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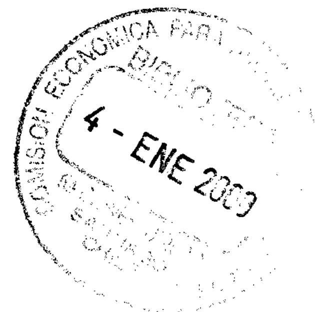
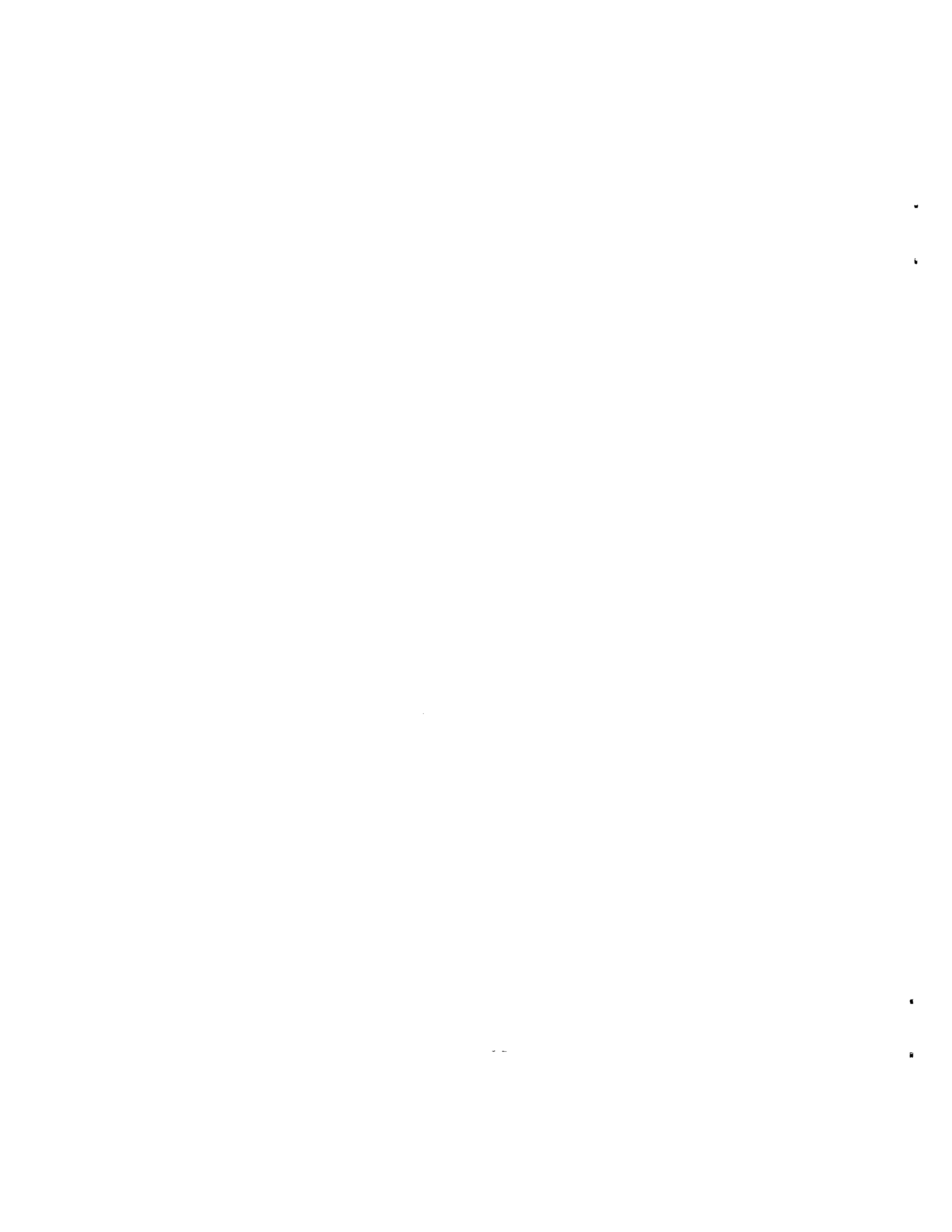


BARRIERS TO LATIN AMERICAN AND CARIBBEAN EXPORTS IN THE U.S. MARKET 1998-1999



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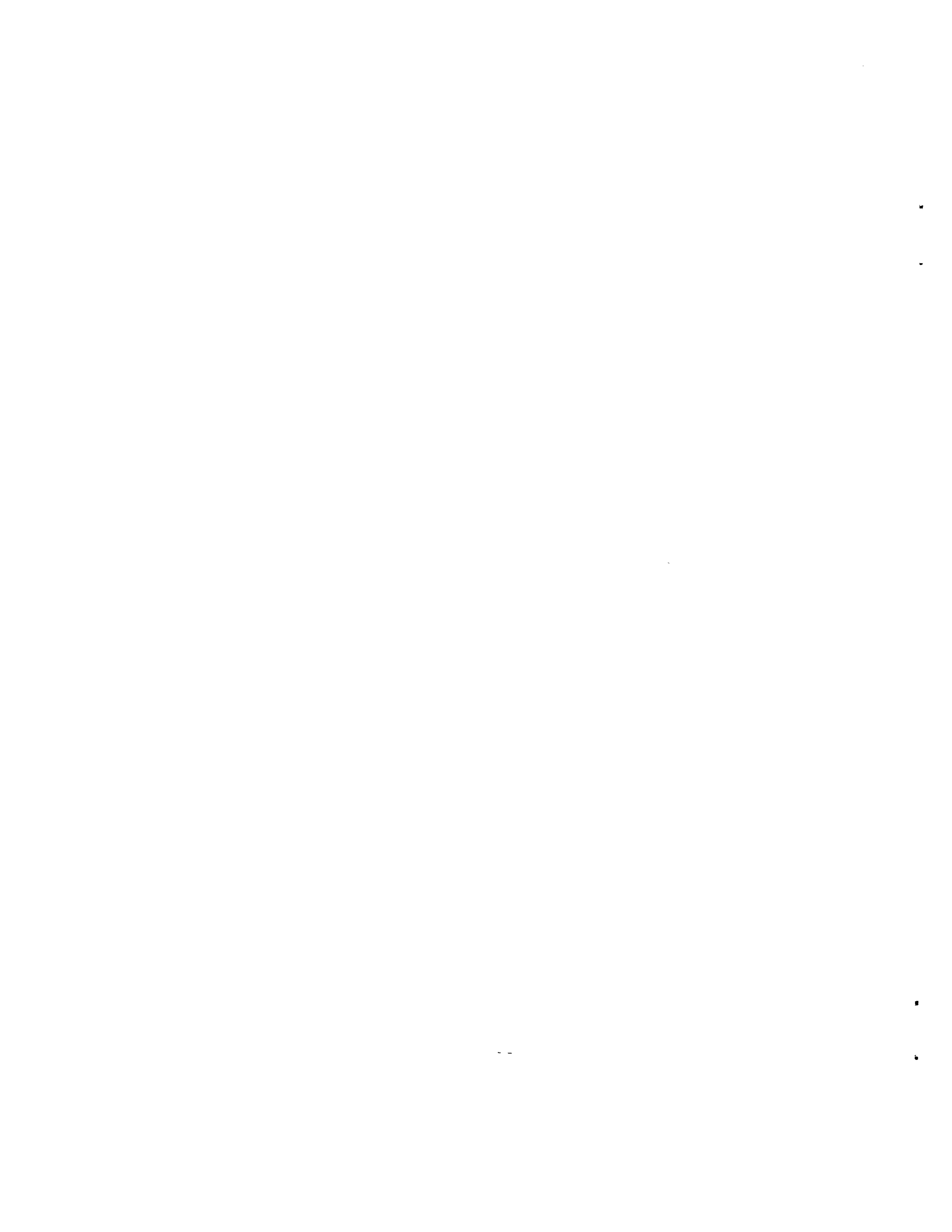


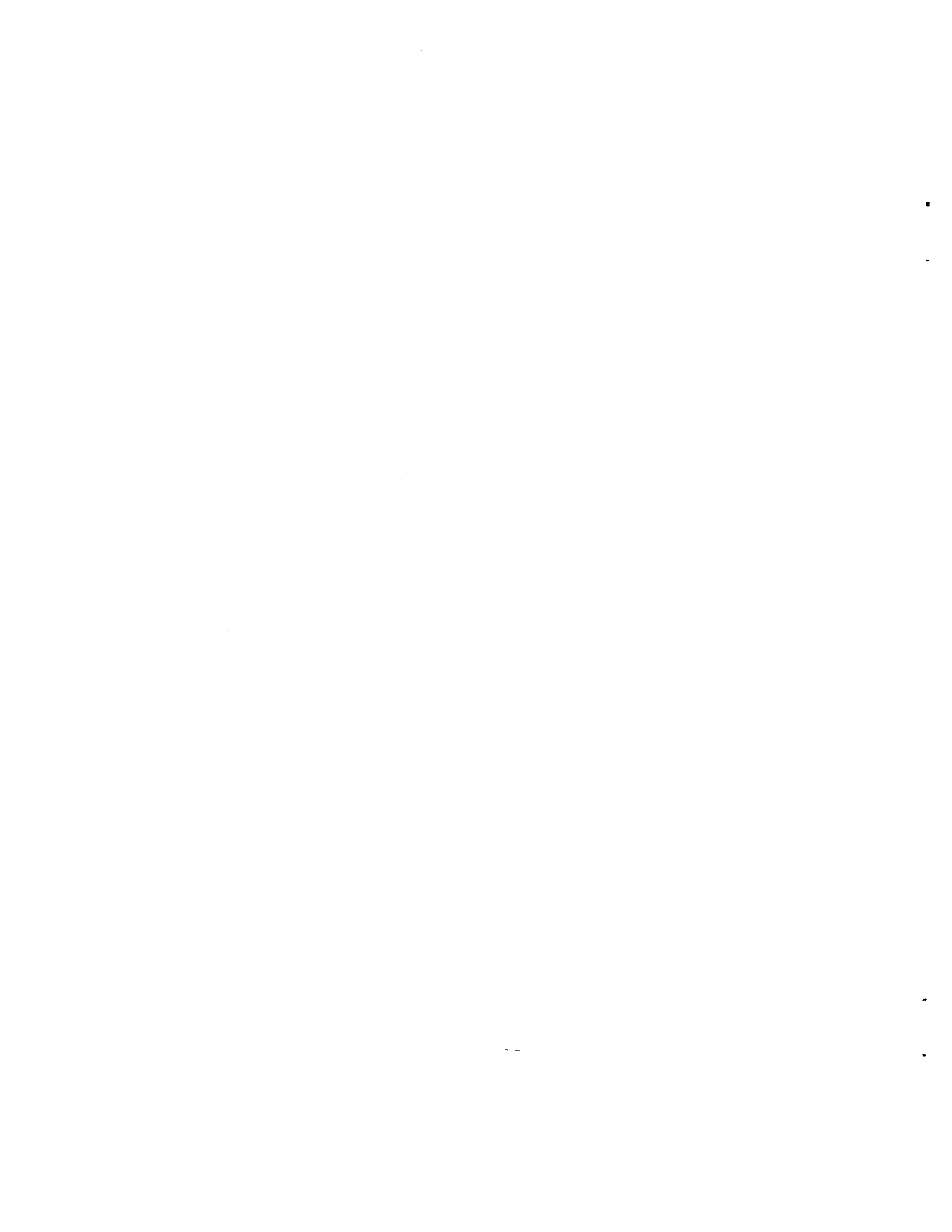
I. INTRODUCTION

Barriers to Latin American and Caribbean Exports in the US Market, 1998-1999 is the sixth report released yearly by ECLAC Washington. Its aim is to provide information on trade inhibiting measures that Latin American and Caribbean exports encounter in the United States, updating that contained in previous reports.

The classification of trade inhibiting measures follows that used by the US Trade Representative's yearly publication National Trade Estimate Report on Foreign Trade Barriers. Out of this classification, the report focuses on those three of greatest relevance for Latin America and the Caribbean:

- 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)
- Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace other foreign exports in third country markets)

The report needs to be placed in the context of a trade relationship between the United States and Latin America and the Caribbean, which has grown strongly over the years to the benefit of both economies. Moreover, it must be seen against the background of the commitment to achieve the Free Trade Area of the Americas (FTAA), in which barriers to trade and investment will be progressively eliminated. In this regard, it is hoped that this report will further contribute to transparency and to the elimination of obstacles to the free flow of trade in the Americas.



II. IMPORT POLICIES

Tariffs

Overall, U.S. tariffs do not constitute a major barrier to Latin American and Caribbean (LAC) exports. In 1998, over 70% of all U.S. imports from the LAC region entered duty free. The trade-weighted tariff for all U.S. imports has gone down from 3.27% in 1992 to 2.0% in 1998, and the collected duties on Latin America and Caribbean exports have gone down even more. Total duties collected in 1998 on $142.3 billion of U.S. imports from LAC was $1.6 billion (table 1).

The Ad Valorem Equivalent (AVE)[1] total for U.S. imports from the LAC region in 1998 was 1.1%, while U.S. imports from the world paid an average duty rate of 2.0%. By subregion, imports from the Central American Common Market (CACM) paid an AVE total of 5.3%, Mercosur 2.4%, Caricom 1.5%, Andean Community 0.9% and NAFTA countries had the lowest rate of 0.2%.

In 1998, 67% of imports from Central America entered the U.S. duty free, but the AVE on dutiable goods from Central American countries was 16.2%, the highest among all Latin American regions. This high rate was due in part to the higher rate of duties applied to textiles coming from the region. The countries with the highest Ad Valorem duty rates are El Salvador, Guatemala, Honduras, and Nicaragua, all with rates higher than 16%[2]. About half of U.S. imports from South America entered duty free and almost 80% of all U.S. imports from the Caribbean entered duty free. U.S. duty free imports from Venezuela amounted to 37.8%, in part due to the high volume of petroleum imports from this country not entering duty free while the share for the other Andean countries is considerably higher.

[1] Ad Valorem Equivalent (AVE) is the average duty rate, expressed as the percentage of duties collected over the total value of all imports entering the U.S.

[2] The AVE dutiable is the average duty rate, expressed as a percentage of duties collected over the amount of the dutiable value of imports not entering the U.S. duty free.

Table - 1
Ad Valorem Duty Rates for U.S. Imports 1998
(millions of dollars, customs value)

	Total Value	Duty Free Value	% Duty Free	Duties Collected	A.V.E. Dutiable	A.V.E. Total
World	**907,647**	**521,132**	**57.4**	**18,270**	4.7%	2.0%
Western Hemisphere	317,031	273,385	86.2	1,716	3.9%	0.5%
NAFTA	**267,702**	**243,340**	**90.9**	**517**	**2.1%**	**0.2%**
Canada	174,685	169,316	96.9	89	1.7%	0.1%
Mexico	93,017	74,024	79.6	428	2.3%	0.5%
LAC (including Mexico)	**142,346**	**104,069**	**73.1**	**1,627**	**4.3%**	**1.1%**
Andean Community	**17,235**	**9,019**	**52.3**	**162**	**2.0%**	**0.9%**
Bolivia	220	182	82.7	3	7.9%	1.4%
Colombia	4,442	2,696	60.7	51	2.9%	1.1%
Ecuador	1,774	1,325	74.7	5	1.1%	0.3%
Peru	1,925	1,458	75.7	45	9.6%	2.3%
Venezuela	8,874	3,358	37.8	58	1.1%	0.7%
Mercosur	**12,480**	**7,558**	**60.6**	**300**	**6.1%**	**2.4%**
Argentina	2,240	1,016	45.4	43	3.5%	1.9%
Brazil	9,953	6,325	63.5	251	6.9%	2.5%
Paraguay	33	29	87.9	0	0.0%	0.0%
Uruguay	254	188	74.0	6	9.1%	2.4%
Chile	2,341	1,589	67.9	19	2.5%	0.8%
CACM	**9,246**	**6,226**	**67.3**	**488**	**16.2%**	**5.3%**
Costa Rica	2,742	2,309	84.2	50	11.5%	1.8%
El Salvador	1,436	783	54.5	109	16.7%	7.6%
Guatemala	2,071	1,120	54.1	158	16.6%	7.6%
Honduras	2,544	1,772	69.7	137	17.7%	5.4%
Nicaragua	453	242	53.4	34	16.1%	7.5%
CARICOM	**2,530**	**1,981**	**78.3**	**37**	**6.7%**	**1.5%**
Antigua & Barbuda	2	2	100.0	0		0.0%
Bahamas	144	140	97.2	0	0.0%	0.0%
Barbados	35	31	88.6	0	0.0%	0.0%
Belize	66	49	74.2	1	5.9%	1.5%
Dominica	6	4	66.7	0	0.0%	0.0%
Grenada	12	11	91.7	0	0.0%	0.0%
Guyana	118	102	86.4	0	0.0%	0.0%
Haiti	272	201	73.9	12	16.9%	4.4%
Jamaica	736	596	81.0	20	14.3%	2.7%
St. Kitts	32	27	84.4	0	0.0%	0.0%
St. Lucia	22	13	59.1	1	11.1%	4.5%
St. Vin. & Grenadines	5	5	100.0	0		0.0%
Suriname	106	105	99.1	0	0.0%	0.0%
Trinidad & Tobago	974	695	71.4	3	1.1%	0.3%
Other Countries						
Dominican Republic	4,445	3,167	71.2	184	14.4%	4.1%
Panama	300	253	84.3	2	4.3	0.7%
All other West. Hem.	**752**	252	33.5	7	1.4%	0.9%

Source: U.S. Department of Commerce, International Trade Administration.

Trade Remedy Legislation

In 1998, ten new Antidumping (AD) and countervailing duties (CVD) actions were implemented and two of them involved Latin American countries -- AD duties on Chilean salmon and on canned mushrooms. In 1999 AD duties were imposed on stainless steel from Mexico -- (Tables 2 and 4 list the AD and CVD orders in effect).

An antidumping or countervailing duty petition may be filed with both the U.S. Department of Commerce (USDOC) and the International Trade Commission (USITC), by domestic industries who believe imports are sold at less than fair value, or are subsidized by a foreign government. The domestic industry may claim 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.

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 produced. A final review is then issued and final duties are determined in the same manner as above if the preliminary duty is upheld. If the decision dismisses the case, all bonds posted at the U.S. Customs office during the temporary duty period are returned.

A. Positive AD determinations

Salmon

The AD and CVD cases against fresh Atlantic salmon from Chile were initiated by the USDOC in July, 1997. The case alleging subsidization was dismissed; but the case alleging dumping eventually ended in the imposition of duties. An AD duty order was issued in July of 1998 with antidumping margins ranging from 2% to 11%. But on July 23, 1999, the U.S. International Trade Commission issued a notice of a court-ordered remand of its final antidumping investigation. The notice follows a July 2, 1999 order by the Court of International Trade that directs the U.S. International Trade Commission (ITC) "to reopen the administrative record on the Fresh Atlantic Salmon from Chile to verify the accuracy of its foreign production, shipments and capacity data" and to "take any action necessary after reexamining the foreign production, shipments and capacity data."[3] The Court also directs the ITC to issue a remand determination within ninety days of the date of the order (by September 30, 1999).

[3] Federal Register, Vol.64, No. 149 (August 4, 1999), p.42415.

Table 2
Countervailing Duties on Imports from LAC in Effect as of July 31, 1999

Country	Date Ordered	Item
Argentina	04/04/83	Wool
	11/27/84	Oil Country Tubular Goods
	09/27/88	Welded Carbon Steel Pipe & Tube products
	10/02/90	Leather
Brazil	03/16/76	Castor Oil Products
	10/22/85	Agricultural Tillage Tools
	05/15/86	Iron Construction Castings
	01/08/87	Brass Sheet & Strip
	03/22/93	Hot Rolled Lead/Bismuth Carbon Steel Products
	08/17/93	Carbon Steel Flat Products
Chile	03/19/87	Fresh Cut Flowers
Mexico	12/12/86	Porcelain-On- Steel Cooking Ware
	08/17/93	Carbon Steel Flat Products
Peru	04/23/87	Fresh Cut Flowers
Venezuela	05/10/93	Ferrosilicon

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

Mushrooms

An AD investigation of Chilean canned mushrooms was initiated in February of 1998. Some interested parties argued that harm to the U.S. preserved mushroom industry was not coming from unfairly traded mushrooms but instead from a shift in demand away from preserved mushrooms toward fresh mushrooms. This did not keep the USDOC from issuing a 149% duty order on Chilean canned mushrooms in December, 1998.[4]

Stainless Steel Sheet

On June 30, 1998, the Department of Commerce initiated an AD investigation of stainless steel sheet and strip from Mexico. On January 4, 1999, the Department issued a preliminary determination that the stainless steel sheet and strip in coils from Mexico was being, or was likely to be, sold in the United States at less than fair value.[5] In May 1999, the USDOC issued its final determination, citing a dumping margin of 30.86%.[6] Importers will be required to post a bond or cash deposit equal to the amounts of dumping found in these final determinations. Although the International Trade Commission (ITC) was supposed to issue a final determination in July 1999, on whether these imports are injuring the U.S. industry, it

[4] Federal Register, Vol.63, No. 231 (December 2, 1998), p. 66575

[5] Federal Register, Vol.64, No. 1 (January 4, 1999), p.124.

[6] U.S. International Trade Administration, Commerce Announces Final Determination in the Antidumping and Countervailing Duty Investigations on Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan and the United Kingdom, Washington D.C., May 1999.

instead agreed to amend its final determination of the AD investigation of stainless steel sheet and strip in coils from Mexico. The International Trade Administration (ITA) acknowledged that its final determination contained computation errors as a result of two clerical errors. On July 27, 1999, the International Trade Administration issued an amended final determination of sales at less than fair value and antidumping duty order on the stainless steel sheet and strip in coils from Mexico.[7] It should be noted that under the amended final determination, the antidumping margins change from 30.86% to 30.85%.

Final Antidumping and Countervailing Duty Margins
(stainless steel sheet and strip, by company)

Country	Company	AD Margins	CVD Margins
Mexico	Mexinox	30.85%	NA
	All Others	30.86%	NA

Stainless Steel Sheet and Strip in Coils
Volume and Value Imports

Mexico	1997	1998
Volume (metric tons)	71,222MT	80,175MT
Value ($U.S.)	127,441,508	124,123,197

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

B. Partial rescission of AD review

Brazilian Frozen Concentrate Orange Juice

On February 5, 1999, the U.S. Department of Commerce issued its preliminary results and partial rescission of antidumping duty administrative review on Brazilian frozen concentrated orange juice. The partial rescission or abrogation of the antidumping duty administrative review emerged from USDOC's confirmation with U.S. Customs Service that CTM and Sucorrico had no shipments of subject merchandise (frozen concentrated orange juice) to the United States during period of review. The USDOC preliminary determined that sales have been made below normal value by Branco Peres Citrus S.A., Cambuhy Citrus Comercial e Exportadora Ltda, Citrovita Agro Industrial S.A., and Frutax Industria e Comercio Ltda. The USDOC estimated their margins at 65.20% for each. If these preliminary results are adopted in the final results of this administrative review, the USDOC

[7] Federal Register, Vol.64, No. 143 (July 27, 1999), p. 40560.

instructs the Customs Service to assess antidumping duties on all appropriate entries.[8]

On March 5, 1999, the U.S. International Trade Commission announced that it was conducting an expedited "sunset" review to determine whether revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would likely lead to continuation or recurrence of material injury in the near future.[9]

On May 10, 1999, the U.S. International Trade Commission determined that revoking the existing antidumping duty order on frozen concentrated orange juice from Brazil would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission's decision, along with the Department of Commerce's preliminary finding of dumping suggests that the existing antidumping duty order on frozen concentrated orange juice from Brazil will remain in place.[10]

On August 11, 1999, the Department of Commerce issued final results and partial rescission of antidumping duty administrative review, in which changes in the dumping margins are as follows: 39.18% for Branco Peres, and 63.55% for each of the remaining three companies (Cambuhy Citrus, Citrovita, and Frutax). As mentioned before, CTM and Sucorrico were abrogated from the review. Although Customs Service was instructed to assess antidumping duties on all appropriate entries, the final results also affects entries during the review period from May 1, 1997 to April 30, 1998.[11]

C. Suspension of AD and CVD investigation

Steel

Brazil was included in a set of dumping cases filed by twelve steel firms and two unions. The U.S. steel industry reacted to a surge in low priced imports by petitioning the USDOC on September 30, 1998 to open AD and CVD investigations on hot-rolled, flat rolled, carbon-quality steel products from several nations, including Brazil. Record levels of unfair and disruptive steel imports are causing injury to U.S. steel companies, employees, and communities, the petitioners contended. However, table 3 would indicate, according to the USDOC, that imports of hot-rolled steel products from Brazil neither exhibited a large increase in 1998, nor did they constitute a large part of the market to begin with.

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[8] Federal Register, Vol.64, No. 24 (February 5, 1999), p. 5767.

[9] U.S. International Trade Commission, ITC Will Conduct an Expedited "Sunset" Review Concerning Frozen Concentrated Orange Juice From Brazil, (News Release), Washington, D.C., March 5, 1999.

[10] U.S. International Trade Commission, ITC Determines That Continuation or Recurrence of Material Injury Likely if Antidumping Duty Order on Frozen Concentrated Orange Juice From Brazil Is Revoked, (News Release), Washington, D.C., May 10, 1999.

[11] Federal Register, Vol.64, No. 154, August 11, 1999, p. 43659.

Table 3
Imports of Hot-Rolled Steel Products into the United States (All Grades)
Quantities in Metric Tons

	November	December*	% Change November to December*	Jan - Dec '97	Jan - Dec '98*	% Change 1997 - 1998*
Hot-Rolled Steel Products**	1,472,687	479214	-67.46%	6,092,968	10,569,492	73.47%
--Japan	405,974	93,102	-77.07%	502,990	2,443,238	385.74%
--Russia	621,188	64,825	-89.56%	1,801,426	3,461,298	92.14%
--Brazil	**64,529**	**9,961**	**-84.56%**	**371,911**	**410,817**	**10.46%**

*Figures for December 1998, are based on preliminary census data
**Includes hot-rolled sheet, strip, and plate coils
Source: U.S. Department of Commerce, International Trade Administration

On February 12, 1999, the U.S. Department of Commerce issued preliminary determinations in the antidumping and countervailing duty investigations on hot-rolled, flat-rolled, and carbon-quality steel products from Brazil. The antidumping margins on imports of hot-rolled steel products from Brazil ranged from 50.66 to 71.02 percent. Subsidy rates on imports of hot-rolled steel products from Brazil ranged from 6.62 to 9.45 percent. Importers of hot-rolled steel products would be required to post a bond or a cash deposit when the products enter the country, in some cases as far back as mid-November.[12] Should the USITC issue AD and CVD orders later, these deposits would be forfeited.

On June 7, 1999, U.S. Commerce Secretary William M. Daley announced that imports of Brazilian hot-rolled steel would be reduced by approximately 28 percent and its price will more accurately reflect its costs of production, under tentative agreements with the Government of Brazil. In exchange, the U.S. Department of Commerce would suspend the antidumping (AD) and countervailing (CVD) investigations of Brazilian hot-rolled steel no later than July 6, 1999.[13]

On July 7, 1999, the USDOC reached final agreements with the Government of Brazil and Brazilian producers to suspend the pending dumping and subsidy investigations on imports of hot-rolled steel from Brazil in exchange for substantial restrictions on the level of imports and a requirement that the imports be sold at significantly higher prices.[14] According to U.S. Commerce Secretary Daley, these agreements provide better protection than an antidumping or

[12] U.S. Department of Commerce, Commerce Announces Preliminary Determinations in the Antidumping and Countervailing Duty Investigations on Hot- Rolled Steel Products, (Press statement), Washington D.C., 12 February, 1999.
[13] U.S. Department of Commerce, Commerce Secretary William M. Daley Announces Tentative Agreements to End Dumping of Brazilian Steel in the U.S., (Press statement), Washington D.C., June 7, 1999.
[14] U.S. Department of Commerce, Commerce Secretary William M. Daley Announces Agreements Substantially Reducing Imports of Brazilian Steel, (Press statement), Washington D.C., July 7, 1999.

countervailing duty order by providing certainty in the market and eliminating the ability of Brazilian firms to sell steel at dumped prices. Stated differently, the deal as announced on July 7 offers a completely different approach on price than the draft suspension agreement struck in June, which would have calculated a floor price based on cost of production and set a required profit margin per ton of steel.

That change is more favorable to U.S. producers and workers because it will lead to a higher price than the draft agreement initialed on June 6.[15] The final agreement did not change the access level of 295,000 metric ton per year of hot-rolled steel that was set in the initialed agreement for settling the countervailing duty case. That level represents a cutback of 150,000 tons over the highest shipment level in 1998, according to U.S. Commerce Secretary Daley. Brazil accounts for about 1.5 percent of the U.S. imports of hot-rolled steel, a level which would be cut to about 1 percent by the deal.[16]

D. Negative final AD and CVD determinations

Rubber

On April 9, 1998, the US International Trade Commission (ITC) announced that it was determined to schedule a preliminary phase of countervailing duty and antidumping investigations on imports of certain emulsion styrene-butadiene rubber from Brazil and Mexico.[17] On March 29, 1999, the U.S. Department of Commerce issued a final determination of sales at less than fair value on imports of emulsion styrene-butadiene rubber from Brazil and Mexico. According to the USDOC, dumping margins for Petroflex Industria e Comercio from Brazil were estimated at 71%, whereas dumping margins for Industrias Negromex of Mexico were valued at 33%.[18] To suspend such liquidation, U.S. Customs Service was directed to require a cash deposit equal to the estimated amount by which the normal value exceeded the export price. This suspension of liquidation remained in effect until the ITC's final determination.

On April 29, 1999, the ITC made negative final determinations that an industry in the United States was neither materially injured nor threatened with material injury by reason of imports of certain emulsion styrene-butadiene rubber from Brazil and Mexico that the US Department of Commerce had determined were sold in the United States at less than fair value.[19] Therefore, the proceedings would be terminated and all securities posted refunded or canceled.

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[15] Telephone conversation with U.S. Department of Commerce, July, 1999.

[16] Americas Trade, US and Brazil announce suspension agreement on hot-rolled steel, V. 6 No. 14, July 15, 1999.

[17] Federal Register, Vol.63, No. 68 (April 9, 1998), p.17443.

[18] Federal Register, Vol.64, No. 59 (March 29, 1999), p.14863-14883.

[19] U.S. International Trade Commission, Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico does not injure U.S. Industry, says ITC, (News Release), Washington D.C., April 29, 1999.

Likewise the USITC issued a negative final determination on the AD petitions against steel wire rod from Trinidad and Tobago and against steel wire rod from Venezuela.

Table 4
Antidumping Duties on Imports from LAC in Effect as of July, 1999

Country	Date Begun	Item
Argentina	11/23/84	Carbon Steel Wire Rod
	11/13/85	Barbed Wire and Barbless Wire Strand
	05/22/89	L-WR Welded Carbon Steel Pipe & Tube
	09/26/91	Silicon Metal
	08/03/95	Line and Pressure Pipe
	08/11/95	Oil Country Tubular Goods
Brazil	05/09/86	Iron Construction Castings
	05/21/86	Malleable Cast Iron Pipe Fittings
	12/17/86	Carbon Steel Butt-Weld Pipe Fittings
	01/12/87	Brass Sheet and Strip
	05/05/87	Frozen Concentrated Orange Juice
	07/10/90	Industrial Nitrocellulose
	07/31/91	Silicon Metal
	11/02/92	Circular Welded Non-Alloy Steel Pipe
	03/22/93	Hot Rolled Lead/Bismuth Carbon Steel Products
	08/19/93	Cut-To-Length Carbon Steel Plate
	01/28/94	Stainless Steel Wire Rod
	03/14/94	Ferrosilicon
	12/22/94	Silicomanganese
	02/21/95	Stainless Steel Bar
	08/03/95	Line and Pressure Pipe
Chile	03/20/87	Fresh Cut Flowers
	07/30/98	Fresh Atlantic Salmon
	12/02/98	Preserved Mushrooms
Colombia	03/18/87	Fresh Cut Flowers
Ecuador	03/18/87	Fresh Cut Flowers
Mexico	12/02/86	Porcelain-on-Steel Cooking Ware
	04/23/87	Fresh Cut Flowers
	08/30/90	Gray Portland Cement and Cement Clinker
	11/02/92	Circular Welded Non-alloy Steel Pipe
	03/25/93	Carbon Steel Wire Rope
	08/19/93	Cut-to-Length Carbon Steel Plate
	08/11/95	Oil Country Tubular Goods
Venezuela	11/02/92	Circular Welded Non-Alloy Steel Pipe
	06/24/93	Ferrosilicon

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

E. AD and CVD case closed

Crude Petroleum Oils

On July 8, 1999, the United States International Trade Commission (USITC) issued a notice that it was commencing an investigation and preliminary phase of countervailing duty and antidumping investigations to determine whether there was a reasonable indication that the United States petroleum industry was materially injured or materially retarded, by reason of imports from Mexico and Venezuela, among others, of crude petroleum oils and oils obtained from bituminous minerals above or below 25 degrees A.P.I. that are alleged to be subsidized by the Governments of Mexico and Venezuela and to be sold in the United States at less than fair value.[20] The action taken by the USITC resulted from a petition filed by "Save Domestic Oil Inc." (a group of independent oil producers and associations of independent producers located in Kansas, Oklahoma, and Texas) on June 29, 1999.

However, on August 9, 1999, the U.S. Department of Commerce determined not to initiate antidumping and countervailing duty investigations on crude oil from Mexico, Venezuela, and the other countries involved, due to its lack of adequate industry support. Stated differently, the U.S. Department of Commerce based its decision on a finding that opposition to the petitions from U.S. producers exceeded support for the petitions from U.S. producers, which by law prohibits the USDOC from initiating investigations.[21] Therefore, the cases are closed and neither the USDOC nor the U.S. International Trade Commission will take any further action.

F. Changed circumstances AD review

Fresh Cut Flowers

The U.S. Department of Commerce's International Trade Administration announced on May 28, 1999, that it was lifting compensatory duties on fresh-cut flowers from Colombia. On June 8, 1999, the U.S. Department of Commerce initiated a changed circumstances antidumping duty review and issued a notice of intent to revoke the antidumping duty order on certain fresh cut flowers from Colombia, effective July 20, 1999.[22]

In addition to instructing the U.S. Customs Service to end the suspension of liquidation, the USDOC also instructed U.S. Customs to refund any estimated antidumping duties collected for all unliquidated entries of certain fresh cut flowers from Colombia on or after March 1, 1997. U.S. Customs was also instructed to pay interest on such refunds in accordance with section 778 of the Act.

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[20] Federal Register, Vol. 64, No. 130 (July 1999) p. 36919-36920.

[21] USDOC, Commerce Dismisses Antidumping and Countervailing Duty Petitions on Crude Oil, (Press statement), Washington D.C., August 9, 1999.

[22] Federal Register, Vol. 64 No. 138, Tuesday, July 20, 1999.

The U.S. International Trade Commission issued a notice, on June 11, 1999, that it will proceed with full five-year reviews to determine whether revocation of the countervailing duty orders on standard carnations from Chile and pompom chrysanthemums from Peru, as well as, antidumping duty orders on standard carnations from Chile, fresh cut flowers from Ecuador, and fresh cut flowers from Mexico would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established.[23]

Two trade remedy measures were revoked in 1998. The CVD duties imposed on textiles and textile products from Argentina had been in place for thirteen years, and the CVD duties imposed on cotton yarn from Brazil had been in place for twenty-one years.

Finally, with respect to the application of AD's andCVD's, 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 USDOC 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 2 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.

Safeguard

In December of 1998, ended the case of tariffs imposed in 1996 on imports of broomcorn brooms from Mexico for a three-year period, based on a USITC injury determination.

> Section 201 of the 1974 Trade Act is the mechanism that the United States uses to "safeguard" at risk industries. Unlike action to redress unfair trade, to gain protection under Section 201, a domestic industry only has to prove that imports have caused serious damage or are a substantial threat.

Mexico had 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 broomcorn brooms was "inconsistent" with the trade pact. The Mexican Government argued that the USITC's finding that led to the decision was based on a definition of the U.S. industry that was too narrow. The USITC excluded from its determination the production of other types of brooms, such as plastic brooms, which Mexico argued are similar or directly competitive with broomcorn 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."

In February 1998, a NAFTA arbitration panel found that U.S. action under its safeguard laws violated NAFTA because the injury determination of the USITC did not contain sufficient

[23] Federal Register, Vol. 64 No. 112, Friday, June 11, 1999.

explanation.[24] The tariff was cancelled in December 1998, saying that the US broomcorn broom industry has not made adequate efforts to make a positive adjustment to import competition.[25]

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). The only country in Latin America whose sugar exports do 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. During the fiscal year 1998, Latin America supplied nearly 65 percent (1,359,724metric tons) of the total U.S. sugar imports.[26]

The total level of imports that entered the U.S. at the lower duty for fiscal year 1998 was 1,400,000 metric tons. For fiscal year 1999, the new Tariff-Rate Quota of imports that may enter the U.S. at the lower duty is 1,164,937 metric tons. Latin America and the Caribbean will supply nearly 65 percent (752,747metric tons) of total U.S. sugar imports during fiscal year 1999.[27] Countries that were not affected by the reduction in the new Tariff-Rate Quota are: Haiti, Mexico, Paraguay, St. Kitts & Nevis, Uruguay. The only country that benefited by this new Quota is Guyana.

On March 12, 1998, the Mexican government asked for formal consultations under NAFTA Chapter 20 to clarify the sugar side agreements, in an effort to increase the Mexican sugar quota and to have unlimited access to the U.S. market by 2000.[28] The allocations for fiscal year 1999 do not give Mexico any more access than it had previously.

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[24] USTR, USTR Underscores NAFTA Panel Decision on Corn Brooms to have Virtually no Effect on U.S. "Safeguard" Regime, (Press-release 98-12), Washington D.C., February 1998.
[25] White House, Office of the Press Secretary, A Proclamation by the President of the United States of America to Terminate Temporary Duties on Imports of Broom Corn Brooms, Washington D.C., 3 December, 1998.
[26] USTR, USTR Announces Allocation of the Raw Can Sugar, Refined Sugar and Sugar Containing Products Tariff-Rate Quotas for 1998-1999, (Press Release 98-83), Washington D.C., 16 September, 1998.
[27] USTR, USTR Announces Allocation of the Raw Can Sugar, Refined Sugar and Sugar Containing Products Tariff-Rate Quotas for 1998-1999, (Press Release 98-83), Washington D.C., 16 September 1998.
[28] SECOFI, Embassy of Mexico, Mexico requests consultations with the U.S. on sugar under NAFTA, Washington D.C., 20 March, 1998.

Table 5
U.S. Sugar Tariff-Rate Quota
(FY 1999 Allocation)

Country	% of total U.S. Imports	Metric tons
Argentina	4.0%	46,581
Barbados	0.7%	7,583
Belize	1.0%	11,916
Bolivia	0.7%	8,666
Brazil	13.5%	157,076
Colombia	2.2%	25,999
Costa Rica	1.4%	16,249
Dominican Republic	16.4%	190,657
Ecuador	1.0%	11,916
El Salvador	2.4%	28,165
Guyana	4.5%	51,997
Guatemala	1.1%	12,999
Haiti	0.6%	7,258
Honduras	0.9%	10,833
Jamaica	1.0%	11,916
Mexico	2.1%	25,000
Nicaragua	2.0%	22,749
Panama	2.7%	31,415
Paraguay	0.6%	7,258
Peru	3.8%	44,415
St. Kitts & Nevis	0.6%	7,258
Trinidad & Tobago	0.7%	7,583
Uruguay	0.6%	7,258
LAC Total	**64.6%**	**752,747**

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

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 the dispute settlement procedures available, the USTR has authority to implement any number of serious trade restrictions, such as import duties or fees.

The USTR accepted a Section 301 petition on May 15, 1998, filed by U.S. (High-Fructose Corn Syrup) exporters (Corn Refiners Association, Inc.) based upon allegations that the policies and practices of the Government of Mexico regarding high-fructose corn syrup are unreasonable and deny fair and equitable market opportunities for U.S. exporters. The investigation must be concluded within 12 months of initiation.[29] USTR Charlene Barshefsky announced on May 14, 1999 that the United States would further explore

[29] USTR, 1999 National Trade Estimate Report on Foreign Trade Barriers, March 31, 1999, p. 304.

the nature and consequences of efforts on the part of the Government of Mexico to limit the importation and purchases of high-fructose corn syrup.[30]

Such practices affecting U.S. exports of HFCS have already given rise to action in the World Trade Organization (WTO) and under the North American Free Trade Agreement (NAFTA). The United States is currently engaged in WTO dispute settlement with Mexico over application of antidumping measures on U.S. exports of HFCS. U.S. exporters are also challenging these Mexican antidumping measures under Chapter 19 of the NAFTA.

Super 301

The Super 301 authority of the Omnibus Trade and Competitiveness Act of 1988 had expired in 1997, but was re-instituted by executive order in January, 1999. The latest Super 301 report does not include Latin American and Caribbean countries that warrant the "priority practice" designation.

Super 301 mandates the USTR to identify the most significant unfair trade practices facing U.S. exports, the elimination of which would result in the greatest increase in U.S. exports.

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.

Other categories that the United States uses to identify these countries are "Priority Watch List," and "Watch List," indicating descending levels of concern by the United States.

As a result of a comprehensive Memorandum of Understanding (MOU) signed by the United States and the Government of Paraguay in November 1998, the United States revoked Paraguay's identification as a "Priority Foreign Country" and has terminated the section 301 investigation of Paraguay. In the MOU, the government of Paraguay committed to strengthen intellectual property rights enforcement at its borders and to facilitate prosecution of copyright piracy. The United States holds that implementation of the MOU has been "uneven thus far."[31]

[30] USTR, US to further explore Mexican practices affecting high-fructose corn syrup, (Press Release 99-44) May 14, 1999.

[31] USTR, 1999 National Trade Estimate Report on Foreign Trade Barriers, March 31, 1999, p. 340.

Priority Watch List

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 May 1997 stating a 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.[32] Argentina estimates the loss of export earnings to be about $600 million. The United States pharmaceutical industry claims the same amount of loss as a result of Argentina's inadequate patent protection. In the 1998 Special 301 review, Argentina remained on the "Priority Watch List."

The U.S. stated that the Dominican Republic was elevated to the "Priority Watch List" in 1998 due to its lack of TRIPS-consistent laws. Of special concern to the United States is inadequate enforcement against piracy and counterfeiting, particularly of pharmaceutical products. It has been estimated that the economic losses to U.S. industry in the Dominican market in pharmaceutical products alone are in excess of $50 million.[33]

In 1999 the USTR elevated Guatemala to the "Priority Watch List" stating neglect to protect and enforce existing IPR laws. The USTR urged the Government of Guatemala to effectively enforce its laws to meet TRIPS standards no later than January 1, 2000.

Peru had been identified on the "Watch List" since 1992. However, according to the US pharmaceutical industry, the Appellate Tribunal of INDECOPI (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual) has failed to effectively impose penalties and because last year it had been slow to reach decisions, this year the USTR placed Peru on the "Priory Watch List." The U.S. Government has expressed its concern with the performance of INDECOPI Appellate Tribunal, but the response has not been satisfactory.

Watch List

A step below the category of "Priority Watch List" in the Special 301 Review is the category of "Watch List." In 1998, eight LAC countries were identified under "Watch List."

In May 1998, Ecuador passed a comprehensive law significantly improving the legal basis for protecting IPR's and establishing an IPR institute (IEPI) that has begun enforcement action against IP piracy. However, the United States is still not fully satisfied with the function of the IEPI and is still concerned that it can be difficult to gain protection through the legal system.

Bolivia was placed on the "Watch List" in 1999, after failing to achieve a TRIPS

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

[33] USTR, 1999 National Trade Estimate Report on Foreign Trade Barriers, March 31, 1999, p. 84.

compliance by the April 17, 1999 US-Bolivian accorded deadline. Bolivia was on "Other Observations" in the 1998 Special 301 review.

Brazil was placed on the "Watch List" after the US found deficiencies with its patent law to meet TRIPS requirements and proposed legal reforms that could reduce penalties for IPR crimes. A major priority for the US is to ensure full implementation of TRIPS obligations no later that January 1, 2000.

Chile's patent, trademark, and industrial design law implemented in 1991 is viewed as generally strong by the United States, especially in the area of patent protection for pharmaceuticals. Nevertheless, the US placed Chile on the "Watch List" since it considers that Chile's intellectual property laws are still not fully consistent with international standards.

Colombia has been on the "Watch List" every year since 1991. Colombia's efforts on the subject of IPR enforcement included an update of Decision 344 of the Andean Community. This strengthened the rights of patent owners and addressed issues of anti-competitive practices, among other things. Yet the United States believes that Colombia still needs to take action against pirate cable television operators and needs to restart a stalled cable television licensing process.

Costa Rica is a signatory of all major international agreements and conventions on trademarks, copyrights, and patent protection. In particular, Costa Rica is bound to implement TRIPS obligations by January 2000. A new patent law is being drafted in Costa Rica to achieve this goal. Presently, Costa Rica is on the "Watch List" as a result of inadequate enforcement of copyright law.

The USTR believes that Jamaica has been slow to pass legislation that came as a part of a bilateral IPR agreement with the United States. Jamaica was placed on the "Watch List" in 1998.

Mexico was placed on the "Watch List" in the 1999 Special 301 annual review in relation to problems with piracy and counterfeiting. The U.S. was encouraged by Mexico's action to combat piracy, but the U.S. is looking forward for the full implementation of the new anti-piracy initiative.

Uruguay was placed on the "Watch List" in 1999. The U.S. urged the Uruguayan Government to modify its draft patent law and to accelerate efforts to meet TRIPS standards before January 1, 2000, since Uruguay's current copyright law does not protect computer software as required by TRIPS. Also, its draft patent law does not include a pipeline patent protection, protection for test data and it establishes an overly broad compulsory licensing regime.

Venezuela has been on the "Watch List" under the Special 301 since 1989. Of particular concern to the United States are widespread piracy of well-known trademarks,

videos, satellite signals, and other protected works. A new government Intellectual Property Office (SAPI) was made operational in May 1998 to address trademark piracy. Further, the special anti-piracy police unit (COMANPI) was given an expanded mandate. Yet the United States is concerned that neither SAPI nor COMANPI have sufficient resources.

Voluntary Export Restraint Agreements (VERAs)

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.

The threat of the imposition of AD duties by the USDOC compelled Mexican tomato growers to agree in 1996 to a price floor on tomatoes shipped to the United States. This agreement was amended in August 1998 when different floor prices were established for the summer and winter months.

Similarly, a suspension agreement brokered between Venezuelan steel wire rod producers and the USDOC ended an AD investigation in February 1998.

On July 7, 1999, the USDOC reached final agreements with the Government of Brazil and Brazilian producers to suspend the pending dumping and subsidy investigations on imports of hot-rolled steel from Brazil in exchange for substantial restrictions on the level of imports and a requirement that the imports be sold at significantly higher prices.

Textiles and Clothing

As part of the World Trade Organization (WTO), the Agreement on Textiles and Clothing (ATC) entered into force on January 1, 1995. The ATC superseded the Multi-fiber 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 the remaining products by January 1, 2005. Once integrated, quotas can be applied only under regular WTO safeguard procedures.[34]

[34] 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 6: U.S. Imports from LAC of Textiles and Apparel

Country	1997 Imports (in million meters^2)	1998 Imports (in million meters^2)	1998 Imports (in million $)	Growth rate (percentage)
Argentina	9.1	22.8	8.1	150.3
Belize	10.5	11.4	18.2	8.2
Brazil	101.8	91.0	123.7	-10.5
Colombia	100.3	96.1	392.0	-4.3
Costa Rica	317.4	327.2	831.1	3.1
Dominican Republic	863.3	886.4	2,395.0	2.7
Ecuador	14.2	10.3	14.4	-27.3
El Salvador	460.1	524.0	1,203.2	13.9
Guatemala	252.5	301.7	1,144.7	19.5
Guyana	5.1	4.4	11.2	-13.8
Haiti	78.2	113.4	218.5	45.0
Honduras	735.2	808.5	1,878.5	10.0
Jamaica	194.4	171.3	422.5	-11.9
Mexico	3,041.1	3,559.5	7,452.5	17.1
Nicaragua	47.8	56.6	232.1	18.5
Panama	7.3	3.9	-46.2	-46.2
Peru	45.2	44.6	246.0	-1.3
Venezuela	10.1	5.6	3.8	-45.1

Source: ECLAC, on the basis of data from the US Department of Commerce, Major Shippers Report, 1998.

III. STANDARDS AND REGULATIONS

As indicated in previous reports, exporting to the US can be a difficult task due to the complex system of standards and regulations at the federal, state and local level. 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.[35] These barriers, although unintentional, still create major hurdles for foreign firms attempting to enter the U.S. market.

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

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

Gaining access to the U.S. market can be cumbersome and costly process that can take years. Exporters must finance all United States Department of Agriculture (USDA) expenses in researching and approving products.

> Once a phytosanitary rule is proposed by USDA 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.
>
> All shipments of 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.

A. Avocados

Restrictions on the importation of Mexican avocados had remained in effect since 1914[36]. On January 31, 1997, the USDA issued a final ruling that lifted the 84-year ban 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, Mexico, into 19 Northeastern States during the winter months of November through February.[37]

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.

B. Fruit

Sanitary barriers affect the majority of fruits and vegetables. For the most part an additional obstacle and/or obligatory prerequisite is an import license.

For example, both grapes and apples require a special cold treatment, while yams and other vegetables require a treatment of methyl bromide. Apples are one of the principal fruits exported to the United States from Brazil, but entrance is restricted through North Atlantic ports. Mangos require a hot water dip and need certification stating "USDA-APHIS treatment with hot water". Finally, all these products need specific documentation certified by the APHIS representative in Brazil.

[36] The ban stemmed from the existence of both seed weevils and fruit flies in avocados from Mexico, as it was feared their importation might lead to the infection of the domestic industry.
[37] Federal Register, Vol.62, No. 24 (February 1997), p. 5293.

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 products subject to marketing order regulations are 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.[38]

On January 5, 1998, the USDA published new regulations that sought to enhance the quality of tomatoes in the U.S. market. These rules increased the minimum size level 1/32 of an inch in three different grades of tomatoes. Foreign tomato growers were also subject to the new guidelines. Mexican officials complained that the U.S. failed to give adequate notice of the changes. Mexican growers were upset by the impact of these new costs on their sales, including purchases of new sizing belts that range in price from $450 to $19,000.

Guatemalan Raspberries

The FDA banned US imports of Guatemalan raspberries from March 15, 1998 until August 15, 1998. Guatemala's raspberries were blamed for causing intestinal disease from the parasite cyclospora. On May 1997, Guatemala voluntarily stopped imports of the fruit after an outbreak of cyclospora disease in the U.S.

To date through the Model Plan of Excellence inspection program, no breakouts or clinical cases have been attended or reported, according to the Center for Disease Control of the United States. In 1999, Guatemalan raspberries are back in the US market after two years of confronting the prohibition of imports to the United States, with a more aggressive negotiating power and an assurance of a healthier product.[39]

Gasoline Standards

On August 19, 1997, the Environmental Protection Agency (EPA) issued a final regulation aimed at complying with the WTO. Under this new regulation, foreign refiners will have a choice of applying to EPA for a similar individual baseline (the 1990 standard) for their gasoline, or adhering to a statutory baseline established by the EPA.

The quality of the conventional gasoline will be monitored annually by the EPA to ensure there is no environmental degradation as a result of the new regulations. Still, U.S. refiners charged that this new regulation would allow foreign refiners to choose to import

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

[39] Embassy of Guatemala, Raspberries Exports, Washington D.C., June 1999.

dirtier gasoline. The costs of complying with the additional requirements of an individual baseline will limit the amount of applicants.

The dispute between foreign and domestic gasoline refiners had sparked in December 1993, when the Environmental Protection Agency (EPA) instituted import standards for both reformulated and conventional gasoline in an attempt to control auto emissions. The regulations were charged to be less favorable to imported gasoline, since foreign producers were required to conform to a restrictive "baseline" for measuring pollutants, while U.S. refiners had the option of establishing an individual baseline corresponding to the quality of their gasoline in 1990.

In March 1995, Venezuela, later joined by Brazil, filed a complaint with the WTO against the EPA 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.[40] 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.[41]

Meat Import Regulation

Uruguay,[42] on November 15, 1995 and Argentina[43] as of August 25, 1997, became 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.

Currently, Argentina and Uruguay operate under a 20,000 metric tons quota imposed by the U.S. So far this year, US imports of Uruguayan fresh chilled frozen beef are estimated at 12,268 metric tons, whereas US imports from Argentina for the same period are estimated at 15,446 metric tons. Argentina began exporting manufacturing (grinding-quality) meat in September of 1997.

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 company requesting the inspection.

[40] USTR, WTO Dispute Settlement Panel Issues Report on EPA Rules for Imported Gasoline, (Press Release 96-04), Washington D.C., January 17, 1996.
[41] USTR, WTO Appellate Body Issues Report on EPA Rules for Imported Gasoline, (Press Release 96-38) Washington D.C., April 29, 1996.
[42] Federal Register, Vol. 60, No. 211 (November 1995) p. 55441.
[43] Federal Register, Vol. 62, No. 94 (June 1997) p. 34385.

The United States Department of Agriculture, consistent with the WTO Sanitary and Phytosanitary Agreement, has adopted a policy that recognizes regions and levels of risk among those regions (regionalization). Such a policy allows specified regions within South American countries, which meet the disease free requirements, to export bovine products even though the entire country has not been declared disease free.[44]

APHIS's proposed regulation on regionalization outlines 6 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.[45]

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. The process is expensive and takes months to complete.

Marine Mammal Protection Act

The United States enforced an embargo on yellowfin tuna from all countries that fish in the Eastern Tropical Pacific (ETP) extended from Mexico and Venezuela to northern Chile and 700 miles out to sea. The embargo was required under the United States' Marine Mammal Protection Act of 1972 (MMPA) and the International Dolphin Conservation Act (IDCA) adopted in 1992. The IDCA prohibited the use of "on dolphin" methods for catching tuna, which involved dropping purse seine nets on dolphin schools to trap the tuna that frequently swim beneath them. This legislation, however, applied exclusively to those fishing in the ETP, where the U.S. tuna fleet maintains only minimal presence.

In 1994, 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 mortality 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.[46]

On October 1995, the members of the Inter-American Tropical Tuna Commission (IATTC), in conjunction with major environmental groups, signed the Panama Declaration to strengthen the IDCP and reduce below 5,000 the number of dolphins killed by ETP tuna boats. The agreement sought to make the marine-species protection in the ETP binding in exchange for changes in U.S. law, including an altered definition of "dolphin-safe" tuna.[47]

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[44] Federal Register, Vol. 62, No. 208 (October 1997) p. 56027.
[45] Federal Register, Vol.61, No 76 (April 18 1996), pp. 16977-17105.
[46] GATT, United States Restrictions on Imports of Tuna, Report of the Panel, (DS29/R), June 1994.
[47] U.S. Congress. House. Ways and Means Committee, Tuna-Dolphin Bill: Hearing before the Ways and Means Committee, Washington, D.C., 1 May, 1997.

As a result of the Panama Declaration, the U.S. Congress debated legislation to amend the MMPA, which would make U.S. law compatible with the International Dolphin Conservation Program. On June 30, 1997, legislators negotiated a compromise that lifted the U.S. ban on tuna imports, but kept in place the current definition of "dolphin-safe" tuna for labeling purposes until at least March 1999. An in-depth study on the role chasing has on dolphin populations, as well as alternative ways of fishing for tuna, will be released between July 2001 and December 2002, and will further determine the possibility of a new definition for the "dolphin-safe" label.

On May 21, 1998, the U.S. and seven Latin American countries signed the International Dolphin Conservation Program that will provide the basis for removing U.S. tuna trade embargoes for nations that become parties to the agreement. The dolphin-safe label, however, will remain unchanged contingent upon the in-depth 1999 study.

On February 15, 1999, Ecuador, Mexico, Panama and the U.S. approved and fully ratified the international agreement. The Commerce Department announced on April 14, 1999 that the United States will adopt a new dolphin-safe label standard for tuna caught by the encirclement of dolphins in the Eastern Tropical Pacific Ocean. The new dolphin-safe standards under the International Dolphin Conservation Program Act will allow the use of the "dolphin-safe" label if the tuna are caught in the presence of dolphins, provided that no dolphins are killed or seriously injured. Previously, only tuna caught when no dolphins were present qualified for the dolphin-safe tuna label on products imported into the United States.[48]

Shrimp Embargo

Between May 1, 1999 and July 2, 1999, Panama and Costa Rica, Guyana, and Suriname were certified by the U.S. Department of State as meeting the requirements by Section 609 of P.L. 101-162 for continued export of shrimp to the United States[49].

P.L. 101-162 (Section 609) prohibits the importation of shrimp harvested in ways harmful to sea turtles unless the U.S. Department of State certifies that the harvesting nation either has a sea turtle protection program comparable to that of the United States, or has a fishing environment that does not pose a threat to sea turtles, as the U.S. sea turtle conservation program in which commercial shrimp boats are required to use sea turtle excluder devices (TEDs) to prevent the accidental drowning of endangered and threatened sea turtles in shrimp trawls.

The restriction had originated on December 29, 1995, when 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

[48] NOOA, US Department of Commerce issues initial finding on tuna/dolphin interactions; will adopt new dolphin-safe label standard, (Press statement), Washington D.C., April 29, 1999.
[49] U.S. Department of State, Suriname: Sea Turtle Conservation and Shrimp Imports, (Press Statement), Washington D.C., July 2, 1999.

commercial fishing operations or that the fishing environment of the harvesting nation does not pose a risk to sea turtles.[50]

On February 1998, a WTO interim panel ruled that the U.S. violated its obligations under international trade rules by imposing a ban on wild shrimp caught without devices that allow endangered sea turtles to escape from nets. In March of 1998, the Office of the U.S. Trade Representative appealed the WTO ruling.[51] In an April 1998 meeting, the interim panel decided to uphold the earlier ruling.[52] As of May 1, 1998, the U.S. State Department certified that 39 countries met the standard to prevent accidental drowning of sea turtles in shrimp trawls. Among the countries that were certified are: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Suriname, Trinidad and Tobago, Dominican Republic, Jamaica and Peru. Argentina, Chile and Uruguay have shrimp fisheries only in cold waters, where the risk of catching sea turtles is negligible.[53]

Brazil, Venezuela and the Bahamas, which were certified in 1997, were banned from selling shrimp in the U.S. market, after officials determined that they were not enforcing their own laws aimed at protecting sea turtles. However, effective August 19, 1998, the U.S. Federal Courts of Appeals approved a waiver, subject to verification every 6 months, that authorizes shrimp exports from non-certified countries that show proof of using Turtle Excluding Devices (TED)during their commercial fishing operations.[54]

IV. EXPORT SUBSIDIES

Products from Latin American and Caribbean countries regularly encounter competition from subsidized U.S. goods in their domestic markets, as well as 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, though many of them at lower funding levels due to the WTO agreement on agriculture. Essentially, this law is intended to support an export strategy that is designed to increase U.S. agricultural exports at a rate faster than the global rate.

[50] WTO, U.S. Trade Policy Review, Geneva, 1996.
[51] USTR, USTR to challenge draft shrimp-turtle report at WTO, (PR 98-29), Washington D.C., March 1998.
[52] USTR, Barshefsky responds to WTO shrimp-turtle report, (PR 98-40), Washington D.C., April 1998.
[53] U.S. Department of State, Sea turtle conservation and shrimp imports, (Press statement), Washington D.C., 4 May 1998.
[54] Embassy of Brazil, Estudo Sobre Barreiras ao Acesso de Productos e Servicos Brasileiros no Mercado Norte-Americano, Washington D.C., September 1998.

Export Enhancement Program (EEP)

The agricultural Export Enhancement Program (EEP), approved in 1985 to challenge unfair trade practices from other countries, was created during a period of large grain stocks and low prices to help U.S. agricultural producers, processors, and exporters compete in foreign markets. Recently, the EEP has been broadened to not only counter specific competition actions, but to assist U.S. agricultural exports in general.[55] Under the program, U.S. exporters are paid subsidies when they commercialize 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 other 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.

In 1996, the program was extended until the year 2002. Under the new farm bill, the EEP expenditure was capped at $350 million in 1996; $250 million in 1997; and will be $500 million in 1998; $550 million in 1999; $579 million in 2000 and $478 million for 2001 and 2002. For the years 2000-2002, funding levels for EEP represent the maximum allowable expenditures under the WTO.

No subsidies were granted between July 1995 and June 1998, due mainly to high world prices and tight food stocks. In 1998, a subsidy worth $1.205 million was granted to a firm exporting Barley to Algeria, Cyprus, and Norway, and a subsidy worth $0.863 million was granted to a firm exporting frozen poultry to Middle East countries. This last one affected Brazil since Brazilian chicken is not subsidized.

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 those commodities, but has eliminated semolina and frozen pork, and has since added rice and table eggs. It has also extended its operations to assist similar programs in the export of dairy products and sunflower and cottonseed oils.

Many countries complained in the past that the EEP caused their agricultural products to loose market shares abroad. In a September 1997 report on U.S. Agricultural Exports, however, the General Accounting Office (GAO) detected minimal global impact of the EEP, the reason being that the EEP had not significantly increased U.S. export market share, as the gains made from the lower prices were often offset by lost U.S. sales in other unassisted markets.

Dairy Export Incentive Program (DEIP)

The Dairy Export Incentive Program is intended to make certain U.S. dairy products

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[55] General Accounting Office, U.S. Agricultural Exports, (Report GAO/NSIAD-97-260), Washington D.C., September 1997.

more competitive against other 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.

Under the new farm law, the DEIP eliminates the price supports on dairy products over the next three 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 the largest U.S. export promotional programs of the Commodity Credit Corporation (CCC). They 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 CCC guarantees it. The programs guarantee payment from approved foreign banks, normally to financial institutions in the United States, that extend credit to them to finance U.S. agricultural imports. The CCC usually insures up to 98 percent of the principal plus a portion of the interest.

There are two programs within the export credit guarantee 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 up to three years. Second, the intermediate export credit guarantee program GSM-103 provides coverage for credit terms that are between three and ten years in length. The loan terms under the GSM-103 sales distort trade, due to the favorable loan terms that surpass commercial terms.

Table 7: GSM-102 Allocations and Applications for Coverage Under Allocations
(Fiscal Year 1998. Millions of Dollars)

Country	Announced Allocations	Exporter Applications Received	Balance
Andean Region	350.0	225.5	124.5
Brazil	90.0	71.7	18.3
Central America	110.0	82.6	27.4
East Caribbean	60.0	54.3	5.7
Mexico	1,260.0	1,011.8	248.2
West Caribbean	35.0	8.1	26.9

Source: United States Department of Agriculture. October 1998

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 1998, $5.8 billion was allocated for GSM-102, of which exporters made use of $4.0 billion. This compares to an allocation of $4.0 billion allocated in 1997 with exporter applications covering $2.8 billion of that allocation.

In fiscal year 1998, $310 million was allocated for GSM-103, of which exporters made use of 56 million. This compares to an allocation of $373 million allocated in 1997 with exporter applications covering $62.8 million of that allocation.

Consequently, these generous subsidies create unfair situations for domestic agricultural producers who cannot compete with the low prices and easy access to credit that can be offered by U.S. exporters.

Some eligible commodities within these programs 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, and corn products. However, the USDA will consider any agricultural commodity of 100 percent U.S. origin, or if the market for U.S. exports will be expanded or maintained as a result. Also, the GSM-103 program is focused on a more limited number of products, such as wheat and breeder livestock.

Table 8: GSM-103 Allocations and Applications for Coverage Under Allocations
(Fiscal Year 1998. Millions of Dollars)

Country	Announced Allocations	Exporter Applications Received	Balance
Colombia	50.0	5.0	45.0
Mexico	35.0	1.9	33.1

Source: United States Department of Agriculture. October 1998

Supplier Credit Guarantee Program

The Supplier Credit Guarantee Program (SCGP), which became effective on August 30, 1996, is intended to encourage U.S. exporters to expand, maintain and develop markets for U.S. agricultural commodities and products in areas where commercial financing may not be available without a CCC payment guarantee.

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 with the GSM-102 (currently 50 percent).[56] Also, under SCGP the CCC guarantees the importer obligations, as opposed to guaranteeing repayment of credits extended to foreign banks under the GSM-102 program.

Eligible commodities include 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.

Table 9: SCGP Allocations and Applications for Coverage Under Allocations
(Fiscal Year 1998. Millions of Dollars)

Country	Announced Allocations	Exporter Applications Received	Balance
Central America	5.0	2.5	2.5
Mexico	120.0	15.1	104.9

Source: United States Agricultural Department. October 1998

Facility Guarantee Program

The Facility Guarantee Program (FGP) was re-authorized by USDA in 1995 as a division of the CCC, and is intended to provide payment guarantees to assist in the financing of manufactured goods and services exported from the U.S. It is administered by the FAS, and is a subpart of both the GSM-102 and GSM-103 programs. Its intent is to establish agriculture-related facilities in emerging markets and enhance sales in markets where inadequate storage, processing, or handling capabilities may otherwise restrict demand.

The U.S. allocated $155 million in emerging markets worldwide for the fiscal year 1998. Allocations in fiscal year 1999 have already come to $190 million. However there have been no applications for projects since its reauthorization.

The Market Access Program (MAP)

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. With funds from the CCC, the MAP works by partially reimbursing program participants who conduct these foreign market

[56] USDA, Fact Sheet, (FAS Online), Washington D.C., September 1997.

development projects for eligible products in specified countries. 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.

Within the Market Access Program is the Export Incentive Program (EIP) which helps small-sized U.S. commercial and cooperative entities promote their products through advertising, seminars, trade shows, and demonstrations.

Some of the commodities covered by the MAP include apples, asparagus, canned peaches and fruit cocktail, catfish, cherries, citrus, cotton, dairy products, dry beans, eggs, feed grains, frozen potatoes, grapes, honey, hops, kiwi fruit, meat, peanuts, pears, pet food, pistachios, poultry meat, prunes, raisins, rice, salmon, soybeans, strawberries, sunflower seeds, surimi, tallow, tomato products, walnuts, and wheat.

Foreign Market Development Program

Also known as the Cooperator program, the Foreign Market Development Program (FMD) has sought for more than 40 years to develop, maintain, and expand long-term export markets for U.S. agricultural products. The program facilitates partnership with nonprofit cooperators and the USDA who pool their financial and technical resources to build export markets.

This program has proven to substantially support growth in U.S. agricultural exports, as it has funded market development activities in more than 100 countries worldwide.[57] Projects within the program consist of market research, trade servicing activities, and technical assistance, depending on the status of individual markets.

USDA's contribution to this program has averaged $30 million annually. Cooperators and U.S. industry also contribute significantly as in 1999, they will likely contribute resources totaling 110 percent of the $33.5 million in funds provided by the United States Foreign Agricultural Service.[58]

Emerging Markets Program

The Emerging Markets Program (EMP), originally authorized by the Food, Agriculture, Conservation and Trade Act of 1990 and amended by the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act), promotes U.S. agricultural exports to emerging markets by providing technical assistance and agricultural expertise. It seeks low-income markets with dynamic economies and high potential for U.S. export growth. The Act authorizes $10 million annually for 7 years, using funds from the Commodity Credit

[57] USDA, Fact Sheet, (FAS Online), Washington D.C., November 1997.

[58] USDA, USDA Announces Fiscal 1999 Foreign Market Development Program, (Press Release 0526.98), Washington, D.C., 29 December 1998.

Corporation (CCC).[59]

The activities in the program include: agricultural sector and joint-venture assessments, market information systems, commodity exchange development, resident policy advisors, training in importing, agriculture banking and credit, business planning, farm and agribusiness management, and sanitary and phytosanitary training.

Farm Service Agency loans

The Department of Agriculture's Farm Service Agency (FSA) provides direct and guaranteed loans to farmers who are unable to obtain loans from the Farm Credit System or other commercial lenders. All FSA loans provide some subsidy value or credit enhancement to the borrower.

The interest rates on loans made directly by the FSA, are lower than the rates on loans from commercial lenders. These low-interest rate programs were originally authorized to stem acute cash flow or profitability problems, but have now become permanent features of Federal farm credit programs. However, because of lower interest rates and reduced lending activity in the late 1990's, FSA has become a less important source of credit for many direct borrowers. Nevertheless, special low interest rates for direct lending programs have been used extensively.

FSA is required by law to lend at least 25% of its direct loans each year at the limited-resource rate. Limited-resource rates are set at half the rate on 5-year U.S. Treasury notes, but not below 5%. Other FSA loan rates include the "Emergency Disaster Rate", which is fixed at 3.75% for the life of the loan. "The Beginning Farmer Down-payment Rate" is available for qualified farmers for 4-percent, 10-year, fixed-rate loans to finance the down-payment on farm real estate purchases. Others may be able to obtain 4-percent loans under joint financing arrangements with commercial lenders.

Some of the loans obtained from local lenders but guaranteed by the FSA are given "interest assistance," or subsidization. Almost 19% of the $1.88 billion in guaranteed lending allocated in fiscal year 1999 is made through these programs.[60]

For interest rate assistance, FSA reduces the rate on guaranteed operating loans by 4 percentage points from the loan rate negotiated between the borrower and the lender. There is no minimum rate, and eligibility is reviewed annually.

[59] USDA, Summary: Emerging Markets Program, (FAS Online), Washington D.C., February 1998.
[60] USDA, Farm Loan Programs Current Funding Status, (Farm Service Agency Online), Washington D.C., April 1999.