

# Report on Seasonal and Perishable Products in U.S. Commerce



September 2020

# **Report on Seasonal and Perishable Products in U.S. Commerce**



**Office of the United States Trade Representative  
Ambassador Robert E. Lighthizer**

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**United States Department of Commerce  
Secretary Wilbur L. Ross, Jr.**

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**United States Department of Agriculture  
Secretary Sonny Perdue**

**September 1, 2020**

## INTRODUCTION

Following extensive consultation, the Office of the United States Trade Representative (USTR), United States Department of Agriculture (USDA), and the United States Department of Commerce (Commerce) jointly announce the following actions to address threats that increased imports pose to American producers of seasonal and perishable fruits and vegetables.

A report outlining these actions in greater detail follows.

### **Plan to Support American Producers of Seasonal and Perishable Fruits and Vegetables**

1. USTR will request the International Trade Commission to initiate a Section 201 global safeguard investigation into the extent to which increased imports of blueberries have caused serious injury to domestic blueberry growers.
2. USTR will pursue senior-level government-to-government discussions with Mexico over the next 90 days to address U.S. industry concerns regarding U.S. imports of Mexican strawberries, bell peppers, and other seasonal and perishable products.
3. USTR will work with domestic producers to commence an investigation by the International Trade Commission to monitor and investigate imports of strawberries and bell peppers, which could enable an expedited Section 201 global safeguard investigation later this year.
4. The Department of Commerce will
  - a) establish an outreach program to connect with Southeastern and other growers of seasonal and perishable fruits and vegetables, to enhance understanding of applicable trade remedy laws and processes; and
  - b) establish a formal channel for stakeholders to provide information related to unfair subsidies for foreign producers and exporters of seasonal and perishable fruits and vegetables, including those in Mexico –building on ongoing efforts to partner with U.S. industry to identify such subsidies.
5. The Department of Agriculture will
  - a) increase targeted outreach to producers of seasonal and perishable fruits and vegetables to maximize the use of existing Department of Agriculture programs; and
  - b) develop a market promotion strategy for domestically produced produce; and
  - c) initiate conversations with relevant federal partners to better understand the extent to which imports of seasonal and perishable products are utilized to enable criminal activity.
6. USTR, the Department of Commerce, and the Department of Agriculture will establish an interagency working group to monitor seasonal and perishable fruit and vegetable products, coordinate as appropriate regarding future investigations and trade actions, and provide technical assistance to Members of Congress in developing legislation on this issue.

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## **I. Executive Summary**

The Office of the United States Trade Representative (USTR), the United States Department of Agriculture (USDA), and the United States Department of Commerce (Commerce) have jointly prepared this report outlining the Trump Administration's plan to address threats that increased imports pose to American producers of seasonal and perishable fruits and vegetables.

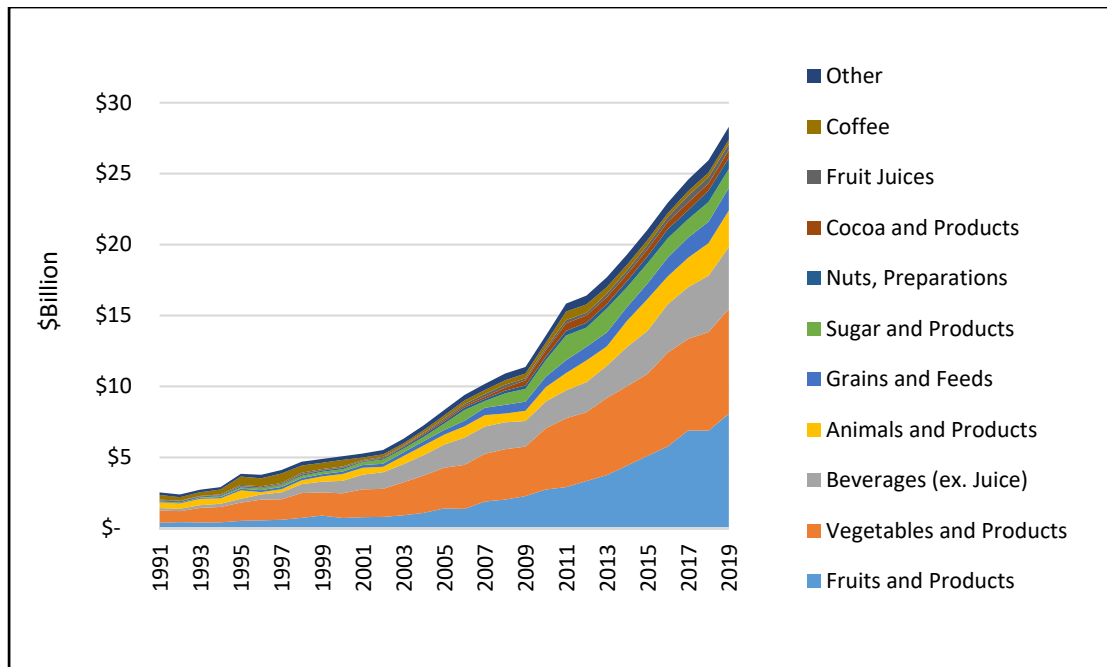
Perishable fruit and vegetable producers face unique challenges because of the short window of time during which their produce retains the freshness that retailers and consumers demand. Given this narrow window of marketability, American fruit and vegetable producers' profitability can be devastated when imports of a product surge immediately before or during the domestic growers' marketing window for that product. This challenge is compounded when imported products are sold to the consumer at lower prices than the domestically grown produce, and particularly so if the import prices are significantly and artificially lower due to unfair trade practices.

Furthermore, while multiple regions of the United States may be suitable for growing a particular commodity, the disparate climates and temperature patterns among those regions create distinct marketing windows for each region that vary from one another. As such, different regions within the United States that grow the same seasonal commodity can be affected and potentially injured by import competition to drastically differing degrees. The various regions also may differ with regard to the sub-markets in which they primarily market their products. For example, blueberry farmers in Florida and Georgia may have to compete primarily against imports from a particular country in that region's marketing window, Michigan blueberry farmers against a different country in their window, while blueberry farmers in the northwest in Washington and Oregon may face altogether different competitive dynamics.

Given the unparalleled variety of seasonal specialty crops grown in the United States, the differing marketing windows among regions growing those crops, and the variability of import competition for each crop, there are contrasting opinions on this matter that vary by crop and largely by region of the country. Generally, it is predominantly fruit and vegetable producers in southeastern U.S. states who contend that they are adversely affected by import competition from Mexico, whereas producers and stakeholders in California and western states generally consider foreign production to be countercyclical and beneficially complementary to domestic production in their region.

The dramatic increase in U.S. imports of fresh fruits and vegetables from Mexico since NAFTA entered into force is undeniable. In 1993, the United States imported approximately \$1.2 billion of fresh fruits and vegetables from Mexico. By 2019, imports had increased 1,025 percent to \$13.5 billion.

## U.S. Agricultural Imports from Mexico 1990-2019<sup>1</sup>



The Mexican agriculture industry has undergone a substantial transformation and modernization over the last two decades, largely attributed to investment in large-scale greenhouse production facilities and other technical innovations. Some claim these advances and operations are subsidized by the Mexican government and should be addressed through countervailing duties (CVD) on U.S. imports of subsidized produce. Some also claim that Mexico sells these products into the United States at prices below the cost of production and alternatively could be countered by higher antidumping (AD) duties.

Interested parties ordinarily could adjudicate these contentions under U.S. AD/CVD laws, but both the regional and seasonal nature of these industries present challenges to doing so. Before initiating an AD/CVD investigation, the statute requires that a petition be supported by domestic producers or workers accounting for at least 25 percent of the total production of the industry and more than 50 percent of the production of the portion of the industry that has expressed an opinion for or against the petition. Furthermore, in order to obtain relief under the AD/CVD laws, a domestic industry must establish that it is injured, or threatened with injury, by unfairly traded foreign imports. In general, but with certain exceptions, the term “industry” means the producers as a whole of a domestic like product, wherever located in the United States.

Recognizing the concerns of southeastern U.S. growers and the challenges to seeking relief under current U.S. trade remedy laws, U.S. Trade Representative Robert Lighthizer sent letters to Congressional delegations from Florida and Georgia in January 2020 committing to two timelines:

- Convening field hearings in Florida and Georgia for officials from USTR, the Department of Commerce, and the Department of Agriculture to hear firsthand from

<sup>1</sup> U.S. Census Bureau Trade Data.

- U.S. producers of seasonal and perishable fruits and vegetables on trade distorting policies that may be contributing to unfair pricing in U.S. commerce.
- Releasing a plan within 60 days after entry-into-force of USMCA to address any trade distorting policies that may be contributing to unfair pricing in the U.S. market and harming U.S. producers of seasonal and perishable products.

USTR, Commerce, and USDA held hearings on August 13 and August 20. Following those hearings, USTR, Commerce, and USDA jointly prepared this report to which Ambassador Lighthizer committed in his January 2020 letters.

Specifically, these agencies commit to the following actions to support America's seasonal and perishable fruit and vegetable producers:

1. USTR will request the International Trade Commission to initiate a Section 201 global safeguard investigation into the extent to which increased imports of blueberries have caused serious injury to domestic blueberry growers.
2. USTR will pursue senior-level government-to-government discussions with Mexico over the next 90 days to address U.S. industry concerns regarding U.S. imports of Mexican strawberries, bell peppers, and other seasonal and perishable products.
3. USTR will work with domestic producers to commence an investigation by the ITC to monitor and investigate imports of strawberries and bell peppers, which could enable an expedited Section 201 global safeguard investigation later this year.
4. The Department of Commerce will
  - a) establish an outreach program to connect with southeastern and other growers of seasonal and perishable fruits and vegetables to enhance understanding of applicable trade remedy laws and processes; and
  - b) establish a formal channel for stakeholders to provide information related to unfair subsidies for foreign producers and exporters of seasonal and perishable fruits and vegetables, including those in Mexico – building on ongoing efforts to partner with U.S. industry to identify such subsidies.
5. The Department of Agriculture will
  - a) increase targeted outreach to producers of seasonal and perishable fruits and vegetables to maximize the use of existing Department of Agriculture programs;
  - b) develop a market promotion strategy for domestically produced produce; and
  - c) initiate conversations with relevant federal partners to better understand the extent to which imports of seasonal and perishable products are utilized to enable criminal activity.
6. USTR, the Department of Commerce, and the Department of Agriculture will establish an interagency working group to monitor seasonal and perishable fruits and vegetable products, coordinate as appropriate regarding future investigations and trade actions, and

provide technical assistance to Members of Congress in developing legislation on this issue.

Each of these specific actions is discussed in greater detail below.

## **II. Hearings**

Consistent with the commitment in Ambassador Lighthizer's January 2020 letters, USTR announced in early March that it would hold field hearings in Plant City, Florida and Valdosta, Georgia in April 2020 at which officials from USTR, USDA, and Commerce would hear firsthand from seasonal and perishable producers and other interested parties. Shortly thereafter, USTR had to postpone both hearings due to Covid-19. Ultimately, both hearings were rescheduled and held virtually in light of ongoing challenges due to Covid-19.

Ambassador Lighthizer, Secretary Ross, and Secretary Perdue each delivered opening remarks at the August 13 hearing, and Secretary Perdue also delivered opening remarks and attended the morning session for the August 20 hearing. In his remarks, Ambassador Lighthizer underscored that the Administration "is concerned about the state of the market for seasonal fruits and vegetables" and that U.S. producers "are the most productive in the world and they have every right to expect fair trade in their home market."<sup>2</sup> Secretary Ross noted that it is "imperative that the U.S. Government listens to the concerns of our growers and at the Commerce Department, we take concerns of unfair trade practices seriously and we use every tool available to counter them whenever and wherever they exist."<sup>3</sup> Secretary Perdue also noted that "Ambassador Lighthizer, Secretary Ross, and I have been working to figure out how we can level the playing field in here. We fully understand the competitive situation that you're in ... we want to know what we can do[.]"<sup>4</sup> Each agency was represented by senior officials for the entirety of both hearings: USTR Chief Agricultural Negotiator Gregg Doud, Under Secretary for Trade and Foreign Agricultural Affairs Ted McKinney, and Assistant Secretary of Commerce for Enforcement and Compliance Jeffrey Kessler. Additional representatives from the International Trade Commission attended virtually as well.

Over the course of the two days of hearings, the Administration officials heard live testimony from more than 60 witnesses. The witnesses included 11 Members of Congress, elected state officials from Florida and Georgia, leadership from national and state agricultural associations, academics, and dozens of seasonal and perishable farmers from Florida, Georgia, and other states. In addition to roughly 500 pages of testimony, the record is further supplemented by approximately 300 written submissions from interested parties. The full record is available at [www.regulations.gov](http://www.regulations.gov) under Docket ID: USTR-2020-0010.

Individuals from all parts of the country participated at the hearings, with the largest concentration coming from Florida and Georgia, and the testimony included robust discussion from a variety of

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<sup>2</sup> Transcript: Public Hearing Regarding Trade-Distorting Policies that may be Affecting Seasonal and Perishable Products in U.S Commerce, Public Hearing, at 6-7, Aug. 13, 2020.

<sup>3</sup> Hearing Transcript, Aug. 13, 2020, at 14-15.

<sup>4</sup> Hearing Transcript, Aug. 13, 2020, at 10.

perspectives. While not intended to be a comprehensive summary of testimony, below is a sampling of the testimony heard and positions expressed.

First, numerous witnesses testified that Mexico's trade practices uniquely harm southeastern growers of seasonal and perishable vegetables and that urgent relief is needed. Examples of such testimony include:

- *Mike Joyner, Florida Fruit and Vegetable Association*: "Florida ranks first or second in the nation in the value of production of many seasonal and perishable crops, including squash, blueberries, strawberries, bell peppers, and a host of others. Our industry is essential in feeding Americans fresh U.S.-grown produce from November to late spring. However, our ability to do so has severely eroded over the last few decades because of unfair trade practices by Mexico, which shares our growing seasons."<sup>5</sup>
- *Gerald Long, Georgia Farm Bureau Federation*: "Much like our friends in Florida ... Georgia's season on perishable commodities production has been, and continues to be, directly affected by Mexican imports due to our shared market imports ... These consistent unfair market practices Mexico has been utilizing, that undercut American farmers must be addressed."<sup>6</sup>
- *Brittany Lee, Florida Blueberry Growers Association*: "Florida blueberry growers continue to experience undue hardship as a result of Mexico's unfair trading practices. My family farm is well on its way to becoming a casualty of this and eventually it will be the reason that my family business and others are forced out of commercial production."<sup>7</sup>
- *Kenneth Parker, Florida Strawberry Growers Association*: "The unprecedented growth of the Mexican strawberry industry has been enabled to a great degree by significant subsidy support from the Mexican government and other unfair trading practices. These support programs have helped Mexican producers become the dominant U.S. supplier of produce and are progressively pushing growers out of business."<sup>8</sup>
- *Bill Brim, Lewis Taylor Farms (GA)*: "In 2015 when we began to see markets and prices change due to ... the increase in Mexican imports, by 2018, the import pressure was so strong that we almost had to shut down. We are barely holding on today."<sup>9</sup>
- *Charles Hall, Georgia Fruit and Vegetable Growers Association*: "Over the past twenty years, imports of fresh produce from Mexico have grown tremendously ... The pattern has now shifted from undercutting our growers' financial and competitive health, to threatening our industry's very survival."<sup>10</sup>

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<sup>5</sup> Hearing Transcript, Aug. 13, 2020, at 90.

<sup>6</sup> Transcript: Public Hearing Regarding Trade-Distorting Policies that may be Affecting Seasonal and Perishable Products in U.S Commerce, Public Hearing, at 57, Aug. 20, 2020 ("Hearing Transcript, Aug. 20, 2020").

<sup>7</sup> Hearing Transcript, Aug. 13, 2020, at 152.

<sup>8</sup> Hearing Transcript, Aug. 13, 2020, at 170.

<sup>9</sup> Hearing Transcript, Aug. 20, 2020, at 146.

<sup>10</sup> Hearing Transcript, Aug. 20, 2020, at 71-72.

- *John Sizemore, Sizemore Farms (FL)*: “In my 33 years of operating our farm, the greatest challenge has been increased Mexican competition in the winter months. We simply can’t compete with Mexico’s unfair trade-distorting practices.”<sup>11</sup>
- *Joel Connell, Grimes Farms (FL)*: “However, each year seems to be more difficult with unfair trade practices and loss of market share due to Mexican fruit production. During the past three seasons, strawberry prices have gotten so low that it’s been cheaper for us to strip the fruit from the plants, throw it on the ground, rather than pack it for fresh market ... Without immediate attention to these unfair trade practices, many family farms like my own will cease to exist.”<sup>12</sup>
- *Marie Bedner, Bedner Farms (FL)*: “Growers have made the tough decision to sell their land because they simply can’t compete with the unfairly priced Mexican fruits and vegetables. And the surging volumes coming across their border into the U.S. marketplace during our growing season. We need relief and we need it sooner rather than later.”<sup>13</sup>

Other testimony disputed the notion that Mexico engages in unfair trade practices:

- *Rene Romero, San Diego Customs Brokers Association (CA)*: (In response to question: “Do you know whether or not Mexico is in violation of its trade commitments with the United States?”) “I would say just the opposite. I would say that they’re in compliance with our trade agreements.”<sup>14</sup>
- *Demetrio Kyriakis, Nogales U.S. Custom House Brokers Association (AZ)*: “U.S. private sector interests are also being affected by these hearings and the unproven claim that trade-distorting policies may be contributing to unfair pricing in the U.S. market and causing harm to U.S. seasonal and perishable producers in the U.S. commerce.”<sup>15</sup>
- *Lance Jungmeyer, Fresh Produce Association of the Americas (AZ)*: “For decades, the Southeast has continued to use outright falsehoods and misleading rhetoric such as unfair trade or unfair subsidies in an attempt to paint themselves as victims and draw sympathy. Florida and Georgia growers present policy briefings that are misleading and inaccurate and have been challenged by academics and the U.S. Department of Agriculture.”<sup>16</sup>
- *Sergio Contreras, Border Trade Alliance (TX)*: “[F]or agriculture subsidies in general based on support to producers as a percentage of gross support, we see Mexico had a lower percentage of support, around 9 percent, and the U.S., 10.7 percent from 2017 to 2019.”<sup>17</sup>
- *Skip Hulett, NatureSweet (TX)*: (In response to question: “So you’re producing in Mexico ... are you familiar with these alleged subsidy schemes ... ?”) “[I]t’s just

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<sup>11</sup> Hearing Transcript, Aug. 13, 2020, at 179.

<sup>12</sup> Hearing Transcript, Aug. 13, 2020, at 190.

<sup>13</sup> Hearing Transcript, Aug. 13, 2020, at 244-45.

<sup>14</sup> Hearing Transcript, Aug. 20, 2020, at 224.

<sup>15</sup> Hearing Transcript, Aug. 13, 2020, at 118.

<sup>16</sup> Hearing Transcript, Aug. 20, 2020, at 194-95.

<sup>17</sup> Hearing Transcript, Aug. 13, 2020, at 100.

inconsistent with what I've seen in our operation ... I can just tell you from our experience, not consistent with our operation.”<sup>18</sup>

A number of individuals testified that imports of seasonal agricultural products is not an issue confined to the southeastern United States, and that other regions of the country are affected by this issue, including imports from other markets in addition to Mexico:

- *Fred Leitz, Leitz Farms LLC (MI)*: “[T]his is not just a southeast U.S. problem, this is a Midwest problem, a U.S. problem.”<sup>19</sup>
- *John Hoblick, Florida Farm Bureau Federation*: “No longer is this a dilemma confined to one state or one commodity. In addition to story after story from Florida specialty crop producers, you’ll likely receive insightful comments from asparagus farmers in Michigan, blueberry growers in Georgia, or onion producers in New York, all experiencing the familiar unfair trade practices that will persist without a remedy.”<sup>20</sup>
- *Michael Hill, H&A Farms (FL)*: “There is [sic] eight major regions in our -- in the U.S. that -- or states that are producing blueberries and only one of them is not affected by imports ... There’s other countries that are increasing at the same rates [as Mexico]. Peru is one ... They’ve gone from zero to 200 million in six years. I think they are going to be at 350 million within the next two to four.”<sup>21</sup>
- *David Fisher, New York Farm Bureau*: “There is concern that unfair subsidization of Canadian produce is occurring, which makes it possible and profitable for Canadian farmers to ship and sell produce in the U.S. either as country export or through individual provincial programs.”<sup>22</sup>
- *Zippy Duvall, American Farm Bureau Federation*: “[T]his is not just a Southern or Southeastern problem. It reaches up into New York. It reaches up in, I think we had some New England people testifying on the first hearing. And I also know that I’ve heard concerns from Michigan. So, this problem exists all over our country when it comes to fruits and vegetables.”<sup>23</sup>

Additional testimony—largely from individuals and entities concentrated in the southwestern United States—opposed seasonal and perishable trade remedies against Mexico, testifying that such remedies would be detrimental to their businesses:

- *Skip Hulett, NatureSweet (TX)*: “I certainly look forward to discussing the negative impacts that additional trade action with respect to seasonal and perishable products would have on our company, on innovation and the industry, and certainly on the U.S. consumer.”<sup>24</sup>
- *Demetrio Kyriakis, Nogales U.S. Custom House Brokers Association (AZ)*: “Should the USTR impose some form of punishment or countervailing measures against Mexican

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<sup>18</sup> Hearing Transcript, Aug. 13, 2020, at 115-16.

<sup>19</sup> Hearing Transcript, Aug. 20, 2020, at 154.

<sup>20</sup> Hearing Transcript, Aug. 13, 2020, at 80.

<sup>21</sup> Hearing Transcript, Aug. 13, 2020, at 161, 163.

<sup>22</sup> Hearing Transcript, Aug. 20, 2020, at 65.

<sup>23</sup> Hearing Transcript, Aug. 20, 2020, at 49.

<sup>24</sup> Hearing Transcript, Aug. 13, 2020, at 109.

- fresh produce imports, it will negatively affect our custom brokerage business ... We are also American companies paying American taxes providing American jobs to thousands of American families ... If any of these negative measures are taken, please know that many businesses like mine and many American jobs are at stake.”<sup>25</sup>
- *Scott Vandervoet, Vandervoet and Associates (AZ)*: “Applying trade remedies for seasonal produce has the potential to penalize companies such as mine for the simple reason that I’m meeting the expectations of the market.”<sup>26</sup>

Additional testimony was heard from U.S. agricultural industries largely unaffected by this issue who expressed concern that unilateral action targeting specific countries could lead to retaliation that would negatively affect their industries.

- *Brian Kuehl, Farmers for Free Trade*: “We are concerned that taking unilateral action on imports from Mexico at this time could violate the spirit and letter of the United States-Mexico-Canada Agreement and, critically, we are concerned that it could lead to retaliation against U.S. agricultural products by Mexico ... If the U.S. attempts to implement protectionism in the guise of seasonality, the U.S. will once again invite retaliation against America’s farmers, including their dairy farmers and fruits and pork and corn producers.”<sup>27</sup>
- *Jaime Castaneda, National Milk Producers Federation and the U.S. Dairy Export Council*: “[W]e urge you to avoid steps that would, once again, place U.S. dairy producers and processors in the crosshairs of a trade dispute with Mexico. As you know, this is not an unfounded concern, as U.S. dairy exports have been a frequent target of tariff retaliation by Mexico, another way for retaliation to put at risk many jobs in key dairy states, such as Wisconsin, Pennsylvania, Michigan, and others. Retaliation would have serious consequences for the economic well-being of U.S. dairy farmers and manufacturers during an already extremely volatile time for our industry.”<sup>28</sup>
- *John Bode, Corn Refiners Association*: “We urge that federal government action to address abuses be calibrated to the character of the alleged trade violation to avoid collateral damage ... Mexico is the central market for U.S. corn and refined corn products, wheat, soybeans, meat, poultry, and, as Jaime just reported, dairy. There is potential for great collateral damage to farmers and the industry that are already experiencing tremendous stress, particularly in the Midwest.”<sup>29</sup>

To reiterate, the sampling of testimony above is not intended to comprehensively summarize all of the testimony heard and written submissions received. Indeed, substantial portions of testimony and many written submissions cover topics and express opinions that do not fall into any of the general categories identified above. There is also significantly more testimony and supporting materials in the record relating to each of the positions identified above that would be too

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<sup>25</sup> Hearing Transcript, Aug. 13, 2020, at 119-120.

<sup>26</sup> Hearing Transcript, Aug. 13, 2020, at 105.

<sup>27</sup> Hearing Transcript, Aug. 20, 2020, at 169.

<sup>28</sup> Hearing Transcript, Aug. 20, 2020, at 178-79.

<sup>29</sup> Hearing Transcript, Aug. 20, 2020, at 186-87.



voluminous to list in this report. The full record is available at [www.regulations.gov](http://www.regulations.gov) under Docket ID: USTR-2020-0010.

### **III. Plan**

USTR, USDA, and Commerce have worked extensively for the past few months to prepare for the hearings and to review, analyze, and discuss the resulting record. This collaboration has included countless senior and staff level discussions and exchanges, including multiple conversations between and among Ambassador Lighthizer, Secretary Ross, and Secretary Perdue devoted entirely to this issue.

Following a thorough review of the record, available trade data, applicable trade laws, and extensive senior-level discussion at each agency, USTR, USDA, and Commerce have decided to take the following actions.

#### **1. USTR will request an immediate Section 201 investigation into imports of blueberries into the U.S.**

USTR will request the ITC immediately commence a Section 201 investigation for blueberries. This will mark the first time in nearly 20 years that USTR has used this authority.

Section 201 is an important part of the Administration's trade toolbox. It calls for the ITC, upon receipt of a petition from domestic producers or a request from the Administration, to investigate whether increased imports of a product are causing or threatening to cause serious injury to domestic producers of the product. If the ITC determines that this is the case, the President is authorized to take all action within his power to facilitate efforts by the domestic industry to make a positive adjustment to import competition, including increased tariffs and quantitative limitations.

"Safeguard measures" like the remedies available under Section 201 are explicitly allowed under World Trade Organization rules when necessary to prevent or remedy serious injury caused by increased imports. In 2018, the President used his authority under Section 201 to increase tariffs on imported washing machines and solar panels. In both cases, the import restrictions prompted a marked improvement in the performance of the domestic industry.

Two main aspects of Section 201 distinguish this remedy from U.S. antidumping and countervailing duty laws. First, Section 201 does not require a finding of an unfair trade practice. Rather, an increase in imports—irrespective of the reason for the imports—is by itself sufficient to warrant a trade remedy, provided the increase is "a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." Second, Section 201 investigations are not restricted to assessing imports from one particular country, and instead analyze and account for imports into the United States from all countries. This is why Section 201 is often referred to as a "global safeguard."

Section 201 investigations ordinarily begin after the filing of a petition with the ITC by an entity that is representative of the domestic industry producing the product in question. However, the statute also requires the ITC to conduct an investigation if requested by the President or the U.S. Trade Representative. Despite this authority, USTR-requested Section 201 investigations have

been exceptionally infrequent, and the USTR has only requested one such investigation in the last 25 years.

Upon review and consideration of the totality of the testimony at the hearings, review and consideration of the hundreds of written submissions, and USTR's own research and analysis, USTR has decided to utilize this seldom-used authority to request the commencement of a Section 201 global safeguard investigation for blueberries.

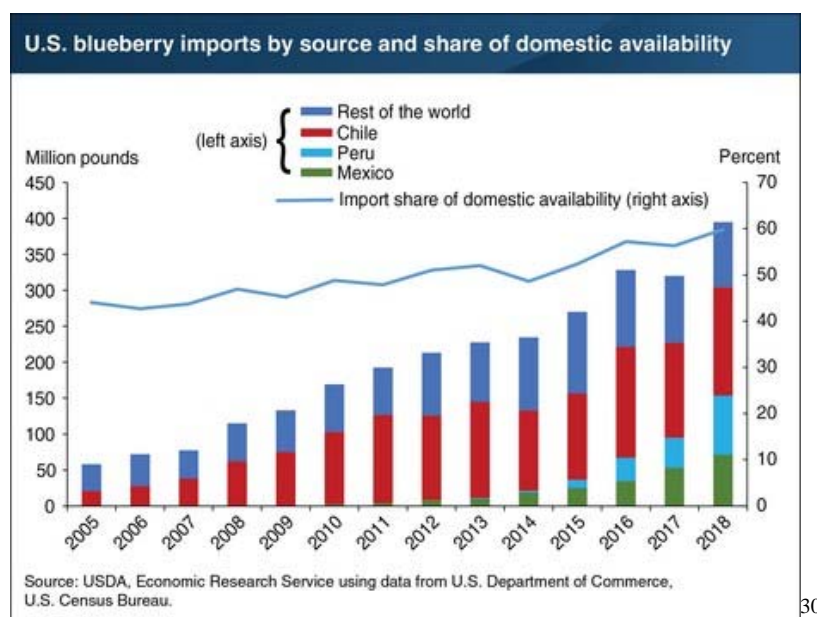
Once USTR makes its formal request, the statute calls on the ITC to complete its investigation and to make its determination within 120 days. If the determination is affirmative, the ITC will conduct a further inquiry to allow it to recommend action for the President to take. The ITC is required to complete all of its deliberations and provide a report containing its findings and recommendations to the President no later than 180 days after commencing its investigation. The President then has 60 days to decide what action to take to facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

**(i) Factors supporting a request for a Section 201 investigation of blueberry imports**

Several factors indicate that conditions warrant a Section 201 investigation into whether increased blueberry imports are causing serious injury to domestic blueberry growers.

**1. U.S. blueberry imports have greatly increased in recent years**

U.S. imports of blueberries have increased significantly over the last 15 years, from roughly 50 million pounds in 2005 to almost 400 million pounds in 2018.



<sup>30</sup> United States Department of Agriculture, Economic Research Service, *Imports from Latin America Make Up a Growing Share of U.S. Blueberry Consumption*, available at <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=93270>.

The stark increase in blueberry imports was repeatedly emphasized by multiple witnesses who testified at the hearings:

- *Rep. Ted Yoho (FL)*: “The value of U.S. imports of Mexican blueberries in this six-year period of time, 2012 to 2018, grew by 708 percent with a sustained average annual growth rate of 47 percent.”<sup>31</sup>
- *Gary Black, Commissioner of Agriculture, Georgia Department of Agriculture*: “[W]e had an enormous influx of blueberries ... [Y]ou see blueberries from Mexico right in the middle of our season.”<sup>32</sup>
- *Joe Cornelius, J&B Blueberry Farms Inc. (GA)*: “Just in the blueberry industry alone, Mexican imports have increased dramatically. In 2010, Mexico exported 1.8 million pounds. By 2020, that number has increased to 53.9 million pounds just in the southeastern production.”<sup>33</sup>

## 2. U.S. blueberry imports are sourced in major quantities from multiple countries

Unlike other trade remedy investigations that focus on imports from one particular country, Section 201 provides for a “global safeguard” that accounts for imports from all countries. This is particularly well suited for the U.S. blueberry industry, where multiple countries export blueberries to the United States in significant quantities. Whereas a country-specific investigation could only yield a country-specific remedy, a Section 201 investigation for blueberries must necessarily analyze blueberry imports from all countries comprehensively and account for such in any recommended action to the President.

In the case of blueberries, U.S. Census Bureau data shows that the value of blueberry imports into the United States has more than doubled since 2014, with five countries accounting for more than 98 percent of total U.S. imports over that time period:

### U.S. Imports of Blueberries\* by Value (2014-2019)<sup>34</sup>

Partner	2014	2015	2016	2017	2018	2019
Peru	\$12,613,651	\$53,025,270	\$135,173,466	\$162,387,791	\$284,439,423	\$485,261,673
Chile	\$260,465,178	\$276,758,435	\$358,835,516	\$281,321,778	\$354,417,789	\$313,017,358
Mexico	\$76,158,740	\$133,173,522	\$145,179,912	\$219,402,417	\$289,614,962	\$291,060,437
Canada	\$101,928,691	\$110,951,232	\$95,727,500	\$114,198,944	\$113,855,898	\$115,988,405
Argentina	\$69,041,154	\$65,528,366	\$85,359,715	\$66,136,724	\$51,480,720	\$33,257,806
Other	\$10,064,643	\$7,007,391	\$8,541,504	\$4,373,716	\$4,439,151	\$3,517,364
<b>World Total</b>	<b>\$530,272,057</b>	<b>\$646,444,216</b>	<b>\$828,817,613</b>	<b>\$847,928,947</b>	<b>\$1,098,267,213</b>	<b>\$1,242,103,043</b>

\*includes HS Codes: 0810400029, 0810400026, 0810400024

<sup>31</sup> Hearing Transcript, Aug. 13, 2020, at 74.

<sup>32</sup> Hearing Transcript, Aug. 20, 2020, at 37.

<sup>33</sup> Hearing Transcript, Aug. 20, 2020, at 103.

<sup>34</sup> U.S. Census Bureau Trade Data.

Increased blueberry imports from these countries was noted in testimony at the hearings:

- *Michael Hill, H&A Farms (FL)*: “There’s other countries that are increasing at the same rates. Peru is one that’s going to be -- you know, they are already at 200. They’ve gone from zero to 200 million in six years. I think they are going to be at 350 million within the next two to four.”<sup>35</sup>

3. The public hearings provided evidence that increased imports of blueberries may be harming the blueberry industry, particularly in the southeastern United States.

Numerous witnesses testified that increased blueberry imports have had devastating effects on their industry and operations. Specifically, witnesses stated that cheaper imported blueberries significantly restrict the marketability of U.S.-grown blueberries:

- *Patrick Carroll, Clear Springs (FL)*: “Over the last 15 years we’ve witnessed the surge in cheap Mexican blueberry and strawberry supply resulting in an uncompetitive pricing for American farmers. As a result, Florida farms have seen decreasing, and now negative growth, in production. Over the last three years the price per pound return for our blueberry farm has declined 19 percent. And over the last five years it has declined over 28 percent.”<sup>36</sup>
- *Michael Hill, H&A Farms (FL)*: “Our market prices have continued to fall year after year due the direct impact of increased volume pouring into our market by the imported blueberries.”<sup>37</sup>

Other witnesses testified that lower-priced imports of blueberries have driven down the price of domestically grown blueberries, and have led to drastically reduced domestic market share for domestic growers:

- *Rep. Darren Soto (FL)*: “[I]n 2007, Florida growers had nearly one-third of the blueberry market share, while the market share for Mexico growers was negligible. As of 2019, Mexico accounts for nearly 30 percent of the blueberry market and Florida’s market share shrunk to about 16 percent.”<sup>38</sup>
- *Rep. Ted Yoho (FL)*: “Mexico shipped an additional 1.5 million flats of blueberries to the U.S. from January to April, versus the same period in 2018, a market share increase of 64 percent.”<sup>39</sup>
- *Rep. Doug Collins (GA)*: “To provide an example of one commodity that is disastrously struck by Mexico’s practice, Mexico’s share of the U.S. blueberry market has gone up by 2,111 percent over the last 10 years. I didn’t make a mistake there. That’s 2,000 percent in 10 years.”<sup>40</sup>

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<sup>35</sup> Hearing Transcript, Aug. 13, 2020, at 163-64.

<sup>36</sup> Hearing Transcript, Aug. 13, 2020, at 257.

<sup>37</sup> Hearing Transcript, Aug. 13, 2020, at 158.

<sup>38</sup> Hearing Transcript, Aug. 13, 2020, at 26.

<sup>39</sup> Hearing Transcript, Aug. 13, 2020, at 74.

<sup>40</sup> Hearing Transcript, Aug. 20, 2020, at 160-61.

Numerous witnesses testified that imported blueberries are having devastating effects on their industry and operations, and accordingly requested urgent and immediate action:

- *Jerome Crosby, Georgia Blueberry Commodity Commission*: “Mexican imports increased 68 percent in one year. From 2019 to 2020, Mexican imports grew by 17 million pounds in the Georgia window alone in a 14-week period. At the same time, Georgia lost 25 percent of its market ... We need an immediate and resolute response from USTR to save our blueberry industry in Georgia.”<sup>41</sup>
- *Brittany Lee, Florida Blueberry Growers Association*: “[T]his issue directly hurts my family farm just as it does the other 920 farms that grow blueberries in the state of Florida ... The massive amounts of Mexican blueberries surging into the U.S. every spring are crippling the southeast domestic blueberry industry.”<sup>42</sup>
- *Gary Black, Commissioner of Agriculture, Georgia Department of Agriculture*: “[W]e had an enormous influx of blueberries from Mexico that it’s a little disheartening when you go to the -- direct into the middle of the blueberry belt, and you see in the big box stores Mexico from blue -- you see blueberries from Mexico right in the middle of our season ... [B]lueberry leads the top of the list as far as the greatest concern.”<sup>43</sup>

While most of the testimony and submissions focused on the effects of imports on the southeastern United States, some noted that this issue is not confined to that region with respect to blueberries:

- *Michael Hill, H&A Farms (FL)*: “California is also being affected by this on their blueberry front. They are in the market window that Mexico is producing as well. Georgia is being affected. North Carolina is being affected. There is eight major regions in our -- in the U.S. that -- or states that are producing blueberries and only one of them is not affected by imports.”<sup>44</sup>
- *Fred Leitz, Leitz Farms LLC (MI)*: “We farm in southwest Michigan, a few miles from Lake Michigan. We specialize in blueberries ... [T]his is not just a southeast U.S. problem, this is a Midwest problem, a U.S. problem.”<sup>45</sup>

Production statistics for blueberries demonstrate the national footprint for blueberry production in the United States.

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<sup>41</sup> Hearing Transcript, Aug. 13, 2020, at 146.

<sup>42</sup> Hearing Transcript, Aug. 13, 2020, at 151.

<sup>43</sup> Hearing Transcript, Aug. 20, 2020, at 37.

<sup>44</sup> Hearing Transcript, Aug. 13, 2020, at 161.

<sup>45</sup> Hearing Transcript, Aug. 20, 2020, at 153-54.

Top Blueberry Producing States Utilized Production (1,000 lbs) <sup>46</sup>		
State	2018	2019
Washington	136,100	162,830
Oregon	134,750	154,100
Georgia	53,350	93,980
Michigan	70,030	84,900
California	63,470	71,780
New Jersey	44,010	46,070
North Carolina	33,490	35,770
Florida	20,420	23,620

**(ii) Additional aspects of Section 201 investigation**

As noted above, USTR has already created a robust record through the two hearings and written submissions. The ITC will have full access to that record as it conducts its own thorough investigation process.

Upon commencement of a Section 201 investigation, the statute requires publication of a notice in the Federal Register, and to hold public hearings at which interested parties and consumers present evidence, respond to the presentations of other parties and consumers, and otherwise to be heard.”

In conducting its review and analysis, the ITC is required by statute to “take into account all economic factors which it considers relevant” to the inquiry. The statute, 19 U.S.C. § 2252(c) identifies the following factors to consider:

- the significant idling of productive facilities in the domestic industry;
- the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit;
- significant unemployment or underemployment within the domestic industry;
- a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry;
- the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

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<sup>46</sup>USDA National Agricultural Statistics Service, 2018 Blueberry Statistics, at 2, *available at* [https://www.nass.usda.gov/Statistics\\_by\\_State/New\\_Jersey/Publications/Blueberry\\_Statistics/2018%20NJ%20Blueberry%20Summary.pdf](https://www.nass.usda.gov/Statistics_by_State/New_Jersey/Publications/Blueberry_Statistics/2018%20NJ%20Blueberry%20Summary.pdf); USDA National Agricultural Statistics Service, 2019 Blueberry Statistics, at 2, *available at* [https://www.nass.usda.gov/Statistics\\_by\\_State/New\\_Jersey/Publications/Blueberry\\_Statistics/NJ%202019%20Blueberry%20Summary.pdf](https://www.nass.usda.gov/Statistics_by_State/New_Jersey/Publications/Blueberry_Statistics/NJ%202019%20Blueberry%20Summary.pdf).

- the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets;
- an increase in imports (either actual or relative to domestic production), and a decline in the proportion of the domestic market supplied by domestic producers.

The statute is explicit that the injury determination is “not limited to” these factors, and that “all economic factors” should be taken into account. Indeed, the statute notes that “[t]he presence or absence of any factor which the Commission is required to evaluate ... is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.”<sup>47</sup>

Furthermore, the statute requires that the Commission to investigate any factor that it considers may be contributing to increased imports of the article under investigation. If the investigation gives the ITC reason to believe that the increased imports are attributable in part to dumping, subsidization, or violations of U.S. intellectual property rights, the statute instructs the Commission to notify the appropriate agency so that action may be taken as is otherwise authorized by law.

If the ITC makes an affirmative finding of injury, it seeks additional submissions from parties to its investigation, and conducts a second hearing to evaluate what action to recommend the President to take to facilitate the domestic industry’s positive adjustment to import competition.

Upon receipt of a report of an affirmative injury determination by the ITC, the statute directs the President to “take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.” The President has the authority to implement the ITC’s recommendations as recommended, modify the ITC’s recommendations, provide an altogether different remedy than the ITC recommended, or to take no action at all.

If the ITC makes an affirmative determination, an interagency trade committee chaired by USTR reviews the ITC’s report and recommendations makes a recommendation to the President as to what action the President should take. USDA and Commerce also have seats on this committee.

After receiving the recommendation of the committee, the President may do any of the following:

- a) proclaim an increase in, or the imposition of, any duty on the imported article;
- b) proclaim a tariff-rate quota on the article;
- c) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;
- d) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this subchapter;

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<sup>47</sup> 19 U.S.C § 2252(c)(3).

- e) negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;
- f) proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;
- g) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;
- h) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;
- i) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of paragraph (1); and
- j) take any combination of actions listed in subparagraphs (a) through (i).<sup>48</sup>

Irrespective of any determinations and recommendations, USTR will monitor, review, and analyze all ITC findings in its report and investigation and will determine whether such findings necessitate additional action by USTR with respect to blueberries.

**2. USTR will pursue senior-level government-to-government discussions with Mexico over the next 90 days to address U.S. industry concerns regarding U.S. imports of Mexican strawberries, bell peppers, and other seasonal and perishable products.**

USTR will initiate senior-level discussions with Mexico to address U.S. industry concerns regarding U.S. imports of Mexican seasonal and perishable products, with particular focus on strawberries and bell peppers. These discussions will begin as soon as is practicable and will seek to conclude within 90 days.

Initiating these discussions is consistent with the provisions and spirit of USCMA, which provides multiple avenues for the Parties to engage on such matters. For example, Article 30.1 establishes a Commission composed of the government representatives of each Party at the level of Ministers or their designees. Among the functions of the Commission specified by the Agreement is to “consider ways to further enhance trade and investment between the Parties,” or “take any other action as the Parties may decide.”<sup>49</sup> Separately, the Agreement establishes a Committee on Agricultural Trade whose functions include “promoting trade in agricultural goods between the Parties” and “providing a forum for the Parties to consult and endeavor to address issues or trade barriers and improve access to their respective markets.”<sup>50</sup>

USTR will utilize these channels established under USMCA to engage with Mexico on seasonal and perishable issues, specifically with respect to strawberries and bell peppers, and will seek to conclude these discussions within 90 days.

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<sup>48</sup> 19 U.S.C. § 2253(a)(3).

<sup>49</sup> USMCA Article 30.2.

<sup>50</sup> USMCA Article 3.7.



**3. USTR will work with domestic producers to commence an investigation by the ITC to monitor and investigate imports of strawberries and bell peppers, which could enable an expedited Section 201 global safeguard investigation later this year.**

Within Section 201 of the Trade Act of 1974, Congress included an avenue for trade remedies specifically for “perishable agricultural product[s].” The mechanism for relief for perishable agricultural products is contained in 19 U.S.C. 2252(d), and it permits USTR to request commencement of an investigation under section 332(g) of the Tariff Act of 1930 if an entity representative of producers of an agricultural product requests monitoring of imports of that product, and the Trade Representative determines that the product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry. The “perishable agricultural product” process under 19 U.S.C. 2252(d) includes expedited timelines for potential relief given the perishable nature of the products.

Written submissions received by USTR and public testimony at the hearings provide a significant amount of information related to the criteria set out in 19 U.S.C. 2252(d)(1). USTR anticipates that this information would facilitate an expeditious response if an entity representing a domestic industry producing strawberries or bell peppers requests monitoring of imports under 19 U.S.C. 2252(d). In this regard, USTR notes the following information provided in written submissions and public testimony.

**(i) Whether strawberries and bell peppers are perishable agricultural products.**

The statute requires USTR to determine whether the product in question is a perishable agricultural product in terms of having (I) a short shelf life, (II) a short growing season, or (III) a short marketing period” or “any other factor considered by the Trade Representative.” Zippy Duvall of the American Farm Bureau Federation testified that “[F]ruits and vegetables are a short marketing season[.]” *See also* Rep. Darren Soto (FL) (“Central Florida is home to cattle, citrus, tomatoes, strawberries, and blueberries. Throughout the history of Florida agriculture, we have primarily focused on producing winter fruits and vegetables that are first in the market from early winter through early spring. In short, this is our window of opportunity, this is our traditional season.”).

**(ii) Information related to the volume of strawberry imports and potential effects on the domestic industry.**

U.S. imports of strawberries from Mexico have increased from roughly \$44 million in 2001 to more than \$840 million in 2019.

### U.S. Imports of Fresh Strawberries by Value (2014-2019)<sup>51</sup>

Partner	2014	2015	2016	2017	2018	2019
Mexico	\$373,333,460	\$388,063,445	\$530,908,470	\$621,070,693	\$584,926,602	\$842,404,686
Canada	\$1,486,988	\$1,661,327	\$1,601,870	\$4,118,946	\$6,003,912	\$7,890,869
Turkey	\$0	\$0	\$1,225,607	\$348,156	\$431,775	\$281,973
South Korea	\$12,216	\$3,013	\$0	\$26,556	\$120,071	\$217,242
Japan	\$0	\$14,308	\$18,686	\$46,322	\$47,671	\$168,881
Other	\$84,322	\$476,687	\$269,074	\$97,897	\$200,823	\$119,494
<b>World Total</b>	<b>\$374,916,986</b>	<b>\$390,218,780</b>	<b>\$534,023,707</b>	<b>\$625,708,570</b>	<b>\$591,730,854</b>	<b>\$851,083,145</b>

Unlike blueberries, the United States imports strawberries primarily from one country, with Mexican strawberries accounting for more than 99% of U.S. strawberry imports over the last several years.

Numerous witnesses testified on the effects that imports of Mexican strawberries have had on their industry and the marketability of domestically grown strawberries in the U.S. market, particularly those grown in the southeastern United States.

- *Patrick Carroll, Clear Springs (FL)*: “Over the last 15 years we’ve witnessed the surge in cheap Mexican ... strawberry supply resulting in an uncompetitive pricing for American farmers. As a result, Florida farms have seen decreasing, and now negative growth, in production.”<sup>52</sup>
- *Rep. Ross Spano (FL)*: “In the last 20 years, Florida growers have lost between \$1.1 and 2.2 billion in sales, leading to nearly 40,000 lost jobs in Florida. And in strawberries alone, our growers have suffered hundreds of millions in losses in sales and a 36 percent reduction in market share in the U.S. since 2000 ... The situation is truly dire and if a solution is not provided and fair trade practices restored, the strawberry industry in Plant City could be completely eradicated within just a few years.”<sup>53</sup>
- *Kenneth Parker, Florida Strawberry Growers Association*: “These dramatic increases of imported strawberries from Mexico present a clear and present danger to the sustainability of the Florida industry, placing at peril family farms in production for generations and the ability to provide domestically produced winter strawberries for our nation at large.”<sup>54</sup>
- *John Sizemore, Sizemore Farms (FL)*: “Without relief, I believe the losses sustained as a result of Mexico’s ascension in the U.S. market will be catastrophic to our farms, ending our family’s farming legacy with me ... Our local industry has dwindled over

<sup>51</sup> U.S. Census Bureau Trade Data.

<sup>52</sup> Hearing Transcript, Aug. 13, 2020, at 257.

<sup>53</sup> Hearing Transcript, Aug. 13, 2020, at 47, 49.

<sup>54</sup> Hearing Transcript, Aug. 13, 2020, at 169-70.

the past 20 years with only one-half of the number of growers surviving the devastating impact of Mexican dominance.”<sup>55</sup>

- *Hilda Castillo, Castillo Family Farms Food Corporation (FL)*: “In the future, if strawberries continue to be imported from Mexico at such great volume, we will be out of the strawberry industry.”<sup>56</sup>
- *Dustin Grooms, Fancy Farms Inc. (FL)*: “I am asking for your help today in our fight against imported produce. Mexican imports have crippled our strawberry prices in Florida as well as other crops.”<sup>57</sup>

In the event that USTR receives a request for monitoring under 19 USC 2252(d)(1), USTR will consider all information available from submissions and testimony, information submitted with the request, and any information otherwise available.

**(iii) Information related to the volume of bell pepper imports and potential effects on the domestic industry.**

U.S. imports of Mexican bell peppers have increased from roughly \$456 million in 2014 to more than \$737 million in 2019.

**U.S. Imports of Fresh Bell Peppers\* by Value (2014-2019)<sup>58</sup>**

Partner	2014	2015	2016	2017	2018	2019
Mexico	\$456,119,020	\$457,509,792	\$678,609,130	\$556,731,507	\$670,024,339	\$737,189,329
Canada	\$222,207,747	\$239,046,902	\$226,770,612	\$231,426,542	\$246,934,914	\$302,111,765
Netherlands	\$23,287,338	\$34,328,972	\$50,727,907	\$45,378,700	\$43,937,899	\$40,492,476
Israel	\$8,157,493	\$11,653,288	\$18,047,415	\$9,110,933	\$11,509,599	\$12,496,343
Spain	\$2,883,965	\$7,440,786	\$1,074,944	\$652,750	\$2,637,354	\$7,834,745
Other	\$24,044,810	\$21,523,335	\$30,467,350	\$25,921,720	\$23,172,970	\$22,827,774
<b>World Total</b>	<b>\$736,700,373</b>	<b>\$771,503,075</b>	<b>\$1,005,697,358</b>	<b>\$869,222,152</b>	<b>\$998,217,075</b>	<b>\$1,122,952,432</b>

\*includes HS codes: 0709604015, 0709604025, 0709604065, 0709604085

Unlike strawberries, U.S. bell pepper imports have increased significantly from two countries—Mexico and Canada. Numerous witnesses testified on the effects that bell pepper imports have had on their industry and the marketability of domestically grown bell peppers in the U.S. market, particularly those grown in the southeastern United States.

- *Mike Joyner, Florida Fruit & Vegetable Association*: “[T]his explosive growth and imported Mexican fruits and vegetables is devastating Florida growers and their families. Just last spring, our Florida producers were plowing under crops they couldn’t sell because of the shutdown of the food service industry here in Florida ... Mexico also shipped an additional 2.2 million cartons of bell peppers in that same three-month

<sup>55</sup> Hearing Transcript, Aug. 13, 2020, at 178-79.

<sup>56</sup> Hearing Transcript, Aug. 13, 2020, at 185.

<sup>57</sup> Hearing Transcript, Aug. 13, 2020, at 194.

<sup>58</sup> U.S. Census Bureau Trade Data.

period, again, while we were plowing under crops ... We see so often breakeven points for bell peppers at \$16 and yet it's coming from Mexico at 12 and 13.”<sup>59</sup>

- *Jerome Crosby, Georgia Blueberry Commodity Commission*: “For several years, we tried to grow produce such as squash and pepper varieties but we just couldn’t compete against the imports and had to give it up.”<sup>60</sup>
- *Marie Bedner, Bedner Farms (FL)*: “We are a family owned operation and has farmed bell peppers and cucumbers in Palm Beach County and Martin County since 1950. I’d like to thank you for the opportunity today to talk about how our family’s business and livelihood have been affected by the devastating loss of market share, crop volume and sales revenue as a result of surging unfairly priced fruit and vegetable imports from Mexico.”<sup>61</sup>

In the event that USTR receives a request for monitoring under 19 USC 2252(d)(1), USTR will consider all information available from submissions and testimony, information submitted with the request, and any information otherwise available.

**(iv) Statutory process for 19 U.S.C. § 2252(d)(1) “perishable agricultural product” investigation**

If USTR determines that imports of a product satisfy the two prongs identified above, the statute requires that it request the ITC to begin monitoring imports under section 332(g) of the Tariff Act of 1930, 19 U.S.C. 1332(g).

After a monitoring investigation initiated under this process has been underway for 90 days—or anytime thereafter—a petitioner may file a Section 201 petition alleging serious injury from increased imports of that perishable agricultural product. If the petition requests provisional relief, the ITC must make a determination within 21 days of whether increased imports of the perishable agricultural product are a substantial cause of serious injury to the relevant domestic industry and whether:

1. the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or
2. the serious injury cannot be timely prevented through investigation under [the customary Section 201 investigation timeline].

If the ITC makes an affirmative preliminary determination with respect to these prerequisites, it then makes a finding as to the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. The statute creates a preference for increasing tariffs, as long as that form of relief is feasible and would prevent or remedy the serious injury. The ITC must “immediately report” its findings to the President. Within seven days after receiving a report from the ITC, the President may, if he considers provisional relief to be warranted:

- (i) increase or impose a duty;

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<sup>59</sup> Hearing Transcript, Aug. 13, 2020, at 91, 96.

<sup>60</sup> Hearing Transcript, Aug. 13, 2020, at 143.

<sup>61</sup> Hearing Transcript, Aug. 13, 2020, at 242.

- (ii) modify or impose a quantitative restriction on the importation of an article into the United States; or
- (iii) take a combination of actions under clauses (i) and (ii).

Irrespective of any provisional relief, USTR will monitor, review, and analyze all ITC findings in its reports and investigations and will determine whether such findings necessitate additional action by USTR with respect to strawberries and bell peppers.

#### **4. The Department of Commerce will establish a unique outreach program to advise seasonal and perishable growers on potential trade remedies.**

A number of witnesses testified that there is a “legal gap” in existing trade remedies under the AD and CVD laws administered by Commerce and the ITC. Under these laws, the ITC generally considers data from producers that represent the domestic industry throughout the United States in evaluating injury to the domestic industry as opposed to evaluating injury based on a segment of the industry during a specific selling or growing season.<sup>62</sup> During the hearing, some stakeholders suggested changes to the existing laws to make it possible for seasonal and perishable producers to bring cases that would adjudicate claims of unfairly traded imports during a particular growing season:

- *Rep. Darren Soto (FL)*: “We also ask you all to look to the Defending Domestic Produce Production Act, H.R. 101, a bipartisan bill that grants standing to those who are in the seasonal and perishable producer industry, to bring important relief based upon unfair trade practices and harm that they uniquely suffer during their discrete seasonal periods.”<sup>63</sup> H.R. 101 would amend the criteria for establishing the adequacy of antidumping and countervailing duty petitions, as well as the basis for the U.S. International Trade Commission to determine injury or threat thereof.
- *Jerome Crosby, Georgia Blueberry Commodity Commission*: “And we have been telling Washington about Mexico’s unfair trading practices for several years. We raised it when the USMCA negotiations began and we proposed a solution to the issue. Our solution was to give us access to the trade laws. We did not ask for a guarantee that we would win any anti-dumping case or that we would win a countervailing duty case. We asked for the ability to file a case, not a nominal ability but an actual ability to file a case[.]”<sup>64</sup>

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<sup>62</sup> Although the statute allows the ITC to define “regional industries” and assess injury on that basis, the statutory definition requires a concentration of dumped and/or merchandise benefiting from a countervailable subsidy into a regional market, and that (i) the producers within such regional market sell all or almost all of their production of the domestic like product in question in that market, and (ii) the demand in that regional market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States. 19 U.S.C. § 1677(4)(C).

<sup>63</sup> Hearing Transcript, Aug. 13, 2020, at 29; *see also* Hearing Transcript, Aug. 20, 2020, at 18 (quoting Representative Lawson stating that he is the regional cosponsor of H.R. 101).

<sup>64</sup> Hearing Transcript, Aug. 13, 2020, at 145.

- *Zippy Duvall, American Farm Bureau Federation*: “[W]e support changes necessary to allow seasonal crop producers to bring antidumping and countervailing duty cases.”<sup>65</sup>
- *David Fisher, New York Farm Bureau*: “The New York Farm Bureau supports ... [c]hanges to antidumping and countervailing duty laws would provide a process for regional, seasonal industries to petition for antidumping and countervailing duties.”<sup>66</sup>
- *George Tudor, Desert Grape Growers League of California*: “Even though the Department of Commerce’s preliminary determination had dumping margins as high as 114 percent, the ITC’s lack of injury determination was caused by the statutory definition of ‘industry.’ In short, ITC is required by statute to consider the economics of the entire U.S. table grape industry even though the remaining table grape geographical region was not harvested and marketed during the period of dumping.”<sup>67</sup>

Absent a change to the existing AD and CVD laws, Commerce and the ITC are required to enforce these laws as they currently exist. However, unfair foreign pricing and foreign government subsidies distort the free flow of goods and adversely affect U.S. industries, and the U.S. AD and CVD laws are not expressly limited to providing relief to certain industries at the expense of others. Rather, they were enacted to help all U.S. industries that are engaged in the production or manufacture of goods—including agricultural products—to obtain meaningful relief from dumped and/or unfairly subsidized imports. Therefore, it is important to ensure that producers of seasonal and perishable products have a complete understanding of the available trade remedies so that they can fully exercise their rights under existing trade remedy laws. Similar sentiments were expressed at the hearings:

- *Jerome Crosby, Georgia Blueberry Commodity Commission*: “Small-farm commodities need help identifying when and how to bring trade cases to defend our interests ... We need your help in identifying when a dumping or countervailing investigation should be considered. Larger industries have teams of lawyers and economists to help them make those decisions. Small fruit and vegetable farmers don’t. We have you, and we need you to step in and help us.”<sup>68</sup>

Commerce already provides robust AD/CVD counseling and other services to help U.S. industries and their workers level the playing field by taking action against unfair pricing and foreign government subsidies. Commerce’s counseling staff engage with U.S. industries and their workers to help them understand the U.S. unfair trade laws dealing with dumping and unfair foreign government subsidies, determine what information will be required for initiation of an investigation into the unfairly traded imports, and ensure there is sufficient evidence to meet initiation requirements provided under the statute. In addition, Commerce’s counseling staff help U.S. industries and their workers obtain publicly available data and information, which the industry can use together with its own data to evaluate whether pursuit of an AD/CVD case may

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<sup>65</sup> Hearing Transcript, Aug. 20, 2020, at 48.

<sup>66</sup> Hearing Transcript, Aug. 20, 2020, at 68.

<sup>67</sup> Hearing Transcript, Aug. 13, 2020, at 125-26.

<sup>68</sup> Hearing Transcript, Aug. 13, 2020, at 147-48.

be a viable option for relief from the unfairly traded imports. By statute, Commerce's counseling to potential petitioners is strictly confidential.

Normally, Commerce performs such counseling only when approached by industries, and Commerce does not coordinate with the ITC. However, in order to better support producers of seasonal and perishable fruits and vegetables, Commerce will conduct proactive outreach to producers of such products to ensure that these producers fully understand and can exercise their rights under existing trade laws. Commerce will invite officials from the ITC to participate in this outreach jointly with Commerce. Proactive outreach and counseling for these producers could potentially lead to the identification of a viable AD/CVD case. Should that occur, producers could potentially petition Commerce and the ITC to investigate the unfairly priced and/or subsidized imports, or Commerce could consider self-initiating an AD/CVD case, if appropriate. In order for Commerce to initiate an investigation, whether on the basis of self-initiation or the filing of a petition by the U.S. industry, U.S. law requires that there be sufficient information meeting the statutory requirements for initiation, including evidence of unfair trade practices (*i.e.* dumping or subsidies) and injury to the domestic industry, or threat thereof, caused by the allegedly dumped and/or subsidized imports. To the extent that the ITC is involved in such outreach, producers will be able to engage with the ITC at an early stage to determine what pathways may exist in the ITC's injury investigation process to address potential challenges faced by U.S. producers of seasonal and perishable products.

In conjunction with the efforts described above, Commerce will continue its ongoing efforts to partner with U.S. industry in identifying unfair subsidies provided by foreign governments, including Mexico. This information would contribute and feed into Commerce's ongoing efforts to monitor and address foreign subsidies that may contribute to injury to U.S. domestic industries.<sup>69</sup> In furtherance of this effort, Commerce will establish a formal channel for stakeholders to provide such information to Commerce via email in a time and cost-efficient manner. Commerce will review and analyze these submissions to inform its counseling work described above, and additionally will factor any new information into its consideration of any future AD/CVD cases involving seasonal and perishable agricultural products.

**5. USDA will increase targeted outreach to seasonal and perishable producers to maximize the use of existing USDA programs, will develop a market promotion strategy for domestically produced produce, and will initiate conversations with relevant federal partners to better understand the extent to which imports of seasonal and perishable products are utilized to enable criminal activity.**

While USDA understands the primary remedies sought by southeastern seasonal and perishable producers are those that can address concerns of unfair trade practices by Mexico, USDA will offer a secondary set of tools and efforts aimed at increasing competitiveness, expanding markets, and strengthening promotion of these products both domestically and internationally. Furthermore, USDA will increase targeted outreach to seasonal and perishable growers to ensure farmers are aware of and know how to access these resources.

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<sup>69</sup> Information regarding Commerce's ongoing monitoring of foreign subsidies is available at <https://enforcement.trade.gov/esel/eselframes.html>.

USDA is prepared to assist producers with programs to: 1) help ensure consistent quality of products coming into the United States; 2) to promote consumer education about where their produce comes from; 3) to expand global export markets; 4) to strengthen research and increase productivity; and 5) to examine areas of potential criminal activity. A summary of each of these resources and efforts is described below.

1. USDA can help ensure imported product is not of an inferior quality utilizing our Section 8e program.

USDA understands from the hearings there may be concern about inferior quality product coming across the border from Mexico. Federal marketing orders can be utilized to ensure imported products meet the same or comparable grade, size, quality, and maturity standards as domestic products to ensure domestic growers are not disadvantaged.

Section 8e of the Agricultural Marketing Agreement Act of 1937 (AMAA) applies to specific fruit, vegetable, and specialty crop imports into the United States. The Marketing Order and Agreement Division (MOAD) under USDA's Agricultural Marketing Service (AMS) enforces the Federal marketing orders for fruits, vegetables, and specialty crops, as well as compliance with import regulations. Current products under a marketing order include: Avocados, Dates (other than dates for processing), Hazelnuts, Grapefruit, Table Grapes, Kiwifruit, Olives (other than Spanish-style), Onions, Oranges, Irish Potatoes, Pistachios, Raisins, Tomatoes, and Walnuts. When these covered commodities come across the border during a period defined by the marketing order, the imports must be inspected by USDA to ensure it meets U.S. grade standards. If a load fails inspection, that shipment must be diverted to another country, donated, or destroyed.

Adding additional commodities to Section 8e requires a statutory change. Industry would need to work with Congress to establish a new marketing order as many of those products highlighted at the hearings are not yet covered commodities.

*USDA action: If producers are interested in establishing a new marketing order, USDA will provide technical assistance on the requirements, including the process to establish grade standards if they do not yet exist.*

2. USDA programs can strengthen consumer education to ensure individuals know where their produce is grown to make informed purchase decisions.

A number of individuals testified that consumers may be misled about where their produce is sourced. Retailers may make purchases from "local" brokers, although that broker may source the product itself from all over, including through the use of imported product.

USDA administers mandatory Country of Origin Labeling (COOL) that can help ensure consumers know where their product is grown. Through the 2002 and 2008 Farm Bills, Congress amended the Agricultural Marketing Act of 1946 to establish COOL, which requires retailers, such as full-line grocery stores, supermarkets and club warehouse stores, to provide their customers with information regarding the source of certain foods. Today, fresh and frozen fruits and vegetables are among the commodities covered by COOL.



Under COOL, retailers in physical (bricks and mortar) locations and those who sell remotely (such as online), are required to identify the country of origin on covered foods using a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. This information may be typed, printed, or handwritten provided it is in conformance with other Federal labeling laws and does not obscure other labeling information required by Federal regulation.

USDA audits retail establishments for compliance to ensure proper labeling. In addition, USDA conducts retail surveillance reviews on all covered commodities using State cooperative agreements and USDA personnel. In addition to retail surveillance activities, products are audited through the supply chain for accuracy of and compliance with COOL.

*USDA Action: USDA will review its COOL enforcement and compliance protocols to ensure USDA is taking an effective, risk-based approach to identifying potential points of non-compliance.*

USDA also administers research and promotion (R&P) programs. R&P boards provide a framework for agricultural industries to pool their resources and combine efforts to develop new markets, strengthen existing markets, and conduct important research and promotion activities.

While most R&P programs are industry specific, a “Buy American Produce” research and promotion program could be established across a broader coalition of industries to promote the benefits of buying U.S.-produced specialty crops. A proposal from a proponent group, along with industry support would be needed for USDA to begin taking the initial steps to create this program. Under the program, assessment dollars from industry stakeholders could be used to conduct research, publish studies on the benefits of U.S. grown produce, and create advertisements to encourage increased consumption of American fruits and vegetables.

Additionally, the program could provide consumers with comparative information about imported produce giving the consumer more information and education when making purchasing choices.

*USDA Action: USDA will develop will develop a market promotion strategy for domestically produced produce. If there is interest from industry, and consistent with our international trade obligations, this strategy could include the establishment and administration of a potential “Buy American Produce” R&P.*

3. USDA will continue efforts to expand markets globally and to strengthen export promotion.

The USDA Foreign Agricultural Service (FAS) administers a number of programs aimed at opening new markets to producers and strengthening existing ones. While USDA understands the primary concern of S&P producers is related to import concerns, for some farmers, additional export opportunities may provide a valuable avenue to expand their customer base.

The Technical Assistance for Specialty Crops program provides \$9 million per year to U.S. organizations for projects that address sanitary, phytosanitary, and technical barriers that prohibit

or threaten the export of U.S. specialty crops. Activities can be conducted in any market where a potential or existing threat to U.S. specialty crop exports can be demonstrated. Examples of eligible activities that can be funded under the program include seminars and workshops, study tours, field surveys, pest and disease research, and pre-clearance programs.

*USDA Action: USDA will increase outreach to S&P commodity groups to discuss priority markets in which trade barriers exist and the way in which TASC funding may be utilized to help resolve these market access issues.*

In addition, USDA-sponsored international trade missions open doors and provide a platform for U.S. food and agriculture exporters and host country buyers, giving them the opportunity to forge relationships, gather market intelligence, and, most importantly, generate sales. In 2019, USDA sponsored six Trade Missions that enabled more than 170 U.S. companies and organizations to engage in over 3,200 one-on-one meetings with foreign buyers, generating more than \$78 million in projected 12-month sales. While Covid-19 has impacted USDA's ability to engage in such in-person events, FAS has turned to virtual trade shows to continue its trade promotion efforts.

*USDA Action: USDA will host a Virtual Trade Event for horticulture producers to connect U.S. exporters and foreign buyer of U.S. fruits and vegetables in a series of business-to-business meetings designed to build relationships and drive sales of U.S. horticultural products.*

While these two steps represent industry-specific opportunities, they represent only a small portion of the tools available via FAS. Other programs, including the Agricultural Trade Promotion Program, Emerging Markets Program, Foreign Market Development Program, and others provide financial assistance to enable a broad range of export activities.

*USDA Action: As part of our overall effort to increase outreach to S&P stakeholders, USDA will work to make sure the industry is knowledgeable about FAS programs and how to apply for these resources.*

4. To better inform future decision-making, USDA can expand research opportunities for seasonal and perishable products.

USDA's National Institute of Food and Agriculture (NIFA) was established by the Food Conservation and Energy Act of 2008 (the 2008 Farm Bill) to find innovative solutions to issues related to agriculture, food, the environment, and communities. NIFA is structured to direct federal funding effectively to programs that address key national and global challenges. NIFA addresses these challenges by supporting a clear mission, a vision, and goals. NIFA supports research, education, and extension activities through three primary funding mechanisms – competitive grants, formula grants, and non-competitive grants. USDA funds and provides leadership for research, education, and extension programs that address national agricultural priorities. NIFA publishes requests for applications (RFA) to solicit grant proposals. RFAs provide instructions on how to apply as well as information about program purpose, eligibility, administrative and regulatory rules, and evaluation criteria. Information on the different types of funding available and RFAs can be found online.

*USDA Action: NIFA reviews various agricultural priorities to direct and coordinate grant funding. USDA will review priorities to evaluate specific opportunities to provide RFA's for projects intended to increase the competitiveness of seasonal produce.*

5. USDA will reach out to U.S. Customs and Border Protection to better understand whether produce imports are being used to enable criminal activity.

Some producers raised concerns that produce from Mexico is being used to bring narcotics across the Southern border. While reports of individual seizures demonstrate that this does occur, it is not clear whether agricultural shipments are used for this purpose more commonly than other types of cross-border traffic.

*USDA Action: USDA will initiate conversations with relevant federal partners, including U.S. Customs and Border Protection to analyze data on seizures of narcotics to understand if shipments of agricultural products are used to traffic narcotics disproportionately relative to other types of cross-border traffic.*

#### **6. Establishment of an interagency seasonal and perishable fruits and vegetable working group**

USTR, USDA, and Commerce will jointly establish an interagency working group that will include officials from each agency and will consider whether to include other agencies as well. The primary objective of this interagency group will be to monitor and assess on an ongoing basis seasonal and perishable fruits and vegetables trade data and related information, and to coordinate as appropriate regarding potential additional trade actions and investigations with respect to any seasonal or perishable agricultural products as deemed advisable by the group—recognizing that relevant statute confers sole authority to USTR and/or Commerce (as the case may be) to initiate such trade actions. The group will also make recommendations to the Secretary of Agriculture as to programs or assistance the Department of Agriculture could provide to producers of seasonal and perishable fruits and vegetables. Finally, the interagency working group will be available to provide technical assistance to Members of Congress, including consulting and assisting with drafting of legislation related to trade remedies affecting seasonal and perishable fruit and vegetable growers.

## **IV. Conclusion**

The Office of the United States Trade Representative, the United States Department of Agriculture, and the United States Department of Commerce recognize the challenges faced by American farmers and are committed to using each agency's resources and authority to promote and secure fair trade and a level playing field for American farmers.

Nothing in this plan is meant to indicate that this is the end of USTR's, USDA's, and Commerce's consideration of this issue. To the contrary, these are the actions deemed appropriate by the agencies at this time, but initiating these actions now does not foreclose the possibility of additional actions and investigations, or otherwise providing support to producers of seasonal and perishable fruits and vegetables. The Administration is dedicated to supporting America's hardworking

farmers across the country, and recognizes the importance of preserving and enhancing a diverse food supply that is literally homegrown.