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U.S. BARRIERS TO LATIN AMERICAN AND CARIBBEAN EXPORTS 1995

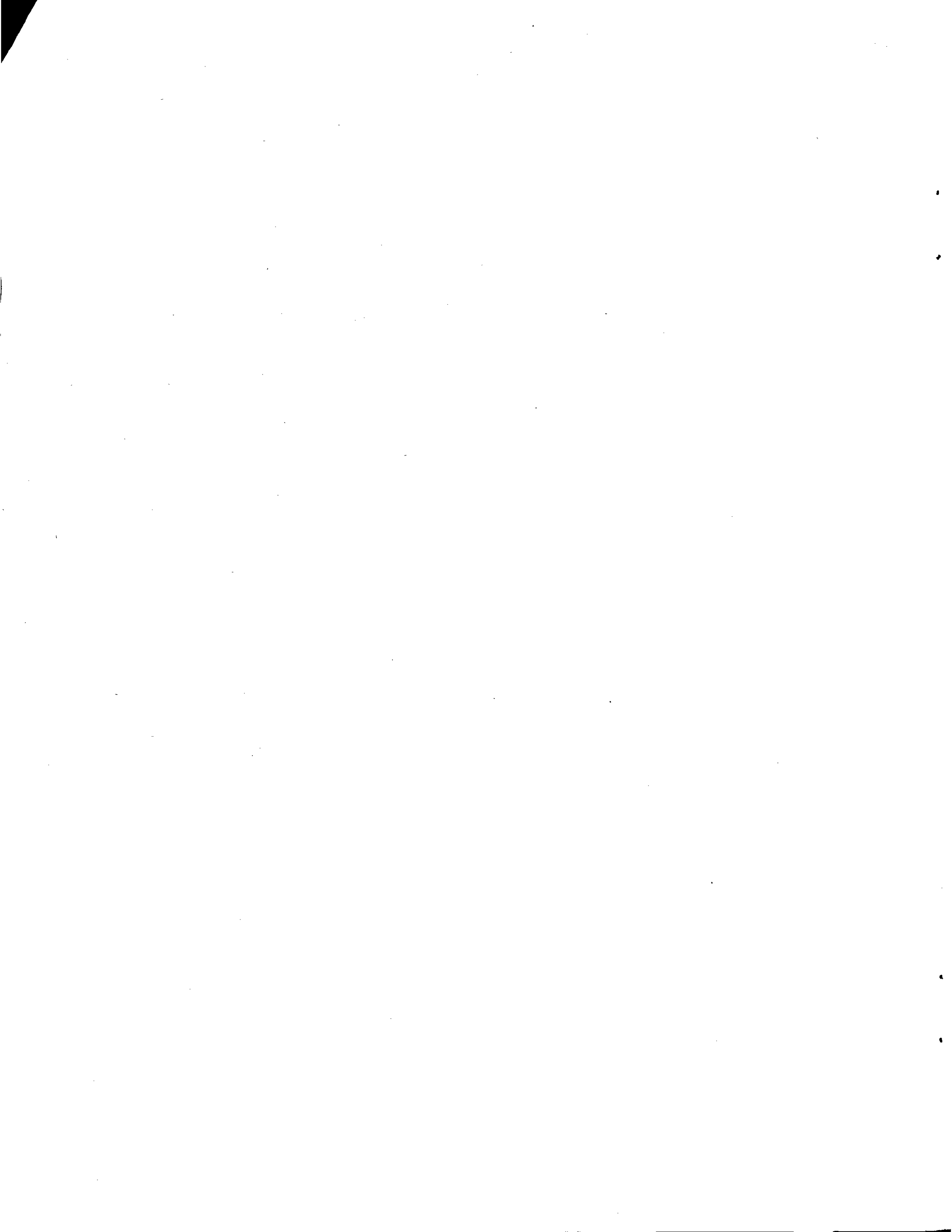

TABLE OF CONTENTS

		Page
	PREFACE	v
I.	INTRODUCTION	1
II.	IMPORT POLICIES	2
	Tariffs	2
	Textiles and Clothing	3
	Trade Remedy Legislation	4
	Voluntary Export Restraint Agreements	6
	Sugar Tariff-Rate Quota	6
	Section 301 Provisions	7
	Super 301	8
	Special 301	8
III.	STANDARDS AND REGULATIONS	9
	Phytosanitary Regulations	9
	Avocados	9
	Tomatoes	10
	Marketing Orders	10
	Gasoline Standards	10
	Meat Import Regulations	11
	Marine Mammal Protection Act	12
	Shrimp Embargo	12
IV.	EXPORT SUBSIDIES	13
	Export Enhancement Program	13
	Dairy Export Incentive Program	14
	Sunflower and Cottonseed Oil Assistance Programs	16
	The Export Credit Guarantee Programs	16
	The Market Access Program	17
	Supplier Credit Guarantee Program	17
	Facility Guarantee Program	18

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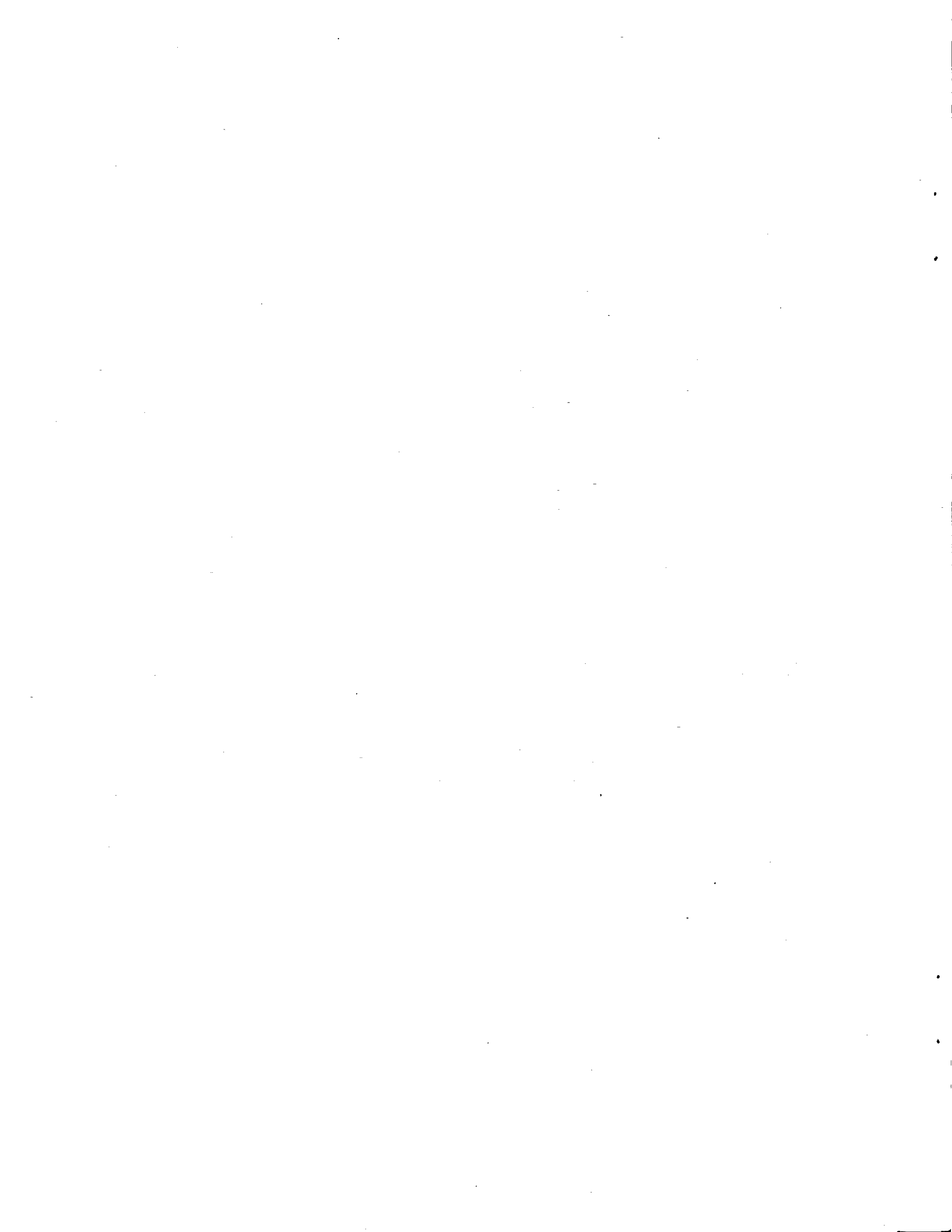

PREFACE

A precedent immediately followed by others was set by Section 303 of the United States Trade and Tariff Act of 1984. According to this Act, the Office of the United States Trade Representative (USTR) must submit an annual report to the Senate Finance Committee and the House Ways and Means Committee on the significant barriers confronted by the exports of the United States throughout the world.

Following that example, the Services of the European Commission release an annual report on United States trade barriers and unfair practices. The Industrial Structure Council of Japan also releases a yearly report on unfair trade policies by major trading partners, and Canada's Ministry of External Affairs and Trade releases every year a register of U.S. trade barriers.

This report, released periodically by ECLAC Washington, contributes to transparency through the identification of the trade barriers confronted by the exports from Latin America and the Caribbean in the United States market. As countries in the hemisphere work to achieve the Free Trade Area of the Americas (FTAA), in which barriers to trade and investment will be progressively eliminated, it is timely to look at the trade inhibiting measures that Latin American and Caribbean exports confront in the United States.

The list of barriers is not exhaustive, but covers the three most significant identified among the eight categories used by the USTR report: import policies, standards, and export subsidies. If necessary, subsequent ECLAC reports will cover the remaining five categories of barriers.

I. INTRODUCTION

This paper highlights U.S. trade measures of greatest importance to Latin America and the Caribbean (LAC), updating the information contained in a previous ECLAC report[1]. The classification of trade inhibiting measures follows that used by the U.S. Trade Representative's yearly publication National Trade Estimate Report on Foreign Trade Barriers. The USTR uses the following eight trade-barrier categories:

- Import Policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, customs barriers)
- Standards, testing, labeling, and certification (e.g., unnecessarily restrictive application of phytosanitary standards)
- Government procurement (e.g., "buy national" policies and closed bidding)
- Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace other foreign exports in third country markets)
- Lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes)
- Services barriers (e.g. regulation of international data flows, restrictions on the use of foreign data processing)
- Investment barriers (e.g., limitations on foreign equity participation, local content and export performance requirements, and restrictions on transferring earnings and capital)
- Other barriers (those that encompass more than one of the above or that affect a single sector)

Out of these categories, this report will focus on the following measures of greatest relevance for Latin America and the Caribbean: import policies, standards and export subsidies.

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[1] ECLAC, U.S. Barriers to Latin American and Caribbean Exports 1994, (LC/WAS/.28), April 14, 1995.

II. IMPORT POLICIES

Tariffs

Broadly, U.S. tariffs do not constitute major barriers to Latin American and Caribbean (LAC) exports. In fact, the U.S. trade weighted tariff for all imports has gone down from 3.27% in 1992, to 3.18% in 1994 and 2.51% in 1995, and the collected duties on Latin American and Caribbean exports have gone down even more.

Table 1: Estimated Duties Collected on U.S. Imports from Latin America and the Caribbean 1995

Country	Imports (thousands of US $)	Ad Valorem Equivalent
Latin America and the Caribbean	103,423,874	1.51
South America		
Argentina	1,761,257	1.57
Bolivia	256,795	0.83
Brazil	8,998,708	2.96
Chile	1,874,593	1.23
Colombia	3,807,348	1.28
Ecuador	1,939,218	0.36
Guyana	102,692	0.41
Paraguay	54,931	0.27
Peru	965,370	2.94
Suriname	100,108	0.01
Uruguay	167,488	3.16
Venezuela	9,213,789	0.59
Central America and Mexico		
Mexico	61,721,000	0.84
Belize	51,172	1.40
Costa Rica	1,841,767	3.00
El Salvador	813,109	7.65
Guatemala	1,514,566	5.29
Honduras	1,440,657	5.67
Nicaragua	237,731	5.25
Panama	300,478	1.36
Caribbean		
Aruba	289,308	0.57
Bahamas	143,937	0.14
Barbados	37,495	1.08
Dominican Republic	3,385,121	4.21
Haiti	129,230	3.33
Jamaica	837,702	3.76
Netherlands Antilles	263,038	0.32
Saint Kitts and Nevis	22,417	0.43
Saint Lucia	35,124	7.81
Trinidad and Tobago	1,068,419	0.27
Other Caribbean	56,245	1.02

Source: U.S. Department of Commerce

Table 1 shows, the duties paid, on average, by the countries of the region. Even though the average tariff is in general low, it varies significantly by product, and certain Latin American and Caribbean exports face high duties, such as apparel, textiles, tobacco, footwear and ceramics.

Textiles and Clothing

As part of the World Trade Organization (WTO) agreements, the Agreement on Textiles and Clothing (ATC) entered into force on January 1, 1995. The ATC superseded the Multifiber Arrangement (MFA), as a ten-year, time-limited arrangement for the slow integration of textiles and clothing into the WTO agreements. Under the ATC, the U.S. will integrate a specified percentage of textile and apparel imports in each of three stages and integrate the remaining products by January 1, 2005. Once integrated, quotas can be applied only under regular WTO safeguard procedures.[2]

Table 2: U.S. Imports of Textiles and Apparel 1995

Country	1994 Imports (in million meters^2)	1995 Imports (in million meters^2)	Growth rate (percentage)
Brazil	216.3	152.8	-29.4
Colombia	106.3	104.5	-1.7
Costa Rica	284.0	312.5	10.0
Dominican Republic	608.4	710.3	16.8
El Salvador	200.7	275.7	37.4
Guatemala	194.7	203.8	4.7
Honduras	220.5	337.9	53.3
Jamaica	201.9	228.0	13.0

Source: ECLAC, on the basis of data from the US Department of Commerce, Major Shippers Report, 1995.

On March 1, 1995, quotas set by the U.S. were notified to the WTO's Textiles Monitoring Body (TMB). Under the U.S. schedule, 89% of all U.S. apparel products under quota in 1990 will not be integrated into normal WTO rules until 2005.

However, the U.S. is the only WTO member country to have imposed thus far new quotas

[2] U.S. International Trade Commission, The Economic Effects of Significant U.S. Import Restraints, (Investigation No.332-325) Washington D.C., Dec. 1995, p. 3-3.

under the agreement's safeguard procedures.[3] In 1995, the U.S. determined that nine categories of domestic production had been damaged or were threatened with damages as a result of imports. That same year, safeguard quotas were established by the U.S. against imports from Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Jamaica.[4]

Trade Remedy Legislation

Antidumping (AD) and countervailing duties (CVD) have played an increasing róle in the United States. In 1995, twenty five new actions were implemented, of which five involved Latin American countries.

An antidumping or countervailing duty petition may be filed with both the U.S. Commerce Department and the International Trade Commission (USITC) by domestic industries which believe imports are sold at less than fair value (LTFV), or are subsidized by a foreign government. The domestic industry claims that it is being materially injured, that it is in threat of such injury, or that the establishment of a domestic industry is prevented by the above actions.

Table 3: Countervailing Duties in Effect as of February 1996

Country	Date Begun	Item
Argentina	4/4/83	Wool
	11/22/84	OCTG
	10/2/90	Leather
Brazil	3/16/76	Castor Oil
	3/15/77	Cotton Yarn
	4/4/80	Pig Iron
	10/22/85	Tillage Tools
	5/15/86	Construction Castings
	1/8/87	Brass Sheet & Strip
	3/22/93	Hot-Rolled Lead & Bismuth CSP
	8/17/93	Cut to Length Carbon Steel Plate
Chile	3/19/87	Standard Carnations
Mexico	12/12/86	POS Cookware
	8/17/93	Cut to Length Carbon Steel Plate
Peru	4/23/87	Pompon Chrysanthemums
Venezuela	8/22/88	Redraw Rod
	5/10/93	Ferrosilicon

Source: ECLAC, on the basis of data from the U.S. Department of Commerce.

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[3] United States General Accounting Office, International Trade, (GAO/T-NSIAD-96-122) Washington D.C. March 13, 1996, p. 9.

[4] USTR, 1996 Trade Policy Agenda and 1995 Annual Report, Washington D.C., 1996, p. 43.

After an initial review, a preliminary determination is made either rejecting the petition and dropping the case or agreeing that either dumping or subsidization has occurred and has or will cause harm to the domestic industry. At that point a preliminary duty is established. For the AD case the duty amount should equal the difference between the good's price in its home market and the price of the import in the United States. For CVD the duty should equal the amount of the subsidy per unit of good produced. A final review is then issued and final duties are redetermined in the same manner as above if the preliminary duty is upheld. If the decision dismisses the case, all bonds posted to the U.S. Customs office during the temporary duty period are returned.

Table 4: Antidumping (AD) Duties in Effect as of February 1996

Country	Date Begun	Item
Argentina	11/13/85	Barbed Wire
	11/23/84	Carbon Steel Wire Rods
	5/26/89	Rect. Tubing
	9/26/91	Silicon Metal
	8/3/95	Seamless Pipe
	8/11/95	OCTG
Brazil	1/12/87	Brass Sheet & Strip
	12/17/86	Butt-weld Pipe Fittings
	11/2/92	Circ. Welded Non-Alloy Pipe
	5/9/86	Construction Castings
	8/19/93	Cut to Length CS Plate
	3/14/94	Ferrosilicon
	3/22/93	Lead & Bismuth Steel
	7/10/90	Nitrocellulose
	5/5/87	Orange Juice
	5/21/86	Pipe Fittings
	7/31/91	Silicon Metal
	12/22/94	Silicomanganese
	2/21/95	SS Bar
	8/3/95	Seamless Pipe
	1/28/94	SS Wire Rods
Chile	3/20/87	Standard Carnations
Colombia	3/18/87	Fresh Cut Flowers
Ecuador	3/18/87	Fresh Cut Flowers
Mexico	8/30/90	Cement
	11/2/92	Circ. Welded Non-Alloy Pipe
	12/2/86	Cooking Ware
	8/19/93	Cut to Length CS Plate
	4/23/87	Fresh Cut Flowers
	8/11/95	OCTG
	3/25/93	Steel Wire Rod
Venezuela	6/24/93	Ferrosilicon
	11/2/92	Circ. Welded Non-Alloy Pipe

Source: ECLAC, on the basis of data from the U.S. Department of Commerce.

Latin American countries have raised several concerns regarding the United States' interpretation and enforcement of these two measures. The language of the laws gives great leeway to both the Department of Commerce and the USITC in determining such vital factors as what constitutes material injury and what the appropriate level of antidumping and countervailing duties should be. Although the level of duties is scheduled for yearly review, delays are common, thus causing foreign exporters to pay higher duties until the cases are reviewed and the duties adjusted. As shown in tables 3 and 4, AD and CVD measures are often kept in place for many years. Because of these uncertainties, any trade remedy action or threat thereof can act as a barrier to trade whether justified or not.

Once in place, antidumping and countervailing duties can have significant effects on both the United States and the exporting country. For instance, according to a recent USITC study, the remedy in the case of Frozen Concentrated Orange Juice (FCOJ) against Brazil cost the U.S. FCOJ consumers $10.6 million in welfare losses, due to higher prices. The ITC also estimated that Brazilian imports fell 75% in the period following the AD remedy[5].

Voluntary Export Restraint Agreements (VERAs)

The situation with respect to Voluntary Export Restraint Agreements (VERAs) has remained unchanged since 1993. The threat of resorting to antidumping and countervailing duties has often compelled countries to negotiate VERAs to avoid being penalized. Although considered less harmful to exporting countries than trade remedy legislation, these often coerced agreements are certainly contrary to the spirit of free trade. Steel and machine tools were the products most affected by VERAs in Latin America and the Caribbean. For many years the U.S. maintained VERAs on steel with Brazil, Venezuela, Mexico and Trinidad and Tobago. However, these agreements expired in 1992, which set off a chain of antidumping claims by the U.S. steel industry.

The Sugar Tariff-Rate Quota

As part of its sugar program, the U.S. sets quotas on a yearly basis for countries that export sugar. The countries subject to quotas are granted most-favored-nation status and the rate of duty for them is 0.625 cent per pound (raw value). Additional amounts require a duty of 16 cents per pound (raw value).

Most countries in Latin America and the Caribbean were exempt from the 0.625 cent duty, since they were beneficiaries under the Generalized System of Preferences (GSP), but on July 30, 1995 this system expired. Today, all countries who were in this program must pay the 0.625 cent duty. If GSP is reinstated the fees paid by its participants will be reimbursed. The only country in Latin America that does not receive duty-free treatment under the GSP is Brazil, due to its competitive advantage in this industry.

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[5] U.S. International Trade Commission The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, (Investigation No. 332-344), Washington D.C., June 1995, pp.6-4 and 6-5.

Table 5 shows the country-by-country allocation based on historical trade patterns of raw and refined sugar by percentage of total U.S. imports. The total level of imports that may enter the U.S. at the lower duty between October 1, 1995 - September 30, 1996 is 2,017,195 metric tons. The total level of sugar imports that may enter the U.S. from Latin America and the Caribbean for 1995-96 is equal to the total amount imported in 1994-95 by the U.S. from all sugar producing countries. Latin America and the Caribbean will supply over 65 percent of total U.S. sugar imports during the 95-96 period.[6]

Table 5: U.S. Sugar Tariff-Rate Quota
(October 1,1995 - September 30, 1996)

Country	% of total US Imports	Metric tons
Argentina	4.4	95,866
Barbados	0.6	12,311
Belize	1.1	24,524
Bolivia	0.8	17,836
Brazil	14.9	323,270
Colombia	2.5	53,507
Costa Rica	1.5	33,442
Dominican Republic	16.2	350,940
Ecuador	1.1	24,524
El Salvador	2.7	57,966
Guyana	1.2	26,753
Guatemala	4.9	107,014
Haiti	0.3	7,258
Honduras	1.0	22,295
Jamaica	1.1	24,524
Mexico	0.3	7,258
Nicaragua	2.2	46,818
Panama	2.7	57,825
Paraguay	0.3	7,258
Peru	4.2	91,407
St. Kitts & Nevis	0.3	7,258
Trinidad & Tobago	0.6	15,606
Uruguay	0.3	7,258
LAC Total	**65.5**	**1,422,718**

Source: ECLAC, on the basis of data from the U.S. Trade Representative

[6] U.S.T.R., Allocation of Tariff-Rate Quota for Raw Cane Sugar, Washington D.C., June 1996.

Section 301 Provisions

The United States' main statue for unilaterally addressing unfair trade practices affecting U.S. exports of goods or services falls under Section 301 of the Trade Act of 1974. Section 301 gives the USTR the power to respond to unreasonable, unjustifiable, or discriminatory practices that burden or restrict U.S. commerce. Once a petition has been filed with the USTR, or the USTR itself initiates the process, an investigation into the foreign government policy or action is implemented. During each investigation the USTR must carry out consultations with the foreign government involved. If an agreement is not reached by the conclusion of the investigation, or through those dispute settlement procedures available, the USTR has authority to implement any number of serious trade restrictions, such as import duties or fees.

For instance, in January 1996, the United States initiated a Section 301 investigation against Costa Rica and Colombia for their practices regarding banana exports to the European Union (EU). The United States argues that banana quotas on imports from Costa Rica and Colombia into the EU harm U.S. based banana trading companies, by restricting fair access to the EU market. Although, the U.S. acknowledged substantial progress, through changes in the banana regime, as a result of consultations initiated in 1995, it continues to claim the regime is an unreasonable and discriminatory practice.

Super 301

Super 301 of the Omnibus Trade and Competitiveness Act of 1988 was recently extended through 1997. Super 301 mandates the USTR to identify any foreign government "priority practice" whose elimination will result in the greatest increase in U.S. exports. The Super 301 report of 1995 does not include Latin American and Caribbean countries that warrant the "priority practice" designation. It only mentions the case regarding access to the Mexican market for small package delivery services, as it is currently being addressed in the North American Free Trade Agreement (NAFTA) dispute settlement proceedings.[7]

Special 301

Under Special 301 the USTR must identify those countries that deny adequate and effective protection for intellectual property rights (IPR). Countries that have policies that most adversely impact U.S. products are designated "priority" foreign countries, and must be investigated under section 301. No country may be designated "priority" if it has entered in good faith negotiations with the USTR. Those countries in danger of receiving the "priority" designation are placed on watch lists updated annually by the USTR.

In 1995, the United States noted progress in intellectual property rights issues for several Latin American countries. Costa Rica, Panama, Mexico, and Colombia have all been cited for improved IPR legislation, while Paraguay was lauded for joining international IPR conventions. Brazil's new patent law has enabled it to be removed from the "priority watch list." Yet, the U.S. has expressed concern over lack of improvement in Argentina's legislation. As of May

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[7] USTR, 1996 Trade Policy Agenda and 1995 Annual Report, p. 125.

1996, Argentina is the only Latin American country on the "priority watch list", but several others are currently placed on the second tier "watch list": Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Paraguay, Peru, and Venezuela.

III. Standards and Regulations

A vast maze of standards and regulations makes exporting to the United States a daunting task. The complexity of the system can be partly attributed to the three separate tiers of regulations that exist: federal, state, and local. These regulations are often inconsistent between jurisdictions, or needlessly overlap. It is estimated that more than 44,000 federal, state, and local authorities enforce 89,000 standards for products within their jurisdictions.[8] These structural barriers, although unintentional, still create major hurdles for foreign firms attempting to enter the U.S. market.

The types of U.S. standards that have the greatest impact on Latin America and Caribbean exports are discussed below. Increasingly, these barriers have taken the form of consumer or environmental protection. The cases below only touch on a handful of the thousands of technical and regulatory requirements that hinder access to the U.S. market.

Phytosanitary Regulations

Phytosanitary regulations for fruit and vegetables pose numerous difficulties for Latin American and Caribbean exports. Gaining access to the U.S. market is a cumbersome and costly process that can take years. Exporters must finance all USDA expenses in researching and approving products. Once a rule is proposed and published in the Federal Register it is subject to a 90-day "comment" period, after which the final rule may be issued and assigned a legally effective date. If access is gained, all shipments of the fruit or vegetable are subject to an inspection process in both the originating country and the allowed ports of entry that may further slow the process.

Avocados

Restrictions on the importation of Mexican avocados remain under effect. Since 1914, the United States has effectively banned all imports of Mexican avocados. However, as of

[8] Canada, Foreign Affairs and International Trade, Register of U.S. Barriers to Trade 1995, Ottawa 1996, p. 11.

July 27, 1993, Alaska has been allowed to import Mexican avocados.[9]

The ban stems from the existence of both seed weevils and fruit flies in avocados from Mexico, as their importation may lead to the infection of the domestic industry. On July 5, 1994 the Mexican Government requested that the Animal and Plant Health Inspection Service (APHIS) amend its regulations to allow restricted export of Mexican avocados into the United States. In July 1995, after extensive scientific inquiry and examination, the USDA proposed a rule to amend the current embargo and allow the restricted import of Mexican avocados into 19 Northeastern and Middle Atlantic states.[10] The comment period allowing public discussion of the proposed rule has closed and final review is now taking place. It is expected that the ruling will allow Mexican avocado growers limited access in November of 1996.[11]

Tomatoes

Throughout 1995, the U.S. denied Chilean tomato producers access to the U.S. market as it has in previous years. The USDA has yet to approve a fumigation treatment to eradicate tomato moth and thus free Chilean tomato producers of phytosanitary import restrictions.

Marketing Orders

Under Section 8e of the Agricultural Marketing Agreement Act, the Secretary of Agriculture can issue grade, size, quality, or maturity regulations for certain commodities through domestic marketing orders. These requirements must also be applied to comparable import commodities. The same products as last year remain subject to marketing order regulations: avocados, dates (other than dates for processing), filberts, grapefruit, table grapes, kiwifruit, limes, olives (other than Spanish-style olives), onions, oranges, prunes, raisins, tomatoes, and walnuts.[12]

Gasoline Standards

In December 1993, the U.S. Environmental Protection Agency (EPA) instituted new

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[9] Federal Register, Vol. 58, No. 142 (July 1993) p. 40033.

[10] Federal Register, Vol. 60, No. 127 (July 1995) p. 34832.

[11] The 19 states listed in the proposed rule are Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

[12] USDA, Agricultural Marketing Service, Fruit and Vegetable Division, Fruit and Vegetable Requirements Washington D.C., March 1996.

standards for both reformulated and conventional gasoline in an attempt to control auto emissions. These new measures were less favorable to imported gasoline, since foreign producers were required to conform to more restrictive standards, based on average U.S. baselines for quality of gasoline set in 1990.

In March 1995, Venezuela filed a complaint with the WTO against the EPA gasoline standards. In April 1995, the Dispute Settlement Body of the WTO approved Venezuela's request for the establishment of a dispute panel and was joined by Brazil as a complainant. Venezuela argued that the EPA regulations created preferential treatment for domestic suppliers and for those U.S. companies which had refineries in another country, since they could use their own individual baseline readings that could be lower than the U.S. average standards. On January 17, 1996 the WTO ruled that the U.S. was in violation of Article III of the General Agreement on Trade and Tariffs (GATT), known as the national treatment principle, which requires equal treatment for imports and domestic products.[13] The United States appealed the decision. The Appellate Body of the WTO ruled that U.S. environmental policy did not necessarily conflict with international trade rule, but the EPA regulations did indeed create different standards for domestic and foreign producers.[14]

Meat Import Regulation

On November 15, 1995, Uruguay became the only South American country eligible to export meat to the United States.[15] Prior to 1995, all South American countries were subject to import restrictions due to outbreaks of cattle foot and mouth disease, which poses no threat to humans, but can infect cattle. Unlike the European Union, which imports uncooked meat from South America, the United States operates under a "zero risk" policy, prohibiting all imports of meat from countries with recent outbreaks of foot and mouth disease, or rinderpest. To be eligible to export meat to the U.S., a country must have had no outbreaks of each disease and must have outlawed the vaccination for such diseases for one year. Individual exporters must then contact their veterinary services to request an inspection, followed by inspections from both the U.S. Food Safety Inspection Service (FSIS) and APHIS, with the costs borne by the industry requesting the inspection.

The United States Department of Agriculture is moving toward implementing a regionalization policy. Such a policy would allow specified regions within South American countries, who meet the disease free requirements, to export bovine products even though the entire country has not been declared disease free. For instance, this would allow imports from Brazil's southern regions of Rio Grande Do Sul and Santa Catarina, which have not

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[13] USTR, WTO Dispute Settlement Panel Issues Report on EPA Rules for Imported Gasoline, (Press Release), Washington D.C., Jan. 17, 1996.

[14] USTR, WTO Appellate Body Issues Report on EPA Rules for Imported Gasoline, (Press Release), Washington D.C., April 29, 1996.

[15] Federal Register, Vol. 60, No. 211 (November 1995) p. 55441.

vaccinated or had an outbreak in 1995. Also, Argentina has not had an outbreak of foot and mouth disease since April 1994, and has received favorable evaluations of veterinary health and sanitary conditions. Still, imports of meat from Argentina will not occur until a year after vaccination ceases.

The import of cooked meat products into the U.S. is also subject to a lengthy inspection process. Each processing plant must demonstrate to APHIS inspectors that the meat products are cooked to minimum core temperatures to remove the threat of disease. Again, the process is expensive and takes months to complete.

Marine Mammal Protection Act

The United States currently enforces an embargo of yellowfin tuna on all countries that fish in the Eastern Tropical Pacific (ETP), including Mexico and Venezuela. The embargo is required under the United States' Marine Mammal Protection Act of 1972 (MMPA) and the International Dolphin Conservation Act (IDCA) adopted in 1992. The IDCA prohibits the use of "on dolphin" methods for catching tuna, which involves dropping purse seine nets on dolphin schools to trap the tuna that frequently swim beneath them. However, this legislation applies exclusively to those fishing in the ETP, where the U.S. tuna fleet maintains only minimal presence, on the false notion that tuna-dolphin association and the practice of fishing "on dolphin" only occur in the ETP. A 1992 court ruling extended the ban to all exports of ETP tuna being sold by all intermediary countries, such as Costa Rica.

In 1992, the United States signed the international La Jolla Agreement with member governments of the Inter-American Tropical Tuna Commission (IATTC). The agreement adopted the International Dolphin Conservation Program (IDCP), implementing strict measures for reducing the number of dolphin mortalities in the ETP. Yet the IDCA and the La Jolla agreement are not fully compatible, as those countries complying fully with the La Jolla agreement are still banned from exporting tuna to the United States, despite the undeniable success of the program in reducing dolphin mortality rates to under 5,000 per year.[16]

In October 1995, the Panama Declaration was signed by eight Latin American countries and the United States, in conjunction with major environmental groups, to strengthen the IDCP. The declaration lifts the U.S. embargo for those countries that abide by the established rules for "on dolphin" methods and dolphin mortality rates. Currently, the U.S. Congress is debating legislation to amend the MMPA allowing U.S. law to be compatible with the International Dolphin Conservation Program, but such a measure will not be voted until August of 1996. Unless the legislation is passed by January 1997, the Panama Declaration will not become a legally binding international agreement.

[16] Report of the GATT Panel, United States Restrictions on Imports of Tuna, DS29/R, June 1994.

Shrimp Embargo

On December 29, 1995, the U.S. Court of International Trade ordered an embargo against all shrimp imports, effective May 1, 1996, from countries that do not require and enforce the use of Turtle Excluding Devices (TED) on shrimp trawlers. The court further rejected a request by the U.S. administration to delay the implementation of the order, to allow time to comply for countries not currently under the restriction. Although the embargo's greatest impact will be in the Far East, fifteen Latin American countries may be affected, including Mexico and Ecuador, two of the top three worldwide shrimp exporters to the United States. The overall effect on each individual country's shrimp exports will vary depending on previously adopted measures and the amount of fishing waters where the limited threat to sea turtles warrants exemption from the law.[17]

IV. Export Subsidies

Products from Latin American and Caribbean countries regularly encounter competition from subsidized U.S. goods not only in their domestic markets but also in other export markets. U.S. export support programs facilitate export transactions overseas by creating more incentives for exports, credit opportunities for potential buyers, and overseas infrastructures that facilitate the storage of U.S. agricultural products. The comprehensive farm bill approved on April 4, 1996 maintains most U.S. export support programs although many of them at lower funding levels due to the WTO agreement on agriculture. The new law is intended to support an export strategy designed to increase U.S. agricultural exports at a rate faster than the global rate.

Export Enhancement Program

The agricultural Export Enhancement Program (EEP), approved in 1985 to challenge unfair trade practices of other countries by compensating U.S. exporters, was extended until the year 2002. Under the new farm bill, the EEP expenditure is capped at $350 million in 1996; $250 million in 1997; $500 million in 1998; $550 million in 1999; $579 million in 2000 and $478 million for 2001 and 2002[18].

For the years 2000-2002, funding levels for EEP represent the maximum allowable expenditures under the WTO. Although the EEP is currently active, funded, and operational, no subsidies have been granted since July 1995, since U.S. agricultural prices have been more competitive than world prices.

The EEP was created to help U.S. agricultural producers, processors, and exporters to

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[17] Federal Register, Vol. 61, No. 77 (December 1995) p. 17342.

[18] U.S. Congress, Federal Agricultural Improvement and Reform (FAIR) Act, approved on March 28, 1996.

compete in foreign markets by paying subsidies to exporters when they commercialize their products in targeted countries. These are defined as those where U.S. sales have been nonexistent, displaced, reduced, or threatened, because of competition from subsidized exports. Every three months, the U.S. Department of Agriculture allocates quantities and destinations for U.S. agricultural products where bonuses will be awarded (see table 6).[19]

Table 6
Quantities and Destinations for U.S. Products in Latin America and the Caribbean Eligible for Bonus Awards Under the EEP
Fiscal Year 1995

PRODUCTS	COUNTRIES	METRIC TONS (quantity)	Bonus Paid
Barley Malt	Caribbean	30,000	750,000
	Brazil	15,000	704,520
	Colombia	14,000	224,000
	Central America	9,200	455,580
	Venezuela	7,500	371,000
Wheat	Trinidad and Tobago	109,200	1,380,703
	Honduras	31,800	272,953
	Nicaragua	17,508	94,368

Source: USDA, Foreign Agricultural Service

Originally, commodities eligible for EEP subsidies were wheat, wheat flour, semolina, frozen poultry, frozen pork, barley, barley malt, and vegetable oil. Presently, the program operates to subsidize all of these products but has extended its operations to assist similar programs in the export of dairy products and sunflower and cottonseed oils. Many countries have complained that the EEP caused their agricultural products to loose market shares abroad. In 1992, for example, Brazil expressed concern over its poultry and soybean oil exports, while in 1994, Argentina complained that subsidized U.S. exports of wheat to Brazil violate MERCOSUR integration agreements.[20]

Dairy Export Incentive Program (DEIP)

The DEIP is intended to make certain U.S. dairy products more competitive against countries that subsidize their dairy industry. The program works by granting cash bonuses to exporters, calculated by multiplying the determined bonus by the net quantity of the export commodity. This allows U.S. dairy exporters to sell products at a price below cost. Commodities eligible under DEIP are milk powder, butterfat, cheddar, mozzarella, Gouda, feta, cream, and processed American cheeses (see table 7).[21]

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[19] USDA, Foreign Agricultural Service (FAS), Fact Sheet, Washington D.C., May 1995.

[20] GATT, Trade Policy Review Mechanism of the United States of America, Geneva, November 1991, p. 110.

[20] USDA, Foreign Agricultural Service, Fact Sheet, Washington D.C., May 1995.

Under the new farm law, the Dairy Export Incentive Program (DEIP) eliminates the price supports on dairy products over the next four years, after which they are replaced by a recourse loan program. The law will fully fund the DEIP to the maximum levels allowed by the WTO.

Table 7
Dairy Export Incentive Program Awards for Latin America and the Caribbean Fiscal Year 1995

Commodity	Country	Quantity Metric Tons	Bonus Paid
Anhydrous Milkfat	Mexico	6,138	2,916,360
	South America	970	595,230
	Caribbean and Central	324	129,887
Butteroil	Caribbean and Central America	192	82,815
	South America	30	18,150
Butteroil and/or Anh	Caribbean	434	367,031.5
	Central America	200	159,000
Butter	Caribbean	17	4,702.5
	Central America	59	5,733
Mozzarella Cheese	South America	300	209,100
Nonfat Dry Milk	Mexico	41,875	10,028,775
	South America	9,914	4,261,533
	Caribbean	6,842	2,765,095
	Chile	2,082	1,529,850
	Central America	1,939	1,431,440
	Venezuela	702	507,250
	Colombia	385	281,907
	Peru	286	198,084
Processed American Cheese	South America	140	98,000
Whole Milk Powder	South America	6,245	4,777,788
	Caribbean	2,996	2,237,771.5
	Central America	693	730,459
	Colombia	669	728,240.5
	Ecuador	235	260,825
	Chile	70	73,500
	Bolivia	34	37,332

Source: USDA, Foreign Agricultural Service

Sunflowerseed Oil and Cottonseed Assistance Programs

In 1996, the Sunflower Oil Assistance Program (SOAP) and the Cottonseed Oil Assistance Programs (COAP) were eliminated and rolled into the EEP. For fiscal year 1995, Congress authorized a combined program level of $25.65 million for SOAP and COAP.

The programs are intended to help U.S. exporters become more competitive on the world market by targeting certain countries. The program works by paying cash to U.S. exporters to compensate for the difference between their more expensive prices and lower world market prices.[22]

The Export Credit Guarantee Programs

The Export Credit Guarantee programs are designed to increase U.S. exports in countries where credit is necessary to finance purchases, and where private financial institutions would not finance the commercial purchase, unless the Commodity Credit Corporation (CCC) guarantees it. The CCC usually insures up to 98 percent of the principal plus a portion of the interest. The Export Credit Guarantee Programs of the CCC are the largest US export promotional programs.

First, the export credit guarantee program (GSM-102) allows foreign buyers to purchase U.S. agricultural products from private U.S. exporters, providing coverage for financing the sale, with repayment guarantees, from 90 days to three years. Second, the intermediate export credit guarantee program (GSM-103), also provides coverage for credit terms, longer than three years and up to 10 years. Loan terms for GSM-103 sales distort trade, due to the favorable loan terms which surpass commercial terms.

Each fiscal year the U.S. Department of Agriculture allocates approximately $5 billion to the GSM-102 and about $500 million to GSM-103. In fiscal year 1994, $4.5 billion was allocated for these two programs but only $3.2 billion was actually used in the countries for which allocations were made. In fiscal year 1995, $4.2 billion was allocated for the GSM-102 and GSM-103, and only $2.09 billion was actually used. For fiscal year 1996, $3.4 billion has been allocated for GSM-102 and $3.4 million for GSM-103.

Some eligible commodities are: barley malt, cotton, dairy products, feed grains, fresh fruits, oilseeds, vegetable oils, meat (chilled or frozen), planting seeds, potatoes, peanuts, poultry, rice, livestock, wheat, wood products, almonds, corn products, or any other agricultural commodity which is considered of 100-percent U.S. origin.

As of September 30, 1995, the Andean region (Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela) used $27.40 million out of the $150 million allocated to that region under the GSM-102 program. Central America has used a much larger portion of the GSM-102 allocation, $42.9 million out of $60 million.

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[21] Ibid.

The countries in Latin America and the Caribbean that use most of the allocations are Brazil and Mexico. For example, during fiscal year 1995, Brazil was allocated $250 million under the GSM-102 program, of which $75.4 million was used, while Mexico used $1,422.4 million out of $1,500 million.[23] Therefore, the program is creating an unfair situation for domestic agricultural producers who cannot compete with the low prices and easy access to credit that can be offered by U.S. exporters.

The Market Access Program

The Market Access Program (MAP), (called the Market Promotion Program (MPP) until April 1996) began in 1990 to finance promotional activities, market research, technical assistance, and trade servicing for U.S. agricultural products. In April 1996, expenditures were capped at $90 million per year until the year 2002 and reforms were implemented to restrict participation to small business, farmer-owned cooperatives and agricultural groups.[24]

The MAP works by partially reimbursing program participants conducting foreign market development projects for eligible products in specified countries. Some of the commodities covered by the MAP are apples, asparagus, canned peaches and fruit cocktail, catfish, cherries, citrus, cotton, dairy products, dry beans, eggs, feed grains, frozen potatoes, ginseng, honey, hops, kiwi fruit, meat, mink pelts, peanuts, pears, pet food, pistachios, poultry meat, prunes, raisins, rice, salmon, soybeans, strawberries, sunflower seeds, surimi, tallow, tomato products, walnuts, and wheat.

Supplier Credit Guarantee Program

The Supplier Credit Guarantee Program (SCGP) was authorized in 1995 but it is not currently active. However, funds were allocated to start operations in August 30, 1996, with $100 million for fiscal year 1996 and $250 million for fiscal year 1997.

Under the SCGP program, the CCC guarantees a portion of payment due from importers under short-term financing of up to 180 days. The SCGP is similar to the Export Credit Guarantee Program (GSM-102) but the CCC guarantees a substantially smaller portion of the value of exports than in the GSM-102. Also under SCGP, the CCC instead of the foreign bank guarantees the importer obligations.[25]

Eligible commodities are specific U.S. agricultural products with an emphasis on high value products (processed products and value-added products) like wine, chilled-beet, and frozen dinners, to a limited number of countries. Initially the SCGP will target $100 million

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[22] USDA, Monthly summary of FY 95 export program activity, Washington D.C., September 30, 1995.

[23] Inside US Trade, Clinton signs farm bill that preserves most trade programs, Washington D.C., April 12, 1996.

[24] USDA, FAS, Fact Sheet, Washington D.C., April 1996.

for a pilot program to guarantee importers in Mexico and Guatemala, which are on top of the list. In the near future, USDA plans to enter the markets of Brazil, Chile, and Argentina.

Facility Guarantee Program

The Facility Guarantee Program (FGP) was created in 1995 to build actual facilities like warehouses in other countries to facilitate the storage of U.S. agricultural products. This program is still not operational.