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BARRIERS TO LATIN AMERICAN AND CARIBBEAN EXPORTS IN THE U.S. MARKET 2000-2001

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I. INTRODUCTION

Barriers to Latin American and the Caribbean Exports in the U.S. market, 2000-2001 is the seventh annual report released by the ECLAC Washington Office, updating information contained in previous reports. Its aim is to compile and make available information on trade inhibiting measures that Latin American and Caribbean exports encounter in the United States.

The report needs to be placed in the context of a trade relationship between the United States and Latin America and the Caribbean, which has grown strongly over the years to the benefit of both economies. Moreover, it must be viewed against the background of the commitment to achieve the Free Trade Area of the Americas (FTAA), through which barriers to trade and investment will be progressively eliminated. In this regard, it is hoped that this report will further contribute to transparency and the elimination of obstacles to the free flow of trade in the Americas.

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

- Imports Policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, customs barriers).

- Standards, testing, labeling and certification (e.g., unnecessarily restrictive application of phytosanitary standards).

- Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace other foreign exports in third country markets).

II. IMPORT POLICIES

1. Tariffs

As it is well known, U.S tariffs do not constitute a major barrier to Latin American countries' (LAC) exports. In 2000, 74.7% of all U.S. imports from the LAC region entered duty free[1], down slightly from the 1999 level of 76.5%. The trade-weighted tariff for all U.S. imports has gone down from 1.81% in 1999, to 1.64 % in 2000. Furthermore, the collected duties on exports from Latin America and the Caribbean to the U.S. have been reduced to about 0.87 % of the total value in 2000 (Table 1).

While the Ad Valorem Equivalent (AVE)[2] total for U.S. imports from the LAC region in 2000 was 0.87%, U.S. imports from the world paid an average duty rate of 1.64%. Within the region, countries from the Central American Common Market (CACM) paid an AVE total of 5.72%. Exports from MERCOSUR paid 2.08%, CARICOM 0.83 % and the Andean Community 0.67%. Overall, the North American Free Trade Agreement (NAFTA), which includes Canada and Mexico, has the lowest duty rate of 0.11%.

In 2000, 65% of all U.S. imports from Central America entered the market duty free, but the AVE on dutiable goods[3] from the CACM countries was 16.19%, the highest among all Latin American regions. The countries with the highest Ad Valorem duty rates, each above 16%, are El Salvador, Guatemala, Honduras and Nicaragua, mostly due to textile and apparel imports.

Over 60% of all imports from South America entered duty free to the U.S. in 2000, and over 73% from the Caribbean. U.S. duty free imports from Venezuela only amounted to 39%, in part due to the high volume of petroleum exports from this country that did not enter duty free. The share for the other Andean countries is considerably higher.

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

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

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

Ad Valorem Duty Rates for U.S. Imports 2000

(Thousands of dollars, Customs Value)

	Total Value	Dutiable Value	Duties Collected	% Duty Free	A. V. E Dutiable	A. V. E Total
World	1,205,339,019	407,734,091	19,753,669	66.17%	4.84%	1.64%
Western Hemisphere	435,147,111	60,031,328	1,881,408	86.20%	3.13%	0.43%
NAFTA	**363,794,331**	**27,907,387**	**395,350**	**92.33%**	**1.42%**	**0.11%**
Canada	229,059,929	6,482,606	81,502	97.17%	1.26%	0.04%
México	134,734,402	21,424,781	313,848	84.10%	1.46%	0.23%
LAC (including Mexico)	**206,087,180**	**52,231,042**	**1,799,904**	**74.66%**	**3.45%**	**0.87%**
Andean Pact	**28,545,756**	**15,152,631**	**192,508**	**46.92%**	**1.27%**	**0.67%**
Bolivia	184,250	33,578	3,546	81.78%	10.56%	1.92%
Colombia	6,680,611	2,645,002	60,297	60.41%	2.28%	0.90%
Ecuador	2,266,975	1,259,662	6,380	44.43%	0.51%	0.28%
Peru	1,985,389	578,919	72,144	70.84%	12.46%	3.63%
Venezuela	17,428,531	10,635,470	50,140	38.98%	0.47%	0.29%
MERCOSUR	**17,177,475**	**6,487,317**	**357,801**	**62.23%**	**5.52%**	**2.08%**
Argentina	3,094,608	1,928,299	55,549	37.69%	2.88%	1.80%
Brazil	13,731,571	4,481,580	296,184	67.36%	6.61%	2.16%
Paraguay	42,055	1,995	105	95.26%	5.26%	0.25%
Uruguay	309,241	75,443	5,963	75.60%	7.90%	1.93%
Chile	3,257,520	1,128,829	20,052	65.35%	1.78%	0.62%
CACM	**11,771,512**	**4,157,401**	**673,146**	**64.68%**	**16.19%**	**5.72%**
Costa Rica	3,555,153	429,119	46,374	87.93%	10.81%	1.30%
El Salvador	1,925,054	866,234	146,806	55%	16.95%	7.63%
Guatemala	2,603,452	1,450,451	237,658	44.29%	16.39%	9.13%
Honduras	3,090,922	1,117,259	192,389	63.85%	17.22%	6.22%
Nicaragua	596,931	294,338	49,919	50.69%	16.96%	8.36%
CARICOM	**3,875,613**	**1,062,754**	**32,178**	**72.58%**	**3.03%**	**0.83%**
Antigua & Barbuda	2,286	231	8	89.90%	3.46%	0.35%
Bahamas	272,794	60,406	367	77.86%	0.61%	0.13%
Barbados	38,451	4,341	474	88.71%	10.92%	1.23%
Belice	91,073	13,021	1,310	85.70%	10.06%	1.44%
Dominica	6,938	3,555	62	48.76%	1.74%	0.89%
Grenada	27,072	2,940	8	89.14%	0.27%	0.03%
Guyana	126,700	17,396	551	86.27%	3.17%	0.43%
Haití	296,713	82,289	13,074	72.27%	15.89%	4.41%
Jamaica	631,452	108,182	11,636	82.87%	10.76%	1.84%
St. Kitts	36,808	2,521	117	93.15%	4.64%	0.32%
St. Lucia	22,208	7,452	1,066	66.44%	14.30%	4.80%
St. Vin. & Grenadines	8,800	216	7	97.55%	3.24%	0.08%
Suriname	135,279	872	34	99.36%	3.90%	0.03%
Trinidad & Tobago	2,179,039	759,332	3,464	65.15%	0.46%	0.16%
Other Countries	**4,675,152**	**1,382,606**	**204,215**	**70.43%**	**14.77%**	**4.37%**
Dominican Republic	4,378,235	1,319,946	203,427	69.85%	15.41%	4.65%
Panama	296,917	62,660	788	78.90%	1.26%	0.27%
All other West. Hem (1).	2,049,752	1,434,722	6,158	30.01%	0.43%	0.30%

Source: U.S. Department of Commerce, International Trade Administration.

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

2. Trade Remedy Legislation

In 2000-2001, two final negative AD/CVD determinations were reached, while five new antidumping (AD) and three countervailing duty cases (CVD) were initiated[4]. Nine Administrative Reviews were announced, as well as a Suspension Agreement with Brazil regarding steel. In addition, under the Sunset Review, the U.S. Department of Commerce (USDOC) and the International Trade Commission (ITC), as of July 2001, revoked 24 AD/CVD cases and issued continuances in 18 others from Latin America and the Caribbean.

Antidumping & Countervailing Duties

Under the antidumping (AD) law, duties are imposed on U.S. imported products when the Department of Commerce determines that the merchandise is being sold at a price that is below that producer's sales in the country of origin (home market), or at a price that is lower than the cost of production. The difference between the price in the foreign market and the price in the U.S.market is called the "dumping" margin.

An antidumping or countervailing duty petition may be filed with both the U.S. Department of Commerce and the International Trade Commission, by domestic industries that believe imports are sold at less than fair value, or are subsidized by a foreign government. The domestic industry may claim that it is being materially injured, that it is in threat of such injury, or that the establishment of a domestic industry is prevented by the above actions.

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

For the AD case the duty amount should equal the difference between the good's price in its home market and the price of the import in the United States. For CVD the duty should equal the amount of the subsidy per unit produced. A final review is then issued and final duties are determined in the same manner as above if the preliminary duty is upheld. If the decision dismisses the case, all bonds posted at the U.S. Customs office during the temporary duty period are returned.

A. Positive AD and CVD Determinations

The USDOC started investigations on 7 cases requested by U.S. industry, issued preliminary duty margins and in one case, final duty margins. The ITC also announced two positive determinations of a reasonable indication of material injury or threat of material injury to a domestic industry.

i. Certain Large Diameter Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Mexico: On June 26, 2000, the DOC published its notice of affirmative final determination of sales at less than fair value for this product and issued the final weighted-average dumping margin for the investigated company[5]. On July 13, 2000, the ITC determined that an industry was materially injured or threatened by imports of a certain large diameter seamless carbon and alloy steel standard line and pressure pipe

[4] **USTR**, 2001 Trade Policy Agenda and 2000 Annual Report, March 2001, p.296
[5] **Federal Register**, Vol. 65, No. 123, June 26, 2000.

from Mexico[6]. The DOC published an amended final antidumping duty determination on August 11, 2000, with the following revised final weighted-average dumping margins to be assessed on all entries of imports of the subject merchandise for consumption on or after February 4, 2000[7].

Tubos de Acero de Mexico	15.05%
All others	15.05%

ii. Certain Hot-Rolled Carbon Steel Flat Products from Argentina: On December 4, 2000, the USDOC initiated AD investigation on this product from Argentina, based on a petition filed by 9 U.S. steel companies as well as the Independent Steelworkers Union and the United Steel Workers of America. On May 3, 2001, the DOC announced the following preliminary AD margins.[8]

Siderar Saic	44.59%
All others	40.60%

Additionally, on February 8, 2001, the DOC announced preliminary countervailing determination for carbon steel flat products from Argentina. Ten U.S. steel companies as well as the Independent Steelworkers Union and the Independent Steelworkers of America filed the petition against Siderar of Argentina. The net subsidy rate is 40.79%.[9]

iii. Honey from Argentina: On September 29, 2000, the DOC received an AD petition on honey from Argentina, filed by the American Honey Producers Association and the Sioux Honey Association collectively. The DOC initiated AD investigation and made the following preliminary AD determinations on May 11, 2001.[10]

ACA	49.93%
Radix	60.67%
ConAgra	60.67%
All Others	49.93%

On October 26, 2000, the DOC initiated as well, a CVD investigation to determine whether manufacturers, producers or exporters of honey from Argentina receive subsidies. On March 13, 2001, the DOC published their preliminary results determining that countervailing subsidies have been provided to producers and/or exporters of honey from Argentina. The cash deposit rate of estimated countervailing duties, countrywide, applicable to all exporters and producers is 6.55% ad valorem.[11]

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[6] **USITC**, Certain seamless carbon and alloy steel standard line, and pressure pipe from the Czech Republic, Mexico, and Romania injures U.S. industries, says ITC, News Release 00-091, Washington DC, July 13, 2000.
[7] **Federal Register**, Vol. 65, No. 156, August 11, 2000.
[8] **Federal Register**, Vol. 66, No. 86, May 3, 2001.
[9] **Federal Register**, Vol. 66, No. 35, February 21, 2001.
[10] **Federal Register**, Vol. 66, No. 92, May 11, 2001.
[11] **Federal Register**, Vol. 66, No. 41, March 1, 2001.

iv. Welded Large Diameter Line Pipes from Mexico: The DOC initiated AD duty investigations on February 23, 2001. The estimated dumping margin calculated by DOC is 49.86%.[12]

v. IQF Red Raspberries from Chile: The DOC initiated AD and CVD investigations on June 28, 2001, on subject merchandise from Chile. The preliminary determination will be made no later than 140 days after the date of this initiation. In addition, on July 16, 2001, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Chile of individually quick frozen red raspberries, that are alleged to be subsidized by the Government of Chile and sold in the United States at less than fair value.[13]

B. Administrative Review

Upon requests by interested parties, DOC conducted 9 annual reviews of dumping margins and subsidy rates. Under Section 751 of the Tariff Act, DOC and ITC are authorized to review certain outstanding determinations that show changed circumstances that warrant review and revocation.

i. Brazilian Frozen Concentrated Orange Juice (FCOJ): On June 6, 2000, in response to a request by the petitioners and one producer/exporter of the subject merchandise, the Department of Commerce conducted an administrative review on FCOJ from Brazil. The period of review was May 1, 1998 through April 30, 1999 for Citrovita Agro Industrial Ltda. The DOC preliminary determined that this company had made sales below the normal value and instructed Customs to assess antidumping duties of 26.27%[14]. The DOC made changes to the weighted average dumping duties, on October 11, 2000, after comments were received for the preliminary results. The new margin was 25.87%[15]. On November 7, 2000, the DOC issued amended final results stemming from allegations that the DOC had made an error in its final results by failing to apply the proper U.S. dollar/Brazilian real exchange rate. The final revised dumping margin is 14.77%[16].

In addition, on June 4, 2001, the DOC announced its thirteenth period review covering May 1, 1999 through April 30, 2000 and preliminary determined that Citrovita Agro-industrial Ltda/Cambuhy MC had made sales of FCOJ below the normal value. The preliminary dumping margin rate is 15.98%.[17]

ii. Certain Cut-to-Length Carbon Steel Plate from Mexico: On January 24, 2001, the DOC decided to amend the final results of the administrative review of the AD order on certain cut-to-length carbon steel plate from Mexico. This review covered one producer of this merchandise, Altos Hornos de Mexico S.A. (AHMSA)[18]. (On December 13, 2000, AHMSA notified the DOC of an incorrect adjustment factor to implement the major

[12] **Federal Register**, Vol. 66, No. 37, February 23, 2001.
[13] **Federal Register**, Vol. 66, No. 125, June 28, 2001.
[14] **Federal Register**, Vol. 65, No. 109, June 6, 2000.
[15] **Federal Register**, Vol. 65, No. 197, October 11, 2000.
[16] **Federal Register**, Vol. 65, No. 216, November 7, 2000.
[17] **Federal Register**, Vol. 66, No. 16, June 10, 2001.
[18] **Federal Register**, Vol. 66, No. 16, January 24, 2001.

input rule for direct material costs in its amended results of December 12, 2000. The DOC corrected an apparent typographical error, which dropped a zero from the factor, thus resulting in its overstatement.) As a result, the DOC amended their final results of review to correct the error in implementing the major input rule. The amended weighted average dumping margin is 20.34%.

The DOC published its final results of CVD administrative review on March 13, 2001, of one manufacturer/exporter, Altos Hornos de Mexico, S.A. (AHMSA). On this date, the DOC instructed Customs to assess CVD of 11.68% on all shipments of the subject merchandise from AHMSA[19].

iii. Gray Portland Cement and Clinker from Mexico: On March 14, 2001, the DOC published the final results of its administrative review of the AD order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. and its affiliate, Cementos de Chihuahua S.A. Based on comments received, the DOC made changes in the margin calculations as well as corrected certain programming and clerical errors from their preliminary results. The new weighted-average margin of 39.34% exists for both parties[20]. Furthermore, on May 14, 2001, the DOC; based on a correction of a ministerial error, changed the antidumping duty margin from 39.34% to 38.65%.

iv. Oil Country Tubular Goods from Mexico: This administrative review by the DOC covers exports of the subject merchandise to the United States by Tubos de Acero de Mexico S.A. (TAMSA) and Hylsa S.A. de C.V. The final results include changes in the margin calculations from the preliminary results published on September 12, 2000. Based on comments received by the DOC, the following are the final percentage weighted average margins published on March 21, 2001, that U.S. Customs Service shall assess on exports from both companies[21]:

TAMSA	0%
Hylsa	0.79%

v. Fresh Atlantic Salmon from Chile: On August 30, 1999, the DOC published a notice regarding the initiation of an administrative review of AD on fresh Atlantic salmon from Chile, covering the period of July 28, 1998 through June 30, 1999. On August 8, 2000, the U.S. DOC determined that sales had been made below normal value[22]. The DOC has instructed the U.S. Customs Service to assess AD duties on shipments of fresh Atlantic salmon from Chile entered, or withdrawn from warehouse, for consumption on or after December 15, 2000. The final dumping margins have been revised for the following manufacturers/exporters[23]:

[19] **Federal Register**, Vol. 66, No. 49, March 13, 2001.
[20] **Federal Register**, Vol. 66, No. 50, March 14, 2001.
[21] **Federal Register**, Vol. 66, No. 55, March 21, 2001.
[22] **Federal Register**, Vol. 65, No 153, August 8, 2000.
[23] **Federal Register**, Vol. 65, No. 242, December 15, 2000.

Cultivos Marinos	0.01%
Eicosal	0.18%
Fiordo Blanco	1.46%
Linao	0.00%
Mainstream	0.00%
Mares Australes	0.00%
Pacific Star	3.94%
Pacific Sur	0.00%
Tecmar	0.01%
All others	4.57%

The AD and CVD cases against fresh Atlantic salmon from Chile were initiated in July 1997. The case alleging subsidization was dismissed, but the U.S. Department of Commerce imposed an AD duty order when they determined that sales of fresh Atlantic salmon from Chile were hindering the U.S. market. Therefore, a dumping margin of 2% to 11% was issued in July of 1998.

However, on August 13, 2001, the DOC announced its final dumping margins for its latest administrative review on AD duties of fresh Atlantic salmon from Chile. This review covers sales of fresh Atlantic salmon from 11 producers/exporters from Chile. The margins for all 11 producers/exporters are either at zero or de minimis during the period July 1, 1999 through June 30, 2000.[24]

vi. Porcelain-on-Steel Cookware from Mexico: The DOC published on October 24, 2000, preliminary results of the AD order on porcelain-on-steel cookware from Mexico. On March 1, 2001, the DOC made changes to the preliminary results margin and released their final results for the two reviewed firms. The review covers Cinsa, SA and Esmaltaciones de Norte America, SA. The following are the final weighted average margin percentages effective as of March 1, 2001[25]:

Cinsa	10.39%
ENASA	17.69%

C. Negative AD and CVD Determinations

The ITC, generally within 45 days of a filing of the petition decides whether there is a reasonable indication of material injury to a U.S. industry. If this determination is negative, the investigation is terminated by both DOC and ITC. For the period 2000-2001 two negative determinations were announced.

i. Certain Cold-Rolled Steel Products: On March 3, 2000, the ITC adopted its final antidumping and countervailing duty decision on certain cold-rolled steel products from Argentina and Brazil. The Commission determined that no industry in the U.S. is being

[24] **Federal Register**, Vol. 66, No. 156, August 13, 2001.

[25] **Federal Register**, Vol. 66, No. 41, March 1, 2001.

materially injured or threatened with material injury by reason of imports of the subject merchandise. Therefore, no countervailing duty or antidumping duties will be imposed on these imports. These investigations were started on June 2, 1999, following receipt of petitions by Bethlehem Steel Corporation and seven other U.S. steel companies along with the United Steelworkers of America[26].

ii. Spring Table Grapes from Chile and Mexico: The DOC initiated AD duty investigations on May 15, 2001, to determine whether imports of this subject merchandise from Chile and Mexico were sold in the U.S. at less than fair value. The preliminary determination would be made no later than 140 days after the date of this initiation. However, on June 12, 2001, the ITC determined that there is no reasonable indication that imports of spring table grapes from Chile and Mexico are causing material injury to an industry in the United States, thus terminating the investigation.[27]

D. Suspension Agreement

Several antidumping and countervailing duties were filed during the steel crisis. In September 1998, the industry and the unions filed an AD as well as a CVD case against hot-rolled steel from Brazil. The final dumping margin ranged from 41.27 % to 43.40%. In July 2000, the Department of Commerce suspended its dumping and countervailing duties investigations and put in place an agreement with Brazilian steel producers to establish references prices and a quota of 295,000 Metric Tons (MT)[28] per year. The reference prices for each product ranged from $327 per MT to $390.35 per MT[29].

[26] **Federal Register**, Vol. 65, No. 54, March 20, 2001.
[27] **USITC**, Spring Table Grapes from Chile and Mexico , USITC Publication 3432, Washington DC, June, 2001.
[28] 1MT=2,204.600 pounds
[29] **U.S. Department of Commerce**, Global Steel Report: Report to the President on structural problems, and future solutions, July 2000, Washington DC, p. 105

Table 2
Antidumping Duties on Imports from LAC in Effect as of April 30, 2001

COUNTRIES	ITEM	DATE BEGUN
Argentina	Barbed Wire and Barbless Wire Strand	11/13/1985
	Light-walled rectangular tube	05/26/1989
	Seamless Line and Pressure Pipe	08/03/1995
	Oil Country Tubular Goods	08/11/1995
Brazil	Iron Construction Castings	05/09/1986
	Carbon Steel Butt-Weld Pipe Fittings	12/17/1986
	Brass Sheet and Strip	01/12/1987
	Frozen Concentrated Orange Juice	05/05/1987
	Industrial Nitrocellulose	07/10/1990
	Silicon Metal	07/31/1991
	Circular Welded Non-Alloy Steel Pipe	11/02/1992
	Cut-to-Length Carbon Steel Plate	08/19/1993
	Stainless Steel Wire Rod	01/28/1994
	Silicomangnese	12/22/1994
	Stainless Steel Bar	02/21/1995
	Seamless Pipe	08/03/1995
Chile	Fresh Atlantic Salmon	07/30/1998
	Preserved Mushrooms	12/02/1998
Mexico	Porcelain-on-Steel Cooking Ware	12/02/1986
	Gray Portland Cement And Cement Clinker	08/30/1990
	Circular Welded Non-Alloy Steel Pipe	11/02/1992
	Cut-to-Length Carbon Steel Plate	08/19/1993
	Oil Country Tubular Goods	08/11/1995
	Stainless Steel Sheet and Strip in Coils	07/27/1999
	Large Diameter Carbon Steel Seamless Pipe	08/11/2000

Source: ECLAC, on the basis of data from the International Trade Administration

Table 3
Countervailing Duties on Imports from LAC in Effect on April 30, 2001

COUNTRIES	ITEMS	DATE BEGUN
Brazil	Heavy Iron Construction Castings	05/15/1986
	Brass Sheet and Strip	01/08/1987
	Cut to Length Carbon Steel Plate	08/17/1993
Mexico	Carbon Steel Flat Products	08/17/1993

Source: ECLAC, on the basis of data from the International Trade Administration

E. Sunset Review

The Uruguay Round Agreement Act amended the Tariff Act of 1930, requiring the DOC to conduct reviews of existing antidumping and countervailing duty no later than five years after the duty order was issued. The DOC and the ITC must determine whether revoking the order would likely lead to a recurrence of dumping or subsidies (DOC) and of material injuries (ITC). As of July 2001, 24 Revocations and 18 Continuations were effective.

Table 4
Revocations of AD and CVD

Sunset Revocations (Current Through July 21, 2001)	**Effective Date**
Cotton yarn from Brazil (C-351-037)	01/01/2000
Castor oil from Brazil (C-351-029)	01/01/2000
Frozen concentrated orange juice from Brazil (C-351-005)	01/01/2000
Textiles and textile products from Colombia (C-301-401)	01/01/2000
Tillage tools from Brazil (C-351-406)	01/01/2000
Fresh cut flowers from Colombia (A-301-602)	01/01/2000
Fresh cut flowers from Ecuador (A-331-602)	01/01/2000
Standard carnations from Chile (A-337-602)	01/01/2000
Fresh cut flowers from Mexico (A-201-601)	01/01/2000
Standard carnations from Chile (C-337-601)	01/01/2000
Pompon chrysanthemums from Peru (C-333-601)	01/01/2000
Hot-rolled lead and bismuth carbon steel products from Brazil (C-351-812)	01/01/2000
Hot-rolled lead and bismuth carbon steel products from Brazil (A-351-811)	01/01/2000
Cotton shop towels from Peru (C-333-401)	01/01/2000
POS Cooking Ware from Mexico (C-201-505)	01/01/2000
Steel wire rope from Mexico (A-201-806)	01/01/2000
Carbon Steel Wire Rod From Argentina (A-357-007)	01/01/2000
Carbon Steel Wire Rod From Argentina (C-357-004)	01/01/2000
Silicon Metal from Argentina (A-357-804)	01/01/2000
Malleable cast iron pipe fittings from Brazil (A-315-505)	01/01/2000
Circular-Welded Non-Alloy Steel Pipe from Venezuela (A-307-805)	01/01/2000
Circular Welded Non-Alloy Steel Pipe and Tube from Venezuela (A-307-805)	01/01/2000
Gray Portland Cement and Cement Clinker from Venezuela (A-307-803)	01/01/2000
Gray Portland Cement and Cement Clinker from Venezuela (C-307-804)	01/01/2000

Source: ECLAC, on the basis of data from the International Trade Administration.

3. Safeguard

Section 201 of the 1974 Trade Act provides a procedure whereby the president may grant temporary import relief to a domestic industry seriously injured by increased imports. Relief may be granted for an initial period of up to four years, with the possibility to extending the action to a maximum of eight years. Unlike action to redress unfair trade, to gain protection under Section 201, a domestic industry only has to prove that imports have caused serious damage or are a substantial threat.

As of August 2001, the United States has put four imported products on the Safeguard Clause. This measure affects wheat gluten (effective June 1998), lamb meat (effective July 1999) certain steel wire rod (rod wire) (effective March 2000), and circular welded carbon quality line pipe (effective March 2000), and applies to all countries with the exception of Canada, Mexico, CBI and the Andean Trade Preference Beneficiaries. Quantitative restrictions on wheat gluten will be effective for three years and one day, as well as the tariff-rate quota on lamb meat. The imposition of a tariff-rate quota on wire rod will apply to all countries except Canada and Mexico and will also be for a period of three years. The import relief for the welded carbon quality line pipe will take the form of an increase in duty of 19 percent. All countries are eligible for this duty.

4. Sugar Tariff-Rate Quota

In order to protect domestic sugar producers from a lower world price for sugar, the U.S. sugar program has kept the domestic price of sugar, on average, nearly twice as high as the world price. By law, the sugar program supports the domestic price of sugar by offering non-recourse loans to sugar processors at a rate of 18 cents per pound for raw cane sugar and 22.9 cents per pound for refined beet sugar.

The United States Trade Representative (USTR) allocates shares of the tariff-rate quota (TRQ) among some 40 designated countries. Sugar imported under the TRQ is either assessed no tariff or a 0.63 cent-per-pound tariff, while imports above this limit are assessed a 15.82 cent-per-pound tariff. Therefore, the tariff-rate quota for sugar, as administrated, is actually a quota.

As part of its sugar program, the USTR sets quotas on a yearly basis for countries that export sugar. However, whenever the Secretary of Agriculture "believes that domestic supplies of sugar may be inadequate to meet domestic demand at reasonable price", the Secretary may modify previously established TRQ amounts[30]. The countries subject to quotas are granted "most-favored-nation" status and the rate of duty is 0.625 cent per pound (raw value).

Most countries in Latin America and the Caribbean were exempt from this duty since they were beneficiaries under the Generalized System of Preferences (GSP). The only country in Latin America whose exports do not receive duty-free treatment under the GSP is Brazil due to its competitive advantage in this industry.

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[30] **USDA**, Sugar Program, www.fas.usda.gov/info/factsheets/sugar.html

For fiscal year 2001, the new Tariff-Rate Quota on sugar imports that may enter the U.S. at the lower duty is 1,117,195 metric tons[31]. Table 5 shows the country-by-country allocation based on historical patterns of raw and refined sugar as a percentage of total U.S. imports. Latin America and the Caribbean will supply 64.05 percent (715,541 metric tons) of total U.S. sugar imports during fiscal year 2001. This represents a slight decrease of 17,742 metric tons in LAC's sugar exports from the previous year (733,283 metric tons).

Table 5
Sugar Tariff-Rate Quota
(Fiscal Year 2001 allocation)

Countries	% Of total U.S imports	Metric tons
Argentina	3.99%	45,283
Barbados	0.65%	7,372
Belize	1.02%	11,584
Bolivia	0.74%	8,425
Brazil	13.45%	152,700
Colombia	2.23%	25,274
Costa Rica	1.39%	15,797
Dominican Republic	16.33%	185,346
Ecuador	1.02%	11,584
El Salvador	2.41%	27,381
Guatemala	4.45%	50,549
Guyana	1.11%	12,637
Haiti	0.64%	7,258
Honduras	0.93%	10,531
Jamaica	1.02%	11,584
Mexico	2.20%	7,258
Nicaragua	1.95%	22,115
Panama	2.69%	30,540
Paraguay	0.64%	7,258
Peru	3.80%	43,177
St. Kitts & Nevis	0.64%	7,258
Trinidad-Tobago	0.65%	7,372
Uruguay	0.64%	7,258
LAC Total	64.05%	715,541

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

For the previous FY 2000, the U.S. allocated 1,117,195 metric tons of sugar under the raw tariff rate quota (TRQ) [32]. LAC's were only allowed to export 733,283 metric tons at a lower duty. In fact, throughout the year the actual total amount of sugar imports that entered the

[31] **USTR**, USTR announces allocation of the raw cane sugar, refined sugar and sugar containing products tariff-rate quotas for FY 2001. (Press release 00-64), Washington DC, September 21, 2000.
[32] **Federal Register**, Vol. 64, No. 216, November 9, 1999.

U.S. from Latin American countries was 1,006,266 metric tons[33]. As stipulated in the U.S. sugar program, imports above the tariff-rate quota are assessed at 15.82 cent-per-pound, which represent in this case an amount of $95.2 million[34] in customs duty.

For fiscal year 2001, Mexico will be allowed to ship up to 70% of its outstanding TRQ quantity of 105,788 metric tons raw value before June 30, 2001. The remaining 30%, plus any residual quantity not shipped prior to June 30, may enter during the final quarter (July-September) of FY 2001. According to the United States Department of Agriculture (USDA), this fulfills the U.S. commitment to provide Mexico additional duty-free market access for sugar in FY 2001 under NAFTA. By 2008, all restrictions on Mexican sugar imports into the U.S. market will cease.

Both Mexican and U.S. officials failed to end a long-standing dispute over differences on how to calculate the amount of surplus Mexico can ship to the U.S. market. In this sugar dispute, the U.S. maintains that Mexico can ship up to 250,000 tons of its sugar surplus a year, providing Mexico falls under the definition of a net surplus producer of sugar. The U.S. defines a net sugar surplus by calculating Mexico's sugar production minus its consumption of sugar and High Fructose Corn Syrup (HFCS). Mexico, on the other hand, uses a formula that assesses sugar surplus by calculating sugar production minus the sugar consumption of sugar HFC's. Mexico says that according to their interpretation of the provision, it would permit the shipment of up to 600, 000 tons of sugar[35]. The disagreement between the two countries is due to the discrepancy of the respective formulas that each side applies.

In October 2000, Mexico and the U.S. had the first formal contact since Mexico informed the United States that it would request a dispute settlement panel under NAFTA. Since then, the United States has agreed to extend its market access to 116, 000 tons of sugar to Mexico in its allocation for the fiscal year 2001[36].

[33]**ECLAC**, on the basis of USDA, Sugar: World Markets and Trade, November 2000. Foreign Agricultural Service, www.fas.usda.gov/htp/sugar/2000/november/toc.htm

[34] 1MT=2,204.600 pounds

[35] **Inside U.S. Trade**. Sugar and Tuna to Feature Among Trade Issues During Fox's Visit, August 31, 2001, p.1

[36] **Inside U.S. Trade**, Mexico, U.S. Resume Sugar Talks After Weeks of Deliberation, October 6, 2000.

5. Section 301

The United States' main statue for unilaterally addressing unfair trade practices affecting U.S. exports of goods or services falls under Section 301 of the Trade Act of 1974. Section 301 gives the USTR the power to respond to unreasonable, unjustifiable, or discriminatory practices that burden or restrict U.S. commerce. Once a petition has been filed with the USTR, or the USTR itself initiates the process, an investigation into the foreign government policy or action is implemented. During each investigation the USTR must carry out consultations with the foreign government involved. If an agreement is not reached by the conclusion of the investigation, or through the dispute settlement procedures available, the USTR has authority to implement any number of serious trade restrictions, such as import duties or fees.

A. Mexico: High-Fructose Corn Syrup (HFCS)

The USTR initiated an investigation on May 1998, in response to a Section 301 petition filed by the Corn Refiner Association Inc. The United States challenged several aspects of Mexico's action to limit Mexican imports of High Fructose Corn Syrup (HFCS; a sweetener widely used in soft drinks and other products). In particular, the investigation focused on whether the government of Mexico had encouraged an agreement between the Mexican sugar industry and the Mexican soft drink bottling industry to limit the soft drink industry's purchases of HFCS. After Mexico's impositions of a final antidumping measure in January 1998, the U.S. held consultations with Mexico in June 1998. The United States referred its complaint to a WTO dispute settlement panel in October 1998.

On January 27, 2000, the World Trade Organization (WTO) established under a dispute settlement panel regarding HFCS, at the request of the U.S., that Mexico's threat of injury determination violated the antidumping (AD) agreement in several respects. The panel also found that Mexico improperly imposed final AD duties for the period during which its provisional measure was in place. On February 24, 2000, the WTO adopted the panel's report, with which Mexico will have to comply[37]. Mexico refunded antidumping duties collected during the seven-month period and provided a new justification for the original duty rates, which were kept in place.

On October 2000, the U.S. requested the WTO Dispute Settlement Body (DSB) to form a panel to review whether Mexico's re-determination is inconsistent with the recommendations and rulings of the DSB. The WTO DSB ruled on June 22, 2001, that Mexico's imposition of Antidumping duties on imports of HFCS from the U.S. is inconsistent with the requirements of the WTO Antidumping Agreement. They also ruled that the steps Mexico had taken to comply with an earlier adverse WTO panel ruling were insufficient.[38]

[37]**USTR**, Panel Finds Mexican Antidumping Order Violates WTO Rules, (Press Release 00-05) Washington DC, January 27, 2000.

[38] **USTR**, U.S. Wins WTO Case on High Fructose Corn Syrup, (Press Release 01-44) Washington DC, June 22, 2001.

6. Super 301

Super 301 refers to an annual process by which the United States Trade Representative reviews U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent.

Although the USTR has not identified in any Latin American country practices that can be considered as "priority foreign country practices", within the meaning of the Executive Order, it lists examples of practices that the Administration is carefully monitoring.[39]

i. Argentina: Patents: The U.S. held WTO consultations with Argentina on July 2000, November 2000 and April 2001, regarding Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals and its denial of certain exclusive rights for patents.

ii. Brazil: Patent Protection: The U.S. requested the establishment of a WTO panel to resolve this dispute in February 2001. The U.S. considers that the provision in Brazil's patent law that requires all patent owners to manufacture their products in Brazil in order to maintain full patent rights is inconsistent with the TRIPS Agreement. The U.S. and Brazil resorted to WTO dispute settlement procedures and had consultations in June and December 2000, but failed to reach a mutually agreed resolution to the dispute.

iii. Brazil: Customs Valuation Practices: Brazil's practice of using officially established minimum reference prices as a requirement to obtain import licenses, is believed to be inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuations. The U.S. and Brazil held WTO consultations on this matter in July 2000. The U.S. is monitoring the operation of the Brazilian regime and consulting with U.S. exporters of textile products on possible next steps.

iv. Mexico: Customs valuation practices: Bilateral consultations with Mexico are planned for mid 2001, regarding Mexico's use of reference prices for a vast range of imported products. Companies importing certain affected products such as foods, distilled spirits, chemicals, paper, textiles, apparel, footwear, steel, hand tools and appliances below the government's minimum price will have to cover the difference in duties and taxes in cash in a designated Mexican bank. Furthermore, on October 1, 2001, Mexico increased the costs associated with its reference price system by imposing a cash requirement guarantee for subject goods. The U.S. alleges that these practices infringe on the WTO agreement on Import Licensing Procedures and is considering additional steps, including WTO dispute settlement action.

[39] **USTR**, Identification of Trade Expansion Priorities Pursuant to Executive Order 13116, April 30, 2001.

v. Mexico: Beans: On November 30, 2000 the U.S. requested NAFTA consultations with Mexico regarding U.S. exports of beans to Mexico. As a result, on April 18, 2001, the USTR reached an understanding with Mexico's Secretary of Economy on Mexico's allocation of the TRQ. Mexico will now allocate the NAFTA TRQ for beans on a regular schedule, with auctions held each March and June. Under NAFTA, exports of dry beans to Mexico will be free of all duties in 2008.

vi. Mexico: Measures Affecting Trade in Live Swine: On July 10, 2000, the United States requested consultations with Mexico regarding a Mexican antidumping measure on live swine from the United States, as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. Consultations were held September 7, 2000, and resulted with Mexico issuing a protocol designed to allow a resumption of U.S. shipments of live swine weighing 110 kilograms or more into Mexico.

7. Special 301[40]

Under Special 301, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights (IPR). Countries with policies that most adversely impact U.S. products are designated as "Priority Foreign countries", and must be investigated under Section 301. No country may be designated "priority" if it has entered in good faith with the USTR. Those countries in danger of receiving the "priority" designation are placed on a watch list that is updated annually by the USTR.

Other categories that the United States uses to identify these countries are "Priority Watch List", and "Watch List" indicating descending levels of concern by the United States.

A. Priority Watch List

Countries placed under the "priority watch list" are the focus of increasing bilateral attention concerning the problem areas.

i. Argentina: In the 2001 Special 301 Report, Argentina remained on the "priority watch list" due in part to its patent, as well as its copyright and trade secrets regimes still considered not meeting international standards. Additionally, the USTR initiated a second WTO dispute settlement case to address concerns resulting from Argentina's failure to implement TRIPS obligations due on January 1, 2000.

According to this report, Argentina's level of protection, including pharmaceuticals and chemicals, has steadily deteriorated over the past two years and the enforcement against copyright piracy and trademark counterfeiting

[40] USTR, 2001 Special 301 Report, May 2001.

remains significantly below TRIPS standards. The United States raised nine distinct claims with Argentina in this dispute and as of May 2, 2001, there are still some outstanding issues that must be resolved before the dispute settlement case can be fully concluded.

ii. Costa Rica: Even though the United Sates saw positive steps taken by Costa Rica in 2000, there is still concern regarding the lack of effective enforcement activity by the Government of Costa Rica regarding intellectual property crimes. The United States seeks improvement in nationwide coordination of enforcing and defending IP rights, as well as improvement of enforcement-related training at all levels of government and appointment of special prosecutors to take on intellectual property cases. The U.S. will conduct an Out of Cycle Review at the end of 2001 to assess Costa Rica's legislative and enforcement efforts.

iii. Dominican Republic: According to the United States, the Dominican Republic has failed to correct deficiencies in its legal framework to meet its obligations under the TRIPS Agreement. In September 2000, the U.S. Government recommended that steps be taken to correct the patent law's implementing regulations created in May 2000.

iv. Uruguay: The U.S. reports that Uruguay needs to reform its outdated patent and copyright legislation, as well as stronger and constant enforcement of both criminal and civil copyright cases.

B. Watch List

i. Bolivia: According to the United States, Bolivia has made marginal progress this past year in its protection of intellectual property rights. Bolivia is believed to have the highest levels of copyright piracy in Latin America and the use of pirated software is still widespread.

ii. Brazil: The U.S. initiated a dispute settlement panel in the WTO on February 1, 2001 to resolve concerns regarding Brazil's local manufacturing requirement for patents. The U.S. is looking for Brazil to develop and implement an effective action plan that allows the new Inter-Ministerial Committee to Fight Piracy to take concrete, significant action to reduce and deter piracy in Brazil.

iii. Chile: Chile introduced legislation in 1999 intended to make Chile's intellectual property regime TRIPS compliant. However, the U.S. reports that this legislation has not yet been enacted. Furthermore, the U.S. alleges that Chile's inadequate enforcement against piracy and counterfeiting remains of high concern, as does the large backlog of pending patent applications.

iv. Colombia: The U.S. reports that the Government of Colombia has made efforts to reduce its use of unauthorized software. However, according to the report, Colombia still lacks effective enforcement of its existing copyright laws and as a result, piracy levels for most copyright sectors remain high. With regards to

patents, deficiencies in Colombian Government data protection for pharmaceuticals products have also led to high piracy levels in this area.

v. Guatemala: In 2000, the Guatemalan Congress passed new patent and trademark legislation that meets most TRIPS requirements, as well as amendments to its 1998 Copyright Law. The U.S. reports that the amendments decreased criminal penalties in cases of infringement of intellectual property and the provision providing for statutory damages was removed.

vi. Jamaica: The USTR believes that Jamaica's protection of IPR does not yet meet TRIPS standards. Specifically, Jamaica lacks patent, industrial design, geographical indication, and plant standards. However, Jamaica has made continual progress in the enforcement of existing intellectual property laws, including the misuse of unlicensed cable television re-transmissions.

vii. Peru: In 2000, Peru formed a public-private entity (CONTRACOPIA) to protect and enforce piracy laws. The government intellectual property agency (INDECOPI) has conducted two joint publicity campaigns with the Business Software Alliance. However, according to the report, criminal enforcement remains a problem.

viii. Venezuela: The United States considers Venezuela's protection of IPR to be moving in the right direction. The Trademark Office (SAPI) and the Anti-Piracy Command of the Judicial Police (COMANPI) continue to make positive efforts despite severe personnel and resource constraints, which have significantly hampered their effectiveness. Delays in the judicial system have contributed to a lack of enforcement of copyright laws. Furthermore, only a few government agencies have legalized their software and no negotiations are underway to legalize the rest.

C. Special 301 Out of Cycle Reviews

On November 8, 2000, the USTR announced that El Salvador would not be placed on the Watch List in its Special 301 out-of-cycle reviews. The USTR was encouraged by the steps El Salvador had taken to improve its protection of intellectual property rights, including raids against software pirates and invigorating efforts to bring its intellectual property laws into compliance with the TRIPS agreement.

Also, the USTR recognized steps by The Bahamas to strengthen its copyright protection. By assuring that it would amend its copyright law, the U.S. can expect the elimination of provisions that create a compulsory license for unauthorized re-transmissions by cable television systems of any copyrighted work transmitted over its territory, including encrypted transmissions.

8. Section 306 Monitoring

The USTR designated Paraguay for Section 306 Monitoring to ensure its compliance with the commitments made under bilateral intellectual property agreements with the United States. The U.S. was concerned especially with the lack of enforcement and enactment of a TRIPS consistent patent law. The U.S. Government will reactivate the Section 301 investigation if no progress is made in 2001. Under Section 306 of the Trade Act of 1974, the USTR can move directly to trade sanctions if there is slippage in a country's enforcement of bilateral intellectual property rights agreements. Paraguay was identified as a Priority Foreign Country in January 1998. The subsequent Section 301 investigation terminated with the signing of a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property. According to the U.S., the implementation of the MOU has been inadequate, and Paraguay continues to be a regional center for piracy and counterfeiting and a transshipment point to the larger markets bordering Paraguay, particularly Brazil.

9. Textiles and Clothing

As part of the WTO, the Agreement on Textiles and Clothing (ATC) entered into force on January 1, 1995. The ATC superseded the Multi-Fiber Arrangement (MFA) as a ten-year, time-limited arrangement for the slow integration of textiles and clothing into the WTO agreements. Under the ATC, the U.S. will integrate a specified percentage of textile and apparel imports in each of three stages and the remaining products by January 1, 2005. Once integrated, quotas can be applied only under regular WTO safeguard procedures[41].

On May 18, 2000, President Clinton signed into law the Caribbean Basin Trade Partnership Act (CBTPA). This partnership will allow the Caribbean Basin Initiative (CBI) countries to obtain the same preferential tariff and quota as under the NAFTA on certain textiles and apparels.

The CBTPA extends duty-free and quota-free treatment to certain apparel manufactured in the CBI region from U.S. origin fabric, as well as limited quantities of apparel made from fabric, which is knit in the CBI region from U.S. yarns up to 250 million square meters equivalent. These duty-free quotas cover such items as shirts, knit blouses, pants, and underwear made from knit and fabric. In addition, it sets a cap for T-shirts made from U.S. yarn at 4.2 million dozens per year. The caps will rise 16 percent each year from October 1, 2000 to September 30, 2004. Congress will reexamine the caps in the final year[42].

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[41] **U.S. International Trade Commission,** The Economic Effects of Significant U.S. Import Restraints, (Investigation No.332-325), Washington D.C, December 1995, p.3-3.

[42] **USTR,** Caribbean Basin Trade Partnership Act, www.ustr.gov/regions/whemisphere/camerica/factsheet.html

Table 6
U.S. Imports from LAC of Textiles and Apparel

Country	1999 Imports (In million meters²)	2000 Imports (In million meters²)	2000 Imports (In millions $)	Growth rate Percentages
Argentina	8.9	17.8	7.02	100.64
Belice	9.5	12.2	17.8	28.5
Brazil	130.8	184.2	224.5	40.76
Colombia	112.6	117.3	443.8	4.24
Costa Rica	370.0	373.4	831.3	0.9
Dominican Republic	900.3	858.9	2,456.5	-4.59
Ecuador	12.5	16.4	23.1	30.04
El Salvador	640.9	757.2	1,634.1	18.15
Guatemala	333.0	389.7	1,499.2	17.04
Guyana	4.4	4.4	10.9	-0.21
Haití	127.4	125.0	251.0	-1.84
Honduras	958.3	1,045.6	2,365.9	9.12
Jamaica	148.8	126.3	269.7	-15.10
México	4,142.7	4,746.5	9,692.8	14.57
Nicaragua	69.4	87.5	337.8	26.14
Peru	58.3	70.5	405.7	20.83
Venezuela	6.1	11.0	6.6	79.86

Source: ECLAC, on the basis of data from the U.S. Department of Commerce, Major Shippers Report, 2001.

10. Voluntary Export Restraint Agreements (VERAs)

The situation with respect to VERAs has remained unchanged since our last report. The threat to resorting 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.

III. STANDARDS AND REGULATIONS

As indicated in previous reports, exporting to the U.S. can be a difficult task due to the complex system of standards and regulations at the federal, state and local level. These regulations are often 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.[43] Although unintentionally, standards and regulations sometimes create major barriers for foreign firms attempting to enter the U.S market. For example, U.S authorities must ensure that the bio-engineered goods coming into the country are safe enough for humans and the environment. There are four federal agencies responsible for ensuring the safety of these plants, animals, seafood, microorganisms, and other products obtained: the Animal Plant Health Inspection Service (APHIS), the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Food Safety and Inspection Services (FSIS).

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[43]**Canada, Department of Foreign Affairs and International Trade**, Register of U.S Barriers to Trade, Ottawa, 1996, p.11.

The types of U.S. standards that have the greatest impact on Latin America 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.

1. Phytosanitary Regulations

Once a phytosanitary rule is proposed by the USDA and published in the Federal Register, it is subject to a 90-day comment period, after which the final rule may be issued and assigned a legally effective date.

All shipments of fruits and vegetables are subject to an inspection process in both the originating country and the allowed ports of entry. This may further slow down the process.

Gaining access to the U.S. market can be a cumbersome and costly process that may take years. Exporters must finance all USDA expenses in researching their products and getting them approved. Still despite the money and effort, many of those products never quite escape the restrictions placed on them.

Phytosanitary barriers affect a large portion of the fruits and vegetables entering the U.S. market. For example, grapes and apples require a special cold treatment while yams and other vegetables require a methyl bromide treatment. Mangos require a hot water dip and need certification stating they have received this treatment. All these products also need specific documentation certified by the APHIS representative in their respective country. For the most part, an additional obstacle and/or obligatory prerequisite is the acquiring of an import license for the given product. If the product does not pose a threat to the market, then it is allowed entry without an import license. Otherwise, they must have a license in order to enter the country. In the case of Argentine fruit and citrus products, the list is limited because of threat of the fruit fly. The products that are admitted are usually submitted to various tests and treatments before they are even shipped off.

A. Mexican Avocados

Restrictions on imports of Mexican avocados have remained in effect since 1914. This ban stemmed from the fear of infection of the domestic industry from the importation of weevils and fruit flies found in avocados from Mexico. On January 31, 1997, the USDA issued a final ruling that lifted the 84 year-old ban to permit U.S. imports of Mexican Hass avocados from Michoacan under the "system approach". The new rule allowed imports of fresh Hass avocados grown in approved orchards in Michoacan, Mexico, into 19 Northeastern States during the winter months of November through February.[44]

The USDA import plan contains nine specific safeguards to prevent exotic pests from entering the United States. The safeguards include packinghouse and port of arrival inspections, limited distribution, and continuing field services. Also, avocados must be shipped in sealed

[44] **Federal Register**, Vol. No 62, No. 24, February 1997.

containers under Custom Bonds with clearly labeled Northeast destinations and each fruit must display a sticker so that it can be traced to its place of origin in Mexico if it is necessary.

In December 1999, the rules regarding the imports of Mexican avocados were once again amended to require handlers and distributors to enter into compliance agreements with the Animal and Plant Health Inspection Service. The repackaging of the avocados after their entry into the U.S. also became a requirement. These modifications were necessary to ensure that distributors and handlers are familiar with the regulations and to ensure that any box used to repackage the avocados in the U.S. has the same information that is required to be displayed on the original boxes in which the fruit was packed from Mexico.[45]

In May of 2000, Mexico asked for permission from the U.S. to sell avocados as far west as Wyoming and extend the shipping season by two months. That request is still pending.

In August 2000, various U.S. state agriculture departments, with support from Mexican avocado growers, U.S. importers, and several Texas legislatures, also urged the USDA to relax current restrictions on imports of Mexican avocados. In statements submitted to the USDA on August 9th, state agriculture officials from Illinois, Michigan, Minnesota, North Dakota, Pennsylvania, and Texas all supported expanding the current season for shipping avocados from Mexico to the U.S., as well as increasing the number of states that Mexican avocados can be sold in. Supporters for the expansion of avocado importation argue that the current system has been successful in providing Mexican avocados to the U.S. market without the occurrence of any pests.

However, California growers argued in August that the USDA should withdraw approval for Kentucky and Virginia to receive Mexican avocados because their mean temperatures are high enough to encourage the development of fruit flies. Furthermore, California growers contended that the USDA should consider that mean temperatures above 50 degrees Fahrenheit are warm enough to foster fruit fly development[46], which is lower than the current USDA standard of 70 degrees Fahrenheit. By this measure, California growers presented a list of states that should be excluded from consideration for imports of avocados from Mexico. Finally, in presenting their argument against the expansion of Mexican avocado shipments, California growers stressed that the USDA does not have the resources to monitor and enforce increased imports, citing cases of illegal shipments reaching warmer states over the past three years.

At the same time, with the support of several California House lawmakers the Hass Avocado Promotion, Research and Information Act of 2000 was signed into law on October 23, 2000. The Act authorizes the creation of a 12 member Hass Avocado Board to administer the program under supervision of the Agricultural Marketing Service and to fund board developed promotional programs in the United States. The twelve-member Hass Avocado Board is composed of seven members from domestic producers and two from importers, plus three swing positions based on current level of imports[47].

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[45] **Federal Register**, Vol. No 54, No. 233, December 1999.
[46] **Inside U.S. Trade**, U.S. States, Lawmakers Urge Expanding Avocado Imports, August 25, 2000.
[47] USDA, AMS Research and Promotion Programs, Hass Avocado Promotion, Research and Information Act of 2000, www.ams.usda.gov/fv/rpavocado.html, March 21, 2001.

The Board would collect an assessment of 2.5 cents per pound on fresh domestic production and on fresh and processed imports of Hass avocados. The rate could be raised up to a maximum of five cents per pound. Furthermore, the Act stipulates that the assessment on all imported Hass avocados be paid at the time of entry into the U.S., while the assessment on domestically grown Hass avocados sold in the U.S. can be paid more than sixty days after the sale occurs.

B. Argentine Citrus

> The regulations in "Subpart-Fruits and Vegetables" restricted the importation of fruits and vegetables from any part of the world in order to prevent the dissemination of plant pests, especially fruit flies, not common in the U.S. The "Subpart-Citrus Fruit" restricted the imports of fruits and peels of all genera from specified countries such as Argentina, in order to prevent the introduction of citrus canker into the U.S. On August 12, 1998, a proposal was presented to amend the citrus regulation and recognize a citrus-growing area in Argentina as canker free. After comments and hearings, this proposal was approved.

On June 15, 2000, the USDA announced its final ruling on amendments made to the law regarding fruits and citrus imported from Argentina. The USDA certified that four Argentine states are free of citrus canker and eligible for export to the U.S. Grapefruit, lemons, and oranges could be exported with shipment to non-citrus producing states starting August 2000. The regulation stipulated that Argentina follow certain safety related conditions for preventing the introduction into the U.S. of sweet orange scab and citrus black spot[48].

The USDA will phase in this regulation over the course of four years. If problems are encountered during the first phase-in implementation period, the next phase-in will not be implemented until the problems are corrected. In addition to the requirements, during the first stage of the implementation in 2000-2001, fruit will be eligible for entry into 34 northern tier states in the U.S. Fruit will not be allowed entry into any citrus producing states or any of the ten buffer states that border citrus producing states. The second stage begins with the 2002 shipping season and will allow eligible fruit to be shipped to the 34 first stage states and the ten buffer states. In 2004, phase three will allow eligible fruit to be shipped to all areas of the continental Unites Sates.[49]

C. Guatemalan Raspberries

In May of 1997, Guatemala voluntarily stopped imports of the fruit after an outbreak of the cyclospora disease in the U.S. The FDA banned U.S. imports of Guatemalan Raspberries carrying cyclospora parasite from March 15, 1998 until August 15, 1998.

In November and December of 1998, FDA representatives visited a number of raspberry farms to determine if they were following the Model Plan of Excellence program when growing their raspberries so that they could be allowed entrance into the U.S. markets. Raspberries from

[48] **Federal Register**, Vol. 65, No. 116, June 15, 2000.
[49] **USDA**, Allows limited importation of citrus from Argentina, www.aphis.usda.gov/lpa/press/2000/06/acitrus.txt

farms found following the program were not detained for physical examination. However, on March 15, 2001, a new import alert was issued regarding raspberries from Guatemala requiring that all raspberries entering the U.S., with exception of those grown in the approved farms, are subject to examinations at the port of entry. For the 2001 spring growing season, March 15 through August 15, 2001, Guatemalan raspberry farms should once again follow the MPE in order to export to the United States. Farms following the MPE should not be subject to detention for physical examination. Four farms/growers are exempt from the detention for physical examination: Finca El Injertal, Finca Nuevo Paraiso, Finca San Jorge and Finca Karmel. In addition, only the following exporters are allowed to ship berries for the farms listed above: Café S.A., Cofruga, Mayacrops and Planessa[50].

D. Chilean Fruit

On May 31, 2000 the U.S Department of Agriculture imposed restrictions on the imports of certain fruit from Region 1, the northern-most part of Chile, and the Metropolitan Region, which includes greater Santiago, due to the threat of the Mediterranean fruit fly. All fruit that is a host for the Medfly and originates from these regions must undergo treatment before or during export to the U.S., or upon arrival, in order to prevent the spread of this pest across the U.S borders. However, on October 31, 2000, the U.S. Department of Agriculture announced that it is no longer regulating the Metropolitan Region of Chile for Medfly. APHIS has reduced the quarantined area based on a review of Chile's Medfly eradication efforts in the Metropolitan Region implemented by Chile's Ministry of Agriculture[51].

2. Marketing Order Regulations

Under section 8e of the Agricultural Marketing Agreement Act, the Secretary of Agriculture can issue grade, size, quality, or maturity regulations for certain commodities through domestic marketing orders. These requirements must also be applied to comparable import commodities. The products subject to marketing order regulations are avocados, dates (other than dates for processing), filberts, grapefruit, table grapes, kiwifruit, limes, olives (with the exception of Spanish-style olives), onions, oranges, prunes, raisins, tomatoes, and walnuts.[52] Regulations for imported commodities apply only during periods when domestic marketing order regulations are in effect.

3. Meat Import Regulation

The United States operates under a "zero risk" policy, prohibiting all imports of meat from countries with recent outbreaks of foot and mouth disease, or rinderpest. To be eligible to export meat to the U.S., a country must have had no outbreaks of each disease and must have ceased vaccination for such diseases for one year. Individual exporters must then contact their veterinary services to request an inspection, followed by inspection with the cost borne by the company requesting the inspection.

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[50] **Food and Drug Administration**, Office of Regulatory Affairs, Import Alert #20-04, Detention without physical examination of imported raspberries from Guatemala, March 15, 2001.

[51] **USDA**, USDA reduces restrictions on imports of Chilean fruit, www.aphis.usda.gov/lpa/press/2000/10/chilefly.txt

[52] **USDA**, Agricultural Marketing Service, Fruit and Vegetable Division, Fruit and Vegetable Requirements, Washington D.C., March 1996

A. Beef

As of August 25, 1997, Argentina was granted the right to export beef to the United States. Prior to 1995 (the year that Uruguay became eligible), all South American countries exporting beef were subject to restrictions. This was due to outbreaks of cattle foot and mouth disease, among other diseases such as rinderpest that pose threats to cattle but not humans. Argentina operates under a 20,000 metric tons quota imposed by the U.S. [53]

The USDA issued a temporary ban on the imports of all swine and ruminant, and any fresh swine or ruminant meat (chilled or frozen) and other products of swine and ruminants from Argentina. This ban effects any products processed on or after February 19, 2001. The only product the United States currently imports from Argentina that is affected by this ban is beef.

On June 28, 2000, APHIS amended the regulations governing the imports of certain animals, meat and other animal products. This included imports from Argentina of any bovine parts that are not, by standard practice, part of the bovine carcass that is placed in a chiller for maturation after slaughter. Items prohibited from importation include all parts of bovine heads, feet, hooves, and internal organs. Additionally, it is required that bovines slaughtered for the export of fresh beef from Argentina to the U.S. undergo ante- and post-mortem inspections for the signs of foot and mouth disease. Another exigency is that representatives of the Animal and Plant Health Inspection Service be allowed access to the establishments where the bovines are slaughtered.[54] This regulation is in part to prevent the introduction into the U.S. of diseases such as rinderpest, foot and mouth disease, African swine fever, hog cholera, and swine vesicular disease.

On August 2, 2000, Argentina and the U.S. mutually agreed on suspending exports of Argentine fresh beef to the U.S. market due to a detection of the foot and mouth virus in cattle. The U.S. is mainly concerned with the contamination of livestock. To this effect, evidence will have to be presented to the USDA, who will assess if this incident has been controlled.

In December 2000, the ban was lifted and under amended regulations, a foreign meat inspection certificate, issued by an authorized veterinary official of the Government of Argentina, must accompany fresh beef from Argentina. However, the ban on beef has once again been reinstated.[55]

In the case of Uruguay, the entire country had been considered among those regions free of foot and mouth disease. However, on December 13, 2000 the USDA removed the region of Artigas in Uruguay from the list of regions considered to be free of foot and mouth disease due to an outbreak. Furthermore, on April 25, 2001, Uruguay confirmed two cases of foot and mouth in the city of Palmitas, therefore the USDA is prohibiting the imports of susceptible animals and their products from Uruguay produced on or after March 23, 2001[56].

[53] **ECLAC**, Barriers to Latin American and Caribbean Exports in the U.S. Markets: 1998-1999, November 23, 1999.
[54] **Federal Register**, Vol. 65, No.125, June, 2000
[55] **USDA**, APHIS, Foot and Mouth Disease in Argentina, February 19, 2001. www.aphis.usda.gov
[56] **USDA**, News Release, Uruguay confirms case of FMD; U.S. announces import restrictions. April 26, 2001.

On February 23, 2001, the USDA lifted the temporary suspension on Brazilian beef imports and associated products from Brazil. The USDA made a site visit to review and analyze data to complete a bovine spongiform encephalopathy (BSE) risk assessment. Upon completion, the USDA was assured that Brazil had taken sound measures to prevent BSE and therefore lifted the suspension on imports. The USDA has determined that there is no risk of BSE introduction associated with the import of Brazilian beef and beef products and no evidence of BSE in Brazil.

However, Brazilian beef products must meet three conditions to enter the U.S. First, shipments must be certified as containing beef products from cattle that were born and raised in Brazil and not from any imported sources of beef. Second, the beef must come from cattle born after Brazil enacted its 1996 ruminant-to-ruminant feed ban. Lastly, shipments must have a statement accompanying them that certify that the cattle used in the products were exclusively grass-fed and not fed any animal proteins.[57]

Previously, the USDA had suspended imports from Brazil on February 2, 2001, pending the release of the data to complete the BSE risk assessment.

Finally, certain recognized regions within South American countries that meet the disease free requirements to export bovine products may export even if the whole country has not been declared disease free.[58] In addition to recognizing specific regions that may export beef, the U.S. also recognizes levels of risk within each region. Import conditions and restrictions vary according to risk class and region from which they are exported.

B. Mexican Pork

Due to the existence of hog cholera in Mexico, pork and pork products from Mexican states must meet specific requirements to be imported into the United States. However, Section 94.20 of the Code of Federal Regulation on APHIS provides an exception for fresh pork and pork products from the states of Sonora and Yucatan.[59] On June 14, 2000, parts of Mexico were added under the list of regions that are allowed to import animal products. This amendment to the regulation pertaining to the imports of such allows for the entrance of fresh (chilled or frozen) pork and pork products from the Mexican states of Baja California Sur, Campeche, Coahuila, Nuevo Leon, Quintana Roo, and Sinaloa into the United States for export to other countries. This amendment was proposed because there exists minimal threat of hog cholera exposure from shipments of pork and pork products from these states, transiting the U.S. Furthermore, there has not been an outbreak of hog cholera in any of these areas since 1993.[60]

Fresh pork from four other Mexican states: Baja California, Chihuahua, Sonora and Yucatan, already have been cleared to transit the United States via land border ports for export to other countries.

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[57] **USDA**, APHIS Press Release, USDA lifts suspension on Brazilian beef imports, February 23, 2001.
[58] **Federal Register**, Vol. 62, No.208, October, 1997
[59] Sec. 94.20 includes the provisions that were added in 1992 to the regulations on the importation of certain animals, in order to prevent introduction of diseases into the U.S. market.
[60] **Federal Register**, Vol. 65, No. 115, June 14, 2000

4. Marine Mammal Protection Act

A. Yellow Fin Tuna Embargo

The killing of dolphins by foreign countries has become a major concern for the U.S. Therefore, the United States enforced an embargo on yellow fin tuna from all countries that fish the Eastern Tropical Pacific (ETP) extending from Mexico and Venezuela to northern Chile and 700 miles out to sea.

The embargo was a requirement under the United States' Marine Mammal Protection Act and the International Dolphin Conservation Act (IDCA) adopted in 1992. The IDCA prohibits the use of any methods for catching tuna that are dangerous to dolphins. This legislation applied exclusively to those fishing the ETP where the U.S. tuna fleet maintains only minimal presence. The U.S. prohibits the imports of yellow fin tuna from any nation that does not have regulatory programs and mortality rates comparable to the U.S.[61]

On top of the restrictions placed on foreign countries, Congress included three provisions to the MMPA when it was adopted in 1992: The Intermediary Nation Provision, the Pelly Amendment, and the Dolphin Protection Consumer Information Act. The first, states that intermediary countries that export tuna to the U.S. must only import from countries that are "dolphin safe". Second, after either ban had been implemented for 6 months, the Secretary was to notify the President of the United States. Finally, producers, importers, exporters, distributors and sellers of tuna could only include a dolphin safe tuna label if they were harvested in a manner that was not harmful to dolphins.

In October of 1995, members of the Inter-American Tropical Tuna Commission (IATTC) and some major environmental groups, signed the Panama Declaration to strengthen the Inter-American Dolphin Conservation Program (IADCP) that implemented strict measures for reducing the number of dolphin mortalities in the ETP. This agreement promised changes in U.S. law in return for marine-species protection in the ETP.[62]

On June 30, 1997, legislators negotiated a compromise that lifted the U.S. ban on tuna imports but kept the definition of "dolphin-safe" tuna in act. On May 21, 1998, the U.S. along with seven Latin American countries signed the IADCP, which serves as the base in order to remove the embargoes on nations that agree to sign the pact. As always, the "dolphin-safe" standards remain the same.

On February 15, 1999, Ecuador, Mexico, Panama, and the U.S. approved and fully ratified the agreement. In April of the same year the Commerce Department announced that the U.S. would adopt a new standard for "dolphin-safe" tuna. This would include as "dolphin-safe" all the tuna caught in the presence of dolphins as long as dolphins weren't hurt.[63]

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[61] **Tuna Dolphin GATT Case,** http://www.american.edu/projects/mandala/TED/tuna.htm

[62] **U.S. Congress,** Ways and Means Committee, Tuna-Dolphin Bill: Hearing before the Ways and Means Committee, Washington, D.C., May 1, 1997.

[63] **NOAA,** U.S. Department of Commerce issues initial finding on tuna/dolphin interactions, (Press Statement), Washington D.C, April 29, 1999.

In April 2000, after many requests from several environmental groups, a federal court ruling halted the implementation of the above-mentioned U.S. labeling standard set by the same environmental groups. The new labeling standard would have allowed fishermen to label their tuna as "dolphin safe" if the methods used to catch the tuna managed to reduce dolphin deaths by at least 99%.[64]

The U.S. Department of Justice filed an appeal in this case on May 18, 2000 and the hearing was held on December 11, 2000. On July 23, 2001, the appellate court upheld the lower court's ruling. Bilateral consultations under the AIDCP are scheduled for September 2001.

On August 3, 2000, the Government of Mexico requested formal emergency consultations regarding the AIDCP. Mexico charged the U.S. with not fulfilling its commitments to effectively open its markets under the Agreement on the International Dolphin Conservation Program. In this letter, Mexico, the largest component of the ETP purse seine fishery fleet, considered pulling out of the AIDCP and the possibility of bringing the case to the WTO.[65]

Additionally, on August 1, 2001, the National Marine Fisheries Service (NMFS) Office of Protected Resources issued a scientific research permit to the NMFS Southwest Fisheries Science Center to conduct a chase-recapture experiment on dolphins in the eastern tropical Pacific Ocean (ETP) as one component of the stress studies mandated in section 304(a)(3) of the Marine Mammal Protection Act. The permit is accompanied by an Environmental Assessment, which concludes that the research will not cause a significant impact to the environment under the National Environmental Policy Act.[66]

B. Shrimp Embargo

P.L. 101-162 (Section 609) prohibits the imports of shrimp harvested in ways that are harmful to sea turtles, unless the U.S. Department of State certifies that the harvesting nation either has a sea turtle protection program similar to that of the U.S., or has a fishing environment in which there is no threat to sea turtles. U.S. sea turtle conservation programs include commercial ship boats required to use sea turtle excluder devices, or TEDs, to prevent their drowning in shrimp trawls.

Shrimp embargoes began on May 1, 1996, after the U.S. Court of International Trade announced that all nations that did not enforce the use of TEDs on shrimp trawlers would be barred from exporting shrimp to the U.S. The only way a country could avoid this embargo was by getting approval from the U.S. for a comparable program in order to prevent the accidental deaths of sea turtles while fishing for shrimp. In April of 2001, 43 countries were certified by the U.S. State Department as meeting the standard to prevent accidental drowning of sea turtles. Among these countries are Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Suriname, Trinidad and Tobago, Bahamas,

[64] **Ibid**

[65] **USDOC**, NOAA Fact Sheet, Litigation Related to the Tuna/Dolphin Program, March 19, 2001. www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/litigation.html

[66] **NOAA**, Office of Protected Resources, Dolphin Interactions with the Eastern Tropical Pacific Tuna Purse Seine Fishery, http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/tunadolphin.html

Dominican Republic, Haiti, Jamaica, and Peru. Argentina, Chile, and Uruguay have shrimp plants only in cold waters where the risk of catching sea turtles is negligible.[67]

On August 19, 1998, the U.S Federal Court of Appeals approved a waiver, subject to verification every 6 months, which authorizes shrimp exports from non-certified countries that show proof of using TEDs during their commercial shipping operations.[68]

The regulations provide a mechanism to implement further restrictions of fishing activities, in case this becomes necessary in order to avoid unauthorized takings of sea turtles. Unauthorized takings endanger the existence of the certain species, or violate the terms and conditions of an incidental take permit. Additional restrictions may be applied, lasting up to 30 days, and may be renewed for additional periods also up to 30 days each.[69]

As of May 2, 2001, fourteen Latin American countries were certified as meeting the U.S. Sea Turtle Conservation program that requires that commercial shrimp boats use sea turtle excluder devices. Countries meeting the standards are Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Suriname, Trinidad and Tobago, and Venezuela.

Twenty-six countries were certified as having fishing environments that do not pose a danger to sea turtles and are harvesting shrimps using manual rather than mechanical means to retrieve nets or use of other fishing methods. Among these nations are the Bahamas, the Dominican Republic, Haiti, Jamaica, and Peru. Furthermore, three Latin American countries have shrimp fisheries in cold water where the risk of taking sea turtle is negligible. These countries are Argentina, Chile, and Uruguay. Imports of shrimps from all other nations will be prohibited unless harvested by aquaculture, in cold water, or by a specialized technique that does not threaten sea turtles[70].

IV. EXPORT SUBSIDIES

Products from Latin America 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 programs facilitate 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 programs, 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.

1. Export Assistance Programs

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[67] **U.S. Department of State**, Media Note, Sea Turtle Conservation and Shrimp Imports, May 2, 2001.
[68] **Ibid**
[69] **Federal Register**, Vol. 65, No.80 (April 25, 2000), pg.24133
[70] **U.S. Department of State**, Sea turtle conservation and shrimp imports, April 27, 2000, Washington DC.

A. Export Enhancement Program (EEP)

> The EEP, approved in 1985 and created during a period of large grain stocks and low prices, was created to make U.S. commodities more competitive in the world marketplace and to offset the adverse effects of unfair trade practices or subsidies. Under this program, the U.S. Department of Agriculture pays cash to exporters as bonuses, allowing them to sell U.S. agricultural products in targeted countries at prices below the exporter's cost of acquiring them. These targeted countries are defined as those where U.S. sales have been nonexistent, displaced, reduced, or threatened, due to competition from other subsidized exports. Every three months, the USDA allocates quantities and destinations for U.S. agricultural products.

In 1996, the EEP was extended until the year 2002. Under this new farm bill, the program expenditure was capped at $350 million in 1996, $250 million in 1997, $500 million in 1998, $550 million in 1999, $559 million in 2000 and $478 million for both fiscal year (FY) 2001 and 2002[71].

Originally, commodities eligible for EEP subsidies were wheat, wheat flour, semolina, frozen poultry, frozen pork, barley, barley malt, and vegetable oil. The program has eliminated semolina and frozen pork and has since added rice, table eggs and sorghum. The Uruguay Round Agreement on Agriculture would allow the export of all products mentioned above. However, EEP was made operational only for frozen poultry.

On July 1, 1999, a one-year allocation for 20,210 metric tons of frozen poultry to six Middle Eastern countries under the EEP was announced in accordance with the quantity limitations of the Uruguay Round Agreement on Agriculture. Moreover, for FY 2000, as of April 23, 2001, bonuses of about $5 million[72] have been awarded for 8,014 metric tons of frozen poultry.

B. Dairy Export Incentive Program (DEIP)

> The DEIP is intended to develop export markets for dairy products and enhanced competition, allowing them to sell certain U.S. dairy products at prices below cost.

The DEIP was announced by the USDA on May 1985 and was reauthorized by the Food, Agriculture, Conservation and Trade Act of 1990, as well as the Uruguay Round Agreement Act of 1995 and the Federal Agriculture Improvement and Reform Act (FAIR) of 1996. Section 148 of the FAIR extended the DEIP through 2002[73]. The program will focus on market development, providing full authority and funding to the maximum level allowed by the WTO.

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[71] **USDA,** Foreign Agricultural Service (FAS), Agricultural Export Assistance Update, March 16, 2001, http://www.fas.usda.gov/excredits/quarterly/2001/mar-sum.html
[72] **Ibid.**
[73] **USDA,** FAS, Dairy Export Incentive Program, September 1997 http://www.fas.usda.gov/info/factsheets/deip.html

Commodities eligible under the DEIP initiatives are milk powder, butterfat, cheddar, mozzarella, Gouda, feta, cream and processed American cheeses.

The major markets for the DEIP in FY 2001 included the Caribbean, Central and South America. As of April 23, 2001, bonuses totaling $12.4 million had been awarded.[74]

Under the new farm law, the DEIP eliminates the price supports on dairy products over the next three years, after which a recourse loan program will replace them. The law will fully fund the DEIP to the maximum levels allowed by the WTO.

C. The Market Access Program (MAP)

Since 1985, the MAP and its predecessors, the Targeted Export Assistance Program (TEA) and the Market Promotion Program (MPP), have helped boost U.S. agriculture exports. The MAP began in 1990 and was designed to finance promotional activities, market research, technical assistance and trade servicing for U.S. agricultural products. It also formed a partnership among small businesses, cooperatives, trade associations, and the FAS to use the experience of specialists deployed around the world and share the costs of eligible overseas marketing and promotional activities. Eligible activities include consumer promotion, in-store demonstrations, trade shows, and seminars.

With funds from the Commodity Credit Corporation (CCC), the MAP works by partially reimbursing program participants who conduct these foreign market development projects for eligible products in specified countries. Expenditures were capped at $90 million per year until the year 2002, and reforms were implemented to restrict participation to small business, farmer-owned cooperatives and agricultural groups.

Some of the commodities covered by the MAP include apples, asparagus, canned peaches and fruit cocktail, catfish, cherries, citrus, cotton, dairy products, dry beans, eggs, feed grains, frozen potatoes, grapes, honey, hops, kiwi fruit, meat, peanuts, pears, pet food, pistachios, poultry meat, prunes, raisins, rice, salmon, soybeans, strawberries, sunflower seeds, surimi, tallow, tomato products, walnuts, and wheat.

D. Foreign Market Development Program (FMD)

Also known as the Cooperator Program, the goal of this program is to develop, maintain, and expand long-term export markets for the U.S. agricultural products by using the funds from the USDA Commodity Credit Corporation. The program facilitates partnerships between the USDA and nonprofit cooperators who pool their financial and technical resources to build overseas market development.

The Cooperator Program benefits U.S. farmers, processors, and exporters by assisting their organization in developing new foreign markets and increasing their market shares in existing markets[75]. USDA contributions to this program have averaged $30 million annually,

[74] **USDA**, FAS Press Release, Country/Allocation Status reports for the DEIP, April 27, 2001, http://www.fas.usda.gov/excredits/deip.asp

[75] **USDA**, FAS, Foreign Market Development Program, Washington DC, March 2000.

and this year's donation was leveled at $33.5 million, allocated among 25 U.S. trade organizations[76].

E. Emerging Market Program (EMP)

The EMP, originally authorized by the Food, Agriculture and Trade Act of 1990 and amended by the FAIR Act of 1996, promotes U.S. agricultural exports to emerging markets by providing technical assistance and agricultural expertise. The FAIR Act describes an emerging market as any country that "is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country", and "has the potential to provide a viable and significant market for United States commodities or products of the U.S. agricultural commodities"[77].

It seeks low-income markets with dynamic economies and high potential for U.S. export growth. The legislation authorizes $10 million annually for seven years, using funds from the CCC to support the program. Overall, the main goal is to develop, maintain, and expand markets for U.S. agricultural exports in emerging markets.

The activities in the program include; agricultural sector and joint-venture assessments, market information systems, commodity exchange development, resident policy advisors, training in importing, agriculture banking and credit, business planning, farm and agribusiness management, and sanitary and phytosanitary training.

2. The Export Credit Guarantee Programs

The United States Department of Agriculture operates four credit guarantee programs. The Export Credit guarantee program (GSM-102) is the largest U.S. export promotional program of the Commodity Credit Corporation. The other three are the Intermediate Credit Guarantee Program (GSM-103), the Supplier Credit Program and finally the Facility Guarantee program. It is important to mention that the USDA views its credit guarantee programs as commercial programs—not export subsidies. However, for the purpose of the report we will consider it as export subsidies.

The GSM-102 and GSM-103 are designed to support and encourage U.S. agricultural exports in eligible countries. In addition to facilitating U.S. exports, these programs also help developing countries and other countries with credit problems to finance purchases of needed food and other agricultural products. These two programs guarantee that U.S. banks will finance such transactions for exporters shipping U.S. product on credit to foreign importers in eligible countries[78]. The CCC usually insures up to 98% of the principal plus a portion of the interest.

[76] **USDA**, FAS, Agricultural Export Assistance Update, March 16, 2001, http://www.fas.usda.gov/excredits/quarterly/2001/mar-sum.html
[77] **USDA**, FAS, Emerging Market Program, February 1999, http://www.fas.usda.gov/info/factsheets/emofact.html
[78] **USDA**, FAS, International Negotiations on Export Credit Programs, November 1999, http://www.fas.gov/info/factsheets/ec-backgrounder.html

A. GSM-102 Export Credit Guarantee Program

The GSM-102 export credit guarantee program is by far the largest of the four programs. It guarantees repayments of short-term credit (90 days to 3 years) and allows foreign buyers to purchase U.S. agricultural products from private U.S. exporters. As of April 6, 2001, GSM-102 allocations of about $4 billion have been awarded to 21 countries and 11 regions including the Caribbean Region, Central America, South America, Mexico, Peru and the Dominican Republic.

Table 8:
GSM-102 Allocations and Applications for Coverage
(Fiscal year 2001, April 6 2001, Millions of Dollars)

Countries	Announced Allocations	Exporter Applications Received	Balance
Caribbean Region	95.0	25.6	69.40
Central America	110.0	69.57	40.43
Dominican Republic	25.0	0.0	25.0
Mexico	500.0	255.6	244.4
Peru	80.0	2.8	77.20
South America Region	370.0	134.1	235.9
TOTAL	**1,180.00**	**487.67**	**692.33**

Source: United States Department of Agriculture. April 6, 2001.

B. GSM-103 Intermediate Export Credit Guarantee Program

The GSM-103 Intermediate Export Credit Guarantee Program can cover financing periods of more than 3 to 10 years. This program is designed to help developing countries make the transition from financing to cash purchases. As of April 6, 2001, $193 million of intermediate credit guarantees have been made available for sale to Latin American countries.[79]

[79] USDA, FAS, Program Activity, March 2001, http://www.fas.usda.gov/excredits/quarterly/2001/mar-sum.html

Table 9:
GSM-103 Allocations and Application for Coverage
(Fiscal year 2001, April 6, 2001 Millions of Dollars)

Countries	Announced Allocations	Exporter Applications Received	Balance
Central America	10.0	0.0	10.0
México	35.0	2.2	32.8
South America	5.00	0.00	5.00
TOTAL	**50.00**	**2.2**	**47.8**

Source: United States Department of Agriculture. April 6, 2001

A minimum annual program level of $5.7 billion is available for the Export Credit Guarantee Program and the Intermediate Export Credit Guarantee Program. The FAIR Act mandates a minimum annual program level of $5.5 billion for GSM-102 and GSM-103, but it allows flexibility in how much is made available for each program. Provisions of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 mandate that a minimum of $1.0 billion be made available for direct credits or export credit guarantees to emerging markets during fiscal years 1996-2002. Under this mandate, $200 million is made available annually, increasing the minimum annual program level for GSM-102 and GSM-103 from $5.5 billion to $5.7 billion[80].

Some eligible commodities within these programs are, barley, malt, cotton, dairy products, feed grains, fresh fruits, oilseeds, vegetable oil, vegetable oil soapstocks, meat (chilled or frozen), planting seeds, potatoes, peanuts, poultry, rice, livestock, wheat, wood products, almonds, and corn products. However, the USDA will consider any agricultural commodity of 100 percent U.S. origin, or if the market for U.S. exports will be expanded or maintained as a result. Furthermore, the GSM-103 program is focused on a more limited number of products, such as wheat and breeder livestock.

C. Supplier Credit Guarantee Program (SCGP)

The SCGP became effective in late FY 1996. This program is intended to encourage U.S. exporters to expand, maintain and develop markets for U.S. agricultural commodities and products in areas where commercial financing may not be available without a CCC payment guarantee.

This program also helps U.S. exporters who wish to provide short-term credit (180 days or less) directly to their foreign buyer. The SCGP is similar to the export credit guarantee program GSM-102, but the CCC guarantees a substantially smaller portion of the value of exports than with the GSM-102 (currently 65%)[81]. In June 2000, the U.S. Department of Agriculture amended the CCC's supplier credit guarantee program (SCGP) for the Central

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[80] **Ibid.**
[81] **USDA,** CCC Supplier Credit Guarantee, October 1999, http://www.fas.usda.gov/info/factsheets/scgp.html

America region. This amendment increases the program allocation from $10 million to $15 million. The countries included are Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

Table 10:
SCGP Allocation and Applications for Coverage Under Allocations
(Fiscal Year 2001, April 6, Millions of Dollars)

Countries	Announced Allocations	Exporter applications Received	Balance
Central America	15.0	15.0	0.0
Caribbean	10.0	.80	9.20
México	100.0	57.63	42.37
South America	20.0	.24	19.76
TOTAL	**145.00**	**73.67**	**71.33**

Source: United States Department of Agriculture. April 6, 2001

D. Facility Guarantee Program (FGP)

The FGP was implemented in December 1997 as a division of the CCC and is intended to provide payment guarantees to assist in the financing of manufactured goods and services exported from the U.S. It is administrated by the Foreign Agricultural Service (FAS) of the USDA and is a new subpart of the GSM-102 as well as of the GSM-103. This program was designed to increase sales of U.S. agricultural commodities and products to emerging markets[82].

The U.S. allocated $195.5 million to emerging markets worldwide for the FY 2001. However, no applications have been received in FY 2001.

3. Farm Service Agency Loan

The FSA supports farmers through commodity programs, farmer operating and emergency loans, conservation, domestic and overseas food assistance, and disaster programs that improve the economic stability of agriculture and the environment. Furthermore, the Department of Agriculture's Farm Service Agency provides direct and guaranteed loans to farmers who are unable to obtain loans from the Farm Credit System or other commercial lenders. All FSA loans provide some subsidy value or credit enhancement to the borrower.

The interest rates on loans made directly by the FSA are lower than the rates on loans from commercial lenders. These low-interest rate programs were originally authorized to stem acute cash flow or profitability problems, but have now become permanent features of Federal Farm Credit Programs. However, because of lower interest rates and reduced lending activity in

[82] **USDA**, FAS, Facility Guarantee Program, August 1997, http://www.fas.usda.gov/info/factsheets/fgp_fact.html

the late 1990's, FSA has become a less important source of credit for many direct borrowers. Nevertheless, special low interest rates for direct lending programs have been used extensively.

FSA is required by law to lend at least 25% of its direct loans each year at the limited-resource rate. Limited-resource rates are set at half the rate on 5-year U.S. Treasury notes, but not below 5%. Other FSA loan rates include the " Emergency Disaster Rate", which is fixed at 3.75% for the life of the loan. The "Beginning Farmer Down Payment Rate" is available for qualified farmers for 4%, 10-year, fixed-rate loans to finance the down payment on farm real estate purchases. Others may be able to obtain 4% loans under joint financing arrangements with commercial lenders.

For refinancing assistance, the FSA reduces the rate on guaranteed operating loans by four percentage points from the loan rate negotiated between the borrower and the lender. There is no minimum rate and eligibility is reviewed annually.