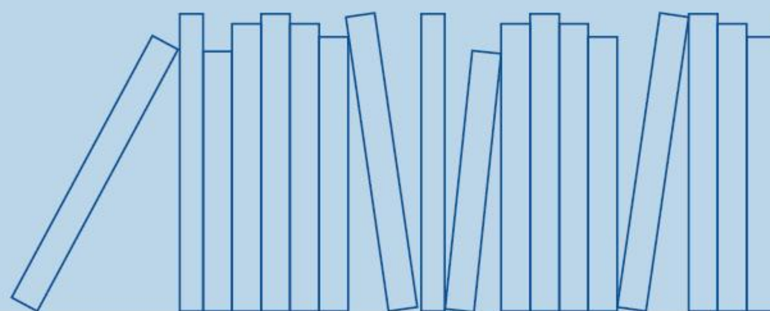
Economic Commission for Latin America and the Caribbean

ECLAC OFFICE IN WASHINGTON, D.C.

United States- Latin America and the Caribbean Trade Developments 2016-2017



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Abstract

United States Trade Developments, 2016-2017, provides an overview of the most relevant developments in United States trade relations with Latin America and the Caribbean and of the measures that inhibit the free flow of goods among countries in the Western Hemisphere. This is an annual report elaborated by the ECLAC Washington Office.

Trade features prominently in the new administration's economic agenda. The 2017 President's Trade Policy Agenda reinforces the focus on the defense of United States interests through the promotion of free and fair trade. The four trade priorities stated in the Trade Policy Agenda are: promoting United States sovereignty, enforcing United States trade laws, leveraging United States economic strength to expand goods and services exports, and protecting United States intellectual property rights.

Specifically, the administration has indicated that multilateral free-trade pacts will be avoided, bilateral trade negotiations will be prioritized, and reducing the United States' trade deficit will be a central goal of trade policy.

A growing range of economic activities are moving online, encompassing various information and communication technologies (ICTs) that are having a transformational impact on the way business is conducted, people interact among themselves and with the government and businesses. United States digital trade related exports are increasing and so are foreign direct investment (FDI) patterns and expansion of United States companies' operations abroad. This year's ECLAC Washington report addresses the significance of digital trade for the U.S. economy as well as some of the existing barriers that may be inhibiting the growth of the digital economy.

The report also describes the main trade policy developments of the year, discuses United States trade deficits and presents trade inhibiting measures.

Introduction

United States Trade Developments, 2016-2017, provides an overview of the most relevant developments in United States trade relations with Latin America and the Caribbean and of the measures that inhibit the free flow of goods among countries in the Western Hemisphere. This is an annual report elaborated by the ECLAC Washington Office.

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Specifically, the administration has indicated that multilateral free-trade pacts will be avoided, bilateral trade negotiations will be prioritized, and reducing the United States' trade deficit will be a central goal of trade policy. The new administration is categorical that the United States's chronic trade deficit is a drag on United States economic growth and that balanced trade should be the long term goal. A presidential memorandum instructed the withdrawal of the United States from the Trans-Pacific Partnership (TPP) and announced the intention to renegotiate the North American Free Trade Agreement (NAFTA) on 23 January, 2017. The President sent a letter to Congress indicating his intent to renegotiate the NAFTA on May 18, 2017 and negotiations started mid-August. There are seven rounds of negotiation scheduled.

The United States Department of State, in coordination with the United States Agency for International Development (USAID), prepared a multi-year Caribbean strategy to enhance the security and prosperity of the Caribbean region and in turn that of the United States. The strategy was submitted to Congress in June 2017. The Caribbean is considered central to the United States's efforts to counter organized crime, support democracy, strengthen energy security, and create jobs through increased trade and investment. The goal of the strategy is to encourage private sector-led growth and job creation; reduce energy costs through diversification, regulatory reform, and public-private partnerships in the Caribbean; and maximize partnerships between the United States and the Caribbean in health and education for more sustainable growth and development.

With respect to Central America, the United States co-hosted with Mexico the Conference on Prosperity and Security in Central America in Miami, Florida on June 15-16, 2017. This was the first high-level summit between the Central American and the Trump Administration authorities and was intended to set the tone for the relationship for years to come.

Throughout the conference, the United States highlighted its support for the Alliance for Prosperity and its efforts to address the economic, security, and governance challenges in the region. Since the launch of the Alliance for Prosperity in 2014, the United States has allocated $1.3 billion to Central America. The United States Congress included $655 million in fiscal year 2017 to continue United States support for the region. However, in the 2018 budget request to Congress United States assistance for the Northern Triangle Central America countries was reduced by about a third. The fiscal year 2018 budget request includes $460 million to support this initiative.

On June 16, 2017 President Trump outlined a new policy towards Cuba that partially reversed the Obama administration's opening policy. On travel, President Trump ended the directive that allowed for individuals to plan their own trip to Cuba. Under the new directives, United States citizens will still be able to travel to Cuba in groups and for educational or professional purposes. Transactions with Cuba's military are banned under the new directive but exceptions for airlines and cruise lines would be allowed. Also, the embargo would remain in place until the Cuban government holds free elections, releases political prisoners, legalizes all political parties and takes other steps to open up its society. The United States Embassy in Havana will remain open. However, after several United States Embassy employees suffered injuries from a suspected attack, the State Department ordered the departure of non-emergency personnel assigned to the United States Embassy in Havana, as well as all family members on September 29, 2017.

In May 2017, the Department of Homeland Security (DHS) granted a six-month extension to 58,000 Haitian immigrants who have been living in the United States under Temporary Protected Status (TPS) since a devastating 2010 earthquake, saying the conditions in their struggling homeland are not stable enough to force them to return. However, on November 20th the administration announced that Haitians with TPS will be expected to leave the United States by July 2019 or face deportation. This follows October's DHS decision to end TPS for about 5,300 of Nicaraguans who were given temporary refuge after Hurricane Mitch in 1998 along with nationals from Honduras and El Salvador. Nicaraguans living in the United States under TPS have until January of 2019 when they will lose their permission to work and live in the U.S. The DHS did not make a decision about TPS recipients from Honduras --about 83,000. Honduras (like El Salvador) is still experiencing significant turmoil and violence. Since there was no decision, Hondurans get an automatic six-month extension. TPS for El Salvador expires in January 2018 –about 200,000 Salvadorans are benefiting from the program. The DHS is scheduled to announce in December 2017 whether it will rescind or renew protection for that country. The protection applies to Salvadorans who were in the United States without permission on February 13, 2001, and was granted after deadly earthquakes in their home country.

Increasingly, an ever-wider range of economic activities are moving online, encompassing various information and communication technologies (ICTs) that are having a transformational impact on the way business is conducted, people interact among themselves and with the government and businesses. United States digital trade related exports are increasing and so are foreign direct investment (FDI) patterns and expansion of United States companies' operations abroad. United States exports of digital services grew at an average rate of 5.6% in the period 2012-2014 and imports of digital services an average of 3.5% over the same period. At the same time the information sector position relative to the total FDI position in the United States, has grown more than 30% between 2011 and 2015 and the same is true for the relative position of this sector to total FDI position abroad with a 20% increase over the same period. This year's ECLAC Washington report will address the significance of digital trade for the U.S. economy as well as some of the existing barriers that may be inhibiting the growth of the digital economy.

The report is organized as follows: section I describes the main trade policy developments of the year. Section II discuses United States trade deficits given the new administration's strong concern on the persistency of United States trade deficits and the stated goal of using trade policy to address this concern. Section III includes a special analysis of international digital trade and investment in digital

trade-related industries. Section IV presents trade inhibiting measures. This year's report includes a subsection on digital trade inhibiting measures.

I. Trade policy developments

The 2017 trade agenda outlines the new Administration's four trade priorities: (1) promote United States sovereignty over trade policy; (2) enforce United States trade laws; (3) leverage United States economic strength to expand goods and services exports and protect intellectual property rights; and (4) negotiate new and better trade deals.

To further these priorities, a presidential memorandum instructed the withdrawal of the United States from the Trans-Pacific Partnership (TPP) and announced the intention to renegotiate the North American Free Trade Agreement (NAFTA) on 23 January, 2017. On May 18, 2017 the President sent a letter to Congress indicating his intent to renegotiate the NAFTA. Negotiations started on August 16, 2017. The Administration has also voiced the need to renegotiate the U.S.-Korea free trade agreement that went into effect in 2011. Since then, the United States trade deficit in goods with South Korea has more than doubled which is taken as an indication that it is failing the United States population. The U.S. runs a trade surplus in services with South Korea, and the surplus grew 29% over the same time period.

A. NAFTA renegotiation

On July 17th, the United States released a seventeen page summary of its objectives for potential NAFTA renegotiations. The summary, prepared by the Office of the United States Trade Representative, is required under U.S. law and its release allows the administration to begin formal negotiations with Canada and Mexico in 30 days.

The objectives in the summary are the result of "extensive consultations with Congress, stakeholders, and the public at large," with over 12,000 public comments received and three days of public hearings with over 140 witnesses conducted. Broadly, the summary contends that the objectives listed will, "ensure truly fair trade by seeking the highest standards covering the broadest possible ranges of goods and services…but most importantly, the new NAFTA will promote a market system that functions efficiently, leading to reciprocal and balanced trade among the parties".

Many of the objectives, while still potentially difficult to negotiate, are not particularly surprising. The document signals a willingness to continue tariff-free trade within NAFTA. In the document's sections on industrial good and agricultural goods, for example, it calls for maintaining "existing

reciprocal duty-free market access". Further, many of the items listed as objectives for NAFTA renegotiations are items that were already negotiated and agreed upon by the three NAFTA parties during TPP negotiations. These include rules covering state-owned enterprises, e-commerce, telecommunications, and financial services.

Other areas that were widely expected as part of an effort to "modernize" NAFTA include adding sections on digital trade, anti-corruption rules, and ensuring "provisions governing intellectual property rights reflect a standard of protection similar to that found in U.S. law". The administration wants to make environmental and labor disputes subject to NAFTA arbitration panels—meaning that alleged violations can be punished by the imposition of tariffs. They would replace weak labor and environmental panels that were added to NAFTA as a side agreement to the main accord.

Some of the objectives reflect movement towards protectionism. For example, the objectives call for a revision of government procurement rules that increase "opportunities for U.S. firms to sell U.S. products and services in NAFTA countries" while excluding from renegotiation the "Buy American" requirements for U.S. state and local governments. The USTR also commits to "update and strengthen the rules of origin" and "ensure the rules of origin incentivize the sourcing of goods and materials from the United States and North America".

Most of the goals listed do not articulate specific actions, policies, or mechanisms to achieve them, leaving room for negotiation. However, at least three specific changes to NAFTA that are mentioned are likely to be points of contention with Canada or Mexico or both. The first is proposing to "eliminate the NAFTA global safeguard exclusion". Under the terms of NAFTA, Canada and Mexico are excluded from a section of a 1974 U.S. trade law which allows the U.S. to impose broad barriers, like tariffs or quotas, to help a U.S. industry that is "seriously injured" by trade.

Second, is the aim to "eliminate the Chapter 19 dispute settlement mechanism", that allows NAFTA partners to challenge duties before a special NAFTA tribunal available only to them. In practice, Chapter 19 has meant fewer trade cases among the United States, Canada and Mexico, compared with other trading partners. Canada in particular has made keeping Chapter 19 a priority. U.S. officials and business owners have argued that the Chapter 19 mechanism has hindered the ability to pursue anti-dumping and anti-subsidy cases against Mexico and Canada. Lastly, is the elimination "non-tariff barriers to U.S. agricultural exports". This is widely interpreted as action against protections Canada has placed on its dairy industry, which the U.S. perceives to be unfair and which have been the source of a long running dispute between the two countries.

The most salient of the administration's views on trade have been the need to eliminate trade imbalances and the need to punish currency manipulators. The very first objective listed in the document is "Improve the U.S. trade balance and reduce the trade deficit with the NAFTA countries". Many experts have argued that it is difficult, if not impossible to address trade balance (bilateral or overall) through trade policy since trade balances are driven by macroeconomic issues related to saving and consumption. Given that the objectives insist on maintaining tariff-free trade within NAFTA, there appear to be no specific policies listed that would address the trade deficit in a major way.

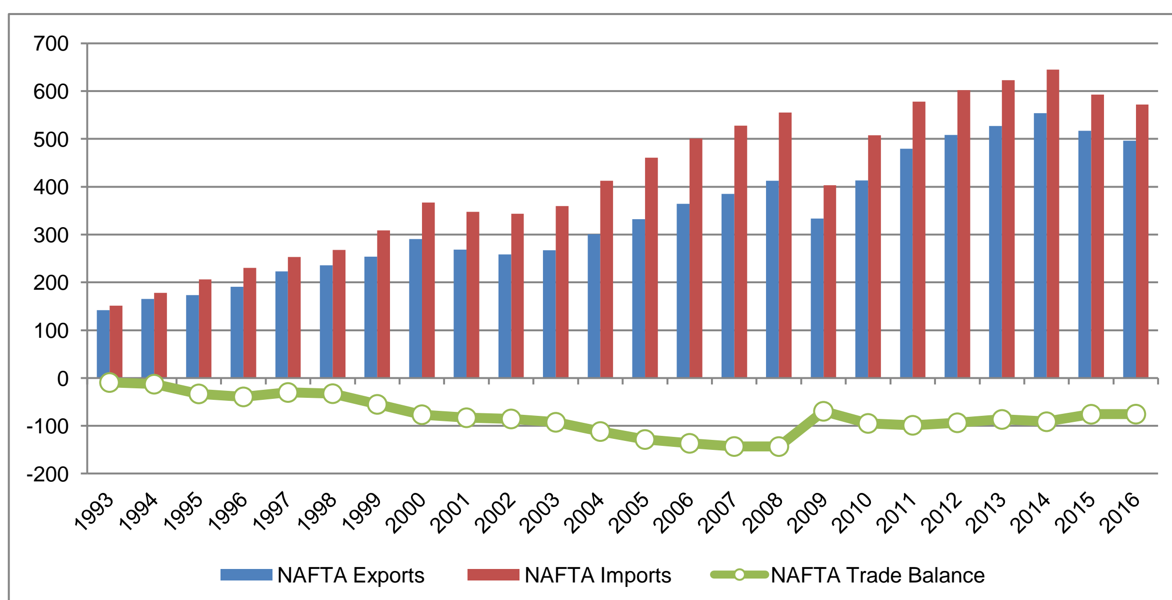
Regarding currency manipulation, the administration would make NAFTA the first U.S. trade agreement to include rules on currency manipulation. Specifically, the goal will be to "ensure that the NAFTA countries avoid manipulating exchange rates…to gain an unfair competitive advantage". This would be done "through an appropriate mechanism", with no further detail given. It is unclear how negotiations will proceed on this issue, as the U.S. has never accused Mexico or Canada of currency manipulation, but will likely be using these negotiations to establish precedents for negotiations with Asian trading partners.

1. United States trade with NAFTA countries

NAFTA, into effect since January 1, 1994, eliminated virtually all barriers to trade and investment between the U.S., Canada, and Mexico. Since then, trade between the three countries has significantly increased (Figure 1) largely as a result of the creation of what are now North American supply chains. Therefore, the economic stakes of renegotiating NAFTA are enormous for all three countries party to the agreement.

NAFTA has been credited with helping U.S. manufacturing industries, especially the U.S. auto industry, become more globally competitive through greater North American economic integration and the development of regional supply chains. This increased competitiveness in turn passes on benefits to companies through efficiency gains and profits, but also consumers, who benefit from lower prices and more variety. Much of the increase in U.S.-Mexico trade, for example, can be attributed to specialization as manufacturing and assembly plants have reoriented to take advantage of economies of scale. As a result, supply chains have been increasingly crossing national boundaries as manufacturing work is performed wherever it is most efficient. It has been estimated that 40% of the content of the U.S. imports from Mexico and 25% of the content of imports from Canada are of U.S. origin. As a comparison, U.S. imports from China have only 4% U.S. content.

Figure 1
United States Trade in Goods with NAFTA Countries 1993-2016
(In trillion dollars)



Source: Taken from Congressional Research Service report "The North American Free Trade Agreement (NAFTA)" prepared by M. Angeles Villareal and Ian F. Ferguson. Available at: https://fas.org/sgp/crs/row/R42965.pdf

United States trade with Canada and Mexico amounts to more than US$1 trillion annually and makes up almost 30% of United States trade. That is twice the United States' trade with China and 10 times its trade with the UK (Table 1). As of 2016, Canada was the leading market for U.S. exports, with Mexico second. The two combined accounted for 34% of total U.S. exports in 2016. With respect to imports, Canada and Mexico rank second and third, respectively, behind China, supplying a total of 26% of imports to the U.S.

Table 1
United States Trade with Selected Countries as a Share of Total United States Trade, 2016
(In trillions of dollars)

Country	U.S. Exports	U.S. Imports	Total trade	Share of total trade *(as percentage of total U.S. trade)*
China	115.8	462.8	578.6	15.8
Canada	266.8	278.1	544.9	14.8
Mexico	231.0	294.2	525.1	14.3

Source: Elaborated by ECLAC on the basis of Census Bureau data.

Mexico is the United States' third largest trading partner, and some six million jobs in the United States rely on trade with Mexico. According to the Department of Agriculture, "sales of food and farm products to Mexico totaled a record US$19.5 billion in fiscal year 2014." That was 13% of U.S. agricultural exports.

Imports from Mexico contain significant United States content, and production-sharing across the continent has given U.S. companies an edge in the global market. North American supply chains are so tightly interwoven that 80% of Mexican exports go to the U.S.—and 40% of the parts those exports contain are made in the U.S.

In terms of trade deficits, much of the United States' trade deficit with Canada and Mexico is a result of import of oil and gas. When those basic raw materials are excluded, United States trade with Canada runs a surplus and the deficit it runs with Mexico is of a lower level of magnitude –a third of the deficit with Mexico in 2012 (Table 2). However, the shale boom in the United States, the fall in Mexico's supply of oil and the liberalization of Mexican energy sector in 2014 helped revert the United States energy trade balance with Mexico. The United States energy trade balance changed from a deficit of US$20bn in 2014 to a surplus of US$11.5bn in 2015. Therefore, expanding natural gas sales to Mexico has become increasingly important because the production in the United States far exceeds domestic demand. To keep the price of natural gas from falling, United States producers need Mexico, their largest customer. Under NAFTA, the authorization of natural gas exports is virtually automatic. More than half of Mexico's domestic consumption comes from United States refineries.

The U.S. also had trade surpluses with both countries in services, which include things like insurance and movies. If the renegotiation of NAFTA places tougher conditions on factories in Canada and Mexico, raises the possibility of placing restrictions on United States service exports, which amounted to US$56.4 billion for Canada and US$31.5 billon for Mexico in 2015.

Table 2
United States Trade Balance with Mexico and Canada
With and Without Imports of Crude Oil, 2012-2016
(In billions of dollars)

Year	Mexico		Canada	
	Trade balance	Trade balance without imports of oil	Trade balance	Trade balance without imports of oil
2012	-61.7	-24.5	-31.6	41.3
2013	-54.6	-22.7	-31.7	44.9
2014	-55.4	-27.7	-36.5	46.7
2015	-60.7	-48.2	-15.5	31.4
2016	-63.2	-55.6	-11.2	25.0

Source: Elaborated by ECLAC on the basis of Census Bureau data.

Fourteen states now count Mexico as one of their main trading partners including New Mexico, Arizona, Texas, Nebraska, Kansas and California for which Mexico is their major export destination and

South Dakota, Michigan, Iowa, Missouri and Illinois for which Mexico is their second largest export market (Table 3).

Table 3
States with Mexico as a Main Trade Partner [a], 2016

State	Rank	Exports to Mexico *(Billions of dollars)*	Share of Exports *(Percentage of Total State Exports)*
New Mexico	1	1.6	42.9
Texas	1	92.7	39.8
Arizona	1	8.3	37.8
South Dakota	2	0.3	24.7
Nebraska	1	1.5	22.9
Michigan	2	12.0	22.1
Iowa	2	2.3	19.0
Kansas	1	1.9	18.5
Missouri	2	2.6	18.4
Illinois	2	9.5	15.9
California	1	25.3	15.4
Wisconsin	2	3.1	14.5
Tennessee	2	4.5	14.2
Colorado	2	1.1	14.2
Indiana	2	4.9	14.1
Ohio	2	6.5	13.1
Minnesota	2	2.3	12.2
Arkansas	3	0.7	12.0
Louisiana	2	5.7	11.6
Virgin Islands	2	0.0	11.5
Oklahoma	2	0.5	10.7
New Hampshire	2	0.4	10.7
North Carolina	2	3.0	10.1
Pennsylvania	2	3.7	10.0
Mississippi	2	1.0	9.9
Georgia	2	3.5	9.9
Massachusetts	2	2.5	9.6
Rhode Island	2	0.2	9.2
New Jersey	2	2.6	8.3
Virginia	3	1.1	6.7
North Dakota	2	0.3	6.1
Florida	3	2.8	5.4

Source: Elaborated by ECLAC on the basis of Census Bureau data.
[a] A main trade partner is a country that falls within the top three trade partners for a given state.

Beyond just Canada and Mexico as export markets for final goods, many U.S. firms depend on supply chains that link their U.S.-based operations with suppliers in Canada and Mexico. As a result, much North American trade occurs in "intermediate goods"—materials or components that companies import and integrate into the production of a final good. In 2015, 50% of the goods imported from Mexico and Canada were intermediate goods a share significantly higher than the European Union (37%) or China (28%). The states that rely most on NAFTA intermediate imports as a share of their total import base tend to be involved in one of two broad sectors: advanced manufacturing and energy. The states of California and Michigan accounted for almost 87.4% of the total U.S. trade deficit with Mexico in 2015. However, almost 55% of imports from Mexico to those two states were intermediate goods, used in the production of final goods in those two states. This suggests that states need Mexican and Canadian imports to remain competitive in certain sectors, and that simply the balance of imports versus exports cannot comprehensively convey all the economic benefits of a bilateral trade relationship.

II. United States trade deficits

The new Administration has shown a strong concern over U.S. trade deficits. The President's 2017 Trade Policy Agenda points out that in 2000-the last full year before China joined the WTO, the U.S. trade deficit in manufactured goods was US$317 billion, and in 2016 it was US$648 billion. At the same time, U.S. trade deficit in goods and services with China climbed from US$81.9 billion in 2000 to almost US$334 billion in 2015 and that coincides with a loss of 5 million U.S. manufacturing jobs and a significant slowdown in U.S. industrial production growth. Similarly, the U.S. has run trade deficits in goods with Mexico and Canada, its NAFTA partners for years. Further, the implementation of KORUS in 2012 coincided with a 100 percent increase in the U.S. trade deficit in goods with that country between 2011 and 2016. In the Administration's view, these figures show that the U.S. approach to trade agreements has not lived up to the expectations and the need to review this approach to make trade free and fair.

A. Trade Deficit

The U.S. runs a large trade deficit in goods that is partially offset by a trade surplus in services. In 2016, the U.S. trade deficit was US$502 billion. This is largely driven by the deficit with China that amounted to US$347 billion in terms of goods. Deficits also were recorded, among others, with the European Union at US$146.3 billion; Japan, US$68.9 billion; Germany, US$64.9 billion; Mexico, US$63.2 billion; and Canada, US$11.2 billion.

Table 4
Top 10 Highest Trade Deficits
Exports, Imports, and Trade Balance of Goods by Country, 2015-2016
(In billions of dollars, not seasonally adjusted)

Country	2015			2016		
	Balance (1)	Exports (2)	Imports (3)	Balance (1)	Exports (2)	Imports (3)
China	- 367.2	116.1	504.1	- 347.0	115.8	481.8
Japan	- 68.9	62.4	135.0	- 68.9	63.3	135.3
Germany	- 74.8	50.0	127.2	- 64.9	49.4	116.4
Mexico**	- 60.7	235.7	299.2	- 63.2	231.0	296.9
Ireland	- 30.4	8.9	39.5	- 35.9	9.6	45.7
Vietnam	- 30.9	7.1	39.7	- 32.0	10.2	43.8
Italy	- 28.0	16.2	45.4	- 28.5	16.8	46.5
Korea, South*	- 28.3	43.4	74.0	- 27.7	42.3	71.9
Malaysia	- 21.7	12.3	34.7	- 24.8	11.9	37.4
India	- 23.3	21.5	46.7	- 24.3	21.7	47.7

Source: Adapted from Bureau of Economic Analysis (2016).
* Countries denoted by asterisks represent countries with Free Trade Agreements with the United States.
** Countries denoted by double asterisks represent countries included within Free Trade Agreements with the United States.
(1) Customs imports.
(2) Domestic & Foreign, F.A.S. basis
(3) C.I.F. basis

Surpluses were registered with South and Central America at US$28.8 billion, among others. With the exception of a few countries --Mexico, Nicaragua, Bolivia, Colombia, Ecuador, Venezuela and Trinidad and Tobago, the United States runs trade surpluses with most of the countries of the Latin America and the Caribbean (Table 5).

Trade with China has increased swiftly over the last couple of decades. In particular, United States imports and trade deficit with China (see Figure 2).

To date, the U.S. Treasury Department has refrained from labeling China a currency manipulator and no tariffs have been levied. However, the United States government is looking into Section 232 of a 1962 trade law that gives presidents the power to block imports that threaten national securities to restrict imports of steel and aluminum. Based on its decision, the White House could impose new steel tariffs, import quotas or a combination of the two. The argument is that a spike in production by China has hit the U.S. steel industry because China floods global markets with cheap steel, making it harder for U.S. producers to compete.

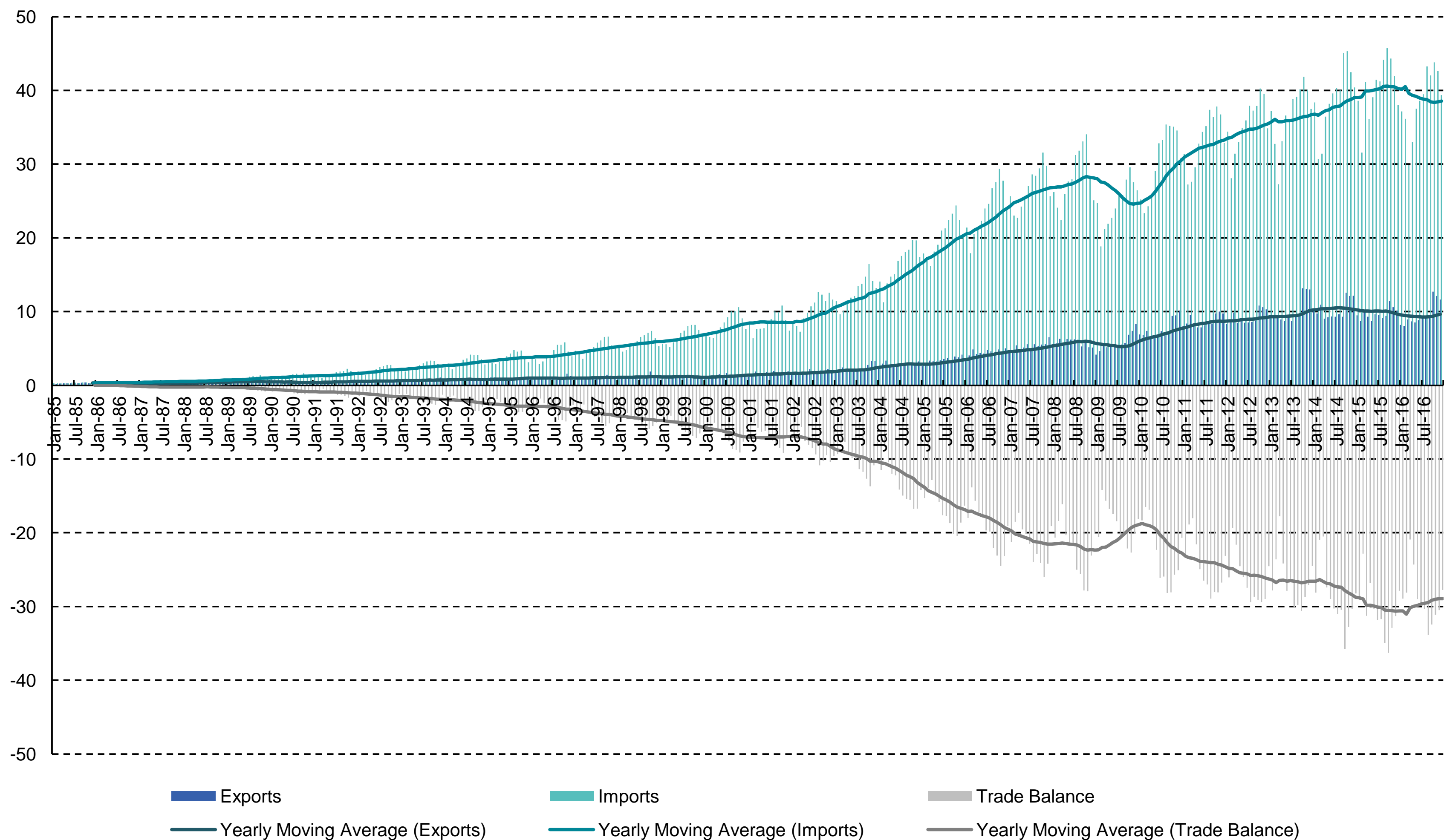
However, since the United States already imposes restrictions on Chinese imports of steel, any new barriers are likely to have more of an effect on close U.S. allies, such as Canada, South Korea, Mexico, Japan and Germany. Canada, for example, is the largest source of steel imports to the United States, providing 17 percent of all steel consumed here. The United States imported about 30 percent of the steel it used in 2016 or 30 million metric tons, up from 23 percent in 2009, according to data from the Commerce Department.

Table 5
Exports, Imports, and Trade Balance of Goods by Country and Area in the Americas, 2015-2016
(In billions of dollars, not seasonally adjusted, (-) represents zero or less than one-half unit)

Country	2015			2016		
	Balance (1)	Exports (2)	Imports (3)	Balance (1)	Exports (2)	Imports (3)
North America						
Canada**	- 15.5	280.6	303.1	- 11.2	266.8	284.6
Mexico**	- 60.7	235.7	299.2	- 63.2	231.0	296.9
Central America						
Costa Rica**	1.6	6.1	4.7	1.6	5.9	4.6
Dominican Republic**	2.4	7.1	4.8	3.1	7.8	4.8
El Salvador**	0.7	3.2	2.6	0.5	3.0	2.6
Guatemala*	1.7	5.8	4.4	2.0	5.9	4.3
Haiti	0.2	1.1	1.0	0.2	1.1	0.9
Honduras**	0.5	5.2	5.0	0.2	4.8	4.9
Nicaragua**	- 1.9	1.3	3.3	- 1.8	1.5	3.4
Panama*	7.3	7.7	0.4	5.7	6.1	0.4
South America						
Argentina	5.4	9.3	4.2	3.9	8.6	4.9
Bolivia	- 0.1	0.9	1.0	- 0.3	0.7	1.0
Brazil	4.2	31.7	28.5	4.1	30.3	27.2
Chile*	6.7	15.4	9.6	4.1	12.9	9.5
Colombia*	2.2	16.3	14.7	- 0.7	13.1	14.4
Ecuador	- 1.7	5.8	7.9	- 1.9	4.2	6.5
French Guiana	1.1	1.1	(-)	0.7	0.7	0.0
Guyana	- 0.1	0.4	0.4	0.0	0.4	0.4
Paraguay	1.4	1.5	0.2	1.8	2.0	0.2
Peru*	3.7	8.7	5.4	1.8	8.0	6.5
Suriname	0.3	0.4	0.2	0.2	0.3	0.1
Uruguay	0.7	1.3	0.6	0.6	1.1	0.6
Venezuela	- 7.2	8.3	16.2	- 5.6	5.3	11.4
Caribbean						
Antigua and Barbuda	0.7	0.7	0.0	0.2	0.3	0.0
Bahamas	1.9	2.4	0.5	1.9	2.2	0.3
Barbados	0.5	0.6	0.1	0.4	0.5	0.1
Belize	0.2	0.3	0.1	0.2	0.3	0.1
Cuba	0.2	0.2	(-)	0.2	0.2	(-)
Dominica	0.1	0.1	0.0	0.0	0.1	0.0
Grenada	0.1	0.1	0.0	0.1	0.1	0.0
Guyana	- 0.1	0.4	0.4	0.0	0.4	0.4
Jamaica	1.4	1.7	0.3	1.3	1.7	0.3
St Kitts and Nevis	0.1	0.1	0.1	0.1	0.1	0.1
St Lucia	0.5	0.5	0.0	0.4	0.4	0.0
St Vincent and the Grenadines	0.1	0.1	0.0	0.1	0.1	0.0
Trinidad and Tobago	- 1.8	2.5	4.6	- 0.6	2.3	3.2
CAFTA-DR	5.0	28.7	24.8	5.5	28.9	24.5
North America	- 76.2	516.4	602.3	- 74.4	497.8	581.5
South/Central America	36.7	152.5	121.6	28.8	136.6	113.2

Source: Adapted from Bureau of Economic Analysis (2016).
* Countries denoted by asterisks represent countries with Free Trade Agreements with the United States.
** Countries denoted by double asterisks represent countries included within Free Trade Agreements with the United States.
CAFTA-DR (Dominican Republic-Central America-United States Free Trade Agreement) - Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua.
North America - Canada, Mexico.
South/Central America - Anguilla, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, British Virgin Islands, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Curacao, Dominica, Dominican Republic, Ecuador, El Salvador, Falkland Islands (Islas Malvinas), French Guiana, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Montserrat, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Sint Maarten, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Turks and Caicos Islands, Uruguay, Venezuela.
(1) Customs imports.
(2) Domestic & Foreign, F.A.S. basis
(3) C.I.F. basis
NOTE: Area data reflect the composition of the areas at yearend.

Figure 2
United States Trade with China, 1985-2016
(In billions of dollars, nominal values)



Source: Elaborated by ECLAC on the basis of Census Bureau data

Trade deficits fundamentally reflect the fact that the U.S. consumes more than what it produces relative to the rest of the world. Therefore, to reduce the deficit the U.S. would have to produce more or consume less or both. In addition, a strong dollar would increase the deficit by making U.S. exports more expensive as will a fiscal expansion by increasing U.S. consumption. Most economists agree that there is very little that trade policy can do to eliminate trade deficits because trade and current account balances reflect differences between income and spending. Trade agreements will have little impact on trade deficits as well. A new study by the non partisan Congressional Budget Office found that estimates of the impact of “trade agreements on the U.S. trade balance are very small and highly uncertain.” Large tariffs are also unlikely to help. They will lower imports, but they will probably lower exports as well, through retaliatory tariffs from United States’ trading partners.

Finally, the relationship between trade deficits, growth and employment is complex and difficult to manage. In the postwar, the United States run trade surpluses up until 1971, the year that marked its first postwar trade deficit. Since then, the United States has run trade deficits through the ups and downs of the business cycle, over periods of low unemployment as well as high unemployment and over periods of large fiscal deficits and fiscal surpluses. Meanwhile manufacturing decline began in the 1950’s and 1960’s, according to Robert J. Samuelson. Citing Bradford DeLong, Samuelson states that about one-third of nonfarm jobs in 1950 were in the manufacturing sectors, by 1970s the share of manufacturing jobs in the U.S. had gone down to 25% and today only 9% of nonfarm jobs are in the manufacturing sectors. At the same time, Germany that has first-rate workers and engineers, benefits from a weak euro, has run routine trade surpluses and has seen the same pattern as the U.S., a steady decline of manufacturing jobs as a share of the total. According to DeLong, from 1971 to 2012, German manufacturing employment fell from about 40% of the total to roughly 20% --fewer workers were needed to make each car, each refrigerator, and each chair than in the past –productivity has been rising allowing both a growth in manufacturing output and a decline in the share of manufacturing in total employment. DeLong argues, as many others, that new technologies rather than trade deficits are the biggest cause of job destruction. Supporting this argument is the fact that, according to Federal Reserve’s data, the output of United States manufacturing was not stagnant, between 1950 and 2016, output rose 640%, while employment fell 7%. Between 1990 and 2016 output rose 63% and employment fell 31%.

III. Digital Trade in the United States

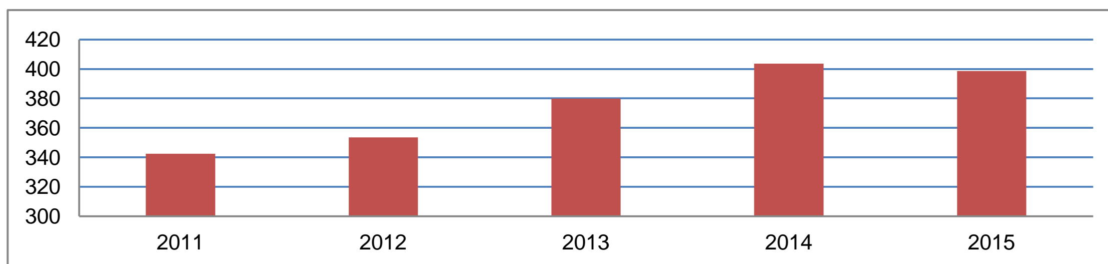
Digital trade—commerce in products and services that are enabled by or delivered via the Internet—continues to increase significantly and is having a major impact on the United States and global economies. Available data indicate that the United States international digital trade has been increasing over the last few years at an annual rate close to 4%. Moreover, United States exports of "digitally enabled services"[1] have exceeded imports in every year from 2007 to 2015, and the United States surplus has widened during this period. During the last five years, trade surplus averaged about US$150 billion a year.

A. Economic impact of digital trade on the United States economy

- United States exports of digital services had been growing at an average rate of 5.6% in the period 2012-2014, but contracted 1.2% in 2015.

[1] Official statistics collected by the U.S. Department of Commerce (USDOC) and the Bureau of Economic Analysis (BEA) capture certain services that are associated with digital trade, but also include many traditional non-digital services. Foreign direct investment (FDI) statistics from the BEA highlight the foreign operations of companies active in industries assumed to be digital trade-related but there is no way to know which ones are actually traded online. Following 2012 BEA staff working paper, digitally enabled services are defined as "those for which digital information and communications technologies (ICT) play an important role in facilitating cross-border trade in services." Since BEA does not measure the amount of trade in these industries that actually occurs online, the authors assumed that all trade in those industries was digital, as does this section. Using the same categories as the BEA authors, this section extends the information to include 2015 whenever the data was available.

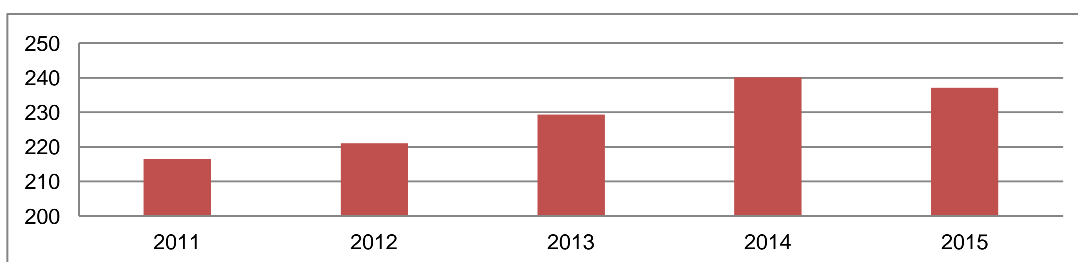
Figure 3
United States Exports of Potentially ICT-enabled Services
(in billion dollars)



Source: ECLAC Washington Office on the basis of BEA

- Imports of digital services have showed the same pattern, with an average increase of 3.5% in the period 2012-2014, and a similar contraction of 1.2% in 2015.

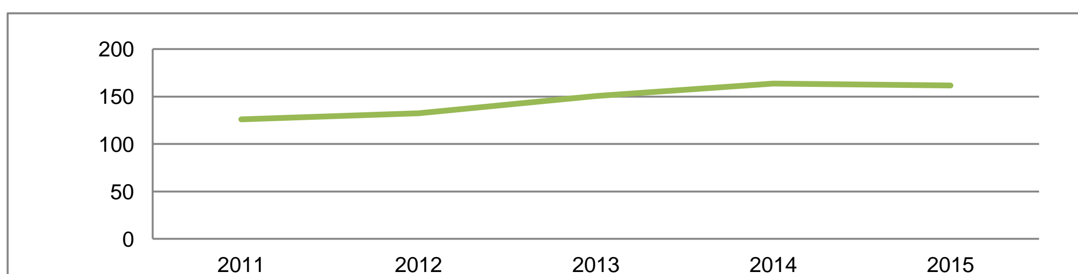
Figure 4
United States Imports of Potentially ICT-enabled Services
(In billion dollars)



Source: ECLAC Washington Office on the basis of BEA

- The trade balance in this sector presents a strong surplus that averaged US$146 billion in the period 2011-2015.

Figure 5
Balance of Trade of Potentially ICT-enabled services
(in billion dollars)

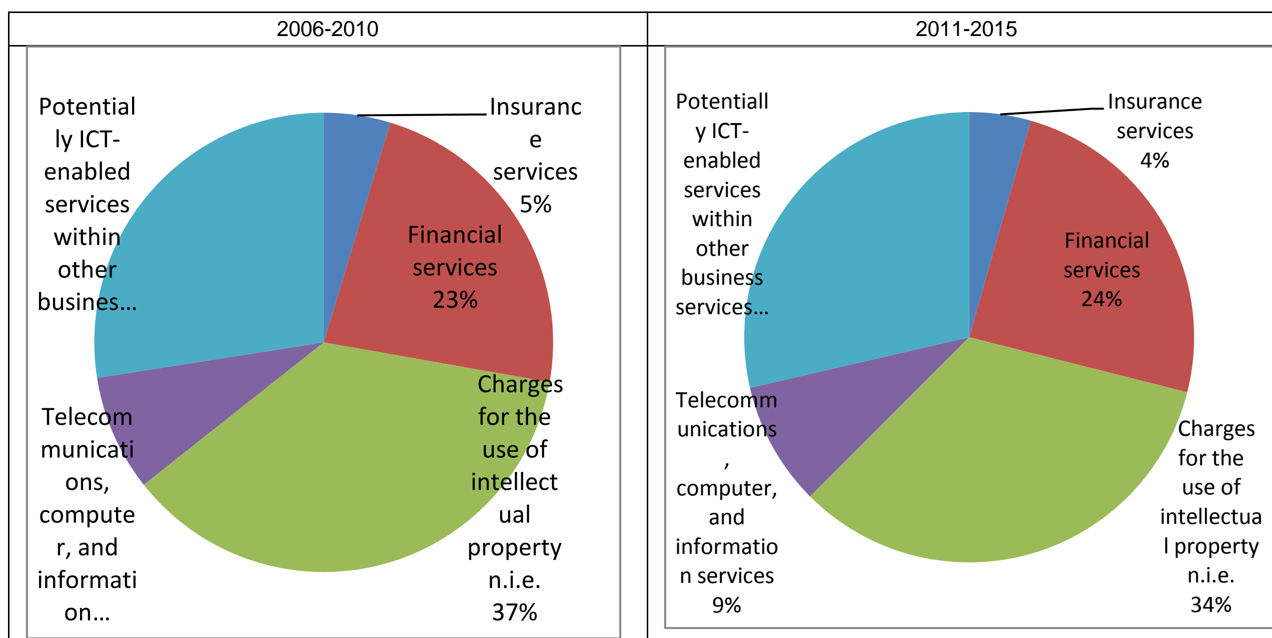


Source: ECLAC Washington Office on the basis of BEA

- In the period 2011-2015, the breakup by industries shows that 34% of the United States exports of digital services correspond to charges for the use of intellectual property rights, followed by business services (29%) and financial services (24%), a pattern similar to that observed in the period 2006-2010.

- The most significant change is the fall in the share of charges for the use of intellectual property by 3 percentage points.

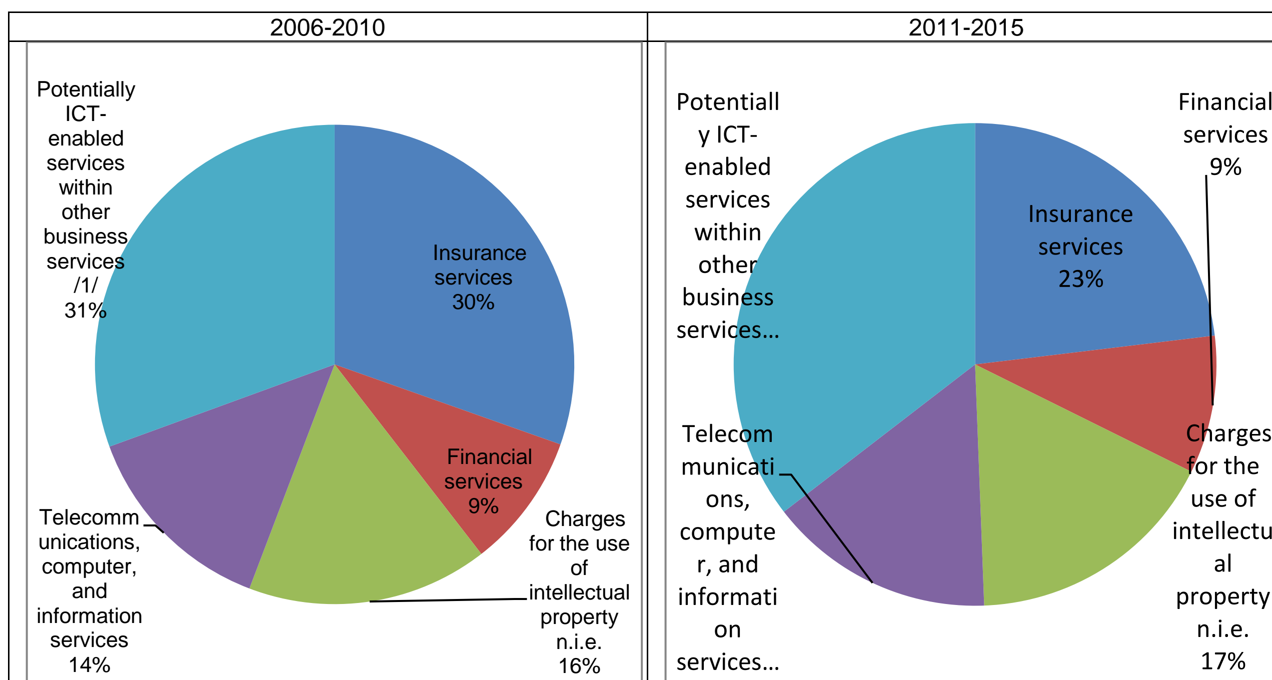
Figure 6
United States Exports of Potentially ICT-enabled services by industries
(In percentages)



Source: ECLAC Washington Office on the basis of BEA

- In the period 2011-2015, 36% of the United States imports of digital services were business services, followed by insurance services (23%) and charges for the use of intellectual property rights (17%). With respect to the period 2006-2010 business services increased its participation by 5%, and insurance services reduced it by 7%.

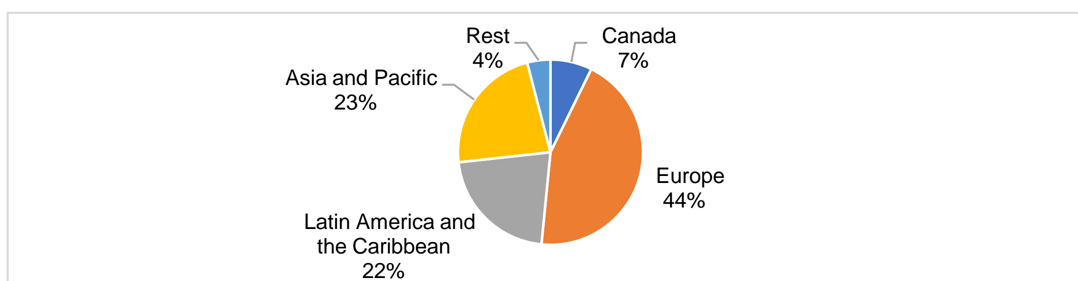
Figure 7
United States Imports of Potentially ICT-enabled services by industries
(In percentages)



Source: ECLAC Washington Office on the basis of BEA

- The U.S. exports of digital services show Europe as the most important destination with 44% of the total U.S. digital services exported in the period 2013-2015, followed by Asia and Pacific (23%) and Latin America and the Caribbean (22%).

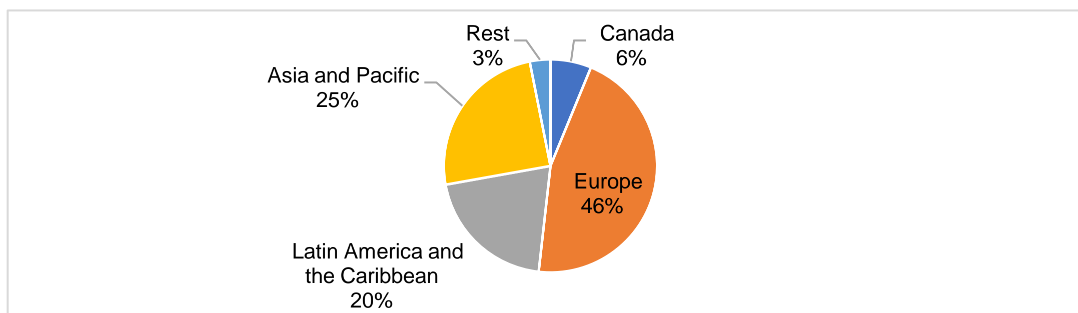
Figure 8
United States Exports of Potentially ICT enabled services by area of destination, 2013-2015
(In percentages)



Source: ECLAC Washington Office on the basis of BEA

- In the case of United States imports of digital services, trade partners are distributed similarly as those in exports: Europe is the top import partner with 46% of the total imports in the period 2013-2015, followed by Asia and the Pacific (25%), and Latin America and the Caribbean (20%).

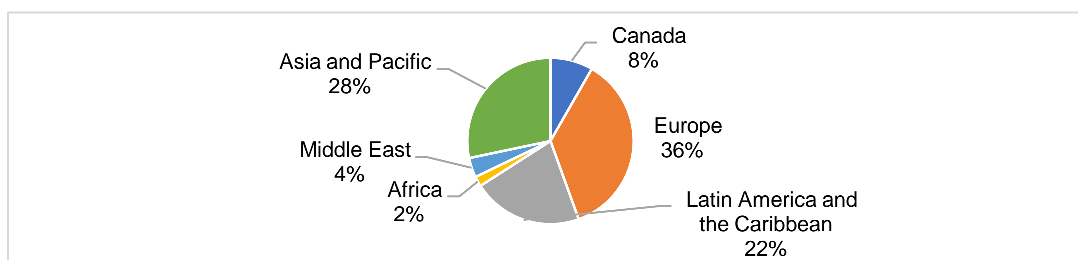
Figure 9
United States Imports of Potentially ICT enabled services by area of destination, 2013-2015
(In percentages)



Source: ECLAC Washington Office on the basis of BEA

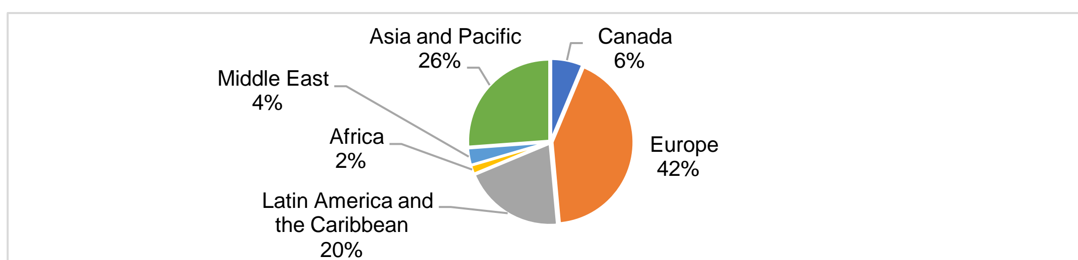
- Partners' participation in digital trade services with the U.S. presents a similar composition, both in imports and in exports, than those for total service trade (figures 10 and 11).

Figure 10
United States exports of total services by destination, 2013-2015
(In percentages)



Source: ECLAC Washington Office on the basis of BEA

Figure 11
United States imports of total services by origin, 2013-2015
(In percentages)

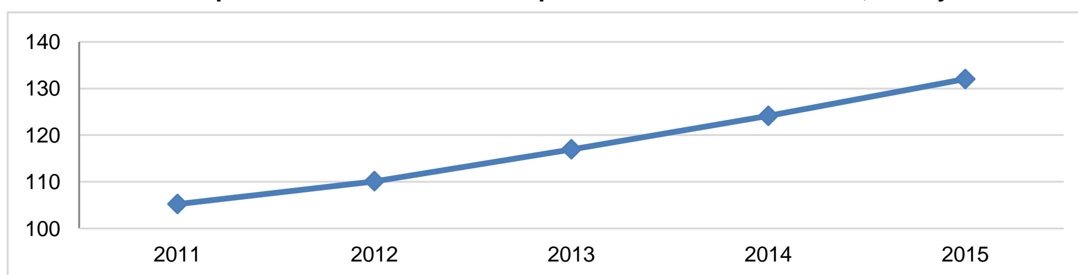


Source: ECLAC Washington Office on the basis of BEA

- The growth in the international trade in information services is also evident in the significant foreign direct investments made by U.S. information-sector companies to establish and expand operations abroad, which in turn generate an important share of these firms' global revenue. The information sector position, relative to the total United States FDI position abroad, has grown about 20% since 2011. The same pattern is shown in this sector relative to total FDI position in the U.S., but with a much larger increase (close to 30%) over the same period.

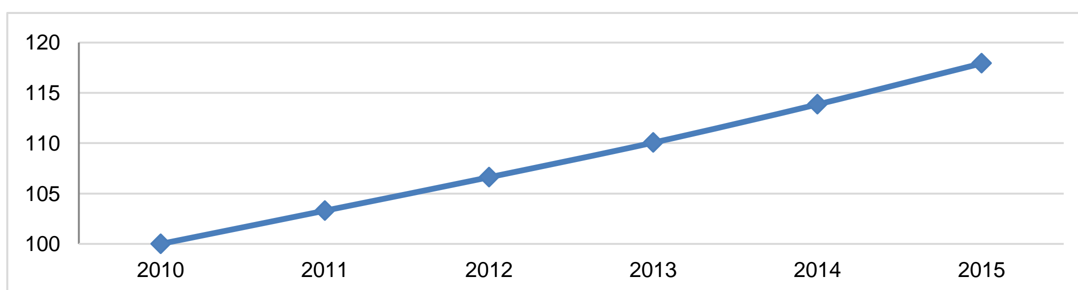
- Foreign Direct Investment (FDI) in digital services[2] includes: publishing industries; motion picture and sound recording industries; telecommunications; broadcasting (except Internet); and, internet service providers, web search portals, data processing services, internet publishing and broadcasting, and other information services. The information sector position[3], relative to the total foreign FDI position, has grown more than 30% since 2011 (Figure 13). The same pattern is shown in this sector relative to total FDI position abroad the U.S., but with a lower increase (close to 20%) in the same period.

Figure 12
Information Sector position relative to total FDI position in the United States, base year 2010



Source: ECLAC Washington Office on the basis of BEA

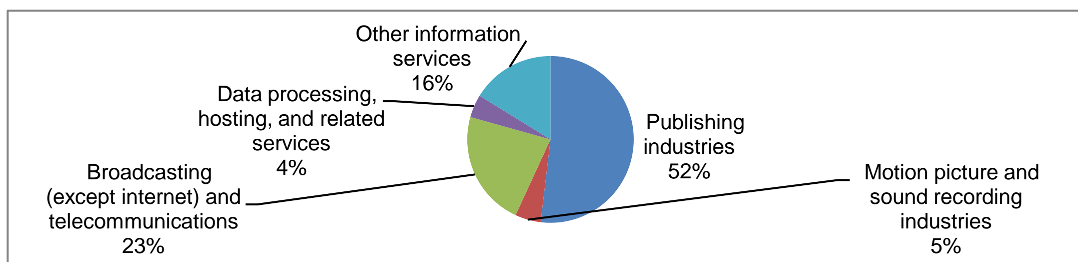
Figure 13
Information Sector Position relative to total United States FDI position abroad, base year 2010



Source: ECLAC Washington Office on the basis of BEA

- The U.S. FDI position abroad in the information sector by industry is dominated by publishing industries that represent 52% of total FDI position in the sector in 2015, followed by broadcasting (23%), and other information services (16%).

Figure 14
United States FDI Position Abroad in the Information Sector, by Industry, 2015



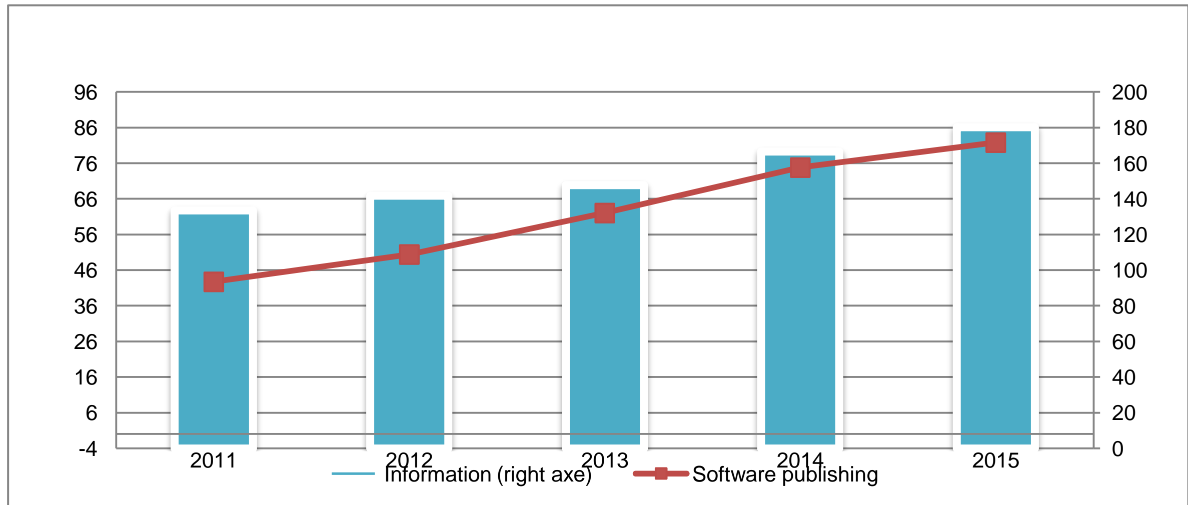
Source: ECLAC Washington Office on the basis of BEA

[2] The BEA considers the information sector (industries reported under code 51 of the North American Industry Classification (NAICS)as the only sector that represents the FDI in digital services.

[3] FDI position represents cumulative investment (stock)

- From 2011 to 2015, software publishing industries increased by 17.3% as compared to a 7.5% for the whole sector over the same period.

Figure 15
United States FDI Information Sector and Software publishing position abroad
(In billions of dollars)



Source: ECLAC Washington Office on the basis of BEA

IV. Trade inhibiting measures

This section focuses on recent developments in three significant areas of trade inhibiting measures: import policies, dispute settlement[4], and agricultural supports In addition, in keeping with this year's report focuse on digital trade, the last subsection includes a description of digital trade inhibiting measures.

A. Import policies

1. Trade remedy legislation

a) Anti-dumping, countervailing duty orders

As of August 2, 2017, there are 27 anti-dumping duty (AD) orders in place against Latin American and Caribbean countries. These cases involve Argentina (1), Brazil (11), Chile (1), Mexico (12), Trinidad and Tobago (1), and Venezuela (1). The case listings may be found in Table 6. Of the 27 AD orders, 4 new orders were placed in 2016 and 2017 on Brazil (3) and Mexico (1); all previous AD orders remained in effect. Five countervailing duty (CD) orders are in place against Latin American and Caribbean countries as of August 2017 which affect Brazil and Mexico and are listed in Table 7.

[4] This year's report addresses new selected dispute settlement cases and updates on previous selected dispute settlement cases. For further background on previous dispute settlement cases and trade inhibiting measures, see ECLAC Washington report "United States Trade Developments 2015-2016, Trade Inhibiting Measures," at https://www.cepal.org/es/node/41812

Table 6
Anti-dumping duty orders affecting Latin America and the Caribbean

Country	Item	Doc #	Order Date	Continued
Argentina	Lemon Juice (suspended)	A-357-818	10/9/2007	7/8/2013
Brazil	Carbon Steel Wire Rod	A-351-832	29/10/2002	3/7/2014
	Uncoated Paper	A-351-842	5/3/2016	
	Pre-stressed Concrete Steel Wire Strand	A-351-837	28/01/2004	23/4/2015
	Iron Construction Castings	A-351-503	9/5/1986	6/1/2017
	Carbon Steel Butt-Weld Pipe Fittings	A-351-602	17/12/1986	23/8/2016
	Frozen Warm-Water Shrimp and Prawns	A-351-838	1/2/2005	29/04/2011
	Circular Welded Non-Alloy Steel Pipe	A-351-809	2/11/1992	17/07/2012
	Stainless Steel Bar	A-351-825	21/02/1995	9/8/2012
	Cold-Rolled Steel Flat Products	A-351-843	20/9/2016	
	Hot-Rolled Carbon Steel Flat Products	A-351-845	3/10/2016	
	Carbon and Alloy Steel Cut-to-Length Plate	A-351-847	26/01/2017	
Chile	Preserved Mushrooms	A-337-804	2/12/1998	2/9/2015
Mexico	Fresh Tomatoes (suspended)	A-201-820	1/11/1996	16/12/2002
	Carbon Steel Wire Rod	A-201-830	29/10/2002	7/3/2014
	Prestressed Concrete Steel Wire Strand	A-201-831	28/01/2004	23/4/2015
	Circular Welded Non-Alloy Steel Pipe	A-201-805	2/11/1992	17/07/2012
	Light-Walled Rectangular Pipe and Tube	A-201-836	5/8/2008	23/6/2014
	Magnesia Carbon Bricks	A-201-837	20/09/2010	12/2/2016
	Seamless Refined Copper Pipe and Tube	A-201-838	22/11/2010	21/12/2016
	Large Residential Washers	A-580-868	15/02/2013	
	Prestressed Concrete Steel Rail Tire Wire	A-201-843	24/06/2014	
	Steel Concrete Reinforcing Bar	A-201-844	6/11/2014	
	Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes	A-201-847	13/9/2016	
	Sugar (suspended)	A-201-845	23/9/2015	
Trinidad & Tobago	Carbon Steel Wire Rod	A-274-804	29/10/2002	3/7/2014
Venezuela (Republica Bolivariana de)	Silicomanganese	A-307-820	23/05/2002	2/10/2013

Source: ECLAC, based on data from United States International Trade Commission, Trade Remedy Investigations and USITC notices in the Federal Register, as of June 2017

Table 7
Countervailing duty orders affecting Latin America and the Caribbean

Country	Item	Doc #	Order Date	Continued
Brazil	Carbon Steel Wire Rod	C-351-833	22/10/2002	3/7/2014
	Heavy Iron Construction Castings	C- 351-504	15/05/1986	6/01/2017
	Cold-Rolled Steel Flat Products	C-351-844	20/09/2016	
	Hot-Rolled Carbon Steel Flat Products	C-351-846	3/10/2016	
Mexico	Sugar (Suspended)	C-201-846	23/09/2015	

Source: ECLAC, based on data from United States International Trade Commission, Trade Remedy Investigations and USITC notices in the Federal Register, as of June 2017

2. Special 301 report

As established on an annual basis by the Office of the United States Trade Representative (USTR), the "Special 301" report is a review of global state protection and enforcement of IPR. Countries may be categorized as "Priority Foreign Countries" or added to either the "Priority Watch List" or the "Watch List." This assessment takes into consideration each country's level of development, its international obligations and commitments, the concerns of rights holders and other interested parties, and the trade and investment policies of the United States. These issues then become the focus of bilateral and multilateral negotiations in an effort to improve the IPR regimes.[5]

Between the 2016 "Special 301" report and the 2017 "Special 301" report, no changes have been made with regard to Latin American and Caribbean countries. The following Latin American countries remain on the Priority Watch Lists: Argentina, Chile, and Venezuela. From the 2016 Watch List, the following Latin American and Caribbean countries remain on the 2017 Watch list: Barbados, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador Guatemala, Jamaica, Mexico, and Peru.

Honduras, which was not listed on the 2016 Special 301 Report, committed to implementing a series of measures to strengthen the protection and enforcement of Intellectual Property Rights in Honduras. The commitments were outlined in the Intellectual Property Work Plan for 2016 and focused on strengthening criminal IPR enforcement, combating the unauthorized rebroadcast of cable and satellite transmissions, clarifying the scope of protections for geographical indications (GIs) and developing a trademark recordation system to improve customs border enforcement.

The commitment to the initiative by the government of Honduras was reached in March 2016, after the United States carried out an out-of-cycle review of intellectual property protection in Honduras. In addition to the agreement, the government pledged a substantial increase in the number of prosecutors specializing in criminal IPR enforcement. The government also committed to publish quarterly reports on prosecution case activity in an effort to promote transparency throughout the implementation of the work plan. As of August 2, 2017, the government of Honduras has conducted investigations on illegal transmissions and as a result, it has accomplished one major cable provider to sign content licensing agreements with the U.S.

Link to USTR Intellectual Property Work Plan 2016:
https://ustr.gov/sites/default/files/IP-Work-Plan-Honduras-02292016-FINAL.pdf

[5] For more information about the "Special 301" Report, see https://ustr.gov/sites/default/files/301/2017%20Special%20301%20Report%20FINAL.PDF.

Listed below is the 2017 Special 301 list of Latin American and Caribbean countries on:

a) Priority Foreign Countries

Priority Foreign Countries are identified as having the strongest impact on the United States intellectual-property-related products and may, therefore, be subject to investigations under the "Section 301" provisions. There are no "Priority Foreign Countries" in Latin America or the Caribbean for the 2017 "Special 301" Report.

b) Priority Watch List

The Priority Watch List consists of 11 countries, 3 of which are from Latin American or Caribbean regions. These include Argentina, Chile, and Venezuela (Bol. Rep. of).

c) Watch List

The 2017 Watch List consists of 23 countries, 11 of which pertain to Latin American or Caribbean regions. For a full list of Latin American and Caribbean countries included on the 2017 Watch List, see Table 8.

Table 8
"Priority watch list and watch list"

Priority Watch List	Watch List
Argentina	Barbados
Chile	Bolivia (Plur. State. of)
Venezuela (Bol. Rep. of)	Brazil
	Colombia
	Costa Rica
	Dominican Republic
	Ecuador
	Guatemala
	Jamaica
	Mexico
	Peru

Source: USTR 2017 Special 301 Report.

B. Overview of selected United States dispute settlement cases involving Latin American and Caribbean countries

As of August 2017, the United States has brought 114 complaints to the WTO Dispute Settlement Body (DSB). No new dispute settlements have been created against countries from the Latin America and Caribbean region since the 2015-2016 ECLAC report. Of these 114 preexisting complaints, 17 complaints were made against Argentina (5), Brazil (4), Chile (1), Mexico (6) and Venezuela (1). Certain preexisting dispute settlements have continued, while others have been resolved or amended. An example of such advancement can be found in WTO Dispute DS381, "United States-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products." The dispute has been ongoing since it first originated in October 2008. The rules were published and announced by the National Oceanographic and Atmospheric Administration (NOAA).

Link to WTO case webpage:
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm

1. Mexico-United States sugar dispute

On April 17, 2014, the Department of Commerce initiated a countervailing duty investigation to determine whether manufacturers, producers, or exporters of sugar from Mexico receive countervailable subsidies. This after a petition filed by the American Sugar Coalition and its members, which include sugarcane farmers, millers, and refiners, sugar beet growers and processors. On August 25, 2014, the Department preliminary determined that countervailable subsidies were being provided to producers and exporters from Mexico, thereby harming the United States industry. These conclusions were confirmed in the final document published in October 2014.

On December 19, 2014, the Department suspended both the CVD and AD investigations. The basis for the CVD suspension was an agreement between the Department and the Government of Mexico, wherein Mexico agreed to restrict the volume of direct or indirect exports to the United States of sugar from all Mexican producers/exporters in order to eliminate completely the injurious effects of exports of this merchandise to the United States. The AD investigation was suspended after an agreement establishing a commitment by each signatory producer/exporter to revise its prices to eliminate completely the injurious effects of exports of the subject merchandise to the United States.

On December 5, 2016, the Department published its preliminary results of its administrative review of the CVD Agreement. In its *Preliminary Results,* the Department determined that there is some indication that certain individual transactions of subject merchandise may not be in compliance with the terms of the CVD Agreement, and further, that the CVD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 704(c) and (d) of the Act.

After a draft agreed in June 2017, a final agreement has been signed in July 2017 between the United States Department of Commerce and the Mexican sugar industry. The AD and CVD agreement include an increase of the price at which raw sugar must be sold from 22.5 cents/pound to 23 cents/pound, while the price of refined sugar price is being raised from 26 cents/pound up to 28 cents/pound. Furthermore, no more than 53 percent of Mexican exports could be of refined sugar.

The amendments define “Refined Sugar” as sugar at a polarity of 99.2 degrees and above, and “Other Sugar” as sugar at a polarity less than 99.2 degrees and shipped in bulk, freely flowing. This decreases the dividing line agreed in December 2014 from the 99.5 degrees.

Each amended agreement contains enhanced monitoring and enforcement provisions such as a requirement for polarity testing and stiff penalties for non-compliance. Mexico accepted the significant modifications above described on the condition that Mexico will continue to have free access to the U.S. sugar market and will be given priority in the event that the United States needs more sugar to be imported.

2. Colombian action plan related to labor rights

In 2011, Colombia, in conjunction with the United States, launched the Colombian Action Plan Related to Labor Rights in an effort to address serious labor concerns in the context of the United States-Colombia Trade Promotion Agreement (CTPA). Within the plan, Colombia committed to addressing issue areas such as violence against unionists, impunity for the perpetrators of such violence and protection of labor rights.

Recognizing the Action Plan’s five-year anniversary in April 2016, the USTR and the United States Department of Labor issued a report on the progress Colombia has made since the implementation of the Plan in 2011. The report indicated that Colombia has made “meaningful progress” with regard to a number of efforts outlined in the Action Plan. Such progress includes a significant decline in the use of fake worker cooperatives, a reduction in violence against labor unionists and a doubling of the number of labor inspector positions in Colombia’s Ministry of Labor. Additionally, the report noted that since the implementation of the Action Plan, 150,000 workers have joined or formed new unions in Colombia.

Despite this achieved progress, the report mentions that Colombia still faces challenges that must be addressed. For instance, although Colombia has witnessed a decline in the use of fake worker cooperatives, some forms of other illegal subcontracting have increased. Colombia has reportedly issued new regulations in response to this challenge, which target all forms of subcontracting rather than just cooperatives. The USTR, the United States Department of Labor and the United States Department of State have worked collectively with Colombia to correct these challenges. Additionally, in 2015, the United States Department of Labor stationed a labor attaché at the United States Embassy in Bogota to continue efforts on the ground.

On 11 January 2017, the U.S. Department of Labor's Office of Trade and Labor Affairs published a report in response to a submission filed under the CTPA by the AFL-CIO and five Colombian workers' organizations. The findings stated that although Colombia has improved in the past several years it also expressed concern on 5 key areas: Labor Law Inspection and Enforcement, Subcontracting, Collective Pacts, Lack of Prosecutions in Cases of Threat and Violence Against Unionists, and the Enforcement of Criminal Code 200. The report found concern in Colombia's Labor Inspectorate and their lack of capacity to have a national management system, confusing inspection process and the lack of implementation and application of fees to employers who violate a worker's right to join work unions. The report initiated a nine month period where both parties can come together for consultations and discuss the next steps of the plan. The participation and willingness of the Government of Colombia will ultimately determine what happens next and if the consultations do not work the issue could move to a dispute settlement but that is deemed highly unlikely. As of August 2017, the two governments have not met for consultations.

Link to USTR five-year progress report:
https://ustr.gov/sites/default/files/2016-Colombia-Action-Plan-Report.pdf

Link to USTR 2017 report:
https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02_Final.pdf

3. Peru's timber verification

On 26 February 2016, the USTR requested the government of Peru to verify the legality of a 2015 timber shipment that entered the United States. Specifically, the shipment corresponds to Inversiones La Oroza SRL, which departed Iquitos, Peru, and arrived in the United States port of Houston, Texas, around 20 January 2015. This is the first such verification request under the United States-Peru Trade Promotion Agreement (PTPA), enforced on 1 February 2009. The verification process deployed would monitor exporters and supplying producers with regard to the compliance of laws, regulations and other measures of Peru.

On November 3-4, 2016, the Governments of Peru and the United States held meetings which concerned the implementation of the environmental provisions of the U.S.-Peru Trade Promotion Agreement, including the Annex on Forest Sector Governance of the TPA, and the environmental cooperation matters under the United States- Peru Environmental Cooperation Agreement. The Peruvian government announced plans to make improvements in their transparency tools by making records available online in order to track sanctions and titles. They also announced their plans to: re-write export documentation requirements, implement measures to promote legal trade of timber, set up efficient systems which would allow regional governments to transfer annual operating plans to appropriate authorities and determine the responsibilities of those in the timber shipment process in order to verify compliance and enforce sanctions.

The United States and Peru have a record of engagement to monitor the enforcement of obligations under the PTPA Environment Chapter and Forest Annex. Since 2009, the United States provided over US$ 90 million in capacity building funds to support Peru's environmental challenges and obligations. Furthermore, the United States and Environmental Cooperation Agreement (ECA) programme agreed to continue with technical assistance for Peru, including the development of an

electronic timber tracking system that tracks timber from stump to port in an effort to ensure legality throughout the timber supply chain.

While the verification process efforts are welcome, there are concerns on whether such actions are both shallow and late. In April 2012, the Environmental Investigation Agency (EIA) and the Center for International Environmental Law (CIEL) asked the USTR to verify the legal shipment origins of two Peruvian companies. On 29 May 2012, labor unions and environmental organizations also expressed their concerns with regard to the continued systematic illegal logging in Peru and the unlawful United States-Peru timber trade. However, the USTR declined to take enforcement action to address trade law violations.

In 2006, the World Bank estimated that the illegal logging sector in Peru generated between US$ 44.5 and US$ 72 million annually. In October 2015, Peru’s forestry supervision agency found that only 6.25% of 144 surveyed logging operations did not present evidence of unlawful forestry activities, while 93.75% of the cases did present indications of illegal logging and export.

Link to USTR Request Letter to Peru:

https://ustr.gov/sites/default/files/Request-Letter-to-Peru-02262016.pdf

Link to USTR press release: https://ustr.gov/about-us/policy-offices/press-office/blog/2015/june/united-states-and-peru-continue-action

Link to 2016 USTR Statement**:** https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/november/joint-statement-meetings-peru-us#

4. United States-Brazil beef trade agreement

On 1 August 2016, the USDA settled with Brazil's Ministry of Agriculture, Livestock and Food Supply regarding the access for United States beef and beef products to Brazil’s market for the first time in 13 years. “Brazil's action reflects the United States' negligible risk classification for bovine spongiform encephalopathy (BSE) by the World Organization for Animal Health (OIE) and aligns Brazil's regulations to the OIE's scientific international animal health guidelines,” the USDA press release stated.

"After many years of diligently working to regain access to the Brazilian market,” United States Agriculture Secretary said, “the United States welcomes the news that Brazil has removed all barriers to United States beef and beef product exports." With more than 200 million consumers in Brazil and an expanding middle class, the Secretary recognizes a long-term opportunity for United States beef and beef products exports.

USDA's Food Safety and Inspection Service (FSIS) also determined that the food safety system of Brazil for overseeing meat production is equivalent to that of the United States and that Brazil’s fresh (chilled or frozen) beef can be safely imported.

Although the USDA and FSIS welcomed beef trade negotiations with Brazil, not all United States cattle producers find the agreement reasonable.

On March 22, 2017, the USDA’S Food and Inspection Service (FSIS) announced that they would take extra measures when it came to inspecting Brazilian beef after it was discovered that Brazilian officials had accepted bribes to ship tainted meat. While it was said that tainted meat never reached the U.S. the FSIS actively implemented tests on all Brazilian meat at their point of entry.

On 22 June 2017, the U.S. Secretary of Agriculture announced a full suspension on all imports of fresh beef from Brazil due to recurring complaints and concerns over the quality of the meat. Since the USDA started to inspect Brazilian beef, the Food Safety and Inspection Service refused entry to 11% of

Brazilian beef meanwhile the rest of the world only has a 1% rejection rate. As of August 3, 2017, the ban is still in effect.

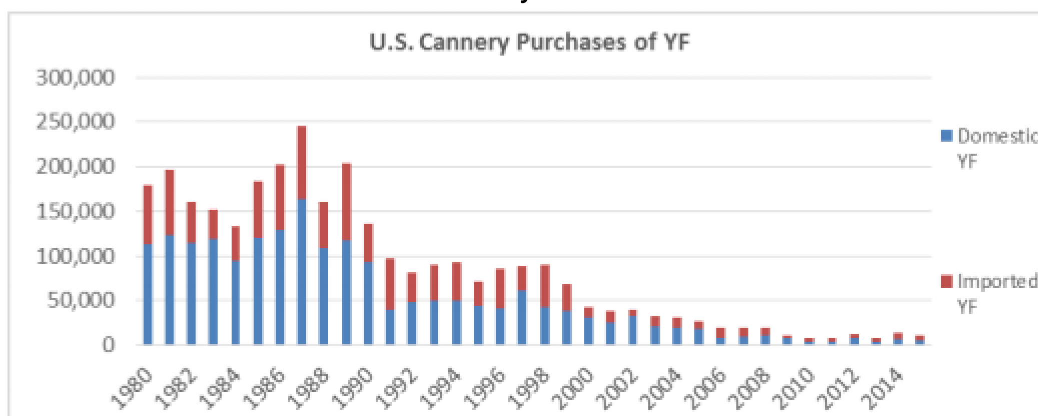
Link to USDA news releases:
http://www.usda.gov/wps/portal/usda/usdahome?contentid=2016/08/0175.xml&contentidonly=true
https://www.usda.gov/media/press-releases/2017/03/22/usda-tainted-brazilian-meat-none-has-entered-us-100-percent-re
https://www.usda.gov/media/press-releases/2017/06/22/perdue-usda-halting-import-fresh-brazilian-beef
Link to R-CALF USA news release:
http://www.r-calfusa.com/r-calf-usa-usdas-action-to-allow-raw-brazilian-beef-imports-is-purely-political-and-terribly-reckless/

5. U.S.- Mexico Tuna Label Dispute

The United States enacted a labeling rule in the 1990s against fishermen's hunting practices in order to protect the dolphin population. Many fishermen utilized nets in order to catch tuna and as a result many dolphins were being trapped and killed. So, the labels were created to distinguish manufacturers who caused no harm to the dolphins. On October 24th, 2008 Mexico raised a complaint to the World Trade Organization (WTO) in which they claimed that they were being denied the label even though they had lowered their dolphin casualties below the international level. Mexico believed that they were being heavily scrutinized when compared to other countries. According to them, they have independent observers who can verify that extra measures have been taken in order to protect the lives of dolphins; meanwhile, other countries are allowed to verify their own process without any outside regulation. As a result of being denied a label and therefore access to the U.S. market, Mexico claimed this was causing millions in damages. The United States has counter-argued and has stated that they have not targeted Mexico specifically and that any decline in tuna demand is just a coincidence and not a direct result of the label requirement. The following graphs show the amounts of imported tuna over several decades, in which it is shown that there has been a decline in imported tuna since the 2000s. The United States has argued that this is due to a lack of consumer demand and not the labeling requirements.

Table 9

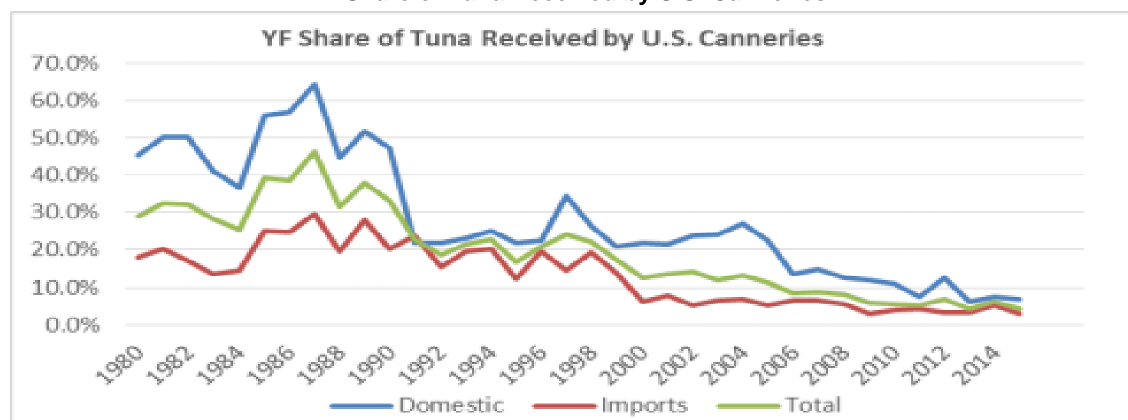
U.S. Cannery Purchases of YF



Source: United States- Measures Concerning the Importation, Marketing and Sales of Tuna and Tuna Products . World Trade Organization, 25 Apr. 2017

Table 10

YF Share of Tuna Received by U.S. Canneries



Source: United States- Measures Concerning the Importation, Marketing and Sales of Tuna and Tuna Products . World Trade Organization, 25 Apr. 2017.

In 2011, the WTO ruled in favor of the United States and found the labels to be legitimate but also very restrictive and hard to attain. The Administration appealed the ruling and on May 2012 they found that the labeling requirements were impeding trade due to their excessive requirements. The WTO gave the U.S. until July 13, 2013 to abide by the ruling and modify their rules. As a result, the U.S. modified the rules and Mexico asked for a compliance panel. In April 2015, the panel found that the modifications to the labeling requirements unfairly targeted Mexico's fishing industry and in November 2015 the WTO found that the requirements were greater than what was required at the international level. In March 2016, Mexico announced that it would be asking for $472.3 million in damages from the United States, and several days later the U.S. announced that it would be expanding the labeling requirements to all the countries which it conducts tuna trade with. In April 2017, the WTO concluded that Mexico had suffered damages and ruled that Mexico had a right to claim damages totaling no more than $163.23 million. But, the WTO did not take into account the rule change that took place in March 2016 so they are expected to re-evaluate and come to a decision in mid-July 2017.

As of August 4, 2017 there have been no updates on this trade dispute.

Link to Congressional Research Service Report:

https://fas.org/sgp/crs/row/RL32934.pdf
Links to WTO reports:

https://www.wto.org/english/tratop_e/dispu_e/381arb_e.pdf
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm

6. U.S. - Brazil Steel Trade

Petitions to review steel imports from Brazil, China, India, Japan, Korea, Netherlands, Russia and the United Kingdom were commissioned on July 28, 2015 by five U.S. steel producers. U.S. producers believed that the products were being sold at cheaper prices than U.S. products and therefore called for an investigation into the matter. The investigation was conducted by the U.S. International Trade Commission and under the Tariff Act Section 771 (24), imports are deemed negligible if they total less than 3% for a period of 12months, but Brazil was above the limit so on September 2, 2016, the United States International Trade Commission found that Brazil was indeed causing harm to the US steel industry and therefore the Department of Commerce issued antidumping and countervailing duty orders against Brazil.

Table 11

Cold-rolled steel: Instances of underselling/overselling and the range and average of margins excluding Russia, by country, January 2013 through December 2015

	Underselling				
Source	Number of quarters	Quantity (short tons)	Average margin (percent)	Margin Range (percent)	
				Min	Max
Brazil	20	...	...	...	...
China	27	...	...	...	...
India	17	...	...	...	...
Japan	1	...	...	...	...
Korea	35	...	...	...	...
United Kingdom	8	...	...	...	...
Total, underselling	108	1,011,055	10.5	0.1	36.8

Source: Comly, Nathanael, et al. "Cold-Rolled Steel Flat Products from Brazil, India, Korea, Russia, and the United Kingdom." *U.S. International Trade Commission* , U.S. International Trade Commission , Sept. 2016.

The International Trade Commission set the antidumping margins at 14.43 percent for Companhia Siderurgica Nacional (CSN), 35.43% for Usinas Siderurgicas de Minas Gerais (USIMINAS) and 14.43% for all other Brazilian steel companies. Brazil filed a petition to the World Trade Organization on the 11th of November, 2016 and the WTO found that the USITC reached a conclusion unfairly. According to the WTO, the United States established countervailing duties without looking at the data that Brazil had provided. The WTO found that the disregard of Brazilian information resulted in inaccurate benchmark numbers and ultimately caused an over-estimation of the subsidy benefits that Brazil was receiving. The WTO ruled that the United States acted without enough information and ultimately violated the Subsidies and Countervailing Measures and the Article VI of the General Agreement on Tariffs and Trade. The United States was expected to respond and renegotiate the measures once the new presidential administration took office but to this day the anti-dumping and countervailing measures are still in place.

Link to USITC Publication 4637:

https://www.usitc.gov/publications/701_731/pub4637_1.pdf

Link to WTO Publication:

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=232774&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

C. Agricultural supports

The USDA supports various programmes to aid the creation, expansion and maintenance of long-term export markets for United States agricultural products.

The USDA's total outlays for 2017 are estimated at US$ 151 billion. Roughly 83% of outlays, about US$ 126 billion, are associated with mandatory programmes that provide services as required by law. The Foreign Agricultural Service (FAS) carries out a variety of programmes that are designed to facilitate access to international markets. The FAS also carries out activities that promote productive

agricultural systems in developing countries and contribute to increased trade and enhanced global food security. The FAS supports market-development programmes as well as export programmes.

1.Market-development programs

The FAS administers several programmes in partnership with private-sector organizations in order to develop, maintain and expand commercial export markets for United States agricultural products. The budget for fiscal year 2017 is about US$ 305 million.

Regarding financial support for these programmes, the Farm Service Agency (FSA) supports the Commodity Credit Corporation (CCC), which provides funding not only for commodity programmes administered by the FSA but all the export programmes administered by the FAS. CCC borrows funds needed to finance these programmes from the United States Treasury and repays the borrowings, with interest, from receipts and appropriations provided by Congress. These programmes facilitate buyers in countries where credit is necessary to maintain or increase United States sales.

Opportunities to apply for these programmes are announced in the Federal Register and on the FAS website.

a) Foreign market-development programme

The Foreign Market Development (Cooperator) Programme supports and expands foreign markets for United States commodity and agricultural products. The programme uses funds from the CCC and partially reimburses cooperators to strengthen market development activities and increase market share. Producers of United States agricultural products, except tobacco, including those associated with small-volume export commodities, participate in efforts to build export markets. Preference is given to nonprofit United States agricultural and trade organizations that represent an entire industry or are nationwide in membership and scope.

The programme provides cost-share assistance to nonprofit commodity and agricultural trade associations to support overseas market development activities that are designed to support United States trade. These activities include technical assistance, trade servicing, and market research. A minimum of US$ 34.5 million at the programme level for the Cooperator Programme is provided by the CCC.

b) Market-access programme

The Market-Access Programme (MAP) uses funds from the CCC to reimburse participating organizations for a portion of the cost of carrying out overseas marketing and promotional activities, such as consumer promotions. The MAP creates a partnership between nonprofit United States agricultural trade associations, nonprofit United States agricultural cooperatives, nonprofit state-regional trade groups and small businesses.

Included in the MAP is a brand promotion component that provides export promotion funding to 600-800 small companies annually, thereby contributing to the National Export Initiative goal of expanding the number of small- and medium-sized entities that export. The budget provides US$ 200million at the programme level for MAP in 2017, the same amount as provided in 2016 (USDA, 2016).

c) Quality samples programme

The Quality Samples Program (QSP) is designed to encourage the development and expansion of export markets for United States agricultural products. The programme, funded by the CCC, ensures that United States agricultural trade organizations are reimbursed for the price of the sample purchase, the domestic transportation cost to the exportation port and to the foreign port or point of entry only. In addition to helping importers overcome trade and marketing obstacles, the QSP promotes foreign understanding and appreciation of United States agricultural products by providing information to a targeted audience about quality and use of the United States goods.

The programme is carried out under the CCC Charter Act, which provides foreign importers with a better understanding of United States agricultural products. The budget includes US$ 2.5 million of funding for the programme in 2017 (USDA, 2016).

d) Emerging markets programme

The Emerging Markets Programme (EMP) promotes United States agricultural exports with CCC funding for technical assistance activities that address technical barriers to trade in emerging markets.

Examples of such technical assistance include feasibility studies, market research, industry-sector assessments, workshops and specialized training. The programme is funded on a case-by-case basis and only supports exports of generic products; it is approved by the Food, Agriculture, Conservation and Trade Act of 1990. The budget provides a US$ 10 million at the programme level for EMP in 2017.

An emerging market is defined as a country that is progressing towards a market-oriented economy that can provide a feasible market for the United States. An emerging market country has a per capita income level below the level for upper middle-income countries as determined by the World Bank, as well as a population of 1 million or greater (Government Publishing Office, 2015).

e) Technical assistance for specialty crops programme

The motive of the Technical Assistance for Specialty Crops (TASC) Programme is to eliminate unique trade barriers that may hinder the exportation of United States specialty crops or all plant products produced in the United States. Specialty crops do not include wheat, field grains, oilseeds, cotton, rice, peanuts, sugar, or tobacco. The programme awards grants to United States organizations to help them undertake measures to overcome sanitary, phytosanitary and technical trade barriers, including grants for seminars, study tours, pest and disease research and field surveys. The maximum award is for US$ 500,000 per year for projects continuing up to five years. The CCC baseline provides a US$ 9 million at the programme level for TASC (USDA, 2016).

f) Borlaug Fellowship Program

The Borlaug International Agricultural Science and Technology Fellowship Program advocates food security and economic growth in developing and middle-income countries by providing fellows an opportunity to work with a mentor in the U.S. The program usually lasts an average of 8-12 weeks and topics covered under the program have included topics like agronomy, nutrition, food safety, and agricultural economics. Participants are usually scientists, researchers, or policymakers and upon completion of their program in the United States, the U.S. mentor will visit the home country of the participating fellow in order to continue collaboration.

g) Cochran Fellowship Program

The Cochran Fellowship Program provides short-term training opportunities to agricultural professionals from eligible countries. The goals of the program are to help develop agricultural systems in order to meet food and fiber needs in the respective countries and to strengthen trade relations with the United States. The program selects participants from middle-income countries and brings them to the United States for 2-3 weeks in order to work alongside U.S. universities, government agencies and private companies. The program was created in 1984 and to date has trained 17,500 individuals from 125 countries.

2. Export programs and commercial export financing

The FAS uses CCC funds to support emerging markets and improve the competitiveness of United States agricultural products in foreign markets. The funds are administered as credit guarantees and are used to increase trade in areas that would otherwise not be able to import United States products.

a) Export credit guarantee programme

The GSM-102 provides credit to foreign buyers with the objective of maintaining or increasing United States sales in countries where financing may not be available. Under the programme administered by the CCC, United States private banks guarantee funds to approved foreign banks in dollar-denominated letters of credit, for use in the purchase of United States agricultural products and foodstuffs. Of the US$ 5.5 billion allocated to Export Credit Guarantees for 2016, US$ 5.4 billion will be made available throughout the GSM-102 programme, which provides guarantees on commercial export credit extended with short-term repayment terms of 18 months. The remaining part of the US$ 5.5 billion will be used for facility financing guarantees.

b) Facility Guarantee Program

The Facility Guarantee program was created in order to boost sales of U.S. agricultural exports in countries where demand may be affected by inadequate handling or distribution. The program grants credit to eligible countries in order to improve or establish agriculture facilities in developing markets.

Table 12
Export credit guarantee program activity for GSM-102
Allocation and application for coverage fiscal year 2016
(In millions of dollars)

Caribbean	**183.9**
Rice	65.9
Soybean Hull Pellets	0.4
Soybean Meal	42.7
Soybean Oil	42.5
Yellow Corn	32.2
Central America	**354.4**
Dist. Dry Grain	4.4
Pork Meat	
Rice	21.3
Soybean Meal	124.7
Soybean Oil	7.2
Soybeans	27.5
Wheat	14
White Corn	81
Yellow Corn	143.5
Mexico	**250.3**
Dist. Dry Gain	2.6
Soybeans	292.2
Wheat	22.9
Yellow Corn	173.5
South America	**600.2**
Dist. Dry Grain	3.2
Rice	15.1
Soybean Meal	135.1
Soybean Oil	40.4
Soybeans	31.9
Wheat	63.7
Yellow Corn	298.9
Total (Latin American Region)	**1,388.8**

Source: USDA “Summary of Export Credit Programme FY 2016
Notes: As of July 2017

3. Sugar import programme

Sugar imports from Latin America and the Caribbean enter the United States under one of two categories: raw cane sugar or sugar and sugar-containing products. Every fiscal year, the USTR announces the country-specific in-quota allocations for raw cane sugar and refined sugar. As stated in the Harmonized Tariff Schedule of the USTR, the 2017 fiscal year Tariff-Rate Quota (TRQ) for raw cane sugar was set at 1,117,195 metric tons raw value (MTRV) and 162,000 MTRV for refined sugar.

Should the Secretary of Agriculture determine that domestic demand for sugar exceeds these allocations, the quotas may be overruled. Such reallocations and quota increases are considered modest increases and do not have a significant impact on high sugar prices in the United States.

a) Raw cane sugar

On July 2017, the USTR announced country-specific reallocations for fiscal year 2017 of 86,495 MTRV of the original TRQ for raw cane sugar that will not be able to fill previously allocated fiscal year 2017 WTO raw sugar TRQ quantities. Of the 86,495 MTRV reallocations, 49,443 MTRV are from Latin American or Caribbean countries.

For a complete list of Latin American countries and allocations, see table 17 regarding United States raw cane sugar TRQ allocations and usage.

Table 13
United States raw cane SUGAR TRQ allocations and usage
(In metric tons)

Country	Original TRQ Allocation	FY 2016 Allocation: 11/16/2016	Quantity Entered (to date: May 2017)	Allocation Filled (%)	Original TRQ Allocation	Quantity Entered (to date: Jul-2017)	FY 2017 Allocation Filled (%)
Argentina	45,281	55,324	55,324	100	45,281	42,929	94.81%
Barbados	7,371	7,333	7,333	100	7,371	6,007	81.50%
Belize	11,584	14,154	14,154	100	11,584	5,500	47.48%
Bolivia(Plu. State)	8,424	0	0	0	8,424	0	0.00%
Brazil	152,691	186,556	186,556	100	152,691	152,691	100%
Colombia	25,273	30,878	24,425	79	25,273	17,265	68.31%
Costa Rica	15,796	19,299	18,619	96	15,796	15,782	99.91%
Dominican Republic	185,335	216,232	185,867	86	185,335	180,736	97.52%
Ecuador	11,584	14,154	14,142	100	11,584	11,528	99.52%
El Salvador	27,379	33,451	33,364	100	27,379	27,373	99.98%
Guatemala	50,546	61,757	60,965	99	50,546	37,760	74.70%
Guyana	12,636	15,439	15,439	100	12,636	12,636	100%
Haiti	7,258	0	0	0	7,258	0	0%
Honduras	10,530	12,865	11,440	89	10,530	5,069	48.14%
Jamaica	11,584	14,154	11,750	83	11,584	7,489	64.65%
Mexico	7,258	7,258	0	0	0	0	0%
Nicaragua	22,114	27,019	27,019	100	22,114	22,114	100%
Panama	30,538	37,311	37,311	100	30,538	28,052	91.86%
Paraguay	7,258	7,258	7,245	100	7,258	1,821	25.09%
Peru	43,175	52,750	52,591	100	43,175	29,828	69.09%
St. Kitts and Nevis	7,258	0	0	0	7,258	0	0%
Trinidad & Tobago	7,371	0	0	0	7,371	0	0%
Uruguay	7,258	0	0	0	7,258	0	0%
All LAC sugar under TRQs	**715,502**	**813,192**	**763,544**	**107**	**708,244**	**604,580**	**85.36**

Source: United States Customs and Border Protection, Office of the United States Trade Representative, Weekly Commodity Status Report on USDA, Economic Research Service, Sugar and Sweeteners: Recommended Data. Table 57f and 57g, as of 4 August 2017. Note: The USTR often makes adjustments to the TRQ allocations. Table V.8 shows the original and final raw cane sugar Tariff Rate Quota (TRQ) allocations, the quantity entered and the percentage of allocations filled for fiscal years 2016 and 2017.

D. Digital trade inhibiting measures

Digital trade is interwoven with all sectors of the economy and therefore, the regulation of digital trade requires balancing many different objectives. For example, digital trade relies on open cross-border data flows, but policymakers must balance open data flows with protecting privacy and enhancing national security. (Fefer et al, 2017).
Many types of regulatory and policy measures can act as digital trade inhibitors. Most experts classify these measures in two broad categories:

1. Traditional market access and investment measures that affect providers of digital goods and services, and
2. Digital-specific measures

1. Traditional market access and investment measures that affect providers of digital goods and services

Market access barriers such as tariffs imposed on imported goods used to create ICT infrastructure that make digital trade possible or on the products that allow users to connect. The U.S. is a major exporter and importer of ICT goods; however tariffs are not levied on many of the products due to free trade agreements and the World Trade Organization Information Technology Agreement. (Fefer et al, 2017). Several countries have "de minimis" obligations for e-commerce --the requirement that exporters must pay duties and taxes if the value of a shipment is above a certain threshold value. In Brazil, for instance, shipments under US$50 are duty-free if using the postal service; but if using express delivery they are subject to duties (USITC, 2013).

Other market access barriers, however, may limit firms' ability to sell digital products across borders. These include government procurement and discriminatory technical standards. For example, in general, a Brazilian government agency may contract services to a foreign firm only if the service cannot be provided by a Brazilian firm. An example of a national standard that inhibits digital trade is an ICT product that conforms to international standards that may not be able to connect to a local network or device based on a local or proprietary standard. Also, proprietary standards can limit a firms' ability to serve a market if their company practices or assets do not conform to those standards. For example, news aggregation fees in several EU member states that requires news aggregators, which provide snippets of text from other news sources, to remunerate those other sources for use of the snippets. These measures serve as an arbitrary tax on firms that help drive traffic to publishing sites, thereby increasing viewership and revenue—a valuable service.(NTE 2016, USTR fact sheet).

Also, investment restrictions can prevent companies from establishing commercial presence. They include joint venture requirements, local content requirements and discriminatory licensing, taxes, and fees.

2. Digital-specific measures often encompass laws and/or regulations that discriminate and/or obstruct the free flow of digital trade.

Following is a description of the best known barriers for digital trade.

- **Data localization** refers to measures that require companies to conduct certain digital trade related activities within a country's borders and include the requirement that data servers be located in-country. For example, Russian law requires that certain data collected electronically by companies on Russian citizens be processed and stored in Russia. For many U.S. companies, ensuring local storage and processing is either technically or economically infeasible, forcing them to operate with significant legal uncertainty.(NTE 2016 USTR fact sheet). Another example is the data localization requirement of Indonesian regulations that require providers of a "public service" to establish local data centers and

disaster recovery centers in Indonesia, and define the term "public service" broadly and vaguely. (NTE 2016 USTR fact sheet)

- **Intellectual Property Rights (IPR)-related barriers**. IPR enforcement in the digital environment raises particular challenges. The Internet and digital technologies have opened up markets for international trade. At the same time, the Internet provides "ease of conducting commerce through unverified vendors, inability for consumers to inspect goods prior to purchase, and deceptive marketing." (citation) Innovation in digital technologies also fuel IPR infringement by enabling the rapid duplication and distribution of content that is low-cost and high-quality, making it easy, for instance, to pirate music, movies, software, and other copyrighted works and to share them globally. In addition, online intermediaries also face barriers to trade over unpredictable legal frameworks in foreign countries regarding liability for IPR infringing or illegal content transmitted over their systems.
- **Data privacy and protection measures** can hold back digital trade because they increase administrative costs associated with complying with stricter privacy measures that differ from U.S. standards.
- **Cybersecurity measures** protect ICT systems and their contents from cyber attacks but they usually limit data flows. They include source code disclosure requirements to ensure that imported digital products do not pose threats to national security and restrictions to cryptography.
- "Net neutrality rules that govern the management of Internet traffic as it passes over broadband Internet access services (BIAS), whether those services are fixed or wireless. In contrast to China, in the U.S., the Federal Communications Commission (FCC) rules ban the blocking of legal content, forbid paid prioritization of content for consideration or to benefit an affiliate, and prohibit the throttling of legal content by BIAS provider. In the EU, however, the Telecoms Single Market legislation allows providers to offer a zero rating and have discretion on managing traffic during times of network congestion, subject to regulator's approval. As a result, each end user's access may be subject to the preferences and decisions of a telecom supplier." CRS R44565 p. 19
- Censorship measures: filtering, blocking, and net neutrality
- Arbitrary blocking of Cross-border data flows in China: For over a decade, China's filtering of cross-border internet traffic has posed a significant burden to foreign suppliers, hurting both Internet services and users who often depend on them for their business. .(NTE 2016 USTR fact sheet)

In the last couple of years, the annual USTR report on foreign trade barriers highlighted the growing and evolving trade using or enabled by information and communications technology and, for some countries, a special section on barriers to digital trade is included. The section highlights barriers such as restrictions and other discriminatory practices affecting cross-border data flows, digital products, Internet-enabled services, and other restrictive technology requirements. In the Americas, only Brazil and Canada have this dedicated section.

Table 14
Digital trade barriers in the Americas

	Brazil	Canada
Data Localization	--Data localization was not addressed in Brazil's landmark 2014 legislation regulating the Internet (*Marco Civil*) --Data localization legislation that would regulate cross border data flows and storage requirements is now being considered --Legislators are debating proposals based on current EU regulations and are soliciting advice from the U.S. and tech industry A vote on the legislation is expected mid-2017	--Contracts for a major IT consolidation project by the Canadian government require that the contracted company keep data within Canada --This effectively prohibits U.S.-based cloud computing suppliers and may have wider effects for U.S. companies procuring Canadian government contracts on IT projects --Sub-federal governments have similar laws, that require that personal information held by the government be stored within Canada
Technology/Source Code	--A 2013 Presidential decree required government agencies to procure email, file sharing, teleconferencing, and VoIP services from a Brazilian public entity --Additional regulations also require auditing of government contractors' systems and source code --The government has announced its intention to revise these regulations but has yet to issue any revisions	
Internet Services Liability	--Since the passage of *Marco Civil*, there has been discussion of proposed amendments to force online companies to assume liability for user communications/publications --The only proposal to advance significantly in the legislature is an amendment to allow the judiciary to block sites/apps in order to deter cybercrime. --Messaging apps would be exempt	

Source: Elaborated by ECLAC on the basis of NTE, 2016

Barriers to trade in telecommunications services and goods can have outsized effects beyond the telecommunications sector because a large and growing segment of international trade is conducted digitally or otherwise depends on high quality telecommunications.

The following table summarizes the main issues found in the Americas with respect to barriers in the telecommunications sector.

Table 15
Barriers to trade in the telecommunications sector in the Americas

	Issue within the Industry	Barriers	Examples
Spectrum Allocation	Because bands on the electromagnetic spectrum have finite capacity, certain governments use an auction system to sell the rights (licenses) to transmit signals over specific bands	--Governments can require that in order to bid, service providers use a certain amount of domestic infrastructure, software, or meet other domestic safeguard mechanisms --Governments can require certain technical standards that discriminate against small or new market entrants	--**Brazil** requires firms ensure 50% of infrastructure to provide service be of Brazilian origin in order to bid --**Colombia** has delayed publishing auction rules for the allocation of 700 MHz spectrum over concerns small providers would be unfairly discriminated --USTR has expressed concern that the **Dominican Republic** does not carry out spectrum allocation in a timely, objective, transparent manner
Mutual Recognition of Conformity Assessment	For both telecommunication equipment/infrastructure and products (e.g. mobile phones), trading partners can agree to mutually recognized, independent technical and safety standards in order to facilitate trade/FDI	If countries refuse to join mutual recognition agreements, are slow to implement them, or design bilateral MRAs to favor their own domestic firms, importing equipment becomes more costly and inefficient	--**Brazil** has yet to sign the Inter American Telecommunication Commission MRA, meaning that that U.S. manufacturers and exporters present virtually all telecoms products and equipment to Brazilian testing centers before they can be placed on the market --**Mexico** and the U.S. signed a bilateral MRA regarding telecommunications equipment in 2011, however the Mexican government required several years to establish and implement relevant procedures, hampering U.S. exports
Roaming Arrangements	Roaming arrangements between large service providers and smaller/newer competitors are critical for new entrants because they rely on roaming to supplement their network during their build-out phase, in order to offer a commercially viable service	If a country's regulators do not stringently police the technical and financial aspects of roaming arrangements, new/small providers can effectively be blocked from expanding	--In **Colombia**, the telecom regulatory authority has proposed wholesale revision of rules regarding data and voice roaming services; it is unclear they will allow for fair roaming arrangements --USTR has indicated **Dominican Republic** has not lived up to its commitments under CAFTA-DR regarding roaming arrangements
State Owned Enterprises/Monopolies	The telecommunications sector was one of the first sectors widely privatized during the wave of liberalization in the region in the 1990s. During the wave of privatization	--SOEs can lead to anticompetitive rules and regulations --In the telecom sector, access and development depend heavily on willingness to take risk	--**Nicaragua** is currently debating legislation that would create an SOE which all state entities would be required to use for broadband service --The Corporación Nacional de Telecomunicaciones, an SOE in

	however, regulators were weak and lacked experience in enforcing regulations, which in turn led to firms that were private, yet almost monopolies due to their market share[6]	and sufficient capital to invest in new infrastructure, which SOEs usually lack relative to private firms --Monopolies or quasi-monopolies can effectively avoid regulations, especially when it comes to rate setting	**Ecuador** receives exemptions from certain license fees and taxes that its private sector competitors do not --Despite significant reforms in **Mexico**, the traditional power, America Movil, still controls almost 70% of mobile and landline market share, allowing it to set prices and evade regulations
Taxes	Taxation of telecom services and devices can take a wide variety of forms and levels, including taxes on operators (which affect investment and market entry) and on consumers (both activating service and ongoing usage)	--Burdensome taxation can limit investment in the telecom sector by reducing post-tax returns on investment, and by reducing the amount of capital available to operators for investment in network roll-out and upgrades. --Tax mechanisms to safeguard domestic operators can make the sector less competitive by excluding foreign firms from market entry	-- **El Salvador** recently passed a 5% tax on internet and telecom services, which is currently under judicial review --**Ecuador** progressively taxes the revenue of telecoms companies with large market share (0.5% for 30% market share up to 9% for 75% market share) --Proposed legislation in **Nicaragua** would introduce a new tax ISPs --**Brazil** provides tax exemptions for the development and build-out of telecommunications broadband networks that utilize locally developed products and investments under REPNBL-Redes tax scheme
Sub-national regulation	Central government and municipal government institutions may have different mechanisms of approval or enforcing regulation, when it comes to permitting construction of infrastructure needed to expand voice and data service.	Differing regulatory frameworks amongst different state or municipal authorities can limit investment by telecom providers, especially in rural and low-density areas.	--In **Costa Rica**, U.S. firms have complained about reluctance of municipal governments to approve cell towers for mobile service --Permits to install telecom technology in **Mexico**, must be obtained at the municipal level, where standards and transparency vary widely. National government is working to adopt a voluntary national framework

Source: Elaborated by ECLAC on the basis of NTE 2016

[6] See: Casanova, Lourdes and Samantha Rullan. "What Is the Future of Telecommunications in Latin America" *World Economic Forum*. 13 June 2016. Available at : https://www.weforum.org/agenda/2016/06/has-telecom-privatization-in-latin-america-been-a-success/

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