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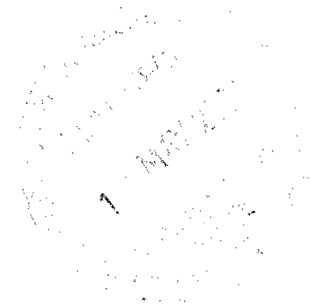

Access of Latin American and Caribbean Exports to the U.S. Market 2002-2003

UNITED NATIONS

Washington, D.C. December 2003

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I. Introduction

This 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 (USTR) yearly publication National Trade Estimate Report on Foreign Trade Barriers. Based on this structure, 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 2002, 76.9% of all U.S. imports from the LAC region entered duty-free[1], down slightly from 78.6% in 2001. The trade-weighted tariff for all U.S. imports stayed about the same, from 1.64% to 1.65% in 2002. The duties collected on U.S. imports from Latin America and the Caribbean to the U.S. increased slightly, from $1.15 billion in 2001, to $1.31 billion in 2002 (Table 1).

While the Ad Valorem Equivalent (AVE)[2] total for U.S. imports from the LAC region in 2002 was 0.65%, U.S. imports from the world paid an average duty rate of 1.65%. Within the region, countries from the Central American Common Market (CACM) paid an AVE total of 3.62%, the highest of any regional trading group in the Western Hemisphere. Exports from MERCOSUR paid 1.88%, CARICOM 0.40 %, and the Andean Community 0.86%. Overall, the North American Free Trade Agreement (NAFTA), which includes Canada and Mexico, had the lowest duty rate of 0.09%.

In 2002, 75.6% of all U.S. imports from the CACM entered the market duty-free, but the AVE on dutiable goods[3] was 14.84%, the highest among all Latin American countries. With Ad Valorem duty rates above 15%, El Salvador, Guatemala, Honduras and Nicaragua are the countries facing the highest tariff rates, mostly due to textile and apparel exports.

Over 60% of all imports from MERCOSUR entered duty-free into the U.S. in 2002, while nearly 50% of all imports from the countries of the Andean Community entered duty-free and 63.7% of imports from the Caribbean were duty-free. Duty-free imports from Venezuela, which accounted for 46.4% of the total in 2002, increased in part due to Venezuela's falling petroleum exports.

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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.

Table 1

Ad Valorem Duty Rates for U.S. Imports 2002						
		(Thousands of dollars, Customs Value)				
	Total Value	**Dutiable Value**	**Duties Collected**	**% Duty Free**	**A.V.E. Dutiable %**	**A.V.E. Total %**
World	1,154,810,867	389,115,052	19,083,919	66.3%	4.90%	1.65%
Western Hemisphere	412,667,028	53,062,291	1,404,316	87.1%	2.65%	0.34%
NAFTA	344,639,079	26,541,818	318,804	92.3%	1.20%	0.09%
Canada	210,517,904	6,343,131	87,216	97.0%	1.37%	0.04%
Mexico	134,121,175	20,198,687	231,588	84.9%	1.15%	0.17%
LAC (including Mexico	202,149,124	46,719,160	1,317,100	76.9%	2.82%	0.65%
Andean	23,963,795	12,290,861	206,597	48.7%	1.68%	0.86%
Bolivia	160,220	28,030	3,530	82.5%	12.59%	2.20%
Colombia	5,382,368	2,546,883	68,617	52.7%	2.69%	1.27%
Ecuador	2,116,973	1,187,959	22,802	43.9%	1.92%	1.08%
Peru	1,952,921	835,601	74,549	57.2%	8.92%	3.82%
Venezuela	14,352,312	7,692,387	37,099	46.4%	0.48%	0.26%
MERCOSUR	19,053,167	7,512,234	358,680	60.6%	4.77%	1.88%
Argentina	3,211,071	2,004,746	53,785	37.6%	2.68%	1.67%
Brazil	15,609,228	5,458,937	300,176	65.0%	5.50%	1.92%
Paraguay	42,356	8,593	859	79.7%	10.00%	2.03%
Uruguay	190,512	39,958	3,860	79.0%	9.66%	2.03%
CACM	11,845,966	2,891,859	429,180	75.6%	14.84%	3.62%
Costa Rica	3,146,218	251,406	16,154	92.0%	6.43%	0.51%
El Salvador	1,975,782	518,677	80,263	73.7%	15.47%	4.06%
Guatemala	2,784,536	1,254,344	197,547	55.0%	15.75%	7.09%
Honduras	3,261,983	558,550	84,047	82.9%	15.05%	2.58%
Nicaragua	677,447	308,882	51,169	54.4%	16.57%	7.55%
Chile	3,556,991	1,149,066	23,515	67.7%	2.05%	0.66%
CARICOM	3,820,722	1,386,844	15,158	63.7%	1.09%	0.40%
Antigua Barbuda	3,527	170	3	95.2%	1.76%	0.09%
Bahamas	459,436	228,608	1,593	50.2%	0.70%	0.35%
Barbados	34,380	4,741	115	86.2%	2.43%	0.33%
Belize	75,448	2,651	354	96.5%	13.35%	0.47%
Dominica Is	5,335	1,771	13	66.8%	0.73%	0.24%
Grenada Is	7,730	766	2	90.1%	0.26%	0.03%
Guyana	104,435	2,278	150	97.8%	6.58%	0.14%
Haiti	254,581	44,023	6,948	82.7%	15.78%	2.73%
Jamaica	372,940	51,755	2,070	86.1%	4.00%	0.56%
St Kitts-Nevis	48,629	2,319	92	95.2%	3.97%	0.19%
St Lucia Is	19,148	4,877	813	74.5%	16.67%	4.25%
St Vinc & Gren	16,475	374	2	97.7%	0.53%	0.01%
Suriname	132,702	362	8	99.7%	2.21%	0.01%
Trin & Tobago	2,418,657	1,042,510	3,002	56.9%	0.29%	0.12%
Other Countries	4,462,178	410,409	48,446	90.6%	11.55%	1.09%
Dominican Republic	4,166,739	381,617	46,781	90.8%	12.26%	1.12%
Panama	295,439	37,792	1,665	87.2%	4.41%	0.56%
Other Western Hemisphere(1)	1,192,430	869,840	3,929	27.1%	0.45%	0.33%

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

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

2. Trade Remedy Legislation

A. Antidumping (AD) and Countervailing Duties (CVD) by outcome

In 2002-2003, the U.S. Department of Commerce (DOC) and the International Trade Commission (ITC) announced six positive AD/CVD determinations and one negative CVD determination. In addition, nine Administrative Reviews were conducted during the year.

Box 1
ANTIDUMPING LAW

Under the anti-dumping (AD) law, duties are imposed on U.S. imported products when the U.S. Department of Commerce (DOC) determines merchandise is being sold at a price that is below what the producers sell it for 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.

Domestic producers that believe imports are sold at less than fair value or are subsidized by a foreign government can file an anti-dumping (AD) or countervailing duty (CVD) petition with both the DOC and the International Trade Commission (ITC) file. 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. Then 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 U.S. For CVD cases, 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 to the U.S. Customs office during the temporary duty period are returned.

(a) Positive AD and CVD determination

i. Certain cold rolled carbon steel flat products from Argentina (A-357-816)

On Oct 3, 2002 the DOC announced its final determination in AD investigations and issued the final dumping margins:

Siderar S.A.I.C.	27.18
All Others	27.18

ii. Certain cold rolled carbon steel flat products from Brazil (A-351-834) (C-351-835)

On September 24, 2002 the DOC announced its final antidumping margins:

USIMINAS/COSIPA	33.88
(effective net margin will be 30.53% after adjusting the CVD rates)	
All Others	33.88

On March 4, 2002 the DOC published the countervailing duties as follows:

USIMINAS/COSIPA	13.99
CSN	7.90
All Others	13.07

iii. Prestressed Concrete Steel Wire Strand from Brazil (A-351-837)

On July 17, 2003, the DOC preliminarily determined the dumping margins as follows:

Belgo Bekaert Arames S.A	118.75
All Others	118.75

iv. Individually quick frozen raspberries from Chile (A-337-806)

On July 9, 2002 the DOC amended its final determination of the weighted average dumping margins as follows:

Comercial Fructicola	(excluded)
Exportadora Frucol	(excluded)
Fruticola Olmue	6.33
All Others	6.33

v. Prestressed Concrete Steel Wire Strand from Mexico (A-201-831)

On July 17, 2003, the DOC preliminarily determined the weighted-average dumping margins as follows:

Aceros Camesa S.A. de C.V.	57.64
Cablesa S.A. de C.V.	77.20
All Others	57.64

vi. Certain cold rolled steel flat products from Venezuela (A-307-822):

The DOC announced its final determinations of antidumping margins on October 3, 2002 as follows:

SIDOR	58.95
All Others	53.90

(b) Administrative review

Upon requests of interested parties, the DOC conducted fourteen Administrative Reviews of dumping margins and subsidy rates. The DOC and the ITC are authorized under Section 751 of the Tariff Act to review certain outstanding determination that shows "changed circumstances" that warrant review or revocation.

i. Oil country tubular goods, other than drill pipe from Argentina (A-357-810):

On July 2, 2003, the DOC made the following final weighted average dumping margin:

Acindar	60.73

ii. Honey from Argentina (A-357-812)

On October 9th, 2003, the DOC rescinded the review in its entirety for Nutrin S.A., Apicola S.A. and Mielar S.A.

iii. Frozen concentrated orange juice (FCOJ) from Brazil (A-351-605):

The DOC decided on August 15, 2002 to rescind the review of the antidumping duty order on frozen concentrated orange juice from Brazil from the four Brazilian exporters (Citrovita, Branco Peres, CTM, Surrico)for the period of May 1, 2001 through April 30, 2002.

Furthermore, on August 18, 2003, the DOC rescinded the review of the antidumping duty order on frozen concentrated orange juice from Brazil for the period of May 1, 2002, through April 30, 2003, for Branco Peres, CTM, Citrovita, and Sucorrico because they had no shipments of FCOJ during the POR.

iv. Silicon metal from Brazil (A-351-806):

On August 8, 2002 the DOC published the preliminary results of administrative review of the antidumping duties order on silicon metal from Brazil. The review covered three manufacturers/exporters, Rima, Minasligas, CBCC. The period of review (POR) is July 1, 2000 through June 30, 2001. The DOC determined the following percentage weighted average margins for the POR:

Rima	0.00
Minasligas	4.30
CBCC	0.00

Furthermore, for the period of review (POR) July 1, 2001, through June 30, 2002, the DOC on October 6, 2003, revoked the order, in part, with respect to CBCC, because it found that CBCC had met all of the requirements for revocation and they rescinded the review with respect to Rima.

v. Fresh Atlantic salmon from Chile (A-337-803):

On July 1, 2003, the DOC preliminarily revoked this order for all entries that were entered, or withdrawn from warehouse, on or after July 1, 2001.

vi. Gray Portland cement and clinker from Mexico (A-201-802):

On January 14, 2003, the DOC published the final results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 2000, through July 31, 2001. The final antidumping duty margins are 80.75 and a per-unit cash-deposit amount of $52.42 per metric ton.

vii. Cut to length carbon steel plate from Mexico (A-201-809)

On March 19, 2003 the DOC announced its final results for the period August 1, 2000 through July 31, 2001. The DOC determined that AHMSA made no sales of steel plate below the normal value.

Moreover, for the period August 1, 2001, to July 31, 2002, the review has been rescinded because Altos Hornos de Mexico, S.A. de C.V. (AHMSA) did not have any shipments during the period of review (POR).

viii. Stainless Steel Sheet and Strip in Coils from Mexico (A-201-822)

On February 11, 2003 the DOC determined that the following percentage margin exist for the period July 1. 2000 to June 30, 2001:

Mexinox	6.15

ix. Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico (A-201-827)

On July 8th, 2003, the DOC determined that the antidumping duty administrative review of Tubos de Acero de Mexico, S.A. (TAMSA) should be rescinded.

(c) Negative AD and CVD Determinations

i. Certain cold rolled carbon steel flat products from Argentina (C-357-817):

On October 3, 2002 the DOC made a final determination that countervailable subsidies are not being provided to producers and exporters of certain cold rolled steel flat products from Argentina for the period July 1, 2000 through June 30, 2001.

(d) Sunset Review

The Uruguay Round Agreements Act amended the Tariff Act of 1930, requiring the DOC to conduct reviews of existing antidumping and countervailing duty orders no later than five years after the order was issued. The DOC and the ITC must determine whether revoking the order or terminating a suspended investigation is likely to lead to a recurrence of dumping or subsidies (DOC) and of material injuries (ITC).

i. Fresh tomatoes from Mexico

On December 4, 2002 the DOC and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed an agreement suspending the antidumping investigation on fresh tomatoes from Mexico. The basis for the agreement is a commitment for each signatory producer/exporter to sell the subject merchandise at or above the reference price, which will eliminate completely the injurious effects of exports of fresh tomatoes to the United States.

ii. Fresh Atlantic salmon from Chile

On July 25, 2003, the DOC determined to revoke the order on fresh Atlantic salmon from Chile, effective July 1, 2001, because domestic interested parties expressed no interest in the continuation of this order.

(e) AD and CVD orders in effect as of October, 2003

As shown in Table 2, there are 32 antidumping orders in effect as of October 23, 2003 against Latin America and Caribbean countries, Argentina (6), Brazil (14), Chile (2), Mexico (8), Trinidad and Tobago (1), and Venezuela (1).

Of the 33 antidumping duty orders, 5 correspond to AG (Agricultural, Forest and processed food products), 10 correspond to ISM (Iron and Steel Mill products), 3

correspond to ISO (Iron and Steel Other products), 9 correspond to ISP (Iron and Steel Pipe products), and 5 correspond to MM (Minerals and Metals).

There are 7 CVD orders in effect as of October 23, 2003 against Latin America and Caribbean countries, Argentina (2), Brazil (4), and Mexico (1).

Of the 7 CVD orders, 1 corresponds to AG products, 4 correspond to ISM products, 1 corresponds to ISO products, and 1 corresponds to MM products.

Table 2
Antidumping duty orders for Latin America and Caribbean
(in effect as of October 23, 2003)

COUNTRIES	ITEM	DATE BEGUN	ORDER DATE
ARGENTINA			
A-357-405	Barbed wire & barbless wire strand	12/12/1984	11/13/1985
A-357-802	Welded carbon steel pipe and tube	06/27/1988	05/26/1989
A-357-809	Seamless line and pressure pipe	07/20/1994	08/03/1995
A-357-810	Oil country tubular goods	07/26/1994	08/11/1995
A-357-812	Honey	11/02/2000	12/10/2001
A-357-814	Hot rolled carbon steel flat products	12/12/2000	09/19/2001
BRAZIL			
A-351-503	Iron construction castings	06/07/1985	05/09/1986
A-351-602	Carbon steel butt-weld pipe fittings	03/24/1986	12/17/1986
A-351-603	Brass sheet & strip	04/07/1986	01/12/1987
A-351-605	Frozen concentrated orange juice	06/04/1986	05/05/1987
A-351-804	Industrial nitrocellulose	10/17/1989	07/10/1990
A-351-806	Silicon metal	09/20/1990	07/31/1991
A-351-809	Circular welded non-alloy steel pipe	10/21/1991	11/02/1992
A-351-817	Cut lo length carbon steel plate	07/29/1992	08/19/1993
A-351-819	Stainless steel wire rod	01/26/1993	01/28/1994
A-351-824	Silicomanganese	12/08/1993	12/22/1984
A-351-825	Stainless steel bar	01/27/1994	02/21/1995
A-351-826	Line and pressure pipe	07/20/1994	08/03/1995
A-351-828	Hot rolled carbon steel flat products	10/22/1998	07/06/1999
A-351-832	Carbon steel wire rod	10/02/2001	10/29/2002
CHILE			
A-337-804	Preserved mushrooms	02/02/1998	12/02/1998
A-337-806	Individually quick frozen raspberries	06/28/2001	07/09/2002
MEXICO			
A-201-802	Gray portland cement & clinker	10/23/1989	08/30/1990
A-201-805	Circular welded non-alloy steel pipe	10/21/1991	11/02/1992
A-201-809	Cut to length carbon steel plate	07/29/1992	08/19/1993
A-201-817	Oil country tubular goods	07/26/1994	08/11/1995
A-201-822	Stainless steel sheet & strip in coils	07/13/1998	07/27/1999
A-201-827	Welded large diameter seamless pipe	07/28/1999	08/11/2000
A-201-828	Welded large diameter line pipes	02/23/2001	02/27/2002
A-201-830	Carbon steel wire rod	10/02/2001	10/29/2002
TRINIDAD & TOBAGO			
A-274-804	Carbon steel wire rod	10/02/2001	10/29/2002
VENEZUELA			
A-307-820	Silicomanganese	05/03/2001	05/23/2002

Table 3
Countervailing duty orders for Latin America and Caribbean
(in effect as of October 23, 2003)

COUNTRY	ITEM	DATE BEGUN	ORDER DATE
ARGENTINA			
C-357-815	Hot rolled carbon steel flat products	12/12/2000	09/11/2001
C-357-813	Honey	11/02/2000	12/10/2001
BRAZIL			
C-351-504	Heavy iron construction castings	06/10/1985	05/05/1986
C-351-604	Brass sheet & strip	04/07/1986	01/08/1987
C-351-818	Carbon steel flat products	07/24/1992	08/17/1993
C-351-833	Carbon steel wire rod	10/01/2001	10/22/2002
MEXICO			
C-201-810	Carbon steel flat products	07/24/1992	08/17/1993

Source: International Trade Administration www.usitc.gov/7ops/ad_cvd_orders.htm

B. Steel Safeguards

On December 4, 2003, President Bush lifted the tariffs on imported steel, nearly 21 months after imposing safeguard measures which had increased such duties. The decision averted a potential trade war, as the European Union had indicated it planned to retaliate with tariffs of its own. The administration cited the safeguard had achieved its purpose by giving the U.S. steel industry time to consolidate and restructure. Domestic steel producers claimed the tariffs were still needed to complete industry consolidation.

However, the decision appeased domestic steel-consuming industries, such as auto and auto parts manufacturers, which had been negatively impacted by the safeguard, as well as industries that would have been hurt by the retaliatory tariffs. The administration stopped short of providing new measures that would aid or protect the domestic steel industry, but noted it would continue to monitor steel imports closely and would be prepared to respond quickly if imports were to suddenly surge. The administration also pledged to vigorously enforce U.S. trade laws and to continue pursuing global negotiations aimed at reducing subsidies and overcapacity in steel production.

In March 2002, President Bush had announced a temporary safeguard on imports of steel products as a protective measure for the U.S. steel industry.[4] These measures were imposed for a period of three years and one day. In March 2003, the steel safeguard remedy was automatically adjusted to the levels laid out in the President's proclamation.[5] This adjustment resulted in a decrease in the tariff levels and an increase in the tariff-rate quotas established by the initial restrictions. The maximum tariff for some steel products was decreased from 30% to 24%.[6] Also in March 2003, the United States announced a set of 295 products to be excluded from the steel safeguard remedy because it was determined that excluding them would not undermine the effectiveness of the safeguard, and that they were not available in sufficient quantities from U.S. producers. These products were added to the 727 products that were initially excluded from the safeguard. Exclusions were also granted to countries which had free trade agreements with the U.S. (Canada, Israel, Jordan, and Mexico), as well as nations that did not export a significant amount of steel to the U.S. such as Argentina, Chile, Colombia, Peru, and the nations of Central America and the Caribbean.

On March 26, 2003, the Panel formed by the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) released an interim decision declaring the steel tariffs illegal. The initial complaint in the WTO was brought against the U.S. by Brazil, China, the European Communities, Japan, Korea, New Zealand, Norway and Switzerland. On July 11, 2003, the panel officially ruled against the import duties, issuing eight reports which concluded that the safeguard measures imposed by the United

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[4] Fact Sheet: The Presidential Determination on Steel. White House office of Communications, December 4, 2003.

[5] Press Release: DOC and USTR Announce Products to be Excluded from Steel Safeguard Remedy and the Automatic Adjustment of the Remedy. DOC and USTR, March 21, 2003.

[6] Fact Sheet: Exclusion of Products from Safeguard on Steel Products and Automatic Adjustment of the Remedy, DOC and USTR, March 21, 2003.

States were inconsistent with the Agreement on Safeguards and the GATT 1994.[7] The panel recommended that the DSB request the United States to bring all the safeguard measures into conformity with its obligations under the Agreement on Safeguards and the GATT 1994. The U.S. appealed this decision, and on November 10, 2003, the Appellate Body upheld most of the panel's conclusions[8], again recommending that the DSB request the United States to bring those safeguard measures which were found to be inconsistent with the Agreement on Safeguards and the GATT 1994 into conformity with its obligations under those agreements.

In September 2003, the International Trade Commission released a midterm report of the trade remedy, assessing the impact of the safeguard on U.S. steel producers and steel consuming industries.[9] Although the tariffs generated $650 million in revenue, they cost steel consuming industries about $680 million, creating an overall loss in GDP of $30.4 million. In another estimate, the ITC review claims the tariffs brought about a general reduction in the economic welfare of the American public of $41.6 million (0.04% of GDP). The ITC noted, however, that it was difficult to isolate the impact of the tariffs from broader economic developments, indicating that the poor overall condition of the U.S. economy reduced demand for steel. Moreover, while steel imports from countries covered by the safeguard decreased, imports of steel from countries that were granted exclusions increased. The most significant impacts were felt in the auto, auto parts, and steel fabrication industries. The report found that employment in steel consuming industries fell or remained flat during 2000-2003, but that there was a more significant decrease in employment the year before the safeguard was imposed than the first year it was in place. The ITC found that since the implementation of the safeguard, there were major mergers, significant restructuring, and consolidation efforts in the steel industry.

In a related development, the U.S. is considering modifying its laws on unfair trade that would penalize steel importers even if the safeguard were removed.[10] Under current law, antidumping duties are determined by calculating the difference between the price received in the importer's home market and the lower price received in the U.S. market. The new proposal would change the calculation to include the effect of the safeguard tariffs on steel imports over the last year and a half. Specifically, the tariff (as high as 30%) would be deducted from the U.S. selling price, meaning the difference between prices received at home and in the U.S. would be greater, implying increased antidumping duties. Foreign companies that imported steel into the U.S. during 2002 and 2003 would face retroactive penalties even if Bush removed the safeguard. Domestic steel producers support this change, as it would minimize the impact of the elimination of the safeguard. However, such action could lead to another dispute at the WTO.

C. Special 301

[7] Document WTO No. 03-3480, Final Reports of the Panel, July 11, 2003.
[8] Document WTO No. 03-5966, Report of the Apellate Body, November 10, 2003.
[9] USITC: *Steel: Monitoring Developments In The Domestic Industry* (Investigation No. TA-204-9) and *Steel-Consuming Industries: Competitive Conditions With Respect To Steel Safeguard Measures* (Investigation No. 332-452), in: Publication 3632, September 2003.
[10] Financial Times, November 12, 2003.

Under Special 301, the USTR must identify countries that deny adequate and effective protection for intellectual property rights (IPR). While a country can be subject to a Section 301 investigation and retaliatory measures taken without previous action by the USTR, three levels of consideration are commonly applied prior to the imposition of new tariffs or duties. Countries that raise concerns in regards to lax laws or limited enforcement in an area can initially be placed on the "Watch List". Lack of action by the country or a worsening of the situation as noted by the USTR, can lead to placement on the "Priority Watch List". Barring further action while at this level can result in categorization as a "Priority Foreign Country". Reserved for countries that are thought to have trade policies that severely impact the importation of U.S. products, and thus requiring a Section 301 investigation.

In this years's review, USTR devotes special attention to the growing issue of counterfeiting and piracy, with particular emphasis on the ongoing campaign to reduce production of unauthorized copies of optical media products such as CD's, VCD's, DVD's, and CD-ROM's. In addition, USTR continues to focus on other important issues including internet piracy, proper implementation of the TRIPS Agreement by developing country WTO members.

(a) Priority Foreign country[11]

The USTR identified Paraguay as a Priority Foreign Country in January 1998 as part of Special 301 Out of Cycle Review. The subsequent 301 investigation terminated with the signing of a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property in 1998. However the USTR remains concerned by several issues, including: the involvement of organized crime in piracy and counterfeiting operations; the relatively few resources that are provided for criminal investigations, raids and investigations, and the attendant lack of those activities; and the lack of willingness on the part of the judiciary to impose deterrent sentences. The MOU expired in January of 2003, but USTR and Paraguay have agreed to extend the provisions of the understanding until it can be renegotiated.

(b) Priority Watch List[12]

From last year's Special 301 report only Bahamas was added to the Priority Watch List, while Colombia, Dominican Republic and Uruguay were removed.

2001	2002	2003
Argentina	Argentina	Argentina
Costa Rica	Brazil	Bahamas
Dominican Republic	Colombia	Brazil
Uruguay	Dominican Republic	
	Uruguay	

[11] Source: USTR, http://www.ustr.gov/reports/2003/special301-306.htm#paraguay
[12] Source: USTR, http://www.ustr.gov/reports/2003/special301-pwl.htm

(c) Watch List[13]

This year's Special 301 report included twelve Latin America and Caribbean countries with Colombia, Dominican Republic, Ecuador, Mexico and Uruguay as new additions this year.

2001	2002	2003
Bolivia	Bahamas	Bolivia
Brazil	Bolivia	Chile
Chile	Chile	Colombia
Colombia	Costa Rica	Costa Rica
Guatemala	Guatemala	Dominican Republic
Jamaica	Jamaica	Ecuador
Peru	Peru	Guatemala
Venezuela	Venezuela	Jamaica
		Mexico
		Peru
		Uruguay
		Venezuela

Even though the U.S. and Chile signed a Free Trade Agreement[14] (April 3, 2003), the USTR claims Chile's IPR laws are not fully TRIPS-consistent. Shortcomings with respect to enforcement remain and the U.S is concerned with Chile's large backlog of pending patent applications. Furthermore, this is the first time that Mexico has been placed on the Watch List since 1999. Despite some signs of progress, the United States remains concerned that several TRIPS and NAFTA issues, including lax enforcement against copyright piracy and counterfeiting, remain problems.

The copyright industry estimates losses of $731 million in 2002: the U.S. is also concerned about recent copyright amendments which were proposed and did not appear to meet international obligations, nor address implementation of the WIPO [15]Internet Treaties.

III. Standards and Regulations

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

[13] Source: United States Trade Representative www.ustr.gov/reports/2003/special301-wl.htm

[14] Source: United States Trade Representative www.ustr.gov/new/fta/Chile/text/index.htm see chapter seventeen for Intellectual Property Right

[15] World Intellectual Property Organization

Phytosanitary barriers affect a large portion of the fruits and vegetables entering the U.S. market. All these products also need specific documentation certified by the (APHIS) representative in their respective country and are usually submitted to various tests and treatments before they are even shipped off..

A. Requirements for Imports of Fruit and Vegetables

There are different types of regulations and each one entails different costs. Some of the treatments used in Latin America and the Caribbean for post-harvest insect control for fresh fruits (e.g., mangos, papaya, persimmon, citrus, bananas, carambola), fresh vegetables (e.g., peppers, eggplant, tomatoes, cucumber, and zucchini squash) are hot-water immersion, high temperature forced air, and/or vapor heat treatments. For example, in the case of mangos the only approved quarantine treatment is the hot water immersion treatment, which can be damaging and stressful for the fruit. Additionally, the cost to build a hot water immersion facility averages about $200,000. APHIS/PPQ must certify each facility and ensure that inspectors are on site.

For other fruits, such as pineapples from Brazil or pitayas from Colombia, require vapor heat and/or forced hot-air treatment systems. Even though these treatments are more sensitive to the fruits, they are just as expensive. For example, both vapor heat and hot-air treatment systems may initially require larger capital investments, ranging from $20,000 to $200,000 for large commercial facilities.[16]

Another form of treatment for fruits such as apples from Argentina, oranges from El Salvador and blueberries from Bolivia, require a cold treatment and are treated mostly when in transit to the United States. However, APHIS allows imported fruit to undergo cold treatment at an approved facility in either the country of origin or after arrival in the United States.

Currently, cold treatment for imported fruits in the United States is limited to Atlantic ports north of, and including, Baltimore, MD.; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports in Wilmington, N.C., Seattle, Washington., Hartsfield-Atlanta International Airport, Atlanta GA; and Dulles International Airport, Chantilly, VA., and the Port of Corpus Christi, Texas.

[16] U.S. Environment and Protection Agency

Table 4
Imported Fruit requirements for the elimination of pests

Country	Pest:	Fruit	Requirements and type of treatment
Mexico	Mexican fruit fly, Western Indian fruit fly, and black fruit fly	Mango	Standard weight and size of fruit Hot water immersion, either at the entry port or in Mexico.
Chile	Mediterranean fruit fly	Grape Fruit	Minimum maturity standards and applicable sampling. Cold Treatment or Irradiation.
Mexico	Mediterranean fruit fly	Avocados	All Avocados with seeds are prohibited from South America, Central America, or Mexico: only Hass avocados from Michoacan can be imported into 19 Northeastern States during the months of November through February.
Brazil	Mediterranean fruit fly, Oriental fruit fly and Melon fly	Pineapple	Vapor heat treatment.
Colombia	Mediterranean fruit fly and South American fruit fly	Yellow Pitaya	Vapor heat treatment.
Argentina	Mediterranean fruit fly and species of Anastrepha	Apple	Cold Treatment
Bolivia	External feeders	Blueberry	Methyl Bromide Fumigation or Irradiation
Ecuador	Mediterranean fruit fly and species of Anastrepha	Tangerine	Cold Treatment or Irradiation
El Salvador	Mexican fruit fly	Orange	Cold Treatment or Irradiation
Uruguay	Mediterranean fruit fly and species of Anastrepha	Plum	Cold Treatment or Irradiation

B. Marine Mammal Protection Act

Under the Marine Mammal Protection Act (MMPA) the U.S. bans tuna imports from countries that fail to protect dolphins when fishing in the Eastern Tropical Pacific Ocean, extending from Mexico and Venezuela to northern Chile and 700 miles out to sea. In 1997, it was amended to include yellow fin tuna imports from countries that submit evidence that they participate in the International Dolphin Conservation Program (IDCP), as well as evidence that dolphin mortality limits have not been exceeded by the exporting country. Exporting countries are also required to have taken steps to become a member of the Inter-American Tropical Tuna Commission.

Additionally, current U.S. law requires that tuna labeled as dolphn safe meet certain criteria[17]. There is no prohibition on importing tuna into the U.S. that does not meet the

[17] The criteria requires the dolphin-safe tuna to be caught without the chase and encirclement of dolphins in the entire trip and without killing or seriously injuring any dolphins in the set in which the tuna was caught.

dolphin safe labeling requirements, provided the exporting country nation meets certain requirements and has an affirmative finding issued by the U.S. Department of Commerce Marine Fisheries Services. However, U.S. tuna canners have instituted a voluntary dolphin-safe tuna campaign wher they purchase only dolphin-safe tuna for introduction to the U.S. market.

Producers meeting these requirements may label their products as dolphin safe tuna. The import ban currently applies to the following Latin American and Caribbean Countries: Belize, Bolivia, Colombia, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru and Venezuela.

C. Shrimp Embargo

Public Law 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 (USDOS) 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. All shipments of shrimp and shrimp products into the United States must be accompanied by a declaration attesting that they have been harvested either under conditions that do not adversely affect sea turtles or in waters subject to the jurisdiction of a nation currently certified pursuant to Section 609.

In 2003, the Department of State determined that Honduras, Venezuela and Costa Rica no longer meet the requirements set by Section 609 related to the protection of sea turtles in the course of commercial shrimp harvesting. As a result of this determination, imports of shrimp harvest in Honduras, Venezuela and Costa Rica with commercial fishing technology that may adversely affect endangered sea turtles will be prohibited. However, imports of shrimp harvest from Honduras, Venezuela and Costa Rica by other means, including by aquaculture and with artisanal methods, may continue.

As of April 30, 2003 the countries that remain certified are: Argentina, Bahamas, Belize, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Nicaragua, Panama, Peru, Suriname, Trinidad and Tobago and Uruguay. Imports of shrimp 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.

D. The Prescription Drug Marketing Act

The pharmaceutical industry in the U.S. has been a carefully regulated sector for many years. The U.S. Food and Drug Administration regulates most food and pharmaceuticals domestically, and overseeing the majority of imported food and drug products.

The Prescription Drug Marketing Act of 1987 made it illegal for anyone other than drug manufacturers to import pharmaceuticals into the United States. Drugs are restricted from importation unless they are covered under an Investigational New Drug

Exemption (IND) or by an approved New Drug Application (NDA). The FDA has standards and regulations that require drug companies to maintain a detailed chain of custody for all pharmaceuticals imported into the U.S. (Randall and Vogt 2002). Furthermore, all drugs imported into the U.S. by manufacturers, have to be FDA-approved and properly labeled. As a general procedure, an importer of a pharmaceutical good or their representative must file an entry notice and an entry bond with U.S. Customs pending a decision regarding the admissibility of the product (FDA, 2003). Once at the port of entry, the FDA may or may not examine the shipment for a laboratory evaluation.[18]

In order to have a drug approved by the FDA, pharmaceutical companies have to conduct pre-clinical tests to determine safety of chemical compounds, file an Investigational New Drug (IND) application to seek permission to perform clinical trial and submit clinical studies data in a New Drug Application (NDA).[19] The FDA subsequently samples the drug's ingredient quality, labeling and the production process to determine if they meet Good Manufacturing Practices (GMPs). Imported pharmaceuticals must be accompanied by information stating place of production, name and address of the importer, and evidence that the production took place in FDA-inspected facilities (Randall and Vogt 2002). In addition, imports must comply with standards and procedures of the Federal Trade Commission and Consumer Product Safety Commission, the U.S. Department of Agriculture, the U.S. Public Health Service Centers for Disease Control, depending on the type of drug and its ingredients. Drugs that do not meet U.S. standards, and/or are not FDA-approved, cannot be legally imported into the United States, even if they are for personal use.[20]

IV. U.S. EXPORT SUBSIDIES

The U.S. Department of Agriculture's Foreign Agricultural Service allocated about $2.8 billion under USDA's export credit guarantee programs for fiscal year 2004. These allocations cover sales of U.S. agricultural commodities to 20 countries and regions. USDA's credit guarantees have helped sell about $3.4 billion in U.S. agricultural products in 29 countries and regions in 2003.

In the Mexican market, for example, exporters have used USDA's export credit guarantees in 2003 to support nearly $750 million in sales of feed grains, oilseeds, cotton, wheat, beef, wood products and other U.S. food and farm products. Under these programs, the Commodity Credit Corporation guarantees repayment by foreign banks or importers for the commercial financing of U.S. agricultural exports.

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[18] If the sample collected from a shipment indicates the product is in compliance with FDA's regulations, it may be released to its destiny. Otherwise, the product will be refused admission, and the importer would be required to either re-export or destroy the article under Customs supervision.

[19] Source: Library of Congress Report, *Importing Prescription Drugs*

[20] FDA does not take enforcement actions against importers of unapproved drugs if: its intended use is for a serious condition for which treatment is not available in the US; there is no commercialization of the drug to US residents; the drug does not represent a risk to the consumer; the importer affirms in writing that the) product is for his/her personal use and is only importing a 3-month supply; the importer provides the name of a US licensed doctor responsible for his/her treatment (FDA, Office of Regulatory Affairs.

For FY 2003, which ended Sept. 30, USDA announced more than $6.2 billion in available allocations under its four export credit guarantee programs. Total allocations for FY 2004, are also expected to top $6 billion, including about 95 programs covering sales to more than 100 countries. Among the FY 2004 allocations are $850 million in available credit guarantees for sales to Mexico, $390 million for sales to Central America and $370 million for sales to the Caribbean.

The GSM-102 Export Credit Guarantee Program and GSM-103 Intermediate Export Credit Guarantee Program help ensure that credit is available to finance commercial exports of U.S. agricultural products to developing countries, while providing competitive credit terms in these countries. GSM-102 covers credit periods of 90 days to 3 years, while GSM-103 covers periods of more than 3 years.

The Supplier Credit Guarantee Program (SCGP) helps exporters offer competitive, open-account financing to foreign buyers on credit terms of up to 180 days. The Facility Guarantee Program (FGP) guarantees payments for credit sales of U.S. goods and services used to improve agricultural infrastructure, such as ports and warehouses, in importing countries, with terms of up to 8 years.

Table 5
Export Credits, Export Credit Guarantees, and Export Credit Insurance

PROGRAM	FTAA COUNTRIES	PRODUCTS	FY 2003[21] US$ million	FY 2004[22] US$ million
GSM 102	Caribbean	Corn, feed grains, oilseeds, rice, vegetable fats and oils, wheat	350	350
	Central America	Cotton, grain, oilseeds, rice, tallow, vegetable fats and oil, wheat	400	300
	Mexico	Cotton, feed grains, hides and skins, meat, oilseeds, rice, tallow, vegetable oils, wheat	500	300
	South America	Aquaculture feed, cotton, corn, grain, lyocell, oilseeds, rice, tallow, wheat, vegetable fats and oil	700	700
GSM 103	Central America	Animal genetics, livestock	10	10
	Mexico	Animal genetics, livestock, poultry	35	35
	South America	Animal genetics, feeder cattle, livestock, poultry	5	5
SCGP	Caribbean	Feed grain, meat, rice, soup, wine	10	10
	Mexico	Cotton, feed grains, meat, oilseeds, rice, wine, wood products	500	500
	Central America	Alcoholic beverages, cereal, condiments, cotton, diary, feed grains, meat, fruit, rice, soup, vegetable oils, wheat	50	50
	South America	Alcoholic beverages, cotton, fruit, meat, rice, wheat, wood	20	20
FGP	Caribbean	Manufactured goods and services	10	10
	Central America	Manufactured goods and services	30	30
	Mexico	Manufactured goods and services	50	50
	South America	Manufactured goods and services	10	10

Source: FAS/USDA

[21] http://www.fas.usda.gov/excredits/Monthly/2003/03_09_30.pdf Announced Allocations through September 30th, 2003.
[22] http://www.fas.usda.gov/excredits/Monthly/2004/04_12_12.pdf Announced Allocations through December 12th, 2003.

V. Public Health Security and Bioterrorism Preparedness and Response Act of 2002

The Public Health Security and Bioterrorism Preparedness and Response Act (Bioterrorism Act) of 2002, was implemented on December 12, 2003. It seeks to protect the public from a threatened or actual terrorist attack on the U.S. food supply.[23] The Act is reported to be motivated by concerns about deliberate contamination (food sabotage by terrorists[24]), but it also serves to protect consumers from foods that have been unintentionally contaminated (through processing failures or handling errors).[25]

The final regulations of the Bioterrorism Act include the regulation on Prior Notice of Imported Food and the Registration of Food Facilities. Except for specified exemptions directly monitored by the U.S. Department of Agriculture (some meat, poultry and egg products) these new regulations apply to all facilities for all foods and animal feed products regulated by the Food and Drug Administration (FDA). Some highlights of the Act include the following:

1. **Prior Notice of Imported Food**

   The regulation requires advance notice for human or animal food shipments imported or offered for import on or after December 12, 2003. This advance information will allow the FDA, working with the U.S. Customs and Border Protection (CBP), to more effectively control imported foods.

   The notice of shipment must include among other information: name of person submitting the notice, entry type and CBP identifier, identification of the article of food and manufacturer, grower, country of production, shipper, arrival information, importer, carrier and mode of transportation.

2. **Registration of Food Facilities**

   Domestic and foreign food facilities that manufacture, process, pack or hold food for human or animal consumption in the U.S. are required to register with the Food and Drug Administration (FDA) by December 12, 2003. Non-U.S. companies, moreover, have to designate a registered agent in the U.S. such as the facility's importer or broker. As a result, the FDA will have an official (yet secret under the Freedom of Information Act) data base of foreign and domestic food facilities. There is no fee associated with registration.

These regulations might have an impact on exports coming from Latin American countries. The problems they are confronted with are manifold. Critical are the procedures for handling countries' primary export products[26] (generally perishable foods) such as mangoes from Mexico, bananas from Ecuador and cantaloupes from Costa Rica. Financing the compliance with the new regulations could turn out to be a major problem

[23] U.S. Food And Drug Administration, Protecting the Food Supply, October 2003.

[24] The overwhelming majority of acts of deliberate food contamination, however, have occurred inside U.S. territory, with no interference of foreign producers.

[25] U.S. Food and Drug Administration, Risk Assessment for Food Terrorism and Other Food Safety Concerns, October 13, 2003.

[26] U.S. Food And Drug Administration, Protecting the Food Supply: FDA Actions on New Bioterrorism Legislation Proposed Regulation: Administrative Detention, May 2003.

for producing countries[27], as it has been the case for the Container Security Initiative (CSI)[28]. Many countries inquired about the technical cooperation assistance the Food and Drug Administration (FDA) could offer countries to assist with their compliance so as to lessen the negative economic impact of the regulation. A further aspect for foreign producers is the necessary representation in the U.S. in order to handle issues of detention resulting from the new rules[29].

The Act requires the Food and Drug Administration (FDA) to issue regulations for procedures for instituting on an expedited basis, certain enforcement actions against perishable foods. While the penalties for failure to register include delay of the release of the goods, mandatory removal of goods to a secure facility, re-export to originating country, civil and criminal action and debarment; the FDA and Customs Border Protection issued a Compliance Policy Guide on December 11, 2003[30] that will outline how FDA intends to exercise its enforcement discretion[31].

The Department of Transportation has implemented new security procedures and programs aimed to decrease irregularities and increase seaport security:

1. The Container Security Initiative (CSI), part of CBP, implemented in 2002 with the purpose of coordinating with authorities of the world's major ports in the fight against terrorism[32]. Under the CSI program, U.S customs officers and inspectors work with host nation counterparts to target high-risk cargo containers.

2. The 24-hour Vessel Manifest Rule, a new U.S. maritime program that requires the presentation of cargo declarations to U.S. Customs 24 hours prior to loading a container or vessel in a U.S. port, usually through an electronic system.[33]

[27] World Bank GDLN document, http://lac.gdln.org/news/fda_bioterrorism_eng.htm

[28] Organización de los Estados Americanos, Recientes Regulaciones de Seguridad Portuaria, 16 March, 2003. http://www.oas.org/cip/esp/comite_ejecutivo/uruguay02/docuru02/cecip-doc18-02.htm

[29] World Bank interactive video conference with several countries in Latin America and FDA officials.

[30] U.S. Food and Drug Administration, Compliance Policy Guide, December 2003. http://www.cfsan.fda.gov/~pn/cpgpn.html

[31] As the rule becomes effective, FDA and CBP expect a "good faith" effort at compliance. The policy guide makes it clear that during the next 8 months, the two agencies will primarily rely on educating the affected firms and individuals. During this period, the agencies will utilize communication and education initiatives, escalating imposition of civil monetary penalties, and ultimately refusal of shipments. This phase-in period will end on August 12, 2004.

[32] As of June 2003 the twenty ports in the world that handle about 70% of U.S. trade have already implemented the CSI program under Phase I. These include ports in Canada, Hong Kong, Singapore, Japan, Germany, France, Belgium, Sweden, United Kingdom, and The Netherlands. Under Phase 2, CSI will be implemented at other foreign ports that handle high volumes of cargo in the attempt to cover over 80% of sea trade to the United States.

[33] The '24-hour rule' took effect on December 2, 2002 and is applied uniformly to all exports from foreign countries (shipments arriving in the Northern Marianas, Guam and American Samoa do not fall under the 24-hour rule, but it does apply in these locations for cargo that is destined *to* the United States. A final decision on whether the 24-hour rule applies to Puerto Rico has not been declared).