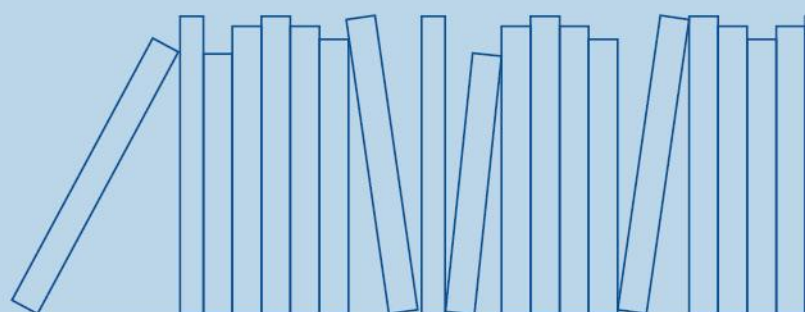


Economic Commission for Latin America and the Caribbean
ECLAC OFFICE IN WASHINGTON, D.C.



United States-Latin America and the Caribbean Trade Developments 2015-2016



UNITED NATIONS



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Abstract

United States Trade Developments, 2015-2016, provides an overview of the most relevant developments in United States trade relations with Latin America and the Caribbean and of the measures that inhibit the free flow of goods among countries in the Western Hemisphere. This is an annual report elaborated by the ECLAC Washington Office.

This period, global trade has continued the slowdown observed in the last couple of years. Global trade is expected to grow 1.7% in 2016, well below the 2.8% projected in April by the World Trade Organization (WTO).

The United States trade policy has continued to focus on the negotiation of “mega-regional” free trade agreements, such as the Trans-Pacific Partnership Agreement (TPP) and the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union. In the region, the United States has continued the process of reestablishing relations with Cuba. With Central America, on 18 December 2016, the United States Congress approved the appropriation of US\$ 750 million in assistance funds for Central America for the fiscal year 2016, in the context of the Alliance for Prosperity Plan that was launched in 2015. In addition, in the summer of 2016, Costa Rica established a “protective transfer arrangement” in partnership with the United Nations High Commissioner for Refugees and the International Organization for Migration to provide temporary safe shelter for up to 200 migrants at a time for countries of the Northern Triangle.

This document delves into the patent and data-exclusivity protection of pharmaceuticals in the intellectual property chapter of the TPP agreement, signed on 4 February 2016, to shed some light on the controversy over access to medicine and intellectual property rights (IPR) that has accompanied the agreement since it was announced. It also describes in some detail the TPP treatment of digital trade and discussed the estimated effects of the agreement on the U.S. economy.

Introduction

United States Trade Developments, 2015-2016, provides an overview of the most relevant developments in United States trade relations with Latin America and the Caribbean and of the measures that inhibit the free flow of goods among countries in the Western Hemisphere. This is an annual report elaborated by the ECLAC Washington Office.

This year has been characterized by a strong worldwide anti-globalization sentiment that permeated the Presidential campaign in the United States and was materialized in the United Kingdom's vote to exit the European Union in June of 2016. It has also been prevalent in the significant increase in protectionism, particularly among the most advanced economies. According to the Global Trade Alert, between January and August of 2016, governments took more than 400 trade-distorting measures, more than four times as many as in the same period in 2009. Most measures are linked to anti-dumping by G-20 countries and are concentrated in a few sectors: steel, copper and aluminum.

At the same time, global trade has continued the slowdown observed in the last couple of years. Global trade is expected to grow 1.7% in 2016, well below the 2.8% projected in April by the World Trade Organization (WTO). The revision is mostly driven by a slowdown in GDP growth in China, Brazil and North America. In particular, United States imports from China have dropped significantly this year. If confirmed, this will be the first time that the ratio of trade growth to world GDP growth falls below 1.1, which is the number that has characterized the post-2008 crisis years (the historical value had been 1.5). United States trade decreased in the first nine months of 2016; exports decreased 3.5% and imports 3.3%, as did trade in Latin America and the Caribbean.

The United States trade policy has continued to focus on the negotiation of “mega-regional” free trade agreements, such as the Trans-Pacific Partnership Agreement (TPP) and the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union. In the region, the United States has continued the process of reestablishing relations with Cuba. A series of efforts have been made to increase economic engagement with Cuba and its people after the restoration of diplomatic relations between the United States and Cuba in 2015. With Central America, on 18 December 2015, the United States Congress approved the appropriation of US\$ 750 million in assistance funds for Central America for the fiscal year 2016, in the context of the Alliance for Prosperity Plan that was launched in 2015. According to the White House, the US\$ 750 million was split into the following categories: US\$ 299

million for development assistance, more than US\$ 200 million for security, US\$ 184 million for economic prosperity programmes, US\$ 26 million for military initiatives and US\$ 4 million for global health, military training, and other regional prosperity programmes. In order to receive such funds, the Northern Triangle countries have to abide by a set of governance and human rights conditions laid out by the United States Congress. In addition, in the summer of 2016, Costa Rica established a “protective transfer arrangement” in partnership with the United Nations High Commissioner for Refugees and the International Organization for Migration to provide temporary safe shelter for up to 200 migrants at a time for countries of the Northern Triangle.

On 4 February 2016, after six years of negotiations, the United States and 11 other countries of the Asia-Pacific region (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam) signed the Trans-Pacific Partnership Agreement. The TPP is a “next generation” comprehensive and high-standard agreement that encompasses new issues—for instance digital trade—and deepens the treatment of others, such as regulatory convergence, government procurement and state-owned enterprises. If implemented, it will create the largest free trade area of the world, encompassing 40% of global GDP. The TPP is considered a “living agreement” because of its potential to extend its membership and include new issues. For the agreement to enter into force, the United States Congress needs to approve implementing legislation.

This document delves into the patent and data-exclusivity protection of pharmaceuticals in the intellectual property chapter of the TPP agreement to shed some light on the controversy over access to medicine and intellectual property rights (IPR) that has accompanied the agreement since it was announced. It also describes in some detail the TPP treatment of digital trade.

The debate surrounding the TPP and its potential effects on the United States economy, employment and income distribution could not be settled by the most recent studies on the potential impact of the TPP on the United States economy, as some of them show very contrasting results. Although most studies project positive economic effects in annual real income, GDP and employment in the United States, the magnitude of these changes is relatively small: of the order of 0.015%-0.5% over a 15 year span. In addition, one study predicts only negative effects on the United States economy and a loss of 500,000 jobs by 2030 in the United States and of more than 700,000 worldwide.

The next section briefly reviews trade in the Americas figures. Section III reviews trade developments starting with a description of the efforts taken to reengage with Cuba, which is followed by a review of some of the aspects of the TPP as described above.

I. Trade in the Americas

Latin America and the Caribbean continue to be the second largest United States trade partner after Asia (Table 1). While both regions have been increasing their share of United States trade in detriment of Europe and Japan, among others, Asia's increase in participation has been much faster –from 20.7% in 1980 to 35.4% in 2015, as compared with an increase from 15.7%-21% for Latin America and the Caribbean. About 25% of total United States exports go to Latin America and the Caribbean as well as to Asia. However, while 18% of United States imports come from Latin America and the Caribbean, more than 40% are originated in Asia.

Table 1
United States: breakdown of trade by main countries and regions (1980-2015)
and annual rates of trade growth (1990-2015)

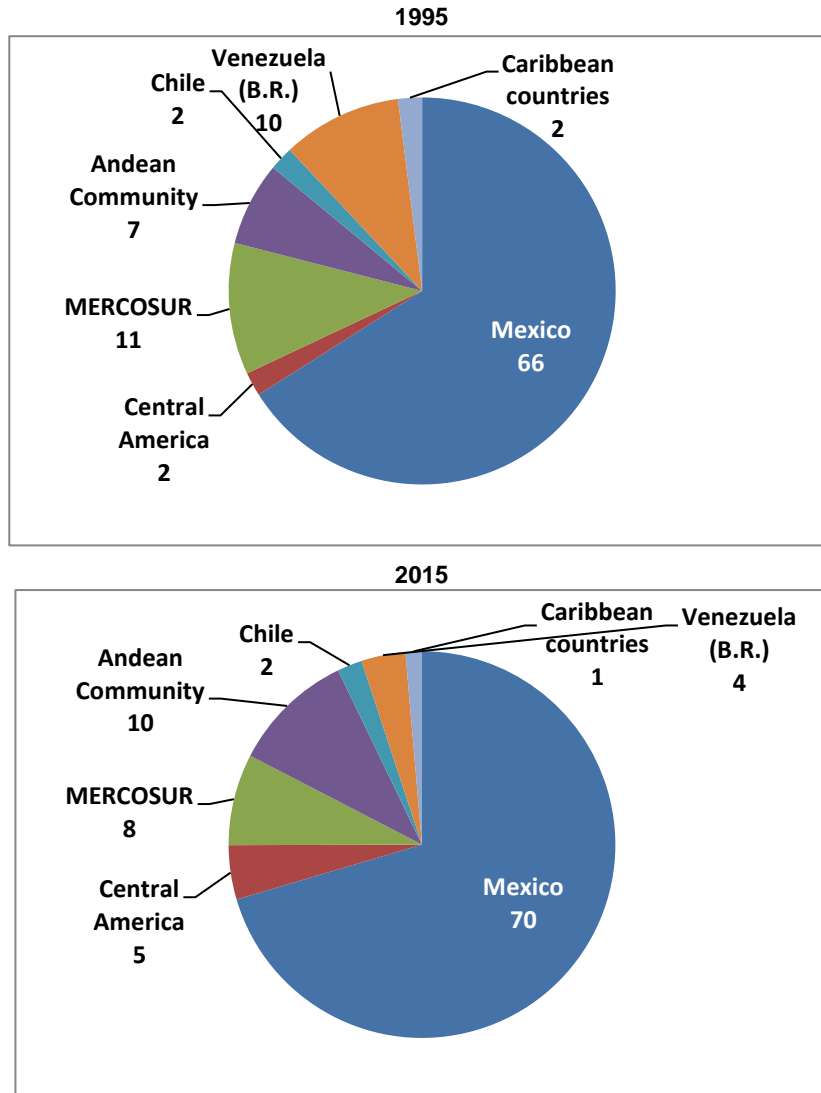
(Percentages of total United States trade and percentages)

	Region/country	1980	1990	2000	2010	2015
Exports	Canada	16.0	21.1	22.6	18.4	18.7
	Latin America and the Caribbean	17.1	13.3	21.6	22.4	25.8
	European Union	28.7	26.6	21.6	19.4	18.1
	Asia	19.6	24.5	21.9	23.7	25.7
	China	1.7	1.2	2.1	7.6	7.7
	Japan	9.4	12.4	8.4	5.0	4.2
	Rest of world	18.5	14.4	12.2	16.2	11.7
	Imports	Canada	16.6	18.1	18.5	14.2
Latin America and the Caribbean		14.2	12.9	16.9	18.1	18.3
European Union		17.2	20.2	18.7	17.9	19.0
Asia		21.9	31.7	31.9	34.6	42.0
China		0.5	3.1	8.6	19.3	21.5
Japan		13.0	18.1	12.0	6.1	5.8
Rest of world		30.1	17.1	14.1	15.2	7.5
Total trade		Canada	16.3	19.6	20.6	16.3
	Latin America and the Caribbean	15.7	13.1	19.3	20.2	21.3
	European Union	22.9	23.4	20.1	18.7	18.7
	Asia	20.7	28.1	26.9	29.1	35.4
	China	1.1	2.2	5.3	13.5	16.0
	Japan	11.2	15.3	10.2	5.6	5.2
	Rest of world	24.3	15.8	13.2	15.7	9.2

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of information from the United States International Trade Commission (USITC).

United States imports from Mexico continue to dominate United States imports from the region. In 2015, 70% of United States imports came from Mexico as compared with 10% from the Andean community and 8% from the Southern Common Market (MERCOSUR). In the 20 years since NAFTA was signed, United States imports from Mexico have increased their share in the region from 66% in 1995 to 70% in 2015.

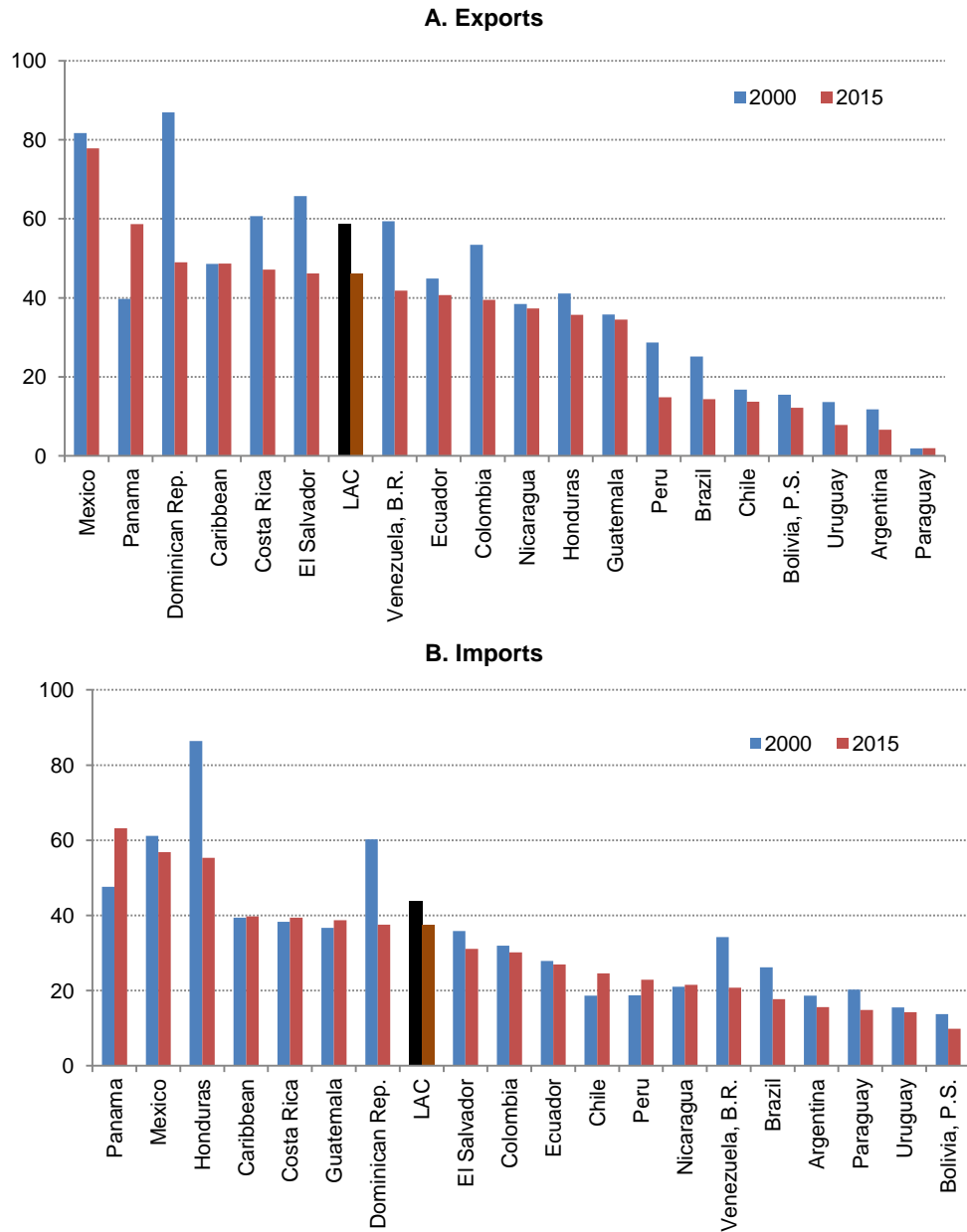
Figure 1
United States: breakdown of imports from Latin America and the Caribbean by origin, 1995 and 2015
(Percentages of the total)



Source: Eclac elaboration on the basis of USITC

Mexico is highly dependent on trade with the United States. Although slightly lower than in 2000, the United States absorbs a little under 80% of total Mexico exports. Panama, the Dominican Republic, the Caribbean, Costa Rica and El Salvador also send more than half of their exports to the United States.

Figure 2
Latin America and the Caribbean: United States share of total trade, 2000 and 2015
(Percentages)



Source: United Nations Commodity Trade Database (COMTRADE), United States International Trade Commission (USITC), International Monetary Fund (IMF), and central banks of Dominican Republic, Nicaragua, Honduras, and Guatemala.

II. United States Trade Developments

In addition to the signature of the TPP agreement, other relevant trade developments include the continuation of the process of reestablishing relations with Cuba. Steps have been taken to ease certain travel, trade, and financial transaction restrictions applicable to Cuba. Postal services have been resumed after a 53 year interruption, airlines have been authorized to fly from the United States to Cuba, education exchanges have been taking place and collaboration in areas of health, education and the environment has been launched. Substantial modifications to the embargo, however, will require congressional action. The next section presents some of the efforts made in the reengagement with Cuba as well as the available data on trade and immigration flows. The following section, B, is devoted to the TPP and the treatment of IPR of pharmaceutical products, digital trade and the potential effects of the TPP agreement on the United States economy.

A. Highlights of United States-Cuba reengagement

On 14 October 2016, the United States made public the Presidential policy directive on the United States-Cuba normalization. The aim of the directive is to institutionalize the progress already made since the United States and Cuba announced the intention to reestablish diplomatic relations in December 2014 and to guide United States policy towards Cuba for the future. The United States and Cuba restored diplomatic relations on 20 July 2015, and both countries have taken several steps toward normalizing their economic relationship, expanding cooperation on the issues of the environment, health and law enforcement.¹ The new directive furthers engagement and cooperation and opens up more opportunities for United States citizens as well as Cuban nationals to connect with one another. It also directs a number of government agencies to expand their engagement with Cuban counterparts in the pursuit of those objectives.

Engagement between governments has included

- 20 July 2015: The United States and Cuba reopened their respective embassies and subsequently launched a Bilateral Commission to meet regularly to advance the normalization process.
- November 2015: the United States and Cuba signed a joint statement on environmental protection cooperation and a memorandum establishing a long-term, cooperative relationship between marine-protected areas in Cuba, Florida and the Gulf of Mexico.
- March 2016: The United States and Cuba signed a Memorandum of Understanding on hydrography and nautical charting to help improve the safety of marines and boaters of all nations. Negotiations are underway to delimit the unresolved maritime boundary between the United States, Mexico and Cuba.
- 20-22 March 2016: President Obama traveled to Cuba. He was the first United States President to visit the island since Calvin Coolidge in 1928.

Enhancing public-health collaboration

- June 2016: The United States and Cuba signed a Memorandum of Understanding on public health that will help facilitate cooperation in the battle against diseases such as the Zika virus and cancer. The new directives also enhance medical collaboration by authorizing joint

¹ Based on the United States Department of State fact sheet: United States-Cuba One-Year Anniversary of Reestablished Diplomatic Relations, July 2016. <https://www.state.gov/r/pa/prs/ps/2016/07/260306.htm>

research between Cuban and United States citizens in pursuit of vaccines and other medical innovations, as well as allowing United States imports of FDA-approved Cuban pharmaceuticals.

Enhancing economic engagement

- The Obama Administration has taken steps to ease certain travel, trade and financial transactions restrictions applicable to Cuba. These have made it easier for United States citizens to travel to Cuba, albeit for authorized purposes only, and to provide resources to and share information with Cuba's private sector. United States travel to Cuba has increased 75% between 2014 and 2015 (Rice, 2016). However, under the current legislation, substantial modifications to the embargo require congressional action.
- 10 June 2016: The Department of Transportation (DOT) approved six United States airlines to begin service between five United States cities and nine Cuban cities, excluding Havana, as early as the fall of 2016.
- 7 July 2016: DOT issued a proposal for eight United States airlines to begin service between Havana and 10 additional United States cities. In November 2016, Southwest and American Airlines started flights to Havana.
- The new directive lifted the cap on Cuban merchandise that United States citizens traveling to Cuba can bring back for personal use, including alcohol and tobacco products.

People-to-people engagement

- 16 March 2016: After 53 years of interruption, the United States resumed regular postal service with Cuba.
- Educational, professional and cultural exchange: In 2016, the Cuban-American community committed US\$ 1 million to support young Cubans pursuing studies in the United States, the inclusion of Cubans for the first time in United States fellowship programmes, and the participation of young Cuban leaders and entrepreneurs in the Young Leaders of the Americas Initiative and the Global Entrepreneurship Summit. The new directive expands the grants and scholarships made available to Cuban citizens to include scientific research and religious activities, in addition to the already authorized grants for humanitarian projects, such as educational and philanthropic projects.

Enhanced security collaboration

- 9 November 2015: the United States and Cuba held an inaugural Law Enforcement Dialogue in Washington, DC. The Law Enforcement Dialogue process includes technical exchanges on specific law enforcement issues of mutual concern such as counternarcotics, money laundering, fraud and human smuggling, and counterterrorism and is co-chaired for the United States by the Departments of Justice, State, and Homeland Security. (<https://cu.usembassy.gov/united-states-cuba-sign-law-enforcement-memorandum-understanding/>). The Department of Homeland Security signed a Memorandum of Understanding with Cuba's Ministry of Interior to improve security in travel and trade issues.

1. United States immigration policy toward Cuba

According to the United States Census Bureau American Community Survey of 2010, Cubans represent one of the top 10 foreign-born groups in the United States, with about 1.1 million immigrants. Mexico, El Salvador, the Dominican Republic and Guatemala also make the list with 11.7 million immigrants, 1.2 million, 0.9 million and 0.89 million, respectively. Mexicans represent 29% of the foreign-born population while Cubans represent 3%.

United States immigration policy towards Cuba is mandated by the Cuban Adjustment Act (CAA) of 1966. Under CAA, all Cubans who arrive in the United States are presumed to be political refugees and are eligible to become legal permanent residents. Once Cubans reach a port of entry into the United States and pass an inspection that includes a check of criminal and immigration history, they can remain

legally in the United States, and after a year, they may apply for legal permanent residence (Krogstad, 2015). When migration via boat from Cuba surged in the mid-1990s —United States Coast Guard apprehension of Cuban nationals jumped from 2,882 in fiscal year 1993 to 38,560 in fiscal year 1994— Cuba and the United States addressed the issue with two migration agreements. In 1994, Cuba agreed to discourage boat departures, and the United States agreed both to grant admission to at least 20,000 Cubans annually and to place intercepted Cubans in safe havens to be considered for asylum (Rosenblum and Hipsman, 2015). In 1995, the United States changed its policy to returning aspiring migrants apprehended at sea directly to Cuba or to third countries, if the migrants feared prosecution. These two agreements set the ground work for the current “wet foot, dry foot” policy in which Cubans intercepted at sea are returned to Cuba and in which the Cuban government has pledged not to retaliate against them. Those who successfully reach the United States are permitted to stay and become eligible to apply for a green card after a year. Rosenblum and Hipsman summarize United States immigration policy as follows: “Cuba receives unique treatment under United States immigration law. No other nationality is given a blanket right to green-card eligibility, no other country has a floor below which visas may not fall, and no other group of immigrants is guaranteed admission to the United States if they appear at or between ports of entry. In effect, Cuban nationals are exempt from deportation and immigration enforcement policies affecting all other noncitizens”(Rosenblum and Hipsman, 2015).

In fiscal year 2015, 43,159 Cubans entered the United States via ports of entry—a 78% increase with respect to the previous year, according to the United States Customs and Border Protection data obtained through a public record request by Pew Research Center. In 2013, the number of Cubans entering the United States had already increased dramatically after the Cuban government lifted travel restrictions in January. In fiscal year 2011, only 7,759 Cubans came into the United States.

Table 2
Number of Cubans entering the United States, by fiscal year

Year	Cubans
2011	7,787
2012	12,192
2013	17,659
2014	23,572
2015	43,159

Source: United States Customs and Border Protection via Pew Research Center.

The most dramatic jump came in the months immediately following the President’s announcement of the decision to normalize relations between Cuba and the United States on 17 December 2014. From January to March 2015, 9,900 Cubans entered, as compared with the 4,746 who arrived during the same time period in 2014, presumably in response to the anticipation that the decision to normalize relations between the United States and Cuba may bring about revisions to the United States immigration policy toward Cuba (Pew Research Center, 2015).

2. United States trade with Cuba

Despite the embargo on Cuba imposed by the United States in 1960, the United States has since maintained some level of trade with Cuba, as shown in Table 3. Up until 2000, exports reflected products and articles donated for relief, including medicinal and pharmaceutical products, food, clothing and so on. In 2000, however, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) exempted certain foods, medicine, and medical equipment from the embargo. As a result, exports picked up, and the United States became one of Cuba’s leading suppliers of agricultural imports. According to the United States Department of Agriculture (USDA), in 2009, the United States share of the Cuban market reached 42%. Increased competition from other countries and the financial limitations placed on United States exporters has contributed to a decline in the United States market share. In 2014, 16% of

Cuba's agricultural imports originated in the United States, making the United States the third-largest supplier of agricultural products to Cuba after the European Union and Brazil.

The states of Virginia, Louisiana, Alabama, Georgia and Florida have since been the top United States exporters to Cuba. In 2015, Virginia exported 28% of all United States exports to Cuba, followed by Georgia at 21%, Florida at 20% and Alabama at 18%. The prohibition on issuing credit to Cuba and the cash-in-advance requirement for all exports maintained a suppressing factor on the United States exports to Cuba. In January 2016, the Department of the Treasury and the Department of Commerce lifted most restrictions on financing of authorized nonagricultural exports to Cuba. The TSRA, however, did not provide for the resumption of agricultural imports from Cuba, and in the absence of new legislation modifying the embargo, United States imports from Cuba will remain banned.

Table 3
United States Exports to Cuba, 1996-2015
(millions of dollars)

Year	Exports
1996	5
1997	9
1998	3
1999	5
2000	7
2001	7
2002	144
2003	261
2004	400
2005	361
2006	348
2007	447
2008	718
2009	533
2010	363
2011	363
2012	464
2013	360
2014	299
2015	180

Sources: Data on this table have been compiled from tariff and trade data from the United States Department of Commerce and the United States International Trade Commission.

The United States exports mostly poultry and soybean meal to Cuba; together these products accounted for 75% of all United States agricultural exports to Cuba. Herbicides, anti-sprouting products and plant-growth regulators, flours and meals of soybeans and soybeans other than seeds round out the top 5 agricultural exports categories, about 98% of the total (table 4).

The top 10 products exported to Cuba include chicken, soybeans and soybean products, herbicides and medical and pharmaceutical products

Table 4
United States Exports to Cuba: Top 10 products
(millions of dollars)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Chicken cuts and edible offal frozen	0.0	1.7	21.2	37.2	56.4	59.1	43.8	76.2	133.8	137.3	99.8	93.5	154.9	144.5	147.7	77.6
Soybean oilcake and other subproducts of the extraction of soy bean oil	0.0	0.0	19.3	21.5	15.2	15.1	26.7	50.1	46.2	48.1	12.2	9.9	41.4	69.3	67.3	43.9
Herbicides, anti-sprouting products and plant-growth regulators	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	6.4	12.6
Flours and meals of soybeans	0.0	0.0	0.0	3.8	17.8	3.4	7.4	3.3	0.0	1.1	0.0	0.0	0.0	0.0	0.0	11.2
Soybeans, other than seed	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	62.3	39.4	30.6	10.3
Phosphates of calcium, except calcium hydrogenorthophosphate (dicalcium phosphate), nesoi	0.0	0.0	0.0	0.0	0.0	2.7	1.1	0.0	0.0	0.0	8.1	5.9	0.0	0.0	0.0	9.2
Corn, other than seed corn	0.0	2.3	22.7	35.6	57.5	49.4	42.6	109.0	195.9	119.9	86.1	122.8	133.5	56.9	28.2	4.9
Ultrasonic scanning apparatus	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	3.9
Medicinal and pharmaceutical products donated for relief or charity	2.3	0.9	0.7	0.5	1.3	1.7	2.0	1.9	0.9	0.5	0.4	0.7	2.9	1.4	1.8	1.9
Commingled food products, donated for relief or charity	0.0	0.3	0.3	0.1	1.6	0.5	0.5	0.7	1.0	2.6	1.6	1.8	3.4	2.5	2.9	1.2

Source: Elaborated by ECLAC on the basis of USITC interactive tariff and trade DataWeb. The level of disaggregation is HST 6 digit

Some United States businesses have already started making new inroads into Cuba. In December 2015, commercial airlines announced plans for regular flights between the United States and Cuba, in response to the United States administration's easing of travel restrictions. Tourism to Cuba is up. A number of telecommunication firms have signed deals to provide roaming services to foreign tourists. The United States also resumed regular postal service with Cuba.

Economic and legal negotiations would also be a crucial component of any future trade with the United States. The Foreign Claims Settlement Commission, part of the United States Department of Justice, recognizes almost 6,000 claims by firms or individuals on property confiscated by the Cuban government. For its part, the Cuban government has claimed US\$ 121 billion in economic damages resulting from the United States embargo.

B. The debate on the impact of globalization on the economy and the Trans-Pacific Partnership Agreement

In the decades before the 2008 financial crisis, trade contributed to high rates of global growth: developing economies were integrated into global value chains and billions of people were brought out of poverty. Nonetheless, the benefits of trade were not equally distributed. Foreign competition rendered some firms non-competitive, so jobs were lost and entire communities were affected. The reallocation of workers from the less competitive firms to the more competitive ones did not occur as seamlessly as anticipated, if at all.

Additionally, the technological change that took place over the past couple of decades greatly affected jobs and pay, as the new technologies increased the demand for college-educated workers. The lower cost of automation made some jobs obsolete and disappear, especially the lower-skilled ones, compounding the increase in wage inequality. In addition, the returns to entrepreneurship also became more unequal due to technological change—for instance, Amazon, Google and Uber, which use online platforms to link consumers with producers, dominate their respective markets at the expense of smaller less technological companies.

China's accession to the WTO in 2001 was also a large shock to the world economy. China penetrated developed countries' markets with low-cost manufacturing at great speed. While in 1991 only 2% of world manufacturing exports originated in China, by 2013, 20% of world manufacturing exports came from China. In the United States, of the 6 million jobs lost in manufacturing between 1999 and 2011, 20% of them were lost to competition with China (Autor, Dorn and Hanson, 2013). Most of the workers who lost those jobs did not find employment nearby or moved in search of new ones, ending up unemployed or leaving the workforce altogether. Those who did find new jobs did so at a significant pay cut and in industries that were vulnerable to foreign competition. As a result, the local economies experienced a depressing effect on aggregate demand and job losses in non-manufacturing industries in those areas. Towns in Rust Belt states (Illinois, Indiana, Michigan, Ohio and Pennsylvania) still show persistent unemployment, deteriorating human capital and lower quality of life. The losses from trade tend to be concentrated in some towns and states.

The growth in United States imports from China deeply affected demand for goods produced by United States local economies. China's share of the United States market grew sharply, even relative to those of Mexico and Central America, regions that have free trade agreements with the United States in place (NAFTA and CAFTA, respectively). The value of annual United States goods imported from China increased by a staggering 1156% from 1991 to 2007 (compared with an increase of only 375% from Mexico/CAFTA), whereas United States exports to China grew by much less (Autor, Dorn and Hanson, 2013). Over the same period, the fraction of United States working-age population employed in manufacturing fell by one third from 12.6% to 8.4% (Autor, Dorn and Hanson, 2013). Autor, Dorn and Hanson acknowledge that the one-off integration of China had a bigger and more lasting effect than expected. The United States should have had an increased demand for its exports and should have moved workers into more advanced industries that could successfully compete in global markets; in reality, however, these presumed adjustments never occurred, at least not in the necessary magnitude.

The anticipated effect of China's growth on the United States —an equivalent increase in demand for United States exports— never materialized either. Economists have advanced several hypotheses to explain why the increased demand never occurred. These hypotheses include, among others, the Chinese economy's high propensity to save, which translates into a small propensity to consume and therefore to import, and the fact that the People's Bank of China maintained the artificial devaluation of the Yuan, thus making imports more expensive.

However, in the long run, gains from trade come from greater efficiency. The proliferation of free trade agreements, cross-border investment, and transnational supply chains has allowed United States industries to stay competitive, innovate and create jobs. Typically, about half of the value of United States imports is composed of intermediate goods and capital equipment —or, inputs to United States production (Ikenson, 2016). Exporting firms pay a wage premium of between 15% and 18% compared with non-exporters (*The Economist*, 2016). Free trade also provides access to cheaper imports, which has a positive effect on the purchasing power of both consumers and producers.

The solution to the trade concern sentiment may be in strengthening the safety net provided to workers displaced by trade or other reasons such as automation or new technologies that make some jobs obsolete. Germany, Singapore, Denmark and the Republic of Korea have been successful in helping negatively affected workers adjust to the new environment and take part in the benefits (*The Economist*, 2016). In the United States, the Trade Adjustment Assistance Programme, a federal government programme that seeks to help workers and firms adapt to import competition and dislocation caused by increased trade liberalization, has not proven as effective (see box on "Trade Adjustment Assistance").

With the correct supporting domestic policies, trade could be made beneficial for all. Governments should increase investment in education, job training, temporary income support, job-search assistance and targeted trade-adjustment assistance to ease the transition of workers left behind by globalization (or technology) to move into new and better jobs.

The TPP agreement was signed by all 12 member countries on 4 February 2016. The agreement's treatment of intellectual property protection of pharmaceutical products has been particularly controversial, especially among less developed countries that fear that stronger protection of IPR of pharmaceutical products could delay the availability of generic drugs and biosimilars. Access to generic and biosimilars contribute to lowering the cost of potentially life-saving medicines. The following section, "The Trans-Pacific Partnership and the pharmaceutical industry," will address these issues from the perspective of the balance struck in the TPP regarding access to medicines and protecting incentives for innovation.

The TPP has been labeled a "next generation" free trade agreement because it goes beyond the traditional topics covered in previous trade agreements, including new issues, such as digital trade, and deepening regulatory convergence and harmonization, among others. Subsection B describes how digital trade is addressed in the TPP.

The last subsection presents the results of the most recent studies on the potential effects of the TPP on the United States economy. If and when the TPP reaches the United States Congress for consideration, the potential effects of the agreement on the United States economy, employment and income distribution would likely take centerstage. The studies examined in the subsection, 3, sought to shed some light on those issues.

Box 1 Trade Adjustment Assistance

The Trade Adjustment Assistance (TAA) Programme is a federal government programme that seeks to help workers and firms adapt to import competition and dislocation caused by increased trade liberalization. Adjustment assistance has long been justified as the least disruptive alternative to policies that would restrict imports, reduce economic growth and potentially create tension (retaliation) among trade partners.

TAA was first authorized in the Trade Expansion Act of 1962, with two programmes covering workers and firms. The United States Congress added a communities programme in 1974, later terminated in 1982, and a farmers programme in 2002. Congress approved another communities programme in 2009, but discontinued it in 2011. General discussion of "TAA" often only refers to the workers programme given that, from a budgetary standpoint, the workers programme is significantly larger than the programmes for firms and farmers.

TAA is a mandatory programme supported through annual appropriations. Appropriations in fiscal year 2016 were US\$ 861 million for the workers programme and US\$ 13 million for the firms programme. Congress authorized the farmers programme to receive US\$ 90 million annually per fiscal year 2015 through fiscal year 2021, subject to annual appropriations.

To be eligible for TAA benefits, a group of workers or their representative (for example, firm, union or state) must petition the Department of Labor (DOL) to establish that they were totally or partially separated from their employment because of foreign trade. The DOL considers that a partial separation occurs when hours of work and wages are reduced to less than 80% of a worker's weekly average. The DOL may qualify workers or their representatives as TAA-certified if they prove that an increase in directly competitive imports affected their employment, that the workers' firm has moved production to a foreign country, that the displaced workers were employed at firms that are suppliers to or downstream producers of TAA-certified firms, or that workers are identified by the United States International Trade Commission (USITC) as affected by a market disruption related to foreign trade.

In general, TAA provides more robust benefits and services than those available for workers who lose their job for reasons other than foreign competition. Individual workers can be eligible for the following TAA benefits:

Training and employment services: Workers receive training to develop skills for obtaining new employment. Training is funded through federal subsidies and constitutes the largest reemployment service expenditure with a cap of US\$ 450 million per year. TAA also provides case management services and an allowance equal to 90% of their job search and reallocation expenses, up to US\$ 1,250 for each benefit. In fiscal year 2015, an estimated 57,631 workers became eligible for TAA benefits and services, and about 88% of TAA training participants received occupational skills training, typically provided in a classroom setting. Remedial, prerequisite, on-the-job and other customized training was also provided. During the same year, 74% of TAA workers found employment in the first quarter after exiting the programme and 92% of those workers remained employed six months later. The DOL reported that 89% of workers who completed training received an industry-recognized credential or a secondary school diploma or equivalent.

Trade adjustment allowance (TRA): TAA-certified workers who have exhausted their unemployment compensation (UC) may receive weekly income support payments. Weekly TRA benefits should be equivalent to the worker's final weekly UC benefit. There is variation in benefit levels across states, as states each administer their UC programmes. In July 2015, a worker with no dependents would receive a maximum of US\$ 698 in Massachusetts versus a maximum of US\$ 240 in Arizona.

Reemployment Trade Adjustment Assistance (RTAA): Certified workers age 50 and over who obtain reemployment at lower wages may benefit from a wage insurance programme. A cash payment is provided to 50% of the difference between the worker's wage at the trade-affected job and the worker's wage at their new employment, and the maximum payment is US\$ 10,000 over a two-year period.

The Health Coverage Tax Credit (HCTC): Administered through the tax code, it provides a credit equal to 72.5% of qualified insurance health premiums to workers eligible for TRA. Nevertheless, for every year HCTC was available, fewer than 30,000 workers participated. Among the possible reasons for the low use of this benefit among eligible workers were the lack of awareness of the benefit, the complexity of the enrollment service to receive the tax credit, and barriers to finding a qualifying health plan. For example, some plans required the certified worker's former employer to have a minimum of 20 workers and continued to provide health benefits to its remaining workers. Some plans imposed stricter standards on health plans than other federal and state laws. Moreover, given that most HCTC-eligible workers were no longer employed, even a 27.5% of the premium could have been unaffordable.

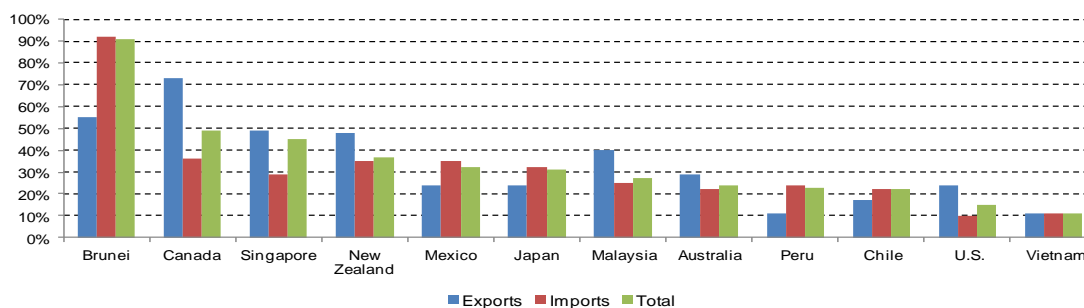
1. The Trans-Pacific Partnership and the pharmaceutical industry²

Achieving the right balance between incentives to innovate and access to medicine is among the most sensitive and contentious issues in the negotiation of trade agreements, particularly their IPR chapters. Many factors, both domestic and global, affect access to medicine in addition to intellectual property protection and trade. Even within trade agreements, provisions other than those covering IPR may also impact access to medicines, including tariff concessions on pharmaceutical goods, healthcare-services liberalization commitments and government procurement policies. It is undeniable, however, that IPR provisions, particularly those intended to grant, enforce and extend patent monopoly rights on pharmaceuticals, do affect market conditions for both originator brands and biosimilar pharmaceuticals. The United States sees its intellectual-property-intensive industries, including chemicals and pharmaceutical, as crucial for its economy and international competitiveness; the United States has been the main driver for high intellectual property standards in trade agreements since before the Uruguay Round. The TPP is no exception.

Trade in pharmaceutical products among the TPP countries amounted to US\$ 32.3 billion in 2014 (UN COMTRADE database). On average, about half of the TPP trade in pharmaceutical products occurs among the TPP member countries (Figure 3). However, the significance of the TPP trade flows in pharmaceuticals varies by country —i.e. 92% of Brunei's pharmaceutical imports are sourced in TPP countries while only about 10% of the United States' come from other TPP partners; the rest of the countries import between one fifth and one third of their pharmaceuticals from other TPP countries.

For the United States, the TPP region is a relatively more significant market as a destination for its pharmaceutical products. About one third of its pharmaceutical exports go to other TPP countries. Similarly, for Canada the TPP represents 71% of its export market for pharmaceuticals, 55% for Brunei and 51% for Singapore (Figure 3).

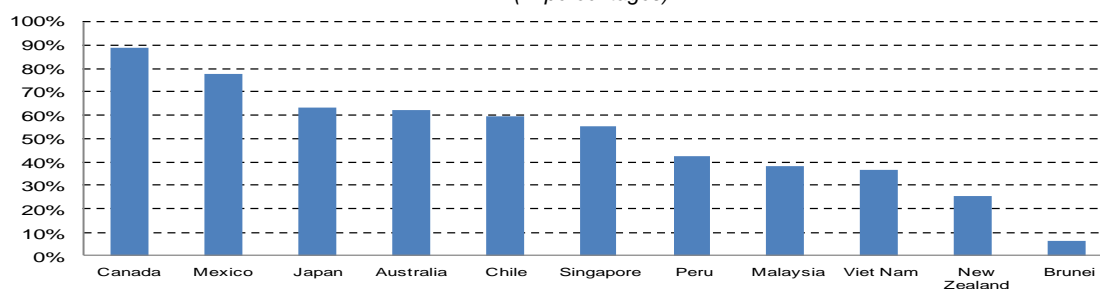
Figure 3
Share of intra-TPP Trade in Global Trade: Pharmaceutical Products, 2014
(In percentages)



Source: Elaborated by the authors on the basis of UN COMTRADE database.

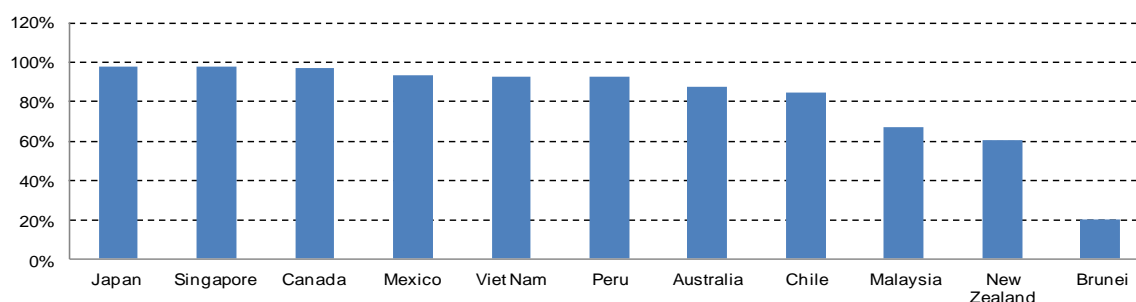
² This section draws heavily from Raquel Artecona and Rosine M. Plank-Brumback (2016).

Figure 4
Share of imports from United States in total TPP imports, small molecule products, 2014
(In percentages)



Source: Elaborated by authors on the basis of UN COMTRADE database.

Figure 5
Share of imports from United States in total TPP imports, biologics, 2014
(In percentages)



Source: Elaborated by authors on the basis of UN COMTRADE database.

Figure 5 shows that the United States is the main —almost sole— supplier of biologics to countries such as Japan, Singapore, Canada, Vietnam and Peru; more than 90% of the countries' imports of biologics from the TPP come from the United States. That means that the TPP is a very significant market for biologics for the United States. Since Japan, Singapore and Canada all import about one third of their pharmaceutical imports from the TPP countries, the United States has a market share in all these three countries of about 30%. Protecting the share of those markets seems very relevant to the United States pharmaceutical industry.

The United States International Trade Commission (USITC) estimates that United States exports of chemical products, including pharmaceuticals, would be 0.7 percent higher (US\$ 1.9 billion) under the TPP than baseline estimates, and that United States imports would be 1.3 percent higher (US\$ 5.3 billion) than the baseline, due in part to tariff reductions.

The TPP is being criticized as undermining access to critically needed prescription drugs. The following section presents some of the most salient pharmaceutical provisions in the TPP.

a) Patent and Regulatory Data-Related Protection on Pharmaceutical Products in the Trans-Pacific Partnership

This section discusses some of the key pharmaceutical patent and data protection provisions in the TPP. The first three subsections address provisions in which the TPP goes further than previous United States free trade agreements with the region in extending IPR protection: protection of incremental innovation, patent extensions, and regulatory data protection. The TPP has been criticized for protecting incremental innovation and with it potentially promoting evergreening. With respect to patent extensions, the TPP rolls back the flexibilities granted in some of the previous free trade agreements with Western

Hemisphere countries, making them mandatory rather than optional. One of the most contentious aspects of the TPP—and still an outstanding issue for ratification by the United States Congress—is the period of regulatory data protection for biologics. The United States had pushed for 12 years, and the TPP requires 8 years at most. Although less than what the United States had advocated for, this length of time still significantly enhances data protection in many TPP countries in which data protection is of a far shorter term or nonexistent, effectively increasing the IPR protection for biologics. The fourth subsection describes patent linkages, an aspect of IPR protection where the TPP provides more flexibility than in previous United States FTAs with the region. The rest of the subsections discuss provisions in which the TPP seeks to create broader access to medicines: public health flexibilities, transition periods, patent cooperation and transparency and exceptions.

i) Patent Process

TRIPS Agreement (Art. 271.1) provides that patents “shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application...patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.” During the Uruguay Round, United States and European negotiators achieved their objectives of ensuring the availability of product patents for pharmaceuticals and agricultural chemicals, as well as eliminating requirements to domestically work/manufacture a product within the country.

In the TPP, patents are also made available for at least one of the following: new uses of a known product, new methods of using a known process or new processes of using a known product (TPP Art. 18.37.2). This provision has been said to support incremental innovation, but goes only so far in terms of protection. A Party does not have to make available patents for all three of these subject matter categories but for at least one of them. Moreover, if a Party allows new processes to be patentable, a Party may still limit those new processes to those that do not claim the use of the product as such.

Whatever new uses, methods or processes a Party deems patentable must still meet the requirements of novelty, inventive step and industrial application. A Party may still exclude inventions from patentability that are necessary to protect ordre public or morality and exclude diagnostic, therapeutic and surgical methods of treatment of humans or animals and biological and microbiological processes and other exclusions broadly in line with TRIPS.

The TPP provides that each TPP Party shall make best efforts to process patent applications in an efficient and timely manner to avoid unreasonable or unnecessary delays. (TPP Art. 18.46.1). United States free trade agreements (FTAs) with Peru, Colombia and Panama contain a similar provision.

The TPP newly provides that a Party may provide procedures for a patent applicant to request to expedite the examination of its patent application (TPP Art. 18.46.2). By its own terms, such provision is optional and does not commit a Party to respond to an applicant’s request any faster, than would normally apply through best efforts to process the application in an efficient and timely manner.

ii) Patent Extensions

Under TRIPS, patent terms last 20 years from the date of filing, which means that any delays in granting the patent reduce the effective period of patent protection by the amount of time between the filing and the granting of the patent right—something that is outside the control of the inventor. The TRIPS agreement does not require patent extensions, but the TRIPS-plus provisions in subsequent United States FTAs with Latin American countries have provided for patent-term extensions to compensate for regulatory delays in granting a patent or marketing approval by authorities.

The TPP requires a Party to adjust the patent term at the patent owner’s request, to compensate for unreasonable delays (of more than five years from the application filing date in the Party or three years after a request for application examination, whichever is later) by authorities in the issuance of a patent (TPP Art. 18.46.3 and 4). The TPP does not specify a minimum or maximum length of time required as compensation to extend the patent term beyond its original 20 years. This requirement exists under the United States FTAs with Chile and Dominican Republic-Central America Free Trade Agreement (DR-CAFTA). It is optional under the United States FTAs with Peru, Colombia and Panama in the case of

unreasonable delays in patent issuance for pharmaceutical products. Peru negotiated an exception and commits to seek a waiver from the Andean Community that would allow it to meet this TPP obligation on pharmaceutical products. The Andean Community authorizes its member countries to restore a patent term to compensate for unreasonable delays in patent issuance only with respect to non-pharmaceutical products. The TPP further provides that if Peru demonstrates that despite its best efforts, the Andean Community withheld approval of Peru's waiver request, Peru will continue to ensure that it will not discriminate with regard to availability or enjoyment of patent rights. Peru thus confirms that it will not treat pharmaceutical products less favorably in processing patent applications (Section viii).

The TPP limits the scope for patent-term adjustments/extensions due to patent office delays by allowing TPP Parties to discount periods of time not directly attributable to the granting authority in determining what constitutes "unreasonable delays" in issuing a patent (TPP Art. 18.46.3). Such a provision exists under the United States FTAs with Chile, Peru, Colombia, Panama and DR-CAFTA.

The TPP provides that each TPP Party shall make its best effort to process patent applications in an efficient and timely manner to avoid unreasonable or unnecessary delays (TPP Art. 18.46.1). United States FTAs with Peru, Colombia, and Panama contain a similar provision.

Similar to patent applications, the TPP also provides that each TPP Party shall make its best effort to process marketing approval applications for pharmaceutical products in an efficient and timely manner to avoid unreasonable or unnecessary delays (TPP Art. 18.48.1).

With respect to a pharmaceutical product that is subject to a patent, the TPP requires a Party to adjust/restore the patent term "to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process" (TPP Art. 18.48.3). Such a requirement exists under DR-CAFTA but not under the United States-Chile FTA. Under the United States FTAs with Peru, Colombia and Panama, it is optional rather than obligatory for a Party to make pharmaceutical patent-term restoration available. Like with patent applications, Peru has negotiated an exception under the TPP to seek a waiver from the Andean Community to meet this TPP obligation. The TPP does open the door for a TPP Party to provide for conditions and limitations in implementing this obligation, provided it continues to give effect to this Article (TPP Art. 18.48.3).

The TPP newly provides that a TPP Party may adopt or maintain procedures that expedite the processing of marketing approval applications with a view to avoiding unreasonable curtailment of the effective patent term (TPP Art. 18.48.4). By its own terms, provision of such expedited processing is optional.

iii) Regulatory Data Protection

Governments must protect the clinical test data submitted on the safety and efficacy of a pharmaceutical product in order to obtain regulatory approval to market the product, against disclosure to or reliance by a generic or biosimilar competitor seeking to obtain marketing approval of its own follow-on biologic product. Regulatory data protection periods can delay market entry for generics and follow-on biologics or biosimilars, which seek to piggyback on, rather than duplicate, the costly clinical data of originator firms.

With respect to undisclosed tests or other data concerning the safety and/or efficacy of a new pharmaceutical product, the TPP provides that a Party may not permit a third party to rely on the information or the marketing approval granted to the person that submitted that information, without the latter's consent, to market the same or a similar product, for at least five years from the date of approval in that Party or in the case of marketing approval "in another territory," from the date of approval in "that Party" (TPP Art. 18.50.1(a) and (b)). It would appear that the reference to "that Party" used here refers to the TPP Party that is requiring the submission of safety and efficacy data in order to grant the marketing approval for a new pharmaceutical product in its territory. The exclusivity period would not run from the earlier date of approval in the other territory or market where the referenced information was submitted (note the exception for Peru in this respect, Section G).

The TPP newly provides for data protection for incremental innovation that builds upon previously approved pharmaceutical products, but, as with patenting of new uses or processes, this only

goes so far. A TPP Party shall apply at least three years of data exclusivity for new clinical information submitted for the marketing approval of a previously approved pharmaceutical product covering a new indication, a new formulation or a new method of administration (TPP Art. 18.50.2(a)). This provision may allow data exclusivity protection to be extended for changes in the methods of administration that do not necessarily enhance the safety or efficacy of a previously approved product.

The TPP “alternatively” provides for a minimum five years of data exclusivity for new pharmaceutical products that contain a chemical entity not previously approved in the Party (TPP Art. 18.50.2(b)). The use of the term “alternatively” indicates that a Party may provide data exclusivity either for three years for a new indication, a new formulation or a new method of administration of a previously approved pharmaceutical or for five years for a combination with a chemical entity not previously approved but does not have to apply both kinds of data protection; they are options. Moreover, footnote 55 exempts a TPP Party from having to apply either of these provisions, if it provides at least eight years of data protection of a pharmaceutical other than a biologic.

The TPP newly requires that a Party provide a “period of at least eight years” of “effective market protection” “from the date of first marketing approval of a [new biologic] in that Party” for the undisclosed safety and efficacy information submitted to obtain marketing approval of the product (TPP Art. 18.51.1(a)). Alternatively, a Party may provide effective market protection of the data that deliver a “comparable outcome in the market” through at least five years of data protection from the date of the first marketing approval in the Party, “through other measures” and “recognizing that market circumstances” “also contribute to effective market protection” (TPP Art. 18.51.1(b)). The terms “comparable outcome in the market,” “other measures,” and “market circumstances” are not defined. One point of contention with respect to this alternative is, or will be, whether the combination of five years of data protection plus other measures plus market circumstances must provide a minimum of eight years of data protection, or whether a Party can meet its obligation by delivering a “comparable outcome” of protection that is less than eight years. TPP Art. 18.51.1(b) does not specifically provide that the protection outcome be eight years only that it be comparable, which may be interpreted to mean “similar” or “close to” and not necessarily the same as eight years.

Canada and Japan already provide 8-year data exclusivity periods, and the United States provides a 12-year period for biologics. United States negotiators under pressure from Congress will seek to clarify via side letters with the other TPP Parties what “other measures” they will apply or how “conditions” in their markets will contribute to their meeting their respective obligations under TPP Art. 18.51(b). Australia, Chile and New Zealand have stated that they do not plan on changing their current five-year data protection laws. Peru has the benefit of an exception under the TPP that allows Peru to apply a shorter data protection period than the TPP imposes. Peru may apply a reasonable period of “five years” from the earlier date of marketing approval abroad, instead of the minimum eight (or comparable five-plus) years for biologics from the later date of marketing approval in Peru. Chile has the benefit of an exception under the TPP that allows Chile to continue to be able to terminate regulatory data protection for justified grounds of public health, national security, noncommercial public use, national emergency or other extremely urgent circumstances, or in which the pharmaceutical product becomes subject to compulsory licensing. More generally, the TPP affirms that countries may take measures to protect public health in accordance with WTO instruments like the Doha Declaration on TRIPS and Public Health. However, these instruments do not specifically mention undisclosed test data, so it is not clear to what extent a TPP Party would be allowed to deviate from its data protection obligations based on WTO public-health flexibilities.

The TPP defines a biologic, for purposes of regulatory data protection, as a “product that is, or, alternatively, contains, a protein produced using biotechnology processes, for use in human being for the prevention, treatment or cure of a disease or condition” (TPP Art. 18.51.2). This definition thus excludes non-protein biologics from data protection—for example, those composed of nucleic acids.

The TPP bars a Party from cutting short the data exclusivity period it provides in the event that the patent protection terminates beforehand (TPP Art. 18.54). This provision also exists in the United States FTAs with Peru, Colombia and Panama.

The TPP provides that the Parties will review the exclusivity periods and scope of application in relation to biologics in the 10 years following the entry into force of the TPP or as decided by the Parties, with a view to providing effective incentives for biologics and ensuring that the scope of applications remains consistent with international developments regarding additional categories that are or contain a biologic (TPP Art. 18.54).

iv) Linkage between Patents and Marketing Approval

If a TPP member country permits a third party to rely on the safety and efficacy information of a pharmaceutical product previously approved in the Party or abroad in another territory, it is required to have a system of notice to the patent holder prior to the marketing of the product during the patent term. The Party is also required to provide the holder with adequate time and opportunity to seek, prior to the marketing of an allegedly infringing product, available remedies, such as judicial or administrative procedures, and expeditious remedies, such as preliminary injunctions, for the timely resolution of patent validity or infringement disputes (TPP Art. 18.53.1). Alternatively, a TPP Party may elect to adopt or maintain a patent linkage system that precludes the issuance of marketing approval to any third person seeking to market a patented pharmaceutical product without the holder's consent. This system would be based on patent-related information submitted to the marketing approval authority by a patent holder or the approval applicant or based on direct coordination between that authority and the patent office (TPP Art. 18.53.2). An alternative patent linkage system was also provided as an option under the United States FTAs with Peru, Colombia, and Panama, with the additional provision for effective rewards for a successful patent challenge. DR-CAFTA required the Parties to implement measures in its marketing approval process to prevent third persons from marketing a pharmaceutical product covered by a patent, and to provide notice to the patent holder of the request and identity of any third person requesting entry into the market during the patent term.

v) Trans-Pacific Partnership and Public-Health Flexibilities

The TPP explicitly recognizes (as did the United States FTAs with Peru, Colombia and Panama) that a TPP Party may take measures to protect public health in accordance with the Doha Declaration (see box "The WTO TRIPS Agreement, Doha Declaration and Public Health") on TRIPS and Public Health (TPP 18.50.3). These WTO instruments refer inter alia to compulsory licenses and do not specifically mention undisclosed test data, so it is not clear to what extent the TPP would allow a TPP Party to deviate from its data exclusivity obligations on the basis of the public-health flexibilities encompassed in these WTO instruments, in the event of a national emergency or public-health crisis. That being said, and as noted before, Chile has negotiated an exception under the TPP that explicitly allows it to continue to be able to terminate regulatory data protection for justified grounds of public health, national security, non-commercial public use, national emergency or other extremely urgent circumstances or where the pharmaceutical product becomes subject to compulsory licensing.

Box 2

The WTO TRIPS Agreement, Doha Declaration and Public Health

Concerns about the possible interpretation, under WTO dispute settlement, of the scope of the flexibilities offered in the TRIPS Agreement in support of public health, particularly as regards compulsory licensing and parallel imports under Article 31 (Taubman, Wager and Watal, 2012, p. 180), led WTO members to adopt a Declaration on the TRIPS Agreement and Public Health, on the occasion of the WTO Ministerial Conference that launched the Doha Development Agenda or the Doha Round (WTO, 2001).² The Doha Declaration confirmed and clarified these TRIPS flexibilities. WTO Ministers recognized that each member had the right inter alia to:

- grant compulsory licenses on whatever grounds it determined (para. 5(b));
- determine "what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency" (para. 5(c));
- freely establish its own regime for IPR exhaustion without challenge, subject to the national and MFN treatment provisions of Articles 3 and 4 (para. 5(d)).

Under paragraph 6 of the Doha Declaration, Ministers instructed the TRIPS Council to find a solution for members with "insufficient or no manufacturing capacities in the pharmaceutical sector [that] could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement." While members can issue compulsory licenses for importation and domestic production without the patent owner's authorization, there was a potential problem of whether

generic producers in countries with manufacturing capacity would be able to export sufficient quantities of the needed medicine if it was patent-protected in those countries. Moreover, Article 31(f) requires that the production under a compulsory license be "predominantly for the supply of the domestic market." The problem was expected to be more acute after 2005 when developing countries with significant generic industries and export capacities, like India, became obligated to provide patent protection for pharmaceutical products under the transitional arrangements in Article 65.4 of the TRIPS Agreement (Taubman, Wager and Watal, 2012, p. 184).

The solution found pursuant to the above-mentioned Ministerial instruction was the establishment of the "Paragraph 6 System" (WTO, 2013), which waives the obligations of an exporting member under Article 31(f) of the TRIPS Agreement, in order to grant a compulsory license to the extent necessary to produce a pharmaceutical product for, and export it to, an eligible importing member. The terms "pharmaceutical product," "eligible importing member" and "exporting member" are defined; there are extensive notification requirements in order to use this flexibility. An eligible importing member means any least-developed country member or a member that has notified the TRIPS Council it intends to use the system. The importing member's notification must include the name of the product and the quantities the member wants to import for each use, confirm that it has insufficient or no manufacturing capacity for the pharmaceutical product in question, and if the product is patented in its territory, that it has granted or intends to grant a compulsory license. The exporting member, in turn, must issue a compulsory license that permits production and exportation to the eligible importing member and must notify the TRIPS Council of the conditions attached to the license. The license must only be for the manufacture and export of the amount necessary to meet the importing member's needs and the products produced must be identified as having been produced under the system through labeling or marking. Prior to shipment, the licensee must post details of the shipment on a website, which it notified to the TRIPS Council. There has only been limited use made of the system; i.e., a Canadian compulsory license in 2007 to manufacture HIV/AIDS medicine for export to Rwanda (Taubman, Wager and Watal, 2012, p. 193-194); Rwanda is the only member to have notified as an eligible importing member.³

For greater legal certainty and at the urging of African countries, the WTO General Council adopted a Protocol that would amend the TRIPS Agreement and submitted the Protocol for acceptance by members (WTO, 2005). The Protocol incorporates the above-mentioned solution/waiver adopted by the General Council (WTO, 2003). This laid down procedures allowing members to issue compulsory licenses to export pharmaceutical products to countries that cannot produce them for themselves in order to meet a national public-health emergency or other circumstances of extreme urgency. Pursuant to Article X:3 of the WTO Agreement, two thirds of the WTO membership must accept the amendment to the TRIPS Agreement, before it comes into force for those members that have accepted it. Only around half of WTO members have already formally accepted the amendment, of which 17 are from the Western Hemisphere; more acceptances are needed to meet the threshold amount for entry into force by the latest extended deadline of 31 December 2017⁴.

Source: Elaborated by authors.

² Among the 17 Sustainable Development Goals adopted by the United Nations General Assembly on 25 September 2015 for a post-2015 development agenda is Goal 3: "Ensure healthy lives and promote well-being for all and for all ages." The targets for achieving this goal include: "3b. Support the research and development of vaccines and medicines for the communicable and non-communicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of developing countries to use to the full the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all." See United Nations (2015), "Transforming our World: the 2030 Agenda for Sustainable Development," A/RES/70/1, p. 16, 21 October.

³ WTO, Notification under Paragraph 2(A) of the Decision of 30 August on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health," IP/N/9/RWA/1, July 19, 2007.

⁴ The full list of members and their dates of acceptance can be found at https://www.wto.org/english/tratop_e/trips_e/amendment_e.htm (accessed June 12, 2016). From the Western Hemisphere, they are: Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Grenada, Honduras, Mexico, Nicaragua, Panama, St. Kitts & Nevis, Trinidad & Tobago, United States and Uruguay. The United States was the first country to accept formally the amendment.

⁵ "Amendment of the TRIPS Agreement – Fifth Extension of the Period for the Acceptance by Members of the Protocol Amending the TRIPS Agreement: General Council Decision of 30 November 2015," WT/L/965, Geneva, Dec. 2, 2015.

The TPP newly commits each Party to notify WTO of its acceptance of the Protocol Amending the TRIPS Agreement, if it has not already done so—for instance, Peru and Viet Nam (TPP Art. 18.6). The TPP reserves the right of TPP Parties to have a national or international exhaustion system of IPR, thus preserving the possibility of parallel importation (TPP Art. 18.11).

vi) Patent Cooperation and Transparency

The TPP has extensive provisions encouraging coordination, training and information exchange between and among intellectual property offices of the TPP Parties, covering several specific intellectual property areas, including technical assistance for developing countries; patent cooperation and sharing of search and examination work, including to reduce differences in the procedures and processes of patent offices; and cooperation on traditional knowledge associated with genetic resources, including in determining

prior art and in examining patent applications (TPP Art. 18.13, 18.14 and 18.16). Cooperation activities are on a best endeavors basis, subject to the availability of resources, and on request and mutually agreed terms between and among the Parties involved (TPP Art. 18.17).

The TPP commits the Parties to endeavor to publish unpublished pending patent applications promptly or as soon as practicable (TPP 18.44).

The TPP specifies the minimal information that Parties must make available to the public relating to published patent applications and granted patents, such as search and examination results, non-confidential communications from applicants, and literature citations submitted (TPP 18.45).

vii) Transition Periods

The TPP includes a number of transition periods and other special provisions for specific members to the agreement. Table 5 shows the transition periods established for Brunei Darussalam, Malaysia, Mexico, Peru and Vietnam in relation to implementing certain patent and data provisions for pharmaceutical products under the TPP. Additionally, New Zealand has a transition period in relation to certain copyright provisions. The other five TPP parties —Australia, Canada, Chile, Japan, Singapore and the United States— are expected to implement the obligations under the intellectual property chapter of the TPP as of their respective dates of entry into force.

Table 5
Transition Periods for Implementing Certain (TRIPS-PLUS)
Patent and Data Provisions for Pharmaceutical Products under the TPPa

RELEVANT TPP PROVISIONS	BRUNEI DARUSSALAM	MALAYSIA	MEXICO	PERU	VIETNAM
Art. 18.46.3 and 18.46.4 Patent Term Extension for Unreasonable Regulatory Delays in Patent Issuance					3 years + 1 year extension
Art. 18.48.2 Pharmaceutical Patent Term Restoration for Unreasonable Curtailment of Patent Term due to Marketing Approval Process		4.5 years	4.5 years		5 years
Art. 18.50 Regulatory Data Exclusivity for Pharmaceutical Products	4 years ++		5 years ++	18.50.2 (new clinical information or combinations) 5 years	10 years + 2 year extension + additional 1 year extension ++
Art. 18.51 Regulatory Data Exclusivity for Biologics	4 years ++	5 years	5 years ++	10 years	10 years + 2 year extension + additional 1 year extension ++
18.53 Pharmaceutical Patent Linkage	2 years	4.5 years			3 years

Source: Elaborated by the authors

^a As provided under Art. 18.83.4 (Final Provisions). The transition periods begin on the date of entry into force of the TPP for the five Parties listed above, respectively. For the seven TPP Parties not listed above (i.e., Australia, Canada, Chile, Japan, New Zealand, Singapore and the United States), they shall make these and other patent provisions effective as of the date of entry into force for these Parties respectively.

++ If there are unreasonable delays in the Party in the initiation of the filing of marketing approval applications for new pharmaceutical products after implementation, the Party may adopt measures to incentivize timely initiation following consultations with the other Parties.

What this table shows *inter alia* is that five TPP Parties, including Mexico and Peru, have determined that they require changes to their laws and regulations to implement and comply with the provisions relating to regulatory data exclusivity for pharmaceutical products (5 years for Mexico and Peru) and biologics (5 years for Mexico and 10 years for Peru) (TPP Art. 18.83 (c) (iv) and (v) and (e) (i) and (ii)). It is not yet known how those countries will implement their respective obligations under the TPP regulatory data provisions. Additionally, Mexico has a transition period of four-and-a-half years to implement pharmaceutical patent restoration to adjust for delays in its marketing approval process (TPP Art. 18.83 (c) (iii)). Mexico has also reserved the possibility to consult with TPP partner countries on measures to incentivize the timely initiation of the filing of marketing approval applications for new pharmaceutical products.

viii) Exceptions

There is an Annex to the intellectual property chapter of the TPP, which includes a general exception to or understanding on the provisions relating to legal remedies and safe harbors for copyright enforcement of the Internet. There are also specific exceptions for New Zealand on the protection of plant species, as well as exceptions for Chile, Malaysia and Peru in relation to the pharmaceutical-patent- and data-related provisions.

Under the TPP Annex 18-B, it is stated that nothing in TPP Arts. 18.50.1, 18.50.2 (Protection of Undisclosed Test or Other Data) or 18.51 (Biologics) prevents Chile from maintaining or applying Art. 91 of its Law No. 19.039 on Industrial Property.³ This exception for Chile was deemed necessary because the exceptions to regulatory data protection under Chilean law are broader than allowed under the TPP; that is, Chile does not provide data protection where the pharmaceutical product has not been marketed in its national territory within a year of the grant of marketing approval in Chile or cases in which the marketing approval application is filed in Chile more than 12 months after approval was granted abroad for the product.

As has already been mentioned, under the TPP Annex 18-D Part 1, Peru commits to making its best effort to obtain a waiver from Andean Decisions 486 and 689 to allow it to adjust/restore the patent term for delays in issuing patents for pharmaceutical products or for unreasonable curtailment of the patent term as a result of delays in the marketing approval process, in compliance with TPP Arts. 18.46.3 and 18.48.2. Art. 1(d) of Decision 689 (referencing Chapter V of Decision 486) authorizes Andean member countries to restore a patent term to compensate for unreasonable delays (of greater than five years from the filing date or greater than three years from the request for application examination, whichever is later) in patent issuance only with respect to non-pharmaceutical products.⁴ The TPP Annex further provides that if Peru demonstrates that despite its best effort the Andean Community withheld approval of Peru's waiver request, Peru will continue to ensure that it will not discriminate with

³ "Article 91.- Protection under this paragraph shall not apply where:

- (a) the holder of the information providing proof indicated in Article 89 has engaged in conduct or practices declared anticompetitive, directly related to the use or exploitation of such information, according to a final or binding decision by the Antitrust Tribunal;
- (b) on justified grounds of public health, national security, noncommercial public use, national emergency or other extremely urgent circumstances declared so by the competent authority, the protection set out in Article 89 may be terminated;
- (c) the pharmaceutical product or agricultural chemical is the subject of a compulsory license pursuant to the stipulations in this Law;
- (d) the pharmaceutical product or agricultural chemical has not been marketed within the national territory by the end of a 12month period beginning from the date of the health registration or authorization granted in Chile;
- (e) the application for registration or health authorization of the pharmaceutical product or agricultural chemical that is filed in Chile 12 months after the first registration or health authorization has been obtained abroad.

⁴ Article 1. – The Member Countries, through their internal regulations, shall be authorized, under the terms expressly provided in subparagraphs a)through j), to develop and deepen the following provisions only of Decision 486:

- ...
 - d) In Chapter V, Title II (Patents): With the exception of pharmaceutical patents, establish the means to compensate the patent owner for unreasonable delays by the National Office in the issuance of the patent, by restoring the patent term or patent rights. Member Countries shall deem as unreasonable delays, delays of more than 5 years from the date of filing the patent application or three years from the request for examination of patentability, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays."

regard to availability or enjoyment of patent rights. Peru thus confirms that it will not treat pharmaceutical products less favorably in processing patent applications.

Under the TPP Annex 18-D, Part 2, para. 1, it is stated that if Peru relies on the marketing approval granted in another territory of a new pharmaceutical product (TPP Art. 18.50.1(b)) or a biologic (18.51.1(b)(i)), and grants its own marketing approval within six months of an application, Peru may count the undisclosed test data exclusivity period as running from the date of “the first marketing approval relied on.” This exception allows Peru to count the period of data exclusivity as running from the date of the first marketing approval abroad, rather than the later date of marketing approval in Peru. Peru may also apply, in such cases, the period of data exclusivity protection provided under Art. 16.10.2(b) of the United States-Peru FTA; namely, “a reasonable period of time, which shall normally mean 5 years.” Thus, Peru may apply a shorter exclusivity of “normally 5 years” from the date of the first marketing approval outside of Peru rather than “at least 5 years” from the later date of marketing approval in Peru, which should apply under TPP Art. 18.50.1(b) and 18.51.1(b)(i).

There is similar language used under TPP Annex 18-D, Part 2, para. 2, that allows Peru to apply a data protection period of “normally” five years as of the date of marketing approval abroad for pharmaceutical combinations of a previously approved pharmaceutical product, rather than “at least 5 years” from the later date of marketing approval in Peru that should apply (TPP Art. 18.50.2(b)).

In sum, the TPP continues the trend in TRIP-Plus protection of pharmaceutical patents and test data; for example, patent term extensions for regulatory delays in granting patents and marketing approvals, no cutting short the data exclusivity period for a product covered by a patent that expires and notification to a patent holder that a competitor is seeking marketing approval of a pharmaceutical during the patent term. It should be noted that in relation to patent extensions, Mexico has a four-and-a-half year transition period from the entry into force of the the TPP for Mexico to implement pharmaceutical patent-term restoration, which is not required under NAFTA. Also, Peru commits to seeking a waiver from the Andean Community to allow it to extend pharmaceutical patent terms for patent issuance and regulatory delays (TPP Annex 18-D) to comply with the TPP (TPP Arts. 18.46 and 18.48), which it may or may not be successful in obtaining.

Notwithstanding the flexibilities incorporated with respect to pharmaceutical IPR provisions, the intellectual property chapter in the = TPP represents an augmentation of IPR protection for pharmaceutical products compared with the intellectual property chapters in previous United States FTAs with Latin American countries. The TPP has new TRIPS-plus features said to be supportive of incremental innovation. In this case, Peru and Mexico obtained a five-year transition period to fully implement some of the obligations involved with incremental innovation and data protection submitted to obtain marketing approval of the new indication.

The most noteworthy and controversial TRIPS-plus requirement of the TPP is the new minimum eight-year (or comparable five-plus) data exclusivity period for undisclosed safety and efficacy information submitted for the first marketing approval of a new pharmaceutical product that is or contains a (protein-based) biologic (TPP Art. 18.51.1(a)). This is a higher IPR standard than exists under any other trade agreement and may become the new regional and global norm, if the the TPP comes into force.

The TPP also contains important new TRIPS-plus pro-access to medicine provisions in relation to cooperation and information exchanges among intellectual property offices, including on traditional knowledge associated with genetic resources and information to the public about patent applications and grants. Assuming sufficient budgetary resources are allocated, this has the potential to improve and streamline patent search and examination work, reduce differences among patent procedures and processes on a regional basis, facilitate knowledge-sharing with researchers and the public and technology transfer and cut down on unnecessary regulatory delays in making life-saving new medicine available.

2. The Trans-Pacific Partnership and digital trade

While flows of goods and services have lost momentum in recent years, international data flows grew 45 times between 2005 and 2014 (McKinsey Global Institute, 2016). Digital platforms have created markets and communities with global scale, providing businesses with a huge base of potential customers as well as ways to reach them (McKinsey Global Institute, 2016). However, trade policy has not updated to accommodate the revolutionary changes that the digital world entails. The TPP tries to address this shortfall by setting out new rules for the digital economy.

The TPP, the first free trade agreement to include digital trade, seeks to promote a free, open market for digital goods and services.⁵ It stipulates that levying tariffs on imported digital goods and services is prohibited among member countries, although physical goods purchased online can be subject to customs duties. In addition, it indicates that Parties to the TPP agreement cannot favor local suppliers of digital goods and services through discriminatory taxation or blocking of foreign websites (Branstetter, 2016).

Moreover, the TPP provides freedom of data flows across member countries, and members are not allowed to require the establishment of local computing facilities as a condition for doing business (the “data localization requirement”). This data localization requirement was perhaps the most contentious issue regarding digital trade that came up during the TPP negotiations. The establishment of local computing facilities requirement would impose significant restrictions to cross-border data flows – for instance, travelers would not be able to execute many of their daily e-transactions (such as e-banking, online shopping and so on) unless at least part of the data associated with them resided, albeit temporarily, in the countries the travelers are visiting. Thus, companies that seek to serve customers in several countries would need to build expensive, duplicative, physical data infrastructure in different countries, raising the cost of digital trade.

The TPP also protects innovation by protecting source code from involuntary disclosure, copyrights and technology choice. It requires member states to establish laws protecting consumers from online fraud and spam and seeks to promote the free and open flow of data, online services and digital trade in general by attempting to ease cross-border information flows and restrict digital protectionism.

The United States has a strong interest in ensuring an open and free digital economy. According to Branstetter, 32% of United States online service providers export their services. In addition, taken together, their foreign sales double their sales to the domestic market. Whereas most of the European firms are focused on the domestic market.

⁵ Digital goods are any goods that are stored, delivered and used in an electronic format. Digital goods are shipped electronically to the consumer through e-mail or downloaded from the Internet. Examples of digital goods include e-books, music files, software, digital images, website templates, manuals in an electronic format, and any item which can be electronically stored in a file or multiple files. Digital services are services delivered via the Internet or an electronic network. Their supply is essentially automated or involves only minimal human intervention and is impossible to ensure in the absence of information technology. Examples of digital services include distance teaching, website hosting, and VOIP services.

Box 3**Contents of the Trans-Pacific Partnership Article 14 on e-commerce**

Article 14 of the Trans-Pacific Partnership (TPP) agreement contains the regulations on digital trade for the 12 member countries party to the agreement. The following paragraphs summarize the most important content.

Free and open market for digital goods and services

The TPP prohibits customs duties on electronic transmissions. Even though there are currently no significant duties in place in any of the member states, this is an important regulation for any state that might join the agreement in the future. Furthermore, it forbids less favorable treatment of products/services stemming from foreign producers or suppliers, such as discriminatory taxation. Exceptions to this article (Article 14.4) are subsidies or grants offered by the state.

Location of computing facilities

Article 14.13 of the TPP prohibits member states to require digital service providers to use or locate computing facilities in the respective countries as a condition for doing business there. This requirement would be an unnecessary, high cost for companies that are operating internationally. Large firms might be able to afford this —small and medium enterprises, however, may not.

Disclosure of sensitive information

A source code is a complete description of a software system; hence, it is sensitive information for any company providing digital goods and services. In article 14.17, the TPP prohibits member states from forcing companies to provide them with the source code of a product/service as a condition for accessing the local market. However, this is limited only to mass-market software and does not include the hardware and software parts of the “critical infrastructure” of the member state. The United States, for example, has defined 16 sectors as “critical infrastructure,” such as communications, energy and financial services.

Protecting consumers

Article 14.7 and 14.14 state that members should enforce measures or laws protecting consumers from fraudulent and deceptive commercial activities and unsolicited commercial electronic messages (namely, spam), respectively. Additionally, the TPP deals with secure encryption in chapter 8 (Technical Barriers to Trade). Similar to the source code mentioned above, the TPP prohibits members from requiring firms to reveal their encryption algorithms as a prerequisite for activities in the respective country (sales, imports and so on). The agreement, however, does not prevent law enforcement authorities from requiring the companies to decrypt data in case of a legal investigation.

Protecting privacy

The TPP stretches the importance of protecting consumer privacy, though it does not mention any specific conditions. It solely requires member countries to maintain or establish laws that protect consumer privacy, but without information on how or to what degree, leaving privacy regulation entirely up to national governments. Currently, this does not present a problem, as present member states have similarly lax privacy laws enforced. It could, however, become a potential issue in the future if countries with different and stricter data privacy laws join the agreement, possibly endangering the most important goal of chapter 14 of the TPP: free data flows.

3. The Trans-Pacific Partnership and the United States economy

This section presents the main results of recent studies on the economic effects of the TPP. The estimation of the economic impact of any trade agreement is complex and imprecise. Economic models by definition are a simplified version of the actual economic activity they are trying to analyze and are, as a result, highly dependent on the underlying assumptions and methodology used. In the case of modeling the economic effects of trade agreements, this complexity is compounded by the difficulty in accurately measuring existing trade barriers, including non-tariff barriers and the effect of the trade agreement on them. In addition, economic outcomes are influenced by factors external to trade agreements, which are exogenous to models and very difficult to forecast (Ferguson and Williams, 2016).

The studies overviewed in this section are: “Potential Macroeconomic Implications of the Trans-Pacific Partnership” from the January 2016 World Bank report “A Topical Issue of the Global Economic Prospects, January 2016, “Assessing the Trans-Pacific Partnership” published by the Peterson Institute for International Economics (PIIE) in February 2016, “Trans-Pacific Partnership Agreement: Likely Impact on the United States Economy and on Specific Industry Sectors” made available by the United States International Trade Commission (USITC), in May 2016; and “Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement” by J. Capaldo and A. Izurieta with J. Kwame Sundaram of the Global Development and Environment Institute at Tufts University published in January 2016.

The first three studies use the Global Trade Atlas Project (GTAP) model, the computable general equilibrium (CGE) model and database located at Purdue University. These models are long-run microeconomic models that are widely used. They provide estimates of the distribution of potential gains and losses for various sectors, relative to a baseline projection. CGE models have been typically used to estimate the impact of changes to tariffs however; the TPP includes provisions that will affect much more than tariffs. These three studies attempt to incorporate changes to non-tariff barriers as well. This goal requires the estimation or quantification of the non-tariff barriers as well as that of the rate and degree of their removal, inserting another layer of assumptions and modeling difficulties and adding to the non-comparability of the results.

The fourth study applies a UN Global Policy Model (GPM) that does not build on micro-level foundations and dynamics. This model builds from an “empirically plausible relation between variables of interest and it then imposes the constraints that these variables must satisfy in the model’s general equilibrium”(Ghironi, 2016). In the case of the TPP, the empirically plausible relation is assumed to be an exogenous cut in unit labor costs. This model allows for external imbalances, unemployment and changes in the labor share of income over time and focuses on the short to medium run. The World Bank and Peterson Institute studies, on the other hand, work under the assumption of full employment and balanced trade because they take a long-run perspective. They model micro-level decisions by economic agents that inform and affect the aggregate economy and vice versa. Moreover, they model the TPP implementation as changes in trade policy and market regulation variables that are taken into consideration by economic agents in their decision-making process. The ITC study does allow for employment effects of the TPP implementation but not for income distribution effects or for cost of adjustment in labor markets across sectors. It also allows for external imbalances and has a medium-to-long-run focus. Like the WB and PIIE studies, the TPP implementation is modeled as changes in policy variables and then traces the outcomes of those policy actions.

The USITC study predicts a small positive benefit for the United States economy from the TPP implementation by 2032, when most commitments would be phased in, relative to the baseline—a modest 0.15% increase in GDP and a 0.07% increase in employment. Among the sectors that will benefit the most are the agricultural and service sectors, with a 0.5% and a 0.1% increase, respectively, in both product and employment. The PIIE study also predicts a modest increase (0.5%) in United States GDP by 2030; agriculture is predicted to be one of the sectors that would benefit the most. The service sector, however, is seen as experiencing a larger positive effect than in the USITC study. The World Bank study estimates that the TPP implementation could raise member countries’ annual GDP by 1.1% by 2030. This figure is an average with some countries—namely small open economies—gaining more

than others. The World Bank study estimates that United States GDP will grow by 0.5% by 2030. The fourth study by Capaldo et al. (2016), on the other hand, concludes that the TPP will not bring benefits; instead, it will have a negative effect both in terms of GDP and employment. The study predicts a 0.54% reduction in GDP by 2025 and a loss of 448,000 jobs in the United States alone.

a) The United States International Trade Commission Model on the Trans-Pacific Partnership⁶

The USITC study assumes that the TPP is implemented in 2017. The results are presented for two different years: 2032, when the majority of the TPP's provisions would be implemented, and 2047, when the TPP would be fully implemented. The data used are based on projections by the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD), International Labour Organisation (ILO), the United States Congressional Budget Office, and the USITC.

Three types of policy changes are included in the model: a) tariffs, tariff quotas, and non-tariff measures reduction or elimination of trade in goods; b) non-tariff measures reductions of trade in services and c) effects of provisions related to foreign investment.

One limitation of the model is that it does not capture costs associated with employment transition between economic sectors, as it assumes that in the medium and long term workers immediately move between economic sectors.

According to model assumptions and estimations, in 2032, annual United States GDP is projected to be 0.15%, or US\$ 42.7 billion, larger with the TPP than without it. Moreover, by 2047, United States GDP is expected to be 0.18%, or US\$ 67 billion, larger than the baseline scenario.

In addition, the implementation of the TPP is expected to increase employment by 128,000 full-time equivalent jobs, or 0.07% of total United States employment, compared with the baseline scenario by 2032. By 2047, United States employment is expected to increase by 174,000 full-time equivalents, or by 0.09% of total employment. The real wage rate is expected to increase by 0.19%, as compared with the baseline scenario by 2032.

Real United States income, which reflects the net income received from overseas plus GDP, is expected to be US\$ 57.36 billion larger than the baseline scenario by 2032 and US\$ 82.56 billion larger by 2047 (or equivalently, 0.23% and 0.28% larger than the baseline scenario for 2032 and 2047) respectively. The stock of capital is expected to be 0.18% higher than the baseline scenario in 2032 and 0.24% higher in 2047.

Table 6
USITC estimated effects of the TPP on the United States economy, changes with respect to baseline scenario
(in billion dollars and percentages)

	2032		2047	
	billion dollars	percent	billion dollars	percent
Real Income	57.3	0.23	82.5	0.28
Real GDP	42.7	0.15	67.0	0.18
Employment (full time equivalents, thousands)	128.2	0.07	174.3	0.09
Capital Stock	171.5	0.18	343.5	0.24

Source: USITC, 2016

⁶ All the information and results presented in this section are based on the document of the United States International Trade Commission (USITC): "Trans-Pacific Partnership Agreement: Likely Impact on the United States Economy and on Specific Industry Sectors," May 2016.

With respect to United States trade, exports to TPP countries are expected to be US\$ 57.26 billion higher in 2032 compared with the non-TPP scenario, and imports are expected to be US\$ 47.56 billion larger. As a result, the implementation of the TPP agreement is expected to have a positive effect on the United States trade balance of about US\$ 9.7 billion by 2032. However, total United States trade balance is expected to continue in deficit of about US\$ 21.7 billion in the same year.

Table 7
USITC Estimated Effects of the TPP on United States trade
(changes relative to 2032 baseline scenario)

	Exports		Imports	
	billion dollars	percent	billion dollars	percent
Trade with TPP partners	57.2	5.6	47.5	3.5
New FTA partners	34.6	18.7	23.4	10.4
Existing FTA partners	22.6	2.7	24.2	2.1
Trade with the world	27.2	1.0	48.9	1.1

Source: USITC, 2016

The model projects an important expansion for agricultural and food products and services by the year 2032. The services sector is expected to expand the most in absolute terms, by \$42.3 billion, and the agriculture and food sector by the most in percentage terms—that is, 0.5% higher than the baseline scenario as opposed to 0.1% for services.

The agricultural sector would benefit substantially from access to untapped markets, such as those of Japan, Vietnam, Malaysia, New Zealand and Brunei. It is expected that total output in agricultural and food industries increases by US\$ 10 billion (or 0.5%) over the baseline scenario for 2032 and employment by 0.5% over the same period.

Table 8
USITC Estimated effects of the TPP on United States food and agricultural industries
(changes relative to 2032 baseline scenario)

Sector	ALL TPP Exports		ALL TPP Imports	
	million dollars	percent	million dollars	percent
Agriculture and food (total)	11,115.2	10.7	2,023.6	2.1
Selected industry sectors: Sugar, sweeteners, and SCP ^a	129.6	5.9	132.1	3.6
Dairy products	1,973.7	37.0	369.1	31.2
Beef meat	995.4	18.4	437.9	6.4
Pork meat products	386.8	5.0	93.8	6.2
Poultry meat products	588.4	15.7	-18.9	-4.2
Rice	81.5	6.9	10.5	14.9
Wheat	-46.5	-1.3	19.1	1.6
Corn grain	133.2	1.4	2.1	1.5
Processed foods	1,915.9	9.1	-202.7	-1.0
Fresh fruit, vegetables, and nuts	990.3	8.3	132.7	0.7
Seafood	115.7	8.7	332.2	2.9

Source: USITC 2016.

On the trade side, it is expected that agricultural exports to TPP countries grow by US\$ 11.1 billion (or 10.7%) by 2032. The largest increase is projected in dairy products (US\$ 1.97 billion), mainly to Canada and Japan. Processed food follows with US\$ 1.92 billion, US\$ 1.2 billion of which would be absorbed by the Japanese market. These are followed by beef (US\$ 995 million), with Japan absorbing US\$ 543 million, and fresh fruit, vegetables and nuts (US\$ 990 million), with Vietnam absorbing US\$ 721 million of them.

The United States is expected to increase its imports of agricultural products from TPP countries by US\$ 2 billion, or 2.1% higher than the baseline scenario. The largest increase is expected in beef (US\$ 437 million) from New Zealand, followed by dairy products (US\$ 369 million) —with New Zealand and Canada providing US\$ 253 million and US\$ 119 million, respectively— followed finally by seafood (US\$ 332 million).

The TPP scenario for manufacturing, natural resources and energy shows a slight contraction with respect to the baseline scenario, but certain industries are expected to expand with the TPP. Exports of this sector are expected to grow US\$ 15.2 billion relative to the baseline scenario, and imports are expected to expand US\$ 39.2 billion in the same year and comparison.

Table 9
USITC Estimated effects of the TPP on United States manufacturing, natural resources and energy industries
(Changes relative to 2032 baseline scenario)

	Exports		Imports		Output		Employment
	million dollars	percent	million dollars	percent	million dollars	percent	percent
Manufacturing, natural res	15,187.5	0.9	39,245.4	1.1	-10,843.0	-0.1	-0.2
Selected industry sectors							
Chemicals	1,944.1	0.7	5,283.4	1.3	-2,854.8	-0.3	-0.3
Textiles	256.6	1.3	869.4	1.6	-328.5	-0.4	-0.4
Wearing apparel	10.3	0.3	1,891.3	1.4	424.7	1	0.9
Footwear	137.7	12.2	1,103.6	2.7	29.8	0.5	0.8
Titanium downstream	-33.9	-1.1	115.4	14.2	-202.4	-1.2	-1.3
Passenger vehicles	1,953.9	1.9	2,371.7	0.8	1,628.3	0.3	0.3
Auto parts and trailers	1,219.8	1.2	3,039.2	1.6	-1,365.9	-0.3	-0.3

Source: USITC 2016.

In the case of services, the most important impact is expected in trade: United States exports to the world could rise by US\$ 4.8 billion (or 0.6%) compared with the non-TPP baseline scenario, and imports are expected to grow by US\$ 7 billion (or 1.2%) with respect to the baseline scenario. Output and employment would remain unchanged.

Within services, the most-affected industries would be communication, wholesale and retail trade, and business services, which are respectively expected to increase 2.8%, 2.5% and 1.6% above the baseline scenario. Recreational and other services and transportation, logistics, travel and tourism are expected to contract by -1.5% and -1.1%, respectively.

Table 10
USITC Estimated effects of the TPP on United States in services industries
(changes relative to 2032 baseline scenario)

	Exports		Imports		Output		Employment
	million dollars	percent	million dollars	percent	million dollars	percent	percent
Services	4,797.40	0.6	6,962.50	1.2	42,342.60	0.1	0.10
Selected industry sectors							
Wholesale and retail trade	848.7	2.5	542.4	1.2	7,447.50	0.1	0.1
Transportation, logistics	-1,258.40	-1.1	1,770.50	1.5	-719.9	0.0	-0.1
Communications	877.7	2.8	306.4	1.2	2,845.60	0.2	0.1
Financial services n.e.c.	-12.1	0.0	787.8	1.1	1,520.00	0.1	0.1
Insurance	34.4	0.1	703.5	1.1	707.90	0.1	0.0
Business services	4,575.50	1.6	2,031.50	1.2	11,576.00	0.2	0.10
Recreational and other	-687.8	-1.5	199.3	0.9	1,749.80	0.1	0.1

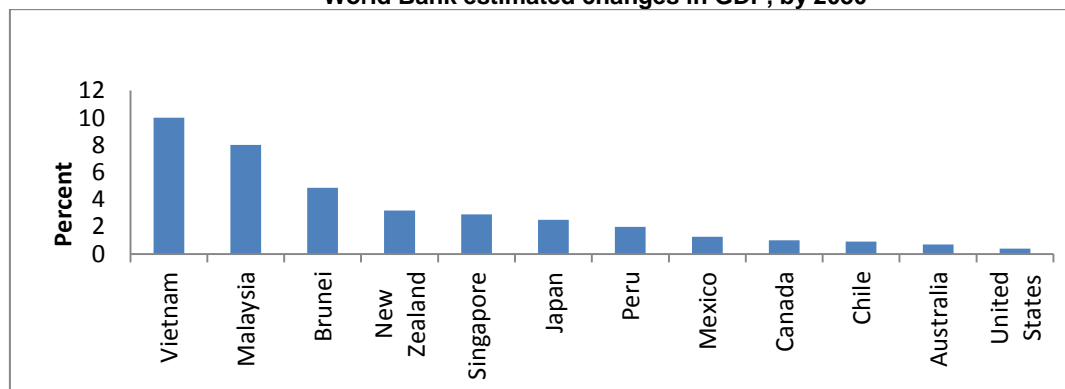
Source: USITC 2016.

Finally, with regard to digital trade and internet-based commerce, areas with strong competitive advantages for the United States, the document forecasts that the TPP's provisions will strengthen the competitive advantage that the United States already has in many digital sectors, including all sectors with relatively higher levels of digital intensity.

b) The World Bank study

The World Bank study assumes that the TPP will be implemented by 2017. The estimates show that effect on the TPP member countries' GDP will vary greatly from country to country. United States GDP is predicted to grow a modest 0.5% by 2030, but the smaller open economies, such as those of Vietnam and Malaysia, will grow 10% and 8%, respectively. On the other hand, NAFTA countries are expected to experience only a modest gain in their respective GDPs, due in part to the low share of trade-to-GDP⁷, especially in the United States, and to the fact that existing trade barriers have already been reduced to very low levels in a broad range of products under NAFTA. The study forecasts that the TPP agreement will boost trade among its members by 11% by 2030.

Figure 6
World Bank estimated changes in GDP, by 2030

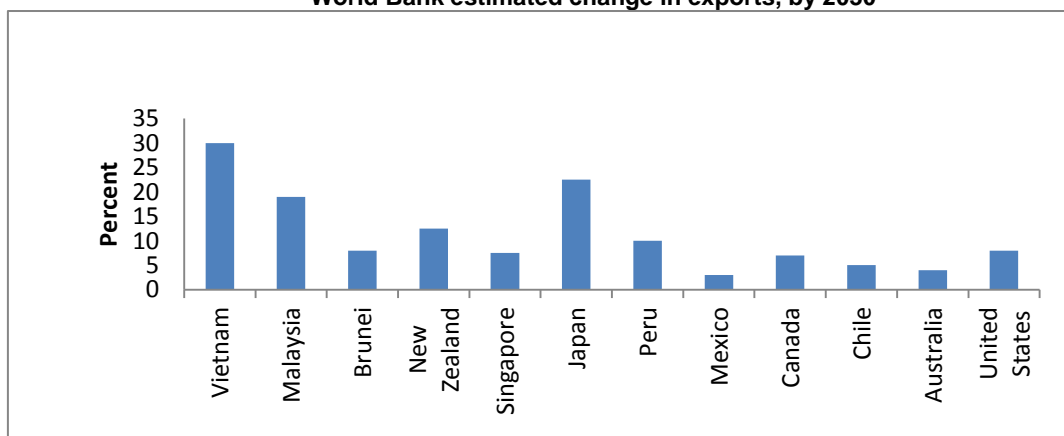


Source: World Bank 2016

⁷ According to this model, the GDP increases mostly through the increase in trade.

At an aggregate level, non-TPP member countries as a whole are expected to experience a loss not to exceed 0.1% of their GDP. Among them, Republic of Korea and Thailand are expected to be among the most negatively affected: about 0.3% of GDP due to preference erosion in the case of the Republic of Korea⁸ and to trade diversion in the case of Thailand. The model estimates that Latin American countries outside the TPP would have a modest contraction in GDP of less than 0.1% by 2030 due to the implementation of the TPP. Exports, on the other hand, are expected to increase close to 1% compared with the base scenario.

Figure 7
World Bank estimated change in exports, by 2030



Source: World Bank 2016

Most of the benefits of the implementation of the TPP are derived from reductions in non-tariff barriers and from services trade liberalization. According to the World Bank study, only 15% of the increase in GDP is due to tariff cuts; the rest are from non-tariff measures in goods (53%) and services (31%).

In terms of employment, it is not expected that the TPP affects overall employment in the long run, but it may accelerate structural shifts between industries based on comparative advantage and scale economies. According to the authors, in advanced economies, these mechanisms favor traded services, advanced manufacturing and, for some resource-rich countries, primary products and investments. On the other hand, in developing countries, there are expected benefits in manufacturing (especially in unskilled labor intensive industries) and some primary production.

As a result, participating advanced economy members are likely to experience a slight increase in skilled wages while others benefit from a higher increase in the wages of unskilled workers. In the United States, changes in real wages are expected to be small, as unskilled and skilled wages increase by 0.4% and 0.6%, respectively, by 2030.

c) The Peterson Institute Model on the Trans-Pacific Partnership⁹

The Peterson Institute also uses a computable general equilibrium model (CGE) for forecasting.

Results assume that the TPP enters into force in 2017. It projects an annual increase in real income of US\$ 131 billion (or 0.5% of GDP baseline scenario) in the United States by 2030 and US\$ 492 billion for the world in the same period. Values for each TPP country member are showed in Table 11.

⁸ Korea free trade agreements with some of the TPP countries, including the United States and Chile.

⁹ All of the information and results presented in this section are based on the document of the Peterson Institute for International Economics: "Assessing the Trans-Pacific Partnership," February 2016.

Table 11
Peterson Institute for International Economics estimates on GDP

Country	Baseline (billions of 2015 dollars)			Change with TPP (billions of 2015 dollars)			Percent change from baseline			
	2015	2020	2025	2030	2020	2025	2030	2020	2025	2030
Americas	21,962	25,177	28,473	31,544	41	129	205	0.2	0.5	0.7
Canada*	1,981	2,227	2,472	2,717	8	22	37	0.4	0.9	1.3
Chile*	269	329	397	463	0	2	4	0.1	0.5	0.9
Mexico*	1,339	1,598	1,868	2,169	3	11	22	0.2	0.6	1
Peru*	219	287	363	442	1	6	11	0.4	1.6	2.6
United States*	18,154	20,736	23,372	25,754	29	88	131	0.1	0.4	0.5
Asia	22,806	29,752	38,179	47,386	52	135	203	0.2	0.4	0.4
Brunei*	20	24	27	31	0	1	2	1.1	3.3	5.9
China	11,499	16,058	21,689	27,839	-1	-8	-18	0	0	-0.1
Hong Kong	300	358	412	461	2	4	6	0.5	1	1.2
India	2,210	3,086	4,197	5,487	0	-2	-5	0	-0.1	-0.1
Indonesia	927	1,240	1,687	2,192	0	-1	-2	0	-0.1	-0.1
Japan*	4,214	4,462	4,693	4,924	39	91	125	0.9	1.9	2.5
Korea	1,384	1,672	1,967	2,243	-1	-5	-8	-0.1	-0.2	-0.3
Malaysia*	349	444	553	675	7	28	52	1.6	5	7.6
Philippines	329	436	547	680	0	-1	-1	0	-0.1	-0.1
Singapore*	320	380	437	485	2	8	19	0.5	1.9	3.9
Taiwan	511	619	707	776	0	1	1	0.1	0.1	0.2
Thailand	411	516	656	812	-1	-4	-7	-0.2	-0.6	-0.8
Vietnam*	209	281	378	497	7	22	41	2.3	5.8	8.1
ASEAN nie	124	175	228	283	0	-1	-1	-0.1	-0.2	-0.4
Oceania	1,896	2,203	2,533	2,854	2	12	21	0.1	0.5	0.7
Australia*	1,704	1,986	2,292	2,590	1	8	15	0	0.4	0.6
New Zealand*	192	217	241	264	1	4	6	0.5	1.5	2.2
Rest of world	34,371	39,492	45,506	52,017	16	44	62	0	0.1	0.1
European Union	17,893	19,746	21,451	23,189	12	34	48	0.1	0.2	0.2
Russia	2,244	2,462	2,903	3,371	0	1	2	0	0	0.1
ROW	14,235	17,283	21,152	25,456	3	8	12	0	0	0
World	81,035	96,623	114,690	133,801	111	319	492	0.1	0.3	0.4
<i>Memorandum</i>										
TPP members	28,969	32,971	37,094	41,011	98	291	465	0.3	0.8	1.1
Non-members	52,066	63,652	77,596	92,790	13	28	27	0	0	0

Note: Asterisk denotes TPP member.

Asean = Association of Southeast Asian Nations; nie = not included elsewhere else; ROW = rest of world.

Source: Peterson Institute for International Economics 2016.

In absolute terms, the largest impact of the TPP would be on the United States, followed by important gains for Japan. Japan would benefit from the improved market access throughout the TPP region, including early liberalization of auto imports in markets other than the United States. However, as a percentage of GDP, the countries with major expected impact would be Vietnam, Malaysia, Brunei, Singapore, Peru, Japan and New Zealand. The percentage impact of the TPP in the United States would be around 0.5% of GDP by 2030.

United States annual exports are expected to increase by US\$ 357 billion (or 9.1% of exports) compared with the baseline scenario by 2030; for all TPP countries, annual exports are expected to increase by US\$ 1,025 billion (or 11.5%) over the same period.

Inward investment stocks in all TPP countries would expand by US\$ 446 billion, or 3.5%, over the 2030 baseline, and outward investment stocks would expand by US\$ 305 billion, or 2 percent;

expansion in both cases would be due to GDP growth in different regions and reductions in investment barriers.

d) Tufts University Model on the Trans-Pacific Partnership

Tufts University based its forecasting on the United Nations Global Policy Model (GPM). According to the authors, this model uses more realistic assumptions. The model recognizes that a demand shortfall can generate unemployment and that the economic adjustment to short-term economic shocks is influenced by financial flows and stocks. In addition, the model does not impose any specific *ex ante* assumptions on the current account balance. The model also allows for changes in the labor share in income, thus allowing for changes in income inequality.

The GPM data include financial flows, trade (of manufactured goods, commodities, energy and services), prices and labor. Actual data go through 2013, and projections cover the 2015–2030 period.

In this model, the implementation of the TPP will liberalize trade and increase international competition. As a result, countries trying to preserve their market share will engage in a race-to-the-bottom that will push the share of labor in income down across the TPP area, and unit labor cost will fall.

Contrary to others results that show a positive effect on growth derived from the implementation of the TPP, this model finds a negative effect on growth for the United States and also for Japan. Moreover, the model estimates an increase in inequality that is manifested by the loss of labor share in the income.

Labor loss is expected to be around 770,000 jobs; largest losses are expected in the United States. Finally, negative effects on growth and employment are also expected for non-TPP countries.

Table 12
Trans-Pacific Partnership scenario
(changes compared to baseline projections, 2015-2025)

Units	Net Exports	GDP Growth		Employment	Real Exchange Rate
	10-year Change	Av. Annual Change	10-year Change	10-year Change	Av. Annual Change
	% of GDP	%	%	Thousands	%
TPP, developed economies		-0.04	-0.34	-625	-0.83
United States	0.2	-0.06	-0.54	-448	-0.65
Canada	-0.58	0.03	0.28	-58	-1.09
Japan	1.54	-0.01	-0.12	-74	-1.28
Australia	0.71	0.1	0.87	-39	-1.44
New Zealand	2.13	0.09	0.77	-6	-1.23
TPP, developing economies		0.22	2.03	-147	-1.22
East Asia: Brunei, Malaysia	1.69	0.24	2.18	-55	-1.08
Latin America: Chile and Pe	1.18	0.31	2.84	-14	-1.55
Mexico	0.2	0.11	0.98	-78	-1.14
Total TPP				-771	
Non-TPP, Developed economies		-0.43	-3.77	-879	0.55
Non-TPP, Developing		-0.6	-5.24	-4,450	0.44

Source: Capaldo, Jeronim and Alex Izurieta (2016), p. 17.

III. Trade inhibiting measures

This section focuses on recent developments in three significant areas of trade inhibiting measures:

- Import policies (for example, quantitative restrictions, anti-dumping and countervailing duties).
- Dispute settlement (for example, the Mexican sugar dispute, Peru's timber verification dispute, and so on).
- Agricultural supports (for example, United States export-support programmes).

This year's report addresses new selected dispute settlement cases and updates on previous selected dispute settlement cases.¹⁰

A. Import policies

1. Trade remedy legislation

a) Anti-dumping, countervailing duty orders

As of August 2016, there are 22 anti-dumping duty (AD) orders in place against Latin American and Caribbean countries. These cases involve Argentina (1), Brazil (8), Chile (1), Mexico (10), Trinidad and Tobago (1), and Venezuela (1). The case listings may be found in Table 13. Of the 22 AD orders, 1 new order was placed in 2016 on Uncoated Paper from Brazil; all previous AD orders remained in effect. Two countervailing duty (CD) orders are in place against Latin American and Caribbean countries as of August 2016, both of which affect Brazil and are listed in Table 14.

¹⁰ For further background on previous dispute settlement cases and trade inhibiting measures, see ECLAC Washington report "United States Trade Developments 2014-2015, section V. Trade Inhibiting Measures," at <http://www.cepal.org/en/publications/37838-united-states-trade-developments-2013-2014>.

Table 13
Anti-dumping duty orders affecting Latin America and the Caribbean

Country	Item	Doc#	Order Date	Continued
Argentina	Lemon Juice (suspended)	A-357-818	10/9/2007	7/8/2013
Brazil	Carbon Steel Wire Rod	A-351-832	29/10/2002	7/3/2014
	Uncoated Paper	A-351-842	5/3/2016	
	Prestressed Concrete Steel Wire Strand	A-351-837	28/01/2004	11/12/2009
	Iron Construction Castings	A-351-503	9/5/1986	17/07/2012
	Carbon Steel Butt-Weld Pipe Fittings	A-351-602	17/12/1986	15/04/2011
	Frozen Warm-Water Shrimp and Prawns	A-351-838	1/2/2005	29/04/2011
	Circular Welded Non-Alloy Steel Pipe	A-351-809	2/11/1992	17/07/2012
	Stainless Steel Bar	A-351-825	21/02/1995	9/8/2012
Chile	Preserved Mushrooms	A-337-804	2/12/1998	28/04/2010
Mexico	Fresh Tomatoes (suspended)	A-201-820	1/11/1996	16/12/2002
	Carbon Steel Wire Rod	A-201-830	29/10/2002	7/3/2014
	Prestressed Concrete Steel Wire Strand	A-201-831	28/01/2004	11/12/2009
	Circular Welded Non-Alloy Steel Pipe	A-201-805	2/11/1992	17/07/2012
	Light-Walled Rectangular Pipe and Tube	A-201-836	5/8/2008	
	Certain Magnesia Carbon Bricks	A-201-837	20/09/2010	
	Seamless Refined Copper Pipe and Tube	A-201-838	22/11/2010	
	Large Residential Washers	A-580-868	15/02/2013	
	Prestressed Concrete Steel Rail Tire Wire	A-201-843	24/06/2014	
	Steel Concrete Reinforcing Bar	A-201-844	6/11/2014	
Trinidad & Tobago	Carbon Steel Wire Rod	A-274-804	29/10/2002	7/3/2014
Venezuela (República Bolivariana de)	Silicomanganese	A-307-820	23/05/2002	8/6/2013

Source: ECLAC, based on data from United States International Trade Commission, Trade Remedy Investigations and USITC notices in the Federal Register, as of August 2016.

Table 14
Countervailing duty orders affecting Latin America and the Caribbean

Country	Item	DOC #	Order Date	Continued
Brazil	Carbon Steel Wire Rod		C-351-833	22/10/2002 7/3/2014
	Heavy Iron Construction Castings		C-351-504	15/05/1986 19/11/2010

Source: ECLAC, based on data from USITC, Trade Remedy Investigations, as of August, 2016

2. Special 301 report

As established on an annual basis by the Office of the United States Trade Representative (USTR), the “Special 301” report is a review of global state protection and enforcement of IPR. Countries may be categorized as “Priority Foreign Countries” or added to either the “Priority Watch List” or the “Watch List.” This assessment takes into consideration each country’s level of development, its international obligations and commitments, the concerns of rights holders and other interested parties, and the trade and investment policies of the United States. These issues then become the focus of bilateral and multilateral negotiations in an effort to improve the IPR regimes.¹¹

Between the 2015 “Special 301” report and the 2016 “Special 301” report, the following alterations have been made with regard to Latin American and Caribbean countries: Ecuador has been moved from the 2015 Priority Watch List to the 2016 Watch List, and Trinidad and Tobago have been removed from the Watch List altogether and are not listed in the 2016 report. The following Latin American countries remain consistent between the 2015 and 2016 Priority Watch Lists: Argentina, Chile and Venezuela. From the 2015 Watch List, the following Latin American and Caribbean countries remain on the 2016 Watch list: Barbados, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Guatemala, Jamaica, Mexico and Peru.

Honduras, which was not listed on the 2015 Special 301 Report, has committed to implementing a series of measures to strengthen the protection and enforcement of IPR in Honduras. The commitments are outlined in the Intellectual Property Work Plan for 2016 and focus on strengthening criminal IPR enforcement, combating the unauthorized rebroadcast of cable and satellite transmissions, clarifying the scope of protections for geographical indications (GIs) and developing a trademark recordation system to improve customs border enforcement.

The commitment to the initiative by the government of Honduras was reached in March 2016, after the United States carried out an out-of-cycle review of intellectual property protection in Honduras. In addition to the agreement, the government pledged a substantial increase in the number of prosecutors specializing in criminal IPR enforcement. The government also committed to publish quarterly reports on prosecution case activity in an effort to promote transparency throughout the implementation of the work plan.

Link to USTR Intellectual Property Work Plan 2016:

<https://ustr.gov/sites/default/files/IP-Work-Plan-Honduras-02292016-FINAL.pdf>

Listed below is the 2016 Special 301 list of countries, with emphasis on Latin American and Caribbean countries:

a) Priority Foreign Countries

Priority Foreign Countries are identified as having the strongest impact on United States intellectual-property-related products and may therefore be subject to investigations under the

¹¹ For more information about the “Special 301” Report, see <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>.

“Section 301” provisions. There are no “Priority Foreign Countries” in Latin America or the Caribbean for the 2016 “Special 301” Report.

b) Priority Watch List

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

c) Watch List

The 2016 Watch List consists of 23 countries, 11 of which pertain to Latin American or Caribbean regions. For a full list of Latin American and Caribbean countries included on the 2016 Watch List, see Table 15.

Table 15
“Priority watch list and watch list”

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

Source: USTR 2016 Special 301 Report.

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

As of April 2016, the United States has brought 136 complaints to the WTO Dispute Settlement Body (DSB). No new dispute settlements have been created against countries from the Latin American and Caribbean region since the generation of the 2014-2015 ECLAC report. Of these 136 preexisting complaints, 17 complaints were made against Argentina (5), Brazil (4), Chile (1), Mexico (6) and Venezuela (1). Certain preexisting dispute settlements have continued, while others have been resolved or amended. An example of such advancement can be found in WTO Dispute DS381, “United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products.” The dispute has been ongoing since it first originated in October 2008. On 22 March 2016, the United States announced that strict rules for labeling Mexican tuna imports as “dolphin safe” would be expanded to the rest of the globe. The rules were published and announced by the National Oceanographic and Atmospheric Administration (NOAA). In April 2016, the compliance proceedings were continued by the United States, as it requested a panel to consider the interim final rule. As of May 2016, the compliance proceedings are considered “ongoing.”

Link to WTO case webpage:

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

1. Mexico-United States sugar dispute

The United States Department of Commerce began attempts to renegotiate agreements with the Mexican government in 2016. In August 2016, the Department of Commerce tabled a proposal with the Mexican sugar industry that would require United States importers of raw Mexican sugar to refine that sugar using a process of greater detail. As of August 2016, Mexico had not yet agreed to such a proposal, and agreement modifications between the two governments are ongoing. At the 2016 International Sweetener Symposium, sugar producers stressed that failure to successfully renegotiate the suspension agreements could result in up to 80% duties being placed on imports of Mexican sugar.

On 31 March 2014, the International Trade Commission (ITC) and the United States Department of Commerce filed a complaint stating that the Mexican sugar industry was shipping sugar to the United States at dumping rates of 45% under large subsidies from the Mexican government. Such allegations indicated that the dumping was disrupting United States sugar production. On 25 April 2014, the United States Department of Commerce began a formal investigation of Mexico's sugar industry. Four months later, in July 2014, the ITC ruled that the case would advance to further stages in which, in October 2014, the Department of Commerce found Mexico's sugar industry guilty of dumping subsidized sugar into the United States market, thereby harming United States producers.

On 27 October 2014, the Department of Commerce announced that it had completed two draft agreements with Mexican sugar exporters to suspend the ongoing AD and countervailing duty CD investigations against the Mexican sugar industry. In December 2015, an agreement was finalized between the Mexican and United States governments. The final agreement included both AD suspension and CD suspension. The AD suspension agreement allocated a minimum price level for Mexican sugar being sold in the United States, while the CVD suspension required that at least 47% of Mexican sugar exports must be raw sugar for further refining and no more than 53% of Mexican exports can be refined sugar.¹²

Since the initial agreement, United States sugar refineries have filed for a review of the suspensions. They claim that the agreements have not eliminated injury to United States sugar producers and that Mexico has circumvented the suspension agreements and is still effectively dumping subsidized sugar into United States markets.

2. Argentina's import restraints

In August 2014, the United States, alongside the European Union and Japan, won a dispute launched in 2012 in favor of the removal of Argentina's import licensing system. The case against the restraints indicated that the importation restrictions not only created uncertainties about which products may be imported, but also that companies could not import the amount and type of product they wished to as a result of such restrictions.

The import restrictions were found to be in violation of the General Agreement on Tariffs and Trade (GATT) on market access, and new regulations had to be adopted within 60 days unless the ruling was to be repealed by the government of Argentina.

On 26 September 2014, Argentina notified the DSB of its decision to appeal. On 23 February 2015, Argentina informed the DSB that it intended to implement the DSB's recommendations while respecting Argentina's obligations to the WTO and that it would need a reasonable period of time in which to do so.

On 2 July 2015, Argentina and the United States informed the DSB that they had decided on a reasonable period of time for Argentina to implement the DSB recommendations —such a period would be 11 months and 5 days from the date of adoption of the Appellate Body and panel reports. The reasonable period of time expired on 31 December 2015, and, accordingly, the United States and

¹² According to the agreement, "raw sugar" is defined as anything below a polarity reading of 99.5. See United States ITC investigation, "Sugar from Mexico," https://www.usitc.gov/publications/701_731/pub4467.pdf.

Argentina informed the DSB of Agreed Procedures under Articles 21 and 22 of the DSU on 18 January 2016.

Link to WTO case webpage:

http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds444_e.htm

Link to all WTO documents for this case:

[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20wt/ds444/*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds444/*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

3. Colombian action plan related to labor rights

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

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

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

Link to USTR five-year progress report:

<https://ustr.gov/sites/default/files/2016-Colombia-Action-Plan-Report.pdf>

4. Peru's timber verification

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

The United States and Peru have a record of engagement to monitor the enforcement of obligations under the PTPA Environment Chapter and Forest Annex. Since 2009, the United States provided over US\$ 90 million in capacity building funds to support Peru's environmental challenges and obligations. Furthermore, the United States and Environmental Cooperation Agreement (ECA) programme agreed to continue with technical assistance for Peru, including the development of an electronic timber tracking system that tracks timber from stump to port in an effort to ensure legality throughout the timber supply chain.

While the verification process efforts are welcome, there are concerns on whether such actions are both shallow and late. In April 2012, the Environmental Investigation Agency (EIA) and the Center for

International Environmental Law (CIEL) asked the USTR to verify the legal shipment origins of two Peruvian companies. On 29 May 2012, labor unions and environmental organizations also expressed their concerns with regard to the continued systematic illegal logging in Peru and the unlawful United States-Peru timber trade. However, the USTR declined to take enforcement action to address trade law violations.

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

Link to USTR Request Letter to Peru:

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

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

5. United States-Brazil trade relations

On 30 March 2016, USTR led the very first minister-level meeting of the United States-Brazil Commission on Economic Trade Relations, co-chaired by the Minister of External Relations and the Minister of Development, Industry and Foreign Trade (MDIC) for Brazil. A broad range of bilateral and multilateral trade issues were discussed, as well as the Ministers' respective trade agendas, including future work in the WTO and the problem of global steel capacity glut. President Rousseff's signature and the delivery of Brazil's letter of acceptance of the Trade Facilitation Agreement to WTO Director General Roberto Azevedo on 29 March were also noted by the Ministers.

The United States and Brazil have worked to address various bilateral issues, including continued implementation of the Memorandum of Understanding on Cotton that resolved a decade-long dispute at the WTO, a meaningful reduction in restrictions on United States insurance firms' participation in the Brazilian market, cooperation on standards and conformity assessment, and signature and creation by United States and Brazilian intellectual property agencies of a Patent Prosecution Highway (PPH) pilot programme.

Prior to this meeting, United States and Brazilian representatives discussed a number of specific trade and investment issues, including market access, General System of Preferences (GSP), tax and labor issues, as well as improved collaboration on WTO issues and agricultural trade. The United States and Brazil also agreed to discuss policies that promote investment in manufacturing.

The next meeting of the United States-Brazil Commission on Economic Trade Relations will take place in Brazil in 2017.

Brazil is currently the United States' 12th largest goods trading partner. Two-way goods trade was US\$ 59 billion in 2015, and two-way goods and services trade totaled approximately \$95 billion in 2015. The United States goods trade surplus with Brazil was US\$ 4.3 billion in 2015. Brazil's foreign direct investment in the United States (stock) was US\$ 616 million in 2014, down 44.2% from 2013. The United States' foreign direct investment in Brazil (stock) was US\$ 70.5 billion in 2014, up 1.6% from 2013.

Link to USTR press releases:

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/march/united-states-and-brazil-hold-third>

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/October/United-States-and-Brazil-Reach-Agreement-to-End-WTO-Cotton-Dispute>

6. United States-Brazil beef trade agreement

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

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

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

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

Link to USDA news release:

<http://www.usda.gov/wps/portal/usda/usdahome?contentid=2016/08/0175.xml&contentidonly=true>

Link to R-CALF USA news release:

<http://www.r-calfusa.com/r-calf-usa-usdas-action-to-allow-raw-brazilian-beef-imports-is-purely-political-and-terribly-reckless/>

7. Philip Morris v. Uruguay

On 8 July 2016, the International Centre for Settlements of Investment Disputes (ICSID) ruled in favor of the government of Uruguay dismissing all claims of Philip Morris. The ICSIS ordered the tobacco company to pay Uruguay US\$ 7 million and to bear the full cost of arbitration.

Philip Morris had sued the government of Uruguay over its measures to cover 80% of the company's cigarette packets with graphic health warnings and to maintain a single presentation, thus banning sub-brands, such as Marlboro Gold or Marlboro Light, in an effort to prevent deceiving branding that make consumers believe some cigarettes are healthier than others.

Link to Inside U.S. Trade News Release:

<https://insidetrade.com/daily-news/experts-split-precedent-uruguays-isds-victory-over-philip-morris>

C. Agricultural supports

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

The USDA's total outlays for 2017 are estimated at US\$ 151 billion. Roughly 83% of outlays, about US\$ 126 billion, are associated with mandatory programmes that provide services as required by law. The Foreign Agricultural Service (FAS) carries out a variety of programmes that are designed to facilitate access to international markets. The FAS also carries out activities that promote productive agricultural systems in developing countries and contribute to increased trade and enhanced global food security. The FAS supports market-development programmes as well as export programmes.

1. Market-development programs

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

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

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

a) Foreign market-development programme

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

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

b) Market-access programme

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

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

c) Quality samples programme

The Quality Samples Program (QSP) is designed to encourage the development and expansion of export markets for United States agricultural products. The programme, funded by the CCC, ensures that

United States agricultural trade organizations are reimbursed for the price of the sample purchase, the domestic transportation cost to the exportation port and to the foreign port or point of entry only. In addition to helping importers overcome trade and marketing obstacles, the QSP promotes foreign understanding and appreciation of United States agricultural products by providing information to a targeted audience about quality and use of the United States goods.

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

d) Emerging markets programme

The Emerging Markets Programme (EMP) promotes United States agricultural exports with CCC funding for technical assistance activities that address technical barriers to trade in emerging markets. Examples of such technical assistance include feasibility studies, market research, industry-sector assessments, workshops and specialized training. The programme is funded on a case-by-case basis and only supports exports of generic products; it is approved by the Food, Agriculture, Conservation and Trade Act of 1990. The budget provides a US\$ 10 million at the programme level for EMP in 2017.

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

e) Technical assistance for specialty crops programme

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

2. Export programs and commercial export financing

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

a) Export credit guarantee programme

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

Table 16
Export credit guarantee program activity for GSM-102
Allocation and application for coverage fiscal year 2015^a
(In million dollars)

Caribbean	217.2
Rice	92.6
Soybean Hull Pellets	0.3
Soybean Meal	46
Soybean Oil	34.8
Wheat	18
Yellow Corn	41.5
Central America	200
Corn Gluten Feed	0.4
Dist. Dry Grain	4.6
Pork Meat	0.4
Rice	8.7
Soybean Meal	65
Soybean Oil	10.3
Soybeans	12.1
Wheat	8.5
White corn	1.5
Yellow Corn	88.1
Mexico	250.3
Dist. Dry Grain	1
Rice	3.5
Soybeans	127
Wheat	41.5
Yellow Corn	77.2
South America	434
Dist. Dry Grain	4.9
Rice	32.1
Soybean Meal	143
Soybean Oil	2.9
Soybeans	44.1
Wheat	25
Yellow Corn	181.7
Total (Latin American Region)	1 101.7

Source: USDA "Summary of Export Credit Guarantee Program FY 2015."

^a As of September 2015

3. Sugar import programme

Sugar imports from Latin America and the Caribbean enter the United States under one of two categories: raw cane sugar or sugar and sugar-containing products. Every fiscal year, the USTR announces the country-specific in-quota allocations for raw cane sugar and refined sugar. As stated in

the Harmonized Tariff Schedule of the USTR, the 2016 fiscal year Tariff-Rate Quota (TRQ) for raw cane sugar was set at 1,117,195 metric tons raw value (MTRV) and 132,000 MTRV for refined sugar.

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

a) Raw cane sugar

In March 2016, the USTR announced country-specific reallocations for fiscal year 2016 of 86,533 MTRV of the original TRQ for raw cane sugar that will not be able to fill previously allocated fiscal year 2016 WTO raw sugar TRQ quantities. Of the 86,533 MTRV reallocations, 56,273 MTRV are from Latin American or Caribbean countries.

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

Table 17
United States raw cane SUGAR TRQ allocations and usage
(Metric tons)

Country	FY 2015				FY 2016			
	Original TRQ Allocation	FY 2015 Allocation: 11/16/2015	Quantity Entered (to date: Sep-2016)	Allocation Filled (%)	Original TRQ Allocation	FY 2016 Allocation: 7/18/2016	Quantity Entered (to date: Jun-2016)	Allocation Filled (%)
Argentina	45,281	56,544	49,705	87.90	45,281	55,324	42,924	77.59
Barbados	7,371	9,205	9,205	100.00	7,371	7,333	7,333	100.00
Belize	11,583	14,465	14,465	100.00	11,584	14,154	11,584	81.84
Bolivia (Plu. State)	8,424	0	0	0	8,424	0	0	0
Brazil	152,691	190,669	189,775	99.53	152,691	186,556	156,598	83.94
Colombia	25,273	31,559	27,732	87.87	25,273	30,878	12,951	41.94
Costa Rica	15,796	19,725	19,630	99.52	15,796	19,299	16,571	85.86
Dominican Republic	185,335	185,335	184,662	99.64	185,335	216,232	114,800	53.09
Ecuador	11,583	14,465	11,584	80.08	11,584	14,154	11,643	82.26
El Salvador	27,379	34,189	34,152	99.89	27,379	33,451	29,679	88.72
Guatemala	50,546	63,118	62,273	98.66	50,546	61,757	37,307	60.41
Guyana	12,636	15,779	12,270	77.76	12,636	15,439	9,465	61.31
Haiti	7,258	7,258	0	0	7,258	0	0	0
Honduras	10,530	13,149	13,141	99.94	10,530	12,865	11,433	88.87
Jamaica	11,583	14,465	13,712	94.79	11,584	14,154	0	0
Mexico	7,258	7,258	0	0	7,258	7,258	0	0
Nicaragua	22,114	27,614	27,604	99.96	22,114	27,019	22,172	82.06
Panama	30,538	30,538	30,488	99.84	30,538	37,311	25,590	68.59
Paraguay	7,258	7,258	6,494	89.47	7,258	7,258	4,726	65.11
Peru	43,175	53,914	43,897	81.42	43,175	52,750	29,993	56.86
St. Kitts and Nevis	7,258	0	0	0	7,258	0	0	0
Trinidad & Tobago	7,371	0	0	0	7,371	0	0	0
Uruguay	7,258	0	0	0	7,258	0	0	0
All LAC sugar under TRQs	715,502	796,507	750,789	104.93	715,502	813,192	544,769	76.14

Source: United States Customs and Border Protection, Office of the United States Trade Representative, Weekly Commodity Status Report on USDA, Economic Research Service, Sugar and Sweeteners: Recommended Data. Table 57f and 57g, as of 18 July 2016. Note: The USTR often makes adjustments to the TRQ allocations. Table V.8 shows the original and final raw cane sugar Tariff Rate Quota (TRQ) allocations, the quantity entered and the percentage of allocations filled for fiscal years 2015 and 2016.

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