CRS INSIGHT

Potential WTO Implications of USDA's Proposed Response to Trade-Retaliation

July 27, 2018 (IN10940)

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On July 24, 2018, Secretary of Agriculture Sonny Perdue announced that the U.S. Department of Agriculture (USDA) would be taking several actions to assist farmers in response to trade damage from what the Administration has characterized as "unjustified retaliation." Specifically, the Secretary said that USDA would authorize up to $12 billion in programs under the Commodity Credit Corporation (CCC) Charter Act (See CRS Report R44606, *The Commodity Credit Corporation: In Brief*) to help agricultural producers meet the costs of disrupted markets. (See CRS Insight IN10880, *China's Retaliatory Tariffs on Selected U.S. Agricultural Products*.)

Due to its price tag ($12 billion) and the uncertainty over how payments will be implemented, there is considerable interest from policymakers and market watchers about whether these payments will be fully compliant with World Trade Organization (WTO) commitments. This Insight briefly discusses the WTO commitments that are relevant to U.S. domestic support programs and how the newly announced U.S. trade retaliation assistance program may or may not comply with those WTO commitments.

USDA's Proposed Trade Retaliation Assistance: What Is Known?

According to USDA Chief Economist Rob Johansson, the trade retaliation assistance is a one-time program that serves as a short-term bridge until the Administration resolves the ongoing trade disputes. The assistance program is to consist of three parts, including direct payments to agricultural producers, government purchase of excess food supplies, and trade promotion activities.

- 1. **Market facilitation program.** Administered by USDA's Farm Service Agency, this program is expected to provide direct payments to producers of soybeans, sorghum, corn, wheat, cotton, dairy, and hogs.
- 2. **Food purchase and distribution program.** Administered by USDA's Agricultural Marketing Service, this program is expected to purchase unexpected surpluses of affected commodities such as fruits, nuts, rice, legumes, beef, pork, and milk from U.S. producers for redistribution to federal nutrition assistance programs. (See CRS Report RL34081, *Farm and Food Support Under USDA's Section 32 Program*.)
- 3. **Trade promotion program.** Administered by the Foreign Agriculture Service in conjunction with the private sector, this program is expected to assist in developing new export markets for affected U.S. farm products. For

examples, see the Market Access Program or the Emerging Markets Program.

The USDA is relying on mechanisms authorized under the CCC Charter Act. The CCC is a government-owned bank used to support or stabilize farm incomes and prices, so it does not require approval from Congress to undertake these initiatives. However, the specifics of the plan are to be subject to a federal rulemaking process.

According to Secretary Perdue, the aid program would begin on September 4, and further details (such as how producers can apply) will come out in mid- to late-August. Such details are likely to include how farmers can prove harm and how much monetary compensation each farmer will get. The specific manner of determining how payments are made to individual producers will determine the WTO status of the programs.

WTO Disciplines of Domestic Support

As a member of the WTO, the United States has committed to abide by WTO rules and disciplines, including those that govern domestic farm policy. (See CRS In Focus IF10192, *WTO Disciplines of Domestic Support for Agriculture*.) A farm support program can violate WTO commitments in two principal ways: first, by exceeding spending limits on certain market-distorting programs and, second, by generating distortions that spill over into the international marketplace and cause significant adverse effects. The WTO's Agreement on Agriculture spells out the rules for countries to determine whether their policies for any given year are potentially trade-distorting, how to calculate the costs of any distortion, and how to report those costs to the WTO in a public and transparent manner.

The principal WTO classifications for domestic support include the following:

- **Green box** programs are minimally or non-trade distorting and ***are not*** subject to any spending limits.
- **Amber box** programs are the most market-distorting programs and ***are*** subject to strict aggregate annual spending limits. The U.S. annual spending limit is $19.1 billion.
- ***De minimis* exemptions** are spending that is sufficiently small (less than 5% of the value of production)—relative to either the value of a specific product or total production—to be deemed benign and thus excluded from any spending limit.

In addition, certain types of export and import subsidies and non-tariff trade barriers that are not explicitly included in a country's WTO schedule or identified and accepted in the WTO legal texts are prohibited.

WTO Compliance of Trade Retaliation Assistance Payments

USDA outlays under food purchase and distribution programs have historically been notified to the WTO as green box compliant and thus not subject to any spending limit. Trade promotion programs are not notified under domestic support because they do not involve direct payments to producers.

Notification of payments under the market facilitation program will depend on how the payments are made. If payments are coupled to a farm's current production (i.e., by this year's harvest), as USDA officials suggest, then they would have to be notified as product-specific amber box outlays subject to the $19.1 billion amber box ceiling. Since 2007, U.S. amber box outlays have averaged $5.2 billion under mandatory farm support programs. Thus, it would appear that there is substantial room under the $19.1 billion ceiling for the addition of the trade-loss offset payments.

If payments are made to historical base acres rather than to actual current-year production, then they could be notified as non-product-specific payments. Non-product-specific payments can be excluded from the amber box ceiling under the *de minimis* exemption if they are less than 5% of the total value of U.S. agricultural production (approximately $400 billion) or approximately $20 billion.

By either approach, the trade retaliation assistance payments would appear to fit within U.S. commitments to the WTO. However, even when compliant with payment limits, any domestic support payments are open to challenge under WTO dispute settlement rules if another country can prove that they cause injury.