



International trade law at the close of the century

An update for Kansas lawyers

By John W. Head¹

Kansas business, including agriculture, continues to “go international.” As the century draws to a close, the annual value of all Kansas exports is nearly \$7 billion. Merchandise exports account for more than half of that amount, having tripled in the past decade. More than 100,000 Kansas jobs are export-related. These Kansas figures reflect the growing importance of international trade for America’s economy generally. It is no surprise, therefore, that Kansas lawyers are feeling the need to keep up with recent developments in international trade law. Many of us are called upon (or soon will be) to advise clients about trade opportunities in various parts of the world — for example, in North America under the North American Free Trade Agreement and in Asia following the economic crisis there — and to help those clients through the labyrinth of U.S. trade law.

This article offers guidance on these topics. It is written for non-specialists in international trade law, and it builds upon two earlier articles I wrote for *The Journal of the Kansas Bar Association* — one in late 1992,² and the other in early 1996.³ Like those earlier articles, this one provides an updated summary of several key developments that Kansas lawyers are likely to find pertinent to their practice.

I. International trade and Kansas business

Total exports from Kansas, including both merchandise and agricultural commodities, amount to nearly \$7 billion a year. Following are some illustrative data that indicate some of the specific features of those exports and show the importance of international trade to today's Kansas economy.⁴

Agricultural exports from Kansas generate about \$2.7 billion a year in revenues. These exports consist mainly of wheat and flour, live animals and meat, feed grains, hides and skins, and soybeans. Kansas agricultural exports consistently rank about sixth in the nation, and Kansas wheat exports rank first in the nation. Kansas is also one of the top wheat producing states in the country, accounting for 42 percent of all hard red winter wheat. There is good potential for increased wheat exports, as the two top foreign importers of U.S. hard red winter wheat — Mexico and Egypt — both have quickly increasing populations.

Merchandise exports from Kansas equal about \$4 billion a year. These exports have increased in value by about 75 percent in the past five years, and they consist mainly of transportation products (33 percent, coming primarily from Kansas' aviation industry), processed food and kindred products (23 percent), and miscellaneous industrial machinery and equipment (12 percent). The top markets for Kansas merchandise exports are Canada (21 percent), Japan (15 percent), Mexico (6 percent), and the United Kingdom (4 percent), and significant exports also go to France, Australia, Korea, Brazil, Singapore, Germany, and China. Overall, Asia is the region that has purchased the largest share of Kansas exports — 38 percent in 1996 but down to 29 percent in 1997 — proof that the Asian economic crisis is important to many Kansas businesses. Our North American neighbors

and European buyers account for the other large shares of Kansas exports.

Kansas exports compete, of course, with those of other states and other countries. International trade rules play a big role in how that competition is conducted. The remainder of this article highlights some key developments in this area of law and business, current as of early February 1999.⁵ I organize my account geographically, starting with the Americas and then proceeding to Asia, Europe and other regions.

II. Trade relations with our neighbors in the Americas

A. NAFTA developments

Background. The North American Free Trade Agreement was signed by the Canadian, Mexican and U.S. heads of state in December 1992. In December 1993, after a heated national debate, Congress agreed to U.S. participation in NAFTA by enacting the NAFTA Implementation Act.⁶ In January 1994 NAFTA entered into force. The overall aim of NAFTA is to bring the 360 million consumers of the North American continent together into one of the world's largest markets. Its specific goals are to increase trade by the gradual elimination of tariff and non-tariff barriers, to increase investment by the removal of performance requirements and investment screenings and to create economic opportunities in several service sectors. It also covers areas such as intellectual property, technical standards and environmental issues. NAFTA trade already amounts to at least one-third of all U.S. trade, and about one-fourth of Kansas merchandise exports go to either Canada or Mexico.

Tariff eliminations. As of January 1998 all tariffs between Canada and the United States have been eliminated. At the border of Mexico and the United States, the elimination of tariffs is progressing more gradually, with a 15-year phase-out period, or a goal of 2009. NAFTA, however, allows for the acceleration of tariff cuts if all countries agree. In 1997, some early U.S.-Mexico cuts were implemented;⁷ and other early cuts became effective in mid-1998.⁸

Chile's possible accession into NAFTA. In late 1994, President Clinton announced that Chile would be the next country invited into NAFTA. If this were to happen, Kansas exporters could benefit from the reduction in tariffs and other barriers to trade with that country. As of now, however, Chile is still not a NAFTA member, for several

FOOTNOTES

1. I wish to express my gratitude to Christine Ohlen and Cathleen Hull for helping me prepare this article.

2. John W. Head, *Making International Trade Less Foreign: A "Nutsbell" for Nonspecialists on the Changing Rules Governing International Trade*, 61 JOURNAL OF THE KANSAS BAR ASSOCIATION, NOV. 1992, pp. 42-49.

3. John W. Head, *International Business and Kansas Lawyers: An Update on International Trade Rules and How They Affect Kansas*, 65 JOURNAL OF THE KANSAS BAR ASSOCIATION, JAN. 1996, pp. 26-33.

4. These figures are mainly for calendar year 1997 and are drawn from several sources, including *State of Kansas 1997 Merchandise Exports*, by the Trade Development Division of the Kansas Department

of Commerce and Housing (1998), and *Agricultural Exports (Special Press Release)*, Aug. 24, 1998, by the Kansas Agricultural Statistics office in Topeka.

5. Much of the information presented in this article is drawn from the weekly BNA publication INTERNATIONAL TRADE REPORTER. The INTERNATIONAL TRADE REPORTER has an excellent index, so I have omitted specific citations to it. A few items are drawn from trade law newsletters issued by law firms such as Miller & Company P.C. (Kansas City) and Cleary, Gottlieb, Steen & Hamilton (Washington, DC), and from some of the web pages listed at section V-B of this article.

6. 19 U.S.C. § 3301 et seq.

7. Presidential Proclamation 7016, 62 Fed. Reg. 42033 (Aug. 4, 1997).

8. Presidential Proclamation 7113, 63 Fed. Reg. 41951 (Aug. 5, 1998).

reasons.⁹ First, the American political environment is not conducive to an in-depth debate on NAFTA expansion relatively soon after NAFTA's establishment. Second, Chile's free-trade agreement with MERCOSUR — the customs union among Argentina, Brazil, Paraguay and Uruguay (with Bolivia and Chile in associate status) — has a "most-favored-nation" policy requiring any MERCOSUR member that offers a lower tariff concession to a third party to extend it also to the other MERCOSUR member states. This obviously complicates Chile's accession to NAFTA. Third, Canada and Chile have already entered into a free-trade agreement, under which Chile received numerous concessions that are both (i) unacceptable to the United States and (ii) unlikely to be dropped by Chile in order to enter into the NAFTA. Chile and Mexico also have entered into a free-trade agreement, which they expanded in April 1998. Fourth, the U.S. Congress has not renewed the Clinton administration's "fast-track" authority, a matter explained in section IV-C of this article.

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B. Free Trade Area of the Americas

Background. For several years, free-trade proponents have urged the establishment of a Free Trade Area of the Americas (FTAA), modeled after NAFTA. The FTAA process began at the December 1994 Summit of the Americas in Miami. In June 1995, trade ministers from 34 nations (all countries in the Americas except for Cuba) formed seven working groups on such topics as market access, customs procedures, investment and subsidies. Other working groups formed in March 1996 and May 1997 focus on government procurement, trade in services, intellectual property rights and dispute resolution. Actual negotiations began in mid-1998, based on the efforts of the working groups, with the aim of establishing an FTAA by 2005.¹⁰

Status and prospects. Current FTAA negotiations focus largely on "business facilitation measures" and "transparency" issues. Although the negotiations are proceeding, several contentious issues stand in the way of FTAA success.¹¹ First, the lack of "fast-track authority" on the part of the U.S. negotiators (see section IV-C, below) might well create a drag on negotiations, as representatives of other countries will question the usefulness of negotiating with U.S. representatives who act without such authority. Second, two especially difficult substantive issues have already emerged: liberalization of trade in services and market access. The United States and some South

American countries disagree as to (i) whether the implementation of World Trade Organization standards on these issues (see section IV-C, below) should be the FTAA's end goal or only its starting point and (ii) whether the FTAA should establish a list of specific goods and services covered by the agreement or should instead start with the assumption of universal free trade and identify only the specific exceptions to that rule. Third, the relationship of the FTAA to NAFTA and MERCOSUR (the southern common market referred to above) remains unresolved. If negotiators resolve these various issues and create an FTAA agreement, Congressional debate over U.S. participation would follow. If approved, the new FTAA regime would create a more liberal legal and business environment for trade between Latin America and the United States.

C. Other North American trade matters of concern to Kansans

U.S.-Canada grain trade. Several irritants have afflicted this trade in recent years. The United States has been concerned about the level of Canadian grain exports to the United States, particularly exports of spring and durum wheat — not the hard red winter wheat that predominates in Kansas. Canada has refused to limit those exports, stating that it is complying with NAFTA. The United States has also complained that Canada does not open its markets sufficiently to imports of wheat and barley from the United States. The most recent development came in December 1998, when the United States and Canada reached an agricultural market access agreement affecting both grain and livestock. Under the pact, Canada agreed (i) to do away with certain testing requirements for wheat, (ii) to permit wheat shipments from some U.S. states to go directly to Canadian elevators without excessive regulatory hurdles, and (iii) to provide the United States with forecasts of grain export sales. But Canada did not agree to any cap on the volume of grain exports to the United States, a fact that has prompted calls for the U.S. government to take trade action under U.S. trade laws.

U.S. corn processors' Section 301 complaint against Mexico. Under Section 301 of the Trade Act of 1974,¹² the U.S. Trade Representative (USTR) can (and in some cases must) take retaliatory action against a country whose trade practices violate an international trade agreement with the United States or are otherwise "unjustifiable" and burden U.S. commerce. In April 1998, U.S. corn processors filed a Section 301 petition concerning policies of the Mexican government that they say have denied fair market access to U.S.-made high fructose corn syrup (HFCS). The Washington-based Corn Refiners Association says that the Mexican government has been involved in a multi-front effort to restrict market access for HFCS. The Section 301 proceeding stems from an agreement under which the Mexican sugar industry supplies the country's soft drink bottlers with sugar at below-market

9. See generally Thomas Andrew O'Keefe, *Symposium: NAFTA and the Expansion of Free Trade*, 14 ARIZ. J. INT'L & COMP. L. 305 (1997); Rafael X. Zahradddin-Aravena, *Chilean Accession to NAFTA: U.S. Failure and Chilean Success*, 23 CAR. J. INT'L L. & COMM. REG'N 53 (1997).

10. See NEW YORK TIMES, Apr. 20, 1998, at 1.

11. See generally Erik S. Gerding, *The Future of Free Trade in the Americas*, TRADE AND INVESTMENT REPORT (Cleary, Gottlieb, Steen & Hamilton), July-August 1997, at 9-10.

12. 19 U.S.C. § 2411.

prices. In response to the petition, U.S. Trade Representative Charlene Barshefsky started an investigation of the Mexican practices; she is to complete her investigation by mid-1999. The United States has also requested WTO consultations, which could result in a WTO panel ruling if the parties do not settle first. Kansas corn growers and their attorneys should monitor these developments. Kansas is the seventh largest producer of corn in the United States.

III. Trade relations with Asia

A. The Asian economic crisis

Background. Beginning in mid-1997, economic disaster hit Asia — particularly Thailand, Indonesia and Korea.¹³ The Thai baht lost more than half of its value between mid-1997 and January 1998; the Indonesian rupiah lost about 75 percent of its value in the same period; and the Korean won fell about 70 percent in value just between mid-October and mid-December 1997. Stock market values in all three countries dropped dramatically. The International Monetary Fund stepped in and put together “bailout” packages for those three countries. Korea’s economy stabilized, as did Thailand’s. Indonesia’s economic woes were combined with political chaos that led to the resignation of President Suharto in mid-1998, and that country’s troubles continue with violent protests. As feared, the crisis in Asia proved contagious. Japan acknowledged in late 1998 that its economy was in deep recession and promised a succession of reforms to stave off the kind of investor retreat that brought down the Korean, Thai and Indonesian economies. Most recently, Brazil conceded defeat in its efforts (again assisted by the IMF) to prevent that country’s currency from falling.

Mixed implications for Kansas trade. How do these developments affect Kansas? For one thing, Kansas merchandise exporters might see their sales figures continue to decline in coming months to those countries hardest-hit by the financial crisis that began in Asia. Indeed, Asia is the only region in which the value of Kansas merchandise exports has dropped recently. Lower currency values (as in Asia and most recently Brazil) tend to boost a country’s exports and reduce its imports; and of course economic depression also curbs a country’s ability to import foreign goods. As a result, Asian-based economic turmoil can trigger even deeper U.S. trade deficits with those countries whose currencies were hit the hardest. Overall, the U.S. trade deficit with the Asian region for 1998 is estimated at \$160 billion, much bigger than for any other region. This, in turn, will probably have legal implications. Two of these are addressed below.

Protecting U.S. industries against cheap imports. Historically, U.S.

trade deficits have often led to U.S. protectionist action, through legislative or administrative measures. Kansas companies and their lawyers should expect to see cases brought under U.S. trade laws to restrict imports coming to the United States from the affected Asian and other countries. Indeed, these cases have already begun. U.S. companies have filed increasing numbers of “antidumping” petitions, alleging that foreign companies faced with collapsing home markets have started selling their goods in the United States at less than the cost of production or at “less than fair value,” in violation of U.S. law¹⁴ and international trade rules based in the General Agreement on Tariffs and Trade.¹⁵ Companies will probably also file complaints against “floods” of cheap but fairly priced imports from various countries whose currencies have dropped in value. These complaints will fall under the Section 201 “escape clause” provisions of U.S. law¹⁶ and corresponding provisions in the GATT. If successful, these “antidumping” or “escape clause” cases can result in extra tariffs being placed on imports. Some Kansas manufacturers can benefit, of course, from the protection that such extra tariffs afford. But the opposite can also be true: many Kansas businesses rely on imported inputs for their business operations. Payless ShoeSource, for example, is one of the biggest purchasers of goods from China. It and other Kansas companies depending on imports could be hurt by such extra tariffs. Notices of “antidumping” and “escape clause” cases are published in the Federal Register.¹⁷

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Increasing Kansas export prospects. Kansas exporters might find a silver lining to the Asian economic crisis, at least in the longer term. Indonesia and Korea in particular have agreed, as a condition of the IMF bailout financing, to open their economies more to foreign goods and services, as well as to foreign investment. Moreover, such relaxation (like the economic crisis that prompted it) might be contagious: liberalization of trade and investment rules in some countries can prompt liberalization in other nearby countries. Accompanying those changes are other legal changes mandated by the IMF and other countries that provided bailout financing: the hard-hit Asian countries are being forced to overhaul their banking systems and break some of the cozy ties among government, business and finance. Change in these areas will not come overnight, but over the long haul these legal and operational reforms augur well for Kansas

13. For an account of the Asian financial crisis, see John W. Head, *Lessons from the Asian Financial Crisis: The Role of the IMF and the United States*, 7 KAN. J. L. & PUB. POL'Y 70 (1998).

14. The U.S. antidumping laws are found mainly in the Tariff Act of 1930, as amended. See 19 U.S.C. § 1673.

15. For a reference to the General Agreement on Tariffs and Trade (GATT) and to the array of treaties that the United States agreed to following the Uruguay Round of GATT-inspired trade negotiations in

the mid-1990s, see section IV-C of this article.

16. The U.S. “escape clause” rules are found in Section 201 of the Trade Act of 1974, as amended. See 19 U.S.C. § 2251.

17. For “antidumping” cases, see listings under the International Trade Commission and the Commerce Department’s International Trade Administration. For “escape clause” cases, see listings under the International Trade Commission.

businesses wanting to trade with or invest in Asia. In the shorter term, Kansas exporters should also consider taking advantage of U.S. export-promotion laws and programs to help overcome the likely drop in demand from Asia. In January 1999 President Clinton announced increased funding for such export promotion programs. For information on contacting government agencies administering such programs, see section V of this article.

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B. Trade with Japan

Trade barriers and imbalances. Every March, the U.S. Trade Representative (USTR) publishes a National Trade Estimate Report on Foreign Trade Barriers. That report details the policies and practices of other countries that tend to block U.S. exports to those countries. The 1998 report, as in earlier years, gave the most attention to Japan (followed by the EU, South Korea, and China). According to the

USTR, the areas of Japanese trade practices that remain most troublesome include import procedures, certification, government procurement, intellectual property rights, and services. Also in March 1998, Japan unveiled a new economic deregulation package that largely lacked the trade initiatives sought by the United States, although the package will include a review of some import procedures. Japan's import rules are important to Kansas because Japan has in recent years been the second largest market for Kansas merchandise exports — mainly processed food products. Kansas exports to Japan might expand if the United States succeeds in market-opening measures. However, progress in that area has been slow. November 1998 was the 26th consecutive month in which the overall American trade deficit with Japan continued to grow.

C. U.S.-China Relations

The political and legal environment. More than with any of its other trading partners, the relations the United States has with China are politically charged. Consequently, the legal environment in which businesses operate in China, both in commerce and investment, must take into account the changing political environment. The past decade has seen many political flashpoints, including these: (i) the Tiananmen Square incident of June 1989, when the Chinese army brutally repressed student-led democracy demonstrations, leaving hundreds of citizens dead and killing the euphoria that had attended growing business relations between China and the United States since Deng Xiaoping took power in the

late 1970s; (ii) the 1995 U.S. visit of Taiwan's president Lee Teng-hui, the first Taiwanese leader to be granted a visa since the United States downgraded its ties with Taiwan in 1979; (iii) the March 1996 military exercises by China in the Taiwan Straits during Taiwan's first democratic presidential elections; and (iv) the July 1997 Chinese takeover of Hong Kong — seen by many as a stepping-stone along China's path toward "reunification" of Taiwan with the mainland. These and other developments will continue to make U.S.-China relations politically charged in the coming century.

Growing trade volume. This issue is also politically charged. The U.S. trade deficit with China increases dramatically each year; it is the second-largest U.S. trade deficit, behind Japan. The U.S. Secretary of Commerce recently called it "a dark cloud" over U.S.-China relations. For 1998 the deficit amounted to about \$60 billion, up from about \$50 billion in 1997 and about \$39 billion in 1996. Chinese imports into the United States account for nearly 30 percent of all U.S. imports of consumer goods, up from 12 percent in 1990. Not all trade with China is one-way, of course, and it is possible that U.S. exports to China will rise as a result of some dramatic reductions in Chinese tariffs: average tariff levels in China were at 42 percent before 1996 and 23 percent by the end of 1996; Chinese commitments made in October 1997 would reduce the average to 17 percent.

Kansas and China. Against the backdrop of these dramatic political and economic developments, 16 Kansas delegates participated in the October 1998 Kansas Trade Mission to China to pursue trade leads and business contacts there.¹⁸ The mission was organized by the Kansas Alliance for U.S.-China Trade¹⁹ and the Kansas World Trade Center, and the delegates included representatives from the aircraft manufacturing industry, education officials, public and private economic development entities, and trade promotion organizations. Kansas does not export much to China yet, but many businesses look for this to change in coming years as China's economy develops further. China is regarded, for example, as the biggest potential market for commercial aircraft makers such as Boeing, which in 1997 won a \$3 billion contract to sell 50 jetliners to China.

WTO membership for China. Prospects for doing business in China turn in part on the issue of China's accession to the WTO. The legal significance of this issue is enormous; one informed observer has called it "the single most important development for the world trading system."²⁰ Why? Because Chinese membership in the WTO would signal a dramatic opening of China's market to foreign trade and investment. Despite numerous discussions and initiatives over the past few years, China's accession into the WTO is still not imminent. In 1995 the United States offered China a "roadmap" detailing the concessions and commitments that would be necessary for China to join, including market access, removal of non-tariff

18. For details about the Kansas Trade Mission to China, see the publication of the Kansas Department of Commerce & Housing, *Developing Kansas*, December 1998 - January 1999, at page 6.

19. The Kansas Alliance for U.S.-China Trade is headquartered in Wichita (316-262-3232). Its steering committee includes Boeing,

Black & Veatch, Payless ShoeSource, the Kansas Farm Bureau and others.

20. Remarks by Fred Abbot, an expert in international trade law, at the 1998 annual meeting of the American Society of International Law (Apr. 3, 1998).

barriers, and uniform application of agricultural subsidies. Since then, progress in meeting those concessions has been minimal, in part because of limited market access for agricultural products. For example, early in 1997 China offered a five-year phase-out period for existing trade limitations for some products, but those that it claims are "fundamental to the livelihood" of the Chinese people would remain subject to state trading, which for import purposes would include grains, vegetables, oil, sugar, cotton, crude oil and chemical fertilizers. Moreover, China reportedly has begun to backslide on its agriculture-sector commitments. No further progress was made on the WTO membership issue when President Clinton visited China in mid-1998 or when the U.S. Secretary of Commerce met with his counterparts in December 1998.

MFN status for China. Legally, if China becomes a member of the WTO, it will automatically receive the benefit of "most-favored-nation" (MFN) status in its relations with all other WTO members (unless some special exception is carved out). The term "most-favored-nation" is misleading; it merely means that one country has normal trade relations with another — and specifically that all articles imported from that country into the MFN-granting country are subject to the same tariff levels as those imposed on like articles from other countries with MFN status. Recently, the United States started using the term "normal trade relations" (NTR) in order to clarify this point. If China were not granted MFN/NTR status, it would be one of a mere handful of "outsiders" such as Libya and Cuba that do not have that status. However, the United States has no obligation to grant MFN/NTR status to China so long as China is not a WTO member (and, before that, a party to the 1947 General Agreement on Tariffs and Trade). Therefore, each year the issue has arisen anew. The latest renewal by the United States of MFN/NTR status for China occurred in early July 1998. If MFN/NTR status is not renewed for China again in mid-1999, thousands of U.S. businesses will be scrambling for cover. The Kansas Alliance for U.S.-China Trade²¹ advocates MFN/NTR renewal.

New contract law. China will probably enact a new contract law in 1999. Here are some key points to the new law of which U.S. companies trading with or investing in China should be aware:

It would largely replace, through **consolidation**, the four statutes that currently state most rules of Chinese contract law — the General Principles of the Civil Law (1986), the Economic Contract Law (1981, as amended in 1993), the Foreign Economic Contract Law (1985), and the Technology Contracts Law (1987).

The new law would **correct gaps and inconsistencies** created by those four laws, by dealing clearly with offer and acceptance, by settling questions of contract invalidity, by reflecting modern economic developments (e.g., finance lease contracts) and by eliminating conflicts among the old statutes in

terms of scope of application, formalities, limitations periods and remedies.

The new law would have **two basic parts**: (i) general provisions and (ii) specific provisions for a variety of particular kinds of contracts (e.g., sales contracts, contracts governing securities brokers, deposit contracts, borrowing contracts, employment contracts and partnership contracts).

The new law would **resemble the UCC** in some respects, and also the CISG — the 1980 U.N. Convention on Contracts for the International Sale of Goods, which came into force for the United States in 1988 and governs most international sales contracts unless the parties opt out of it. But the new law would differ in some ways from those other commercial codes. For example, the new Chinese law would apply to aircraft sales, whereas the CISG does not.

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IV. Trade with other countries and regions

A. Developing Countries and the GSP

Background. The Generalized System of Preferences (GSP) represents a departure from the most-favored-nation principle as enshrined in the GATT and now in the WTO. In the 1970s, European states were interested in providing preferential tariff treatment to imports from less economically developed countries, especially their former colonies. This interest led to a GATT-wide approval of such a preferential system. Under the U.S. version of the GSP,²² free entry or reduced tariffs apply to "eligible articles" from "eligible countries." Many but not all articles are eligible; many but not all less developed countries are eligible. Details appear in the front of the Harmonized Tariff Schedules of the United States, issued by the U.S. International Trade Commission and found at www.usitc.gov. From time to time, countries are "graduated" from the list of eligible countries because they have reached a satisfactory level of development for these purposes. Hong Kong, Singapore, Korea, and other relatively strong developing economies were "graduated" several years ago.

Current status and implications. The U.S. GSP program expired June 30, 1998. President Clinton, in his fiscal year 1999 budget, proposed a GSP extension to September 2001, but with changes that would reduce the costs of the program, such as restricting further the number of eligible countries. After some delays, Congress acted in the fall of 1998 to extend the GSP through end of June 1999, and to make that extension retroactive to June 30, 1998. The Customs Service

21. See note 19, *supra*.

22. 19 U.S.C. § 2461 et seq. and 19 CFR § 10.171.

is currently processing refunds to importers for the higher tariffs they paid in the interim. The U.S. Trade Representative (USTR) typically invites petitions each April to modify the

status of particular articles or countries under the GSP.²³ Kansas businesses that import goods (for example, as inputs for their manufacturing operations) should consider sourcing those goods from GSP countries to save tariffs. On the other hand, Kansas businesses suffering from competition from GSP-produced imports should consider petitioning the USTR for relief.

B. The European Union

Beef ban. In 1989 the European Union placed a ban on the importation of beef produced with the aid of hormones. That ban, still in place today, is estimated to cost U.S. beef exporters between \$100 million and \$250 million per year in lost sales to

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Europe. In 1997 a WTO dispute panel reviewed the policy at the request of the United States. The panel ruled that the EU ban violates the WTO Agreement on Sanitary and Phytosanitary Measures — one of the bundle of treaties emerging from the Uruguay Round of trade negotiations, as noted below in part C of this section — on grounds that that treaty prohibits the EU from establishing sanitary requirements more stringent than international standards unless scientific evidence shows such rules are necessary. The EU appealed the ruling, but the WTO Appellate Body affirmed it in early 1998. Despite this, the EU maintained the ban throughout 1998. The EU is expected to announce by May 1999 if and how it intends to abide by the WTO ruling. Some diplomats fear that this and other issues surrounding EU-U.S. beef trade could explode into a bitter cross-Atlantic trade battle. This could affect Kansas beef exports, which exceeded \$500 million (worldwide) in 1997. Kansas accounts for about 20 percent of cattle processed in the United States, and the Kansas cattle industry generates nearly \$17 billion annually, representing more than 20 percent of the gross state product.

Mutual Recognition Agreements. The U.S. and European governments concluded the first set of U.S.-EU Mutual Recognition Agreements (MRAs) in June 1996. Building on a recommendation of the Trans-Atlantic Business Dialogue to cut regulatory and other costs to business, they designed the MRAs to eliminate duplicate testing and certification requirements by having each side accept the other's manufacturing and regulatory procedures without additional testing. It is anticipated that the MRAs will reduce the costs of affected U.S. exports by up to 10 percent. Six sectors have been the primary focus so far: pharmaceuticals, telecommunications equipment, medical devices, electrical safety,

electromagnetic compatibility and recreational marine craft. MRAs on those topics were concluded in mid-1998 and will be implemented over the next two or three years. The trade covered by these agreements amounts to about \$60 billion per year. Additional MRA discussions concentrate on veterinary vaccines and industrial fasteners, and the Clinton Administration has expressed an interest also in including agri-biotechnology in an MRA.

The new euro currency. The euro was launched at the beginning of January 1999 by 11 European countries: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. The euro is being used only for electronic transactions until cash becomes available in January 2002. What are the implications for Kansas businesses such as Sprint, Black & Veatch and others doing business with Europe? Experts cite several advantages to U.S. companies, including lower transaction costs, lower hedge costs, stimulated growth (hence bigger markets) within the 11 euro countries, and price transparency. For Commerce Department recommendations on euro strategy, specifically targeted for small businesses, see www.mac.doc.gov.

Other U.S.-EU trade issues. The United States probably has more trade issues under discussion with the EU than with any of its other trading partners. Here are some additional issues that might be of most interest to Kansas businesses:²⁴

Aircraft. In December 1998 President Clinton called on European leaders to turn over to the United States data on subsidies provided to some of Airbus Industrie's aircraft, as provided under the 1992 U.S.-EU Large Civil Aircraft Agreement, which limits subsidies. The Europeans responded that the EU has already provided information required under that treaty. Moreover, the EU has claimed that the United States violates the same treaty.

Data privacy. An EU directive on protection of data privacy took effect in October 1998. The directive could lead to a disruption of electronic data flows between companies in the United States or Europe if the EU were to find that certain types of personal information, such as medical records and credit ratings, are not adequately protected against public disclosure. U.S. and EU negotiators expect to have a draft agreement in place by the end of April to avoid disruptions in electronic data transmissions.

Animal feed. In December 1998 EU agriculture ministers agreed to ban four antibiotics used in animal feed because they may diminish the effectiveness of antibiotics used for medicinal purposes. U.S. agriculture officials criticized the ban, saying that it, like the beef ban discussed above, has no basis in scientific proof.

23. See, e.g., 63 Fed. Reg. 18963 (Apr. 16, 1998).

24. For an excellent overview of these and other trade issues for

1999, see Gary G. Yerkey et al., *1999 Outlook*, in 16 INTERNATIONAL TRADE REPORTER 103-127 (Jan. 20, 1999).

C. Developments in global trade regulation

Overview of the GATT and the Uruguay Round.²⁵ The General Agreement on Tariffs and Trade (GATT) was established in 1947 to lower tariffs and other restrictions imposed by countries on articles imported into their territories. Born of a "free-trade" economic philosophy, the 1947 GATT (as amended and interpreted) served for nearly 50 years as the vehicle for liberalizing trade in goods among nearly 100 countries, including the United States and its main trading partners. In 1993, after seven years of international wrangling, a massive new legal regime emerged from the so-called Uruguay Round of trade negotiations, conducted under the auspices of the GATT. That new legal regime, while embracing many of the principles of the 1947 GATT, also introduced many new rules by way of a set of interlocking treaties, all under the umbrella of a new international organization, the World Trade Organization. The United States has become a party to those treaties, which include the following:

- Charter of the World Trade Organization
- GATT 1994 (incorporating the 1947 GATT)
- Agreement on Agriculture
- Agreement on Sanitary and Phytosanitary Measures
- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures (TRIMs)
- Agreement on Article VI (Antidumping)
- Agreement on Article VII (Customs Valuation)
- Agreement on Preshipment Inspection
- Agreement on Rules of Origin
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards
- Dispute Settlement Understanding
- Agreement on Trade in Services
- Agreement on Trade Related Aspects of Intellectual Property Rights

These various treaty commitments are reflected in U.S. law, mainly by way of the Uruguay Round Agreements Act²⁶ and in various federal regulations.²⁷ More than 130 other countries are also parties to these treaties.

A new "Millennium Round" of negotiations? President Clinton and several other world leaders have called for a new round of multilateral trade negotiations — the "Millennium Round" — that would focus on tariffs, agriculture, services, intellectual property, government procurement, and labor and the environment. Vice President Gore announced in late January that the United States will call for the outright elimination of agricultural export subsidies and for deep reductions in tariffs on agricultural products. The United States will also press for rules to ensure that biotechnology and genetically

engineered food products are not discriminated against. The new round of negotiations might be launched in late 1999, when the United States chairs a meeting of WTO trade ministers. Kansas businesses concerned about trade issues can contact the office of the U.S. Trade Representative to express their views.

"Fast track" authority for U.S. negotiators.

The ultimate success of a new round of trade negotiations — either at the global level (see immediately above) or at the regional level (see the discussion of a Free Trade Area of the Americas, in section II-B of this article) — depends in part on whether U.S. negotiators are granted "fast track" authority. Under "fast track" authority, Congress empowers the president to negotiate trade agreements and then submit them to Congress for a straight up-or-down vote without an opportunity for amendments. Congress established "fast track" authority in the Trade Act of 1974. For about 20 years, every U.S. administration maintained "fast track" authority through renewal acts. The latest renewal was in 1988, but it expired in June 1993. Since then, President Clinton has sought renewal of the authority for various reasons — mainly because other countries will consider it futile to work with U.S. negotiators whose commitments could be re-written by Congress. So far, however, Congress has balked on renewing "fast track" authority, most recently last fall in a House rejection by 243 votes to 180 votes. The battle is sharply partisan. Democrats generally want to include provisions for labor and environmental matters, so that any treaty signed under "fast track" authority would have to carry with it labor and environmental guarantees. Republicans generally oppose these conditions, fearing they will result in environmental and labor agreements unacceptable to U.S. business interests. These disputes leave prospects for a renewal of "fast track" authority in 1999 uncertain, despite support expressed for it by various business and agriculture groups, including the American Farm Bureau. In recent weeks proponents have tried to shake off earlier defeats by abandoning the term "fast track" and referring instead to "trade negotiating authority."

*... disputes
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prospects for
a renewal of
'fast track'
authority in
1999
uncertain ...*

V. Miscellaneous

A. Kansas trade assistance

For information and advice about international trade matters, consider contacting:

Kansas Department of Commerce and Housing
Trade Development Division
700 S.W. Harrison, Suite 1300

25. For additional discussion of the Uruguay Round, see John W. Head, *International Business and Kansas Lawyers: An Update on International Trade Rules and How They Affect Kansas*, 65 JOURNAL OF THE KANSAS BAR ASSOCIATION, Jan. 1996, pp. 26-33.

26. 19 U.S.C. §§ 3501-3572.

27. For the latest regulations regarding "antidumping" law, see 19

CFR Part 351, incorporating amendments issued by the Commerce Department in May 1997 (62 Fed. Reg. 27296) to conform to the Uruguay Round treaty on antidumping rules. For the latest regulations regarding "countervailing duty" law, see 19 CFR Part 351 and the November 1998 Commerce Department amendments (63 Fed. Reg. 65348, and posted at www.doc.gov/import_admin/records/download.cvd.htm).

Topeka, KS 66603-3712
T (785) 296-4027; F (785) 296-5263

- or -

South-Central Field Office
209 E. William, Suite 300
Wichita, KS 67202
T (316) 264-6795 or (316) 264-6787
F (316) 264-6844

Kansas Department of Agriculture
Marketing Division
901 S. Kansas Avenue, 1st floor
Topeka, KS 66612-1282
T (785) 233-2230; F (785) 296-2247

U.S. Department of Commerce
Kansas City District Office
601 E. 12th Street, Room 635
Kansas City, MO 64106
T (816) 426-3141; F (816) 426-3140

U.S. Department of Commerce
Wichita Branch Office
151 North Volusia
Wichita, KS 67214-4695
T (316) 269-6160; F (316) 683-7326

U.S. Department of Commerce
Bureau of Export Administration
Exporter Counseling Center
14th Street & Constitution Ave., NW
Washington, DC 20230
T (202) 482-4811, or (202) 482-0097

U.S. Department of Agriculture
Foreign Agricultural Service
14th Street & Independence Ave., SW
Washington, DC 20250
T (202) 720-7115; F (202) 720-7729

U.S. Customs Service
(U.S. Dept. of the Treasury)
2701 Rockcreek Parkway, #202
North Kansas City, MO 64116
T (816) 374-6439; F (816) 374-6422

The Trade Development Division of the Kansas Department of Commerce and Housing publishes each year an International Trade Resource Directory, with other contacts that might be useful to business clients dealing with international trade issues. The same office also publishes every other month a newsletter titled "Markets," advising

readers of trade opportunities and services. These include export counseling, trade shows and trade missions, market research, distributor searches, and export loan guarantees.

The U.S. Department of Commerce publishes each year an Export Programs Guide identifying dozens of government programs and offices dedicated to assisting businesses wishing to "go international."

B. Websites

Further information about government offices and programs, and about some industry groups involved in Kansas trade and investment matters, appear on the Internet. Here are some pertinent website addresses:

U.S. Agriculture Department	www.usda.gov
U.S. Commerce Department	www.doc.gov
International Trade Administration	www.ita.doc.gov
Bureau of Export Administration (BXA)	www.bxa.doc.gov
Trade Information Center	www.ita.doc.gov/tic
U.S. Foreign & Commercial Service	www.ita.doc.gov/uscs/
Final import regulations	www.ita.doc.gov/import_admin/records
Court of International Trade (U.S.)	www.uscit.gov
Customs Service	www.customs.ustreas.gov
European Union	www.europa.eu.int
Federal Register	www.access.gpo.gov/su_docs/aces/aces140.html
Kansas Corn Growers Association	www.ksgrains.com
Kansas Dept. of Commerce,	www.kansascommerce.com
Trade Development Division	(e-mail: ksintl@ink.org)
Kansas Livestock Association	www.kla.org
International Chamber of Commerce	www.iccwbo.org
International Trade Commission (ITC)	www.usitc.gov
International Trade Reporter	www.bna.com/resources/ITR
NAFTA home page	www.itaiep.doc.gov/nafta
Overseas Private Investment Corp.	www.opic.gov
Organization of American States, Trade Unit	www.sice.oas.org
U.S. Meat Export Federation	www.usmef.org
U.S. Small Business Admin., Office of Int'l Trade	www.sbaonline.sba.gov/oit
Treasury's International Trade Data System	www.itds.treas.gov
U.S. Trade Representative	www.ustr.gov
World Trade Organization	www.wto.org

About the Author

John W. Head is a professor of international law and business at the University of Kansas School of Law. He received his bachelor's degree from the University of Missouri at Columbia in 1975 and holds both an English law degree (M.A. Juris.) from Oxford University (1977) and a juris doctor degree from the University of Virginia (1979). Before beginning a teaching career, he was first engaged in private practice in Washington, D.C., with Cleary, Gottlieb, Steen and Hamilton and then served as legal counsel to the Asian Development Bank (Manila, 1983-88) and to the International Monetary Fund (Washington, D.C., 1988-90).

