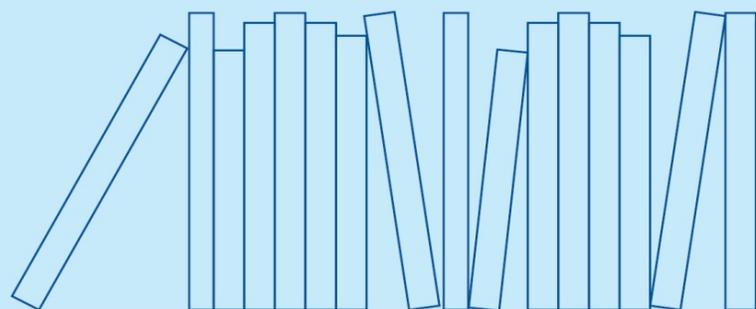


Economic Commission for Latin America and the Caribbean

ECLAC WASHINGTON OFFICE



United States- Latin America and the Caribbean trade developments 2018



UNITED NATIONS

E C L A C

Washington, D.C., 28 December 2018

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Table of Contents

Abstract	7
Introduction	9
I. United States Trade Agenda 2018	11
II. Trade policy developments	14
A. Tariffs.....	14
1. Solar panels and washing machines	16
2. Steel and aluminum.....	16
B. United States trade negotiations.....	20
1. The United States-Mexico-Canada Agreement (USMCA)	20
C. United States-China relations.....	21
1. Section 301 Report on China’s intellectual property rights	23
2. Outbound Chinese Foreign Direct Investment.....	23
III. Trade inhibiting measures	28
A. Import policies	28
1. Trade remedy legislation	28
2. Special 301 Report.....	30
B. Overview of selected United States dispute settlement cases involving Latin American and Caribbean countries.....	31
1. U.S.-Mexico tuna label dispute	31
2. Peru’s timber verification.....	31
C. Agricultural supports.....	32
1. Market-development programs	32
2. Export programs and commercial export financing.....	34
3. Sugar import program	34
Bibliography	36

Tables

Table 1	Timeline and status of U.S. trade actions	15
Table 2	U.S. imports of steel and aluminum by selected trading partner, 2017	17
Table 3	Chronology of escalating tensions between the United States and China	22
Table 4	CFIUS: Covered transactions, withdrawals, and presidential decisions, 2009-2015	26
Table 5	CFIUS: covered transactions by sector and year, 2009-2015.....	26
Table 6	CFIUS: Covered transactions by acquirer home country or economy, 2013-2015	27
Table 7	CFIUS: Covered transactions by top ten home country of the foreign investor and target sector, 2013-2015	27
Table 8	Antidumping duty orders affecting Latin America and the Caribbean.....	29
Table 9	Countervailing duty orders affecting Latin America and the Caribbean.....	30
Table 10	Latin America and Caribbean countries in the Priority Watch List and Watch List, 2018 ...	31
Table 11	Specialty sugar allocations	35
Table 12	U.S. raw cane sugar TRQ allocations and usage	35

Figures

Figure 1	U.S. imports of Steel and aluminum in 2017, by selected trading partner	16
Figure 2	U.S. imports of Steel and aluminum from Latin American and the Caribbean.....	18
Figure 3	Argentina Steel exports to the U.S.	19
Figure 4	Chinese Direct Investment in the U.S.	23

Abstract

United States Trade Developments, 2017-2018, 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.

In 2018, United States trade actions followed closely the goals outlined in the 2018 U.S. trade agenda of assertiveness in enforcing U.S. trade laws and negotiating bilateral rather than multilateral trade agreements to better use the weight of the U.S. economy in favor of U.S. national interests. As a result, 2018 was noticeable by the proliferation of U.S. tariffs increases on the grounds of serious injury to a U.S. industry (solar cells and washing machines), threatening to impair U.S. national security (steel and aluminum) and discriminatory or unreasonable practices (tariffs against China affecting up to US\$250 billion in trade). Also this year the U.S. renegotiated the North American Free Trade Agreement (NAFTA), the South Korea-U.S. agreement (KORUS), and President Trump formally announced the intent to start bilateral trade talks with the European Union, Japan, and the United Kingdom.

The spread of U.S. tariffs increases was met with retaliatory tariffs and other trade restrictive actions by several U.S. trading partners. Although these measures encompass a broad range of sectors, the U.S. agricultural sector was among the most affected by them. In July 2018, the U.S. announced a US\$12 billion plan to provide aid to farmers and ranchers adversely impacted by retaliatory tariffs.

Of note, in December 2017 Argentina was reinstated as a GSP beneficiary country after a six year suspension allowing about 500 Argentine products to enter the U.S. market duty free.

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In December 2017, Argentina was reinstated as a General System of Preferences¹ (GSP) member after a six-year suspension. Argentina was suspended as a GSP beneficiary in May 2012 after its failure to pay two arbitral awards in favor of U.S. companies under the 1991 United States-Argentina bilateral investment treaty. Argentina's reinstated GSP beneficiary status will remove duties on over 500 Argentine goods when entering the U.S. market. Argentina joins other 17 Latin American and Caribbean GSP beneficiary countries: Anguilla, Belize, Bolivia, Brazil, Dominican Republic, Ecuador, Grenada, Guyana,

¹ The Generalized System of Preferences (GSP) is the largest U.S. trade preference program, offering developing countries duty-free entry on up to 5,000 products. GSP promotes economic development by eliminating duties on imports from 120 designated beneficiary countries and territories, including 43 least-developed countries

Haiti, Jamaica, Paraguay, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Uruguay, and Venezuela (Rep. Bol. of).

This document is organized as follows: section I outlines the five pillars of the 2018 United States Trade Agenda, section II analyzes the most relevant trade developments of the year, including tariffs, negotiations and increasing tensions between China en the United States, and section III describes the main trade inhibiting measures affecting Latin America and the Caribbean.

I. United States Trade Agenda 2018

The United States trade policy agenda for 2018 is a pragmatic agenda that seeks to use the leverage of the U.S. economy “to obtain fairer treatment for U.S. workers”. The agenda is based on five pillars: supporting the U.S. national security, strengthening the U.S. economy, negotiating better trade deals, aggressively enforcing U.S. trade laws, and reforming the world trade organization.

Supporting the U.S. national security. The first pillar of the U.S. trade agenda is ensuring that the U.S. trade policy is consistent and supportive of the National Security Strategy that the U.S. Administration issued at the end of 2017. The National Security Strategy named China (and Russia) a threat to the U.S. security and prosperity because, among other issues, their lack of compliance with many of their obligations at the WTO that are considered a challenge to the U.S. economic interests. President Trump has pledged to use all available tools to discourage these countries from undermining free market competition.

Moreover, President Trump has vowed to protect the U.S.’ economy from “competitors who unfairly acquire our intellectual property” and technologies. Section 301 investigation into the allegations that China unfairly obtains U.S. technologies and intellectual property is the first step in that direction.

Strengthening the U.S. economy. The current administration understands that economic prosperity is national security. Thus, policies to promote economic growth also advance national security. Among them are the corporate tax cuts and deregulation measures passed under President Trump that aim to stimulate investment and spur innovation as are the defense against theft and forced transfers of U.S. intellectual property and technologies, and the increase in the military budget

Negotiating better trade deals. The administration’s view is that it is in bilateral rather than multilateral negotiations that the U.S. can better use the weight of its economy to leverage the terms of the agreement in favor of U.S. national interests. This year, the U.S. renegotiated the North American Free Trade Agreement (NAFTA), the South Korea-U.S. agreement (KORUS), and in October President Trump gave formal notification to the U.S. Congress of the intent to start bilateral trade talks with the European Union, Japan, the United Kingdom.

NAFTA, a 25-year-old trade agreement between the United States, Canada and Mexico needed to be updated to include new trade issues such as digital trade that were non-existent when it was originally

signed. The U.S. also wanted to correct some provisions that were thought to have encouraged outsourcing. Furthermore, the new updated agreement sought to contain strong, enforceable provisions on labor and the environment to ensure broad support. NAFTA contained side agreements on labor and the environment that were not subject to dispute settlement. The new agreement, the United States, Mexico and Canada Agreement (USMCA) was signed on 1 October 2018.

With respect to KORUS, the goals were to enhance market access opportunities for U.S. exporters, obtain a more balanced trade exchange between the two countries –the U.S. ran a trade deficit with Korea of US\$9.8 billion in 2017, and rebalance commitments on tariffs for a “reciprocal and mutually advantageous” agreement. Furthering market access opportunities included the elimination of non-tariff barriers to exports of U.S. motor vehicles and motor vehicle parts. The U.S. goods trade deficit with Korea was \$23.1 billion but a services trade surplus of US\$13 billion brings the overall trade deficit for 2017 to US\$9.8 billion.

Aggressively enforcing U.S. trade laws. In this respect, the Administration is using the trade remedy tools available to ensure that U.S. trade laws are being enforced. For example, the U.S. President has initiated investigations under Section 232 of the Trade Expansion Act of 1962 and Sections 201 and 301 of the Trade Act of 1974.

The U.S. solar and washing machine industries brought cases under Section 201 before the U.S. International Trade Commission (USITC). The USITC’s investigation found that import surges are a substantial cause of serious injury to these domestic industries. Section 201 permits the President of the United States to grant temporary import relief, by raising import duties or imposing non-tariff barriers on goods entering the United States that injure or threaten to injure domestic industries. Because of the USITC’s findings, the President imposed temporary global safeguard tariffs in February 2018.

The U.S. President also ordered Section 232 investigations into whether imports of steel and aluminum threaten to impair the national security. The investigations found that the quantity of steel and aluminum imports and the circumstance of global excess capacity threaten to impair the national security. On March 8, 2018, the United States announced tariffs of 25% on foreign steel and 10% on foreign aluminum effective March 23, 2018. The U.S. administration has also ordered Section 232 investigations for autos and uranium.

In August 2017 the USITC initiated an investigation under Section 301 to determine whether some of the policies and practices of the Government of China with respect to technology transfer, intellectual property, and innovation are “unreasonable or discriminatory and burden or restrict U.S. commerce.” Section 301 seeks to address foreign trade practices that are deemed unfair. For instance, Section 301 may be used to obtain increased market access for U.S. goods and services, provide more equitable conditions for U.S. investment abroad, and obtain more effective protection for U.S. intellectual property. The USITC’s investigation concluded that “a key part of China’s technology drive involves the acquisition of foreign technologies through acts, policies, and practices by the Chinese government that are unreasonable or discriminatory and burden or restrict U.S. commerce. These acts, policies, and practices work collectively as part of a multi-faceted strategy to advance China’s industrial policy objectives.” (USTR, 2018a).

The White House published a report in June 2018 where five “vectors of China’s economic aggression in the technology and intellectual property space” are identified: a) State sponsored intellectual property theft through physical theft, cyber-enabled espionage and theft, evasion of U.S. export control laws, and counterfeiting and piracy; b) coercive and intrusive regulatory maneuvers to force technology transfer from foreign companies, in exchange for partial access to the Chinese market; c) economic coercion through export restraint on critical raw materials and monopsony purchasing power; d) methods of information harvesting that include open source collection; placement of “non-traditional” information collectors at U.S. universities, laboratories, and other centers of innovation; and talent recruitment of business, finance, science, and technology experts; and e) State-backed, technology-seeking Chinese investment.(WHOMT, 2018)

With respect to Antidumping and Countervailing Duty Investigations, the Administration initiated 84 antidumping and countervailing duty investigations -a 59% increase from the previous year.

The U.S. along with other countries consider China a non-market economy and does not have the right to engage in government interference and intervention in market mechanisms, distorting market outcomes and undermining WTO rules, without consequence.

Reforming the World Trade Organization. One of the U.S. trade policy objectives for 2018 is to address U.S. concerns with respect to the functioning of the WTO. These include a dispute settlement system that “has appropriated to itself powers that the WTO Members never intended to give it”, the WTO’s inability to reach agreements needed in a modern global economy (because of its unanimity rule and its 164 membership), and issues related to development.

Created in 1995, the WTO sets the basic global rule book for trade and the arbitration of conflicts. Its dispute settlement mechanism functions through panels of arbiters that decide in cases brought by a member country against another regarding alleged breaks to current WTO laws. These panels can authorize retaliation in the form of higher tariffs. For example, in October, the EU, China, Russia, Turkey and Canada started a case against the U.S. over the U.S.’s tariffs on their steel and aluminum exports. The U.S. has criticized the WTO dispute settlement for some years. Much of the criticism is against the appellate body, a tribunal of three judges that reviews ruling by a panel of arbiters of lower jurisdiction. U.S. argues that the appellate body overextends its authority, seeking to fill holes in the WTO rule book rather than interpreting existing law. The U.S. complains that the appellate body often rules against the U.S.’s use of “trade defense” especially anti-dumping and anti-subsidy duties regarding imports that are alleged to be priced unfairly low. The U.S. is now blocking appointments to the WTO’s appellate body, which could bring its work to a halt.

Most countries members to the WTO agree that its rule book needs to be updated. The U.S. argues that WTO rules do not sufficiently prevent the Government of China from subsidizing Chinese industry, support state-owned enterprises and discriminate against foreign investor, including the forced transfer of technology. In 2018, Japan, the U.S. and the EU launched a somewhat coordinated legal action at the WTO against China over technology transfer.

Another point of contention is the status of China as a developing country. WTO agreements have always given “special and differential treatment” to developing economies, including longer transition periods to achieve their commitments. The status of developing country is self-selected and not clearly defined. China continues to define itself as a developing country, based on its level of income before it joined the WTO and therefore assumes fewer commitments than their more developed counterparts at the WTO and enjoys other benefits extended to less developed countries.

The U.S. along with other countries is defending its position before the WTO that China is not a market economy. Chinese government interference and intervention in market mechanisms undermines WTO rules and should be appropriately penalized. The USTR has complained that the WTO fails to curb China’s distortionary and discriminatory behavior.

In September 2018, the EU presented proposals to make dispute settlement more efficient, agree new rules on investment, competition and technology transfer and make subsidies more transparent. Canada has also advanced proposals to reform the WTO.

A press communique released at the end of the IMF meeting in October included a call for WTO reform, a sign of a growing consensus among countries that WTO need reforming.

II. Trade policy developments

A. Tariffs

In the past year, the U.S. has made an aggressive use of tariffs breaking with what has been customary practice in the post-war world. Citing concerns over trade deficits and trade practices of some of the U.S.'s trading partners, the U.S. has imposed tariffs and other trade restrictions.

Although the United States Congress has preeminence over trade policy, certain U.S. trade laws provide limited authority to the U.S. president to unilaterally impose trade restrictions based on investigations and other requirements. Among them are Section 232 of the Trade Expansion Act of 1962 and Sections 201 and 301 of the Trade Act of 1974. They have been rarely used since the 1995 creation of the World Trade Organization (WTO) that contains a dispute settlement system to solve controversies among its membership. For instance, according to the Congressional Research Service U.S. import restrictions were last imposed under these trade laws in 1982 for Section 232, 2001 for Section 301, and 2002 for Section 201 (CRS Escalating Tariffs: Timeline Updated September 24, 2018 (IN10943)). The following table shows the timeline and status of these trade actions under the current administration.

Table 1
Timeline and Status of U.S. trade actions

Date ²	Action	Import Restriction	Countries Affected	Exceptions
February 7, 2018	Section 201: Global Safeguard Investigations “Serious injury to U.S. industry”	<u>Solar Cells</u> : 4-year TQR with 30% above quota tariff, descending 5% annually <u>Solar Modules</u> : 4-year 30% tariff, descending 5% annually <u>Large Residential Washers</u> : 3-year TRQ, 20% in quota tariff descending 2% annually, 50% above quota tariff descending 5% annually <u>Large Residential Washer Parts</u> : 3-year TRQ, 50% above quota tariff, descending 5% annually	All countries included	Canada excluded from the duties on washers. Developing countries excluded if they account for less than 3% individually or 9% collectively of U.S. imports of solar cells or large residential washers, respectively.
March 23, 2018	Section 232³: Steel and Aluminum Investigations “Threaten to impair U.S. national Security”	<u>Aluminum</u> : 10% tariffs on specified list of aluminum imports effective indefinitely <u>Steel</u> : 25% tariffs on specified list of steel imports effective indefinitely; 50% tariffs on steel imports from Turkey	All countries included	<u>Aluminum</u> : Australia and Argentina ⁴ permanently exempted <u>Steel</u> : Australia, Argentina (3) , Brazil (3) and South Korea(3) permanently exempted
July 6, 2018	Section 301(2): China Trade Barriers Investigation	<u>Stage 1</u> : 25% import tariff on 818 U.S. imports (final, \$34 billion approx.)	China	
August 23, 2018	“Discriminatory or unreasonable practices”	<u>Stage 2</u> : 25% import tariff on 279 U.S. imports (final, \$16 billion approx.)		
September 24, 2018		<u>Stage 3</u> : 10% import tariff increasing to 25% on January 1, 2019 on 5,745 U.S. imports (final, \$200 billion approx.)		

Source: ECLAC Washington Office

² Refers to the date when the Action became effective

³ Retaliation also in effect

⁴ Quantitative import restrictions imposed in place of tariffs

1. Solar panels and washing machine. Safeguard tariffs

The U.S. solar and washing machine industries brought cases under Section 201 before the USITC. The USITC's investigation found that import surges are a substantial cause of serious injury to these domestic industries. Because of the USITC's findings, the President imposed temporary global safeguard tariffs in February 2018 as detailed in Table 1. Of note, Canada was excluded from the duties on washers as well as developing countries that do not represent a large share of U.S. imports of solar cells or large residential washers.

2. Steel and aluminum tariffs

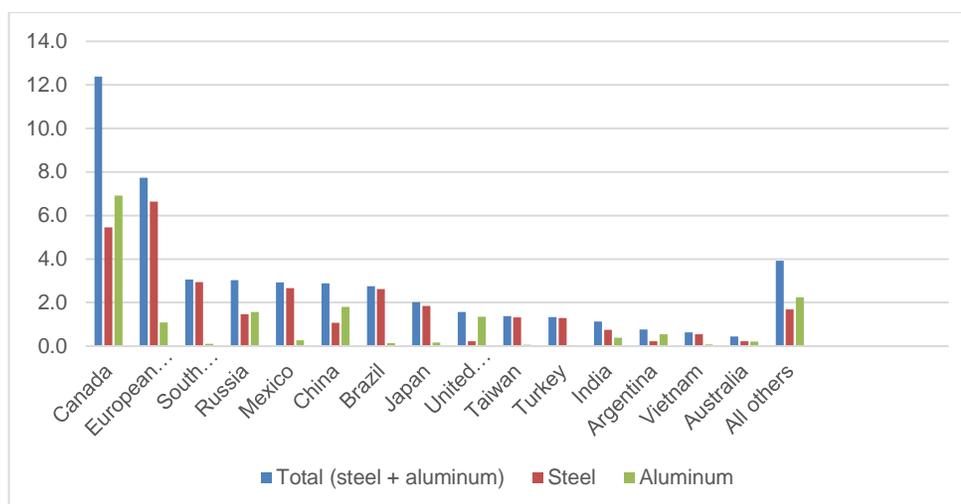
Steel and aluminum manufacturers have long complained about global excess capacity that puts downward pressure on their products. As a result, the U.S. and other major economies formed the Global Forum on Excess Steel Capacity in 2016. Later, in April 2017, President Trump ordered the U.S. Department of Commerce (USDOC) to conduct two separate investigations --one for steel and the other for aluminum-- under Section 232 of the Trade Expansion Act of 1962.

The U.S. administration's arguments to order the investigations were that both steel and aluminum are strategic goods for civil and military industries and must be protected from a distorted world market. A healthy national industry would guarantee the supply of these products and limit dependency on foreign producers.

The USDOC Section 232 report found that the "quantities and circumstances" of steel and aluminum import levels threaten to impair the national security, as defined by Section 232. On March 8, 2018, the United States announced tariffs of 25% on foreign steel and 10% on foreign aluminum effective March 23, 2018. This is an unusual development as of the 26 investigations that have taken place since 1962 only 5 have led to action.

The tariff announced on March 8, 2018 would potentially cover an estimated \$48 billion of imports (Figure 1), mostly from Canada, the European Union, Mexico, and South Korea. Only 6% of the imports covered originate in China since the U.S. has already imposed antidumping and countervailing duties of the products.

Figure 1
U.S. imports of steel and aluminum in 2017, by selected trading partner
(in billion dollars)



Source: ECLAC Washington on the basis of Brown 2018

Initially, Mexico and Canada, two of the United States main trading partners in both steel and aluminum, were excluded from the initial tariffs as NAFTA renegotiation were underway. The exceptions

expired 1 June 2018 and tariffs on steel and aluminum exports from Canada and Mexico were kept after the new agreement was signed.

The country most affected by U.S. measures in Latin America is Mexico that has exported \$ 2.7 billion worth of products that fall under the affected categories in 2017 (Figure 1). Brazil and Argentina exported US\$2.6 billion and US\$770 million of the same products, respectively, in 2017.

The President also announced that the U.S. was open to discussions to modify or remove specific countries from the tariff list under certain conditions. Among the top suppliers of foreign steel, South Korea and Brazil were given permanent exemptions from the steel tariffs as were Argentina and Australia. In the case of Brazil, Argentina and Korea they will face quota restrictions instead.

U.S. businesses will also have a mechanism to apply for exclusion of specific products based on demand that is unmet by domestic production or on specific national security considerations.

Table 2
U.S. imports of steel and aluminum by selected trading partner, 2017
(in billion dollars)

Country	Total (steel + aluminum)	Steel	Aluminum
Total	48.0	31.0	17.0
Canada	12.4	5.5	6.9
European Union	7.7	6.6	1.1
South Korea	3.1	2.9	0.1
Russia	3.0	1.5	1.6
Mexico	2.9	2.7	0.3
China	2.9	1.1	1.8
Brazil	2.8	2.6	0.1
Japan	2.0	1.8	0.2
United Arab Emirates	1.6	0.2	1.3
Taiwan	1.4	1.3	0.1
Turkey	1.3	1.3	0.1
India	1.1	0.8	0.4
Argentina	0.8	0.2	0.5
Vietnam	0.6	0.6	0.1
Australia	0.4	0.2	0.2
All others	3.9	1.7	2.2

Source: Brown, 2018

There is a wide range of source countries for steel. In 2017, Canada was the largest individual foreign supplier to the United States, accounting for 17.7% of U.S. imports of steel. Mexico represents 8.6% and China only 3.5%. The EU accounts for the largest share of U.S. imports at about 21%. The top 5 exporters to the U.S. represent about 65% of total U.S. steel imports.

Source countries for aluminum are significantly more concentrated. The top 5 exporters to the United States: Canada, China, Russia, United Arab Emirates, and the EU represent 75% of U.S. imports of aluminum products. None of them was given tariffs exceptions. Argentina and Australia were given quota restrictions.

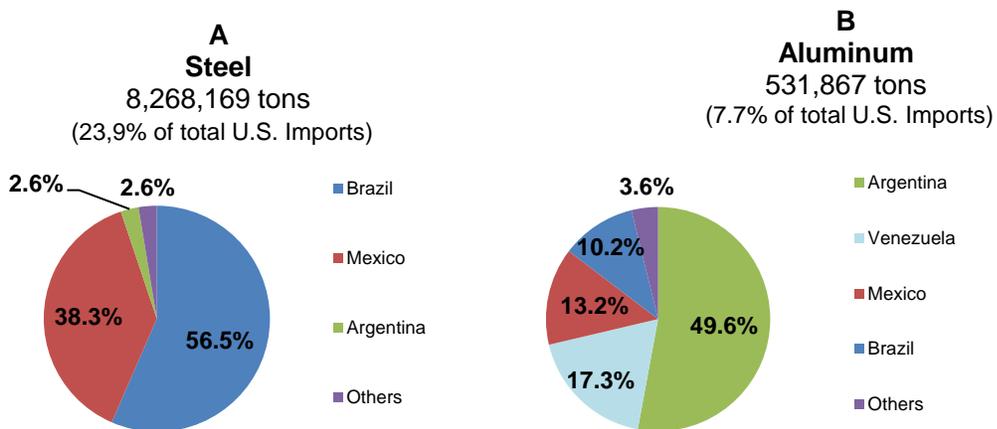
On 1 June 2018 the U.S. ended the exemptions for the EU, Canada, and Mexico that then joined China in imposing retaliatory tariffs on U.S. products. The tariffs imposed match the value of U.S. imports

to the amount of their exports affected by the steel and aluminum tariffs. Products affected range from aluminum waste and scrap, pork, produce as well as bourbon whiskey, motor boats and yachts, Harley Davidson motorcycles, and blue jeans.

The USTR filed disputes at the WTO against Canada, China, the European Union, Mexico, and Turkey, challenging these retaliatory tariffs imposed in response to the aluminum and steel trade actions.

In 2017, Latin America and the Caribbean accounted for 23.9% of U.S. steel imports and 7.3% of U.S. aluminum imports, in volume. Brazil and Mexico are the second and fourth largest steel exporters to the U.S. and together are responsible for almost 95% of the region’s steel exports to the U.S. Regarding aluminum, Argentina is the fifth⁵ biggest exporter to the U.S., representing half of U.S. aluminum imports from Latin America and the Caribbean. Venezuela with 18.4% of the region exports, Mexico (14.0%) and Brazil (10.8%) are other relevant countries in the U.S. aluminum market.

Figure 2
U.S. Imports of Steel and Aluminum from Latin American and the Caribbean⁶
(Quantities)



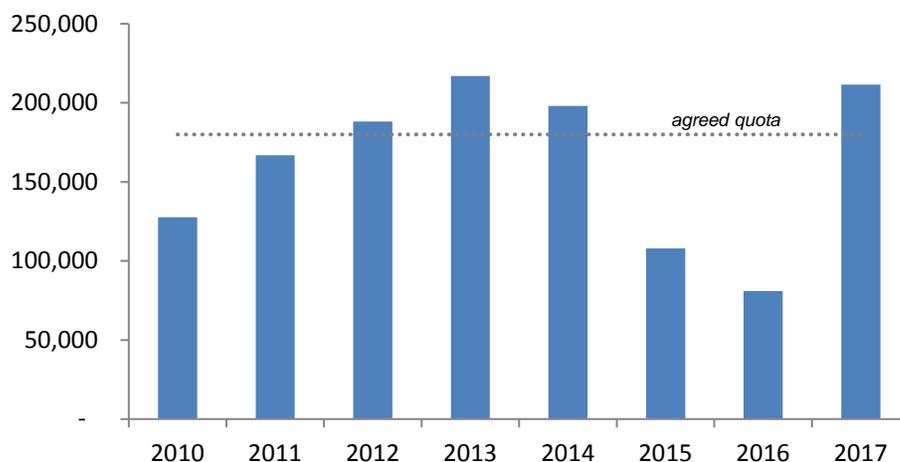
Source: US Department of Commerce and US International Trade Commission (Section 232 Report)

Argentina has agreed to subject its steel and aluminum exports to quotas to avoid the increased tariffs. The quota for aluminum, equivalent to the three-year average exports to U.S. will represent a 31.8% reduction from 2017. In the case of steel, lower than normal exports to the U.S. in 2015 and 2016 (Figure 3) justified a quota of 135% of three year average exports. Nonetheless, the quota will represent a 14.9% reduction from 2017 exports.

⁵ Argentina is fifth largest steel exporter to the U.S. considering individual countries. Considering EU steel exports together, Argentina would be the sixth largest.

⁶ Considering only products subjected to the tariffs under Section 232.

Figure 3
Argentina steel exports to the U.S.
(tons)



Source: US Department of Commerce and US International Trade Commission (Section 232 Report).

Brazil steel exports are subject to a quota limited to 70% of the three-year average exports to U.S. for finished products and 100% of the three-year average exports for semi-finished products. Brazilian aluminum exports are subjected to the 10% tariffs, as other countries.

Venezuela (Bol. Rep of), the third largest exporter of aluminum to the U.S. in the region in 2017, was cited in the DOC report as one of the countries with “significant overcapacity, and/or are potential unreliable suppliers or likely sources of transshipped aluminum from China”. Aluminum exports to U.S. have reached 91,000 tons in 2017, an increase of 32% from the previous year; however, the amount is still 35% smaller than the peak of 142,000 tons exports to U.S. in 2012. Venezuela exported only 4,000 tons of steel to the U.S. in 2017.

Much of the overproduction and excess capacity is attributed to China, which today accounts for about half of world output in steel. China has acknowledged that overproduction capacity is a problem and has committed to cutting down 150 million tons of capacity by 2020. According to the DOC, global steelmaking capacity has increased 127% since 2000, while the demand has increased at a lower rate. China’s crude steel production increased from 15% of world’s production in 2000 to about 50% in 2016⁷. At the same time, China’s production of aluminum has increased from 11% of world’s production in 2000 to about 53% in 2017.

Chinese production is significant enough that any increase in production depresses global prices and drives foreign producers out of third markets. Chinese manufacturers then use those markets to ship into the United States, something known as transshipping.

Lack of customs data from the allegedly involved parties makes it very hard to determine the exact amounts of steel and aluminum that are transshipped. The recent Special 232 investigation report acknowledges that officials were unable to quantify the exact number of transshipments. However, the report notes that in 2016, almost 40% of China’s steel exports went to South Korea (14.2%), Vietnam (11.6%), the Philippines (6.5%), and Thailand (6.2%). This compares to about 16% in 2006. More importantly, while in 2006 the U.S. was the second market for Chinese steel exports, representing about

⁷ Sources: International Iron and Steel Institute - Steel Statistical Yearbook 2001 and World Steel Association – Steel Statistical Yearbook 2017.

5% of Chinese foreign markets of steel, in 2016 the U.S. is out of the top 10 list of markets for Chinese exports of steel.

China was the 2nd largest exporter of aluminum to the U.S. by value in 2017 and represented just 10.7% of imports, as compared with Canada's 40%. While in steel imports, China was the 10th largest exporter to the U.S. and represented 3.5%. However, these new tariffs will have little impact on imports from China since about 94% of U.S. imports of steel from China are already protected by an array of trade barriers, and 96% of U.S. aluminum imports from China have also been covered by special protection. (Brown, 2018)

B. U.S. trade negotiations

In 2018, the U.S. renegotiated NAFTA and the KORUS free trade agreement. Following the completion of these negotiations, the U.S. goal is to intensify trade discussions with other countries. The administration intends to use the new USMC agreement as a template to redefine rules on intellectual property rights protection, labor markets, foreign exchange as well as how U.S. partners conduct business with China. The USMCA contains provisions that allow the U.S. to withdraw its membership if a party to the agreement negotiates a separate deal with a “non-market economy”. Another feature of this new trade accord is the removal, with some exceptions, of the investment state protection that has been included in every agreement the U.S. has negotiated since NAFTA. This chapter sought to provide legal protections for U.S. based multinationals investing abroad against unpredictable legal changes in the countries that host those investments. In the U.S. administration's view, these special protections encourage outsourcing and promote global value chains that end up hurting employment in the U.S.

1. The United States-Mexico-Canada Agreement (USMCA)

On 30 September 2018 the U.S., Mexico and Canada announced they had reached an agreement and that NAFTA would be replaced by USMCA. The new agreement keeps mostly untouched the tariff-free trade in goods prevalent under NAFTA. Its most remarkable change with respect to market access relates to automobiles and agricultural products. It also changes rules with respect to intellectual property rights, government procurements and investment. The new agreement includes a chapter on digital trade that did not exist in the previous agreement along with other issues such as state-owned enterprises and currency manipulation that make it a modern trade agreement. In addition, unlike NAFTA that did not have an expiration date, the new agreement will be subject to review every six years and can expire a decade after each review if any party decides so. NAFTA's side agreements on labor and the environment were revised and moved as chapters in the body of the new agreement. Both labor and environment are now subject to the same dispute settlement mechanism than the other parts of the agreement.

New rules of origin requirements for automobiles. The USMCA raises the share of the value of automobiles that needs to be created within North America to qualify to cross its borders duty-free from 62.5% to 75%. In addition, between 40% and 45% of auto content will have to be made by workers earning at least US\$16 an hour on average—about seven times today's average manufacturing wage in Mexico. Moreover, 70% of a vehicle's steel and aluminum must originate in North America. This change will be phased-in over a five-year period and be fully effective by 2023. The USMCA also introduces a car quota of 2.6 million cars for zero tariffs if auto tariffs are raised under Section 232. The intention is for carmakers to move the production to the United States to access the U.S. market for light vehicles. However, the general effects of these provisions are unknown. On the one hand as car making costs inevitably rises because of these new rules of origin it might make sense to move production to the U.S. --the U.S. imports more vehicles that are sold in Canada and Mexico combined. On the other hand, the North American region will lose competitiveness vis a vis Asia and Europe. This will affect Mexico but also U.S. suppliers of parts to businesses in Mexico and the decision to relocate manufacturing. Many car makers use North America as an export hub to markets overseas, if North America loses competitiveness that may change.

With respect to agricultural products, USMCA increases U.S. dairy access up from 3.2% to 3.59% of Canada's dairy market and increases the TRQs for U.S. poultry and egg exports to Canada.

The new agreement keeps NAFTA's Chapter 19, a binational dispute settlement mechanism to settle trade remedy disputes. However, this mechanism does not apply to tariffs levied on ground of national security (Section 232). The USMCA also maintains the NAFTA state-to-state dispute settlement mechanism for most disputes (Chapter 11). However, it eliminates the investor-state dispute settlement for Canada and maintains it only between the U.S. and Mexico for disputes related to oil, natural gas, power generation, infrastructure, and telecommunications sectors and for other sectors in the case that the claimant exhausts national remedies first.

With respect to intellectual property rights, the USMCA includes 10 years of data protection for biologics—NAFTA did not have commitments in the respect and extends copyright terms from 50 to 70 years, prohibits the circumvention of technological protection measure, extends criminal and civil penalties protections for trade secret theft, including by state-owned enterprises and cyber-theft. It also raises the threshold under which goods can enter Canada or Mexico without incurring taxes or duties (*De Minimis*).

The new chapter on digital trade follows closely the provisions of the Trans-Pacific Partnership (TPP) including duty free trade on electronically-transmitted products and limits on source code disclosure requirements but goes further on cross-border data flows and restrictions on data localization. There is also a new chapter on State-Owned Enterprises (SOE) that requires the State to provide non-discriminatory treatment towards competitors.

The agreement was signed 30 November 2018 in the context of the G20 summit in Buenos Aires just one day ahead of the Mexican change in government.

C. United States-China relations

Longstanding issues regarding China's practices with respect to technology transfer, intellectual property, innovation and trade as well as some geo-political concerns have created tension between the United States and China that has been escalating since President Trump took office in January 2017 (Table 3). The size of the U.S. trade deficit with China has long been a cause of concern for the current U.S. Administration. Additional difficulties are more broadly shared with other members of the international community. For example, certain policies and practices of the Chinese government that negatively affect intellectual property protection, the fair remuneration to inventors for their innovations and the national security of the countries through dual use technology acquisition by the Chinese government.

Trade deficits are one of the major concerns of the current U.S. administration with respect to trade and the size of the trade deficit with China has been the source of significant trade tensions between the U.S. and China. In 2017 the goods trade deficit rose to US\$375 billion from US\$347 billion in 2016 to reach a historical maximum.

In 2017 U.S. exports of goods to China grew 12.8% with respect to the previous year reaching US\$115.5 billion. China was the third largest U.S. exports market for goods after Canada and Mexico; Japan and the UK complete the top five exports markets for goods. The top five U.S. products exported to China in 2017 were aerospace products (civilian aircraft and parts), oils seeds and grains, 63% of which were soybeans, motor vehicles, semiconductors and electronic components and waste and scrap. Since China joined the WTO U.S. exports to China rose by 491%.

U.S. imports of goods from China, the largest source of U.S. goods imports, rose by 9.3% in 2017. Mexico is the second and Canada the third source of U.S. imports of goods. The top five products U.S. imported from China in 2017 were communications equipment, computer equipment, miscellaneous manufacture commodities, apparel and semiconductors and other electronic components. The basket of goods imported has changed significantly over the years. Whereas at the beginning of the reinstating of the U.S.-China relations the U.S. imported mostly labor-intensive products such as toys, games, electronic products, footwear, textiles and apparel, in the last few years the U.S. imports from China have shifted to more technologically advanced products. In 2017, 36% of the U.S. imports of advanced technology products (ATP) came from China.

China is also an important U.S. trading partner in services. In 2017, China was the third largest services export market for the United States following the U.K. and Canada and the 8th largest source of service imports. The largest source of imports is the U.S., followed by Germany, Japan and Canada. The U.S. run a trade surplus with China in services in 2017 of US\$40.2 billion.

Table 3
Chronology of escalating tensions between the United States and China

2017	
28 April	Initiation of 232 investigations into whether steel/aluminum imports pose a threat to national security.
22 May	The U.S. and China agree to a trade deal that would give U.S. firms greater access to China's agriculture, energy, and financial markets, and China gains access the U.S. cooked poultry market.
18 August	Initiation of a Section 301 investigation into certain acts, policies and practices of the Chinese government relating to technology transfer, intellectual property and innovation.
2018	
7 February	After conducting a Section 201 investigation, the U.S. implements 'global safeguard tariffs' on solar panel and washing machine imports.
22 March	Following the results of the Section 301 investigation, President Trump signs a Presidential Memorandum Targeting China's Economic Aggression directing the following acts: <ul style="list-style-type: none"> • To file a WTO case against China for their discriminatory licensing practices; • To restrict investment in key technology sectors; and • To impose tariffs on Chinese products
23 March	The U.S. imposes a 25% tariff on all steel imports with some exceptions and a 10 % tariff on all aluminum imports except from Argentina and Australia..
2 April	China imposes tariffs ranging 15%-25% on 128 products worth US\$3 billion including fruit, wine, seamless steel pipes, pork and recycled aluminum in retaliation to the U.S.' steel and aluminum tariffs.
3 April	The USTR releases an initial list of 1,334 proposed products worth US\$50 billion subject to a potential 25% tariff.
4 April	China reacts to USTR's initial list and proposes 25% tariffs to be applied on 106 products worth US\$50 billion on goods such as soybeans, automobile, chemicals.
16 April	The U.S. Department of Commerce concludes that Chinese telecom company ZTE violated U.S. sanctions. As a result, U.S. companies are banned from doing business with ZTE for seven years.
17 April	China announces antidumping duties of 178.6 % on imports of sorghum from the U.S.
18 May	China announces that it will stop tariffs on U.S. sorghum during negotiations.
20 May	The U.S and China agree to a truce after China reportedly agrees to buy more U.S. goods.
29 May	End of truce, the U.S. reinstates tariff plans.
7 June	The U.S. and ZTE agree on a deal that will allow ZTE to resume business.
15 June	The U.S. revises the initial list of products released 3 April. List 1 implements a 25% tariff on a reduced 818 products (from 1,334) and is set to take effect on July 6, 2018. List 2 of 284 new products is also announced and under consideration.
16 June	China revises its initial tariff list on 4 April, to include a 25% tariff on 545 products valued at US\$34 billion to take effect on 6 July 2018. China also proposes a second round of 25% tariffs on another 114 products valued at US\$16 billion
6 July	The U.S. implements first China specific tariffs and China takes retaliatory measures
2 August	The U.S. Department of Commerce adds 44 Chinese entities to its export control list that pose a "significant risk" to US national security.
14 August	China files WTO claim against the U.S.
23 August	U.S. and China implement second round of tariffs, China files second WTO complaint
24 September	U.S. and China implement third round of tariffs. Total China specific tariffs affect goods valued at US\$250 billion, total U.S. specific tariffs applied by China affect US\$110 billion.
19 November	U.S. releases list of proposed export controls on emerging technologies
1 December	G-20 Summit in Buenos Aires - Meeting between President Trump and President Xi Jinping

Source: ECLAC Washington Office

1. Section 301 Report on China's Intellectual Property Rights policies

The Section 301 investigation ordered by President Trump found that foreign companies seeking to license technologies to Chinese enterprises must do so on non-market-based terms that favor Chinese recipients. The Chinese government uses regulatory restrictions to pressure foreign investors to transfer their technology to Chinese companies. This is the case of joint venture requirements and foreign equity limitations, and cumbersome and non-transparent licensing and approvals process.

The investigation also reported that the government of China applies economic coercion to excerpt better conditions in dealings with foreign investors. This is the case of Chinese export restraints to raw materials that are critical to technology production such as rare earth, tungsten, and molybdenum. This rises the export price of these products with significant consequences to the global supply chain and production of high technology and high value-added products downstream. State-Owned Enterprises command significant monopsony purchasing power in some markets. China uses this power to extract concessions related to localization of factories and transfer of foreign technology.

In addition, the 301 Report also states that there is evidence that the Chinese government has conducted or supported cyber intrusions into U.S. commercial networks obtaining confidential business information held by U.S. firms such as trade secrets, technical data, negotiating positions, and other sensitive information.

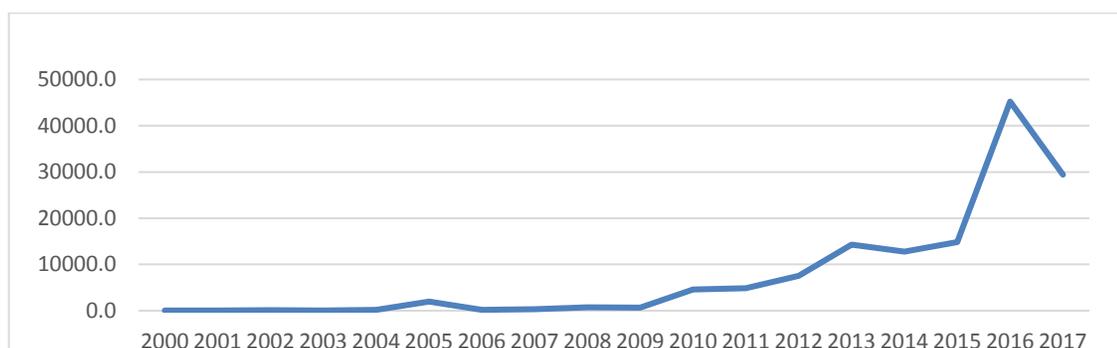
Other measures seek to ensure access to advanced technology developed in other countries through targeted outbound Chinese foreign direct investment that may encourage or require the transfer of technology and intellectual property to enterprises in China. This is the focus of the next section.

2. Outbound Chinese Foreign Direct Investment.

The last couple of decades have seen an unprecedented increase in China's FDI in the United States. The combined value (merger and acquisitions and new greenfield projects) of Chinese direct investment transactions in the U.S. has grown from an annual average value of less than US\$ 500 million before 2008 to a record US\$45.6 billion in 2016 . In 2017, however, Chinese direct investment in the United States dropped 35% to US\$29 billion but still the second-largest year, after 2016.

Chinese direct investment has broadened from trade facilitation and natural resource extraction to a more diverse set of activities and is increasingly headed toward advanced manufacturing, services and technology intensive sectors. Since 2013, investment in unconventional oil and gas extraction has declined substantially from previous years. This drop was compensated by rapid growth of investment in technology and innovation-related activities and modern service sector assets. (Hanemann, 2017) Most Chinese capital is still entering the U.S. through the acquisition of existing assets, but greenfield FDI is growing fast and several large projects are currently under consideration.

Figure 4
Chinese Direct Investment in the U.S.
(in millions of dollars)



According to Thilo Hanemann's testimony before the U.S.-China Economic and Security Review Commission of January 2017, before 2005, Chinese investors in the U.S. consisted of large state-owned as well as small privately-owned companies, but investment values were very small. From 2009 to 2013, Chinese capital inflows were predominantly state-related, as state-owned enterprises (SOEs) in energy and a few other sectors expanded beyond national frontiers. At the peak in 2011, SOEs accounted for 53% of cumulative Chinese FDI in the U.S. Since then SOE investment has continued, but growth has been largely driven by privately owned companies. In 2015 and 2016, privately owned companies accounted for 78% and 79% of total investment, respectively. However, the state dominates the financial system in China and therefore a nominally privately-owned firm can still be subject to substantial state influence in China. (Thilo Hanemann, 2017)

This has raised questions of whether U.S. policymakers should rethink the country's openness towards inbound Chinese investment. The investment activity of firms that are owned or controlled by foreign governments (SOEs) are of special concern. Governments give preferential treatment to SOEs in ways that may convey a competitive edge in their overseas activities. These may include protections to domestic firms to support them in developing a strong competitive position, subsidized financing terms through government-controlled entities, and other measures that would provide these SOEs a competitive advantage over other firms that are subject to market conditions. Or it could just be that these SOEs engage in FDI activities to advance the foreign government public policy goals rather than for commercial reasons (CRS, 2018).

For example, China has a system of "encouraged" sectors for outbound Chinese investments. The list of encouraged sectors changes with the priorities of the Chinese government but investment in whatever those sectors may be is induced through preferential treatment and financing. The guiding policy for outbound investment is delineated in the Overseas Investment Industrial Guiding Policy documents that ensure that investment is consistent with China's five-year plans for national economic and social development "and in accordance with requirements of investment system reform and industrial policy." Among the "encouraged-type overseas investment projects;" are investments that enable the acquisition of resources and raw materials that are in short supply domestically and needed for national economic and social development; investments that support the export of products for which China has a comparative advantage; and investments that "are able to clearly enhance China's technology research and development capacity, including an ability to use international leading technology and advanced management experience and professional talent." (cite OIIGP, 2006, art. 6) Thus, the acquisition and subsequent use of technology is a central feature of "encouraged" outbound investments.

In the last few years, some Chinese acquisitions of U.S. companies have raised concerns in the U.S. Congress, in large part because of the likelihood of links between the Chinese investor and the Chinese government. To address the worries of growing Chinese investment, on 13 August 2018 President Trump signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019 containing two key provisions: the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) for inbound investments and the Export Control Reform Act of 2018 (ECRA) for exports and outbound transfers of technology. FIRRMA strengthens and modernizes the Committee on Foreign Investment in the United States (CFIUS), a multi-agency government body chaired by the Secretary of the Treasury that reviews foreign investment for national security considerations. The change in export controls aims to address the concern that the Chinese government demands to transfer critical technology to joint ventures or other entities. To achieve that U.S. firms will be able to claim that they are legally bound to request permission from the U.S. government to transfer critical technology

FIRRMA expands the scope of transactions reviewable by CFIUS to address more effectively current national security concerns. Recently covered transactions are real estate investment near sensitive military areas or ports, investments in critical technology and infrastructure sectors or those controlling sensitive data on U.S. citizens, even when these transactions do not constitute control over the U.S. business, and transactions that are designed to evade the CFIUS process. CFIUS previously only had jurisdiction over transactions that resulted in control of a U.S. business, so this is a significant change. Also, there are new provisions to establish a monitoring mechanism to ensure that covered transactions cannot evade review.

a) Committee on Foreign Investment in the United States (CFIUS)

The Committee on Foreign Investment in the United States, established in 1975 by President Gerald Ford, oversees and reviews FDI transactions to determine their potential effect on the United States national security.

In general, parties voluntarily submit notices of transactions to the Committee but the U.S. President or any member of CFIUS can also initiate a review of an investment transaction. CFIUS has the authority to review pending or even completed transactions, if the Committee has determined that there are national security concerns. The first step of a CFIUS Foreign Investment National Security Review is to determine if no other laws apply in the case, if the investment threatens to impair national security, critical infrastructure, homeland security, and is state-owned or controlled. During this process, parties can withdraw and resubmit a notification at any point to reset the deadline (FIRMMA extended this time frame from 30 days from notification to 45 days from notification). The Committee will clear the transaction if it deems that there are no threats to national security, that any concerns are adequately addressed by other laws, or that mitigation measures agreed or imposed by CFIUS resolve any concerns. If assessed risks are not resolved, the second step is the National Security Investigation with a timeframe of 45 days. If it is determined that there are concerns that cannot be resolved, the transaction will be referred to the President, unless the parties choose to abandon the transaction (CFIUS Annual Report).

Table 4 presents information about the most recent CFIUS review. The number of annual notices sent by foreign investors to CFIUS has increased from 65 in 2009 to 143 in 2015 (the last year for which this information is available). About 40% of the notices result in investigations (step 2 of CFIUS Review) – 310 out of 770. About 18% of the notices under investigation end up being withdrawn. In the 6 years that go from 2009 to 2015 only one investigation resulted in a presidential decision.

Table 4
CFIUS: Covered Transactions, Withdrawals, and Presidential Decisions* 2009-2015

Year	Number of Notices	Notices Withdrawn During Review	Number of Investigations	Notices Withdrawn After Commencement of Investigation	Presidential Decisions
2009	65	5	25	2	0
2010	93	6	35	6	0
2011	111	1	40	5	0
2012	114	2	45	20	1
2013	97	3	48	5	0
2014	147	3	51	9	0
2015	143	3	66	10	0
Total	770	23	310	57	1

Source: Committee on Foreign Investment in the United States (CFIUS) Annual Report to Congress, Report Period: CY 2015

The tables below show the number of transactions by the target sectors and investors. Most of the notices relate to the manufacturing sector (Table 5) followed by finance, information and services. Between 2009 and 2015 a total of 325 notices, representing 42%, corresponded to the manufacturing sector and 243 or 32% to finance, information and services. Over time, the share of manufacturing has increased in detriment of mining, utilities and construction.

Table 5
CFIUS: Covered Transaction by Sector and Year, 2009-2015

Year	Manufacturing	Finance, Information, and Services	Mining, Utilities, and Construction	Wholesale Trade, Retail Trade and Transportation	Total
2009	21 (32%)	22 (34%)	19 (29%)	3 (5%)	65
2010	36 (39%)	35 (38%)	13 (14%)	9 (10%)	93
2011	49 (44%)	38 (34%)	16 (14%)	8 (7%)	111
2012	47 (39%)	36 (33%)	23 (20%)	8 (7%)	114
2013	35 (36%)	32 (33%)	20 (21%)	10 (10%)	97
2014	69 (47%)	38 (26%)	25 (17%)	15 (10%)	147
2015	68 (48%)	42 (29%)	21 (15%)	12 (8%)	143
Total	325 (42%)	243 (32%)	137 (18%)	65 (8%)	770

Source: Committee on Foreign Investment in the United States (CFIUS) Annual Report to Congress, Report Period: CY 2015

China is the country that has accumulated the most notices between 2013 and 2015 with 74 notices followed by Canada with 49, United Kingdom with 47 and Japan with 40. Within the Latin America and Caribbean region, the Cayman Islands has 12 notices, Mexico 2, and, Brazil and Chile one a piece.

Table 6
CFIUS: Covered Transactions by Acquirer Home Country or Economy, 2013-2015

Country/Economy	2013	2014	2015	Total
Australia	0	4	4	8
Belgium	0	0	1	1
Brazil	1	0	0	1
British Virgin Islands	0	1	0	1
Canada	12	15	22	49
Cayman Islands	1	3	8	12
Chile	1	0	0	1
China	21	24	29	74
Denmark	0	0	1	1
Finland	0	1	2	3
France	7	6	8	21
Germany	4	9	1	14
Hong Kong	1	6	2	9
India	1	2	0	3
Indonesia	0	1	2	3
Ireland	1	1	2	4
Israel	1	5	3	9
Italy	0	0	2	2
Japan	18	10	12	40
Liechtenstein	0	1	0	1
Luxembourg	1	0	2	3
Mexico	2	0	0	2
Netherlands	1	8	5	14
New Zealand	0	0	0	0
Norway	1	1	0	2
Portugal	0	0	1	1
Qatar	0	1	0	1
Russian Federation	1	1	0	2
Saudi Arabia	2	1	1	4
Singapore	3	6	3	12
South Africa	0	0	2	2
South Korea	1	7	1	9
Spain	1	2	2	5
Sweden	2	2	3	7
Switzerland	3	7	2	12
Taiwan	1	0	0	1
Turkey	0	0	2	2
United Arab Emirates	2	1	1	4
United Kingdom	7	21	19	47
Grand Total	97	147	143	387

Source: Committee on Foreign Investment in the United States (CFIUS) Annual Report to Congress, Report Period: CY 2015

Table 7 shows foreign investment transactions of the top ten home country of the foreign investor (acquirer) between 2013 and 2015 by sector. For China, Japan and the United Kingdom investment notifications were concentrated in the manufacturing and finance, information and services sectors. In addition, for China about 20% were in the mining, utilities, and construction.

Table 7
CFIUS: Covered Transactions by Top Ten Home Country of the foreign investor and Target Sector, 2013-2015

Country/Economy	Manufacturing	Finance, Information, and Services	Mining, Utilities, and Construction	Wholesale Trade, Retail Trade, and Transportation	Total
Canada	9	9	19	12	49
Cayman Islands	6	3	2	0	11
China	39	15	13	7	74
France	8	9	1	3	21
Germany	9	5	0	0	14
Japon	20	12	5	4	41
Netherlands	4	8	2	0	14
Singapore	3	5	3	1	12
Switzerland	10	2	0	0	12
United Kingdom	25	15	3	4	47
Total	172	112	66	37	387

Source: Committee on Foreign Investment in the United States (CFIUS) Annual Report to Congress, Report Period: CY 2015

Concerns about the transfer of certain technologies and/or data protection have driven up scrutiny of mergers and acquisitions of Chinese's SOEs. Although no official data has yet been published for 2017, several press reports have indicated that there have been 87 announced acquisitions of U.S. companies by Chinese firms from January to July 2017, the highest on record and up from 77 deals in the corresponding period in 2016 and that the CFIUS sent letters to companies involved in at least nine deals to say they would be blocked based on measures they have proposed to address potential national security risks. Many of these deals are reportedly in the technology sector. Among those abandoned transactions is Canyon Bridge Capital's acquisition of Lattice Semiconductor, Zhongwang's acquisition of Aleris Corp, Orient Hontai's acquisition of stake in Applovin and HNA's acquisition of a stake in Global Eagle Entertainment.

III. Trade Inhibiting Measures

This section focuses on recent developments in three significant areas of trade inhibiting measures: import policies, dispute settlement, and agricultural supports.

A. Import policies

1. Trade remedy legislation

a) Anti-dumping, countervailing duty orders

As of 19 October 2018, there are 35 anti-dumping duty (AD) orders in place against Latin American and Caribbean countries. These cases involve Argentina (2), Brazil (12), Chile (1), Mexico (17), Trinidad and Tobago (2), and Venezuela (1).

Of the 35 AD orders, 3 new orders were placed since August 2017 on Argentina, Brazil, and Mexico; all previous AD orders remained in effect. Seven countervailing duty (CD) orders in place against Latin America and Caribbean countries, one more than last year (Argentina). The orders which now affect Argentina, Brazil and Mexico are listed on Table 8.

Table 8
Antidumping 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
	Biodiesel	A-357-820	26/4/2018	
Brazil	Carbon Steel Wire Rod	A-351-832	29/10/2002	3/7/2014
	Uncoated Paper	A-351-842	5/3/2016	
	Pre-stressed Concrete Steel Wire Strand	A-351-837	28/1/2004	23/4/2015
	Iron Construction Castings	A-351-503	9/5/1986	6/1/2017
	Carbon Steel Butt-Weld Pipe Fittings	A-351-602	17/12/1986	23/8/2016
	Frozen Warm-Water Shrimp and Prawns	A-351-838	1/2/2005	29/4/2011
	Circular Welded Non-Alloy Steel Pipe	A-351-809	2/11/1992	17/7/2012
	Stainless Steel Bar	A-351-825	21/2/1995	9/8/2012
	Cold-Rolled Steel Flat Products	A-351-843	20/9/2016	
	Hot-Rolled Steel Flat Products	A-351-845	3/10/2016	
	Carbon and Alloy Steel Cut-to-Length Plate	A-351-847	16/1/2017	
	Emulsion Styrene-Butadiene Rubber	A-351-849	12/9/2017	
	Chile	Preserve Mushrooms	A-337-804	2/12/1998
Mexico		Bottom Mount Combination Refrigerator-Freezers	A-201-839	26/03/2012
	Galvanized Steel Wire	A-201-840	3/5/2012	
	Lemon Juice (suspended)	A-357-818	21/9/2007	
	Purified Carboxymethylcellulose	A-201-834	17/5/2005	
	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	28/1/2004	23/4/2015
	Circular Welded Non-Alloy Steel Pipe	A-201-805	2/11/1992	17/7/2012
	Light-Walled Rectangular Pipe and Tube	A-201-836	5/8/2008	23/6/2014
	Magnesia Carbon Bricks	A-201-837	20/9/2010	12/2/2016
	Seamless Refined Copper Pipe and Tube	A-201-838	22/11/2010	21/2/2016
	Large Residential Washers	A-580-868	15/02/2013	
	Prestressed Concrete Steel Rail Tire Wire	A-201-843	24/6/2014	
Steel Concrete Reinforcing Bar	A-201-844	6/11/2014		
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes	A-201-847	13/9/2016		
Sugar (suspended)	A-201-845	23/9/2015		
Emulsion Styrene-Butadiene Rubber	A-201-848	12/9/2018		
Trinidad & Tobago	Carbon Steel Wire Rod	A-274-804	29/10/2002	3/7/2014
	Melamine	A-274-806	6/11/2015	
Venezuela (Bol. Rep. of)	Silicomanganese	A-307-820	23/5/2002	2/10/2013

Source: ECLAC, based on data from United States International Trade Commission, Trade Remedy Investigations and USITC notices in the Federal Register, as of October 2018

Table 9
Countervailing Duty Orders Affecting Latin America
and the Caribbean

Country	Item	Doc #	Order Date	Continued
Argentina	Ni-Resist Piston Inserts	C-357-819	18/12/2009	
Brazil	Biodiesel	C-357-821	04/01/2018	
	Carbon Steel Wire Rod	C-351-833	22/10/2002	3/7/2014
	Heavy Iron Construction Castings	C-351-504	15/5/1986	6/1/2017
	Cold-Rolled Steel Flat Products	C-351-844	20/9/2016	
	Hot-Rolled Carbon Steel Flat Products	C-351-846	3/10/2016	
Mexico	Sugar (Suspended)	C-201-846	23/9/2015	

Source: ECLAC, based on data from United States International Trade Commission, Trade Remedy Investigations and USITC notices in the Federal Register, as of October 2018

2. Special 301 Report

The Office of the USTR conducts an annual review of the state of protection and enforcement of Intellectual Property Rights (IPR) among U.S. trade partners around the world. The results are presented in the Special 301 Report. 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 to improve the IPR regime.

Priority Foreign Countries are identified as having the strongest impact on the United States intellectual-property-related products and may, therefore, be subject to investigations under the “Section 301” provisions.

Between the 2017 Special 301 Report and the 2018 Special 301 Report, the changes observed for Latin America and Caribbean countries are the following: Colombia was moved from “Watch List” to “Priority Watch List.” The new Priority Watch List includes: Argentina, Chile, Colombia and Bolivarian Republic of Venezuela.

Colombia was moved to the “Priority Watch List” after an Out-of-Cycle Review conducted in 2017 by the USTR concluded that there was lack of meaningful progress on certain provisions of the United States-Colombia Trade Promotion Agreement (CTPA) and on Colombia’s National Development Plan (NDP). In 2018 a new Review is being undertaken to evaluate the possibility of returning the country to its previous status.

Listed below is the 2018 Special 301 list of Latin American and Caribbean countries:

a) Priority Foreign Countries

There are no “Priority Foreign Countries” for the 2018 Special 301 Report

b) Priority Watch List

The Priority Watch List consists of 12 countries, 4 of which are from Latin American or Caribbean regions. These include Argentina, Chile, Venezuela (Bol. Rep. of) and Colombia – which was included in 2018.

c) Watch List

The 2018 Watch List consists of 24 countries, 10 of which pertain to Latin American or Caribbean regions.

Table 10
Latin America and Caribbean Countries in the Priority Watch List and Watch List, 2018

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

Source: USTR 2018 Special 301 Report

B. Overview of selected United States Dispute Settlement Cases involving Latin American and Caribbean countries

As of October 2018, the United States has brought 130 complaints to the WTO Dispute Settlement body since it became WTO member in 1995.

Of these 130 pre-existing complaints, 18 complaints were made against countries from Latin America and the Caribbean, including Argentina (5), Brazil (4), Chile (1), Mexico (7) and Venezuela (1).

1. U.S.-Mexico Tuna Label Dispute

The U.S.-Mexico Tuna Label dispute has been ongoing for a decade. In the 1990's the U.S. enacted labeling rules to protect dolphin populations. The fishing nets used to catch tuna resulted in dolphins being mistakenly trapped and killed. The tuna labels were intended to distinguish manufacturers that caused no harm to dolphins.

In October 2008, Mexico brought a complaint to the WTO against the U.S. claiming that Mexican manufacturers were denied the use of the label despite reducing dolphin casualties below international levels. In addition, Mexico argued that its independent oversight bodies are sufficient especially when compared to other self-verification processes allowed for other countries. The inability to acquire approval for the tuna label essentially blocked Mexico's access to the U.S. market.

In May 2012, the WTO ruled that the U.S. labeling law violated global trade rules and needed to be amended to come into compliance. In April 2017, the WTO ruled again in Mexico's favor by allowing it to impose trade sanctions worth \$163 million per year against the U.S., an amount equal to the losses from not having the "dolphin-safe" label. Mexico never imposed those sanctions.

In October 2017 a separate WTO proceeding found that the U.S. labeling law followed global trade standards after the U.S. Department of Commerce made changes to the law. In December 2017, Mexico notified its decision to appeal the ruling, arguing that there were several issues of law and legal interpretations developed by the compliance panel. A month later, the Appellate Body notified that it would not be able to circulate the appeal report in the timeframe required by the Dispute Settlement Body because of the *substantially enhanced workload in 2018*⁸. As of 25 October 2018, the report has still not been issued, and therefore the appeal process is stalled.

2. Peru's timber verification

In October 2017, the U.S. Trade Representative ordered the U.S. Customs and Border Patrol (CBP) to block timber imports from a single Peruvian timber exporter --Inversiones La Oroza, for engaging in

⁸ According to the latest document issued on the dispute by the WTO (WT/DS381/46).

illegal logging practices. The action, although unprecedented, is possible through a process outlined in the U.S.-Peru Trade Promotion Agreement (PTPA). The mechanism written in the Forest Sector Governance Annex within the PTPA requires Peru, at the request of the U.S, to conduct audits and verifications of timber producers and shipments to ensure compliance with laws, regulations, and other measures.

In February 2016, the U.S. requested that Peru verify a 2015 Peruvian timber shipment's compliance with PTPA regulations. The audits found that the company was engaging in illegal harvesting practices. The U.S. then ordered CBP to block all shipments from the company for three years or until the company is found to be following logging standards by the Peruvian Interagency Committee on Trade in Timber Products.

Peru has since committed to developing a more robust forest system to ensure transparency and accountability about logging. The country also reiterated that the lone company is not representative of the whole of the Peruvian industry. Peru has the ninth largest forest resource in the world. Timber exports from Peru make up just 0.37% of total U.S. wood imports valued at US\$23.7 million.

C. Agricultural supports

The U.S. Department of Agriculture (USDA) supports various programs to aid the creation, expansion and maintenance of long-term export markets for U.S. agricultural products.

In July 2018, the U.S. announced a US\$12 billion plan to provide aid to farmers and ranchers adversely impacted by retaliatory tariffs. The amount is aligned with the USDA estimate of US\$11 billion in negative impacts agricultural producers have experienced from retaliatory tariffs on U.S. goods such as pork, beef, soybeans, sorghum and fruits. As of 26 October 2018, three agencies belonging to the USDA and the Foreign Agricultural Services (FAS) have been designated administrators of the aid package:

- The Farm Service Agency is the administrator of the Market Facilitation Program, which since 24 September is accepting applications from producers of corn, cotton, dairy, hog, sorghum, soybean, and wheat to enter their program.
- The Agricultural Marketing Service is the administrator of the Food Purchase and Distribution Program. They have received US\$1.2 billion to purchase commodities targeted by retaliation measures. The Food and Nutrition Service is in charge to distribute the commodities purchased through nutrition assistance programs and child nutrition programs.
- The Agricultural Trade Promotion Program (which is part of the FAS) is the recipient of US\$200 million, which are being used to expand the program, which develops foreign markets for U.S. agricultural products. The main objective is for the agricultural exporters to identify and access new markets and help mitigate the effects of other countries' restrictions.

The USDA's total outlays for 2018 are estimated at US\$ 140 billion. Roughly 82% of outlays, about US\$ 117 billion, are associated with mandatory programs that provide services as required by law.

1. Market-development programs

The FAS administers several programs in partnership with private-sector organizations to develop, maintain and expand commercial export markets for United States agricultural products. The budget for fiscal year 2018 is about US\$ 305 million.

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

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

Foreign Market-Development Program

The Foreign Market Development (Cooperator) Program supports and expands foreign markets for United States commodity and agricultural products by seeking to reduce market impediments. The program reimburses cooperators via Commodity Credit Cooperation (CCC) funds 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 program 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 million at the program level for the Cooperator Program is provided by the CCC.

a) Market-Access Program

The Market Access Program (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 non-profit U.S. agricultural trade associations, nonprofit U.S. agricultural cooperatives, non-profit 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 and thereby contributes to the National Export Initiative goal of expanding the number of small and medium-sized entities that export. The budget provides \$200 million program level for MAP in 2018, the same amount as provided in 2017 (USDA, 2018).

b) Quality Samples Program

The Quality Samples Program (QSP) is designed to encourage the development and expansion of export markets for U.S. agricultural products. The program, funded by the CCC, ensures that U.S. 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 U.S. agricultural products by providing information to a targeted audience about quality and use of the U.S. goods. The program is carried out under the CCC Charter Act, which provides the foreign importers with a better understanding of U.S. agricultural products. The budget includes \$3 million of funding for the program in 2018.

c) Emerging Markets Program

The Emerging Markets Program (EMP) promotes U.S. 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 program 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 \$10 million program level for EMP in 2018.

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.

d) Technical Assistance for Specialty Crops Program

The motive of the Technical Assistance for Specialty Crops (TASC) Program is to eliminate unique trade barriers that may hinder the exportation of U.S. specialty crops or all plant products produced in the U.S. Specialty crops do not include wheat, field grains, oilseeds, cotton, rice, peanuts, sugar, or tobacco. The program awards grants to U.S. 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 \$500,000 per year for projects continuing up to five years. The CCC baseline provides a \$9 million program level for 2018.

e) Borlaug Fellowship Program

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

f) Cochran Fellowship Program

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

2. Export Programs and Commercial Export Financing

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

a) Export Credit Guarantee Program

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 program 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 2018, US\$ 5.4 billion will be made available throughout the GSM-102 program, which provides guarantees on commercial export credit extended with short-term repayment terms of 18 months. The remaining part of the US\$ 5.5 billion will be used for facility financing guarantees.

b) Facility Guarantee Program

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

3. Sugar Import Program

All imports of sugar into the U.S. are subject to tariff-rate quotas (TRQ) which set low tariff rates for sugar, up to a specified amount. Upon entering the U.S., sugar imports from Latin America and the Caribbean are categorized in one of two ways: 1) raw cane sugar or sugar and 2) sugar-containing products. Each federal fiscal year beginning October, the U.S. Trade Representative (USTR) announces country-specific in-quota allocations for raw cane and refined sugar.

In the Harmonized Tariff Schedule, the USTR has set the fiscal year 2018 TRQ for raw cane sugar at 1,117,195 metric tons raw value (MTRV), the minimum to which the U.S. is committed under the WTO Uruguay Round Agreement on Agriculture. USTR has set the fiscal year 2018 TRQ for refined sugar at 192,000 MTRV, of which 170,000 MVRT will be reserved for specialty sugars, as defined by USTR.

The specialty sugar TRQ's will be offered in five periodic tranches on a first-come, first-served basis:

Table 11.
Specialty Sugar Allocations

Tranche	Date	Allocation
1	1 October 2018	1,656 MTRV
2	10 October 2018	50,000 MRTV
3	23 January 2019	50,000 MRTV
4	17 April 2019	35,000 MRTV
5	17 July 2019	35,000 MRTV

Source: United States Department of Agriculture notices in the Federal Register as of October, 2018.

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

Table 12
U.S. raw cane Sugar TRQ allocations and usage
(in metric tons)

Country	Original TRQ Allocation	Final TRQ Allocation	Quantity Entered	Allocation Filled (%)	Original TRQ Allocation	Final TQQ Allocation	Quantity Entered	Allocation Filled (%)
Argentina	65,612	61,011	61,011	93.00	47,281	74,312	42,655	94.20
Barbados	7,371	6,007	6,007	81.00	7,371	577	577	7.84
Belize	16,785	16,243	16,243	97.00	11,584	11,584	11,584	100.00
Bolivia	0	0	0	0	8,424	0	0	00.00
Brazil	182,691	182,682	182,682	100.00	152,691	142,120	142,120	93.08
Colombia	36,621	28,023	28,023	77.00	25,273	21,688	21,688	85.82
Costa Rica	22,888	22,888	22,888	100.00	15,796	15,771	15,771	99.85
Dominican Republic	185,335	183,232	183,232	99.00	185,335	183,549	183,549	99.04
Ecuador	16,785	16,704	16,704	100.00	11,584	11,527	11,527	99.51
El Salvador	39,672	33,799	33,799	85.00	27,379	27,379	27,379	100.00
Guatemala	73,241	73,241	73,241	100.00	50,546	31,523	31,523	62.37
Guyana	18,310	18,125	18,125	99.00	12,636	12,609	12,609	99.79
Haiti	0	0	0	0.00	7,258	0	0	0.00
Honduras	15,258	9,816	9,816	64.00	10,530	5,921	5,921	56.23
Jamaica	16,785	11,044	11,044	66.00	11,584	11,577	11,577	99.95
Mexico	7,258	0	0	0.0	7,258	0	0	0.00
Nicaragua	32,043	32,043	32,043	100.0	22,114	11,736	11,736	53.07
Panama	44,250	35,268	35,268	80.00	30,538	19,342	19,342	63.34
Paraguay	7,258	7,037	7,037	97.00	7,258	1,435	1,435	17.77
Peru	62,561	62,402	62,402	100.00	43,175	38,160	38,160	88.39
St. Kitts and Nevis	0	0	0	0.00	7,258	0	0	0.00
Trinidad & Tobago	0	0	0	0.00	7,371	0	0	0.00
Uruguay	0	0	0	0.00	7,258	0	0	0.00
All sugar under TRQs	1,361,885	1,285,609	1,285,609	93.90	1,117,195	835,454	835,454	74.78

Source: U.S. Customs and Border Protection, Weekly Quota Status Report

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