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U.S. BARRIERS TO LATIN AMERICAN AND CARIBBEAN EXPORTS

- With the aim of aiding transparency in trade, ECLAC Washington publishes a yearly report identifying barriers faced by Latin American and Caribbean exports in the U.S. market.
- The list focuses on the three most significant barriers: import policies, standards and export subsidies.

As countries in the hemisphere work to achieve the Free Trade Area of the Americas (FTAA), in which trade and investment barriers will be progressively eliminated, ECLAC believes that "it is timely to look at trade inhibiting measures that Latin American and Caribbean exports confront in the United States".

The latest edition of the report, *U.S. Barriers to Latin American and Caribbean Exports for 1997*, covers the most important U.S. trade measures affecting the region and brings up to date the information in the previous year's study. What follows is a summary of the document, which is published in English.

The classification of the barriers discussed follows the eight categories used by the annual United States Trade Representative (USTR) report, the *National Trade Estimate Report on Foreign Barriers*.

The ECLAC study covers the three most significant of these categories for the region: import policies (e.g. tariffs and other import charges, quantitative restrictions, import licensing, customs barriers); standards, testing, labelling and certification (e.g. unnecessarily restrictive

application of phytosanitary standards); and export subsidies (e.g. export financing on preferential terms and agricultural export subsidies that displace other foreign exports in third country markets).

Import Policies

"In general, U.S. tariffs do not constitute a major barrier to Latin American and Caribbean exports. But antidumping and countervailing duties have played a restrictive role."

Tariffs. In general, U.S. tariffs do not constitute a major barrier to Latin American and Caribbean exports. In 1997, nearly 70% of all U.S. imports from the region entered duty free. The trade weighted tariff for all U.S. imports went down from 3.27% in 1992 to 2.1% in 1997, and the collected duties on Latin American and Caribbean exports have gone down even more. Total duties collected in 1997 on \$136.2 billion of U.S. imports from the region was \$1.6 billion.

Trade Remedy Legislation. Antidumping and countervailing duties have played an increasing role in restricting imports to the United States. In 1997, sixteen new actions were implemented and three of them involved Latin American countries.

Latin American countries have raised several concerns regarding the United States' interpretation and enforcement of these measures. The language of the laws involved gives great leeway to both the Department of Commerce and the International Trade Commission (USITC) in determining such vital factors as what constitutes material injury and what the appropriate level of antidumping and countervailing duties should be. Although the level of duties is scheduled for yearly review, delays are common, thus causing foreign exporters to pay higher duties until the cases are reviewed and the duties adjusted. In practice, these measures are often kept in place for many years. Because of these uncertainties, any trade remedy action or threat thereof can act as a barrier to trade, whether justified or not.

According to the Department of Commerce, on January 6, 1998 seven U.S.

producers filed antidumping petitions against four countries. The most recent cases are against fresh Atlantic salmon and preserved mushrooms from Chile and steel wire rod from Trinidad and Tobago and Venezuela.

In the case against Chilean preserved mushrooms, the Department of Commerce has tentatively estimated dumping margins at 83%. In the case against fresh Atlantic salmon from the same country, the Department initiated the investigations on July 2, 1997. On November 13, 1997, it issued a negative preliminary countervailing duty determination.

On January 9, 1998, the Department issued an affirmative antidumping preliminary determination of 3.31% and 8.27% for two Chilean producers and 5.79% against the remainder of producers. On 2 June this year, the Department of Commerce issued its final determination that three Chilean companies were dumping fresh salmon on the U.S. market by margins ranging from 2.24% to 10.91%. On 14 July 1998, the International Trade Commission (ITC), in a definitive two-to-one decision, found that the United States' industry is suffering harm from Chilean fresh Atlantic salmon exports due to dumping, and ratified the Department of Commerce ruling

The Sugar Tariff-Rate Quota. As part of its sugar programme, the U.S. sets quotas on a yearly basis for sugar-exporting countries. Most countries in the region are exempt from the 0.625 cent duty, since they were beneficiaries under the Generalized System of Preferences (GSP). The only Latin American country whose sugar exports do not receive duty-free treatment under the GSP is Brazil, due to its competitive advantage in this industry.

The total level of raw and refined sugar imports that may enter the U.S. at the lower duty for fiscal year 1998 is 1,400,000 metric tons. The total level that may enter from Latin America and the Caribbean in the same fiscal year is 905,086 metric tons, which is 454,638 metric tons less than in 1997. The region will supply nearly 65% of total U.S. sugar imports during fiscal year 1998.

On March 12, 1998, the Mexican government asked for formal consultations under Chapter 20 of the North American Free Trade Agreement (NAFTA) to clarify the sugar side agreements, in an effort to increase the

Mexican sugar quota and to have unlimited access to the U.S. market by 2000.

Section 301 Provisions. Section 301 gives the USTR the power to respond to unreasonable, unjustifiable or discriminatory practices that burden or restrict U.S. commerce. During each investigation the USTR must carry out consultations with the foreign government involved. If an agreement is not reached, it has authority to implement any number of serious trade restrictions, such as import duties or fees.

The U.S. Government self-initiated a Section 301 investigation regarding Argentina's provisional safeguard duties and statistical tax on textiles and apparel imports from the U.S. In November 1997, a WTO dispute settlement panel ruled in favour of the U.S. challenge to the duties assessed by Argentina. In January 1998, Argentina appealed the ruling and reduced the tax to 0.5%.

"Countries which, in the judgement of the United States, deny adequate and effective protection for intellectual property rights can lose benefits under the Generalized System of Preferences."

Special 301. Under Special 301, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights. In January 1997, the U.S. Government announced the suspension of 50% of Argentina's GSP benefits effective in May 1997 because of that country's lack of patent protection for pharmaceuticals. The products affected include chemicals, certain metals and metal products, a variety of manufactured products and several agricultural items. Argentina estimates the loss of export earnings to be about \$600 million.

The Dominican Republic was added to the USTR's Special 301 Watch List due to concerns about lack of consistent laws and adequate enforcement against piracy and counterfeiting. Ecuador and Colombia were already on the list. Panama was removed due to significant progress in fighting video piracy, but was moved to the "other observations" category in October 1997.

In January 1998, Paraguay was identified as a Priority Foreign Country under Special 301, based on its unsatisfactory

enforcement of intellectual property rights and its failure to enact adequate and effective intellectual property legislation.

In 1997, Honduras was included in the "Watch List" category of the Special 301 review due to lack of adequate and effective protection and enforcement of intellectual property rights. Peru remains on the same list despite two laws passed in 1996 and an executive decree issued by the country's government in 1997 improving several aspects of its industrial property rights law.

The government of Venezuela created a new intellectual property office in March 1997 to focus and improve enforcement efforts, which will become operational in June 1998. Venezuela is on the "Watch List" since 1989.

Voluntary Export Restraint Agreements (VERAs). The situation with respect to VERAs has remain unchanged since 1993. The threat of a resort to antidumping and countervailing duties has often compelled countries to negotiate VERAs to avoid being penalized. Although considered less harmful to exporting countries than trade remedy legislation, these often coerced agreements are certainly contrary to the spirit of free trade. Steel and machine tools were the products most affected by VERAs in Latin America and the Caribbean. For many years, the U.S. maintained VERAs on steel with Brazil, Venezuela, Mexico and Trinidad and Tobago. However, these agreements expired in 1992, setting off a chain of antidumping claims by the U.S. steel industry.

Textiles and Clothing. In December 1997, El Salvador and Honduras asked the U.S. to increase the limits of the quotas to meet its supply of upcoming orders in January, February and March. El Salvador negotiated a settlement with the U.S. in which it doubled its supplies of underwear - up from 1.7 million dozen to 3.2 million dozen for the first three months of 1998.

Honduras asked the WTO's Textile Monitoring Body in March 1998 for increased U.S. quota limits on imports of underwear, and the U.S. agreed to allow all such garments from Honduras made with non-U.S. fabric to enter after March 2, 1998.

In February 1997, the WTO Appellate Body ruled in favour of Costa Rica, because it found that the United States had violated global trade by backdating

restraints on underwear imports. After further consideration, the U.S. allowed the quota restraint on such imports from this country in March 1997 and is now in full compliance with the WTO Appellate Body's report.

Standards and Regulations

"A vast maze of standards and regulations makes exporting to the United States a daunting task. The complexity of the system can be partly attributed to the three separate tiers of regulations that exist: federal, state and local. It is estimated that more than 44,000 authorities from all these levels enforce 89,000 standards for products within their jurisdictions."

A vast maze of standards and regulations makes exporting to the United States a daunting task. The complexity of the system can partly be attributed to the three separate tiers of regulations that exist: federal, state and local. These regulations are frequently inconsistent between jurisdictions, or needlessly overlap. It is estimated that more than 44,000 federal, state and local authorities enforce 89,000 standards for products within their jurisdictions.

The types of U.S. standards that have the greatest impact on Latin American and Caribbean exports are discussed below. Increasingly, these barriers have taken the form of consumer or environmental protection. The cases below only touch on a handful of the thousands of technical and regulatory requirements that hinder access to the U.S. market.

Phytosanitary Regulations. Phytosanitary regulations for fruit and vegetables pose numerous difficulties for Latin American and Caribbean exports. Gaining access to the U.S. market is a cumbersome and costly process that can take years. Exporters must finance all United States Department of Agriculture (USDA) expenses in researching and approving products.

In January 1997, under the "system approach", Mexico achieved the lifting by the USDA of an 84-year-long ban on the import of Hass avocados from Michoacán. This new rule allows imports of fresh Hass avocados grown in this region into 19 Northeastern States during the winter

months from November to February. Nevertheless, many obstacles still remain, and each avocado must display a sticker so that it can be traced back to its place of origin in Mexico.

Sanitary barriers affect the majority of Brazilian fruit and vegetables. Apples are one of the principal fruits exported to the United States from Brazil, but entry is restricted from North Atlantic ports. Both grapes and apples must be given a special cold treatment, while yams and other vegetables require a treatment with methyl bromide. Mangos must receive a hot-water dip and be given special certification.

Those products with potential of being exported to the United States face a major barrier and a slow bureaucratic process imposed by the USDA. Delays often occur during this process, which in certain cases can take years, since there are hundreds of products waiting (for example, Brazilian papayas have been under analysis since 1993). Such sluggishness contrasts with the Brazilian administrative process of risk analysis for oranges from Florida, which took only three months to be certified. Finally, on March 13, 1998, the USDA allowed the importation of Brazilian papayas under strict conditions. The same conditions apply to the import of papayas from Costa Rica.

Marketing Orders. The Secretary of Agriculture can issue grade, size, quality or maturity regulations for certain commodities through domestic marketing orders. The same products as last year remain subject to these regulations: avocados, dates (other than those for processing), filberts, grapefruit, table grapes, kiwifruit, limes, olives (other than Spanish-style olives), onions, oranges, prunes, raisins, tomatoes and walnuts.

On January 5, 1998, the USDA published new regulations that sought to enhance the quality of tomatoes on the U.S. market. These rules increased the minimum sizes of three different grades of tomatoes. Foreign tomato growers were also subject to the new guidelines. Mexican officials complained that the U.S. failed to give adequate notice of the changes and that these would have a serious effect on their growers' sales.

The FDA banned imports of Guatemalan raspberries on March 15, 1998. The ban will remain in effect until August 15, 1998, the end of Guatemala's growing season, during which heavy rains contribute to the growth

of cyclospora on the fruit. Raspberries from this country are blamed for causing intestinal disease from this parasite. In May 1997, Guatemala voluntarily stopped imports of the fruit after an outbreak of cyclospora disease in the U.S.

Meat Import Regulation. In 1995, Uruguay, and in 1997, Argentina, became ineligible to export beef to the United States. Prior to 1995, all South American countries were subject to import restrictions due to outbreaks of cattle foot and mouth disease. Currently, Argentina and Uruguay operate under the same 20,000-ton quota imposed by the U.S. Uruguay's meat exports amounted to about 1% of the U.S. market in 1997 and the country is requesting that the quota be increased by 15,000 tons in 1999.

Marine Mammal Protection Act. The United States enforced an embargo on yellowfin tuna from all countries fishing in the Eastern Tropical Pacific (ETP), an area which extends from Mexico and Venezuela to northern Chile, and 700 miles out to sea. The embargo was required under the United States' Marine Mammal Protection Act of 1972 (MMPA) and the International Dolphin Conservation Act (IDCA) adopted in 1992. The IDCA prohibited the use of "on dolphin" methods for catching tuna, which involved dropping purse seine nets on dolphin schools to trap the tuna that frequently swim beneath them. This legislation, however, applied exclusively to those fishing in the ETP, where the U.S. tuna fleet maintains only minimal presence, on the false notion that tuna-dolphin association and the practice of fishing "on dolphin" only occur there.

In spite of a finding by a GATT panel that the U.S. was improperly prohibiting imports of Mexican tuna, the U.S. extended the ban to all imports of ETP tuna sold by intermediate countries, such as Costa Rica. This embargo had a devastating impact on Mexico's tuna industry. In June 1997, U.S. legislators negotiated a compromise that lifted the ban on tuna imports, but kept in place the current definition of "dolphin-safe" tuna for labelling purposes until at least March 1999, pending the preliminary findings of a study on the impacts of the chasing and encirclement of dolphins in the ETP.

In May 1998, the U.S. and seven Latin American countries signed the International Dolphin Conservation Programme, thus providing the basis for removing U.S. tuna trade embargoes for

nations that become parties to the agreement. The dolphin-safe label, however, will remain unchanged contingent upon the 1999 study. The agreement will be fully ratified after four countries approve it, which is expected to take place by January 1999.

Shrimp Embargo. On December 29, 1995, the U.S. Court of International Trade ordered an embargo, effective from May 1, 1996, against all shrimp imports from countries that do not require and enforce the use of Turtle Excluding Devices (TED) on shrimp trawlers.

Although the embargo's greatest impact will be in the Far East, fifteen Latin American countries may be affected, including Mexico and Ecuador. The effect will depend on previously adopted measures and the amount of fishing waters where the limited threat to sea turtles warrants exemption from the law.

In February 1998, an interim WTO panel ruled that the U.S. had violated its obligations under international trade rules by imposing a ban on wild shrimp caught without devices that allow endanger sea turtles to escape from nets. In March 1998, the Office of the U.S. Trade Representative

appealed against the WTO ruling, but in April the interim panel upheld the earlier ruling. As of May, The U.S. State department certified that 39 countries met the standard to prevent accidental drowning of sea turtles in shrimp trawls.

Brazil, Venezuela and the Bahamas, which were certified last year, were banned from selling shrimp in U.S. markets in 1998, after officials determined that they were not enforcing their own laws aimed at protecting sea turtles. Among the countries that were certified are Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Suriname, Trinidad and Tobago, Dominican Republic, Jamaica and Peru. Argentina, Chile and Uruguay have shrimp fisheries only in cold waters, where the risk of catching sea turtles is negligible.

Export Subsidies

"Latin American and Caribbean exports regularly encounter competition from subsidized U.S. goods in their domestic markets, as well as in other export markets."

Products from Latin American and Caribbean countries regularly encounter competition from subsidized U.S. goods in their domestic markets, as well as in other export markets. U.S. export support programmes aid export transactions overseas by creating more incentives for exports, credit opportunities for potential buyers and overseas infrastructures that facilitate the storage of U.S. agricultural products. The comprehensive farm bill, approved in April 1996, maintains most U.S. export support programmes, though many of them at lower funding levels due to the WTO agreement on agriculture. Essentially, this law is intended to support an export strategy that is designed to increase U.S. agricultural exports at a rate faster than the global rate.

These programmes include the Export Enhancement Program, the Dairy Export Incentive Program, the Export Credit Guarantee Programs, the Market Access Program, the Supplier Credit Guarantee Program, the Facility Guarantee Program, the Foreign Market Development Program, the Emerging Markets Program and the Farm Service Agency Loans.

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