/DATA/Xcytop15.xls [hereinafter Top 15] (last updated Nov. 10, 2010).

[6] *Id.*

[7] FOREIGN AGRIC. SERV., U.S. DEP'T OF AGRIC., FACT SHEET: NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) 1, (Jan. 2008) *available at* http://www.fas.usda.gov/info/factsheets/NAFTA.asp.

[8] *U.S. Free Trade Agreements*, EXPORT.GOV, http://www.export.gov/fta/ (last visited Feb. 9, 2011).

negotiated[9] and, if completed, should expand agricultural trade in the Pacific Rim. Finally, the United States' participation in the Doha Round negotiations has led towards the continual expansion of market access for agricultural trade.[10] These developments in international trade and the growing complexity of trade relations have affected California and the United States as a whole, and in their respective roles in the international export market. Table 1 demonstrates the growth of U.S. agricultural exports to Canada, China, Japan, and Mexico over the past twenty years.

Table 1[11]

Value of U.S. Agricultural Exports 1990-2010
In U.S. $ (Billions)

U.S. Exports To:	1990	1995	2000	2005	2010
Canada	3.7	5.8	7.5	10.38	16.56
China	.913	2.4	1.46	5.25	15
Japan	8.2	10.67	9.3	7.85	11.2
Mexico	2.67	3.7	6.3	9.25	13.9

II. TRADE WITH CHINA

Twenty years ago, Japan stood as California's chief trade interest in the Pacific Rim.[12] California was dependent upon the Japanese market far more than the rest of the United States.[13] Due to consumer interest and its stable economy, Japan had great need of California agricultural imports.[14] Conversely, the United States had a tumultuous relationship with Japan arising from the decline of American industry and the rise of Japanese industrialization and direct foreign investment.[15] These tensions greatly affected California's approach to trade with Japan. As its

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[9] OFFICE OF THE U.S. TRADE REPRESENTATIVE, EXEC. OFFICE OF THE PRESIDENT, TRANS-PACIFIC PARTNERSHIP FREQUENTLY ASKED QUESTIONS, *available at* http://www.ustr.gov/webfm_send/1711.

[10] IAN F. FERGUSSON, CONG. RESEARCH SERV., WORLD TRADE ORGANIZATION NEGOTIATIONS: THE DOHA DEVELOPMENT AGENDA (2008) *available at* http://www.nationalaglawcenter.org/assets/crs/RL32060.pdf.

[11] TOP 15, *supra* note 5.

[12] Friedman, supra note 1, at 2.

[13] *Id.* at 11.

[14] *Id.*

[15] *See id.* at 14.

second largest export destination, Japan stood as a vital market for California's economic success and therefore, required strategic planning to establish an independent approach to agricultural trade in light of the United States' contrary position.[16]

Today, China stands as the United States' preeminent Pacific Rim market. While two decades ago California's trade interests were divergent from the United States with regards to Japan, today both California and the United States have largely benefitted from China's rise in the international market. This is not true for two California agricultural industries: the cling peach and garlic industries.

A. Agricultural Trade Relations Between the United States and China

The United States and China have established substantial economic ties over the past three decades. Since the 1980's, China has taken impressive strides to remove the historical bias against agriculture. Taxes that previously hindered rural areas have been eliminated and the government has poured investments into rural infrastructure, revitalizing the agricultural economy.[17] China's continual need for imports of soybeans and cotton is a demand that U.S. agriculture can supply.[18] With a growing population, China will continue to stand as a valuable export market for U.S. agriculture. China is now the number two economy in the world,[19] and may pass the United States in the future.

Agricultural trade with China has developed over the past two decades due, in large part, to the soybean, grain and cotton industries.[20] Trade revenue between the United States and China "rose from $2 billion in 1979 to an estimated $459 billion in 2010."[21] During FY 2010, the United States exported over $15 billion in agricultural goods to China.[22] U.S. soybean shipments to China for FY 2010 reached a record high of $9.3 billion.[23] High "demand throughout the year, combined with less

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[16] *Id.* at 11.

[17] *History of Agricultural Policy*, ERS/USDA BRIEFING ROOM – CHINA: POLICY, http://www.ers.usda.gov/briefing/China/ historypolicy.htm. (last visited Feb. 22, 2011).

[18] *See* Oliver Flake, *China Emerges as the Second Largest U.S. Agricultural Export Market*, FOREIGN AGRICULTURAL SERVICE (Dec. 20, 2010), http://www.fas.usda.gov/China%20Import122010.pdf.

[19] David Barboza, *China Passes Japan as Second-Largest Economy*, N.Y. TIMES, Aug. 16, 2010, at B1, *available at* http://www.nytimes.com/2010/08/16/business/global/16yuan.html?_r=1&pagewanted=print.

[20] Flake, *supra* note 18.

[21] *China-U.S. Trade Issues*, CONG. RESEARCH REPORTS (Jan. 7, 2011), http://www.congressionalresearchreports.com/report /2011/01/07/china-us-trade-issues.

[22] Flake, *supra* note 18.

[23] *Id.*

competition from South American supplies, led to [these] sustained soybean shipments."[24] In the second half of 2010, droughts and floods in Australia, Russia, Brazil and Argentina created a shortage in imports of agricultural commodities such as wheat, corn, and soybeans. California exports these items to China along with almonds, citrus and other high value items. With high demand for these commodities, the market for agricultural imports from the United States increased and will likely continue to increase throughout the coming year.

Another factor that has spurred an increase in the export of U.S. soybeans has been an augmented demand from the Chinese pork and poultry industries. Oilseed products accounted for sixty-four percent of U.S. agricultural exports to China in FY 2010.[25] Rising demand and high Chinese corn prices led to a boost of U.S. distillers' dried grains shipments, rising from $35 million in FY 2009 to $447 million in FY 2010.[26] This increase in agricultural exports not only benefits the U.S. economy as a whole, but also stimulates demand for additional agricultural employment.

"In addition to soybeans, China also imports large quantities of cotton and hides."[27] The textile and apparel industry continues to expand as a result of increased disposable income and perpetual population growth, allowing for this increase in cotton imports.[28] According to China's National Statistics Bureau, urban per capita spending on clothing doubled between 1997 and 2007.[29] U.S. cotton has become a major export to China, totaling $1.7 billion in FY 2010.[30] Cotton exports accounted for twelve percent of FY 2010 U.S. exports to China.[31]

The United States must sustain China's imports of bulk commodities and further penetrate China's flourishing market for higher-valued products by increasing market access and market promotion programs. "Further, the emergence of food safety as a top bilateral policy issue during 2007 demands that USDA's long-standing partnership with China's trade and government be strengthened, including enhanced technical engage-

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[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] Oliver Flake & Hui Jiang, *India and China: Divergent Markets for U.S. Agricultural Exports*, FOREIGN AGRICULTURAL SERVICE (Feb. 24, 2010), http://www.fas.usda.gov/ltp/china/India_Chinamarket022010.pdf.

[28] *Id.*

[29] *Id.*

[30] Global Agricultural Trade System Query – BICO (HS-10) (China/Cotton), WWW.FAS.USDA.GOV, http://www.fas.usda.gov/gats/expressquery1.aspx (last visited Feb. 7, 2011).

[31] Flake, *supra* note 18.

ment between our regulatory officials and scientists."[32] With an ever increasing population, there comes an increase in demand for agricultural imports. It is expected that the United States will continue to increase exports to China in the coming years to supply this need.

B. Agricultural Trade Relations Between California and China

The California agricultural industry has experienced both benefits and disadvantages of China's prominent position in international trade. California agricultural exports to China in 2010 reached more than $940 million.[33] Agricultural exports to China have steadily increased over the past twenty years, benefitting California famers, agricultural cooperatives and the economy as a whole.

The table below shows California's top twenty international agricultural exports from 2007-2009.

Table 2[34]

California's Top Twenty Agricultural Exports From 2007-2009

2009 Rank	Commodity	2007	2008 *($1000)*	2009
1	Almonds	1,879	1,899	1,925
2	Rice	341	552	877
3	Wine	865	910	812
4	Pistachios	364	581	682
5	Walnuts	444	491	666
6	Dairy and Products	930	1,214	608
7	Table Grapes	558	618	594
8	Tomatoes, Processed	300	490	458
9	Oranges and Products	276	438	419
10	Lettuce	291	338	321
11	Strawberries	261	303	297
12	Raisins	213	300	286

[32] *Agricultural Economy and Policy Report – China,* FOREIGN AGRIC. SERV. (Feb. 2009), www.fas.usda.gov/country/China/China%20Agricultural%20Economy%20and%20Policy%20Report.pdf.

[33] Global Agricultural Trade System Query – BICO (HS-6) (California/China/Agricultural Total), WWW.FAS.USDA.GOV, http://www.fas.usda.gov/gats/expressquery1.aspx (last visited Feb. 8, 2011).

[34] *Agricultural Statistical Review*, 2010-2011 CAL. AGRIC. RESOURCE DIRECTORY 17, 22 (2011), *available at* http://www.cdfa.ca.gov/Statistics/PDFs/AgResourceDirectory_2010-2011/2AgOvStat10_WEB.pdf.

13	Cotton	572	377	253
14	Beef and Products	199	228	205
15	Prunes	175	179	155
16	Lemons	163	168	143
17	Peaches and Nectarines	132	174	124
18	Broccoli	118	120	113
19	Carrots	100	109	100
20	Raspberries	65	85	86

In 2009, China stood as the fourth largest export market for California agriculture.[35] The primary commodities exported were almonds, pistachios, and walnuts.[36] While California's trade relationship with China has been mainly advantageous, the cling peach and garlic industries face direct competition from China. China's garlic exports have caused the California garlic industry to virtually go out of business. Chinese exports of cling peaches are also hurting the California cling peach industry.

In 2001, the United States imported 43,000 cases of canned peaches from China.[37] Only eight years later, in 2009, 3.1 million cases of canned peaches were imported to the United States, 2.25 million of which came from China.[38] This accounts for seventy-three percent of canned peach imports for 2009.[39] Since 1960, acreage of cling peaches in California has decreased from over 51,000 to 23,000.[40] China's low labor and production costs resulting in low priced exports of cling peaches, has caused the California cling peach industry to steadily decline. With losses in cling peach production and sales, comes loss of jobs for agricultural workers and farmers.

The California garlic industry also faces competition from China as imports have steadily increased over the past decade. Fresh garlic grown in California in 2003 equaled 160 million pounds.[41] However, in 2007, only 95 million pounds were grown.[42] Conversely, fresh garlic imported

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[35] *Id.*

[36] *Id.*

[37] Anne Gonzales, *Peach Growers Fight Imports*, SACRAMENTO BEE, (May 2 2010), *available at* http://www.sacbee.com/2010/05/02/2719156/peach-growers-fight-imports.html.

[38] *Id.*

[39] *Id.*

[40] Reed Fuji, *Peach Industry Clings to Hope*, RECORD (Jan. 9, 2011), http://www.recordnet.com/apps/pbcs.dll/article?AID=/20110109/A_BIZ/101090307/-1/A_NEWS05.

[41] Scott Horsley, *U.S. Growers Say China's Grip On Garlic Stinks*, NPR (June 30, 2007), http://www.npr.org/templates/story/story.php?storyId=11613477.

[42] *Id.*

from China in 2003 equaled 55 million pounds,[43] but in 2007 garlic imports reached 160 million.[44] "Since 2001, imports of Chinese garlic have multiplied fifteen-fold . . . ."[45] Today, the California garlic industry has been virtually eliminated due to this competition.

China's rise in the world export market has stimulated the U.S. soybean, grain, and cotton industries and California's specialty crops. While agricultural exports to China are expected to continue to increase, it remains to be seen how China's exports into the world market will affect California in the coming decades.

III. THE NORTH AMERICAN FREE TRADE AGREEMENT AND ITS EFFECT ON THE UNITED STATES AND CALIFORNIA AGRICULTURAL TRADE MARKETS

Twenty years ago, an FTA with Mexico was imminent[46] – a prospect viewed with hesitation by famers and some of the United States' agricultural community. With NAFTA now established, and its provisions implemented, it is seen that the United States has benefitted from this trade agreement. While NAFTA has certainly benefitted the United States and California agricultural industries, recent conflict between the United States and Mexico threatens the success of California agricultural trade with Mexico.

With the adoption of NAFTA in 1994, most non-tariff barriers to agricultural trade between the United States, Canada, and Mexico were eliminated. Many tariffs were eliminated immediately, with others removed over periods of five to fifteen years, resulting in full implementation on January 1, 2008.[47] NAFTA has removed barriers to trade, eliminated tariffs and opened markets, vastly improving the success of North American trade. NAFTA stands as a model for effective trade relations in the international export market.

According to the USDA, "from 1992-2007, the value of U.S. agricultural exports climbed sixty-five percent. Over that same period, U.S. farm and food exports to Canada and Mexico grew by 156 percent."[48] U.S. exports of soybean meal, red meats, and poultry all reached record levels in 2006.[49] "In 2007, Canada and Mexico were, respectively, the

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[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] Friedman, supra note 1, at 3.
[47] FOREIGN AGRIC. SERV., *supra* note 7, at 1.
[48] *Id.*
[49] *Id.*

first and second largest export markets for U.S. agricultural products. Exports to these two markets combined were greater than exports to the next six largest markets combined."[50] NAFTA has lifted the United States economically, increased agricultural exports, and exemplified positive trade relations for the international trade community. It is interesting to note that this agreement has been so successful that most California famers no longer consider Canada and Mexico as export markets. They consider sales to these countries as domestic sales, even though they are not.

A. Agricultural Trade Relations Between the United States and Canada Under the North American Free Trade Agreement

Negotiations towards a free trade agreement between the United States and Canada began in 1985.[51] "Sixteen months later, the two nations . . . agreed to the Canada-U.S. Free Trade Agreement . . . that placed Canada and the United States at the forefront of trade liberalization."[52] Canada has been a steadily growing market for U.S. agriculture under the Canada- U.S. Free Trade Agreement, with U.S. agricultural exports reaching a record $15 billion in 2009,[53] up from $3.7 billion in 1990.[54] "From 1989 to 1998, the Canada-U.S. Free Trade Agreement and NAFTA dismantled all tariff and quota barriers to Canada-U.S. agricultural trade, [excluding] U.S. imports of dairy products, peanuts, peanut butter, cotton, sugar, and sugar-containing products and Canadian imports of dairy products, poultry, eggs, and margarine."[55] Canada-U.S. agricultural trade has steadily increased over the past twenty years. "Between 1988 and 2009, U.S. agricultural exports to Canada expanded at a compound annual rate of 7.0 percent, while agricultural imports from Canada grew at a rate of 7.5 percent."[56]

"Key elements of the [Canada-U.S. Free Trade] Agreement included the elimination of tariffs and the reduction of many non-tariff barriers to

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[50] *Id.*

[51] *North American Free Trade Agreement*, NAFTANOW.ORG, http://www.naftanow.org/ about/ default_en.asp (last modified Oct. 16, 2009).

[52] *Id.*

[53] Global Agricultural Trade System Query – BICO (HS-10) (Canada/Agricultural Products), WWW.FAS.USDA.GOV, http://www.fas.usda.gov/gats/expressquery1.aspx (last visited Feb. 8, 2011).

[54] TOP 15, *supra* note 5.

[55] *NAFTA, Canada, and Mexico: Canada Trade*, ERS/USDA BRIEFING ROOM – NAFTA, http://www.ers.usda.gov/Briefing/NAFTA/CanadaTrade.htm. [hereinafter *Canada Trade*] (last visited Feb. 8, 2011).

[56] *Id.*

trade."[57] The Canada-U.S. FTA was "among the first trade agreements to address trade in services" and "included a dispute settlement mechanism for the fair and expeditious resolution of trade disagreements."[58] The FTA established a revolutionary system for the "bi-national review of trade remedy determinations, providing an alternative to domestic judicial review."[59] Essentially, "Canada and the United States agreed to remove bilateral border measures on traded goods, [including] the removal of tariffs on goods such as meat products, fruits and vegetables, beverages, processed foods, live animals, wine, clothing, fuels, electrical goods and machinery."[60]

"In 2009, Canada's total agri-food and seafood exports to all countries equaled nearly $34 billion, and corresponding imports approached $26.6 billion . . . The United States is Canada's largest agricultural trading partner, buying 51 percent of Canadian exports and supplying 59 percent of Canadian imports."[61] As the "leading agricultural trade partner" of the United States, "Canada accounted for 16 percent of U.S. agricultural exports and 21 percent of imports" in 2009.[62] Fruits, vegetables, grains and meat "accounted for about 60 percent of U.S. agricultural exports to Canada in 2009."[63] Leading exports to Canada were "beef ($621 million), pork ($501 million), soybean meal ($430 million) and lettuce ($399 million)."[64]

Canada stands as the primary export market for California agriculture. The table below displays this relationship.

Table 3[65]

California's Top 10 Agricultural Export Markets, 2009

Rank	Country	Export Value	Leading Exports
	(Millions)		
1	Canada	2.557	Lettuce, Strawberries, Wine
2	European Union-27	1.988	Almonds, Wine, Pistachios

[57] *North American Free Trade Agreement*, *supra* note 51.
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Canada Trade*, *supra* note 55.
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Agricultural Statistical Review*, *supra* note 34, at 22.

3	Japan	1.119	Rice, Almonds, Wine
4	China/Hong Kong	985	Almonds, Pistachios, Walnuts
5	Mexico	551	Dairy and Products, Processed Tomatoes, Walnuts
6	South Korea	347	Oranges, Almonds, Walnuts
7	India	214	Almonds, Cotton, Pistachios
8	United Arab Emirates	213	Almonds, Walnuts, Hay
9	Australia	202	Table Grapes, Rice, Walnuts
10	Taiwan	191	Rice, Table Grapes, Peaches and Nectarines

The benefits of free trade with Canada have only continued to grow over the past twenty years under NAFTA. Agricultural exports have increased by $10 billion,[66] and Canada now stands as the number one agricultural export market for the United States.[67]

B. Agricultural Trade Relations Between the United States and Mexico Under the North American Free Trade Agreement

Non-tariff barriers affecting agricultural trade between the United States and Mexico have been greatly reduced over the past fifteen years under NAFTA. "Prior to January 1, 1994, the single largest barrier to U.S. agricultural sales was Mexico's import licensing system. However, this system was largely replaced by tariff-rate quotas or ordinary tariffs."[68] Many tariffs were eliminated immediately, while others were eliminated over fifteen years.[69] On January 1, 2008, most agricultural tariffs between Mexico and the United States were eliminated.[70] The tariff eliminations apply to a broad range of agricultural products.

Initially, "[b]oth Mexico and the United States protected their import-sensitive zones with longer transition periods, tariff-rate quotas, and . . . special safeguard provisions."[71] "However, now that the fifteen year transition period has passed," Mexico and the United States have estab-

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[66] *See* TOP 15, *supra* note 5

[67] *Canada Trade*, *supra* note 55.

[68] FOREIGN AGRIC. SERV., *supra* note 7, at 2.

[69] *Id.*

[70] *Id.*

[71] *Id.*

lished free trade for all agricultural products.[72] NAFTA also established "strict rules of origin to ensure that maximum benefits accrue only to those items produced in North America."[73]

The cotton industry has greatly benefited from NAFTA as new rules of origin increased demand for U.S. cotton in Canada and Mexico.[74] The ten percent tariff on cotton imports in Mexico has been eliminated, increasing U.S. cotton exports to Mexico from 558,000 bales in 1995 to 2.2 million bales in 2002.[75]

Mexico is a prominent participant in international agricultural trade. Mexico's agricultural food exports in 2009 totaled $15.2 billion while imports totaled $18.9 billion.[76] The United States purchased "76 percent of Mexican exports and suppl[ied] 73 percent of the country's imports in this category."[77]

With a growing population, an expanding economy, and a more market-oriented agricultural sector, Mexico has become the third-largest agricultural trading partner of the United States (following Canada and the 27 countries of the European Union) in terms of exports and imports combined. In 2009, Mexico accounted for 13.1 percent of U.S. agricultural exports and 15.9 percent of imports, as defined and categorized by the United States Department of Agriculture. Between 1993 (the last year prior to NAFTA's implementation) and 2009, U.S. agricultural exports to Mexico expanded at a compound annual rate of 8.3 percent, while agricultural imports from Mexico grew at a rate of 9.4 percent.[78]

"From 2001 to 2006, U.S. farm and food exports to Mexico climbed by $3.6 billion to $10.8 billion" under NAFTA.[79]

The United States and Mexico have an agricultural trade relationship that is largely complementary, as the United States and Mexico produce and export diverse commodities.[80] "Grains, oilseeds, meat, and related products make up about three-fourth of U.S. agricultural exports to Mexico."[81] Mexico does not produce high quantities of grains and oilseeds,

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[72] *Id.*

[73] *Id.*

[74] *Trade and Agriculture: What's At Stake for California?*, FOREIGN AGRIC. SERV. (Sep. 2, 2009), http://www.fas. usda.gov/info/factsheets/wto/states/ca.pdf.

[75] *Id.*

[76] *NAFTA, Canada, and Mexico: Mexico Trade*, ERS/USDA BRIEFING ROOM – NAFTA, http://www.ers.usda.gov/Briefing/NAFTA/MexicoTrade.htm. [hereinafter *Mexico Trade*] (last visited Feb. 9, 2011).

[77] *Id.*

[78] *Id.*

[79] FOREIGN AGRIC. SERV., *supra* note 7, at 1.

[80] *Mexico Trade*, *supra* note 76.

[81] *Id.*

and therefore, food and livestock producers import large volumes of these commodities to make value-added products.[82] Nearly "three-fourths of U.S. agricultural imports from Mexico consist[] of beer, vegetables and fruit."[83] Mexico's favorable climate, whose growing season complements that of the United States allows for a wide range of fruits and vegetables year-round.[84]

C. Agricultural Trade Relations Between California and Mexico under the North American Free Trade Agreement

NAFTA has benefitted not only the U.S. export market as a whole, but California agricultural exports in particular. Through the elimination of tariff barriers to trade, California agricultural exports to Mexico totaled $1.3 billion in 2009.[85] Mexico stands as California's fifth-largest agricultural export market[86] and California farmers rely heavily on the continued success of this relationship.

The California cheese industry has benefitted greatly from the FTA with Mexico. According to the California Milk Advisory Board, "California ships 15 million to 20 million pounds of cheese to Mexico each year for its food service industry, while 10 million to 16 million pounds of California cheese go to Mexico's retail market."[87] Mexico also stands as the "second-largest market for California table grapes, with exports valued at $60 million in 2008."[88]

While NAFTA has largely been a positive development for California agriculture, tensions have recently arisen between the United States and Mexico that have posed challenges to California agricultural trade with Mexico. In 2007, the United States launched a pilot program, which was negotiated under the NAFTA agreement, to allow Mexican long-haul trucks to operate on U.S. roads.[89] This program was terminated by Congress, despite the expressed agreement in NAFTA.[90] Mexico retaliated

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[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] Global Agricultural Trade System Query – BICO (HS-6) (California/Mexico/Agricultural Total), WWW.FAS.USDA.GOV, http://www.fas.usda.gov/gats/expressquery1.aspx (last visited Feb. 8, 2011).

[86] *Agricultural Statistical Review*, *supra* note 34, at 22.

[87] Ching Lee, *Mexico ratchets up its retaliation in truck dispute*, CAL. FARM BUREAU FED'N (Aug. 25, 2010), http://ip67-152-88-194.z88-15267.customer.algx.net/agalert/AgAlertStory.cfm?ID=1596&ck=309 FEE4E54 1E51DE2E41F21BEBB342AA.

[88] *Id.*

[89] *Background on Mexican Trucking Issue and Pork*, NAT'L PORK PRODUCERS COUNCIL, http://nppc.org/issues/mexicantrucking.htm. (last visited Feb. 22, 2011).

[90] *Id.*

by imposing tariffs on eighty-nine U.S. products.[91] These tariffs totaled $2.4 billion in March 2009.[92] With the U.S. government's lack of action to comply with its agreement, Mexico again increased these tariff rates in August of 2010.[93] "The new tariffs, ranging from 5 percent to 25 percent . . . involve a total of ninety-nine U.S. products, fifty-four of which are farm-related."[94] Many of these products are grown in California.

This situation poses challenges to California agriculture. Farmers and cooperatives face increasingly high tariff rates and continually suffer major economic losses. In 2009, after the tariffs took effect, California shipped 1.7 million nineteen-pound boxes of grapes to Mexico, compared to 5.5 million boxes in 2008, a seventy percent drop.[95] California table grapes have been severely damaged by the forty-five percent tariff imposed last year.[96] This was the single-highest tariff rate imposed during the dispute. "There is also concern that the new tariffs will raise prices on California cheeses so high that Mexican consumers w[ill] not be able to afford them."[97] This will greatly reduce California market share in Mexico.[98]

Mexico, California's fifth-largest agricultural export market and the United States' third largest trading partner, believes the trucking ban violates NAFTA.

Many farm groups, including the California Farm Bureau Federation, have urged the Obama Administration to resolve the conflict, saying the tariffs make the affected products more expensive in Mexico, resulting in lost market share for the state. Agricultural products added to the list include pork products, certain cheeses, pistachios, oranges and grapefruit, apples, sweet corn, and oats and grains. Other California agricultural products such as table grapes, strawberries, lettuce, cherries, almonds, apricots, Christmas trees, pears, dates, onions and wine have been on the list since March 2009.[99]

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[91] Lee, *supra* note 87.

[92] Ching Lee, *Farmers, exporters press for resolution of Mexico trade flap*, CAL. FARM BUREAU FED'N (February 14, 2011), http://www.cfbf.com/agalert/AgAlertStory.cfm?ID=1328&ck=4C22BD444899D3B6047A10B20A2F26DB.

[93] Lee, *supra* note 87.

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *Id.*

The U.S. Department of Transportation released a concept paper in January of 2011.[100] It addressed the transportation conflict and presented solutions. A formal proposal will likely be released in the coming months. This issue must be addressed to restore the peaceable trade relations established under NAFTA between the United States and Mexico. This will relieve California farmers of the heavy burden these tariffs are imposing.

IV. DEVELOPMENTS IN INTERNATIONAL TRADE: 1991-2011

Over the past twenty years, the United States has expanded its role in international trade. The establishment of FTAs has allowed for greater market access. The U.S. participation in the Trans-Pacific Partnership will expand this further, if it is completed.

A. Free Trade Agreements

Today, the United States has established FTAs with Australia, Bahrain, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Morocco, Nicaragua, Oman, Peru and Singapore.[101] FTAs with Colombia, Korea and Panama are pending Congressional approval.[102] These agreements aim to eliminate all tariff and non-tariff barriers to trade. Participation in FTAs allows for greater market access, improved environmental standards and labor rights and the establishment of rules on foreign investment. The Central America-Dominican Republic-United States Free Trade Agreement ("CAFTA-DR") has been particularly beneficial for the United States in opening market access and reducing barriers to trade. This FTA gives the United States access to these countries' markets. These countries already exported duty free to the United States. Now, the United States receives similar treatment from these countries.

It is anticipated that the pending FTA with Korea will go into effect this year. This will allow for greater market access and trade cooperation with one of the largest economies in the world. This FTA, if approved by Congress, will be a great benefit to California.

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[100] U.S. DEP'T OF TRANSP., PHASED U.S.-MEXICO CROSS BORDER LONG HAUL TRUCKING PROPOSAL 1 (Jan. 6, 2011), *available at* http://www.fmcsa.dot.gov/documents/cross-border/Concept-Trucks-English.pdf.

[101] *U.S. Free Trade Agreements*, *supra* note 8.

[102] *Id.*

1. Central America-Dominican Republic-United States Free Trade Agreement

On August 5, 2004, the United States entered into the CAFTA-DR,[103] the first free trade agreement between the United States and a group of developing economies.[104] "This agreement is creating new economic opportunities by eliminating tariffs, opening markets, reducing barriers to services, and promoting transparency. It is facilitating trade and investment among the countries and furthering regional integration."[105]

Central America and the Dominican Republic represent the third largest U.S. export market in Latin America, behind Mexico and Brazil. U.S. exports to the CAFTA-DR countries were valued at $19.5 billion in 2009. Combined total two-way trade in 2009 between the United States and Central America and the Dominican Republic was about $37.9 billion.[106]

"U.S. exports of agricultural products to CAFTA-DR countries totaled $3 billion in 2009," and as a group CAFTA-DR countries are the 6th largest U.S. agricultural export market.[107] Leading categories of exports include coarse grains totaling $580 million, wheat totaling $397 million, soybean meal totaling $382 million and rice totaling $223 million.[108] Under the CAFTA-DR, a two-track approach will be established for dairy product exports with the goal of achieving free trade within the next two decades.[109] First, reciprocal duty-free tariff rate quotas must be established.[110] The second step involves the immediate elimination of in-quota tariffs on dairy products.[111] This is necessary because U.S. dairy products shipped to Central America face a range of tariff rate quotas and import tariffs as high as sixty-five percent.[112] "From 2001 through 2003, U.S. suppliers annually shipped on average 17,880 metric tons of dairy products valued at $44.1 million to all six countries combined."[113] It is

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[103] *CAFTA-DR (Dominican Republic – Central America FTA)*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, http://www.ustr.gov/trade-agreements/free-tradeagreements/cafta-dr-dominican-republic-central-america-fta (last visited Feb 9, 2011).

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] *What's at Stake for Dairy?*, FOREIGN AGRIC. SERV. (May 2005), http://www.fas.usda.gov/info/factsheets/CAFTA/dairy.asp.

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Trade and Agriculture: What's At Stake for California?*, *supra* note 74.

hoped that these goals will be achieved, and trade with Central America will continue to flourish.

2. Korea-United States Free Trade Agreement

The United States has negotiated a FTA with South Korea, also referred to as the KORUS FTA.[114] South Korea's $1 trillion economy grew five percent last year, ranking as the fifteenth largest economy in the world.[115] South Korea retains extremely high prices on food, and a continually expanding agricultural market. In 2009, South Korea was the sixth-largest U.S. agricultural market overseas,[116] purchasing nearly $4 billion in agricultural exports including cotton, hides, wheat, coarse grains, and soybeans.[117] The KORUS FTA will improve U.S. market access by applying tariff phase-outs, tariff rate quotas and regulatory harmonization.

While much progress has been made towards finalizing this FTA, there remain members of Congress who fear that trade negotiations with Korea will be unilateral, and not benefit the United States.[118] The KORUS FTA is set to be finalized and approved by July 1, 2011. If the KORUS FTA is not passed this year, but rather, extended, the Korean general elections will affect the passage of KORUS. If, however, the United States passes KORUS in July, the Korean government is likely to pass the FTA quickly, in order to finalize the agreement before their general elections are held. It is of vital importance for the United States and California agricultural industries that the KORUS FTA is passed. Through the establishment of this FTA, tariff barriers on dairy, beef, tree nuts, fruits and vegetables will decrease or be eliminated.[119] This will improve market access for United States and California agriculture products.

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[114] *Korea-U.S. Free Trade Agreement*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta (last visited Feb. 14, 2011).

[115] *Background Note: South Korea*, U.S. DEP'T OF STATE (Dec. 10, 2010), http://www.state.gov/r/pa/ei/bgn/2800.htm.

[116] TOP 15, *supra* note 5.

[117] *Foreign Agricultural trade of the United States (FATUS): Country Specific Data*, WWW.ERS.USDA.GOV, http://www.ers.usda.gov/Data/FATUS/Webtables/Webtables.asp?flow=EXPORTS&YEAR=2007&COUNTRY=5858 (last visited Feb. 10, 2011).

[118] *See* Wally Herger, *Commentary: It's time for Congress to act on free trade agreements*, CAL. FARM BUREAU FED'N (July 14, 2010), http://www.cfbf.com/agalert/AgAlertStory.cfm?ID=1576&ck=AF 5AFD7F7C807171981D443AD4F4F648.

[119] *See Korea-U.S. Free Trade Agreement*, *supra* note 114.

B. The United States Supports the Trans-Pacific Partnership

In 2009, the United States entered into the Trans-Pacific Partnership ("TPP"), which proposes a multilateral free trade agreement with the goal to integrate the economies of the Asia-Pacific region.[120] There are currently nine member countries negotiating the TPP; Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States.[121] The "Asia-Pacific region comprises 40 percent of the global population," with economies growing faster than the world average.[122] In 2009, these countries generated fifty-six percent of global gross domestic product.[123] The region is the largest market in the world for U.S. exports and receives two-thirds of U.S. agricultural exports.[124]

The TPP aims to develop the framework for a multinational high-quality free trade agreement that will give American farmers, businesses, and workers access to the worlds most dynamic and growing markets and support well-paying jobs in the United States. This agreement is comprehensive, covering all the main tenets of a free trade agreement, including trade in agricultural goods, rules of origin, sanitary and phyto-sanitary measures, intellectual property, technical barriers to trade, competition policy, trade in services, and government procurement.[125]

TPP countries address such issues as promoting connectivity to deepen the links of U.S. companies to the emerging production and distribution networks in the Asia-Pacific; making the regulatory systems of TPP countries more compatible so U.S. companies can operate more seamlessly in TPP markets; helping small and medium-sized enterprises, which are a key source of innovation and job creation, participate more actively in international trade and supporting development.[126]

The United States must be sensitive to pre-existing FTAs by adhering to all FTA stipulations previously established, while simultaneously fol-

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[120] OFFICE OF THE U.S. TRADE REPRESENTATIVE, *supra* note 9.

[121] *Id.*

[122] *Benefits From the Trans-Pacific Partnership Free Trade Agreement - California*, OFFICE OF THE U.S. TRADE REPRESENTATIVE (May 2010), http://www.ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/state-benefits-tpp.

[123] *Id.*

[124] *Id.*

[125] *See The Doha Declaration explained*, WORLD TRADE ORG., http://www.wto.org/english/tratop_e/ddae/dohaexplained_e.htm#implementation (last visited Feb 14, 2011).

[126] *Positive Outcome from Fourth Round of Trans-Pacific Partnership Negotiations*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, http://www.ustr.gov/about-us/press-office/press-releases/2010/december/positive-outcome-fourth-round-trans-pacific-partn (last visited Feb. 10, 2011).

lowing all higher TPP requirements. Participation in the TPP will be beneficial for both U.S. and California agriculture by opening market access and allowing for greater trade liberalization.

C. The Doha Round of the World Trade Organization

The Doha Round, a multi-lateral trade negotiation between member nations of the WTO, opened in November of 2001.[127] The Doha Round was preceded by the Uruguay Round, held from 1986-1994.[128] "The WTO is the principal international organization governing world trade . . . [including] 151 member countries, representing over 95 percent of world trade."[129] The WTO was "established in 1995 as a successor establishment to the General Agreement on Tariffs and Trade (GATT)."[130] The United States, as a staunch proponent of liberalizing trade, and an original member of the GATT, is among the countries urging further discussions on opening markets to trade.[131]

Agricultural trade has established itself as the most controversial issue during these negotiations. The primary objective of the Round, agriculturally, is to reform market access, domestic support and export subsidies.[132] Use of export and domestic subsidies was to be restricted, and market access expanded.[133] The Doha Round negotiations aim to liberalize trade in goods and services, including agricultural products. "From the U.S. perspective, a successful Doha agreement under the current negotiating text would significantly lower allowable spending limits for certain types of U.S. domestic support and eliminate export subsidies, while allowing U.S. agricultural products wider access to foreign markets."[134] Under such an agreement, the United States would have to address any inconsistencies between its WTO commitments and current U.S. farm policy authorized by the 2008 farm bill.

The United States has a highly influential role in the WTO, and utilizes this position to promote harmonization of high tariff rates. Conversely, the European Union and Japan desire flexibility to cut some goods less than others, thereby establishing an average total rate cut.

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[127] FERGUSSON, *supra* note 10, at CRS-2.

[128] *Id.*

[129] *Id* at CRS-1.

[130] *Id.*

[131] *Id.*

[132] *The Doha Declaration explained*, *supra* note 125.

[133] *Id.*

[134] CHARLES E. HANRAHAN, & RANDY SCHNEPF, CONG. RESEARCH SERV., WTO DOHA ROUND: IMPLICATIONS FOR U.S. AGRICULTURE 2, (January 4, 2010), *available at* http://www.nationalaglawcenter.org/assets/crs/RS22927.pdf.

Progress towards negotiating conclusions to the Doha Round has been measured, following presentation of the text regarding agriculture modalities to WTO member countries in December 2008.[135] Disagreements between developed and developing countries, especially Brazil, China, India, and South Africa, have slowed progress toward a conclusion.[136] The WTO hopes to conclude this round this year. It is questionable if this can be accomplished by year end.

Another point of dissention arising during the Doha Round concerns geographical indications, namely, the protection of product names that reflect the original location of a product.[137] For example, the use of the term "Bordeaux wine" is reserved for wines from the Bordeaux region alone.[138] The European Union and India desire mandatory registry of geographical proof in order to prevent other regions from falsely using a name.[139] The United States, however, is adamantly opposed to enforcing a mandatory list.[140] The European Union is not open to accepting an agriculture agreement without this geographical registry.[141]

WTO member nations will continue to express varied agricultural interests during the Doha Round, but the main tenets remain the same: improvement of market access, reductions of domestic support and elimination of export subsidies. Expanding existing market access and opening new export markets will significantly benefit U.S. and California agriculture. For this reason, the United States will remain supportive of trade liberalization throughout the remaining Doha Round negotiations.

V. CONCLUSION

The United States and California have adjusted to the developments in international trade over the past twenty years. With Asian-Pacific trade interests shifting from Japan to China, and the implementation of NAFTA, the U.S. agricultural export market has flourished. While California agriculture has both benefitted and struggled due to this continually changing world order, it has mainly benefitted. As the world population continues to grow and demand more food, the United States will

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[135] *Agriculture: Negotiating Modalities*, WORLD TRADE ORG., http://www.wto.org/english/tratop_e/dda_e/status_e/agric_e.htm (last visited Feb. 25, 2011).

[136] FERGUSSON, *supra* note 10, at CRS-9.

[137] *Id.*

[138] *Id.*

[139] *Id.* at CRS-9-10.

[140] *Id.* at CRS-10.

[141] *Id.*

continue to advance trade liberalization through participation in FTAs, the Trans-Pacific Partnership and the Doha Round. While California agriculture will continue to face challenges, it will surely adapt to this need and to these continual changes in world export markets, to its benefit.

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