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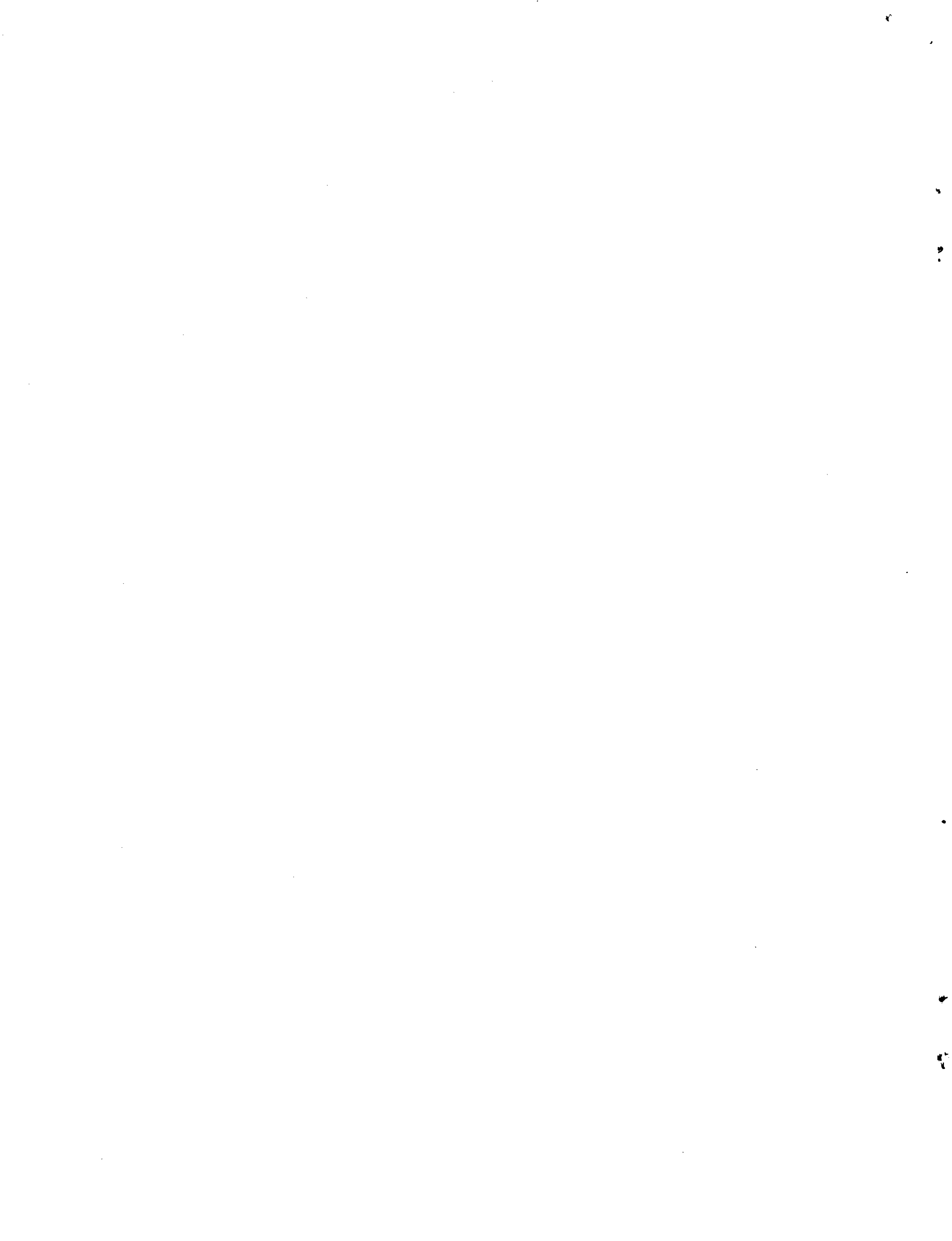

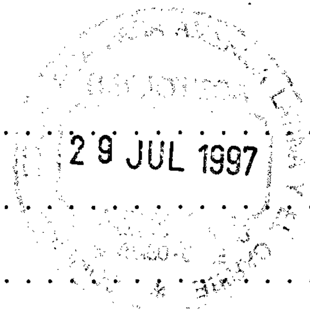

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PREFACE

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 Department of Foreign Affairs and International Trade releases every year a report on market access priorities which includes 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, (LC/WAS/L.36) (July 28, 1996).

II. IMPORT POLICIES

Tariffs

Broadly, U.S. tariffs do not constitute major barriers to Latin American and Caribbean 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.

Since the last Trade Policy Review of the United States by the World Trade Organization (WTO), the United States has fully implemented its tariff commitments under the Uruguay Round Agreement, with staged reductions on January 1, 1995 and January 1, 1996. Only two tariff lines, covering crude petroleum, remain unbound. The U.S. commitments will imply a trade-weighted average tariff reduction by 1999, with some exceptions, of some 35 percent. Full tariff elimination has been agreed for steel, pharmaceuticals, paper, furniture, medical equipment, farm equipment, construction equipment, beer and brown distilled spirits; partial elimination for wood and scientific equipment; participation in tariff harmonization for chemicals and non-ferrous metals; and participation in "substantial" tariff reductions for electronics, ceramics, photographic and cinema goods. By the end of the Uruguay Round phase-in, some 70% of U.S. tariff lines will be subject to most favored nation (mfn) rates of 5% or less, while duty-free treatment will cover 40% of tariff lines.

According to HS 1996 nomenclature, zero duties are applied to 18.5% of tariff lines; 82.5% of tariff lines have duties of 10% or less and 3.5% of tariff lines are higher than 20%. Tariff escalation is not a major feature of U.S. trade policy. However, tariff peaks at above 15% are concentrated in agricultural, food and tobacco products, as well as in textiles and footwear; above-quota tariffs on tobacco are as high as 350%.[2]

Textiles and Clothing

As part of the 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.[3]

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[2] World Trade Organization, Trade Policy Review of the United States, Washington D.C., (October 1996), p. 46.

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

Table 1: U.S. Imports of Textiles and Apparel 1995

Country	1994 Imports (in million meters²)	1995 Imports (in million meters²)	1995 Imports (millions of dollars)	Growth rate (percentage)
Brazil	216.3	152.8	234	-29.4
Colombia	106.3	104.5	390	-1.7
Costa Rica	284.0	312.5	766	10.0
Dominican Republic	608.4	710.3	1,787	16.8
El Salvador	200.7	275.7	607	37.4
Guatemala	194.7	203.8	698	4.7
Honduras	220.5	337.9	921	53.3
Jamaica	201.9	228.0	532	13.0
Mexico	-	-	3,037	-
Uruguay	-	-	13	-

Source: ECLAC, on the basis of data from the US Department of Commerce, Major Shippers Report, 1996.

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 under the agreement's safeguard procedures.[4] As of November 6, 1996, the U.S. had determined that nine categories of domestic production had been damaged or were threatened with damages as a result of imports. The U.S. imposed safeguard quotas against imports from Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Jamaica in 1995.

A recent report by the General Accounting Office (GAO), reported that the U.S. through its Committee for the Implementation of Textile Agreements sometimes applies quotas without proving that American companies have been injured or jobs eliminated. Furthermore, through June 1996, the United States has been the only country that has imposed quotas under ATC since it went into effect in January 1995.[5]

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[4] U.S. G.A.O., International Trade, (GAO/T-NSIAD-96-122), Washington D.C., (March 13, 1996), p. 9.

[5] U.S. G.A.O., Textile Trade, (GAO/NSIAD-96-186), Washington D.C., (September 1996), p. 4.

Table 2: U.S. quota calls under the Agreement on Textiles and Clothing against WTO members as notified to the Textile Monitoring Body (TMB), 1 January 1995 to 31 July 1996

Date of request for consultations	Country	Product category	Action taken
26 April 1995	Brazil	434, men's and boys' wool coats	Request withdrawn.
29 March 1995	Colombia	352/652 cotton and man-made fibre underwear	An agreed restraint measure was notified to the TMB
27 April 1995	Colombia	444, women's and girls' wool suits	An agreed restraint measure was notified to the TMB
29 June 1996	Costa Rica	351/651, cotton and man-made fibre nightwear	The United States informed the TMB that it rescinded the measure
27 March 1996	Costa Rica	352/652 cotton and man-made fibre underwear	The TMB found that no serious damage had been demonstrated, no consensus could be reached on the threat of serious damage. U.S. removed quota on March 1997.
27 March 1995	Dominican Republic	352/652 cotton and man-made fibre underwear	An agreed restraint was notified to the TMB
27 March 1995	El Salvador	351/361, cotton and man-made fibre pajamas and other nightwear	The TMB was informed that a bilateral agreement has been reached.
21 March 1995	El Salvador	352/652, cotton and man-made fibre underwear	The TMB was informed that an agreed restraint measure has been reached
29 March 1996	El Salvador	342/642, cotton and man-made shirts	An agreed restraint measure has been notified to the TMB
31 May 1995	Guatemala	342/642, cotton and man-made shirts	An agreed restraint measure was reached
27 March 1995	Honduras	352/652, cotton and man-made fibre underwear	The TMB found that no serious damage had been demonstrated, no consensus could be reached on the treat of serious damage. The countries reached a bilateral agreement.
24 April 1995	Honduras	435, woolen coats, jackets and blazers	An agreed restraint measure was notified to the TMB.
27 March 1995	Honduras	351/651, cotton and man-made fibre pajamas and other nightwear	Following a decision by the TMB that the measures were not justified, the United States rescinded the safeguard action
27 March 1995	Jamaica	351/651, cotton and man-made fibre pajamas and other nightwear	The TMB was informed that a bilateral agreement had been reached.

On February 10, 1997, the WTO Appellate Body court ruled in favor of Costa Rica when it found that the United States had in fact violated global trade by backdating restraints on underwear imports. The WTO Appellate Body recommended that the Dispute Settlement body of the WTO, request the United States to bring its measure of restricting Costa Rica's exports of cotton and man made fiber underwear into conformity with its obligations under the ATC. After further consideration, the U.S. allowed the quota restraint on imports of underwear from Costa Rica to expire on March 1997, and is now in full compliance with the

WTO Appellate Body report.[6]

Trade Remedy Legislation

Antidumping (AD) and countervailing duties (CVD) have played an increasing role 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 1997

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.

[6] U.S.T.R., WTO Dispute Settlement Panel Issues Report on U.S. Safeguard Restriction on Underwear from Costa Rica, (Press Release No. 96-88), Washington D.C., (Nov.8, 1996).

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.

Table 4: Antidumping (AD) Duties in Effect as of February 1997

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	Carbon Steel 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.

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.

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.

The most recent developments in these areas concerning Latin America and the Caribbean, are the suspensions of anti-dumping investigations pending against Venezuela for cement and Mexico for tomatoes. Although duties will not be imposed on these countries, they must submit quarterly reports to the U.S. displaying their compliance with U.S. laws.

Once in place, antidumping and countervailing duties can have significant effects on both the United States and the exporting country. For instance, Colombian flower producers have been investigated 9 times in the last 10 years without being assessed an anti-dumping duty of more than 3.2%. This will cost Colombian producers between $3 and $5 million to comply with.[7] The costs for U.S. consumers in textile protection alone added approximately $400 a year to the clothing costs of lower income U.S. families.[8]

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.

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[7] Blount, Jeb, "Protectionism, Made in the USA", Latin Trade, (November 1996), p. 65.

[8] Ibid., p. 66.

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).

Table 5: U.S. Sugar Tariff-Rate Quota
(October 1, 1996 - September 30, 1997)

Country	% of total US Imports	Metric tons
Argentina	4.1	87,236
Barbados	0.6	11,359
Belize	1.1	22,316
Bolivia	0.8	16,230
Brazil	13.9	294,169
Colombia	2.3	48,690
Costa Rica	1.4	30,431
Dominican Republic	16.9	357,060
Ecuador	1.1	22,316
El Salvador	2.5	52,748
Guyana	1.2	24,345
Guatemala	4.6	97,380
Haiti	0.4	7,258
Honduras	1.0	20,288
Jamaica	1.1	22,316
Mexico	1.3	25,000
Nicaragua	2.0	42,604
Panama	2.8	58,834
Paraguay	0.4	7,258
Peru	3.9	83,179
St. Kitts & Nevis	0.4	7,258
Trinidad & Tobago	0.7	14,201
Uruguay	0.4	7,258
LAC Total	**65.1**	**1,359,724**

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

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). 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.

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, 1996 - September 30, 1997 is 2,100,000 metric tons. The total level of sugar imports that may enter the U.S. from Latin America and the Caribbean for 1996-97 is 1,359,724 metric tons. Latin America and the Caribbean will supply over 65 percent of total U.S. sugar imports during the 96-97 period.[9]

Section 301 Provisions

The United States' main statute 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.

On October 4, 1996, the Acting USTR self-initiated an investigation with respect to certain acts, practices, and policies of the Argentine government concerning the imposition of specific duties on apparel, textiles and footwear, a discriminatory statistical tax, and a burdensome labeling requirement on apparel and textile. The U.S. requested the WTO to establish a panel to examine Argentina's imposition of the stated duties.[10]

Furthermore, on October 11, 1996, the Acting USTR self initiated an investigation concerning Brazilian auto incentive programs. These programs allow tariff reduction benefits from the Brazilian government contingent on satisfying certain export performance and domestic content requirements. The United States held consultations with Brazil concerning its new auto incentive programs on February 20-21, 1997 and is currently consulting with

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[9] USTR, Allocation of Tariff-Rate Quota for Raw Cane Sugar, (Press Release 97-43), Washington D.C., (May 12, 1997).

[10] USTR, 1997 Trade Policy Agenda and 1996 Annual Report, Washington D.C., (March 1997), p. 62.

Brazil on this issue.[11]

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 1996 does not include Latin American and Caribbean countries that warrant the "priority practice" designation.

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 January 1997, during a Special 301 out-of-cycle review (OCR), the U.S. Government announced the suspension of 50% of Argentina's GSP benefits effective in April 1997 because of Argentina's lack of patent protection for pharmaceuticals. The products affected include chemicals, certain metals and metal products, a variety of manufactured products and several agricultural items.[12] Argentina estimates the loss of export earnings to be about $600 million.[13]

Guatemala's GSP probation was lifted May 2, 1997, ending a four year review of whether Guatemala should lose its duty-free benefits under the U.S. Generalized System of Preferences program due to supposed violations of worker rights. However, the USTR said it would continue to monitor the treatment of workers in Guatemala and will self-initiate a new GSP review if there is serious retrogression in the areas the case has addressed.[14]

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[11] USTR, 1997 National Trade Estimate Report on Foreign Trade Barriers, Washington D.C., (March 1997), p. 22.

[12] USTR, Argentine Products Lose GSP Benefits as a Result of "Out-Of-Cycle" Review, (Press Release 97-31), Washington D.C., (April 15), 1997.

[13] "U.S. Adds Sanctions to Barriers", Latin America Weekly Report, (WR-97-15), London, England, (April 15), p. 172.

[14] "Guatemala GSP Probation Lifted as Clinton Visits Central America", Inside U.S. Trade, (May 9, 1997), p. 26.

On April 30, 1997, the USTR placed Argentina, Ecuador and Paraguay on the "priority watch list" and "out of cycle" reviews will be conducted on Ecuador and Paraguay. These countries were placed on the "priority watch list" because of the lack of adequate and effective intellectual property protection or market access in these countries.[15]

A major IPR priority for the United States is full and timely implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This agreement obligates WTO members to provide in their domestic law and to enforce minimum standards for protecting intellectual property.

The USTR has serious concerns about Ecuador's compliance with WTO obligations such as, patents, copyrights and trademarks. Although, developing countries such as Ecuador have a five year transition period that expires in the year 2000, to fully implement TRIPS obligations. As a result of this year's Special 301 review, the U.S. will initiate WTO dispute settlement procedures in the near future against Ecuador if TRIPS obligations are not met in the coming months.[16]

Last year the government of Paraguay introduced new intellectual property legislation and created the National Intellectual Property Council to confront piracy and counterfeiting in the country. However, despite these efforts by the government of Paraguay, the USTR is placing Paraguay on the priority watch list and an out-of-cycle review will be conducted before April 1998, to monitor the efforts of the Government of Paraguay in cracking down against piracy and counterfeiting and enacting modern intellectual property legislation.[17]

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

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[15] USTR, USTR Announces Results of Special 301 Annual Review, (Press Release 97-37), Washington D.C., (April 1997), p. 4.

[16] Ibid., p. 8.

[17] Ibid., p. 10.

jurisdictions.[18] 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

Since 1914, restrictions on the importation of Mexican avocados remain under effect. However, as of July 27, 1993, Alaska has been allowed to import Mexican avocados[19], and on January 31, 1997, the USDA issued a final ruling to permit U.S. imports of Mexican Hass avocados from Michoacán under the "system approach." The new rule allows imports of fresh Hass avocados grown in approved orchards in Michoacán, México, into 19 Northeastern States from November through February.[20]

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 Services (APHIS) amend its regulation to allow the restricted import of Mexican avocados into 19 Northeastern and Middle Atlantic States.[21]

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

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

[20] Federal Register, Vol.62, No. 24 (February 1997), p. 5293.

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

Even so there still remain many obstacles. The USDA import plan contains nine specific safeguards to prevent exotic pests from entering the United States, including packing house and port of arrival inspections, limited distribution and continuing field services. Also, avocados must be shipped in sealed containers under Custom Bonds with clearly labeled Northeast destination and each avocado must display a sticker so that it can be traced back to its place of origin in Mexico.

Broom Corn Brooms

In response to findings by the ITC, that broom corn brooms from Mexico are being imported into the United States in such increased quantities as to substantially impact the U.S. industry, President Clinton announced on December 2, 1996 a series of actions to sustain the competitiveness of this industry.

Such actions included temporary imposition of increased tariffs, targeted support for the broom industry, and increased enforcement efforts to ensure that broom imports comply with U.S. law.[22]

Duties on brooms under two tariff subheadings (9603.10.50 and 9603.10.60) will be increased to 33% from 22%, effective November 28, 1996, for a period of three years.

Mexico requested on January 15, 1997, the establishment of a dispute settlement panel under NAFTA's Chapter 20, charging that the U.S. action to increase tariffs on Mexican broom corn brooms --carried out under NAFTA's rarely-used safeguard action-- is "inconsistent" with the trade pact. The Mexican Government argues that the U.S. International Trade Commission's finding that led to the decision was based on a definition of the U.S. industry that was too narrow. The ITC excluded from its determination the production of other types of brooms, such as plastic brooms, which Mexico argued are similar or directly competitive with broom corn brooms. NAFTA's Art.805 defines domestic industry as "producers as a whole of the like or directly competitive good operating in the territory of a Party."[23]

As a result of the safeguard, a Colombian firm that exports broom corn brooms has had to pay a prohibitive 33% duty on shipments to the U.S. above an annual quota of 12,000 dozen. Prior to the imposition of the restraint, Colombia's broom exports had expanded from 12,000 dozen worth approximately $250,000 in 1994 to 24,000 dozen worth $500,000 in 1995. Through the first eight months of 1996, exports had already reached 25,000 dozen,

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[22] USTR, President Clinton Assists U.S. Broom Corn Broom Industry,(Press Release 96-92), Washington D.C., (December 2, 1996).

[23] "U.S. Business Coalition Asks U.S., Mexico to Rethink Broom Dispute", Inside Nafta, (January 22, 1997).

and could have reached a value of $1 million by the end of the year.[24]

Tomatoes

Throughout 1996, 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.[25]

Gasoline 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.[26] 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 U.S. Environmental Protection Agency (EPA) regulations did indeed create different standards for domestic and foreign producers.[27]

The United States has indicated its intention to implement changes to its regulations by

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[24] "Colombia Challenges U.S. Broom Safeguard in World Trade Body", Americas Trade, Washington D.C., (May 15, 1997), p. 8.

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

[26] USTR, WTO Dispute Settlement Panel Issues Report on EPA Rules for Imported Gasoline, (Press Release 96-04), Washington D.C., (January 17, 1996).

[27] USTR, WTO Appellate Body Issues Report on EPA Rules for Imported Gasoline, (Press Release 96-38) Washington D.C., (April 29, 1996).

August 20, 1997, so as to accommodate the decision of the WTO Dispute Settlement Body; in this regard, consultations with trading partners are still proceeding.[28] However, a coalition of major U.S. refiners has strongly criticized these changes and charged that the proposed rule would lead foreign refiners to import dirtier gasoline, to the detriment of environmental quality. The EPA by contrast, has determined that foreign gasoline has been consistently cleaner than that produced by domestic refiners. In 1995, the EPA found that the average level of toxins (carcinogens) in imported gasoline was cleaner than both the statutory baseline and the gasoline produced by domestic firms.[29]

The dispute originated in December 1993, when the (EPA) instituted new 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. baseline 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.

Meat Import Regulation

On November 15, 1995, Uruguay became the first South American country eligible to export meat to the United States[30] and effective August 25th 1997, Argentina will become the second country in South America eligible to export beef, to the United States. 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

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[28] WTO, Trade Policy Review of the United States, Washington D.C., (1996).

[29] "EPA seeking to comply with WTO gas ruling amid industry criticism", Inside U.S. Trade, Washington D.C., (May 16, 1997), p. 16.

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

Safety Inspection Service (FSIS) and APHIS, with the costs borne by the company 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 vaccinated or had an outbreak in 1995.

APHIS's proposed regulation outlines 6 risk categories ranked according to increasing risk. Import conditions or restrictions would vary according to the risk class or region from which the product or live animal originates.[31]

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.

Additionally, there was an increase in user fees for certain import-related services effective on June 6, 1996. User fees for import-related services for animals at all ports of entry and animal import centers, including the Canadian and Mexican borders increased by an amount of $0.25 and up to $21.00. For animal products and byproducts the range of increase was from $0.50 for an application for a permit renewal, to $10.25 for the inspection of an approved establishment. The user fees are based on a per load, inspection, application, or certification basis.[32]

Marine Mammal Protection Act

The United States currently enforces an embargo on yellowfin tuna from all countries that fish in the Eastern Tropical Pacific (ETP), extending from Mexico and Venezuela to northern Chile and 700 miles out to sea. 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

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[31] Federal Register, Vol.61, No 76 (April 18 1996), pp. 16977-17105.

[32] Federal Register, Vol.61, No 89 (May 7, 1996), pp. 20421-20437.

presence, on the false notion that tuna-dolphin association and the practice of fishing "on dolphin" only occur in the ETP.

In spite of a finding by a GATT panel that the U.S. was improperly prohibiting imports of Mexican tuna, the U.S. ignored it, and in 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.[33]

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.

The US embargo has a devastating impact on Mexico's tuna industry. Exports fell from 83,000 tones in 1989, to only 11,017 tones in 1994. The tuna fleet, one of the largest in the Pacific was reduced by 46%, it declined from 85 400-ton-capacity ships to 42. The closing of the U.S. market has resulted in a loss of 30,000 permanent jobs related either directly or indirectly to the tuna industry in Mexico.[34]

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 only exception is if the U.S. Department of Commerce certifies that the harvesting nation has adopted a comparable program to protect sea turtles in the course of commercial fishing operations or

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

[34] "End in Sight for Damaging Tuna Ban", Latin America Weekly Report, London, England, (August 15, 1996), p. 370.

that the fishing environment of the harvesting nation does not pose a risk to sea turtles.[35]

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.[36]

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

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[35] WTO, U.S. Trade Policy Review, Washington D.C., (1996).

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

2000 and $478 million for 2001 and 2002.[37]

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 compete in foreign markets by paying subsidies to exporters when they commercialize their products in targeted countries. These are countries 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).[38]

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.[39]

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.[40]

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

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

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

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

Table 6: Status of the Dairy Export Incentive Program in the Caribbean, Central, and South America

Expiration Date: June 30, 1997

PRODUCT	QUANTITY ANNOUNCED	QUANTITY AWARDED	BALANCE
Nonfat Dry Milk	50,000	210	49,790
Whole Milk Powder	6,500	44	64,456
Cheddar, Gouda, Mozzarella, Cream, Feta, Processed American, Cheeses	1,000	0	1,000

Source: U.S. Department of Agriculture. September 20, 1996.

Under the new farm law, the 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.

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 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.

The countries in Latin America and the Caribbean that use most of the allocations are Brazil and Mexico. For example, during fiscal year 1996, Brazil was allocated $150 million under the GSM-102 program, of which $69.2 million was used, while Mexico used $1,414.1 million out of $1,425 million.[41] 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.

Table 7: GSM - 102
(Millions of Dollars)

COUNTRY	COMMODITY	Announced	Registered	Balance
Andean Region	Cotton	6.30	6.30	
	Dairy Products	0.20	0.20	
	Feed Grains	29.00	29.00	
	Livestock, Breeder	0.20	0.20	
	Oilseeds	17.20	17.20	
	Poultry Breeder Stock	0.30	0.30	
	Protein Meals	19.10	19.10	
	Rice	8.40	8.40	
	Tallow, Greases, Lard	3.80	3.80	
	Vegetable Oil	2.20	2.20	
	Wheat, Wheat Flour	140.30	140.30	
	Wood Pulp, Wood Chips	2.20	2.20	
	Undesignated	120.80	---	120.80
	Total:	350.00	229.20	
Argentina	Undesignated	20.00	---	20.00
	Total:	20.00	0	
Brazil	Cotton	14.00	14.00	
	Livestock, Breeder	1.10	1.10	
	Poultry Breeder Stock	3.30	3.30	
	Wheat	50.80	50.80	
	Undesignated	80.80	---	80.80
	Total:	150.00	69.20	

[41] USDA, Monthly Summary of FY 95 Export Program Activity, Washington D.C., (April 12, 1996).

COUNTRY (continued)	COMMODITY	Announced	Register	Balance
Central America	Cotton	20.30	20.30	
	Protein Meals	18.60	18.60	
	Tallow (Greases, Lard)	0.80	0.80	
	Wheat	7.40	7.40	
	Undesignated	5.80	----	5.80
	Total:	80.00	74.20	
East Caribbean	Feed Grains	9.30	9.30	
	Oil Seeds	24.40	24.40	
	Protein Meals	0.40	0.40	
	Rice	16.80	16.80	
	Wheat	29.00	29.00	
	Undesignated	0.10	---	0.10
	Total:	80.00	79.90	
Ecuador	Undesignated	5.00	---	5.00
	Total:	5.00	0	
Mexico	Animal Feed Products	0.90	0.90	
	Barley Malt	6.90	6.90	
	Corn Products	2.30	2.30	
	Cotton	77.10	77.10	
	Feed Grains	514.80	514.80	
	Fruits	5.10	5.10	
	Hides and Skins	3.50	3.50	
	Hops, Hop Extract	2.30	2.30	
	Livestock, Breeder	0.40	0.40	
	Meat Frozen/Chilled	80.00	80.00	
	Oil Seeds	392.50	392.50	
	Protein Meals	46.80	46.80	
	Rice	11.00	11.00	
	Tallow (Greases, Lard)	21.70	21.70	
	Vegetable Oil	58.90	58.90	
	Wheat	164.90	164.90	
	Wood Pulp, Wood Chips	25.40	25.40	
	Undesignated	10.90	---	10.90
	Total:	1,425.00	1,414.10	
Paraguay	Planting Seeds	3.00	---	3.00
	Total:	3.00	0	
West Caribbean	Feed Grains	7.20	7.20	
	Protein Meals	3.50	3.50	
	Rice	9.00	9.00	
	Wood Products	0.50	0.50	
	Undesignated	14.80	---	14.80
	Total:	**35.00**	**20.20**	

Source: U.S. Department of Agriculture. January 30, 1997

Table 8: GSM - 103
(Millions of Dollars)

COUNTRY	COMMODITY	Announced	Registered	Balance
Central America	Undesignated Total:	**5.00**	---	5.0
Ecuador	Undesignated	**5.00**	--	5.0
Mexico	Livestock, Breeder	0.40	0.40	---
	Undesignated	79.60	---	79.60
	Total:	**80.00**	0.40	

Source: United States Department of Agriculture. January 30, 1997

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.[42]

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

[42] "Clinton Signs Farm Bill that Preserves Most Trade Programs", Inside U.S. Trade, Washington D.C., (April 12, 1996).

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.[43]

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 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.

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[43] USDA, Foreign Agricultural Service, Fact Sheet, Washington D.C., (April 1996).