

# Protecting U.S. Agriculture

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June 29, 2015

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# Why Protect Agriculture?

- Food Security
- National Health
- Productive Capacity
- Infant or “New” Industry
- National Security
- Mitigate Unfair Foreign Trade Policies
- Domestic Programs



# How is Agriculture Protected?

- Tariff Barriers
  - Includes Antidumping and Countervailing Duties (AD/CVD)
- Non-tariff Barriers
  - Quotas
  - Sanitary and Phytosanitary (SPS) Measures
  - Licenses
  - Technical Barriers To Trade
    - Regulations, Standards, Testing, Certification
    - Complex Packaging/Labeling Requirements
- Other Laws
  - Mandatory Country of Origin Labeling
  - Domestic Subsidies and Other Policies

# Tariff Barriers to Trade

- Tariff (Levied by Country of Import)
  - Customs Document Specifying Rates of Duty and Other Quantitative Restrictions
  - Tariff Rates Correspond to Harmonized Tariff Code for the Product
- Duty Tax on Imports
  - Specific Duty
    - Specified Amount for Each Imported Unit (ie. \$40 Per MT of Beef)

# Tariff Barriers to Trade (continued)

- Ad Valorem Duty
  - Specified Percentage of the Value of the Imported Good (ie. 6% of the Value of Beef Imported)
- Combination Duty
  - Specific and Ad Valorem Duties
- U.S. International Trade Commission Maintains the U.S. Harmonized Tariff Schedule

# Harmonized Tariff System Agriculture, Food, and Related Chapters

## **Section I: Live Animals; Animal Products**

Chapter 1	Live animals
Chapter 2	Meat and edible meat offal
Chapter 4	Dairy produce; birds eggs; natural honey; edible products of animal origin, not elsewhere specified or included
Chapter 5	Products of animal origin, not elsewhere specified or included

## **Section II: Vegetable Products**

Chapter 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
Chapter 7	Edible vegetables and certain roots and tubers
Chapter 8	Edible fruit and nuts; peel of citrus fruit or melons
Chapter 9	Coffee, tea, maté and spices
Chapter 10	Cereals
Chapter 11	Products of the milling industry; malt; starches; inulin; wheat gluten
Chapter 12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruits; industrial or medicinal plants; straw and fodder
Chapter 13	Lac; gums, resins and other vegetable saps and extracts
Chapter 14	Vegetable plaiting materials; vegetable products not elsewhere specified or included

## **Section III: Animal or Vegetable Fats and Oils and Their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes**

Chapter 15	Animal or vegetable fats and oils and their cleavage products prepared edible fats; animal or vegetable waxes
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## **Section IV: Prepared Foodstuffs; Beverages, Spirits, and Vinegar; Tobacco and Manufactured Tobacco Substitutes**

Chapter 16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates
Chapter 17	Sugars and sugar confectionery
Chapter 18	Cocoa and cocoa preparations
Chapter 19	Preparations of cereals, flour, starch or milk; bakers' wares
Chapter 20	Preparations of vegetables, fruit, nuts or other parts of plants
Chapter 21	Miscellaneous edible preparations
Chapter 22	Beverages, spirits and vinegar
Chapter 23	Residues and waste from the food industries; prepared animal feed
Chapter 24	Tobacco and manufactured tobacco substitutes

## **Agriculture within other Sections**

Chapter 41	Raw hides and skins (other than furskins) and leather
Chapter 51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric
Chapter 52	Cotton

## **Food and Agriculture Related**

Chapter 3	Fish and crustaceans, molluscs and other aquatic invertebrates
Chapter 44	Wood and articles of wood; wood charcoal
Chapter 31	Fertilizers

Source: U.S. International Trade Commission, [www.usitc.gov](http://www.usitc.gov)



# Specific Tariff Example

## Harmonized Tariff Schedule of the United States (2014)

Annotated for Statistical Reporting Purposes

II  
8-6

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
0805		Citrus fruit, fresh or dried:				
0805.10.00		Oranges. . . . .		1.9¢/kg	Free (AU,BH,CA, CL,CO,D,E,IL, JO,KR,MA,MX, OM,P,PA,PE,SG)	2.2¢/kg
	20	Temple oranges. . . . .	kg			
	40	Other. . . . .	kg			
0805.20.00		Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids. . . . .		1.9¢/kg	Free (AU,BH,CA, CL,CO,D,E,IL, JO,KR,MA,MX, OM,P,PA,PE,SG)	2.2¢/kg
	20	Tangerines. . . . .	kg			
	60	Clementines. . . . .	kg			
	80	Other. . . . .	kg			
0805.40		Grapefruit, including pomelos:				
0805.40.40	00	If entered during the period from August 1 to September 30, inclusive, in any year. . . . .	kg. . . . .	1.9¢/kg	Free (AU,BH,CA, CL,CO,D,E,IL, JO,MA,MX, OM,P,PA,PE,SG)	3.3¢/kg
					0.7¢/kg (KR)	
0805.40.60	00	If entered during the month of October. . . . .	kg. . . . .	1.5¢/kg	Free (CA,CL,CO, D,E,IL,JO,MX, OM,P,PA,PE,SG)	3.3¢/kg
					0.1¢/kg (BH)	
					0.6¢/kg (AU,MA)	
					0.6¢/kg (KR)	
0805.40.80	00	If entered at any other time. . . . .	kg. . . . .	2.5¢/kg	Free (CA,CL,CO, D,E,IL,JO,MX, OM,P,PA,PE,SG)	3.3¢/kg



# Ad Valorem Tariff Example

## Harmonized Tariff Schedule of the United States (2014)

Annotated for Statistical Reporting Purposes

II  
8-8

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
0807		Melons (including watermelons) and papayas (papaws), fresh:				
0807.11		Melons (including watermelons):				
0807.11.30		Watermelons:				
		If entered during the period from December 1, in any year, to the following March 31, inclusive. ....		9%	Free (A,AU,BH,CA, CL,CO,E,IL,JO, MA,MX,OM,P,PA, PE,SG) 3.6% (KR)	35%
	10	Seedless.....	kg			
	90	Other.....	kg			
0807.11.40		If entered at any other time.....		17%	Free (A+,AU,CA, CL,CO,D,E,IL, JO,MA,MX,OM,P, PA,PE,SG) 1.7% (BH) 9.7% (KR)	35%
	10	Seedless.....	kg			
	90	Other.....	kg			
0807.19		Other:				
		Cantaloupes:				
0807.19.10	00	If entered during the period from August 1 to September 15, inclusive, in any year. ....	kg. ....	12.8%	Free (A+,AU,BH, CA,CL,CO,D,E, IL,JO,MA,MX, OM,P,PA,PE,SG) 7.3% (KR)	35%
0807.19.20	00	If entered at any other time.....	kg. ....	29.8%	Free (A,AU,CA,CL, CO,E,IL,JO,MA, MX,OM,P,PA,PE,SG) 7.3% (KR)	35%



# Trade Agreement Codes

(I) Programs under which special tariff treatment may be provided, and the corresponding symbols for such programs as they are indicated in the "Special" subcolumn, are as follows:

Generalized System of Preferences .....	A, A* or A+
United States-Australia Free Trade Agreement .....	AU
Automotive Products Trade Act .....	B
United States-Bahrain Free Trade Agreement Implementation Act .....	BH
Agreement on Trade in Civil Aircraft .....	C
North American Free Trade Agreement:	
Goods of Canada, under the terms of general note 12 to this schedule. ....	CA
Goods of Mexico, under the terms of general note 12 to this schedule .....	MX
United States-Chile Free Trade Agreement .....	CL
African Growth and Opportunity Act .....	D
Caribbean Basin Economic Recovery Act .....	E or E*
United States-Israel Free Trade Area .....	IL
Andean Trade Preference Act or	
Andean Trade Promotion and Drug Eradication Act .....	J, J* or J+
United States-Jordan Free Trade Area Implementation Act .....	JO
Agreement on Trade in Pharmaceutical Products .....	K
Dominican Republic-Central America-United States Free Trade Agreement Implementation Act .....	P or P+
Uruguay Round Concessions on Intermediate Chemicals for Dyes .....	L
United States-Caribbean Basin Trade Partnership Act .....	R
United States-Morocco Free Trade Agreement Implementation Act .....	MA
United States-Singapore Free Trade Agreement .....	SG
United States-Oman Free Trade Agreement Implementation Act .....	OM
United States-Peru Trade Promotion Agreement Implementation Act .....	PE
United States-Korea Free Trade Agreement Implementation Act .....	KR
United States-Colombia Trade Promotion Agreement Implementation Act .....	CO



# Tariff Barriers to Trade (continued)

- Protective Duty
  - Designed to Discourage Imports and Protect Domestic Producers
- Revenue Duty
  - Designed to Raise Money
- Anti-Dumping and Countervailing Duty
  - Offset Export Dumping and/or Subsidy on Exports of Another Country

# Non-Tariff Barriers to Trade

## Non-Tariff Trade Barriers

- Any Trade Barrier Other Than a Tariff

## Explicit Non-Tariff Trade Barriers

- A Non-Tariff Trade Barrier which is measurable

vs.

## Implicit Non-Tariff

- A Non-Tariff Trade Barrier which is not measurable

# Explicit Non-Tariff Barriers to Trade

- Import Quotas
  - Quantity Restrictions on Imports (ie. Up to 10,000 Tons)

3. The aggregate quantity of beef, entered under subheadings 0201.10.10, 0201.20.10, 0201.20.30, 0201.20.50, 0201.30.10, 0201.30.30, 0201.30.50, 0202.10.10, 0202.20.10, 0202.20.30, 0202.20.50, 0202.30.10, 0202.30.30 and 0202.30.50 in any calendar year shall not exceed the quantities specified in this note.

	<u>Quantity</u> (metric ton)
Canada	No limit
Mexico	No limit
Australia	378,214
New Zealand	213,402
Japan	200
Argentina	20,000
Uruguay	20,000
Other countries or areas	64,805

Imports under these provisions are subject to regulations issued by the United States Trade Representative.



# Explicit Non-Tariff Barriers to Trade (continued)

- Variable Levy
  - Import Duties Adjusted Weekly, Monthly, or Quarterly by some countries (EU in the past)
- Domestic Content
  - Requirement that Industry Use Specific Amount (Proportion) of Domestic Product

# Implicit Non-Tariff Barriers to Trade

- **Sanitary & Phytosanitary Regulations (SPS)**
  - Government Regulations Designed to Protect Human, Animal, and Plant Health - **IMPORTANT**
  - Sanitary Regulations: Used to ensure the sanitation of meats, poultry & dairy products
  - Phytosanitary Regulations: Used to ensure the health/sanitation of plants & plant material
  - Animal Health Regulations: Used to ensure that animals are free from pests & diseases
- **All Countries Have SPS Regulations**

# **Implicit Non-Tariff Barriers to Trade**

## **WTO SPS Agreement**

- The SPS Agreement Applies to SPS Government Measures that Impact Trade
  - Private firms can impose most any rules they want to – more and more are doing so
- An SPS measure is any laws, regulations, decrees, requirements, and procedures used to protect used to protect human, animal and plant life or health
- Must be science and risk-based, apply to all like products, and base standards on international standards
- SPS Agreement Provides Forum for Resolving Disputes



# **Implicit Non-Tariff Barriers to Trade**

## **SPS Trade Barriers**

- An SPS Measure Might be a Barrier to Trade if:
  - not developed in a transparent manner
  - not science-based
  - not based on international standards such as Codex, OIE, IPPC
  - only applies to foreign companies (imports)
  - compliance process is unclear
  - compliance time-frame is unreasonable
- Biotech a Target for Many SPS Trade Barriers – Precautionary Principle

# Implicit Non-Tariff Barriers to Trade (continued)

- Technical Barriers to Trade are those Technical Regulations and Standards which Unfairly Restrict Trade and Can Include:
  - Licensing Regimes
  - Labeling Regulations
  - Packaging Size/Weight Restrictions
  - Terminology
- Like the SPS Agreement, the WTO TBT Agreement Helps to Ensure Member's Have Product Regulations Which Do Not Unfairly Restrict Trade

# Implicit Non-Tariff Barriers to Trade (continued)

- Government Procurement
  - Domestic Preference in Government Purchases, Including:
    - Military, Food Aid, and Public Sector Cafeterias
- Macroeconomic Policies
  - Monetary/Fiscal Actions Which Affect Exchange Rates, Prices, Interest Rates, and the Balance of Trade
- Public Financed Research & Development

# U.S. Regulatory Requirements Which Help to Protect U.S. Agriculture

- U.S. Department of Agriculture
  - Agricultural Marketing Service - AMS (USDA) Ensures Imported Products Meet U.S. Market Order Restrictions
  - Marketing Orders Impacting Imports Include:
  - Avocados, Dates, Hazelnuts, Grapefruit, Kiwi, Oranges, Olives, Onions, Irish Potatoes, Pistachios, Raisins, Tomatoes, and Walnuts
  - AMS also Enforces Mandatory Country of Origin Labeling (MCOOL) – More on that Later

# U.S. Regulatory Requirements Which Help to Protect U.S. Agriculture

- *Animal and Plant Health Inspection Service – APHIS (USDA)* Enforces the APHIS Plant Protection Quarantine by Inspecting for the Presence of Harmful Agricultural Pests.
- *Food Safety Inspection Service – FSIS (USDA)* is Responsible for Assuring that Meat and Poultry Products Are Safe, Wholesome for Consumption, and Accurately Labeled
- Environmental Protection Agency – EPA
  - Establishes Tolerance Levels for Specific Pesticides That are Enforced by the FDA or USDA

# **U.S. Regulatory Requirements Which Help to Protect U.S. Agriculture**

- Food and Drug Administration – FDA
  - Ensures the Safety, Sanitation, and Proper Labeling of Imported Foods as Specified by the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act
  - FDA Inspects Shipments, Collects and Examines Samples, and Conducts Investigations to Ensure Product Quality Standards are Met
  - Product Specific Regulations May Be Obtained Through the FDA International Affairs Staff



# **U.S. Regulatory Requirements Which Help to Protect U.S. Agriculture**

## **Food Groups Under FDA Authority**

- Dairy Products
  - Milk
  - Cheese
  - Butter
- Plant products
  - Vegetables
  - Fruits
  - Nuts
  - Juices
- Spices
- Dietary Supplements
- Infant Formula
- Seafood
  - Finfish
  - Shellfish
  - Crustaceans
  - Surimi based
- Grain-based
  - Bread
  - Cereals
  - Flour
- Bottled water



# Food Safety Modernization Act (FSMA)

- Legislation Designed to be an Update to a Myriad of U.S. Food Safety Laws Dating back to 1906, When FDA was Created and Meat Inspection Act Passed
- New Import Authorities and Mandates for Imports Under FSMA Include:
  - Importer Accountable for Ensuring Foreign Suppliers Have Food Safety Measures in Place
  - New Program for 3<sup>rd</sup> Party Food Safety Certification
  - High Risk Foods for Import Require Assurance of Compliance
  - Voluntary Qualified Importer Program for Expedited Entry
  - FDA Will Now Have Authority to Deny Entry if FDA Denied Access to the Foreign Facility or Country

# **Food Safety Modernization Act (FSMA)**

- Signed into Law on January 4, 2011
  - Only 3 of at Least 8 Final Rules Have Been Issued by FDA
  - New rule deadlines:
    - Preventive controls for human and animal food (8/30/15)
    - Imported food and foreign suppliers (10/31/15)
    - Produce safety (10/31/15)
    - Food transportation (3/31/16)
    - Intentional adulteration of food (5/31/16)
    - Deadlines for the sanitary transportation and intentional food adulteration rules also pushed back to 2016

# Mandatory Country-of-Origin Labeling (MCOOL)

## Legislation and Related Activities

2002

- 2002 Farm Bill – Enacted Mandatory COOL

2004

- IFR published for Fish and Shellfish Only – 7 CFR Part 60
- Implementation for remaining covered commodities delayed

2008

- 2008 Farm Bill Amended COOL Provisions
- IFR published for remaining covered commodities: 7 CFR Part 65
  - Implementation September 30, 2008

2009

- Final Rule published for all covered commodities combined
  - 7 CFR Part 60
  - 7 CFR Part 65
  - Implementation – March 16, 2009; Remained in 2014 Farm Bill

# MCOOL: Who Must Label?

- **Applies only to Retailers:** Retailers handling fresh and frozen fruits and vegetables with an invoice value of at least \$230,000 annually
  - Does not apply to Restaurant, Cafeteria, Food Stand or Location Providing Ready-to-Eat Food or Products used as Ingredients or Being Exported
- **Covers Fresh and Frozen Muscle Cuts of Meat, Seafood, Fruits, Vegetables, Pecans, Macadamia Nuts, and Ginseng**
  - Does not apply to further processed or cooked foods, or foods used as ingredients (mixes)

# MCOOL: Determining Origin

- Exclusive U.S. Origin - Product of U.S.A.
- Foreign Origin - Imported for Consumption: Product of X
- Mixed U.S. and Foreign Origin - Product of U.S.A. and X
- Country of Origin Declarations can be made on: Placards, Signs; Labels; Stickers; Bands; Twist Ties; Pin Tags; or other display
- Labels Must be: Legible; In a Conspicuous Location, and Abbreviations are Acceptable but Limited
  - Symbols and Flags Alone Not Acceptable

# MCOOL: Implications

## ➤ Problems:

- ✓ Shelf Space at Premium & High Degree of Competition Among Retailers, So Cost Passed Back to Production Sector
- ✓ U.S. Retailers & Especially Packers May Reduce Number of Countries Supplying Products
- Canada and Mexico both took MCOOL to the WTO
- The U.S. Lost Several Rounds in the WTO as MCOOL found to be an Unfair Trade Barrier – a Labeling TBT
- The U.S. Now May Face Retaliatory Tariffs from Canada and Mexico
- U.S. House Voted to Repeal MCOOL for Meats; Senate is Considering

# **Options to Ensure Integrity of Food Supply**

- **Improved Surveillance & Monitoring: Pathogens, Disease, Pests**
- **Increased Coordination Among U.S. Agencies**
  - **Food Safety**
  - **Animal Health**
  - **Plant Health**
- **Improve Computer Hardware & Software Compatibility**



# Options to Ensure Integrity of Food Supply (continued)

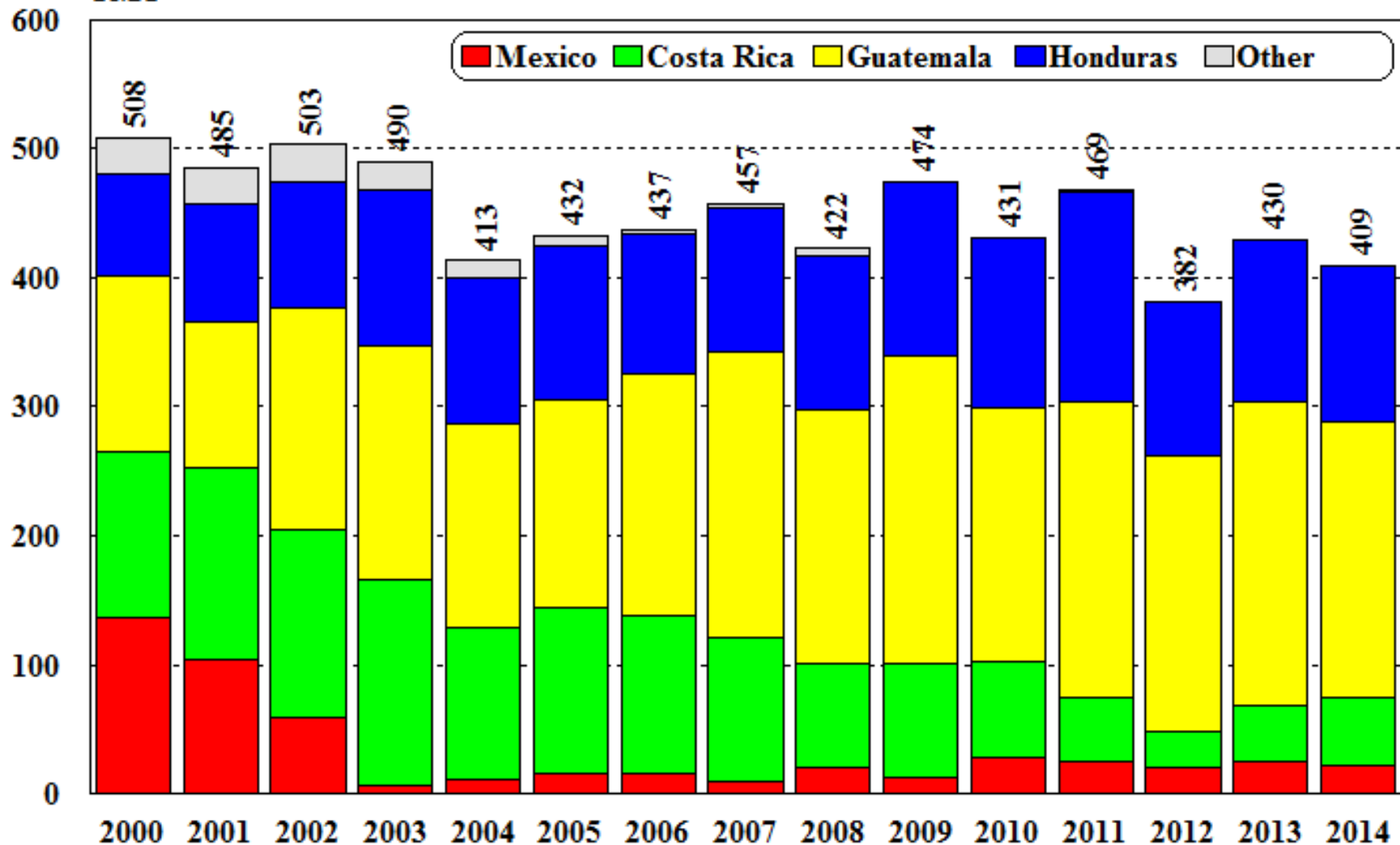
- In the U.S. – Improve Diagnostics & Analytics: USDA, FDA, EPA
- Increase Coordination w/in North American Food, Animal, & Plant Health Agencies: USDA, CFIA
- Increase Outreach by U.S. to Other Food, Animal, & Plant Health Agencies in W. Hemisphere
- Expand the Border: Inspectors in Other Countries-similar to Canada

# Example: U.S. Cantaloupe Imports

- U.S. Imports 400-500 TMT/Year of Cantaloupes
- Mexico, a Cantaloupe Producer Located Next to the U.S., Had a Significant Share of U.S. Market
- Following Outbreaks of Salmonella in Mexican Cantaloupes (NOTE: Not Intentional Outbreaks), FDA Halted Imports of in October 2002
- Central American Countries Filled Mexico's Share of the Market
- Mexico Allowed to Resume Exporting Shortly Afterward But Yet to Reclaim Previous Market Share
  - No Agreement with FDA to Clarify until 2005
  - Competitors Reluctant to Give Up Share

# U.S. Imports of Cantaloupes, 2000 - 2014

TMT



Source: FAS/USDA, Global Agricultural Trading System, [www.fas.usda.gov/gats/default.aspx](http://www.fas.usda.gov/gats/default.aspx)

# **Example: U.S. Cantaloupe Imports**

- **In 2012, Cantaloupe Imports dropped below 400 TMT first time in recent history**
- **Why?**
  - **Numerous food safety outbreaks in recent years**
    - **2008 – Honduran cantaloupes with salmonella**
    - **2011 – Guatemalan cantaloupes with salmonella**
    - **2011 – Colorado cantaloupes with listeria (33 died)**
    - **2012 – Indiana cantaloupes with salmonella (3 died)**
- **The U.S. outbreaks seem to have impacted imports more than outbreaks in imported cantaloupes**
- **Outbreaks in U.S. and imported products continue to happen (bagged salad anyone?)**

# **Trade Disruption Impacts**

- **Actions of Dept. of Homeland Security, USDA, & FDA if Outbreak Occurs**
  - **Border Closings**
    - **Isolated**
    - **Complete**
- **Cargo Backlogs/Spoilage**
- **Disruption of Just-In-Time Delivery**

# **Trade Disruption Impacts**

- **Supply Chain Disruption**
- **Higher Prices in U.S. Market**
- **Lower Prices in ROW**
- **Mexican Cantaloupe Example – Consider the Impacts if the Salmonella was Intentional!**
  - **Would Have Shaken Confidence in Entire Food Supply**



# Thank You!!

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