

RENT SEEKING IN U.S.-MEXICAN AVOCADO TRADE

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This article examines the use of sanitary and phytosanitary (SPS) standards as a method for protectionism through the lens of political economy. Technical measures, especially SPS, remain a potential barrier to free trade, in spite of substantial progress on trade liberalization under the Uruguay round of trade negotiations. In fact, in the 1986–93 Uruguay Round negotiations, separate disciplines were negotiated for the management of SPS standards, which are highly technical and relatively nontransparent compared with other international standards. This study examines the political economy of one contentious trade dispute that has arisen under the SPS Agreement, the import of Mexican Haas avocados into the United States. The history of the dispute is traced and new evidence is provided on the rent-seeking activity of U.S. producers.

The SPS Agreement and Developing Countries

By the 1980s technical standards were recognized as one of the last remaining opportunities for countries to protect domestic producers (Goldstein 1996: 4). The Punta del Este Declaration, which launched the Uruguay Round, specifically addressed the issue of SPS measures in liberalizing agricultural trade (Zarilli 1999: 3). The final document launching the new World Trade Organization included both a revamped Agreement on Technical Barriers to Trade (TBT) (WTO 1995a) and an Agreement on the Application of Sanitary and Phytosanitary Measures (WTO 1995b), along with a new dispute settlements procedure designed to strengthen the dispute body rulings.

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At the outset it is important to distinguish SPS measures as defined in the SPS Agreement from the technical measures governed by the TBT Agreement. Technical trade barriers are “regulations and standards governing the sale of products into national markets that have as their *prima facie* objective the correction of market inefficiencies stemming from externalities associated with the production, distribution, and consumption of those products.”¹ SPS standards, although a type of technical barrier to trade, are treated separately from the technical barriers controlled under the TBT Agreement (Zarilli 1999: 6).

SPS measures are defined as any measures that

- protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment, or spread of pests, diseases, disease-carrying organism, or disease-causing organism;
- protect human or animal life within the territory of the Member from risks arising from additives, contaminants, toxins, or disease-carrying organisms in food, beverages, or feedstuffs;
- protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants, or products thereof, or from the entry, establishment, or spread of pests;
- prevent or limit other damage within the territory of the Member from the entry establishment or spread of pests [GATT 1994: 78].

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements, and procedures, including end-product criteria; processes and production methods; testing, inspection, certification, and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures, and methods of risk assessment; and packaging and labeling requirements directly related to food safety. For the purpose of these definitions, “animals” includes fish and wild fauna; “plant” includes forests and wild flora; “pests” includes weeds; and “contami-

¹*Prima facie* is used in this definition to acknowledge the existence of regulatory capture by individuals or groups with a vested interest in limiting competition (Roberts, Josling, and Orden 1999: 3). These groups lobby for technical measures that, while protecting their industries, have questionable legitimacy. This definition of technical barriers excludes other regulatory nontariff barriers (NTBs) such as domestic content regulations. It does include, however, measures concerning pesticide residue content on horticultural products and labeling requirements for processed food products.

nants” include pesticide and veterinary drug residues and extraneous matter (GATT 1994: 78).

Whether a measure is subject to the disciplines of the SPS or TBT Agreement depends upon the stated purpose for which it was adopted according to the laws of the domestic country.² For example, shelf-life regulations may be adopted as a food safety issue, which is an SPS measure, or they may be adopted to regulate food freshness, which is a TBT measure. The scope of the SPS Agreement is more narrowly defined than the TBT, which covers a broad range of measures. In addition, the SPS Agreement is more firmly grounded in scientific principles. The SPS agreement establishes the principles by which countries may legitimately assert that measures are necessary to protect human, animal, or plant health or life from specified risks. The TBT agreement enumerates the particulars of the national treatment obligations that members are under when they impose technical regulations or standards (Thorn and Carlson 2000: 841).

The main goal of the SPS Agreement is to prevent domestic SPS measures from being misused for protectionist purposes. While the Agreement recognizes that countries have legitimate interests in establishing rules for protecting food safety and animal and plant health (Zarilli 1999: 4), the goal is to accommodate such interests while stripping away any disguised protectionism (Victor 2000: 865). The principles and provisions of the SPS Agreement are summarized in Unnevehr (2000).

It has long been recognized that developing countries in particular are likely to be at a substantial disadvantage in the highly technical world of SPS development and implementation (Elliott 1999) and they are given special treatment in the agreement itself.³ Developing

²The SPS Agreement comprises 14 Articles and three Annexes that form the rules of international trade concerning sanitary and phytosanitary considerations.

³Article 9 encourages Members to provide technical assistance to other members, especially to developing countries. Article 9.1 states: “Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with SPS measures necessary to achieve the appropriate level of SPS protection in the export market.” Article 10 of the Agreement provides for *special and differential treatment* for LDCs. Specifically, “where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their export.” Also, the SPS Committee is enabled to grant to specific developing countries, upon request, specified time-limited exceptions based on their financial, trade, and development needs (WTO 1995b, SPS Agreement). Article 14 of the Agreement gave LDCs a five-year extension on the applications of the provisions of the Agreement since the Agreement’s inception. However, this provision has since expired.

countries are at a disadvantage in trade disputes surrounding SPS issues on a number of grounds. Many LDCs do not have the capacity to participate in the key regulatory bodies set up in the SPS agreement: The Codex Alimentarius (Codex), the Office International des Epizootics (OIE), and the International Plant Protection Convention (IPPC) (Unnevehr 2000: 238).⁴ The institutional framework within LDCs may create hurdles for successful interaction within the framework of the SPS agreement. They lag other countries in complying with transparency requirements designed to facilitate information flow between countries. By June 1999, only 65 percent of low- and lower-middle income countries had specified an enquiry point and only 59 percent had specified a national notification agency responsible for notifications of new or amended SPS measures, and participation is even lower among low-income countries (Henson and Loader 2001).

LDCs also fail to take advantage of the “equivalency principle,” which requires a country to treat another country’s regulations as “equivalent” if they generate the same level of food-safety protection. Bilateral trade agreements eliminating SPS barriers may divert trade away from LDCs. In some cases competitiveness and market access is hampered due to the lack of public grades and standards, and production controls such as HACCP that are required by importers.⁵ The marginal costs of implementing HACCP may be higher in developing countries where fewer basic sanitation services are available and technical assistance may be required due to few trained HACCP specialists (Cato and Lima dos Santos 1998: 1).

LDCs may not benefit from the dispute settlement mechanism of the SPS Agreement, reflecting in part the high cost of pursuing a formal dispute under the Agreement. Of cross-notifications to the SPS Committee (to air grievances between members when bilateral efforts have failed to resolve these issues), only 23 of the 90 notifications (28 percent) placed by September 1999 were filed by low- or middle-income member countries (Hensen and Loader 2001: 97).

Rent-Seeking Behavior and the Avocado Case

We turn now to consideration of Mexican exports of avocados to the United States, a trade dispute in which SPS measures have

⁴Although 74 (62 percent) of the LDCs were members of the WTO in 1999, the rate of membership was significantly lower than upper-middle and high-income countries (24 representing 83 percent; and 35 representing 92 percent, respectively) (Henson and Loader 2001).

⁵HACCP refers to Hazardous Analysis Critical Control Point.

figured prominently. The case provides a compelling story of how special interests can capture the regulatory process and use SPS standards for purposes of protecting monopoly rents that arise from protectionist trade policies, for example, rent-seeking activity. In particular, it illustrates how several factors come together to facilitate rent seeking in agricultural trade. First, the protectionist lobby is well-organized, and is facilitated by producer groups allegedly engaged in “market promotion.” Second, the complexity of SPS regulations puts the developing country at a disadvantage in resolving SPS trade disputes. Finally, the benefits from protectionism are concentrated in the hands of relatively few producers, compared with costs spread thinly across the entire population.

Mexico and the United States are the world’s largest producers of avocados, accounting for 67 and 15 percent of global production, respectively, and both countries export only a small amount of output.⁶ Production of export-quality avocados has been increasing in Mexico over the past few decades and Mexico would like to enter the restricted U.S. market, which is large, typically generating sales around \$250 to \$300 million annually. While sales of Mexican avocados in the United States have increased recently, they remain less than 7 percent of total consumption, and less than 20 percent of imports (Table 1). The dispute between the United States and Mexico over phytosanitary regulations on avocados has been long-standing.

While the standard economic model of market failure focuses on government action as a benign attempt to improve public health and safety in the case of food regulations, an alternative approach to understanding the rise of SPS barriers to open trade is the political economy model of rent-seeking behavior. This is especially so for those SPS measures for which a scientific basis is dubious and which tend to be highly technical in nature. Here we argue that the political economy model for SPS standards as a barrier to trade, especially the model of rent-seeking behavior (developed by Tullock (1967) and others), is likely a key factor in explaining the restrictions on avocado trade in the United States. We present new evidence on the rent-seeking behavior of California avocado growers, and argue that the avocado case may well be indicative of the manipulation of SPS standards in future trade disputes.

In his classic 1967 article, “Welfare Costs of Tariffs, Monopolies, and Theft,” Tullock argued that individuals would compete for the rents and revenues created by market regulations enforced by the

⁶Mexico exports about 7 percent of its production while the United States only exports about 5 percent.

TABLE 1
MEXICAN SHARE OF U.S. IMPORTS FOR CONSUMPTION OF AVOCADOS, 1990-2001

Year	Mexican Imports		All Imports		Mexican Share of Imports		Total U.S. Consumption (kg)	Mexican Imports as a Percentage of Total U.S. Consumption
	Imports (\$)	Kilograms	Imports (\$)	Kilograms	Value	Quantity		
1990	51,139	21,363	24,280,092	13,377,397	0.21	0.16	124,528,481	0.04
1991	685,590	333,128	23,195,456	17,049,993	2.96	1.95	160,622,857	0.43
1992	1,526,820	860,378	24,294,321	24,148,841	6.28	3.56	162,866,032	0.94
1993	868,206	486,777	6,773,767	8,229,327	12.82	5.92	259,329,615	0.33
1994	927,721	616,592	30,659,286	23,932,232	3.03	2.58	155,130,975	0.60
1995	699,190	689,823	18,417,741	18,576,007	3.80	3.71	169,065,397	0.41
1996	1,890,991	1,790,541	28,891,158	25,405,310	6.55	7.05	195,478,639	0.97
1997	6,121,452	4,110,332	34,278,213	26,684,451	17.86	15.40	197,839,093	3.09
1998	11,445,660	9,294,277	78,622,222	60,656,341	14.56	15.32	212,676,553	5.38
1999	18,547,218	11,792,024	85,697,319	55,185,020	21.64	21.37	189,823,129	9.77
2000	21,793,674	13,135,196	126,720,527	78,622,864	17.20	16.71	243,146,576	8.96
2001	19,116,894	12,855,668	99,300,936	73,536,429	19.25	17.48	284,447,528	6.72

SOURCES: ITC Interactive Tariff and Trade Databe, data for HTS Code 0804-40-00, Avocados (fresh or dried); Economic Research Service, United States Department of Agriculture. Data based on farm weight for avocados in pounds per capita, converted into kilograms and adjusted for population size using data from the United States Bureau of the Census.

government. The phrase “rent seeking” was coined in 1974 by Anne Krueger in her article, “The Political Economy of the Rent-Seeking Society.” Before the rent-seeking insight, welfare economics had considered government intervention to be a corrective force in the prevention of monopolies. Tullock contended that governments “usually do not introduce tariffs in the absence of interest-group lobbying in favor of such protective instruments” (Rowley, Tollison, and Tullock 1988: 18), and thus governments are a key actor in creating monopoly power. He believed that the opportunity to effect wealth transfers through the machinery of government action encourages lobbying and counter-lobbying as individuals and groups invest resources in attempting to obtain a wealth transfer to themselves or to resist a transfer away from themselves.

A rent seeker, therefore, can broadly be defined as any individual or group who seeks competitive protection from the government. Rent seeking involves the investment of resources into lobbying and other strategic actions to effectively buy government regulations that give monopoly privileges—such as import bans based on SPS measures. Although lobbying and making campaign contributions are two of the more obvious examples, Anderson (2000) contends that there are many others, including organizing interest groups, influencing public opinion, and conducting smear campaigns. All these activities have been undertaken by avocado producers for years.

In considering the potential role of rent seeking as an explanation of the avocado ban, we first evaluate the ways in which the key tenets of the rent-seeking model apply to the avocado industry. First, the potential for rent seeking is especially high when the regulations involved are of a technical nature. This is because the lay public often does not have sufficient scientific knowledge and understanding about the intricacies of many issues. In many cases, even scientists argue about the nature of the issue. In those cases, public opinion is often easily swayed by the special interest. Laband and McClintock (2001: 59) have pointed out that “rent seekers have learned to disguise their grab for our money behind a cloak of public interest rhetoric. The wolf dons the sheep’s clothing.” That SPS measures are an example of highly technical trade barriers is well documented above.

Second, rent seeking is most likely to occur when the marketplace being affected by regulation gives rise to returns from government intervention that are concentrated in the hands of a few individuals, while costs of government intervention are spread across many. If the beneficiaries are well-organized, the opportunity for rent seeking is even greater. For example, a relatively small coalition of producers of a certain product may benefit immensely from regulations restricting

the imports of foreign competitors for that product. In contrast, the costs of such regulations are spread across consumers and the potential competitors of that commodity. Since the costs do not create noticeable economic losses to domestic consumers, they are not likely to strongly oppose the regulation. In many cases, consumers are not even aware that such regulations exist.

U.S. avocado production fits neatly into the “concentrated benefits” paradigm. More than 90 percent of all avocado trees in the United States, accounting for 95 percent of the U.S. crop, are in California, with half the total U.S. production in San Diego County, California. Of the 7,000 U.S. avocado producers, 6,000 are concentrated near the southern coast of California. But these numbers belie the true extent to which production is highly concentrated. In 1987, just 2 percent of the California growers had sales in excess of \$500,000. In 1990, that same 2 percent of farmers harvested 38 percent of the 70,000 acres of avocados planted in California that year.

Moreover, the California avocado industry is well-organized for rent-seeking behavior. Solidarity among California growers is very strong. Calavo, an agricultural cooperative with more than 2,000 growers holding membership, markets about half of the California crop. All of the 6,000 California growers provide funding to the California Avocado Commission (CAC). The CAC is a commodity board dedicated to the promotion of California avocados and protecting the economic interests of California growers. Growers are required by law to submit 4.5 percent of their gross revenue to the organization each year.

Finally, it is important to mention a couple of other economic factors that heighten the opportunity for rent seeking. When domestic producers are at a comparative disadvantage to foreign producers, the potential for regulatory protection provides strong economic incentives for those producers to engage in rent-seeking activities. The greater the potential losses from free trade, the greater are the incentives of the domestic industry to seek protection (Mueller 1989: 241). In the case of the Mexican avocado dispute, the cost advantage enjoyed by Mexican avocados is very large indeed, heightening the incentive for rent seeking.

Moreover, when the cost structure of the domestic industry is such that fixed costs are large relative to variable costs, the opportunity for rent seeking may be especially heightened. In particular, if free trade represents a threat to the large investment of fixed costs in production, it provides an additional incentive for the domestic industry to protect their investment in the technology. If one thinks of the fixed costs of production as essentially a form of barrier to entry into the rent-seeking game considered here, the theory of rent seeking would

predict that a greater amount of rent-seeking behavior takes place (Mueller 1989: 234).

The evidence suggests that there are strong economic incentives for domestic avocado producers to oppose imports of Mexican avocados. The U.S. industry has large fixed costs invested in existing groves. Start-up costs in avocado production, which are large in any case, are especially high in California owing to the drip irrigation systems required. Once in place, an avocado orchard can remain productive for as long as 40 years. Costs for establishing an orchard in the southern region of California were \$15,372 per acre for the initial 6 years in 1992 (Orden and Romano 1996: 8). In contrast, orchard development costs in Mexico were 25 percent of the costs in California in 1991 (American Farm Bureau 1991). The total investment in avocado orchards by California growers may be as high as \$1 billion (Roberts and Orden 1997).

Avocado production in Mexico is highly concentrated in the state of Michoacan, which produces more than 85 percent of Mexican avocados; Sinaloa is the other major avocado-producing state. Generous rainfall in Michoacan, and thus the absence of expensive irrigation systems, combined with lower labor costs means that Mexican avocados are grown for substantially less than U.S. products (USDA-ERS 1997). In 1990, for example, growers in California spent \$5,200 to \$5,700 per acre, while growers in Michoacan spent \$600 to \$900 (Roberts and Orden 1997: 127). Mexican yields are around 7 to 9 metric tons per hectare, although mature orchards can average up to 15 tons per hectare, compared with an average of 5 tons per hectare for the United States (USDA-ERS 1997). Wholesale prices of export-quality Mexican avocados may be as little as one-fifth the price of California avocados (Malkin 1997). These market price differentials, along with the large sunk-costs invested in the orchards, have provided California producers with strong incentives to oppose any relaxation of the import ban.

The History of Rent-Seeking Behavior in the Avocado Trade

The history of rent seeking by the California avocado industry is long and complicated.⁷ The importation of fresh avocados from Mexico was first prohibited in 1914 and over the years Mexican

⁷The history of Mexican exports of Michoacan and Sinaloa avocados through 1995 is discussed in Roberts and Orden (1997), and is only briefly summarized here.

avocados have been denied entry into the United States owing to alleged risks from three species of fruit flies, four species of avocado weevils, and one species of avocado seed moth (Ramos and Perera: 1999). Since 1914, Mexico has sought to gain access to the United States. U.S. Department of Agriculture (USDA)⁸ officials denied Mexico's request to export avocados from the state of Michoacan in the early 1970s alleging that numerous pests of quarantine significance were present in the Mexican production system. In 1973, USDA spent a total of 560 man-days looking for pests in Mexican fields and discovered only two fruit flies; they recommended that avocados be allowed entry into several states in the United States.⁹ After lobbying on the part of the California growers, USDA left intact the ban (Roberts and Orden 1997: 129).

In 1975, USDA rejected the first petition for imports of avocados from the Mexican state of Sinaloa, since no field surveys had been completed and there was an alleged presence of avocado pests. Over the next two years, field surveys found no pests of quarantine significance, and USDA approved avocado imports from Sinaloa to the United States. The U.S. avocado industry argued vehemently against publication of a ruling in the *Federal Register* and the USDA agreed to delay its decision until another field survey was carried out.¹⁰ Another field test was conducted in 1978 and found no pests of quarantine significance. In January 1979, USDA notified the industry that it intended to publish a proposed change to the Mexican avocado quarantine status in the *Federal Register* within 60 days.

The California Avocado Commission immediately sent a "task force" to lobby the congressional delegations from California and (Roberts and Orden 1997: 132). According to an industry publication, the industry's goal was to prevent a public hearing on the issue from ever taking place (Myers 1979: 27). Under intense public pressure, the USDA once again delayed its decision to publish a proposed change to the importation status. Ultimately, the industry achieved its goal, and the quarantine on avocados from Sinaloa remained in place.

Between 1980 and 1990, only very minor decisions regarding Mexican avocado status were made by APHIS. In the late 1980s and early 1990s, Mexico worked to expand its production and improve its

⁸The USDA agency responsible is the Animal Plant Health Inspection Service (APHIS).

⁹Specifically, states north and east of Colorado, Idaho, Kansas, Kentucky, Missouri, Utah, and Virginia.

¹⁰In fact, their own investigation team found no live pests in Sinaloa. The California Avocado Commission argued that the investigations were carried out at the wrong time of year to detect pests and requested another round of field tests before any decision was made.

process for controlling pests with the intention of exporting to the world market and especially the United States and established an export registration program administered by USDA (USDA-ERS 1997).

In July 1993, despite resistance from the California industry, USDA published a final rule allowing Hass avocados grown in Michoacan to be imported into Alaska under conditions designed to mitigate the risk of phytosanitary contamination to the U.S. avocado industry. This easing of restrictions marked the first time Mexican avocados had been granted access to an American market in 79 years. In June 1994, the research on fruit fly host-status for Hass avocados was completed and Mexico requested that USDA allow Mexican Hass avocados into the northeastern United States (USDA-APHIS 1997).

USDA published an Advance Notice of Proposed Rulemaking and Public Meetings in the *Federal Register* on November 5, 1994, indicating that USDA was considering to allow export-approved avocados into 19 northeastern states of the United States. APHIS received 2,080 comments on the proposal, 1,751 of which were in opposition to the change (Skrzycki 1997). APHIS received 291 public comments in opposition to the proposed rule, including comments from the American Farm Bureau Federation, the Western Growers Association, the Florida Fruit and Vegetable Association, as well as 24 members of the California delegation to Congress. The California Avocado Commission submitted a 266-page report that included commissioned studies and letters from entomologists, tropical fruit specialists, journal articles, and several studies on the economic impacts of pest infestation.

At the hearing held in Escondido, California, more than 1,500 people attended. In protest, growers drove tractors, trucks, and forklifts to the auditorium and carried signs that said, "Free Trade, Yes. Free Pests, No." California congressmen from Washington were even flown in to speak on behalf of the U.S. growers (Mongelluzzo 1995). Owing to the barrage of protests, USDA officials decided to delay its original plan to begin imports in November of 1995 (Tirschwell 1996b).

In March 1996, the CAC submitted new evidence to USDA, allegedly obtained from a "secret source" inside Mexico claiming that pest infestation in Mexico was much higher than previously known (Turck 1996). The California industry argued for USDA to reopen the rule-making process and allow an extended period for public comment. It also unleashed a \$250,000 ad campaign in March 1996 (Tirschwell 1996a). The ads ran in the *Washington Post*, the *Los Angeles Times*, and other major newspapers. The ad in the *Dallas Morning News* on

June 17, 1996, for example, asserted (against the backdrop of a hangman's noose), "Dear Mr. President, the USDA is about to sign the death warrant for a billion-dollar American industry" (Orden and Romano 1996: 28). The ad went on to question the USDA's scientific conclusions in issuing the rule.

In August 1996, USDA officials announced that the removal of the ban on Mexican imports would be delayed for at least another year. The CAC's submission of new data to USDA, along with such vehement opposition to the ban undoubtedly contributed to the decision. Press reports at the time argued that USDA officials were reviewing whether or not the new field surveys submitted by the CAC justified reopening the formal comment period (Tirschwell 1996b).

USDA issued its final rule (published in the *Federal Register* on February 5, 1997) allowing Mexican avocados for import into 19 U.S. states, the first time that Mexican avocados were permitted into the continental U.S. market in 83 years. One press report said the California Avocado Commission "did everything but throw avocados to block the rule" (Skrzycki 1997). Avocado imports from Mexico began in November of that year. As of February 2002, no pests of concern had been found in the groves approved under the program (USDA-FAS 2002).

Rent seeking did not end with the formal rulemaking, however. Since the 1997 ruling, the California industry has frequently complained about illegal transshipments of Mexican avocados across state lines into quarantined states. In fact, in 1999, the California Avocado Commission paid the Washington D.C. legal firm McDermott Will & Emery roughly \$60,000 to lobby for legislation to amend the Plant Protection and Quarantine statute to increase penalties for fraudulent imports (U.S. Senate Office of Public Record). By September 1999, USDA had filed nearly 50 administrative complaints against companies, alleging the movement of Mexican Hass avocados from approved states to unapproved states (USDA 1999). Among those involved, La Hacienda Brands, Inc., of Chicago, settled charges with USDA and agreed to pay a \$50,000 fine and Wal-Mart agreed to pay a civil penalty of \$45,000.

Most interesting about the post-trade era, however, is what has not happened. Although illegal shipments have occurred (and likely will continue), avocado industry representatives calling attention to those incidences have not complained about detection of insects in those shipments. Some observers argue that this is further proof that the industry is more concerned with competition from the Mexican avocados than with pest infestation.

In September 1999, the government of Mexico requested that

USDA amend the regulations to increase the number of states into which avocados may be imported, and to extend the shipping season by two months. A 90-day comment period commenced on May 11, 2000. By the end of the period USDA received 265 comments, the majority of which supported expanding the area of distribution (*Federal Register* 2000). USDA determined that expanding the import program would present a negligible risk of introducing pests and published a proposed rule change in the *Federal Register*. A 60-day comment period commenced in July 2001, and four public hearings regarding the proposed rule were held. A total of 71 comments were received; 34 were opposed to the rule. USDA reported that so far inspection of 5,464,173 fruit had occurred, and not one target pest had been detected. In response the CAC president, Mark Affleck, stated that, “the results are emasculated deceptions of reality” (USDA 2001).

On October 12, 2001, the CAC filed a petition requesting that USDA suspend any actions regarding the rule until it “conducts, publishes, and makes available for public comment additional risk information that complies with *Harlan Land Co. et al. v. USDA, et al*” (*Federal Register* 2001).¹¹ USDA rejected the petition citing the uniqueness of the *Harlan* case and nonapplicability to the avocado situation. On November 1, 2001, USDA published a final rule in the *Federal Register* allowing Mexican Hass avocados into 31 States and creating a new shipping season from October 15 through April 15.

In addition to lobbying lawmakers, legal action in the court system is another option available to rent seekers. The CAC started litigation against APHIS less than two months after the department published its final rule. The federal suit (Case No. 01-CV-6578, *The Avocado Commission, et al v. Veneman, et al*) was filed on December 18, 2001, in the U.S. District Court: Eastern District of California, in Fresno. The plaintiffs argument is that both the February 5, 1997, rule allowing Mexican avocados into 19 northeastern states, and the November 1, 2001, rule allowing for expansion of the distribution area for Mexican Hass avocados are unlawful, because USDA acted in excess of its statutory authority under the Plant Quarantine Act and both rules are “arbitrary, capricious, and an abuse of discretion.” Moreover, USDA failed to prepare an environmental impact statement as required by the National Environmental Policy Act when promulgating each rule (U.S. District Court 2002). At the CAC board meeting of March 21, 2002, it was reported that \$149,000 of an

¹¹This was a court case relating to the importation of citrus from Argentina.

approved \$200,000 for funding the lawsuit had already been spent (California Avocado Commission 2002).

New Evidence on Lobbying in the California Avocado Case

Of course, direct evidence on the extent to which special interest groups are willing to spend resources in lobbying activities in order to restrict competition would be the most useful and direct way to establish rent-seeking behavior as the impetus behind government regulatory actions. Unfortunately, such detailed data on lobbying expenditures have historically been unavailable to the public. Knowledge of interest group expenditure on professional lobbying activity has been limited to actual participants. And of course, those with such knowledge would have a vested interest in resisting inquiries from the public at large.

More recently, though, information on lobbying activities has become more accessible to the general public. The Lobbyist Disclosure Act, passed in 1995, governs disclosure of lobbying activities. Under the law, lobbyists must file semiannual reports with the Secretary of the Senate and the Clerk of the House identifying their clients, the lobbyists working for each client, and the amount of income they receive. Likewise, organizations have to report their overall lobbying expenditures and the names of any lobbyists employed as part of any lobbying effort.

The act has a narrow definition of lobbying, and lobbying figures disclosed include only direct contacts with U.S. representatives, congressional aides, and high-level executive branch officials at the federal level. They do not include grassroots lobbying (for example a media campaign that asks people to write or call their representatives), lobbying state or local officials, general public relations work, or legal fees. Lobbying figures only have to be reported to the nearest \$10,000 and do not have to be reported at all if they fall below \$10,000 for a 6-month period. Furthermore, lobbying expenditures do not include campaign contributions of any kind (U.S. Senate Office of Public Record).¹²

Although the lobbying disclosure reports do require divulgence of

¹²The lobbyist reports are maintained by the Senate Office of Public Record in Washington, D.C. They can also be viewed online at <http://sopr.senate.gov>. Some organizations, such as the Center for Responsive Politics (www.opensecrets.org), compile these data for further analysis. The data about U.S. avocado industry lobbying were compiled from both these sources.

the issue lobbied for, often the information provided is vague and cannot be linked directly to efforts for modifying a particular regulation. Given the fact that the CAC has been primarily concerned about the loosening of SPS regulations affecting Mexican imports, we believe that lobbying expenditures mostly reflect this issue. Table 2 shows the total lobbying expenditures (as reported under the Lobbyist Disclosure Act of 1995) for the California Avocado Commission between 1997 and 2001. Over the period in question, there was a total expenditure of \$580,000 in lobbying activity, but this cost should be seen as a lower bound on the actual expenditure.

TABLE 2
TOTAL LOBBYING EXPENDITURES FOR THE CALIFORNIA
AVOCADO COMMISSION, 1997–2000

Year	Amount Spent (\$)
1997	60,000
1998	40,000
1999	160,000
2000	240,000
2001	80,000
Total for 5-year period	580,000

SOURCE: Author's calculations from the United States Senate Office of Public Record, Lobbyist Disclosure Reports.

In addition to lobbying expenditures, donations to politicians by political action committees (PACs) can arguably be considered a form of rent-seeking behavior. The California avocado industry's PAC, the California Avocado Proponent, has a history of making contributions to federal candidates. Again, such expenditures may represent concern about more than the SPS regulations and the Mexican case. Nonetheless, we believe that this issue is front and center on the California industry's agenda. Table 3 shows the donations made by the California Avocado Proponent between 1997 and 2002. Roughly \$30,000 in campaign contributions are documented, partially explaining why California politicians have continually interceded in USDA's regulatory process.

Ramos and Perera (1999) have argued that the avocado program is arguably APHIS's most glaring example of the difficulties of implementing science-based decisions in the face of strong public pressure to the contrary. The evidence presented here argues strongly for the rent-seeking model as an explanation of the avocado wars. Until the

TABLE 3
CALIFORNIA AVOCADO PROPONENT CONTRIBUTIONS TO
FEDERAL CANDIDATES, 1997–2001

Election Cycle	Total Contributions (\$)	% to Democrats	% to Republicans
2001–2002	8,300	12	88
1999–2000	11,668	45	55
1997–1998	5,997	58	42

SOURCE: Compiled data from the Center for Responsive Politics (www.opensecrets.org).

mid-1990s, the industry was successful in retaining near monopoly dominance of the U.S. avocado market. The outcome of their current lawsuit against USDA will be a pivotal event for their rent-seeking strategy.

Conclusion

This article examines the use of SPS standards as a means of protectionism through the lens of political economy. It shows how the highly technical nature of SPS regulations, combined with the general lack of sophistication on the part of developing countries, facilitates the use of SPS standards as a form of protectionism. The history of the U.S.-Mexican trade in Haas avocados illustrates the abuse of SPS regulations. While couched in the language of protecting the domestic producers from an imminent phytosanitary risk, there has never been any empirical verification of a threatening menace to California's avocado producers from fruit flies in Mexican avocados. There has, however, been a significant competitive risk from the much cheaper Mexican imports which could benefit U.S. consumers. The structure of the U.S. avocado industry makes it a good candidate for manipulation by domestic producers engaged in rent-seeking protectionism. Domestic producers—a small, well-organized group—worked diligently to influence the policy process, as indicated by substantial lobbying expenditures and political contributions.

As trade liberalization spreads across agriculture, domestic producers are likely to turn increasingly to new venues for protection from lower-priced foreign competitors. Such rent-seeking behavior not only harms consumers, who ultimately pay in the form of higher food prices, but it redirects resources away from productive uses and toward wasteful efforts to protect monopoly-pricing power. While SPS

standards are one example of how the use of opaque regulations combined with a bias in the policy process against small, low-income developing countries can lead to rent seeking, no doubt others abound.

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