United Nations
Economic
Commission for
Latin America and
the Caribbean

ECLAC WASHINGTON
Office

LC/WAS/L.71

Access of Latin American and Caribbean Exports to the U.S. Market 2003-2004

UNITED NATIONS

CEPAL
ECLAC

Washington, D.C. November 2004

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I. Introduction

The trade relationship between the United States and Latin America and the Caribbean has grown over the past years to the benefit of both economies. As well, important efforts have taken place in pursuit of free trade. In 2003, the Chile–U.S. free trade agreement was completed and approved by Congress; Central America and the U.S. concluded negotiations (CAFTA) and in 2004 the Dominican Republic was added to the CAFTA; the U.S. also started negotiations with four Andean countries and Panama.

This report needs to be placed in the context of an ongoing trading relationship. It is expected to contribute to transparency and the elimination of obstacles to the free flow of trade in the Americas.

The classification of trade inhibiting measures follows the definition used in the U.S. Trade Representative's (USTR) yearly publication National Trade Estimate Report on Foreign Trade Barriers. Based on this structure, the report focuses on the three areas of greatest relevance for Latin America and the Caribbean:

- Imports Policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, customs barriers).
- Standards, testing, labeling and certification (e.g., unnecessarily restrictive application of phytosanitary standards).
- Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace other foreign exports in third country markets).

II. Import Policies

1. Tariffs

In 2003, almost 85% of all U.S. imports from Latin America and the Caribbean (LAC) entered duty-free, an increase from 77% in 2002.[1] Duties collected on exports from Latin America and the Caribbean to the U.S. decreased, from $1.31 billion in 2002 to $1.24 billion in 2003. In addition, the trade-weighted tariff (AVE) total for U.S. imports from the world contracted from 1.65% to 1.58% in 2003 (Table 1).

Meanwhile, the Ad Valorem Equivalent (AVE) total for U.S. imports from LAC in 2003 was 0.57%.[2] Within Latin America, countries from the Central American Common Market (CACM) on average, once again paid the highest AVE total of any regional trading group in the Western Hemisphere (3.54%), followed by MERCOSUR (1.88%), the Andean Community (0.36%), and CARICOM (0.24%). Overall, the North American Free Trade Agreement (NAFTA), which includes Canada and Mexico, had the lowest duty rate of 0.10%.

Although 76.7% of all exports from CACM entered the U.S. duty free[3], the Ad Valorem duty rates were nearly at or above 15%; El Salvador, Guatemala, Honduras, and Nicaragua faced the highest tariff rates among all LAC countries. This is partly due to the high tariff levels placed upon the region's textile and apparel exports. Other high Ad Valorem duty rates from several CARICOM countries, such as Belize, Haiti, and St. Lucia can be attributed to various sensitive industries in agricultural, food, and tobacco products.

Among the regional trading groups, NAFTA as a region, had the largest percentage (96.1%) of all its exports enter the U.S. duty-free. CARICOM followed with 90.4%, CACM with 76.7%, MERCOSUR with 61.5% and the Andean Community with 57.6%. On a country by country basis Bolivia, Peru, El Salvador, Panama, the Dominican Republic and several Caribbean countries enjoyed duty-free access for 90% or more of their exports. Meanwhile, duty free imports from Venezuela grew to 51.4% in 2003 from 46.4% in 2002, while the percentage of Chile's exports that entered duty free was 61.5%.

[1] The share of duty free imports is calculated by the (Total value – Dutiable value) / Total value

[2] The Ad Valorem Equivalent is the average duty rate, expressed as the percentage of duties collected over the total value of imports entering the U.S.

[3] The AVE dutiable is the average duty rate, expressed as a percentage of duties collected over the amount of the dutiable value of imports.

Table 1
AD VALOREM RATES FOR U.S. IMPORTS 2003
(Thousands of dollars, Customs Value)

	Total Value	DUTIABLE VALUE	Duties Collected	% Duty Free	A.V.E. Dutiable %	A.V.E. Total %
World	1,259,395,643	401,575,171	19,860,863	68.1	4.95	1.58
Western Hemisphere	441,112,929	40,817,574	1,411,944	90.7	3.46	0.32
NAFTA	362,239,367	13,893,562	364,751	96.1	0.26	0.10
Canada	224,166,070	7,047,061	170,406	96.9	2.42	0.08
Mexico	138,073,297	6,846,501	194,345	95.1	2.84	0.14
LAC (with Mexico)	216,930,294	33,770,513	1,241,538	84.4	3.68	0.57
Andean	28,842,170	12,241,922	103,609	57.6	0.85	0.36
Bolivia	184,831	5,893	616	96.8	10.45	0.33
Colombia	6,385,465	2,236,987	43,671	65.0	0.68	0.68
Ecuador	2,720,881	1,074,142	14,470	60.5	0.53	0.53
Peru	2,406,829	239,654	10,765	90.0	4.50	0.45
Venezuela	17,884,028	8,685,245	34,087	51.4	0.39	0.19
MERCOSUR	21,362,430	8,232,353	401,213	61.5	4.90	1.88
Argentina	3,169,286	1,799,954	41,621	43.2	2.31	1.31
Brazil	17,884,028	6,301,651	348,948	64.8	5.53	1.95
Paraguay	53,277	12,271	1,246	77.0	2.34	2.33
Uruguay	255,839	118,477	9,398	53.7	3.67	3.67
Chile	3,703,126	1,426,323	29,087	61.5	0.79	0.79
CACM	12,407,052	2,887,733	438,848	76.7	15.20	3.54
Costa Rica	3,361,551	223,944	13,990	93.3	6.25	0.42
El Salvador	2,019,366	561,798	83,166	72.2	14.80	4.12
Guatemala	2,945,269	1,167,536	203,775	60.4	17.45	6.92
Honduras	3,311,550	569,372	82,271	82.8	14.45	2.48
Nicaragua	769,316	365,083	55,646	52.5	15.24	7.23
Panama	301,242	17,663	514	94.1	2.91	0.17
CARICOM	6,120,013	585,247	14,637	90.4	2.50	0.24
Antigua Barbuda	12,719	285	11	97.8	3.90	0.09
Bahamas	479,383	214,012	1,575	55.4	0.74	0.33
Barbados	43,500	10,925	82	75.0	0.75	0.19
Belize	101,408	4,356	473	95.7	10.86	0.47
Dominica	5,252	1,205	5	77.1	0.41	0.10
Grenada	7,602	690	0	91.0	0.00	0.00
Guyana	118,282	1,959	72	98.3	3.68	0.06
Haiti	332,344	66,410	8,904	80.0	13.41	2.68
Jamaica	494,717	66,742	2,283	87.0	3.42	0.46
Montserrat	1,324	35	1	97.4	2.86	0.08
St Kitts-Nevis	44,589	2,081	54	95.3	2.60	0.12
St Lucia	12,967	3,341	507	74.2	15.18	3.91
St Vincent & Grenadine	4,136	158	2	96.2	1.27	0.05
Suriname	140,064	295	3	99.8	1.02	0.01
Trinidad & Tobago	4,321,727	212,753	665	95.1	0.31	0.02
Dominican Republic	4,455,080	452,737	55,108	90.0	12.17	1.24
Other Western(1)	1,061,999	736,579	2,629	30.6	0.36	0.25

Source: U.S. International Trade Commission

(1) Anguilla, Aruba, Bermuda, British Virgin Islands, Cayman Is., Falkland Is., French Guyana, Guadeloupe, Martinique, Monserrat, Netherlands Antilles, St. Pierre & Miquelon, Turks & Caicos, Cuba.

2. Trade Remedy Legislation

A. Antidumping (AD) and Countervailing Duties (CVD) by outcome

In 2003-2004, the U.S. Department of Commerce (DOC) and the International Trade Commission (ITC) announced three positive AD/CVD determinations on products from Latin American and Caribbean countries. In addition, ten Administrative Reviews and two Sunset Reviews were conducted; three AD investigations were initiated.

Box 1
ANTIDUMPING LAW

Under the anti-dumping (AD) law, duties are imposed on U.S. imported products when the U.S. Department of Commerce (USDOC) determines merchandise is being sold at a price that is below what the producers sell it for in the country of origin (home market), or at a price that is lower than the cost of production. The difference between the price in the foreign market and the price in the U.S. market is called the "dumping" margin.

Domestic producers that believe imports are sold at less than fair value or are subsidized by a foreign government can file an anti-dumping (AD) or countervailing duty (CVD) petition with both the USDOC and the International Trade Commission (ITC). The domestic industry may claim that it is being materially injured, that it is in threat of such injury, or that the establishment of a domestic industry is prevented by the above actions.

After an initial review, a preliminary determination is made either rejecting the petition and dropping the case, or agreeing that either dumping or subsidization has occurred and has or will cause harm to the domestic industry. Then a preliminary duty is established.

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

If both Commerce and the International Trade Commission make affirmative findings of dumping and injury, Commerce instructs the U.S. Customs Service to assess duties against imports of that product into the United States. The duties are assessed as a percentage of the value of the imports and are equivalent to the dumping and subsidy margins, described above. For example, if Commerce finds a dumping margin of 35%, the U.S. Customs Service will collect a 35% duty on the product at the time of importation into the United States in order to offset the amount of dumping.

Source: U.S. Department of Commerce

i) Positive AD and CVD Determination

(a) Prestressed Concrete Steel Wire Strand from Brazil (A-351-837)

On January 28, 2004 the DOC published its notice of AD duties at the following dumping margins:

Belgo Bekaert Arames, S.A.	118.75%
All Others	118.75%

(b) Prestressed Concrete Steel Wire Strand from Mexico (A-201-831)

On January 28, 2004 the DOC publishes its notice of AD duties and issued the final dumping margins:

Camesa	62.78%
Cablesa	77.20%
All Others	62.78%

(c) Light-Walled Rectangular Pipe and Tube from Mexico (A-201-832)

On April 13, 2004 the DOC announced its preliminary determination of sales at less-than-fair-value and postponement of its final determination until 135 days after publication due to the request of manufacturer Galvak/Hylsa. The initial dumping margins are as follows:

Prolamsa	5.56%
LM	13.61%
Galvak/Hylsa	19.89%
Regiomontana	4.45%
All Others	11.59%

ii) Administrative Reviews

Upon requests of interested parties, the DOC conducted ten Administrative Reviews of dumping margins and subsidy rates. The DOC and the ITC are authorized under Section 751 of the Tariff Act to review certain outstanding determinations that show "changed circumstances" that warrant review or revocation.

(a) Honey from Argentina (A-357-812)

On May 27, 2004 the DOC announced the final results of the AD Administrative Review for the Period of Review (POR) May 11, 2001 to November 30, 2002. The following dumping margins were issued:

Asociación de Cooperativas Argentinas	0.00
HoneyMax S.A.	0.00
Nexco S.A.	0.87%
Seylinco S.A.	0.60%
TransHoney S.A.	0.00

(b) Honey from Argentina (C-357-813)

On May 24, 2004 the DOC announced the final results of the CVD Administrative Review. The POR was extended to include the 2002 calendar year: January 1, 2001 to December 31, 2002. The DOC decided to calculate net countervailable subsidy rates on an aggregate/industry-wide basis and determined separate rates for 2001 and 2002. For 2001, the total net countervailable subsidy rate is 5.77 percent ad valorem; for 2002, the rate is 0.57 percent.

(c) Industrial Nitrocellulose From Brazil (A-351-804)

On February 25, 2004 the DOC announced the Initiation of Changed Circumstances Review and Consideration of Revocation of the current AD duty order, which went into effect on July 10, 1990. The request for a changed circumstances review was brought forward by Nitro Quimica Brasileira due to a "lack of interest" on behalf of the U.S. industry.

According to Nitro Quimica, no domestic producer in the U.S. currently exists, which prompted their request.

(d) Silicomanganese from Brazil (A-351-824)

On March 24, 2004 the DOC announced both the final results of its AD Administrative Review and the notice of its Amended final results for the POR of December 1, 2001 through November 20, 2002. Final dumping margins were issues for the following three manufacturers:

Sibra Cletro-Siderurgica Brasileria, S.A. (SIBRA)	16.50%
Compañía Paulista de Ferro-Ligas (CPFL)	16.50%
Urucum Mineracao (Urucum)	16.50%

(e) Stainless Steel Sheet and Strip in Coils from Mexico (A-201-822)

On February 10, 2004 the DOC announced the final results of its AD Administrative Review for the POR July 1, 2001 through June 30, 2002. Final dumping margins are as follows:

Mexinox	7.43%

(f) Certain Cut to Length Carbon Steel Plate from Mexico (C-201-810)

On January 13, 2004 the DOC announced its final results of the CVD Administrative Review for the POR January 1, 2001 through December 31, 2001. Final net subsidy rates were determined as follows:

Altos Hornos de Mexico, S.A. (AHMSA)	13.37%

(g) Individually Quick Frozen Red Raspberries from Chile (A-377-806)

On January 15, 2004 the DOC announced a partial rescission of its First Administrative Review. Of the 51 companies that initially filed a request for review on July 2, 2003 the DOC rescinded its review of 47 leaving only four companies under review: Olmue, SANCO, Vital Berry, and Uren Chile. For the rescinded companies, the cash deposit rate remains at 6.33%. Rates for the other four will be established in upcoming investigations.

(h) Fresh Tomatoes from Mexico (A-201-820)

On November 1, 2003 the DOC published the final results of Analysis of Reference Prices and Clarifications and Corrections in relation to the Agreement to Suspend the AD investigation on fresh tomatoes from Mexico that went into effect on December 16, 2002. The DOC determined an increase in the reference price for the winter season (October 23 through June 30) from $0.2108 per pound to $0.2169 per pound. The reference price for the summer season (July 1 through October 22) remained at $0.172 per pound. The winter season increase went into effect on November 1, 2003.

(i) Gray Portland Cement and Clinker from Mexico (A-201-802)

On March 11, 2004 the DOC published the Notice of the NAFTA Binational Panel's Final Decision and the amended final Results of the AD Antidumping Review. The original margins were calculated at 49.58%. The final results of the re-determination are as follows:

CEMEX, S.A. de C.V.	37.34%
GCC Cemento, S.A. de C.V.	37.34%

(j) Carbon and Certain Alloy Steel Wire Rod from Brazil and Mexico (A-351-832, A-201-830, and C-351-833)

On November 12, 2003 the DOC announced its decision to revoke the AD and CVD duty orders on carbon and certain alloy steel wire rod from Brazil and Mexico, in part, for all entries after the date of the petitioners' request. The decision was made after the Department did not receive any comments during the comment period opposing the exclusion of certain wire rod products that was published in the preliminary results of the changed circumstances review on October 6, 2003. The DOC concluded that all domestic producers lacked substantial interest in the relief provided by the order and therefore revoked the order with respect to products entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

iii) Sunset Reviews

The Uruguay Round Agreements Act amended the Tariff Act of 1930, requiring the DOC to conduct reviews of existing antidumping and countervailing duty orders no later than five years after the order was issued. The DOC and the ITC must determine whether revoking the order or terminating a suspended investigation is likely to lead to a recurrence of dumping or subsidies (DOC) and of material injuries (ITC).

(a) Certain Preserved Mushrooms from Chile (A-337-804)

On March 10, 2004 the DOC announced the final results of the Expedited Sunset Reviews which began on August 1, 2003. The DOC determined that revocation of the AD duty orders would likely lead to a continuation or recurrence of dumping at the following weighted average margins:

Nature Farm Products, S.A.	148.51%
Ravine Foods	148.51%
All Others	148.51%

In addition, the DOC announced the initiation of four Sunset Reviews for Latin American countries. On April 1, 2004 Barbed Wire and Barbless Wire Strand from Argentina (A-357-405) and Frozen Concentrated Orange Juice (FCOJ) from Brazil (A-

351-605) were announced. Then, on May 3, 2004 an announcement on Hot-rolled Flat-rolled Carbon Quality Steel Products from Brazil (A-351-828 and C-351-829).

(b) Frozen Concentrated Orange Juice (FCOJ)from Brazil

On April 1, 2004 the DOC announced the initiation of the second Sunset Review for frozen concentrated orange juice from Brazil (A-351-605). The original date that the AD duty order was issued was May 5, 1987. On August 5, 1999 the order was continued after the DOC conducted its first Sunset Review of the case.

In response to the Florida equalization tax, which is levied mostly on FCOJ imported into the state to be blended with Florida juice, Brazil filed a claim at the World Trade Organization (WTO) in August of 2002. After nearly two years of bilateral talks between government officials and industry representatives the Florida Legislature voted to amend the tax in 2004, which was ratified by the Governor of Florida on May 12, 2004. Juice importers are now required to pay only one-third of the tax and may demand that their money go to the Florida Department of Citrus to finance research projects rather than advertisement campaigns.[4]

The U.S. passed the equalization tax in the Florida State Legislature in 1970. The tax is levied mostly on FCOJ imported into the state to be blended with Florida juice. Brazil, which accounts for 53% of the world's orange juice production and 80% of its exports,[5] is the source of the largest amount of imported juice to Florida and paid $40 on each metric ton of orange juice imported into the State.[6] The tax is not imposed on property, but rather upon the activities of processing, reprocessing, blending, mixing, packing or repackaging processed orange product of foreign citrus juices, or upon the removal of any portion of such products from the original container in which it arrives in Florida. Proceeds from the tax help finance advertising programs for the sale and consumption of Florida citrus fruit and juices.[7]

iv) Initiation of AD/CVD Investigations

(a) Certain Frozen and Canned Warmwater Shrimp from Brazil (A-351-838)

On January 27, 2004 the DOC announced its initial investigation for the POR October 1, 2002 through September 30, 2003. The estimated margins in the petition range from 32-349%.

(b) Certain Frozen and Canned Warmwater Shrimp from Ecuador (A-331-802)

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[4] Todd Benson, "Brazil Resolves Complaint on Florida Juice-Import Tax," May 29, 2004 http://www.nytimes.com

[5] "Brazil Withdraws WTO Orange Juice Complaint Against United States," May 28, 2004 http://www.keepmedia.com

[6] Todd Benson, "Brazil resolves complaint on Florida juice-import tax," May 29, 2004 http://www.nytimes.com

[7] Florida State Senate, Senate Staff Analysis and Economic Impact Statement, CS/SB 96 http://www.flsenate.gov/data/session/2004/Senate/bills/analysis/pdf/2004s0096.ag.pdf

On January 27, 2004 the DOC published its notice of initial investigations for the POR October 1, 2002 through September 30, 2003. The estimated margins in the petition range from 85-166%.

(c) Certain Circular Welded Carbon Quality Line Pipe from Mexico (A-201-833)
On March 30, 2004 the DOC published its notice of initial investigations for the POR January 1, 2003 through December 31, 2003. The estimated price-to-price margin ranges between 24.16%-31.34%, while the estimated price-to-average unit values margin ranges between 8.47%-22.44%.

v) AD and CVD orders in effect

As of October 1, 2004 there are 34 antidumping orders in effect against Latin America and Caribbean countries: Argentina (6), Brazil (14), Chile (2), Mexico (10), Trinidad and Tobago (1), and Venezuela (1). Of the 35 AD orders, five correspond to agricultural, forest, and processed food products;

There are also 8 CVD orders in effect against Latin America and Caribbean countries: Argentina (2), Brazil (5), and Mexico (1).

Table 2
Antidumping duty orders for Latin America and the Caribbean
(in effect as of October 1, 2004)

Country	Item	DOC case No.	Order Date	Continued Date
Argentina	Barbed wire & barbless wire strand	A-357-405	11/13/1985	5/12/1999
	Light-walled rectangular tube	A-357-802	5/26/1989	8/22/2000
	Seamless pipe	A-357-809	8/3/1995	7/16/2001
	Oil country tubular goods	A-357-810	8/11/1995	7/25/2001
	Hot-rolled carbon steel flat products	A-357-814	9/19/2001	
	Honey	A-357-812	12/10/2001	
Brazil	Iron construction castings	A-351-503	5/9/1986	11/12/1986
	Carbon steel butt-weld pipe fittings	A-351-602	12/17/1986	1/6/2000
	Brass sheet & strip	A-351-603	1/12/1987	5/1/2000
	Frozen concentrated orange juice	A-351-605	5/5/1987	5/28/1999
	Silicon metal	A-351-806	7/31/1991	2/16/2001
	Circular welded non alloy steel pipe	A-351-809	11/2/1992	8/22/2000
	Carbon steel plate	A-351-817	8/19/1993	12/15/2000
	Stainless steel wire rod	A-351-819	1/28/1994	8/2/2000
	Silicomanganese	A-351-824	12/22/1994	2/16/2001
	Stainless steel bar	A-351-825	2/21/1995	4/18/2001
	Seamless pipe	A-351-826	8/3/1995	7/16/2001
	Hot-rolled carbon steel flat products	A-351-828	7/6/1999	
	Carbon steel wire rod	A-351-832	10/29/2002	
	Pre stressed concrete steel wire strand	A-351-837	1/28/2004	
Chile	Preserved mushrooms	A-337-804	12/2/1998	
	Individually quick frozen red raspberries	A-337-806	7/9/2002	
Mexico	Gray Portland cement & clinker	A-201-802	8/30/1990	11/15/2000
	Circular welded non alloy steel pipe	A-201-805	11/2/1992	8/22/2000
	Carbon steel plate	A-201-809	8/19/1993	12/15/2000
	Oil country tubular goods	A-201-817	8/11/1995	7/25/2001
	Fresh tomatoes (suspended)	A-201-820	11/1/1996	12/16/2002
	Large diameter seamless pipe	A-201-827	8/11/2000	
	Welded large diameter line pipe	A-201-828	2/27/2002	
	Stainless steel sheet & strip	A-201-822	7/27/1999	
	Carbon steel wire rod	A-201-830	10/29/2002	
	Pre stressed concrete steel wire strand	A-201-831	1/28/2004	
Trinidad & Tobago	Carbon steel wire rod	A-274-804	10/29/2002	
Venezuela	Silicomanganese	A-307-820	5/23/2002	

Source: U.S. International Trade Administration

Table 3
Countervailing duty orders for Latin America and the Caribbean
(in effect as of October 1, 2004)

Country	Item	DOC case No.	Order Date	Continued Date
Argentina	Hot-rolled carbon steel flat products	C-357-815	9/11/2001	
	Honey	C-357-813	12/10/2001	
Brazil	Heavy iron construction castings	C-351-504	5/15/1986	11/12/1999
	Brass sheet & strip	C-351-604	1/8/1987	5/1/2000
	Carbon steel plate1C-351-809	C-351-818	8/17/1993	12/15/2000
	Hot-rolled carbon steel flat products (suspended)	C-351-829	7/6/1999	
	Carbon steel wire rod	C-351-833	10/22/2002	
Mexico	Carbon steel plate	C-201-810	8/17/1993	12/15/2000

Source: U.S. International Trade Administration

B. Steel Safeguards

On December 4, 2003, President Bush lifted the tariffs on imported steel, nearly 21 months after imposing safeguard measures which had increased such duties. The decision averted a potential trade war, as the European Union had indicated it planned to retaliate with tariffs of its own. On July 11, 2003, the Panel formed by the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) officially ruled that the import duties imposed by the United States were inconsistent with the Agreement on Safeguards and the GATT 1994.[8] The U.S. appealed this decision, and on November 10, 2003, the Appellate Body upheld most of the panel's conclusions, again recommending that the DSB request the United States to bring those safeguard measures into conformity with its obligations under the above mentioned agreements.

Box 2
Brazil steel exports

In the case of Brazil, effects of the tariffs during their time of operation on the Brazilian steel industry are mixed. During 2003, Brazilian steel exports witnessed a growth in volume and price as its manufactured products gained increasing participation in the most diverse markets.[1] Sales to North America are the main market destination, with the U.S. absorbing 10% of growth in the period of January-September of 2003.

Due to the tariffs, the composition of U.S. steel imports from Brazil changed. The safeguards prevented Brazil from exporting high-value, finished steel products favoring steel slab instead, which accounted for 88% of the total volume of exports in 2002 and 76% of the value. This trend was cited as a reflection of the increasing U.S. appetite for Brazilian slab as U.S. producers recognized the advantages of outsourcing the initial stages of steel production. As a result, the average nominal price of all types of Brazilian steel exports to the U.S. (tariffs included) fell from $299 in 1998 to $212 in 2002, revealing the change from expensive to cheaper slab products;[2] therefore, Brazil exported more, but profited less.

[1] CNI, "The Brazilian Economy: Performance and Prospects," December 2003, p 47. http://www.cni.org.br/
[2] Jeffrey J. Schott, "US-Brazil Trade Relations in a New Era," Institute for International Economics, 2003, p 12, http://www.iie.com/publications/papers/schott1103-2.htm

[8] WTO Document No. 03-3480, Final Reports of the Panel, July 11, 2003

C. Special 301[9]

Under Special 301, the USTR must identify countries that deny adequate and effective protection for intellectual property rights (IPR). While a country can be subject to a Section 301 investigation and retaliatory measures taken without previous action by the USTR, three levels of consideration are commonly applied prior to the imposition of new tariffs or duties. Countries that raise concerns in regards to lax laws or limited enforcement in an area can initially be placed on the "Watch List." Lack of action by the country or a worsening of the situation as noted by the USTR, can lead to placement on the "Priority Watch List." Barring further action while at this level can result in categorization as a "Priority Foreign Country," which is reserved for countries that are thought to have trade policies that severely impact the importation of U.S. products and thus require a Section 301 investigation.

As in 2003, this year's review gives special attention to problems of counterfeiting and piracy, with particular emphasis on the ongoing campaign to reduce production of unauthorized copies of optical media products such as CD's, VCD's, DCD's, and CD-ROM's. Even countries that have taken steps to approve IPR legislation are noted as having weak judicial institutions and police enforcement to ensure compliance. Countries which remain of particular concern in Latin America are Brazil, Mexico, Ecuador, Paraguay, and Venezuela. In addition to counterfeiting and piracy of optical media products, internet piracy, government use of software, and pharmaceutical patents remain important on the USTR agenda.

Another issue that the 2004 Special 301 Report highlights is growing concern for the protection of test data submitted by drug companies to health authorities against "unfair commercial use." According to Article 39.3 of the TRIPS Agreement, WTO Members are required to protect test data by granting a period of exclusivity to the innovative company during which second-comers may not rely on breakthrough data collected by the innovative company. The U.S. generally grants five years of exclusivity; and in Latin America, Mexico has made the most progress in passing regulations that strengthen the coordination between its health and patent agencies. Colombia has also recently implemented data protection for pharmaceutical and agricultural chemical products.

i) Priority Foreign Country

Paraguay remains the only Latin American country to be classified as a Priority Foreign Country. Originally identified as such in January of 1998 as part of a Special 301 Out of Cycle Review, Paraguay and the U.S. signed a comprehensive Memorandum of Understanding (MOU) on IPR issues in 1998, which expired in January of 2003 and was renewed in December of the same year with a new MOU. The USTR remains concerned, however, about several issues including the involvement of organized crime in piracy and counterfeiting operations, the relatively few resources provided for criminal

[9] USTR, http://www.ustr.gov/reports/2004-301/fullreport.pdf

investigations and raids, and the lack of willingness on the part of the judiciary to impose deterrent sentences.

ii) **Priority Watch List**

This year's Special 301 report listed the same three Latin American countries as the 2003 report: Argentina, Brazil, and Bahamas. Protecting test data remains an important issue in Argentina, along with the need for effective enforcement against piracy and counterfeiting activities. Copyright infringement for U.S. cable programs and motion picture copyrights works is of large concern in the Bahamas. Brazil represents one of the biggest challenges to the U.S. copyright industry, which estimates that losses in Brazil are largest in the hemisphere, with industry-estimated losses exceeding $785 million in 2003.[10] In July of 2003, Brazil amended its criminal code by increasing the minimum penalty for copyright violations from one to two years' imprisonment, and gave increased judicial authority to seize, destroy, and dispose of contraband goods. Brazil also held its first National Anti-Piracy Day in December of 2003 during which several well-known Brazilian recording artists joined political leaders to witness the televised destruction of half a million pirated CDs. Despite these efforts, however, the U.S. remains concerned about insufficient criminal prosecution, conviction, and enforcement against felons, as well as inadequate protection of confidential test data.

2002	2003	2004
Argentina	Argentina	Argentina
Brazil	Brazil	Brazil
Colombia	Bahamas	Bahamas
Dominican Republic		
Uruguay		

iii) **Watch List**

This year's Special 301 report included thirteen Latin American and Caribbean countries with Belize as the only new addition, which is the first time in 15 years that Belize is on the watch list. Of most concern to the USTR is the lack of adequate enforcement of IPR legislation, particularly in the case of pharmaceutical and tobacco sectors, as well as the implementation of counterfeiting investigations and enforcement in the Corozal Commercial Free Zone.

Bolivia, Colombia, Ecuador, and Peru are all described as having particularly substantial piracy problems in music related industries. The USTR has also concluded that several Bolivian government agencies use unlicensed software. Copyright piracy in Mexico also remains problematic, with net losses estimated at $712 million, constituting the second largest level of losses in the hemisphere. Chile, Costa Rica, and the Dominican Republic, all countries with recently concluded FTAs with the U.S., are said to lack effective implementation and execution of IPR legislation. Pharmaceutical

[10] USTR, http://www.ustr.gov/reports/2004-301/fullreport.pdf

protection and test data exclusivity rank high on the USTR's agenda in respect to these countries.

2002	2003	2004
Bahamas	Bolivia	Belize
Bolivia	Chile	Bolivia
Chile	Colombia	Colombia
Costa Rica	Costa Rica	Costa Rica
Guatemala	Dominican Republic	Dominican Republic
Jamaica	Ecuador	Ecuador
Peru	Guatemala	Guatemala
Venezuela	Jamaica	Jamaica
	Mexico	Mexico
	Peru	Peru
	Uruguay	Uruguay
	Venezuela	Venezuela

D. WTO: Selected cases

i) The Cotton WTO Panel Report

On September 8th, 2004, the World Trade Organization (WTO) released its Cotton Panel Report. The WTO panel, which ruled on a complaint from Brazil, found that many U.S. cotton support programs are illegal export subsidies and are higher than permitted by WTO rules. In addition, it also ruled that the U.S. credit guarantee programs are export subsidies.

The report asks the U.S. to withdraw its prohibited subsidies for many products, including cotton, soybeans, corn, and oilseeds. Also, the U.S. must stop subsidizing national producers using U.S. cotton, because this violates the Article 3.1b of the Agreement on Subsidies and Countervailing Measures (ASCM), without delay, or within six months of the adoption of the report by the WTO Dispute Settlement Body or July 1, 2005, whichever is sooner.

Concretely, the panel ruled that:
- The Peace clause[11] does not apply to a number of U.S. measures, including domestic support measures and export credit guarantees;
- The export credit guarantees for "unscheduled commodities" such as cotton, soybeans, and for rice, are prohibited export subsidies;
- Some U.S. domestic support programs such as, marketing loans (guaranteeing U.S. farmers a price of $0.52 per pound of cotton)[12], counter-cyclical payments (payments to

[11] The peace cause refers to article 13 of the Agriculture Agreement. Article 13 ("due restraint") protects countries using subsidies *which comply with the agreement* from being challenged under other WTO agreements. The peace clause is due to expire at the end of 2003. See *Agriculture Negotiations*, http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd13_peace_e.htm

[12] All explanations of the U.S. programs shown come from the following website: International Trade Reporter, *WTO Panel Backs Brazil in Complaint against U.S. Over Cotton Subsidies*, http://www.bna.com/itr/arch244.htm

U.S. farmers to make up the difference between the guaranteed price or market price and a "target" price of $0.72 cents per pound of cotton), market loss assistance and step 2 payments[13], were found to cause significant suppression of cotton prices in the world market in the years 1999 to 2002 causing serious prejudice to Brazil's interests;
- "Step 2" payments to exporters of cotton are prohibited export subsidies, not protected by the peace clause and "step 2" payments to domestic users are prohibited import substitution subsidies since they were only available for U.S. cotton.

However, the panel sided with the U.S. in some issues
- Brazil had failed to show that U.S. domestic support programs caused an increase in U.S. world market share for upland cotton;
- That other U.S. domestic support programs such as, production flexibility contract payments, direct payments and crop insurance payments did not cause serious prejudice to Brazil's interests since Brazil did not succeed in showing that these programs caused significant price suppression;
- Certain U.S. export credit guarantees were consistent with U.S. WTO obligations;
- The panel declined to find that the U.S. domestic support programs threatened to cause "serious prejudice" to Brazil's interests from 2003 to 2007.[14]

Brazil has stated that the U.S. cotton support measures led its farmers to lose sales amounting to $600m during 2001-2002. Consequently, the removal of the illegal subsidies should lead to an increase of cotton exports for the following years. If the United States does not comply with the WTO decision, the Brazilian government could be entitled to compensations, and most likely would raise tariffs if compensations are not provided[15].

The rulings, if upheld on appeal, are expected to reinforce pressure from agricultural exporting countries in the Doha global trade talks.

Furthermore, since the price of agricultural products is expected to rise following the dismantlement of these programs, the effect on LAC depends on whether they are net exporters or importers.

ii) The decision concerning the Byrd Amendment

On August 31st, 2004, the WTO ruled that eight WTO members are entitled to retaliate up to $150 million against the U.S. for failing to comply with its international trade obligations. In January 2003, the WTO ruled as illegal the Byrd Amendment. The WTO gave the U.S. until December 2003 to comply with the WTO ruling but the U.S. missed the deadline. The failure by the U.S. to bring its measure into conformity with WTO rules prompted eight WTO Members—Brazil, Canada, Chile, the EU, India,

[13] The "Step 2" program provides funding to U.S. companies that export or mill (i.e. process into fabric or yarn) cotton, so that they will buy cotton grown United States. See: Environmental Working Group, *Step 2*, http://www.ewg.org/farm/step2index.php
[14] Washington Trade Daily, *WTO Releases Cotton Panel Report*, Vol. 13, Number 181, September 9, 2004.
[15] Food and Agriculture Policy Research Institute, *WTO and U.S. farm policy: Don't Panic but pay attention*, August 17, 2004, http://www.econ.iastate.edu/faculty/lawrence/Midwest%20Outlook/7

Korea, Japan and Mexico—to request authorization from the WTO to impose additional import duties on U.S. products or to suspend other obligations to the U.S.

The Byrd amendment refers to the Continued Dumping and Subsidy Offset Act of 28 October 2000. Under this law, the U.S. government distributes the anti-dumping and countervailing duties collected by Customs to the U.S. companies that brought forward the cases, e.g. that alleged dumping, or the selling abroad at less than the market price in the domestic market.[16]

To qualify for an offset payment under the Byrd Amendment:
- The domestic producer must have supported an application for an anti-dumping or countervailing duty investigation;
- There must have been a finding of dumping or subsidization (as well as injury and a causal link);
- The domestic producer must have incurred qualifying expenditure after an anti-dumping duty order or finding, or a countervailing duty order, was issued[17].

In its decision, the WTO calculated the level of the additional import duty or other countermeasures based on the amount of offset payments disbursed to the U.S. industry in the latest annual distribution. Specifically, the authorized level of retaliation is based on the trade effects of the most recent payments distributed from anti-dumping or countervailing duties collected on the products originating from each member. Accordingly, those payments shall be multiplied by a factor of 0.72, which is based on an economic model developed by an arbitrator to determine such trade effects.

By excluding from compensation those companies or unions not supporting the petitions, opponents maintain that the law encourages companies that might otherwise decline to support petitions to do so simply to maintain eligibility for compensation. Certainly, the possibility of receiving payments for supporting a petition has the potential to bias the process. It is argued that more requests for anti-dumping measures are done by U.S. producers against foreign competitors.[18]

Moreover, since the anti-dumping funds collected are distributed among the complainants that have been affected by dumping measures, foreign producers are subsidizing their U.S. competitors.[19]

iii) The Online Gambling Dispute[20]

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[16] European Union, WTO Appellate Body Condemns the Byrd Amendment, January 16, 2003, http://www.eurunion.org/news/press/2003/2003003.htm

[17] Australian Government, Australia's oral statement to the second hearing of the panel, March 12, 2002, http://www.dfat.gov.au/trade/negotiations/disputes/217_australia_second_hearing.html

[18] Center for Trade Policy Studies, "Byrdening" Relations: U.S. Trade Policies Continue to Flout the Rules, January 13, 2004, http://www.freetrade.org/pubs/FTBs/FTB-005.pdf

[19] Center for Trade Policy Studies, "Byrdening" Relations: U.S. Trade Policies Continue to Flout the Rules, January 13, 2004, http://www.freetrade.org/pubs/FTBs/FTB-005.pdf

[20] WTO, Measures affecting the Cross-border supply of gambling and betting services, WT/DS285/R November 10, 2004; http://www.wto.org/english/tratop_e/dispu_e/285r_e.pdf

On November 10, 2004 the WTO publicly released its findings in favor of Antigua and Barbuda regarding the online gambling dispute with the U.S. Antigua and the U.S. abandoned negotiations in October to settle their dispute. Antigua launched this case against the U.S. at the WTO for refusing to allow firms in Antigua to provide on-line gambling services to U.S. customers. The ruling found that the U.S. had written its Uruguay Round services schedule to permit the cross-border supply of gambling services, and that the U.S. could not deny them access to their market. The U.S. strongly opposed this decision, and said it made it clear that it was using a modified classification system that excluded any commitments on gambling services. The WTO interim panel rejected this argument by saying that member countries do not have the flexibility to alter classification systems in this way. The U.S. has stated that it will appeal the decision.

The situation between the U.S. and Antigua is important because it could have a wider impact on the Doha regulations by imposing a standard approach on countries when making services concessions. More broadly, the ultimate effect of the case could be that the U.S. (and all WTO members) would no longer be free to rely on their own definitions of what constitutes market opening in certain sectors[21].

The U.S. is basing its appeal against online gambling by stating that when it signed the General Agreement on Trade in Services (GATS) it intended this type of trade (online gambling) to be excluded as a form of service in international trade[22].

III. Standards and Regulations

Gaining access to the U.S. market demands familiarity with the complex procedures and regulations.

1. U.S. Quarantine Regulations

To reduce the risk of introducing potentially hazardous pests and diseases from fruits and vegetables, most produce entering the U.S. are subject to complex sanitary and phytosanitary (SPS) requirements.

The Animal and Plant Health Inspection Service (APHIS), a branch of the USDA, is responsible for protecting and promoting U.S. agricultural health. To this end, APHIS created within its organization the Plant Protection and Quarantine (PPQ) department, which has divided commodities entering the U.S into three categories: non-restrictive, prohibitory, and restrictive commodities. Non-restrictive commodities are allowed into the U.S. without quarantine or detailed inspection. Examples of these include aloe vera, coconut, garlic cloves, ginger root, maguey leaf, mushroom, heart of palm, tamarind bean pod, and water chestnuts.[23] Prohibitory commodities are fruits and plants that are not allowed to come in the U.S. due to the potential presence of pests for which the U.S. has no quarantine treatment. Restrictive commodities consist of fruits and

[21] Inside US Trade, Countries eye potential impact of Gambling case, 6 August 2004.
[22] USTR Statement on WTO Gambling Dispute, 10 November 2004.
[23] Non-propagative Manual; Fruits and Vegetables

vegetables that are allowed to enter to the U.S only after post-harvest quarantine treatments or inspections that are meant to decontaminate the produce of infections and pests are completed.

The most obtrusive pest in LAC commodities is the fruit fly. There are more than 300 kinds of fruit flies around the world, with a great variety of fruit flies concentrated in the LAC region (table 4). Of these, the most common Fruit flies are the South American fruit fly, native to Mexico and South America; The West Indian fruit fly, which breeds in the Caribbean countries; and the Mediterranean fruit fly, which comes from Central and South America.

Table 4
Fruit Fly Species from Latin American and Caribbean Countries

Scientific Name	Common Name	Primary Economic Hosts	Geographic Origin
Anastrepha Fracterculus	South American Fruit fly	Citrus, Mango and other fruits	Mexico to South America
Anastrepha Grandis	South American Fruit fly	Cucurbits	South America, Panama, Mexico
Anastrepha Ludens	Mexican Fruit fly	Citrus, Mango soft fruits	Mexico, Central America
Anastrepha Obliqua	West Indian Fruit fly	Mango, Guava, Spondias	Caribbean, Mexico to South America
Anastrepha Serpentina	Sapodilla Fruit fly	Citrus, Mango, Guava, Avocado	Mexico to South America
Anastrepha Suspensa	Caribbean Fruit fly	Guava, Rose apple Eugenia, Citrus	Greater Antilles
Ceratitis Capitata	Mediterranean Fruit fly	Citrus, Most Fruits	Central and South America

Source: International Consultative Group on Food Irradiation. ICGFI Document No. 13.

The fruit fly is infamous for its ability to adapt to a large variety of climates and fruits. Originally from Central-West Africa, the fly has spread globally through the rise of travel and trade. Countries that are not nesting grounds for fruit flies; such as the U.S., require quarantine treatments against them.[24] In the case of the U.S., some restrictive fruit and vegetables can enter upon inspection provided they are approved by APHIS-USDA with proper certification assuring that the insect is not present in the shipment of the commodity. On the other hand, numerous commodities do require post harvest quarantine treatments in order to enter in the U.S. The most commonly utilized post-harvest treatments are shown in Table 5[25] (see special section in appendix).

Table 5
List of Treatments and codes accepted by APHIS-USDA

Treatment Code	Treatment Name
T101	Methyl Bromide Fumigation
T102	Water Treatment
T103	High Temperature
T104	Pest Specific/Host Variable
T105	Irradiation
T106	Vapor Heat
T107	Cold Treatment

Source: APHIS-USDA Treatment Manual PPQ. Treatment Schedules.

In some cases, quarantine treatments can represent a major barrier in LAC export access to the U.S. In order to meet APHIS standards and regulations for produce

[24] SANINET, http://www.iicasaninet.net
[25] International Consultative Group on Food Irradiation. ICGFI Document No. 13 Bethesda, Maryland, January, 1991

exported to the U.S., LAC countries face enormous costs at various stages of the trading process. Whether a country must pay for inspection teams in the U.S. to quarantine its produce, incur costs of building facilities and infrastructure to perform the treatments domestically, hire APHIS staff to oversee quarantine treatments in LAC facilities, obtain compliance agreements with APHIS, or ship products to APHIS approved ports of entry where treatments are performed that can degrade the quality of the product, LAC countries confront numerous obstacles to trade with the U.S. due to the sanitary and phytosanitary standards and regulations championed by the USDA, APHIS, and PPQ.

IV. U.S. Export Subsidies

Export subsidies are used to expand and diversify the markets available to its exporters.

1. Export finance

The United States Department of Agriculture manages four export-credit guarantee programs, which are administered by the Foreign Agricultural Service on behalf of the Commodity Credit Commission. These programs help ensure that credit is available to finance commercial exports of U.S. agricultural products, while providing competitive credit terms to buyers. In fiscal year 2003, the United States Foreign Agricultural Service allocated 2.8 billion under USDA's export guarantee programs.[26]

2. Supplier-credit guarantee program

The SCGP went into effect in FY1996. The purpose of this program is to encourage U.S. exporters to expand, maintain, and develop markets for U.S. agricultural products in areas where commercial financing would not be available without a CCC payment guarantee. The SCGP reduces the financial risk of importers by guaranteeing a portion of payments due from importers under short-term financing (up to 180 days). The portion of payments is provided directly by U.S. exporters to the importers for the purchase of U.S. agricultural products. For Latin America, the allocations increased from US$580 million to US$710 million in 2003 and 2004 respectively.

3. Economic Support Fund and other programs

Funds to purchase U.S. food products, including on concessionary terms, are available through the Economic Support Fund, which is an appropriation account to fund economic assistance to countries based on considerations of special economic, political, or security needs and U.S. interests.

The Market Access Program (MAP) uses CCC funds to help create, expand, and maintain foreign markets for U.S. agricultural products. The MAP consists of a

[26] ECLAC; Access of Latin American and Caribbean Exports to the US Market 2002-2003. LC/WAS/L.67

partnership between non-profit U.S. agricultural trade associations, U.S. agricultural cooperatives, non-profit state-regional trade groups, small U.S. businesses, and the CCC. This partnership serves to share the costs of overseas marketing and promotional activities like consumer promotions, market research, trade shows, and trade servicing. Under the Farm Act, funding for the MAP is increasing from $100 million in FY 2002 to $200 million by FY 2006.[27]

V. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 came into effect on December 12, 2003, and established new requirements on products entering the U.S. such as: the 24 Hour Rule, the Custom Trade Partnership against Terrorism (C-TPAT) and the Container Security Initiative. In particular, Title III, "Protecting Safety and Security of Food and Drug supply," outlines the security mechanisms implemented by the U.S Government to evaluate all food entering the country in order to ensure it does not pose any serious or adverse health threats to humans or animals in the United States.

The Bioterrorism Law established new requirements in the process of exporting to the U.S., some of which include:

- Protection against food adulteration
- Administrative detentions
- Registration of food facilities
- Maintenance and inspection of food records
- Prior notice of imported food shipments

The Food and Drug Administration (FDA) and the U.S Customs and Border Protection (CBP) agreed to implement the Bioterrorism Law in an eight-month phase-in period (Table 6).

Table 6
Time Table for Bioterrorism Law Phase-In Period

Phase One December 12, 2003 to March 12, 2004	Phase Two March 13, 2004 to June 3, 2004	Phase Three June 4, 2004 to August 12, 2004	Phase Four Will take effect on August 13, 2004
FDA and CBP were committed to educate the trade community to achieve compliance with prior notice requirements.	FDA and CBP were committed to pursuing informed compliance prior to the issuance of any BTA-related penalty action. FDA provided information to CBP regarding those entities that failed prior notice data as required.	FDA continued to notify CBP of violators who have violated the Law on Bioterrorism, such as inaccurate filing of prior notice or importation from an unregistered facility. Port directors issued informed compliance notices to violators. CBP, in cooperation with FDA, was able to assess civil monetary penalties for violations.	All violations regardless of category or type may be subject to civil monetary penalties, and the associated merchandise will be refused admission into the U.S.

Source: U.S Customs. Special Trade Enforcement Division.

[27]World Trade Organization Trade Policy Report of the United States: Report of the Secretariat. http://www.wto.org/english/tratop_e/tpr_e/tp226e.htm

1. Title III Safety of food and drug supply

A. Section 302-Protection against Food Adulteration

Section 302 of the Bioterrorism Law demands an increase in the number of food inspections of products entering the U.S., and requests an improvement in the Information Management Systems of the Food and Drug Administration (FDA).

The FDA has been designated as one of the main bodies to coordinate and track all information regarding food imported coming for human consumption. The FDA also has been assigned to develop various programs to improve food security, which includes measures that place FDA officers in U.S ports to inspect all cargo coming to the country, as well as implement a more complex and effective information system. The new FDA information system, the Operational and Administrative System for Import Support (OASIS), works in conjunction with the Custom Automated Commercial System (ACS) to coordinate and evaluate all the information related to food entering the U.S.

In addition, FDA inspection officers located at U.S. ports are able to detain any products that do not present all U.S. Government requested information or may have an adverse effect on human or animal health in the U.S. (Box 3)[28]

Box 3
Detained Food

The FDA has created regulatory procedures for enforcement actions against detained food. The food may be detained for a period no longer than 30 days, and must be labeled or marked as a detained product. Food that has been detained cannot be delivered to another entity or to the importer, owner or consignee, or removed from the place where it is detained until an authority from the FDA releases the product, or the detention period expires. When the product has been detained, any person who is entitled to claim the food may appeal the order to the FDA. For perishable food, as is the case of many products coming from LAC countries, an appeal must be presented within two calendar days of receiving the detention. On the other hand, for non-perishable food the appeal must be presented within four calendar days. As a result, U.S. food importers and shippers have expressed particular concerns over how and when the FDA will detain any shipment since many companies have noted that mistaken delays are very costly, in terms of both food quality and idled equipment. LAC countries are particularly affected negatively because most commodities sent from the region are perishable.

Source: Title III-Protecting Safety and Security of Food and Drug Supply; Public Health and Bioterrorism Preparedness Response Act of 2002

B. Section 303: Administrative Detentions

The Bioterrorism Law also requires that all food imported to the United States enter with additional information such as labeling, a detailed description of the product, and certification of the country of origin when necessary. Otherwise, the product will not be allowed to enter the country and will be detained by FDA officers located at the port of entry.[29] Furthermore, additional cost for detention will be applied to the company responsible for the product; therefore, exporters should be prepared to meet all the new requirements to avoid paying any penalties and fees.

C. Section 305-Registration of Food Facilities

The FDA requires that any domestic or foreign company engaged in manufacturing, processing, packing, or holding food for consumption in the United States

[28] Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Title III
[29] FDA; Protecting the food supply, Proposed Regulation: Administrative Detention

should be registered with the FDA.[30] This mechanism permits the FDA to determine the location and source of all food that enters the country;[31] therefore, every warehouse located in LAC that holds food to be exported to the United States needs to be registered with the FDA. Otherwise, the food will be detained at the port of entry to the U.S. In addition to registration, the FDA requires that every foreign company designate an agent registered with the FDA to provide it with all the information for daily operations to avoid them having to contact the foreign company directly.

For LAC exporters, contracting a single U.S. agent costs between US$700 and US$1,000, as is stipulated by the FDA. As a result, some countries, such as Costa Rica and Ecuador, have provided their own service to exporters that do not already have a U.S. agent. The Aero-commercial Office is an office for Costa Rican exporters located in Miami, Florida (Box 4). Ecuador, through the Corporation to Promote Exports and Investments (CORPEI), has assigned an agent in Miami to represent Ecuadorian companies that do not yet have an agent in the U.S.

Finally, the FDA also requires that every foreign company provide an emergency contact if it is different from the agent located in the U.S. The FDA strongly urges the companies to register online since it allows for faster and easier collection of information; however, other methods, such as mail or CD-ROM, may be used as well.[32] Thus, the FDA is able to track as much information as possible about companies involved in the process of exporting products to the United States.[33]

Box 4
Implementation preparedness
Costa Rica

Costa Rica created a national commission integrated by the public and private sector in order to unify efforts to facilitate the implementation of the Bioterrorism Law among companies exporting to the U.S. Some of the members of the Costa Rica commission are: The Department of Phytosanitary Services, the Department of Agriculture, The Department of International Trade, the Chamber of Exports, etc. The commission has provided training classes since 2003 and it has facilitated not only locations for the exporters to register, but also internet connection for all the companies involved in this project that may need it.

D. Section 306: Maintenance and Inspection of Records for Foods.

The FDA requires that every company keep all records related to the manufacture, processing, packaging, distribution, receipt, holding, or import of food for no longer than two years. There is no special format to create or keep any records, but all the required information by the FDA must be included. Thus, in the case of detention, the pertinent records are provided to the FDA upon request.[34] The FDA is mandated to analyze and

[30] Note: The information required in the registration form is the name, address, and phone number for the facility and its parent company, the name, address, and phone number of the owner, operator, or agent in charge; all trade manes the facility uses; applicable food product categories as identified in FDA's regulations (21 CFR 170.3).

[31] FDA; Protecting the food supply. Fact Sheet on FDA'S New Food Bioterrorism Regulation: Registration of Food Facilities

[32] FDA registrations: On line at http://www.cfsan.fda.gov/~furls/ovffreg.html
By Mail at US Food and Drug Administration.HSF-681 5600 Fishers Lane. Rockville MD 20857, or by CD-ROM at http://www.cfsan.fda.gov/~furls/frm3537.pdf

[33] Many companies from LAC countries involved in exporting food to the U.S may not have internet connection or may not know how to register with the FDA; therefore, countries like Nicaragua, Guatemala and Costa Rica have created special commissions to advise their exporters on the implications of the Law on Bioterrorism and the registration process. http://www.actualidad.co.cr/290/20.apertura.html

[34] FDA; Protecting the food supply, Proposed Regulations: Establishment and Maintenance of Records

collect all the information necessary in the smallest amount of time possible, and is strictly confidential for FDA purposes.

E. Section 307: Prior Notice of Imported Food Shipments

The Law on Bioterrorism requires that all information provided by importers or brokers to the Bureau of Customs and Border Protection (CBP) be provided to the FDA five days before, or at least within eight hours, arrival to the U.S. The FDA is therefore able to review and evaluate all information submitted to determine whether to inspect any imported food at the U.S. port.[35] The prior notice should be submitted electronically to the FDA, and must contain the name of the food, the name of the manufacturer, the shipping company, the country of origin, etc.[36] The FDA will issue a confirmation of prior notice to the transmitter upon successful receipt of the prior notice information.[37]

2. Security Programs

In addition to the Law on Bioterrorism, the U.S. Government has implemented several new security programs that have had a direct effect on the export process for LAC countries.

A. Container Security Initiative Program (CSI)

The U.S. Government introduced the Container Security Initiative Program (CSI) to strengthen the security of the international maritime container trade system. CSI went into effect in January 2002. Each year more than 16 million containers arrive in 301 ports in the United States; containers are an increasingly vulnerable to terrorist misuse.[38]

The CSI has implemented special mechanisms to increase U.S. port security through intelligence and automated information systems to identify high-risk containers. CSI also allows containers to be pre-screened before arrival in the U.S.[39] Also, the U.S. has stationed U.S. Custom's officials in foreign ports in order to screen containers prior to loading onto any ship destined to the U.S., which enables U.S. Customs to determine which containers may be "high risk" and which ones are not. Thirteen countries have signed on to the CSI program.[40]

The CSI initiative has been implemented only in mega-ports with the proper infrastructure and technological capacity, which include Canada (Vancour, Montreal and Halifax), UK (Felixtowe), France (Le Havre), Belgium (Antwerp), Netherlands

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[35] FDA; Fact Sheet on FDA'S New Food Bioterrorism Regulation: Prior Notice of Imported Food Shipments

[36] FDA; Protecting the food supply. Fact Sheet on FDA'S New Food Bioterrorism Regulation: Interim Final Rude—Prior Notice of Imported Food Shipments

[37] For more specific details in the addition information including in the prior notice, check the FDA fact sheet: www.cfsan.fda.gov/~dms/fsbtac13.html

[38] U.S. Customs Border and Protection, CSI

[39] Organización Mundial del Comercio; Examen de las Políticas Comerciales, Estados Unidos. Informe de la Secretaría. WT/TPR/S126

[40] U.S. Customs Border and Protection, CSI

(Rotterdam), Sweden (Gotëborg), Germany (Hamburg and Bremerhaven), Italy (Genoa and Le Spezia), China (Hong Kong), Singapore, Japan (Yokohama), South Korea (Busan), and South Africa (Pretoria). Also, future CSI ports will be located in Spain (Algeciras), China (Shenzhen and Shanghai), Japan (Tokyo, Nagoya, Kobe and Osaka), Malayasia (Tanjong Pelepas), Thailand (Laem Chebang), and Sri Lanka (Colombo).

Information about any port in LAC ready to implement the CSI initiative has not been released. As a result, many LAC exporters that send containers to the Port of Miami are concerned since the screening process may take anywhere between 2 to 6 days.[41] The criteria for new CSI ports given by CBP makes it costly for any port to initiate the CSI program; the criteria outlines how every port must have inspection equipment such as gamma or X-ray, and radiation detection equipment available. Every port must establish an automated risk management system, and the port authorities must share critical data, intelligence, and risk management information with U.S. CBP officials.[42]

Besides the cost of implementing CSI, however, the benefits of adopting the new security measures will be tangible in the event of a terrorist attack. The only containers allowed at U.S. ports are those that have been screened by U.S. officials under CSI jurisdiction; therefore, CSI provides a competitive advantage for any port in the international market.[43] As a result, the CSI program can be understood as a more coordinated approach to improve the security of commercial shipping worldwide.

B. The 24-Hour Advance Vessel Manifest Rule

Another U.S. security measure that has affected exporters is the 24-Hour Advance Vessel Manifest Rule that went into effect in December 2002. This rule applies for CSI and non-CSI ports and consists of sending information electronically to the CBP, 24 hours before the cargo is loaded onto a vessel in a foreign port. By April 2003, "...about 260 containers with inadequate cargo description were denied loading for violation of the 24-hour rule."[44] U.S. Custom's Automated Manifest System provides the information collected under the 24-hour rule; in addition to information already required, more information must be provided.

C. The Customs Trade Partnership Against Terrorism (C-TPAT)

Finally, The Customs Trade Partnership against Terrorism (C-TPAT) is a cooperative program between the U.S. Government and the U.S. business sector to strengthen U.S. national and border security. It is a voluntary program in which businesses are committed to the integrity of their security practices under certain

[41] Greater Miami Chamber of Commerce; The Impact of Post-9/11 Security Measures on South Florida's International Business Community

[42] U.S. Customs Border and Protection, CSI

[43] U.S Customs Border and Protection, CSI

[44] Organización Mundial Del Comercio; Examen de las Políticas Comerciales, Estados Unidos. Informe de la Secretaría. WT/TPR/S126

guidelines. Importers, brokers, manufactures, warehouses, air carriers, sea carriers, land carriers, air freight consolidators/ocean transportation intermediaries, and NVOCCS assume the obligation to develop and implement a number of measures designed to develop a secure framework for manufacturing, production, cargo storage, handling facilities, and transportation.[45]

The measures to be implemented cover physical security, access controls, procedural security, personal security, education and training, etc.[46] Since the C-TPAT program works on incentives, it has gained broad support in the private sector. C-TPAT gives private companies a competitive advantage in the implementation of policies and requirements necessary to make the importing process into the U.S. more effective and efficient. In the first year, more than 1,600 companies signed onto the program. Currently, the program has over 5,000 companies participating, which represent more than 40% of the volume by value of imports in to the U.S. Moreover, international corporations are becoming part of the C-TPAT as well.[47] The C-TPAT will continue to gain appeal and popularity among LAC corporations as the sources of competitive advantage in the LAC export sector grow in importance.

[45] U.S. Customs Border and Protection; 24 Hour Rule
[46] U.S. Customs Border and Protection; 24 Hour Rule
[47] Aaron Lukas, "Protection without Protectionism Reconciling Trade and Homeland Security," Center for Trade Policy Studies, Trade Policy Analysis No. 27, April 2004 http://www.freetrade.org/pubs/pas/tpa-027es.html

Appendix

Post-harvest treatments to combat the fruit fly

1. T101-Methyl Bromide Fumigation (MB)

One of the most common quarantine treatments used for produce imported from LAC countries is fumigation. APHIS has approved fumigants that have the following characteristics:

- Highly toxic to the target pest and non-toxic to plants and vertebrates,
- Easily generated and inexpensive,
- Harmless to food and commodities,
- Non-explosive, nonflammable and insoluble in water.

Fumigants such as ethylene dibromide (EDB), carbon disulphide, and hydrogen cyanide were used in the past. It has been found, however, that these fumigants are flammable and highly toxic to humans. Methyl Bromide (MB) has become the most common fumigant used in LAC countries. MB is widely used in LAC countries to treat produce against fruit flies because it is a colorless, odorless, harmless, and nonflammable fumigant, and has the added beneficial quality of meeting most of the standards required by the APHIS aforementioned. In the Montreal Protocol of 1992, however, MB was listed as a substance that depletes the stratospheric ozone layer. Consequently, the use of this treatment has been reduced in many countries making it less available and more expensive in recent years.

Regardless of the mandates outlined in the Montreal Protocol, MB is still used in many countries around the world. The U.S. approved the elimination of its production, but it is still accepted by APHIS as a quarantine treatment. In fact, in some cases MB is the only quarantine treatment approved for certain LAC produce. For example, the MB treatment T101-i-1-1 is the only treatment approved by APHIS for blueberries coming from Argentina that host the Mediterranean fruit fly. Moreover, certain grapes and apricots from Chile host a pest, "external feeders," for which the only treatment recommended by APHIS is MB-T101-i-2-1. Yams from Bolivia host internal and external feeders for which the MB treatment that APHIS uses is T101-G-1.[48] Due to its high degree of penetration, rapid action, and high toxicity to a wide range of pests, MB is considered highly effective.

2. Temperature Control Treatments

An alternative treatment used in LAC commodities against the fruit fly is temperature manipulation. This treatment entails maintaining the commodities at a specific temperature for a set amount of time.[49] The time-temperature relationship varies

[48] PPQ/Non-propagative Manual; Fruit and Vegetable section
[49] PPQ/Non-propagative Manual; Fruit and Vegetable section

according to the commodity and pest involved. The more common heat treatments used by LAC countries are hot water immersion treatments, vapor heat treatments, and forced hot air and cold treatments.

Box 1
Hot Water Treatment

Hot water treatment has been used for LAC commodities for more than a decade. In 1986, hot water immersion treatment was developed for mangos coming from Mexico and other LAC countries. Between 1990-1992, hot water treatment was developed for guavas, carambolas, mangos and grapefruit to control the Caribbean fruit fly. The treatment has proven effective against the Caribbean and Mediterranean fruit flies and other pests. In fact, cherimoyas, passion fruit and lime passion fruit from Chile, which host the "Chilean False Spider mite" (Brevipapuls chilensis), are allowed to come to the U.S. only if treated first by hot water. The APHIS approved treatment is hot water immersion (T102-b), which entails immersing the fruit 20 seconds in a soapy water bath of one part soap solution to 3,000 parts water. When complete, the fruits are rinsed in a pressure shower to remove any soapy excess. Finally, the fruits are immersed for 20 seconds in an undiluted wax coating. The wax coating must cover the entire surface of the fruit.

Another example where hot water treatment is used for LAC commodities is the Mexican mango that hosts the Mediterranean and/or Mexican fruit fly. In this case, the mangos are treated in the country of origin at a facility certified by APHIS under the supervision of APHIS personnel. The procedure of the treatment is as follows; first, the mangos are pre-sorted by weight class because treatment of mixed loads is not allowed. The pulp temperature must be 70°F or above before the treatment starts. Next, the fruit is submerged at least 4 inches below the water's surface; and finally, the water is circulated constantly and is kept at a minimum of 115°F throughout the treatment.

a. T102-Hot Water Immersion Treatment

The hot water immersion treatment is an important treatment used in many LAC countries. It consists of submerging the commodity in water-filled tanks in which the water temperature is raised to a precise level for a specific length of time. It is important to note that the temperature relationship varies according to the commodity and the pest treated. Typically, the pulp of the fruit's temperature is raised using water heated to between 115°F and 118°F. After the treatment, there are additional packaging standards set by the APHIS, which require specific labeling of hot water treated products and numerical designation that identify the product treatment facility used. If the commodities are treated in their country of origin, they are moved to an insect-free enclosure promptly after the treatment is done, and are maintained thus contained throughout the shipping process. In fact, commodities treated in the country of origin may enter the U.S only through ports approved by APHIS, while the treatment itself must be monitored by APHIS or by signed authorities approved by APHIS from the foreign country.[50]

b. T103-High Temperature Forced Air (FHA)

High temperature forced air treatment (FHA) is a high-cost treatment used against fruit flies, which requires the produce be sorted by size beforehand and entails loading into a chamber heated with special equipment. A temperature recorder is necessary to make numerical recordings of temperatures from each sensor at least once every five minutes as the temperature of the pulp is increased to the target temperature stated in the treatment schedule. In the case of Mexican citrus, this entails increasing the temperature of the fruits' center to 111.2°F within at least 90 minutes or more. After this, it is necessary to keep the temperature of the fruits' center around 111.2°F or more for 100 minutes. APHIS has approved the FHA treatment for the following citrus products:[51]

[50] PPQ/Non-propagative Manual; Fruit and Vegetable section
[51] http://www.pesticide.net

- Tangerines – 113°F – 210 Minutes
- Oranges – 114.8°F – 250 Minutes
- Grapefruit – 114.8°F – 300 Minutes

FHA has been used to treat mountain papayas from Chile that host the Mediterranean fruit fly, the Oriental fruit fly and the Melon fly. The corresponding FHA treatment is T103-d-1, which consists of the following steps; first, temperature probes or sensors are inserted into the center of the largest fruits; however, all sensors must be distributed among the load so that high, middle and low areas are all reached. Second, the fruits are loaded into the treatment chamber with sensors attached to the recorder monitor that loads the fruits. Third, the fruits are heated using forced hot air until the fruits' center temperature reaches at least 117.0°F. The temperature of the forced air used to heat the fruit in the chamber must be constant. Treatment length varies, but in every case, it must be at least four hours or more in duration. Finally, after the treatment is finished, the fruit is cooled by forced air or hydro cooling.[52]

c. T106-Vapor Heat Treatment (VHT)

Vapor heat treatment (VHT) uses hot air saturated with vapor to raise and hold the temperature of a commodity to a required point for a set period. VHT is used primarily for fruit and vegetables that host fruit flies. The time-temperature relationship varies according to the commodity and pest involved. In most cases, the pulp temperature of the commodity is raised by saturated water to between 110°F and 112°F during a period of 6 to 8 hours and held there an additional 6 to 8 hours. The fruit and vegetables need to be cooled immediately after the treatment.[53] Although this treatment has proven effective for fruits like mango, papaya, and pineapple, it requires prolonged exposure (more than eight hours) to moist heat at temperatures as high as 112°F. It has proven particularly effective against the Mediterranean fruit fly. For bell peppers, which host the Mediterranean fruit fly, Oriental fruit fly, and the Melon fruit fly, the VHT used is T106-b-1.

Vapor treatment has also proven effective for clementines from Mexico. The fruit hosts the Mexican fruit fly for which the vapor treatment approved by APHIS is T106-a-1. The fruit pulp temperature is raised gradually to 110°F until the center reaches the same temperature. This usually occurs within 8 hours at which point the temperature is held at 110°F for another 6 hours. Yellow pitayas from Colombia that host the Mediterranean and South American fruit flies undergo the approved treatment T106-e, which entails raising the temperature of the fruit to 116.6°F until the center reaches 114.8°F, usually within at least 4 hours. The fruit temperature is then held at 114.8°F or more for 20 minutes.

VHT can be an effective quarantine treatment for many LAC commodities; however, the treatment is extremely costly because it requires a great deal of energy.

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[52] PPQ/Treatment Manual, T103- High Temperature Forced Air, p 52-55
[53] PPQ/Treatment Manual

d. T107-Cold Treatment

The T107-cold treatment has been used for many years in LAC countries. Since the release of the 1976 U.S. Quarantine Manual, the U.S. has allowed cold treatment for fresh commodities from areas infested with the Mediterranean fruit fly.[54] APHIS allows imported fruit to undergo cold treatment at approved facilities either in the country of origin or after arrival in the U.S. The cold treatment consists of reaching a specified temperature for a certain length of time in order to eliminate the fruit fly, and may be conducted either in refrigerated compartments of transporting vessels or in containers cooled by the ship's refrigeration system, or by individually refrigerated containers. The factors that must be considered in temperature manipulation are the effective time and temperature needed to kill the pest (efficacy), and the tolerance of the commodity that is treated (phytotoxicity). Cold treatment requires the produce be held at least 10 days at 32°F, which makes it available only for commodities able to resist the temperature, such as apples, pears, grapes, and kiwis.[55] The most common cold treatments used for LAC commodities are, for the Mediterranean fruit fly, T107-a-1, and for the Mexican fruit fly, either T107-b or T107-c.

Since the discovery of the inability of T107-a-1 to provide a 100% level of mortality for the Mediterranean fruit fly, APHIS has revised the cold treatment process and presented new parameters for controlling high larva populations. Table 6 presents the new parameters.

Table 1
Comparative Exposure Periods for Three Cold Treatment Schedules

Temperature	T107-a (revised)	T107-a-1	T107-b	T107-c
32 F	12 days	12 days	N.A	11 days
33 F	13 days	13 days	18 days	13 days
34 F	14 days	15 days	20 days	15 days
35 F	16 days	17 days	22 days	17 days
36 F	18 days	Not Available	N.A	Not Available

Source: PPQ. Treatment Manual. Cold Treatment.

3. T105-Irradiation

Irradiation is the most recent procedure adopted by the U.S. as a quarantine treatment for food products coming from LAC countries. The treatment entails exposing the pulp of LAC produce to a carefully controlled amount of ionized radiation, which can be gamma rays, X-rays, or electrons. In fact, when pests are present in the commodities that are irradiated, the energy from the irradiation breaks the bonds of the DNA molecules causing defects in their genetic material. As a result, the pest either dies or is unable to reproduce. Moreover, if the produce itself still has any living cells, they will be

[54] PPQ/Treatment Manual
[55] FAO, Control de la pudrición y los insectos

damaged or killed just like the pests. Since this prolongs the shelf life of the product by inhibiting sprouting and delaying ripening, it is a useful effect.[56]

It is important to note that irradiation does not change the nutritional value of the produce, nor does it become harmful to humans. In fact, irradiation is a food-safety technology that can eliminate disease-causing microorganisms such as E. coli O157:H7, Campylobacter, and Salmonella. The Food and Drug Administration (FDA) has approved irradiation for a variety of foods including fruit and vegetables; "The agency determined that the process is safe and effective in decreasing or eliminating harmful bacteria,"[57] and also expressed that, "...most of the irradiation doses assigned for fruit and vegetables are small doses that do not harm the commodity."[58]

The effects of irradiation on food consumed by animals and people have been studied extensively for over 40 years; studies have demonstrated that when irradiation is used as approved on foods, disease-causing microorganisms are reduced or eliminated. The nutritional value is essentially unchanged, and more importantly, the food does not become radioactive;[59] therefore, irradiation is a safe and effective technology that can be used to treat LAC commodities for the fruit fly. The irradiation treatment approved by APHIS against the Mediterranean fruit fly is T105-b-2. This treatment involves applying a minimum absorbed dose of gamma irradiation of 225 Doses Gray (Dg). Some of the doses approved in the U.S against the fruit fly are as follows:

- T105-b-2 irradiation treatment against the Mediterranean fruit fly: minimum 225Dg
- T105-b-4 irradiation treatment against the South American fruit fly, Caribbean fruit fly, Mexican fruit fly and the West Indians fruit fly: minimum 150Dg
- T105-c irradiation treatment against the Mango Seed Weevil: minimum 300Dg

(Note: Dose mapping is required for each commodity and/or size. Different configurations, packaging, and/or mixed commodities must also be dose mapped)[60]

Research from the International Consultative Group of Food Irradiation (ICGFI) in 1991 found that irradiation is a treatment applicable to many fruits and vegetables and is available at a very competitive cost. Although the economic advantages of irradiation have proven it an optimal treatment against fruit flies and other quarantine pests, some countries do not allow irradiation as a quarantine treatment due to pressure from environmentalists.[61] On the other hand, more than 40 countries around the world do accept it as a quarantine treatment.

In 2002, the U.S. allowed imports of irradiated fruits and vegetables while the USDA stated that, "irradiation allows importers to sell riper, more valuable fruit with less

[56] UW Food Irradiation Education Group
[57] UW Food Irradiation Education Group
[58] International Consultative Group on Food Irradiation; Irradiation as a Quarantine Treatment of Fresh Fruits and Vegetables
[59] UW Food Irradiation Education Group
[60] APHIS; Irradiation treatments
[61] International Consultative Group on Food Irradiation

damage."[62] Only a few LAC countries, however, are developing the irradiation treatment, such as Brazil and Colombia. According to Sure Beam Corp., a provider of electronic beam food safety systems in San Diego, California, they are building an irradiation facility in Brazil, and the company is also considering building plants in several countries."[63] Colombia, which is currently working on irradiation research for more than eleven kinds of fruits by using gamma rays (Co-60), is expecting APHIS approval by the end of 2004.[64]

The cost estimated for the irradiation treatment is similar to the cost of fumigation, and in some cases, less than cold or heat treatments. According to ICGFI, irradiation is less costly and more effective than hot vapor, or hot air and cold air treatments, and is as competitive in cost and effective as the hot water and fumigation treatment, as is shown in Table 7.

Table 2
General Comparison of Quarantine De-infestation Treatments

Treatment	Cost	Effectiveness on quarantine pests	Tolerance of Commodities	Residues	Remarks
Irradiation	Good	Excellent	Very Good	Nil	Only Method available
Vapor Heat	Fair	Mainly Fruit Flies	Good	Nil	
Hot Air	Fair	Mainly Fruit Flies	Good	Nil	
Hot Water	Good	Mainly Fruit Flies	Good	Nil	
Cold Air	Poor	Good	Fair	Nil	N/A to many fruits
Fumigation	Good	Good	Very Good	Yes	Depends on Fumigant

Source: International Consultative Group on Food Irradiation, http://www.iaea.org/icgfi/

There are some requirements that the LAC exporters should know before adopting the irradiation quarantine treatment. First of all, the treatment is actually illegal in some states within the U.S. Second, irradiation facilities must be certified by the office of APHIS in the United States, even if the facilities are located outside the U.S. In order to perform irradiation outside the U.S., a facility must have a compliance agreement with APHIS and the plan protection service of the country in which the facility is located. Similarly, if the irradiation is conducted in the U.S., both the importer and operator of the facility must sign compliance agreements with APHIS.[65]

Packaging is also another standardized element of irradiation quarantine procedure. All produce that is irradiated must be packaged in insect-proof cartons or sealed cartons that show they have been irradiated. In addition, in order to preserve the identity of treated lots, each pallet containing the carton with fruit and vegetables must be wrapped before leaving the irradiation facility. The packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.[66]

[62] World Environment News
[63] Mark Stephenson, the vice-president for public relations of Sure Beam Corp, CIDRAP
[64] SANINET, http://www.iicasaninet.net
[65] PPQ/Non-propagative Manual; Fruit and Vegetable section
[66] PPQ/Non-propagative Manual; Fruit and Vegetable section

In general, LAC exporters face numerous costs and procedures in order to export restrictive commodities to the U.S due to expensive, complicated, and technologically advanced treatments. Moreover, many LAC countries do not have the infrastructure necessary to perform these treatments, and as a result, they must be done in the U.S. Furthermore, in order to have the quarantine treatment carried out in the U.S., LAC exports must ship their produce to specific ports of entry approved by APHIS that are staffed with at least one PPQ officer, which is a source of added costs. When quarantine treatments are performed in the U.S., it is particularly expensive for LAC exporters; in some cases, the commodities require several treatments, or in the worse case scenario, may require several days of quarantine. Such is the case of cold treatments for apples and pears from Chile, which require at least 15 days exposure to cold temperature. This poses a problem to LAC exporters that must deliver the product on time and in the best condition.

To remedy the challenges of U.S. port restrictions and treatment costs, some quarantine treatments are carried out in the country of origin. Doing so, however, is also expensive because post-harvest treatments may not only imply additional costs in infrastructure or energy, but also require the presence of PPQ officers in LAC. In the case of Brazilian exports of mangos, exporters pay the cost of treatment during the mango season, as well as an estimated $800,000 to $1,000,000 for the presence of an APHIS officer in Brazil during mango season[67]. Other countries that have needed APHIS officers for specific commodities include Haiti, Ecuador, Colombia, Chile and Argentina. Since Mexico is a major exporter to the U.S., there is an APHIS officer for Mexican inspections all year round. In Chile, the Chilean Exporters Association (CEA) has a cooperative international-public partnership program with the USDA and the Chilean Phytosanitary Authority (SAG) of approximately US$2.5 million annually. USDA personnel stationed in Chile inspect the fruit, making sure that it meets the SPS standards before it is exported.

A substantial amount of time and resources are devoted by LAC countries to find effective quarantine treatments for new products to be approved by APHIS. In June 2003, pitahayas and uchuvas from Colombia were accepted by APHIS-USDA to be imported into the U.S., it was the first time in twelve years that Colombian products were approved by APHIS-USDA since the mango was accepted in 1991.

The Instituto Colombiano Agropecuario (ICA) and El Centro de Excelencia Fitosanitaria (CEF) collaborated to research risk management treatments for quarantined pests hosted in exported fruits. As a result, the Colombian department of agriculture proposed the cold treatment for uchuvas and vapor heat treatment for the pitahayas, which APHIS accepted last year.[68]

[67] USDA; Regulating the Importation of Fresh Fruits and Vegetables, Non-propagative Manual
[68] U.S. Embassy in Colombia, http://usembassy.state.gov/colombia