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**U.S. BARRIERS TO LATIN AMERICAN AND
CARIBBEAN EXPORTS 1992**

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PRESENTATION

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

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

With the publication of this report, to be released regularly henceforward by ECLAC Washington, the purpose is to contribute to transparency by the identification of the trade barriers confronted by the exports of Latin America and the Caribbean in the market of the United States.

The list of barriers is not exhaustive, it only covers the most significant that were identified in three of the eight categories used by the USTR report on foreign trade barriers. It is hoped that the following reports will include those barriers that also exist in other categories.

I. INTRODUCTION

As Latin American countries continue to unilaterally liberalize access to their markets and anticipate free trade negotiations, it is timely to look at the trade inhibiting measures which Latin American exports face in the United States. This paper describes in simple form the U.S. trade measures of greatest importance to Latin America and the Caribbean. To define the categories under which these measures fall, the annual U.S. Trade Representative publication entitled National Trade Estimate Report on Foreign Trade Barriers was utilized as the basic framework.

The U.S. report delineates the following eight trade barrier categories:

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

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

II. IMPORT POLICIES

A. Tariffs

In general, U.S. tariffs do not constitute a major barrier to Latin American and Caribbean (LAC) exports. According to the GATT, the simple average of U.S. tariffs for all products is 7.1% and the weighted average is 5.1%.¹ However, averages can mask high tariffs levied on certain products. Table 1 lists major LAC exports, the region's top-forty exports in 1991 according to the U.S. Department of Commerce, that face tariffs with upper bound ranges exceeding 10%.

Table 1: Latin American & Caribbean Exports Facing High U.S. Tariffs

Item	% Range	% of LAC Exports to the U.S.
AGRICULTURAL PRODUCTS AND PROCESSED FOODS		
Fresh or Dried Fruits and Nuts	3 to 35	2.94
Vegetables, Roots/Tubers; Fresh, Frozen	4.2 to 25.0	1.44
Sugars, Molasses and Honey	6.0 to 15.0	0.88
Fruit and Vegetable Juices	0.3c to 9.25c/L*	0.75
Live Animals	4.0 to 15.0	0.59
Crude vegetable materials (not elsewhere specific)	1.5 to 11.0	0.57
TEXTILES, APPAREL AND FOOTWEAR		
Footwear	2.4 to 67.0	2.25
Men's Coats, of textile fabric not knits	3.0 to 29.7	1.75
Apparel of Textile Fabrics, (not elsewhere specified)	3.0 to 34.6	1.67
Women's Coats of Textile Fabric, not knit	3.0 to 30.4	1.62
Women's Coats, knit	4.0 to 34.6	0.62
OTHER MANUFACTURES		
Furniture and Parts	2.4 to 14.5	1.17
Thermionic, Cold Cathode, Photocathode Valves, etc.	4.2 to 15.0	0.74
Carboxylic Acids, etc., Halides, etc., and derivatives	1.8 to 23.5	0.73
Measuring, Checking, Analyzing, Controlling Instruments	3.0 to 17.0	0.60
MINING PRODUCTS		
Gold, Nonmonetary, Excluding Ores/Concentrated	3.1 to 20.0	0.83
Copper	1.0 to 11.2	0.77

Source: ECLAC, based on data from the U.S. Department of Commerce and the U.S. Harmonized Tariff Schedule of 1993.

* cents/liter

¹ GATT, Trade Policy Review Mechanism of the United States of America (Geneva, November 1991), p. 44.

The ranges listed in the table show the lower and upper bounds of tariffs encountered by dutiable items of each export category. Though this 10% threshold is subjective, it is a level which is clearly above the average U.S. tariff. Each product category's share of total LAC exports to the U.S. in 1991 appears in the third column of table 1.

Some items from these product categories enter the U.S. duty-free. For instance, 15 fruits and nuts items, 2 footwear items, 16 vegetable items, 2 fruit and vegetable juice items, and 36 crude vegetable material items enter duty-free.

The highest tariffs are faced by agricultural products and articles of textile, apparel and footwear. The significance of tariff barriers, however, pales in comparison to the incidence of U.S. non-tariff barriers encountered by major LAC exports.

B. The Multifiber Agreement (MFA)

Originally instituted under the aegis of the GATT in 1974, signatory countries of the MFA negotiate bilateral agreements with their trading partners to establish quotas on the importation of textiles and apparel. The U.S. may still negotiate bilateral agreements with those countries which are not signatories to the MFA, like Haiti and Panama, under the authority of section 204 of the Agricultural Act of 1956. In all, there are 147 categories of textiles and clothing for which the U.S. may establish quotas. The amount of product categories covered by quota restrictions varies widely among countries. In addition to product quotas, aggregate quotas that restrict the total amount of textile and clothing imports are imposed on some countries, such as Brazil.

The majority of the U.S. MFA agreements are with its lesser developed trading partners. Lesser developed countries are more likely to be targeted for MFA agreements because MFA restrictions are imposed on low cost suppliers. In general, textile and clothing exports from lesser developed countries are more likely to experience non-tariff barriers than those exports coming from developed countries. Furthermore, NTBs on textile and clothing products tend to be more frequent than those applied to manufactured products.

Table 2 lists the Latin American and Caribbean countries that had MFA agreements with the U.S. in 1991. The MFA agreements with Argentina and Peru were not renegotiated due to a decrease in their textile and apparel exports. The U.S. may decide to initiate consultations with these countries, however, if a market disruption is foreseen.

Demonstrating or quantifying the restraining effect which the MFA has on LAC textile and apparel exports is difficult. As indicated by the utilization rates in Table 2, MFA quotas for LAC countries are not usually filled. The low quota utilization rate may indicate that it is the high tariff rates which textile and clothing exports experience, and not the actual import quotas, which limit Latin American exports.

Table 2: U.S.-LAC MFA Agreements and Import Value in 1991

Country	Import Value (thousands of dollars)	Expiration Date	Number of Restrictions	Utilization Rates ° (percentages)
Argentina ^a	9,371	03/31/92		
Brazil	218,011	03/31/93	30 ^b	60.0
Dominican Republic	957,888	05/31/92	12	50.2
El Salvador	106,861	12/31/92	1	29.1
Guatemala	349,586	12/31/92	1	20.7
Haiti*	152,421	12/31/93	6	84.2
Jamaica	254,577	12/31/92	15	55.9
Mexico	879,395	12/31/92	32	55.3
Panama*	63,029	03/31/93	2	32.0
Peru ^a	89,116	12/31/91	12 ^c	19.0
Trinidad and Tobago**	1,232	12/31/91	12	0.7
Uruguay	45,135	06/30/92	6 ^d	77.9

Source: ECLAC, based on data from the U.S. International Trade Commission.

* Not an MFA signatory ^a The agreement was not renewed after expiration.

^b Includes a limit on the overall exportation of textiles. ^c Includes 2 aggregate limits for cotton and wool products. ^d Includes a sublimit on certain wool products. ° Period between 1986-1988.

C. Trade Remed / Legislation

Resorting to unilateral action to rectify perceived injuries to U.S. producers has become increasingly common within the last decade. The imposition of antidumping (AD) and countervailing duties (CVD) is a tool through which governments can retaliate for the dumping or subsidy practices of their trading partners.

Antidumping duties are imposed by the United States when the Department of Commerce finds that imports are being sold at less than fair value (LTFV), or when the U.S. International Trade Commission (ITC) concludes that a domestic industry is being materially injured, or the establishment of an industry is prevented by the dumping of imports. The Department of Commerce and the ITC begin simultaneous investigations when a private petition is filed. Procedures for CVD investigations are similar to those for antidumping cases.² The duty imposed for ADs is supposed to equal the difference between the price of the product in the producer's domestic market and the price at which the product is sold in the U.S. market. The duty for CVDs should be equivalent to the subsidy from which the imported product benefits.

While an investigation is being conducted, preliminary duties are immediately imposed on the imported product until a final determination is made. The most recent flurry of AD and CVD claims

² U.S. International Trade Commission, The Year in Trade: Operation of the Trade Agreements Program, 1991 (Washington, D.C., 43d. Report, August 1992), p. 149.

against non-U.S. steel producers has affected several countries, particularly Brazil, Argentina and Mexico. Preliminary duties on steel are now in place for these countries, as illustrated in Table 3. The companies listed in the table are those which are being investigated, but all other producers in these countries are similarly penalized.

Table 3: Preliminary AD & CVD for Steel Products as of January 1993

Item	Country	Company	Preliminary Duty (Percentages)	
			AD	CVD
Hot-Rolled Sheet and Strip	Brazil	Cosipa	87.0	53.48
		CSN	24.47	
		USIMINAS	24.16	42.83
		Others	45.54	
Cold Rolled Sheet and Strip	Argentina	Somisa	20.28	
		Others	20.28	
	Brazil	Cosipa	88.0	53.48
		CSN	8.47	42.83
		USIMINAS	23.54	19.7
		Others	40.0	
	Brazil	CSN	58.96	
		All Others	58.96	42.38
Corrosion-Resistant Sheet	Mexico	IMSA	76.12	5.01
		Hylsa	90.09	
		All Others	76.12	5.01
Cut to Length Plate	Brazil	Cosipa	109.0	53.48
		USIMINAS	37.72	29.91
		All Others	73.36	
	Mexico	Ahmsa	49.25	
		All Others	49.25	16.12
Special Bar Quality Engineered Steel	Brazil	Aco Minas	19.67	
		Villares	57.0	

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

The preliminary duties are collected from steel importers in the U.S. For example, if a U.S. importer purchases steel from Brazil, they must put up a bond in the amount of the preliminary duty which will be forfeited if the investigation is decided against Brazil. For this reason, once preliminary duties are put in place, exports of the affected product immediately decline. Even if the AD or CVD claims are not affirmed and the preliminary duties cease, the foreign industry loses a considerable amount

of business. This fact has caused affected countries to assert that a thorough initial review should be conducted before a full scale investigation begins.

Latin American countries, especially Brazil, have been adversely affected by the use of ADs and CVDs. The number of ADs and CVDs currently in effect for Latin American and Caribbean countries are listed, respectively, in Table 4 and Table 5.

Table 4: Antidumping (AD) duties in effect as of March 1993

Country	Date Begun	Item
Argentina	11/13/83	Barbed Wire
	11/23/84	Carbon Steel Wire Rods
	5/26/89	Rect. Tubing
	9/26/91	Silicon Metal
Brazil	5/9/86	Construction Castings
	5/21/86	Pipe Fittings
	12/17/86	Butt-weld Pipe Fitting
	1/12/87	Brass Sheet & Strip
	5/5/87	Orange Juice
	7/10/90	Nitrocellulose
	7/31/91	Silicon Metal
	11/2/92	Circ. Welded NonAlloy Pipe
Chile	3/20/87	Standard Carnations
Colombia	3/18/87	Fresh Cut Flowers
Dominican Republic	5/4/63	Portland Cement
Ecuador	3/18/87	Fresh Cut Flowers
Mexico	12/2/86	Cooking Ware
	4/23/87	Fresh Cut Flowers
	8/30/90	Cement
	11/2/92	Circ. Welded Non-Alloy Pipe
Venezuela	8/22/88	Aluminum Rod
	12/15/89	Aluminum Sulfate
	11/2/92	Circ. Welded Non-Alloy Pipe

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

Table 5: Countervailing duties in effect as of March, 1993

Country	Date Begun	Item
Argentina	11/16/78	Woolen Garments
	1/17/79	Non-Rubber Footwear
	4/4/83	Wool
	3/18/83	Leather Wearing Apparel
	4/26/84	Cold-Rolled Flat Products
	11/22/84	OCTG
	3/12/85	Certain Apparel
	3/12/85	Certain Textile Mill Goods
	9/27/88	Standard and Line Pipe
	10/2/90	Leather
Brazil	3/16/76	Castor Oil
	3/15/77	Cotton Yarn
	4/4/80	Pig Iron
	10/22/85	Tillage Tools
	5/15/86	Construction Castings
	1/8/87	Brass Sheet & Strip
Chile	3/19/87	Standard Carnations
Ecuador	1/13/87	Cut Flowers
Mexico	4/10/81	Leather Wearing Apparel
	5/10/81	Ceramic Tile
	3/18/85	Textile Mill Products
	12/12/86	POS Cookware
Uruguay	7/17/82	Leather Wearing Apparel
Venezuela	8/22/88	Redraw Rod
	12/19/89	Aluminum Sulfate
	9/17/92	Circ. Welded Non-Alloy Pipe

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

As it is evident from the tables, AD and CVD measures are often kept in place for long periods of time. The level of the duties imposed are supposed to be reviewed every year, but delays of three to four years are common, causing foreign exporters to needlessly pay higher duties until their cases are reviewed and the duties are adjusted to reflect changing circumstances. Furthermore, no sunset provision exists under U.S. law for these measures.³

³ Industrial Trade Council, Japan, 1993 Report on Unfair Trade Policies by Major Trading Partners - Trade Policies and GATT Obligations (Tokyo: JETRO, 1993), p. 118.

D. Voluntary Export Restraint Agreements (VERAs)

The threat of resorting to antidumping and countervailing duties often compels countries to negotiate Voluntary Export Restraint Agreements (VERAs), in order to avoid being penalized. The products most affected by VERAs in Latin America and the Caribbean are steel and machine tools. For many years the U.S. has maintained VERAs on steel with Brazil, Venezuela, Mexico and Trinidad & Tobago. When these agreements expired in the later part of 1992, the U.S. did not renew them, setting off a chain of antidumping claims by the U.S. steel industry, as described above.

E. Section 22 Agricultural Product Quotas

Under Section 22 of the Agricultural Adjustment Act of 1933, imports of certain agricultural products which interfere with U.S. Department of Agriculture domestic price support policies are subject to quotas or import fees. Because this is a breach of GATT rules, the U.S. requested and received a GATT waiver for this provision in March, 1955. The products currently under quota limitations include dairy products, such as cheese and ice cream, certain sugar-containing products, peanuts, and cotton. The LAC exports most affected by these quotas include dairy products exported from Argentina and Mexico, and unprocessed cotton which is exported from a number of LAC nations.

F. The Sugar Tariff-Rate Quota

The U.S. limits the importation of sugar as part of its overall sugar program. Quotas are set for countries which have access to the U.S. market on a yearly basis. Because the majority of LAC countries are beneficiaries of the Generalized System of preferences (GSP) and/or the Caribbean Basin Economic Recovery Act (CBERA) they receive duty free treatment for the sugar they export within their set quotas. Due to its competitive advantage in sugar production, Brazil does not enjoy GSP benefits for its sugar exports and is the only country in Latin America that pays the U.S. duty of 0.625 cent per pound on its import allotment. If sugar imports exceed the quota set for each country, a prohibitive duty of 16 cents per pound is applied.⁴

Shortly after the establishment of the U.S. sugar quota system in 1982, Brazil's share of the U.S. sugar market fell by 62% and since that time Brazil's sugar quotas have gradually declined. Brazil's current sugar export allotment represents 19% of what Brazil was once capable of exporting to the U.S.

Table 6 shows the country-by-country allocation of raw and refined sugar by percentage of total U.S. imports. These allocations are based on historical trade patterns with the United States. The total level of imports that may enter the U.S. at the lower duty for the period of October 1, 1992 to September 30, 1993 is 1,231,000 metric tons. Latin America and the Caribbean will supply 61 percent of total U.S. sugar imports during this period.

⁴ U.S. Department of Agriculture Fact Sheet on the U.S. Sugar Program (Revised) (Washington, D.C., December 1992).

Table 6: U.S. Sugar Tariff-Rate Quota
(October 1, 1992 - September 30, 1993)

Country	Percentage of Total U.S. Imports	Metric tons
Argentina	4.3	50,142
Bolivia	0.8	9,329
Brazil	14.5	169,084
Colombia	2.4	27,986
Costa Rica	1.5	17,491
Dominican Republic	17.6	205,232
Ecuador	1.1	12,827
El Salvador	2.6	30,318
Guatemala	4.8	55,972
Haiti	*0.3	7,358
Honduras	1.0	11,661
Jamaica	1.1	12,827
Mexico	*0.3	7,258
Nicaragua	2.1	24,488
Panama	2.9	33,817
Paraguay	*0.3	7,258
Peru	4.1	47,810
Uruguay	*0.3	7,258
Total	61	759,106

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

* These countries have been allocated a minimum access level.

G. Section 301 Watch List

Section 301 gives the USTR the authority to investigate cases and to retaliate against trading partners when the U.S. determines that its rights have been denied under international agreements, or when U.S. commerce is being subjected to discriminatory treatment. Section 301 investigations may be initiated by any interested party, or by the USTR itself. Under the 1988 Omnibus Trade and Competitiveness Act, a "Special 301" provision was created by which the USTR is required to launch investigations of "priority" countries concerning the denial of intellectual property rights or market access.

Currently, no exports from Latin America are being penalized as a result of a Special 301 investigation, although a few are being monitored, primarily due to intellectual property concerns. In 1992 Argentina, Chile, and El Salvador were on the "special 301 watch list." Brazil remained on the "special 301 priority watch list," a classification which signifies that it is being considered for investigation under an accelerated framework. If efforts are underway to correct the problem, a country can usually avoid being placed on the "priority" list.

By conducting investigations under Section 301, the U.S. is able to put pressure on foreign governments to make policy changes. For example, following a Section 301 investigation which resulted in the imposition of sanctions against certain of its imports, Brazil introduced legislation to revise its intellectual property protection laws. A similar situation occurred in Argentina.⁵

⁵ U.S. Trade Representative, 1993 Trade Policy Agenda and 1992 Annual Report of the President of the United States on the Trade Agreements Program (Washington, D.C., February 1992).

III. STANDARDS AND REQUIREMENTS

Understanding and abiding by the complex system of U.S. standards is no easy task for exporters. There are three tiers of regulations that must be considered: federal, state and local. More than 44,000 federal, state, and local authorities enforce an estimated 89,000 standards for products destined for their jurisdictions.⁶ These regulations are often inconsistent with each other or create overlap. The situation is further exacerbated by the fact that there is no central source of information on U.S. product standards. Because of this complex structure, obtaining information and complying with the necessary regulations is a major undertaking for foreign enterprises, especially for those of small and medium size.⁷

Imports into the U.S. are increasingly facing regulations related to consumer and environmental protection. In this area, state and local authorities tend to impose more stringent restrictions, tailor-made for their particular constituencies. In addition, the line between optional requirements and essential safety standards has become blurred due to the role that private organizations often play in determining the criteria for standards.⁸

The types of U.S. standards that have the greatest impact on Latin American exports are discussed below.

A. Marketing Orders

Under Section 8e of the Agricultural Marketing Agreement Act, the Secretary of Agriculture can issue grade, size, quality or maturity regulations for agricultural products through domestic marketing orders. Some of these requirements are also applied to imported agricultural products. Currently, the following imported products are subject to marketing order regulations: avocados, dates (other than dates for processing), filberts, grapefruit, table grapes, kiwifruit, limes, olives (other than Spanish-style olives), onions, oranges, Irish potatoes, prunes, raisins, tomatoes, and walnuts.⁹

Some countries have complained that the marketing order requirements pose barriers to their exports. In 1989 Chile brought a complaint before the GATT claiming that U.S. marketing orders were applied in a more favorable way for domestic goods and for Mexican and Canadian goods. Chile pointed out that its grapes were subject to marketing orders when many domestic producers had been exempt. Furthermore, under special agreements Canada and Mexico were allowed to have their produce inspected

⁶ External Affairs and International Trade, Canada, Register of U.S. Trade Barriers 1992 (Ottawa, April 1992), p. 11.

⁷ U.S. Customs Service, Importing into the United States (Washington, D.C., September 1991) for a description of importing standards and requirements. This publication includes sources of further information, including a list of the customs offices for each state.

⁸ Services of the Commission of the European Communities, Report on United States Trade and Investment Barriers 1992 (No place or date), p. 65.

⁹ U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, Fruit and Vegetable Import Requirements (Washington, D.C., January 1993).

at the point of origin, whereas Chilean produce was inspected at the port of entry.¹⁰ Section 8e was also a point of controversy during the U.S.-Mexico trade negotiations when Mexico charged that minimum quality standards were being used as non-tariff barriers.

B. Phytosanitary Regulations

Phytosanitary regulations for fruit and vegetables pose numerous difficulties for Latin American exports. Resolving claims involves a cumbersome and costly process that can take years. The case of Chilean tomatoes serves as a useful illustration. The USDA argues that Chilean tomatoes are infected with an insect called *Rhagoletis Tomatis*, and has established a four year investigation period in order to prove their claim.¹¹ During this period no tomatoes can be exported to the U.S. After Chilean and USDA phytosanitary experts finish conducting their experiments, a determination will be made as to whether the tomatoes can be exported from Chile. Once the decision is published in the Federal Register, a 90 day comment period follows, after which the decision is re-published in the Federal Register and designated with an effective date.

Another illustrative example is the case of Mexican avocados. While Mexico exports its avocados to Canada and Europe, since 1914 the USDA has banned the exportation of Mexican avocados to the U.S. due to phytosanitary concerns related to the incidence of the seed weevil and certain species of fruit fly.¹² Mexico has tried for 26 years to negotiate with the U.S. in order to eliminate this regulation. However, effective July 27 1993, the Mexican government gained the approval for a rule change from the USDA's Animal and Plant Health Inspection Service that would allow *Hass* avocados to be transported to the state of Alaska. The USDA noted that due to the short summer season in Alaska, the insects known to infect the avocado would not survive, thus cause no harm to the agriculture in that State.¹³

The U.S. often concludes that certain fruits and vegetables can be exported from Latin America if they are subjected to specified treatments. For example, Chilean farmers had the opportunity to export the fruit, *chirimoya*, for the first time in November 1992, only after developing machines that wash the fruit in soapy water and then spray it with wax.¹⁴ Similarly, several hot water treatment plants have recently been established in Central America to treat tropical fruit in order to meet U.S requirements.

¹⁰ GATT, Trade Policy Review Mechanism of the United States of America (Geneva, November 1991), p. 61.

¹¹ U.S. Department of Agriculture, Decision on Entry Status of Fruits and Vegetables Under Quarantine (No. 56), Washington, D.C., November 12, 1981.

¹² American Farm Bureau Research Foundation, NAFTA - Effects on Agriculture, Vol. 4: Fruits and Vegetables Issue (Park Ridge, Illinois, 1991), p. 139.

¹³ U.S. Department of Agriculture, "Hass Avocados From Mexico", Federal Register (Vol. 58, No. 142), July 27, 1993, pp. 40033-40037.

¹⁴ U.S. Department of Agriculture, "Importation of Chirimoyas From Chile", Federal Register (Vol. 57, No. 230), November 30, 1992, pp. 56434-56437.

C. Meat Import Regulations

Most Latin American countries are not able to export uncooked beef into the U.S. due to the incidence of hoof and mouth disease, which does not pose any danger for humans, but can infect cattle. While other countries such as Germany and the United Kingdom import meat from Latin America, the U.S. operates under "zero risk" assumptions, making the importation of meat from countries with hoof and mouth disease unacceptable. In the Dunkel Text which is currently under consideration in the Uruguay Round, the "zero risk" assumption is replaced by "managed risk," a rubric which attempts to judge health and safety standards through a more scientific approach. The concept of the regionalization of standards is also under consideration. Regionalization would make the exports from a certain area of a country possible under the following conditions: the region must be disease free and the area must be monitored and quarantined from the rest of the country. Argentina, for example, is negotiating to have the region of Patagonia declared hoof and mouth free, in which case it would be possible to export meat to the U.S. from this region alone.

Cooked and corned beef can, however, be exported from most Latin American countries. Argentina exports approximately \$150 million in cooked and corned beef to the U.S. every year.

D. Marine Mammal Protection Act

A U.S. embargo of Mexican, yellowfin tuna was put into effect on February 22, 1991. This embargo, intended specifically to save dolphins, is maintained under an amendment of the U.S. Marine Mammal Protection Act (MMPA) which prohibits the importation of tuna from countries that have a higher marine mammal fatality rate than U.S. vessels. Venezuelan tuna imports are also embargoed under the MMPA.¹⁵

Mexico challenged the tuna embargo immediately after it was imposed, claiming it violated GATT rules because it judged the product by the production method and not by the product's makeup. While the GATT panel ruled in Mexico's favor, an official report has not been submitted. The U.S. and Mexico have tried to settle the problem bilaterally in light of the NAFTA negotiations. While the embargo remains, the MMPA is expected to be revised in an agreeable manner for both parties, at which time Mexico will withdraw its complaint.¹⁶

¹⁵ U.S. International Trade Commission, The Year in Trade: Operation of the Trade Agreement Program, 1991 (Washington, D.C., 43d Report, August 1992), p. 38.

¹⁶ *Ibid.*, p. 118.

IV. EXPORT SUBSIDIES

A. Export Enhancement Program (EEP)

Authorized to continue until 1995 under the 1990 Farm Act, the Export Enhancement Program is the major U.S. export subsidy program. The EEP is intended to compensate U.S. exporters for the unfair trade practices of other countries, namely those of the European Community, by providing subsidies which enable U.S. agricultural products to be price competitive vis-a-vis other countries' exports in selected foreign markets. The U.S. Department of Agriculture uses Commodity Credit Corporation (CCC)-owned stocks or cash payments to provide bonuses to U.S. exporters, processors, and foreign purchasers in order to compensate for the adverse effects caused by the alleged unfair practices of their competition.

The EEP was originally intended to concentrate on grains and oilseeds but it has expanded over the years to include many other agricultural products including flour, sorghum, rice, poultry and vegetable oil. In 1992 the President's budget proposal set the funding level for the EEP at \$1.2 billion.

Many countries have complained that the EEP has caused their agricultural products to lose market share abroad. Brazil, for example, has expressed particular concern over its poultry and soybean oil exports. Brazil contends that it has lost 15-20% of its poultry market share in the Persian Gulf and has been unable to compete with the lower subsidized U.S. prices in Iraq, Egypt and the Canary Islands. Brazil has requested consultations with the U.S. under GATT Article XXIII:1, to discuss the damage the EEP had caused Brazilian soybean oil exports. Similarly, The EEP also came under fire when in 1988 Argentina argued in the Uruguay Round Surveillance Body that the EEP was a violation of the standstill commitment.¹⁷

B. Marketing Loans

Marketing loans serve as an additional means of internal support by allowing government loans to be paid back at less than the loan rate. The 1990 Farm Bill provided for the continuation of this program for wheat, feedgrains and soybeans on a discretionary basis, and cotton and rice on a mandatory basis.

C. Market Promotion Program

Formerly known as the Targeted Assistance Program which began in 1985, the Market Promotion Program is designed to help establish and maintain the market share of U.S. agricultural exports abroad by funding promotional activities. The MPP is jointly funded through the CCC and an eligible trade organization, which can include non-profit trade organizations, regional associations of state agriculture departments, producer cooperatives, state agencies which promote agricultural products, and in some cases private companies. The MPP's goal is to counteract the unfair trade practices of other countries. Under the 1990 Farm Bill the MPP receives a minimum amount of \$200 million per year.

¹⁷ GATT, Trade Policy Review Mechanism of the United States of America (Geneva, November 1991), p. 110.

D. Credit Guarantee Programs

The Export Guarantee Program (GSM-102) has been functioning since 1982 and is the U.S. largest export promotion program. GSM-102 guarantees repayment of private, short-term credit for up to three years.

The Intermediate-Term Export Guarantee Program (GSM-103) began under the Food Security Act of 1985 and is designed to complement the GSM-102. GSM-103 authorizes the CCC to provide low interest loans to expedite the sale of U.S. agricultural products and guarantees 98 percent of the principal and some of the interest accrued during the financing period which can range from 3 to 10 years. If importers default on their loans, the CCC pays the exporter the amount of the principal and interest covered by the guarantee. In FY1991 \$4.5 billion in credit was approved for the GSM-102 and GSM-103 programs.