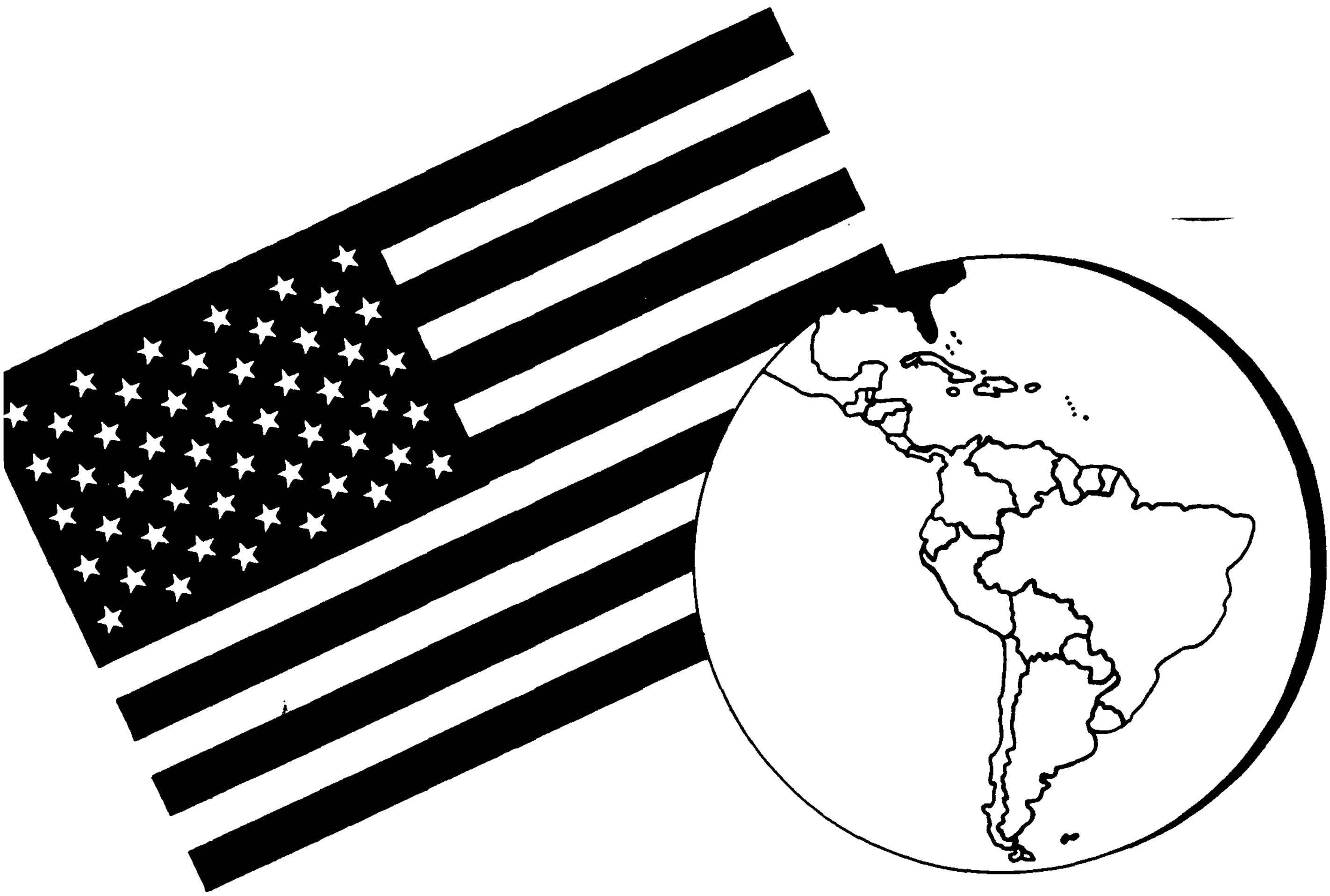
U.S. Market Access in Latin America: Recent Liberalization Measures and Remaining Barriers

(With a Special Case Study on Chile)



Report to the Committee on
Finance of the United States
Senate on Investigation
No. 332-318 Under Section 332 of the
Tariff Act of 1930

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PREFACE

On October 30, 1991, the United States International Trade Commission received a request from the Senate Committee on Finance (appendix A) to conduct an investigation under section 332(g) of the Tariff Act of 1930 on recent economic and trade policies in Latin America and remaining obstacles to U.S. market access. In response to the request, the Commission instituted investigation No. 332-318 on December 2, 1991.

Copies of the notice of the investigation were posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC 20436, and the notice was published in the *Federal Register* (56 F.R. 64643) on December 11, 1991. The Commission held a public hearing in connection with the investigation on January 22 and 23, 1992. All persons were afforded an opportunity to appear by counsel or in person, to present information, and to be heard. In addition, interested parties were invited to submit written statements concerning the investigation.

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EXECUTIVE SUMMARY

Following a period of economic crisis in the 1980s, Latin American governments are replacing longstanding economic policies based on import substitution[1] and government intervention with market-oriented policies intended to foster the development of a more open and competitive economy. To this end, the nations covered in this report are dismantling tariff and nontariff barriers to trade, easing restrictions on investment, and showing renewed interest in regional economic cooperation.[2]

To support these changes and encourage continued progress, President Bush on June 27, 1990, launched a new economic initiative with Latin America known as the Enterprise for the Americas Initiative (EAI). Its aim is threefold:

1. Expand trade among the nations of the Western Hemisphere;
2. Foster investment in Latin American nations; and
3. Provide debt relief for these nations.

The United States has already begun to move forward on the EAI by concluding "framework agreements" on trade and investment with individual nations or groups of nations in the hemisphere. In addition to the EAI, the United States has unilaterally reduced some market barriers for selected developing nations in accordance with the framework of the General Agreement on Tariffs and Trade (GATT). Such U.S. initiatives include the now-permanent 1983 Caribbean Basin Economic Recovery Act (CBERA), the long-established Generalized System of Preferences (GSP) that is available to designated developing nations throughout the world, and the newly enacted Andean Trade Preference Act. President Bush has identified Chile, one of Latin America's most market-oriented economies, as a potential candidate for the negotiation of a free-trade agreement before the June 1993 expiration of the current fast-track authority.

With respect to regional integration, most Latin American countries are now revitalizing efforts toward some level of regional economic cooperation. Such efforts have been motivated by the desire of the Latin American countries to stabilize their economies and implement free-market economic policies, as well as by concerns over the European Community's 1992 program, the delayed GATT Uruguay Round, and the proposed North American Free-Trade Agreement (NAFTA).

The following list outlines the major associations of countries in the region.

- The Latin American Integration Association (LAIA) is the largest, with 11 member countries—Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.
- Within the LAIA, Bolivia, Colombia, Ecuador, Peru, and Venezuela founded the Andean Group in 1969, whereas Argentina, Brazil, Paraguay, and Uruguay agreed in 1990 to establish the Southern Common Market (MERCOSUR).
- The Central American Common Market (CACM) was created in 1961, and its current members are Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.
- The Caribbean Community (CARICOM) consists of 13 English-speaking countries in the Caribbean, all island nations with the exception of Belize.

As stated by the Senate Committee on Finance, this report may be followed by a series of reports that may be found necessary to complete the investigation on Latin America's

[1] That is, the development of domestic industries to produce manufactured goods that were previously imported.

[2] The nations highlighted in this report are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, and Venezuela.

trade and investment policies. The Commission's investigation indicates that the seven countries highlighted in this report have made progress in liberalizing economic barriers. As a result, opportunities have improved for U.S. trade and investment. The remainder of this executive summary profiles the major liberalization efforts and existing barriers in each of these seven countries. The concluding section of the executive summary is a brief discussion of the status and effects of liberalization.

Chile

Liberalization Efforts

Due to the free-market policies of the Pinochet era and the 1989 return to democracy, Chile is now fully integrated into the world economy with sustainable economic growth, generally transparent and nondiscriminatory trade and investment regimes, and relatively few barriers to trade and investment. Chile applies a relatively low, uniform tariff to most imports and permits foreign ownership in almost all sectors of its economy.

Existing Barriers

Although Chile has few specific barriers to U.S. goods, services, and investment, U.S. market access is limited in a few industry sectors, such as agriculture and motor vehicles. In addition, Chile's intellectual property rights protection for pharmaceuticals—15 years for pharmaceutical patents—is considered short by international standards, and Chilean law does not protect pharmaceuticals with existing foreign patents. Pursuant to the "special 301" provision of the Trade Act of 1974, Chile remains on the "watch list" of the United States Trade Representative (USTR) concerning intellectual property protection.

Although capital inflows into Chile generally are free of restrictions, the Chilean Government imposes a 3-year waiting period on capital repatriation. A recently enacted restriction makes investments of less than 1 year using foreign-source loans subject to a 20-percent reserve requirement. Investment in the financial sector is limited because no new banking licenses are being issued. In addition, foreign banks are subject to discriminatory tax treatment.

Andean Countries

Bolivia

Liberalization Efforts

The Paz Zamora administration, which took office in 1989, has reinforced and extended economic reforms initiated in 1985, resulting in lower inflation (12.6 percent in 1991 versus 66 percent in 1986), steady economic growth, and increased private investment. The 1985 reforms included elimination of government subsidies and price controls, abolition of foreign-exchange controls, liberalization of restrictions on bank deposits and commercial lending rates, and restoration of dollar-denominated accounts.

Existing Barriers

Although Bolivia currently leads other Andean Group countries in reduction of tariffs and elimination of nontariff barriers, several significant barriers to market access and investment remain. These include import license requirements for sugar, wheat, and national security items; required prior approval for certain investments; foreign ownership restrictions; and weak intellectual property rights protection.

Although Bolivia's mining and hydrocarbon sectors remain subject to certain foreign investment restrictions, recently enacted legislation may open and simplify investment in these sectors. The new Mining Code allows foreign companies to operate 50 kilometers inside Bolivia's borders if they form joint ventures with Bolivian companies. In addition, the revised

Hydrocarbons Code permits the government oil company to form mixed companies or partnerships with private investors.

Colombia

Liberalization Efforts

Colombia's "Apertura" 5-year economic plan, introduced in 1989, seeks to open the economy to foreign competition and investment. The main features of this plan include import tariff and export subsidy reductions, virtual elimination of import-licensing requirements and foreign investment restrictions, creation of a Ministry of Foreign Trade to coordinate trade policy, privatization of government-owned enterprises, and labor and tax law reforms.

Existing Barriers

Despite reform, certain trade and investment barriers still exist. Colombia imposes a 5-percent import surcharge on almost all imports and maintains cargo reserve restrictions. Colombia is on USTR's "special 301" "watch list;" reportedly maintains price controls on a number of items that can distort trade and hinder foreign investment; and has significant investment and market access barriers in the automotive and agricultural sectors. The automotive sector is protected from foreign competition by a combination of taxes, fees, import performance requirements, and local-content rules. To pursue self-sufficiency in food, the Colombian Government has instituted a "price band" system that sets floor and ceiling prices and weekly reference prices for certain agricultural products. The Government retains monopoly control over wheat imports and production and requires import licenses for certain agricultural products.

In the services sector, numerous barriers also limit market access. Contract proposals must be offered through local representatives and foreign consulting firms must form joint ventures with local firms to contract with the government. Quantitative restrictions exist on foreign television programming, which is controlled by the monopoly provider INRAVISION.

Venezuela

Liberalization Efforts

Faced with severe economic conditions, President Carlos Andres Perez adopted a new macroeconomic plan in early 1989, designed to reduce debt, inflation, and balance-of-payments deficits, as well as to spur foreign trade and investment. Under this plan, efforts were made to free the exchange rate, lift most price controls, create real interest rates high enough to attract domestic savings, increase prices of public goods and services, and reduce public spending. The Perez administration also sought to reduce tariffs and quantitative restrictions, to simplify trade procedures, to ease rules for foreign investors, to privatize government-owned enterprises, and to cut corporate and individual tax rates.

Existing Barriers

Although there has been significant liberalization in trade and investment practices, barriers remain in many sectors. These include import license requirements for certain agricultural products, restrictive sanitary certificate requirements, export bonds on agricultural products, and subsidized export financing. Automotive imports are subject to high tariffs, import surcharges, and performance requirements that effectively limit imports of auto parts. In the investment area, certain sectors (primarily service industries) have a 20-percent limit on foreign ownership, and petroleum investments need Government approval. Venezuela is on USTR's "special 301" "watch list."

In services, Venezuela maintains domestic-content restrictions in the advertising sector and a variety of barriers in the banking sector, such as discriminatory regulations regarding capitalization and foreign ownership. Foreign banks are prohibited from purchasing foreign exchange from the Central Bank. Liberalization measures have been proposed that would, if enacted, allow foreign firms greater participation in the banking and insurance sectors.

Southern Common Market Countries

Argentina

Liberalization Efforts

Since taking office in July 1989, President Carlos Menem has introduced a series of measures to stabilize the economy, reform foreign investment rules, and liberalize trade. Provisions were made to abolish government subsidies, privatize government-owned firms, eliminate export taxes on industrial goods, reduce import tariffs, and modify the 1963 "Buy Argentine" requirement for government purchases. In addition, provisions were made for preferential treatment of new investment. Building on this foundation, recent reforms set an exchange-rate ceiling; liberalized banking requirements; and eliminated price indexing from contracts, trade restrictions and quotas on all goods except autos and raw hides, and virtually all export taxes. As a result of these measures, inflation rates have dropped and economic growth has resumed.

Existing Barriers

Foreign investment policies have been significantly liberalized, despite continued restrictions on foreign participation in certain sectors, such as insurance, motor vehicles, air transport, and nuclear industries. Although legislation has been proposed to protect patent rights, Argentina remains on USTR's "special 301" "watch list."

Brazil

Liberalization Efforts

Within months of taking office in 1990, President Fernando Collor de Mello rescinded a collection of laws and regulations used to deny import licenses for products "similar" to those that were, or could be, produced in Brazil. Most nontariff barriers, such as import quotas and restrictive import-licensing practices, also have been eliminated. Furthermore, a transparent tariff reduction schedule has been implemented that will lower import duties from an average of about 25 percent in 1992 to an average of about 14 percent by mid-1993.

To encourage foreign investment, President Collor has also proposed amendments to the Constitution that will open certain industries to foreign investment, privatize some government monopolies, and provide further incentives to foreign investors to reinvest profits in Brazil. In addition, taxes on remittances have been lowered or eliminated. Legislation is pending that will formally eliminate the substantial market access barriers for computer software by October 1992.

Existing Barriers

Despite considerable progress in liberalizing Brazil's trade and investment policies, substantial barriers remain. Even after the scheduled implementation of new informatics legislation in October 1992, foreign investment in this sector will continue to be restricted by performance requirements, high tariffs, distribution restrictions, and barriers to foreign participation in government procurement.

Foreign investment continues to be explicitly proscribed in mining and petroleum industries, telecommunications, and industries related to national security. Brazil reportedly uses price controls as a barrier to trade and investment. Constitutional provisions still apply a "buy national" policy to government procurement at the local, State, and Federal levels.

Brazil still does not provide for either product or process patent protection for chemical compounds, foodstuffs, or pharmaceuticals. For issues related to intellectual property rights, Brazil remains on USTR's "special 301" "priority watch list."

In many service industries, especially in insurance, architecture, engineering, and construction, there are differential tax systems, nontransparency of government regulations, foreign investment restrictions, and local-content requirements.

Central American and Caribbean Countries

Costa Rica

Liberalization Efforts

Recent liberalization steps for Costa Rica include joining the GATT, signing a trade framework agreement with the United States under the EAI, and instituting reforms in response to structural adjustment programs with the World Bank. Further, Costa Rica instituted a lower, unified, and more transparent tariff and tax structure and, in March 1992, eliminated the 2-percent Central Bank fee applied to all imports.

Existing Barriers

Although Costa Rica has historically maintained one of the most open trade and investment climates in the region, existing barriers include import tariffs, surcharges, permits, and deposit requirements; export subsidies; barriers in the banking and insurance sectors; and lack of adequate intellectual property protection.

Status and Effects of Liberalization

Trade and investment liberalization is being pursued throughout Latin America, although faster and more successfully in some nations than in others. Of the countries highlighted in this report, Chile has made considerable progress in lowering barriers to trade and investment because it has remained on a relatively steady course of market-based economic policies for nearly two decades. The Andean nations of Venezuela, Bolivia, and Colombia have all made notable progress as well, although Venezuela retains a significantly larger number of restrictions on investment. Argentina's recent reform efforts have been successful, largely because they are comprehensive, have been implemented quickly, and have been steadfastly maintained. Costa Rica has succeeded in advancing some elements of its domestic economic reform package, but complete implementation of its tariff reduction policies has been slowed in recent years. Brazil has made some progress in dismantling its formidable array of trade barriers. After many setbacks, the Brazilian Government recently launched an ambitious privatization program. The scheduled liberalization of the investment regime, however, remains difficult and slow.

It should be noted that investment strategies of U.S. firms in the Latin American countries are affected by economic conditions and other factors unrelated to the liberalization initiatives undertaken by these nations. For example, several factors, such as the relatively small size of the markets in most of these nations, low levels of per capita income, perceived uncertainty about political and economic stability, and an underdeveloped industrial base and infrastructure, appear to be limiting the Latin American market's attractiveness to U.S. business. Assuming that economic growth and trade liberalization continue in Latin America, the benefits of the reform measures undertaken are likely to overcome these remaining limitations.

Chapter 1
Introduction

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CHAPTER 1
INTRODUCTION

Background

In the 1980s Latin American countries experienced slow economic growth and difficult economic relations with the United States. The global economic slowdown, coupled with Latin America's rapidly increasing foreign debt service and ineffective economic policies, forced some nations in the region to adopt painful austerity measures. In addition, such measures were adopted in response to the demands by such international lending institutions as the International Monetary Fund and the World Bank for reforms as a condition for assistance. At the same time, the United States had bilateral trade disputes concerning certain Latin American practices and policies regarding export subsidies, restrictions on market access and foreign investment, and protection of intellectual property rights.

The Latin America of the 1990s, by contrast, is a region undergoing considerable change. Most nations are now led by democratically elected leaders, although democratic principles have been institutionalized to different extents in different nations. Throughout the region, market-oriented economic reforms are eliminating inward-looking domestic economic policies based on tight state controls. A growing number of Latin American nations are liberalizing their trade and investment policies and are showing renewed interest in regional economic cooperation and integration. The ongoing reforms not only made Latin America a key destination for foreign investment in 1991, but they also enhanced opportunities for future trade and economic cooperation between the nations of Latin America and the United States.

Purpose and Scope Of Study

Given the developing trends in liberalization in Latin America, it is important that U.S. business leaders and policymakers have a better understanding of the business climate there, including the scope of the changes being undertaken and their implications for future U.S.-Latin American relations. To this end, the Senate Committee on Finance asked the Commission to provide—

(1) a brief summary of Latin America's economic performance during the past decade;

(2) a profile of barriers to U.S. market access and of current Latin American trade, investment, and production patterns; and

(3) highlights of recent events significantly influencing U.S.-Latin American economic relations, including a description of recent liberalization measures undertaken by these countries and of the Enterprise for the Americas Initiative (EAI) and other efforts to expand intraregional trade.

The committee also requested the Commission to include a case study on Chile in the report. In President Bush's request to the Congress of March 1, 1991, for an extension of "fast-track" negotiating authority, the President identified Chile as a potential candidate for the negotiation of a free-trade agreement within the extension period.

This report has been compiled from information from both primary and secondary sources. The Commission held a public hearing where 23 witnesses presented their views, and received written submissions from a number of interested parties. (See appendix B for a list of interested parties who testified or submitted briefs.) Staff traveled to Santiago, Chile, for a series of meetings with Chilean Government officials, U.S. Government officials based in Chile, and U.S. and Chilean private sector business executives. In addition, the staff was assisted by a delegation of Latin American officials who visited the Commission during a month-long tour of the United States sponsored by the U.S. Information Agency.

The Commission also received extensive assistance from several U.S. Government agencies, including the Departments of State, Commerce, Treasury, and Agriculture and the Office of the United States Trade Representative, and from several international organizations such as the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, and the United Nations Economic Commission for Latin America and the Caribbean. The Commission also relied on telegrams and reports from U.S. embassies in Latin America, as well as responses to inquiries sent to certain Latin American missions in Washington, DC.

Organization

The report first reviews Latin America as a whole, presenting an overview of recent economic developments in chapter 2. This chapter also discusses common factors leading to recent measures for liberalization and economic integration in the region. Chapter 3 examines steps under way in Latin America to revive dormant regional economic integration groups or to create new ones for the purpose of reducing intraregional barriers to trade and investment. Chapter 4 discusses the EAI and other U.S. initiatives to spur economic development in the region, including the Caribbean Basin Economic Recovery Act and the newly enacted Andean Trade Preference Act.

Chapter 5 contains the case study on Chile, and chapters 6, 7, and 8 group the countries by region and examine selected countries' trade and investment policies. Chapter 6 focuses on Bolivia, Colombia, and Venezuela of the Andean Group; chapter 7, Argentina and Brazil of the Southern Common Market (MERCOSUR); and chapter 8, Costa Rica of the Central American and Caribbean region. Chapters 5 to 8 contain an overview of recent economic trends in the specified countries, including trade with the United States and the world and broad economic reform efforts, such as exchange-rate reforms and privatization programs. This overview is followed by a discussion of trade, investment, and intellectual property policies, including recent liberalization measures and remaining sector-specific barriers. Statistics discussed in these chapters are presented in appendix C, which contains tables showing data for selected economic variables, including U.S. trade with each of the selected nations.

Country Group Definitions

For purposes of this report, the term "Latin America" includes South and Central America and the Caribbean, except for Mexico and Cuba. Because of the longstanding U.S. trade embargo, Cuba was not included in the report. Mexico was excluded because its economy and the amount of its trade with the United States are so much larger than that of any other nation in the region.[1] Moreover, the Commission has completed three recent reports on Mexico.[2] Data presented in this report on Latin America cover the countries and territories listed below.

[1] U.S. merchandise trade with Mexico in 1991 of \$59.8 billion exceeded the \$59.7 billion in U.S. trade with all other Latin American nations combined.

[2] The Commission's most recent report on Mexico was requested by the House Ways and Means Committee and the Senate Committee on Finance: USITC, *The Likely Impact on the United States of a Free Trade Agreement With Mexico* (investigation No. 332-297), USITC publication 2353, Feb. 1991.

Andean Group	*MERCOSUR*[1]	*CACM*[2]	*CARICOM*[3]	*Other*
Bolivia	Argentina	Costa Rica	Antigua and Barbuda	Anguilla
Colombia	Brazil	El Salvador	Bahamas	Aruba
Ecuador	Paraguay	Guatemala	Barbados	British Virgin Islands
Peru	Uruguay	Honduras	Belize	Bermuda
Venezuela		Nicaragua	Dominica	Cayman Islands
			Grenada	Chile
			Guyana	Dominican Republic
			Jamaica	French Guiana
			Montserrat	Guadeloupe
			Saint Christopher and Nevis	Haiti
			Saint Lucia	Martinique
			Saint Vincent and the Grenadines	Netherlands Antilles
			Trinidad and Tobago	Panama
				Suriname
				Turks and Caicos Islands

[1] Southern Common Market, or Mercado Común del Sur in Spanish.
[2] Central American Common Market.
[3] Caribbean Community.

CHAPTER 2
ECONOMIC OVERVIEW OF LATIN AMERICA

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CHAPTER 2
ECONOMIC OVERVIEW OF LATIN AMERICA

The 1980s have been described as Latin America's "lost decade" of development.[1] For nearly all countries in the region it was a time of economic stagnation and declining per capita incomes. For many countries it was also a period of high foreign debt and domestic inflation. These difficulties, while felt most acutely by the domestic populations, also had global ramifications. Latin America declined as an export market and was unable to meet its interest and principal payments on foreign debt. As a consequence of Latin America's economic crisis, most countries in the region have instituted some market-oriented economic reforms.

This chapter reviews Latin America's recent economic performance, its production and trade patterns, and the factors and events that have shaped the region's economy over the past decade. It concludes with a discussion of how recent events have led Latin American countries to liberalize their trade and foreign investment policies.

Performance of the Latin American Economies

Domestic Production, Living Standards, and Investment

The Latin American regional economy produced approximately $665 billion in goods and services in 1990 (table 2-1).[2] Brazil alone accounted for $326 billion, or 49 percent of the total. In 1990, per capita gross domestic product (GDP) for the seven countries surveyed in this report ranged from $870 for Bolivia to $3,038 for Venezuela, whereas Latin America as a whole had an average per capita GDP of $1,937 (table 2-1). By contrast, Mexico's per capita GDP in 1990 was $1,980,[3] and that of the United States was $20,170.[4]

After regional GDP increased at an average annual rate of 5.0 percent during the 1960s and 5.7 percent during the 1970s, the growth rate declined significantly during the 1980s, averaging only 0.8 percent per year (table 2-2). Because regional population increased faster than production, GDP per capita actually declined, by an average of 1.3 percent annually and by a total of about 12 percent over the decade. Among the countries of mainland South and Central America, only Chile and Colombia had a growing GDP per capita over the 1980s, and even their growth was relatively small (table 2-2).[5] This pattern may have changed somewhat since 1990. According to preliminary data

[1] M. Delal Baer, Georges A. Fauriol, and Sidney Weintraub, Center for Strategic and International Studies, written submission to the Commission, Jan. 22, 1992, p. 2.

[2] The most recent year for which many of the data in this chapter are available is 1990, but data for 1991 are presented whenever possible. Many of the statistics presented in this chapter cover the 24 Latin American members of the Inter-American Development Bank (IDB) excluding Mexico. IDB members include all members of the Andean, Southern Common Market, and Central American groups defined in chapter 1 plus Chile, Guyana, Suriname, and the following Caribbean countries: Bahamas, Barbados, Dominican Republic, Haiti, Jamaica, and Trinidad and Tobago. See IDB, *Economic and Social Progress in Latin America: 1991 Report* (Washington, DC: The Johns Hopkins University Press, 1991).

[3] IDB, *Economic and Social Progress in Latin America: 1991 Report*, table B-2, p. 273.

[4] In 1988 dollars. *Economic Report of the President*, Feb. 1992, tables B-1, B-2, and B-29, pp. 298, 300, and 331.

[5] Some Caribbean countries had slight growth in real GDP per capita during the 1980s.

Table 2-1
GDP, population, and GDP per capita for selected Latin American countries (in 1988 dollars), 1990

Country	*GDP*	*Population*	*GDP per capita*
	Billion dollars	*Millions*	
Argentina	84.8	32.3	$2,623
Bolivia	6.4	7.3	870
Brazil	326.2	150.4	2,169
Chile	32.3	13.2	2,451
Colombia	46.7	33.0	1,416
Costa Rica	5.1	3.0	1,677
Venezuela	60.0	19.7	3,038
Latin America[1]	665.0	343.3	1,937

[1] Total for IDB member countries excluding Mexico.

Note.—Data are preliminary estimates.

Source: Inter-American Development Bank (IDB), *Economic and Social Progress in Latin America: 1991 Report*, (Washington, DC: The Johns Hopkins University Press, 1991), tables A-1, B-1, and B-2, pp. 271 and 273.

Table 2-2
Growth rates of real GDP and real GDP per capita for selected Latin American countries, annual average 1971-80, 1981-90, and 1991

(Percent)

Country	*1971-80*	*1981-90*	*1991*
		Average annual growth rate of real GDP	
Argentina	2.5	-1.9	4.5
Bolivia	4.0	0.1	3.5
Brazil	8.6	1.3	1.0
Chile	2.6	2.7	5.0
Colombia	5.5	3.5	2.0
Costa Rica	5.4	2.3	1.0
Venezuela	4.3	0.4	8.5
Latin America[1]	5.7	0.8	([2])
		Average annual growth rate of real GDP per capita	
Argentina	0.8	-3.2	3.0
Bolivia	1.4	-2.6	1.0
Brazil	6.1	-0.8	-1.0
Chile	1.1	1.0	3.5
Colombia	3.1	1.5	0.0
Costa Rica	2.6	-0.5	-1.5
Venezuela	0.7	-2.3	5.9
Latin America[1]	3.2	-1.3	([2])

[1] Weighted average for IDB member countries excluding Mexico.
[2] Not available.

Source: Through 1990: IDB, *Economic and Social Progress in Latin America: 1991 Report*, tables B-1 and B-2, p. 273. 1991: United Nations, Economic Commission for Latin America and the Caribbean (ECLAC), *Preliminary Overview of the Economy of Latin America and the Caribbean, 1991*, tables 2 and 3, pp. 37-38.

for 1991, Latin America as a whole had a growing GDP per capita for the first year since 1987.[6] Four of the seven countries in table 2-2 had positive growth in GDP per capita that year: Argentina, Bolivia, Chile, and Venezuela.

Latin Americans suffered a reduction in their living standards during the 1980s. Because of declining revenues, many governments were forced to cut spending on health, education, water and sewerage, and other public services.[7] Incomes reportedly fell disproportionately among the poor, the young, the aged, and women. The number of people living below the poverty line in all Latin America, including Mexico, rose from an estimated 112 million, or 35 percent of households, in 1980 to 164 million, or 38 percent of households, in 1986.[8]

Latin America's severe economic problems also had adverse effects on investment. Gross domestic investment, which covers mainly public and private expenditures on infrastructure and fixed capital, fell by about 30 percent over the decade ending in 1990, for an average annual decline of 3.6 percent (table 2-3). Argentina's decline was the greatest, about 12 percent annually, whereas Chile and Colombia had positive, though small, growth over the decade. The recent experience of all these countries contrasts markedly with growth in investment during the 1970s, when regional investment grew by an average of 7.0 percent annually. The reduction in investment was affected not only by slower growth in regional production, but also by a decline in net capital inflows from abroad.

International Trade And Financial Flows

The most notable features of Latin American trade performance over the past decade were (1) the sharp decline in imports between 1981 and 1983 and (2) the growth in exports beginning in 1983 (figure 2-1). Together, these trends reversed the regional trade deficits of 1981 and 1982. A surplus was not experienced by every individual country, however. In 1990, over 80 percent of the regional surplus was accounted for by Argentina, Brazil, and Venezuela (table 2-4).

The decline in Latin American imports can be attributed partly to the region's economic stagnation and consequent slack domestic demand for foreign products. Another reason for the decline in imports

[6] United Nations, Economic Commission for Latin America and the Caribbean (ECLAC), *Preliminary Overview of the Economy of Latin America and the Caribbean, 1991*, tables 2 and 3, pp. 37-38.
[7] Inter-American Development Bank (IDB), *Economic and Social Progress in Latin America: 1990 Report* (Washington, DC: The Johns Hopkins University Press, 1990), p. 31.
[8] United Nations, Economic Commission for Latin America and the Caribbean, *Changing Production Patterns With Social Equity* (Santiago de Chile, 1990), p. 34.

Table 2-3
Growth rates of real gross domestic investment for selected Latin American countries (based on 1988 dollars), annual average 1971-80 and 1981-90

(Percent)

Country	Annual average 1971-80	1981-90
Argentina	3.7	-12.1
Bolivia	2.2	-3.3
Brazil	9.5	-2.4
Chile	2.8	0.6
Colombia	5.1	1.8
Costa Rica	9.3	-0.2
Venezuela	4.6	-7.1
Latin America[1]	7.0	-3.6

[1] Weighted average for IDB member countries excluding Mexico.

Source: IDB, *Economic and Social Progress in Latin America: 1991 Report*, table B-5, p. 275.

Table 2-4
Exports, imports, and trade balance in goods and services[1] for selected Latin American countries, 1990

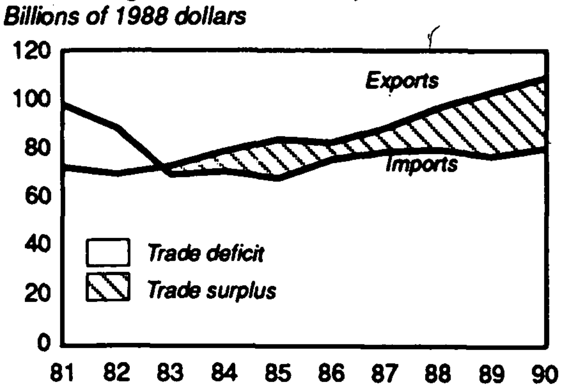
(Millions of 1988 dollars)

Country	Exports	Imports	Trade balance
Argentina	13,655	5,888	7,767
Bolivia	838	968	-130
Brazil	37,701	24,193	13,508
Chile	10,293	8,373	1,920
Colombia	8,065	6,187	1,878
Costa Rica	1,987	2,085	-98
Venezuela	12,839	9,652	3,187
Latin America[2]	109,447	80,468	28,979

[1] Excluding investment income.
[2] Total for IDB member countries excluding Mexico.

Source: IDB, *Economic and Social Progress in Latin America: 1991 Report*, tables B-6 and B-7, p. 276.

Figure 2-1
Latin America:[1] Exports, imports, and trade balance in goods and services,[2] 1981-90
Billions of 1988 dollars



[1] IDB member countries excluding Mexico.
[2] Excluding investment income.

Source: IDB, *Economic and Social Progress in Latin America*: 1991 Report, tables B-6 and B-7, p. 276.

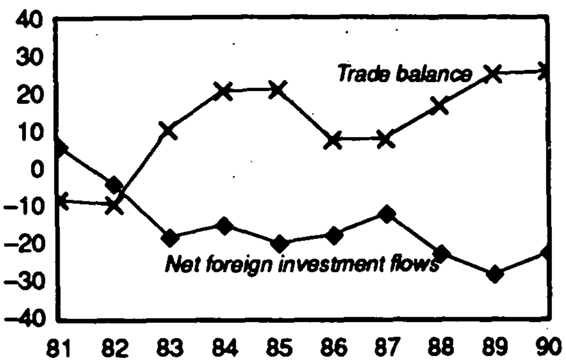
was the lack of funds in terms of foreign currency credits to pay for the imports, which, in turn, resulted from a major reduction in new foreign investment.

Through 1981, Latin America had a positive net foreign investment flow—that is, net inflows of new investment funds were greater than net outflows of debt repayments, interest payments, and other investment income. Net foreign investment flows turned sharply negative in 1982 and 1983 and remained negative for the rest of the decade (figure 2-2), as foreign banks reduced new lending to the region while requiring interest and principal payments on existing loans.[9]

To raise foreign currency credits for debt service, Latin American countries had to run trade surpluses. As figure 2-2 indicates, changes in the trade balance largely offset changes in net investment flows

[9] These and other aspects of Latin America's debt crisis are discussed further later in this chapter.

Figure 2-2
Latin America:[1] Trade balance[2] and net foreign investment flows,[3] 1981-90
Billions of 1988 dollars



[1] IDB member countries excluding Mexico.
[2] Goods and services (excluding investment income); data differ from figure 2-1 due to exchange-rate indexation methods.
[3] Net capital flows and investment income, including interest on debt.

Source: IDB, *Economic and Social Progress in Latin America: 1991 Report*, tables D-2, D-5, D-8, and D-11, pp. 297, 299, 300, and 302.

throughout the decade.[10] The forced adjustment in the trade balance occurred first largely through a decline in imports, as figure 2-1 shows. However, when Latin American countries were later able to increase exports, imports also rose, although they remained significantly below their 1981 level.

According to preliminary data, net foreign investment flows rose by over $10 billion in 1991 as a result of substantial new investments. Imports also rose significantly, and the trade balance declined.[11]

Structure of Production And Trade

Production and Trade by Sector

In 1990 the Latin American countries produced approximately 12 percent of their output in agriculture, 39 percent in industry, and 49 percent in services (table 2-5).[12] Taking agriculture and mining together, primary commodities accounted for 16.5 percent of total production. Most of industrial output was accounted for by manufacturing, with 25.4 percent of total production.[13]

Comparable sectoral data on exports and imports are not available for 1990, but data for 1988 are likely to present a reasonably accurate picture. Most of Latin America's exports in 1988 were primary commodities in agriculture and mining, with about 18 and 38 percent of total exports, respectively (table 2-5). Within the category of mining goods, exports of mineral fuels, chiefly crude and refined petroleum, accounted for about 23 percent of total regional exports.[14] About 45 percent of exports and 75 percent of imports were made up of manufactured goods.

Latin American Trade With the United States

The United States is the leading trading partner for most Latin American countries. In 1990, it received 31 percent of exports and provided 34 percent of imports for the region as a whole.[15] The countries of the European Community (EC) followed in importance, accounting for 26 percent of Latin America's exports and 21 percent of imports. Intraregional trade, including trade with Mexico, accounted for 17 percent of exports and 19 percent of imports.

In contrast to the high U.S. share of Latin American trade, Latin America accounted for only 7 percent of U.S. exports and 7 percent of imports in 1990, based on official statistics of the U.S. Department of Commerce (Commerce).[16] In descending order, Latin America ranked fifth behind the EC, Canada, Japan, and the remainder of the Pacific Rim region as a destination for U.S. exports. It also ranked fifth as a source of U.S. imports, behind the Pacific Rim, Canada, the EC, and Japan.

Commerce data show that Latin America's annual exports to the United States remained relatively constant at about $24 billion (current dollars) from 1980 until 1986, and then rose to $32.9 billion in 1990 (table 2-6). U.S. exports to Latin America, by contrast, fell by 30 percent, from $23.1 billion in 1980 to $16.1 billion in 1983, before rising again to $18.0 billion in 1986. As discussed above, this decline reflected Latin America's foreign payments difficulties of the early 1980s. U.S. exports rose after 1986 to $24.8 billion in 1990.

In sectoral terms, Latin American exports to the United States are dominated by primary commodities (table 2-6). In 1990 agricultural and related commodities accounted for 20 percent of total

[10] For any country, total inflows of foreign currency must come close to matching outflows each year. The two curves in figure 2-2 do not sum to exactly zero because several things are omitted: unpaid interest due, public and private transfer payments, changes in official foreign-exchange reserves, and transactions that go unrecorded in official statistics.

[11] ECLAC, *Preliminary Overview*, tables 14 and 15, pp. 49-50. These data are not strictly comparable to the data in figures 1 and 2, but the magnitude of changes is likely to be similar.

[12] The source data for 16 of 24 IDB member countries allocate indirect taxes and subsidies to the sectors concerned, whereas the data for the other countries do not, leaving a residual portion of GDP not allocated to any sector. These are percentages for allocated GDP only. Unallocated GDP is assumed to be distributed among sectors in proportion to allocated GDP.

[13] For further country- and sector-level detail, see appendix C, table C-2.

[14] United Nations Trade Data System.

[15] Excluding Mexico. International Monetary Fund, *Direction of Trade Statistics*, 1991, pp. 44-48 and 279-80.

[16] Total for all Latin America excluding Mexico and Cuba.

Table 2-5
Latin America:[1] Production, 1990, and trade, 1988, by sectors

(Percent)

Sector	1990 Production[2]	1988 Exports	1988 Imports
Agriculture	11.9	17.8	5.1
Industry:			
Mining	4.6	37.5	19.9
Manufacturing	25.4	44.7	75.0
Construction, electricity, and gas	9.0	(3)	(3)
Services	49.2	(3)	(3)
Total	100.0	100.0	100.0

[1] IDB member countries excluding the Bahamas, for which sectoral data are not available, and Mexico.
[2] Percent of the $620.1 billion in GDP that is allocated among sectors in the source data. The remaining $42.3 billion represents indirect taxes and subsidies which 8 of the 24 countries do not allocate among sectors.
[3] Comparable data not available.

Source: Production: IDB, *Economic and Social Progress in Latin America: 1991 Report*, tables B-3, B-8 through B-17, pp. 274, 277-281. Trade: United Nations Trade Data System.

Table 2-6
U.S.-Latin American[1] trade: Share of trade by sector and total trade, 1986-90

(In percent, except where indicated)

Item	1986	1987	1988	1989	1990
Latin American exports to the United States:					
Agriculture and processed food	30.4	26.4	24.5	21.6	20.4
Mining	32.4	34.8	29.5	34.4	40.5
Manufacturing	37.2	38.8	46.0	44.0	39.1
Total (billion current U.S. dollars)	24.3	25.8	27.2	29.8	32.9
U.S. exports to Latin America:					
Agriculture and processed food	14.4	12.4	12.2	11.5	11.3
Mining	6.6	6.6	5.4	6.2	6.6
Manufacturing	79.0	81.0	82.4	82.3	82.1
Total (billion current U.S. dollars)	18.0	19.7	22.4	23.4	24.8
U.S. trade balance with Latin America (billion current U.S. dollars)	-6.3	-6.1	-4.8	-6.4	-8.1

[1] All countries included in this report's definition of Latin America.

Source: Compiled from official statistics of the U.S. Department of Commerce.

exports, and petroleum and other mineral products accounted for 40 percent. According to Commerce statistics, the leading agricultural products exported to the United States that year were coffee, $1.1 billion; bananas and plantains, $890 million; and orange juice, $548 million. Exports of crude petroleum amounted to $7.3 billion for the period, or 22 percent of total exports to the United States, and refined petroleum exports were $5.2 billion, or 16 percent. Manufactured goods accounted for 39 percent of exports to the United States in 1990 (table 2-6). According to Commerce data, the leading manufactures exported to the United States included textiles and apparel, metal products, and machinery.

U.S. exports to Latin America during 1986-90 consisted primarily of manufactured goods (table 2-6). Within this category, exports of machinery and mechanical appliances were valued at $6.6 billion in 1990, or 27 percent of exports. Exports of chemical products and transportation equipment (largely aircraft and parts) were valued at $3.1 billion and $2.9 billion, respectively. Agricultural exports were led by cereal grains, and over half of mineral exports consisted of refined petroleum.

Factors and Events Affecting Economic Performance

Latin America's strong economic growth during the 1970s gave way to economic crisis during the 1980s because of factors both external and internal to the region. The following discussion examines import-substitution policies, the sharp drop in world demand for several important Latin American export commodities, and Latin America's foreign debt crisis, capital flight, low domestic savings, and inflation.

Import-Substitution Policies

Much of Latin American economic policymaking from the 1950s until the 1980s was based on the concept of industrialization through import substitution, i.e., the development of domestic industries to produce manufactured goods that were previously imported. This policy was rooted in Latin America's experience of the Great Depression and World War II when world demand for the region's traditional commodity exports fell sharply and imported manufactured goods remained relatively expensive or unavailable. Buttressed by the ideas of Argentine economist Raul Prebisch, Latin American countries drew from this experience the lesson that they should pursue economic independence.[17] Latin American countries pursued this strategy by imposing substantial tariff and nontariff import barriers, regulating foreign investment, restricting currency exchange, maintaining high-valued exchange rates to keep prices of imported inputs low, and by using subsidies and other incentives to encourage domestic manufacturing.

Import-substitution policies failed to free Latin America from dependence on commodity exports, because earnings from these exports were needed to pay for imports of inputs and advanced-technology products that the countries could not produce domestically. Furthermore, these policies often resulted in industries that were inefficient by world standards and unable to compete in world markets. This happened both because the industries were shielded from world competition and because domestic markets were generally too small to achieve efficient scales of production.[18] Some Brazilian industries were an exception to this rule, partly because of the relatively large size of the domestic market and partly because of efforts since the 1970s to make some industries competitive in export markets (e.g., sheet and semi-finished steel, aircraft, and footwear).

In addition to uncompetitive industries, the import-substitution policies, among other factors, contributed to massive, unprofitable state enterprises, distorted capital markets, and substantial public debt.[19] These policy shortcomings contributed to Latin America's being unprepared to respond effectively to the two major changes in its economic environment in the 1980s: the decline in world demand for the region's export commodities and the reduction in lending by foreign banks.

External Demand Shocks

Global demand for Latin American exports declined during the 1980s, because of the global recession of the early 1980s and because of increasing production and export of agricultural and other commodities by developed countries. As a recent IDB study notes, developed countries experienced declines in both real GDP and import volume in 1982, and the average price of their imports declined by approximately 5 percent per year in both 1982 and 1983. The same study notes that between 1980 and 1986 the commodity terms of trade, which is an index of the ratio of world agricultural and mineral commodity prices to prices of manufactured goods, declined by nearly 40 percent. Latin America's terms of trade for all regional exports compared with imports declined by 21 percent between 1980 and 1989.[20] Prices declined for beef, coffee, cocoa, cotton, iron ore, sugar, and oil, all among the region's key exports.[21] Particularly hard hit were sugar producers, who saw prices tumble by 22.1 percent between 1980 and 1989, and oil producers. Between the years 1981 and 1988, the price for oil set by the Organization of Petroleum Exporting Countries (OPEC) fell by 50 percent in current dollars, from a peak of $34.20 to $17.10 a barrel,[22] creating great difficulties for Latin America's chief oil-exporting nations, Colombia and Venezuela. Although Latin American countries were able to expand the total value of exports during the 1980s, the

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[17] The seminal work promoting import-substitution policies was Raul Prebisch, *The Economic Development of Latin America and Its Principal Problems* (New York: United Nations, Economic Commission for Latin America, 1950). See also his later work, "Commercial Policies in the Underdeveloped Countries," *American Economic Review*, papers and proceedings, May 1959, pp. 251-273.

[18] As chapter 3 relates, Latin American countries sought to overcome the disadvantage of small domestic markets through regional economic integration efforts during the 1960s and 1970s. In general, however, these efforts were ineffective.

[19] For further discussion of the shortcomings of import-substitution policies, see Paul R. Krugman and Maurice Obstfeld, *International Economics: Theory and Policy* (New York: Harper Collins, 1991), pp. 245-246.

[20] IDB, *Economic and Social Progress in Latin America: 1990 Report*, p. 5. The definition of Latin America here includes Mexico.

For additional information on the adverse impact on Latin America of shifting demand for commodities in industrialized countries, see discussion on commodities in U.S. International Trade Commission, *Operation of the Trade Agreements Program: 42nd Report, 1990*, USITC publication 2403, July 1991, chapter 3.

For detailed discussions of declining commodity prices during the 1980s, see Bernhard Fischer, "From Commodity Dependency to Development," *The OECD Observer*, Apr.-May 1991, pp. 24-27, and Enzo R. Grilli and Maw Cheng Yang, "Primary Commodity Prices, Manufactured Goods Prices, and the Terms of Trade of Developing Countries: What the Long Run Shows," *The World Bank Economic Review*, vol. 2, No. 1, pp. 1-47.

[21] See Fischer, "From Commodity Dependency to Development," p. 27, and UNCTAD, *Monthly Commodity Price Bulletin, 1970-1989 Supplement*, Nov. 1990, pp. 2-6.

[22] IDB, *Economic and Social Progress in Latin America: 1989 Report*, table F-1, p. 514, and *Economic and Social Progress in Latin America: 1987 Report*, table 66, p. 474.

decline in unit value for major export commodities made this more difficult to achieve.

The Foreign Debt Crisis

Latin America's foreign debt crisis of the 1980s was rooted in excessive lending by foreign banks and excessive borrowing by Latin American governments during the 1970s. The foreign banks held tens of billions of dollars in deposits from oil-exporting nations, and hence they sought new borrowers in the then growing economies of Latin America.[23] Loans provided a way for Latin American governments to finance high levels of spending on social programs and subsidies, exchange-rate support, investment in infrastructure and industry, deficits of state-run enterprises, and other programs. Most observers agree that this spending was often excessive and that many of the investments were unproductive.[24] In some Latin American countries, notably Chile, large volumes of lending by foreign banks to private firms also helped precipitate the crisis.

Latin America's accumulation of foreign debt turned into a crisis in 1982 when Mexico declared itself unable to meet its debt-servicing obligations. In response, foreign banks quickly became concerned about the ability of other Latin American countries to repay their loans and, thus, sharply reduced new lending. This reduction in turn made it difficult for most Latin American countries to raise the foreign currency needed to make payments of interest and principal on past debt.

Two factors made it particularly difficult to make these payments. First, because many loans to Latin American countries carried variable interest rates,[25] the very high global real interest rates of the early 1980s added some $8 billion annually to the region's debt service requirements.[26] Second, most loans to Latin America were denominated in U.S. dollars. Thus, the substantial appreciation of the dollar during the first half of the decade resulted in a rise in the local-currency value of this debt.

The extent of the crisis is indicated by the statistics in table 2-7. Total public and private external debt for Latin America, excluding Mexico, stood at $247 billion (current dollars) at the start of the crisis in 1982. By 1987, debt had increased to $337 billion, as some Latin American countries were unable either to repay principal or meet current interest payments. Thereafter the debt declined slightly, to $334 billion in 1990. This decline was the result of repayments, debt forgiveness, and other debt reduction programs.

In proportion to annual gross national product (GNP), Latin American debt increased from 44 percent in 1982 to 60 percent in 1987, then declined to 40 percent in 1990. Moreover, service on Latin America's long-term debt alone required 37 percent of regional export earnings in 1982.[27] Combined long-term and short-term debt service consumed 37 percent of export earnings in 1987 and 24 percent in 1990.

Initial responses to the debt crisis, by both lenders and borrowers, emphasized rescheduling of payments. In October 1985, the U.S. Government proposed a more comprehensive solution in the Baker plan, named for then Secretary of the Treasury James A. Baker III. This plan proposed both new loans and reduced interest rates for specified debtor countries if they would undertake certain structural reforms to improve their long-term ability to pay. International Monetary Fund (IMF) assistance to debtor countries was made contingent upon these structural reforms and was used as leverage to obtain debtor government cooperation.

The United States followed in March 1989 with the Brady plan, named for Secretary of the Treasury Nicholas Brady. The Brady plan went beyond the Baker plan by involving commercial bank creditors in agreements to reduce outstanding principal as well as interest payments. It represented a market-based approach to debt reduction that recognized that full repayment is not possible.[28] Since 1990, agreements under the Brady plan have been concluded with Mexico, Costa Rica, Venezuela, and Uruguay. Agreements with Argentina and Brazil are expected in 1992.[29]

Capital Flight and Domestic Savings

Two factors contributing to Latin America's low domestic investment during the 1980s were capital flight and low domestic savings. Capital flight was the movement of assets by Latin American individuals and enterprises into banks, securities, and fixed investments abroad in an effort to avoid domestic political and economic risks to their assets. According to one estimate, capital flight totaled $170 billion.[30] Capital flight was already a major factor during the 1970s when foreign banks made large loans to Latin American governments. In fact, the foreign currency credits that came into Latin America through

[23] By one estimate, between 1974 and 1981 OPEC members deposited more than $160 billion in "petrodollars" in commercial banks. *New England Economic Review*, July/Aug. 1986, from Bank of England *Quarterly Bulletin*, Mar. 1985.

[24] Eliana Cardoso and Rudiger Dornbusch, "Brazilian Debt Crises: Past and Present," in Barry Eichengreen and Peter Lindert, eds., *The International Debt Crisis in Historical Perspective* (Cambridge: MIT Press, 1989), p. 125.

[25] At the end of 1979, about 60 percent of the total debt carried variable interest rates. IDB, *Economic and Social Progress in Latin America: 1990 Report*, p. 13.

[26] World Bank, *World Development Report 1990*, p. 15.

[27] Debt service is defined as debt repayments plus interest due. Statistics are not available for short-term debt service for 1982.

[28] Krugman and Obstfeld, *International Economics: Theory and Policy*, p. 661.

[29] ECLAC, *Preliminary Overview*, p. 19.

[30] IDB, *Economic and Social Progress in Latin America: 1991 Report*, p. 19.

Table 2-7
External debt and debt service for selected Latin American countries, 1982, 1987, and 1990

Country	*1982*	*1987*	*1990*
		Total external debt[1] (billion current dollars)	
Argentina	43.6	58.5	61.1
Bolivia	3.2	4.8	3.9
Brazil	91.0	123.7	116.2
Chile	17.3	21.5	19.1
Colombia	10.3	17.0	17.2
Costa Rica	3.5	4.7	3.8
Venezuela	31.8	34.7	33.3
Latin America[2]	247.1	336.7	334.3
		Total external debt as a percent of GNP[3]	
Argentina	84	76	62
Bolivia	109	144	101
Brazil	36	42	23
Chile	77	124	74
Colombia	27	49	44
Costa Rica	167	111	69
Venezuela	48	74	71
Latin America[2]	44	60	40
		Total debt service[4] as a percent of exports[5]	
Argentina	23	74	34
Bolivia	32	34	40
Brazil	43	42	22
Chile	20	36	26
Colombia	17	35	39
Costa Rica	12	22	24
Venezuela	16	38	21
Latin America[2]	37	37	24

[1] Includes public and publicly insured long-term debt, private non-guaranteed long-term debt, short-term debt, and IMF credits used.
[2] Total for Latin America excluding Mexico.
[3] Gross national product.
[4] Data for 1982 based on long-term debt service only.
[5] Exports of goods and services.

Source: World Bank, *World Debt Tables*, 1988-89 and 1991-92 editions.

these loans often provided the means for Latin American individuals to purchase foreign assets. In this way, capital outflows from Latin America largely offset the capital inflows. Because some of the inflows were used for nonproductive purposes, the net effect of the foreign loans may have been to reduce rather than increase productive investment within Latin American countries. With the onset of the foreign debt crisis, it became more difficult for individuals to obtain foreign currency credits, but some capital flight continued.

Since 1989, however, there reportedly has been a substantial return of flight capital to Latin America. This has been attributed to growing economies, an improved investment climate due to recent economic liberalization, and privatization of state enterprises in such countries as Argentina, Venezuela, and Chile.[31]

Both capital flight and popular perceptions about risks to domestic assets are reflected in the decline in private domestic savings during the 1980s. Although this happened throughout the region, the decline in savings was particularly strong in Venezuela, where the savings rate fell from 11.0 percent of GDP in 1981 to 5.3 percent by 1983, and in Argentina, where savings for the same period fell from 0.3 percent of GDP to -6.0 percent. The savings rates in other Latin American countries, such as Brazil and Colombia, declined moderately but recovered by the end of the decade. In Chile, savings declined to zero in 1982 during that country's economic crisis but by 1987 had returned to precrisis levels.[32]

Inflation

Another factor causing economic difficulties in some Latin American countries has been inflation. Most Latin American countries had annual rates of inflation ranging between about 10 and 30 percent over the past decade.[33] However, several countries have

[31] Ibid., and ECLAC, *Preliminary Overview*, pp. 1, 2, and 4.

[32] IDB, *Economic and Social Progress in Latin America: 1989 Report*, pp. 90-104.

[33] ECLAC, *Preliminary Overview*, table 5, p. 40, and IDB, *Economic and Social Progress in Latin America: 1991 Report*, table F-2, p. 317.

experienced periods of much higher rates. Argentina and Brazil have had high rates throughout most of the period, reaching over 3,000 percent and 1,200 percent, respectively, in 1989. Bolivia's inflation rate skyrocketed to over 8,000 percent in 1985 but has declined significantly to between 10 and 22 percent since 1987. Venezuela experienced rates below 20 percent through 1986 but has had rates from 25 to over 80 percent since then.

The primary cause of inflation has been the monetization of deficit government spending (i.e., printing of money to cover such spending).[34] Another factor that has sometimes made it difficult to reduce high rates of inflation was the introduction of automatic wage and price adjustment mechanisms, known as indexation. Indexation was used to reduce the economic dislocation caused by inflation, as a painless alternative to reducing inflation through orthodox economic austerity measures. However, by the end of the 1980s it was apparent that indexation perpetuated inflation and did not resolve all the problems that it caused.[35]

Recent Economic Liberalization

By the end of the 1980s, many Latin American policymakers recognized that decades of import-substitution and other economic policies had resulted in large public debts, high inflation, inefficient state-owned enterprises, a lack of incentives for entrepreneurs, distorted capital markets, and industrial products that were not competitive in world markets. The crisis in servicing Latin America's large foreign debt brought a particular urgency to the task of economic liberalization. This urgency was reinforced by the demands of multilateral lending institutions, chiefly the IMF, IDB, and World Bank, for reforms as a condition for assistance.[36]

Recent economic reforms have emphasized the need to be competitive in world markets, to reduce government subsidies, and to improve incentives for production in the domestic economy. Reforms affecting each country's domestic economy have focused on fiscal conservatism, privatization of state enterprises, and the establishment of real interest rates high enough to attract domestic savings. While moves toward deregulation have proved politically difficult in most Latin American countries, there is a growing consensus in the region to let market forces determine prices and the allocation of resources.

Reforms affecting the external economy include greater transparency and less burden in trade regulation, simplified tariff structures and reduced tariffs, reduced nontariff barriers, reduced subsidies for export promotion, more competitive exchange rates, greater protection of foreign intellectual property rights, and reduced regulation of foreign direct investment. Furthermore, Latin American countries have also pursued increasing regional economic integration, as discussed in chapter 3.

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[34] The sharp reductions in imports and the exchange-rate devaluations also contributed to inflationary pressures. See International Monetary Fund (IMF), *World Economic Outlook*, May 1990, pp. 57-60.

[35] A wide range of issues related to inflation and indexation are discussed in Rudiger Dornbusch and Mario Henrique Simonsen, eds., *Inflation, Debt, and Indexation* (Cambridge: MIT Press, 1983). References to more recent literature are provided by Laurence Ball and Stephen G. Cecchetti, "Wage Indexation and Discretionary Monetary Policy," *American Economic Review*, Dec. 1991, pp. 1310-19.

[36] Another factor commonly cited as leading to change was the strong economic growth in liberal, export-oriented Asian economies. See, e.g., IDB, *Economic and Social Progress in Latin America: 1990 Report*, p. 30.

Chapter 3
Latin American Regional Economic Integration Efforts

CONTENTS

CHAPTER 3 LATIN AMERICAN REGIONAL ECONOMIC INTEGRATION EFFORTS

During the 1960s, the Latin American countries created a number of regional economic organizations, including the Latin American Free-Trade Association (LAFTA), the Andean Group, the Central American Common Market (CACM), and the Caribbean Free-Trade Association (CARIFTA). These bodies were largely based on the premise of establishing protectionist regional trading blocs to create common internal markets large enough to promote economic growth through import-substitution policies.

By 1980, these organizations either had collapsed, had been replaced by other organizations, or had fallen significantly short of their planned targets. There are many reasons for these failures, including political disputes and hostilities among members, the inability of such associations to create sufficiently large regional markets, and the economic climate of slower global economic growth coupled with rising foreign debt burdens.

Latin American countries are now revitalizing the regional economic integration movement, motivated by the desire to stabilize their economies and implement free-market economic policies. They are also motivated by concerns over the European Community's 1992 program, the delayed GATT Uruguay Round, and the proposed North American Free-Trade Agreement (NAFTA). Almost all Latin American countries have shown renewed interest in some level of regional economic cooperation. In contrast to previous efforts, the goal now is to open up the Latin American economies to greater international competition by expanding trade within the region, dismantling tariff and nontariff barriers to trade, and removing barriers to foreign investment.

Latin American Integration Association (LAIA)[1]

The forerunner of the LAIA, LAFTA[2] was created in 1960, with the main objective of removing trade restrictions through multilateral tariff reductions and the future goal of regionwide free trade. However, the implementation of these goals fell seriously behind schedule because of disparities among member countries' economies and lack of adequate mechanisms for tariff reductions. By 1980, only 14 percent of annual trade among members could be attributed to LAFTA agreements. In June 1980, LAFTA members, having agreed to restructure the organization to make it less ambitious and more flexible, changed its name to the LAIA. The 11 LAIA members are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.

The key feature of the LAIA is that its outward orientation allows members to establish multilateral linkages with countries outside Latin America.[3] The LAIA's main policy calls for a regionwide preferential tariff regime for products from other member countries, preferential quota agreements among individual LAIA members, and a reciprocal credit system. The LAIA also has provisions for cooperation in specific sectors such as tourism, agriculture, trade promotion, science and technology, services, and transportation and communications.

Preferential Tariffs

Preferential tariffs for LAIA members were first implemented in 1984 and have been modified several times. The current scheme, effective since August 1, 1990, recognizes the following three levels of economic development among its members: more developed countries—Argentina, Brazil, and Mexico; intermediate developed countries—Chile, Colombia, Peru, Uruguay, and Venezuela; and less developed countries—Bolivia, Ecuador, and Paraguay. The more developed countries may give as much as 40 percent tariff reductions on products from less developed countries, whereas less developed countries are to give as little as 8 percent reductions on products from more developed members[4] (table 3-1). However, the only LAIA countries that have implemented the scheme are Brazil, Chile, Colombia, Mexico, and Uruguay.

In an effort to encourage unilateral tariff reductions, the LAIA reduced the number of products exempt from the regional preferential tariff reductions from slightly more than 4,000 items to 1,920 for the less developed countries, to 960 for the intermediate countries, and to 480 for the more developed countries, effective August 1990.[5] Quotas are allowed within the framework of LAIA preferential treatment, but articles subject to quotas under LAIA preferences may be imported from other LAIA members above quota limits at the normal duty rate.[6]

The LAIA permits two or more member countries to negotiate preferential tariff regimes within the association provided that such regimes are designed to eventually be incorporated into the LAIA multilateral system. These so-called partial-scope agreements

[1] Asociación Latinoamericana de Integración (ALADI).

[2] Asociación Latinoamericana de Libre Comercio (ALALC).

[3] "Latin American Integration Association," *Europa World Yearbook, 1991* (London: Europa Publications, Ltd., 1991), p. 172.

[4] IDB and Instituto para la Integración de América Latina (INTAL), *El proceso de integración en América Latina en 1990* (Buenos Aires, Argentina: IDB/INTAL, 1991), pp. 34-35.

[5] Ibid., p. 35.

[6] GATT, *Trade Policy Review Mechanism (TPRM): Chile*, C/RM/G/14, June 3, 1991, report submitted by the Government of Chile, p. 44, and U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.

Table 3-1
Latin American Integration Association: Regional tariff preference reductions applied to exporting countries, by types of markets

(Percent)

Market	*Less developed country*	*Intermediate developed country*	*More developed country*
Less developed	20	12	8
Intermediate developed	28	20	12
More developed	40	28	20

Source: IDB and Instituto para la Integración de América Latina (INTAL), *El proceso de integración en América Latina en 1990* (Buenos Aires, Argentina: IDB/INTAL, 1991), table 1, p. 35.

bind only their signatories and cover trade and economic cooperation.[7] By 1989, 40 agreements were reportedly signed, but actually only 24 were active.[8]

Reciprocal Trade Credit System

The trade credit system that began under the LAFTA was retained by the LAIA. This system was created to provide timely settlement of trade accounts and to minimize the use of foreign exchange in intraregional trade through the use of reciprocal credit lines. Despite the system's difficulties in settling payments during the 1980s, it allowed LAIA countries to clear, on a quarterly basis, more than 80 percent of their reciprocal trade through trade credits without having to dip into their scarce foreign currency reserves. In 1990, the system cleared 75 percent of total LAIA trade, meaning that LAIA countries "only had to find some $2.8 billion in foreign exchange to settle the bill on trade worth $11.4 billion."[9] The reciprocal trade credit system has demonstrated itself to be an important institution in facilitating intraregional trade.

In May 1990, the LAIA Council of Ministers approved guidelines to strengthen the role of the association in the context of renewed interest throughout Latin America in regional economic integration.[10] As a result, the LAIA is poised to become a major element in promoting export-led growth and trade liberalization in Latin America on a regional basis. In September 1990, the LAIA Secretariat articulated the association's new priorities—

(1) to harmonize macroeconomic policies;

(2) to expand preferential tariffs and eventually eliminate partial-scope agreements;

(3) to strengthen customs cooperation;

(4) to work jointly for regional export and investment promotion;

(5) to increase regional trade in primary products, minerals, and agricultural products;

(6) to develop common sanitary and phytosanitary regulations;

(7) to improve and strengthen the intraregional payments system; and

(8) to seek cooperative solutions to the region's foreign debt payment problems.[11]

Andean Group

Bolivia, Colombia, Chile, Ecuador, and Peru founded the Andean Group ("Grupo Andino")[12] in 1969 because of their dissatisfaction with the LAFTA. The Andean countries complained that Argentina, Brazil, and Mexico, the largest LAFTA countries, were reaping most of the benefits of that association. Venezuela joined the Group in 1973 and Chile exited in 1976 to pursue an independent economic program.

Objectives of Andean Group

Industrial integration and protection of nascent Andean industries were the original focal points of the 1969 Cartagena Agreement that created the Andean Group.[13] The Group's main objective at the time was to make the member states as self-sufficient as possible in key products, even if this meant that an industry was not internationally competitive. To achieve this objective, the Cartagena Agreement provided for the establishment of:

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[7] GATT, *TPRM: Chile*, p. 23.

[8] Marion Bywater, *Andean Integration: A New Lease of Life?* (London: The Economist Intelligence Unit, 1990), p. 148.

[9] "How ALADI Copes Without Dollars," *Latin American Weekly Report*, Feb. 14, 1991, p. 9.

[10] "Latin American Integration Association," *Europa World Yearbook, 1991*, p. 172.

[11] IDB and Instituto para la Integración de América Latina (INTAL), *El proceso de integración en América Latina en 1989* (Buenos Aires, Argentina: IDB/INTAL, 1990), p. 31.

[12] The Andean Group is alternately known as the Andean Pact ("Pacto Andino") or the Cartagena Agreement ("Acuerdo de Cartagena"), after the treaty that created the organization.

[13] The information on the Andean Group is mainly from Bywater, *Andean Integration: A New Lease of Life?*, except as noted.

- Sector development programs to promote industrial development and prevent competition from non-Andean products;
- A minimum common external tariff on non-Andean products, combined with phased-in duty-free trade among Andean countries;
- Common investment policies (Decision 24) to discourage Andean countries from competing with one another for foreign investment; and
- Common intellectual property protection policies (Decision 85) covering patents, patent licensing, trademarks, and designs. Pharmaceuticals and medicines, food and beverages, and foreign inventions that have been patented abroad for more than 1 year were not patentable.

Other original goals of the Andean Group included harmonization of economic and social policies, liberalization of trade within the region at a more accelerated rate than envisioned by LAFTA, and preferential tariff treatment for Bolivia and Ecuador. Because Bolivia and Ecuador were considered the least developed Andean Group members, extended transition periods and unspecified deadlines allowed them to phase in the minimum common external tariff. In addition, Bolivia was given the exclusive right to produce 47 products not produced elsewhere in the Andean region, and Ecuador, the same right for 51 products.

Problems in the 1980s

Several problems have prevented the Andean Group from attaining its goals. First, the Andean region is small and lacks sufficiently large internal markets to support economies of scale through the development of large, efficient industries. Second, the lack of adequate intraregional transportation often makes it easier for Andean countries to trade with countries outside the region than with one another. In fact, intraregional exports have never exceeded 5 percent of the member countries' total worldwide exports. Third, Andean countries were hit hard by the debt crisis and the resulting prolonged economic downturn. Intraregional trade fell to less than 1 percent of total trade. By the mid-1980s, the Andean countries virtually abandoned multilateral discussions and resorted to bilateral arrangements among themselves. By 1984, disagreements over the allocation of plants and the choice of foreign manufacturers for cooperation caused industrial integration plans to falter.

The Cartagena Agreement was revamped by the Quito Modifying Protocol in 1987. A new regional strategy rejected the import-substitution model and called for less emphasis on common industrial policies. Also in 1987, the Andean ministers extended the deadlines for dismantling all trade barriers to the end of 1988. A more liberal investment policy conferred to Group members the ability to decide what investment each would allow in what sectors and guaranteed foreign investors the right to repatriate capital, subject to the discretion of the host country government. It also allowed Andean Group members to conclude agreements that allow disputes to be submitted to bodies outside the Group's jurisdiction.

Plans for the 1990s

At their December 1989 summit, the Group announced a new strategic action plan for the 1990s. Its key objectives were to—

(1) implement a common external tariff on all imports;

(2) articulate common policies for increased participation in such international forums as the LAIA and such multilateral negotiations as the Uruguay Round;

(3) increase participation of small and medium-sized private firms in the region's development plans; and

(4) provide preferential treatment for Bolivia and Ecuador through the promotion of special projects for these countries.

Perhaps most important, the Group proposed to establish an Andean free-trade zone by 1995 and a common market by 1997. Sectoral development programs were to be reformulated as industrial integration programs, with a new focus on encouraging the growth of internationally competitive industries. The Group pledged to maintain tariff-free trade under the sectoral development programs for the metal engineering and petrochemicals industries and to implement such measures for the automobile and the iron and steel industries.[14]

In response to international developments, such as the GATT Uruguay Round negotiations, the U.S.-proposed EAI, and a swifter economic integration calendar announced by the Southern Common Market, the Andean Group began to accelerate its economic integration schedule. In May 1991, the Andean Group ministers formally agreed to establish a free-trade zone. The Andean countries enacted further changes in 1991 to more closely align their policies, including adoption of an "open skies" policy eliminating all restrictions on regional air travel and cargo for the shipping sector as well as on regional ground transportation of passengers and cargo. They also established standardized antidumping and subsidy provisions. In November 1991, the Andean Group Ministers agreed to strengthen intellectual property protection (Decision 311). In December 1991, the Andean Presidents signed the Act of Barahona to formalize these new arrangements.[15]

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[14] IDB and INTAL, *El proceso de integración en América Latina en 1990*, p. 48.

[15] U.S. Department of State Telegram, Dec. 10, 1991, Bogota, message reference No. 18891.

The Act of Barahona also created a common external tariff (CET) scheme for Bolivia, Colombia, and Venezuela effective on January 1, 1992, and for Ecuador and Peru on July 1, 1992. The CET shifts the Andean Group's emphasis away from the former goal of a minimum common external tariff, which was designed primarily to exclude competitive foreign products, and toward intraregional free trade and the establishment of a common basis for regional tariff reductions. To further support creation of a regional common market, the Andean countries pledged to establish a common agricultural policy; to eliminate exchange rate, financial, and fiscal subsidies; and to implement common customs procedures.[16]

The Andean CET scheme sets four tariff levels, of 5, 10, 15, and 20 percent, to apply to most goods of a type produced in the Andean region.[17] Competing imports will be exempt from the CET. Colombia and Venezuela will adopt a CET for automobile imports with a maximum tariff rate of 40 percent until January 1, 1994, and 25 percent thereafter. To promote intraregional free trade, products that each country exempted from free trade within the region will be subject to the CET. Ecuador's list of exempted products will be reduced by 30 percent in January 1993, by an additional 30 percent in January 1994, and by the remaining 40 percent in June 1994.

In the steel sector, a steel committee with private and public sector representatives will work to boost regional steel trade, production, and the interchange of raw materials and will examine the possibility of complementary production. In addition, Venezuela and Colombia have established a 3-year "administrated trade" plan for steel in response to Colombia's request for protection of its fledgling steel industry. The plan regulates certain sensitive Venezuelan steel exports to Colombia by a system of quotas in exchange for guaranteed access by Venezuela to Colombia's iron ore and coal resources.[18]

Within the framework of the Andean Group, Colombia and Venezuela signed a partial free-trade agreement that became effective February 6, 1992, and reportedly covers some 6,000 goods traded between the two countries. Although there are no provisions for quotas in the agreement, there is a "tariff snap-back" provision[19] to allow each partner to impose tariffs in the event of dumping or any other type of injury to a specific industry.[20] Although this agreement speeds up the pace of economic integration for Colombia and Venezuela only, it could prompt the other Andean countries to quicken their own liberalization plans.

[16] Ibid.
[17] Bolivia will be allowed to maintain its two-tier tariff structure of 5 and 10 percent.
[18] Jaime García Parra, Ambassador, Embassy of Colombia, posthearing statement, Jan. 30, 1992, p. 2.
[19] A provision that allows a signatory to withdraw concessions under specific circumstances.
[20] U.S. Department of Commerce official, Commission interview, May 8, 1992.

Subsequent to the signing of the Act of Barahona, changes were made in investment regulation and intellectual property protection. These changes would eliminate nearly all provisions that treat foreign investment less favorably than local investment and would enunciate the principle of equality of rights and obligations between national and foreign investors, subject to state regulatory power. Intellectual property protection was strengthened by establishing a 15-year patent term from the time a patent is granted and the inclusion of pharmaceutical patents and trademarks (Decision 313).[21] Nevertheless, all Andean Group countries except Bolivia are on the United States Trade Representative's "watch list" under the "special 301" provision of the 1988 Trade Act on intellectual property.[22]

Southern Common Market (MERCOSUR)

Argentina and Brazil signed their first bilateral economic integration agreement in 1986. This agreement included protocols covering trade in specific items, such as food crops, capital goods, and automobiles, and promised to lead to the establishment of a common market by 1999. However, they made little progress toward economic integration.

On July 6, 1990, the Presidents of Argentina and Brazil signed the "Act of Buenos Aires,"[23] an agreement to accelerate economic integration between the two countries. They advanced the date for the establishment of a bilateral common market to the end of 1994 and created a bilateral working group to coordinate macroeconomic policy until then.[24] Because the economies of Paraguay and Uruguay are closely linked to and highly dependent upon the economies of their larger neighbors, these countries sought formal inclusion in the Argentina-Brazil bilateral agreement in late 1990.[25]

On March 26, 1991, the Presidents of Argentina, Brazil, Paraguay, and Uruguay signed the Treaty of Asuncion, which has as its goal the establishment of a Southern Common Market (Mercado Común del Sur (MERCOSUR)),[26] by December 1994.[27] All four

[21] Jaime García Parra, Ambassador, Embassy of Colombia, written submission to the Commission, Apr. 1, 1992.
[22] Office of the United States Trade Representative, "Fact Sheet: 'Special 301' on Intellectual Property," attached to press release entitled "USTR Announces Special 301, Title VII Reviews," Apr. 29, 1992, p. 5.
[23] U.S. Department of State Telegram, June 22, 1990, Brasilia, message reference No. 06878.
[24] *Argentina Country Report* (London: The Economist Intelligience Unit, 1990), No. 4, p. 19.
[25] "Four Southern Cone Countries Set Out on the Road Towards a Common Market," *Latin American Weekly Report*, Nov. 22, 1990, p. 1.
[26] MERCOSUR is the Spanish acronym, and MERCOSUL is the Portuguese acronym.
[27] Under terms of the treaty, the common market enters into effect 30 days from the date of deposit of the instruments of ratification. U.S. Department of State Telegram, Oct. 17, 1991, Asuncion, message reference No. 04305.

Governments have ratified the treaty and have begun to reduce tariffs for trade among themselves. All tariffs are to be eliminated by December 1994 for Argentina and Brazil, and a year later for Paraguay and Uruguay. Each member country maintains a list of special items that will be exempt from the first round of tariff cuts. A code of sanctions has been established but formal administrative bodies and dispute resolution mechanisms have not yet been developed.[28] MERCOSUR nations are also negotiating the establishment of a common external tariff, currently projected at 35 percent.[29]

Central American Common Market (CACM)

The CACM was created in 1961 to liberalize intraregional trade and to establish a protected regional free-trade area and, eventually, a customs union for the countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. CACM achieved early success in implementing duty-free trade among its members. By 1969, nearly 95 percent of the goods traded among CACM members had been granted duty-free status. Trade within the region increased from $33 million in 1960 to $1.1 billion in 1980 but diminished every year until 1986, when it reached $421 million.[30]

The CACM virtually collapsed during the 1970s because of trade disputes rooted in political and ideological differences among members.[31] In response, a new treaty was drafted in 1976 but never ratified. Progress towards a Central American peace plan led to a new regional tariff and customs union agreement in January 1986 along with a common external tariff scheme to discourage imports of non-Central American products.[32] A payment mechanism for settling intraregional trade accounts, implemented in 1987, was probably one factor that helped intraregional trade to increase to $750 million by 1989.[33]

[28] Gaston Lasorte, Minister of Counsel, Embassy of Uruguay, interview by the Commission, Apr. 22, 1992.

[29] U.S. Department of Commerce, "The MERCOSUR Countries are Potentially a Huge Market," *Business America*, Mar. 23, 1992, p. 8.

[30] "Central American Common Market," *Europa World Yearbook, 1991* (London: Europa Publications, Ltd., 1991), p. 110.

[31] The most serious trade dispute erupted as a result of the 1969 war between El Salvador and Honduras. Demanding special relief measures for its war-ravaged economy, Honduras withdrew from the group in December 1970. Honduras ceased trade with El Salvador and returned to bilateral treaties and import duties on trade with other CACM members. In a subsequent trade dispute, Costa Rica was expelled in 1972.

[32] Honduras continued to insist on signing bilateral agreements. "Central American Common Market," *Europa World Yearbook, 1991*, p. 110.

[33] Ibid.

By 1990 the CACM countries were expressing increased interest in integrating the regional economy and liberalizing trade as a new approach to solving the regional economic and political problems that arose during the 1980s. In June 1990 the CACM nations drafted a "far-reaching" economic action plan ("Plan de Acción Económica de Centroamérica" (PAECA)) that "marked the beginning of economic reconstruction" in the region.[34] The PAECA pledged the CACM countries to establish a framework for intraregional free trade and to take the necessary steps to facilitate the movement of goods in the region, such as highway improvements. One of the initial accomplishments of the PAECA was attained in July 1990, when the Transitory Multilateral Agreement on Free Trade was concluded between Honduras and the other CACM nations. Through this treaty, Honduras rejoined the CACM.[35]

In July 1991 the CACM nations agreed to set up a new common market and allow free trade between member nations in almost all goods.[36] The CACM nations have eliminated almost all quantitative restrictions and have agreed to liberalize intraregional trade in 12 basic agricultural items in 1992.[37] The CACM nations also plan to eliminate quotas on non-CACM imports of "highly sensitive basic grains," namely rice, maize, sorghum, and soybeans, by July 1992.[38] In addition, they agreed to adopt a system of common external tariffs (CET), ranging from a minimum of 5 percent to a maximum of 20 percent, effective in January 1993.[39] The CACM also plans to adopt in the near future the Harmonized Tariff System to facilitate commercial relations with non-CACM nations.[40] Future CACM goals include the establishment of free trade in services and the free movement of capital and labor.

The regional integration talks for the first time involve Panama,[41] which has not historically considered itself as a part of "Central America."[42] In

[34] Peter B. Johnson, executive director, Caribbean/Latin American Action, written submission to the Commission, Jan. 22, 1992, p. 7.

[35] Carlos M. Echeverria, executive director, Federation of Private Entities of Central America and Panama (FEDEPRICAP), Costa Rica, written submission to the Commission, Jan. 1992, p. 9.

[36] U.S. Department of Commerce, "Central America Economic Integration Proceeds," *Business America*, by Jay Dowling, Mar. 23, 1992, p. 5.

[37] Echeverria, written submission, Jan. 1992, p. 5, and letter to the Commission, Jan. 15, 1992, p. 2.

[38] Ibid.

[39] U.S. Dept. of Commerce, "Central American Economic Integration Proceeds." Costa Rica will phase in the maximum CET on a quarterly basis starting on March 31, 1992, and ending in June 1993.

[40] Echeverria, written submission, p. 9.

[41] Rodrigo A. Sotela, Minister Counselor for Economic Affairs, Embassy of Costa Rica, written submission to the Commission, Jan. 22, 1992, p. 7.

[42] U.S. Dept. of Commerce, "Central American Economic Integration Proceeds."

addition, the success of these talks has "made it easier" for the CACM to enter into negotiations for trade agreements with its major trading partners such as Mexico and Venezuela.[43] CACM officials see such agreements as a means of insulating the CACM economies against possible trade diversion arising from a NAFTA.

Caribbean Community

The Caribbean Community, known as CARICOM, was created in 1973 as a replacement for the Caribbean Free-Trade Association. Its goal is to establish a common market among the Caribbean Basin's English-speaking countries. The key policy instruments CARICOM envisions for creating a common market are common external tariffs and common rules of origin. Progress in putting these policies in place has been impeded by the economic difficulties facing member countries, declining intraregional trade, and trade disputes among members. Following the 1973 oil price shock, CARICOM members erected trade barriers to avoid exposing themselves to global inflation. Other problems emerged during the 1980s, one of the most significant being the 1983 collapse of the CARICOM trade payments facility after it had exceeded its credit limit.[44]

In 1984 CARICOM members agreed to establish by 1989 a system of common external tariffs (CET) and to make structural adjustments in their economies, including expanded production and reduced imports. Although implementation of the CET has been marked by delays, the CET has been adopted by all CARICOM members except Antigua and Barbuda, Montserrat, St. Christopher and Nevis, and St. Lucia.[45] The CET ranges from 5 percent to 45 percent. The adoption of a lower, common external tariff should help simplify CARICOM trade procedures and reduce the cost of doing business in the region, including the costs for imports of capital equipment and raw materials. However, U.S. Assistant Secretary of State Bernard W. Aronson indicated that the 45-percent maximum CET may not be low enough to offer sufficient incentives for new investment.[46]

In June 1991 CARICOM heads of state endorsed a proposal calling for the creation of a CARICOM single market and the elimination of all barriers to intraregional trade.[47] They also recommended free movement of skilled workers and professionals, development of a common currency, creation of a CARICOM investment fund, and mobilization for international negotiations.

Although CARICOM nations are moving toward regional integration, the region, with a combined population of just 5.5 million, is a "small player" in the world economy. Moreover, some Caribbean officials fear that a NAFTA would "marginalize" Caribbean nations and erode the preferences currently granted by the United States under the Caribbean Basin Economic Recovery Act. As a result, they have called for steps to integrate the entire Caribbean Basin. To this end, Caribbean and Central American leaders met in Honduras in January 1992 to discuss Caribbean-Central American integration.[48] "Historically divided by culture and language, [the leaders] recognize that uniting behind common goals could expand their leverage to achieve these goals."[49] The conference's agenda included the development of a unified Caribbean Basin response to a NAFTA and the European single market. Although "short on specific results, the conference was an important step toward ending years of mutual ignorance."[50]

CARICOM nations also are working towards expansion of the organization to include more nations of the region. In July 1991 CARICOM members agreed to grant associate membership to the British Virgin Islands and to the Turks and Caicos Islands. They already have granted observer status to Mexico, Puerto Rico, Venezuela,[51] and Colombia.[52] Venezuela in October 1991 formally requested full membership in CARICOM, which has long-pending requests for membership from the Dominican Republic and Haiti. Venezuela's request followed its July 1991 offer to negotiate a free-trade agreement with the CARICOM, initially providing for one-way free trade for CARICOM exports to Venezuela. CARICOM and Venezuela are finalizing negotiations for such an agreement.[53]

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[43] Johnson, written submission, Jan. 22, 1992, p. 8, and Sotela, written submission, Jan. 22, 1992, p. 8.

[44] "Caribbean Community and Common Market," *Europa World Yearbook; 1991* (London: Europa Publications, Ltd., 1991), p. 108.

[45] U.S. Department of Commerce, "Caribbean Common Market Has Broad Economic Agenda," *Business America*, by Jay Dowling, Mar. 23, 1992, p. 7.

[46] Bernard W. Aronson, Assistant Secretary of State for Inter-American Affairs, remarks to the 1991 Miami Conference on the Caribbean, Dec. 4, 1991, in Miami, FL.

[47] Johnson, written submission, pp. 8 and 9, and U.S. Dept. of Commerce, "Caribbean Common Market Has Broad Economic Agenda."

[48] Johnson, written submission, p. 9.

[49] U.S. Department of Commerce, "A Caribbean Basin-Wide Agenda?" *Business America*, Mar. 23, 1992, p. 13.

[50] Ibid.

[51] "CARICOM Takes the Strain of Ambitious Summit Decisions," *Caribbean Insight*, Sept. 1990, p. 4.

[52] "Trade Pact With Venezuela at Summit a Step Towards 'Widening' CARICOM," *Caribbean Report*, July 25, 1991, p. 1.

[53] U.S. Department of State Telegram, "Venezuela Economic News Briefs: April 14-27," Caracas, Apr. 28, 1992, message reference No. 04626, p. 3.

Chapter 4
Enterprise for the Americas Initiative and Other U.S. Initiatives

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CHAPTER 4
ENTERPRISE FOR THE AMERICAS INITIATIVE AND OTHER U.S. INITIATIVES

Traditionally, U.S. trade liberalization efforts have focused on multilateral discussions and forums. Groups such as the GATT, the Organization for Economic Cooperation and Development (OECD), and the United Nations Conference on Trade and Development (UNCTAD) have promoted free, rule-based trade. The Bush administration has continued this general approach, stating that it views the successful completion of the GATT Uruguay Round, where the United States is pursuing trade liberalization in many areas, as "the best means of strengthening the multilateral trading system."[1]

In the past decade, the United States has also pursued trade promotion and international economic cooperation through regional and bilateral trade initiatives that complement the multilateral trading system. The United States negotiated free-trade agreements with Canada and Israel in the 1980s and pursued improved market access on a bilateral basis with such countries as Japan, for instance, with which it has a large trade imbalance. Most recently, the United States launched negotiations that could lead to a NAFTA with Mexico and Canada. In addition, President Bush has pledged the United States to engage in "close cooperation" with Latin America in the Uruguay Round and stated that the United States "will seek deeper tariff reductions" on products of special interest to Latin America.[2] Moreover, the United States unilaterally lowered some barriers to its markets for certain developing countries in an effort to encourage their economic development.

Enterprise For The Americas Initiative

By 1990, following years of deteriorating economic performance, most Latin American countries had begun to abandon longstanding policies of government intervention in key economic activities and adopt market-oriented economic reforms. Following a request for economic assistance made by the Presidents of Bolivia, Colombia, and Peru in February 1990, the United States conducted a review of its economic policies toward Latin America. As a result of this policy review, President Bush announced the establishment of the Enterprise for the Americas Initiative (EAI) on June 27, 1990. By seeking to recognize the ongoing economic reforms in Latin America and to encourage their continued implementation, the EAI shifts the focus of U.S.-Latin American economic relations to "trade, not aid."[3]

This section provides an overview of the main features of the EAI. It includes a description of the three major components of the EAI—

- *trade expansion* among countries in the hemisphere, with the long-term objective of a Western Hemisphere free-trade zone;
- *investment promotion* and support for economic reforms that encourage private investment; and
- *debt relief* for Latin American countries.[4]

Trade Component

The trade component of the EAI consists of a three-point plan. First, the United States will cooperate closely with the countries of the Western Hemisphere to secure the successful completion of the GATT Uruguay Round. Second, it will pursue free trade agreements (FTAs) with countries or groups of countries in the region. Third, it will negotiate bilateral framework agreements with "some [Latin American] countries [that] aren't yet ready to take that dramatic step to a full free trade agreement."[5]

The goal of the framework agreements is to allow Latin American countries to gradually eliminate barriers to trade and investment with the United States. The model for such agreements is the United States-Mexico framework agreement on trade and investment signed in 1987.[6] This agreement created a regular forum for discussing bilateral trade and investment issues. The agreement also established procedures to resolve trade and investment disputes. Finally, the agreement affirms the desirability of liberalizing trade and investment regimes and establishing adequate protection of intellectual property.

The United States has signed bilateral/plurilateral EAI framework agreements with the following countries since 1990:

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[1] Office of the United States Trade Representative, *1991 Trade Policy Agenda and 1990 Annual Report* (Washington, DC: USTR, n.d.), p. 7.

[2] "Remarks Announcing the Enterprise for the Americas Initiative," June 27, 1990, *Weekly Compilation of Presidential Documents*, vol. 26, No. 26, July 2, 1990, p. 1011.

[3] Ibid., p. 1010.

[4] "Message to the Congress Transmitting the Enterprise for the Americas Initiative Act of 1990," Sept. 14, 1990, *Weekly Compilation of Presidential Documents*, vol. 26, No. 37, Sept. 17, 1990, p. 1371.

[5] "Remarks Announcing the Enterprise for the Americas Initiative," p. 1011.

[6] See U.S. International Trade Commission, *Operation of the Trade Agreements Program, 40th Report, 1988*, USITC publication 2208, 1989, p. 118, and USITC, *Review of Trade and Investment Liberalization Measures by Mexico and Prospects for Future United States-Mexican Relations* (investigation No. 332-282), USITC publication 2275, Apr. 1990, p. 2-3.

Parties signed in 1990	Parties signed in 1991
Bolivia[1]	CARICOM[2]
Chile	Dominican Republic
Colombia	El Salvador
Costa Rica	Guatemala
Ecuador	MERCOSUR[2]
Honduras	Nicaragua
	Panama
	Peru
	Venezuela

[1] The agreement was signed before the EAI was announced.
[2] See chapter 1 for a list of nations in this organization.

All of the framework agreements negotiated with these Latin American countries contain a statement of principles recognizing the importance of—

- open trade and investment,
- trade in services,
- intellectual property rights protection,
- worker rights, and
- expeditious resolution of trade and investment problems.

The framework agreements provide also for the creation of bilateral or multilateral councils on trade and investment consultative mechanisms. These councils monitor trade and investment relations, convene consultations on specific trade and investment issues, and seek to remove impediments to trade and investment flows.

Investment Component[7]

To spur sectoral and structural investment reforms in Latin America, the EAI proposes the creation of an Investment Sector Loan Program (ISLP) in the Inter-American Development Bank (IDB) and a Multilateral Investment Fund (MIF) to be administered by the IDB. The IDB in 1991 established the ISLP to support investment sector reform, and funding for the program is drawn from IDB's current resources. The MIF is designed to provide program and project grants to advance market-oriented investment policies, such as privatization of government-owned industry, worker training, and enterprise and infrastructure development.

In June 1991, the IDB approved the first loan under the ISLP—$150 million for Chile. Later that year, the IDB approved a $140 million loan to Bolivia, a $75 million loan to Jamaica, and a $200 million loan to Colombia. Loans are under negotiation with Uruguay, Costa Rica, Argentina, Honduras, Guatemala, Trinidad and Tobago, El Salvador, the Bahamas, Barbados, and Paraguay in 1992.

Grants from the MIF will complement the investment sector loans described above, with funds to be disbursed after reforms are enacted. The MIF will be capitalized at $1.5 billion for the period 1992-96. The proposed U.S. share is one-third of this amount, or $500 million, to be made in annual contributions of $100 million over 5 years. The Government of Japan has committed formally to contribute a matching amount. Twenty European and Latin American countries have also pledged funds to the MIF.

Debt Reduction Component

The EAI debt component consists of unilateral U.S. action to reduce all debt, whether it be low-interest rate loans (concessional debt) or market-interest-rate loans (nonconcessional debt), owed to the U.S. Government. The total stock of Latin American debt eligible to be reduced under the EAI is approximately $10.2 billion (table 4-1), compared with the total $12.3 billion-debt owed to the United States. Generally, eligible countries will be expected to meet the following conditions:

- have an International Monetary Fund (IMF) program in place;
- have a World Bank structural adjustment loan, if appropriate;
- undertake major investment reforms; and
- have negotiated a financing program with commercial bank creditors if commercial loans are a significant share of the country's debt portfolio.

Decisions on the extent of debt reduction are to be made through an interagency National Advisory Council chaired by the U.S. Secretary of the Treasury.

The concessional debt extended through the United States Agency for International Development (USAID) and under Public Law 480 (PL-480) "Food for Peace" food financing programs would be reduced under the EAI according to countries' ability to repay. Principal repayment is in dollars, as under the original repayment terms. Interest payments, calculated at a lower concessional rate under an EAI debt reduction arrangement, are also in dollars.

Interest payments can be made in local currency if the debtor country negotiates a bilateral environmental framework agreement. Under such an agreement, debtor countries make interest payments in local currency, which saves the debtor country the additional expense of converting local currency into U.S. dollars. These payments ultimately are used to support environmental preservation activities in the debtor country. The framework agreement establishes an environmental fund, jointly managed by the United States and representatives from the debtor country.

[7] The information presented here and in the following section, "Debt Reduction Component," is mainly from U.S. Department of Commerce, "Fact Sheet: Enterprise for the Americas (EAI)," Mar. 3, 1992.

Table 4-1
Latin American bilateral debt[1] owed to the United States (subject to EAI debt- reduction programs), as of Dec. 31, 1990

(Million dollars)

			Non-concessional debt		
Country	*Concessional debt U.S. Agency for International Development*	*Public Law 480 Program*	*Commodity Credit Corp.*	*U.S. Exim-bank*	*Total[2]*
Argentina	36	0	0	465	501
Bolivia	[3]0	[4]141	0	33	505
Brazil	966	49	152	1,304	2,471
Chile	304	[4]45	68	29	446
Colombia	499	2	0	497	998
Costa Rica	331	127	0	32	490
Venezuela	0	0	0	18	18
Other	2,570	1,516	269	385	4,740
Total[2]	5,037	1,880	489	2,763	10,169

[1] Excludes Mexico.
[2] Totals do not reflect changes attributable to non-EAI debt reduction programs.
[3] Reflects non-EAI 1991 reductions of $331 million under section 572 AID debt.
[4] Chilean and Bolivia debt reduced to $23 and $8 million, respectively, under EAI debt-reduction agreements.

Source: U.S. Treasury Department, as cited in U.S. Department of Commerce, "Fact Sheet: Enterprise for the Americas (EAI)," Mar. 3, 1992, p. 19.

Committees in the debtor country, composed of representatives of the U.S. Government and local private environmental groups, formulate programs and projects funded through each country's environmental fund. As of March 1992, Bolivia, Jamaica, and Chile signed bilateral environmental framework agreements.

Nonconcessional loans were extended by the U.S. Export-Import Bank (Eximbank)[9] and the U.S. Commodity Credit Corporation (CCC) at market interest rates to applicants that were deemed able to repay at the time the loans were extended. Because these loans were extended to essentially creditworthy countries, the U.S. Government makes approximately 10 to 15 percent of this debt eligible for reduction through several swap arrangements and insists that the remaining principal and interest be repaid in full. Under debt-for-nature swap arrangements, investors or other interested parties, such as private environmental organizations, will pay off a portion of a country's outstanding Eximbank or CCC debt to the U.S. Government. In exchange for the payment of its debt obligation, the debtor country will repay the investor in local currency, which will be used to finance environmental programs, development projects, or an equity purchase in the debtor country.

EAI Legislation

On September 14, 1990, President Bush sent a legislative proposal to Congress to implement the MIF funding and debt portions of the EAI.[10] The Congress did not approve such legislation during the 1990 session. However, Congress did approve the establishment and operation of the Enterprise for the Americas Facility (EAF) to manage debt reduction operations and the reduction of PL-480 loans to eligible Latin American countries.[11]

In February 1991, the President submitted new EAI-implementing legislation to Congress that would authorize a reduction in USAID, Eximbank, and CCC debt and provide funding for the IDB-managed MIF.[12] By the end of 1991, Congress enacted no further legislation to reduce Latin American debt or to approve appropriations for the MIF. However, Congress did approve the establishment of the Environmental Framework that allows interest payments on reduced debt to be made in local currency and used to fund environmental projects in debtor countries. An executive order to implement the bill was issued March 19, 1991.[13] In September 1991, President Bush appointed the Environment for the Americas Board, which is chaired by the U.S. Deputy Assistant Secretary of the Treasury for International Development and Debt Policy and includes representatives from the State Department, USAID, the

[9] Loans granted under the Export-Import Bank Act of 1945, as amended.

[10] "Remarks on Transmitting the Enterprise for the Americas Initiative Act of 1990," Sept. 14, 1990, *Weekly Compilation of Presidential Documents*, vol. 26, No. 37, pp. 1370-1371.

[11] The Food, Agriculture, Conservation, and Trade Act of 1990, S. 2830 (Farm Bill), which became Public Law 101-624 in November 1990.

[12] "Message to the Congress Transmitting the Enterprise for the Americas Initiative Act of 1991," Feb. 26, 1991, *Weekly Compilation of Presidential Documents*, vol. 27, No. 9, Mar. 4, 1991, pp. 217-219.

[13] "Executive Order 12757—Implementation of the Enterprise for the Americas Initiative," Mar. 19, 1991, *Weekly Compilation of Presidential Documents*, vol. 27, No. 12, Mar. 25, 1991, p. 337.

Environmental Protection Agency, and the private sector.[14]

Opinions of Foreign Governments

Representatives of the governments of Bolivia, Chile, Jamaica, Costa Rica, and Venezuela submitted testimony to the U.S. International Trade Commission that they support the EAI and the changes that it proposes for trade and investment in the Western Hemisphere. These countries were among the first to negotiate framework agreements with the United States, obtain loans through the ISLP, and reduce their concessional debt burden under the provisions of the EAI. The Government of Chile "received [the EAI] enthusiastically"[15] and the Government of Bolivia believes that "Governments throughout the hemisphere have taken up [the U.S.] initiative and have made [it] their own."[16] The Jamaican ambassador expressed similar sentiments when he said that the EAI was a "bold new approach to economic relations in the Western Hemisphere" and that members of CARICOM were committed to furthering trade liberalization in the region.[17] The representative of Costa Rica voiced a similar opinion when he stated that his government "believes stronger hemispheric trade links should be forged if the United States and Latin America are to be competitive in the coming global environment."[18]

The Venezuelan ambassador said that the introduction of the EAI was a positive step and supported its long-term goals. However, he said that the EAI did not weigh the objectives of all western hemisphere countries equally. He called for the elimination of U.S. trade barriers and a greater degree of "regional burden-sharing."[19]

Other U.S. Initiatives

The United States has established several other nonreciprocal programs that encourage economic development in Latin America. Three of these programs, the Caribbean Basin Economic Recovery Act (CBERA), Section 936 of the U.S. Internal Revenue Code, and the Andean Trade Preference Act, are briefly described below. In addition to these region-specific programs, the countries of Latin America are eligible for duty reduction under the U.S. Generalized System of Preferences (GSP) and the production-sharing program. The GSP program offers nonreciprocal duty-free entry for designated articles from developing countries, providing that at least 35 percent of the value of the product is added in the beneficiary country.[20] The production-sharing program provides for reduced duties on U.S.-origin goods that are processed or assembled outside the United States and subsequently returned as U.S. imports.[21]

Caribbean Basin Economic Recovery Act

The CBERA went into effect in 1984 and is the centerpiece of the Caribbean Basin Initiative (CBI), a broader program launched in 1983 to expand foreign and domestic investment in nontraditional sectors of the Caribbean Basin nations, to diversify their economies, and to expand their exports. The CBERA is intended to encourage economic development in the Caribbean Basin principally by providing duty-free entry into the United States for a wide range of products from CBERA-eligible nations.[22] In 1990 the CBERA program was made permanent and expanded to include additional products.[23]

To receive duty-free entry into the United States under the CBERA, products must be either of CBERA-country origin, of Puerto Rican origin with value added in a CBERA country, or of U.S. origin with assembly in a CBERA country. Several items, which account for a significant percentage of U.S. imports from CBERA-eligible countries, are excluded from the CBERA program. These items include most textiles and apparel, canned tuna, petroleum and

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[14] Private sector participants include the Inter-American Foundation, the Natural History Museum of Los Angeles, the IWC Resources Corp., the World Wildlife Fund, and the Nature Conservancy. U.S. Dept. of Commerce, "Fact Sheet," p. 4.

[15] Andrés Velasco, Coordinator of International Finance, Chilean Ministry of Finance, prehearing brief submitted to the Commission by Patricio Silva, Ambassador, Embassy of Chile, Jan. 15, 1992, p. 9.

[16] Jorge Crespo-Velasco, Ambassador, Embassy of Bolivia, transcript of hearing, Jan. 22, 1992, p. 124.

[17] Dr. Richard L. Bernal, Ambassador, Embassy of Jamaica, written submission to the Commission, Feb. 4, 1992.

[18] Rodrigo A. Sotela, Minister Counselor for Economic Affairs, Embassy of Costa Rica, transcript of hearing, Jan. 22, 1992, p. 174.

[19] Ambassador Miguel Rodriguez-Mendoza, President, Venezuelan Foreign Trade Institute, written brief submitted to the Commission by Carlos Bivero, Deputy Chief of Mission, Embassy of Venezuela, Jan. 31, 1992, p. 11.

[20] For a more detailed discussion of the GSP program, see chapter 5 of USITC, *Operation of the Trade Agreements Program, 42nd Report*, 1990, USITC publication 2403, July 1991.

[21] U.S. customs duties for goods imported under the production-sharing program are assessed only on the value added to the goods as a result of processing or assembly in the foreign location and not on the value of the exported and reimported U.S. content. For more information, see USITC, *Production Sharing: U.S. Imports Under Harmonized Tariff Schedule Subheadings 9802.00.60 and 9802.00.80, 1986-1989*, USITC publication 2365, Mar. 1991.

[22] The 24 nations eligible for the CBERA include all the members of the Central American Common Market and the Caribbean Community (see chapter 1 for country lists), plus Aruba, British Virgin Islands, Dominican Republic, Haiti, Netherlands Antilles, and Panama. Anguilla, the Cayman Islands, Suriname, and the Turks and Caicos Islands are potentially eligible, but have not formally requested designation for benefits under the CBERA. See USITC, *Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers, Sixth Report, 1990*, USITC publication 2432, Sept. 1991.

[23] Public Law 101-382, title II. See "Statement on Signing the Customs and Trade Act of 1990," Aug. 20, 1990, *Weekly Compilation of Presidential Documents*, vol. 26, No. 34, Aug. 27, 1990, p. 1266.

petroleum products, most footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and watches and watch parts of Communist country origin. For textiles and apparel, the United States in 1986 created a special access program to liberalize quota treatment for such goods from CBERA-eligible nations. Under this program, bilateral agreements have been signed with the major CBERA-producing nations establishing guaranteed access levels, or GALs, that grant the nations greater access to the U.S. market for apparel assembled from fabric made and cut in the United States and entered under heading 9802.00.80 of the Harmonized Tariff Schedule of the United States.[24]

Section 936 of the U.S. Internal Revenue Code

Section 936 of the U.S. Internal Revenue Code provides U.S. firms with tax exemptions for profits earned while operating in Puerto Rico if they are retained in local Puerto Rican financial institutions.[25] In 1986 the Government of Puerto Rico enacted a program to lend funds for economic development or stand-alone projects in eligible Caribbean Basin countries. To be eligible, a country must sign a Tax Information Exchange Agreement (TIEA) with the United States. A TIEA is a mutual and reciprocal obligation to ~~exchange information with the United~~ States about the enforcement of tax laws.[26]

[24] The United States has GAL agreements with Costa Rica, the Dominican Republic, Guatemala, Haiti, and Jamaica. The GAL agreement with Trinidad and Tobago expired in December 1991. For a more detailed discussion of CBERA provisions and exclusions, see USITC, *Sixth CBERA Report, 1990.*

[25] For a more detailed discussion of section 936 benefits, see USITC, *Sixth CBERA Report, 1990*, p. 1-2.

Section 936 loans are made at concessional rates, typically one or two percentage points below the London Interbank Offer Rate (LIBOR).[27] Section 936 funds are also available for "twin plants" that divide production between a Puerto Rican site and a site in a lower cost Caribbean country. Loans disbursed for projects in eligible countries totaled $245 million in 1990, representing a significant inflow of investment capital into the Caribbean Basin.[28]

Andean Trade Preference Act

The Andean Trade Preference Act (ATPA) was signed into law in November 1991. The ATPA is a package of trade initiatives designed to combat production and export of illicit drugs and create opportunities for expanded trade and investment between the Andean nations and the United States.[29] It offers trade preferences, similar to those of the CBERA program, for Bolivia, Colombia, Ecuador, and Peru. The most significant trade difference between the ATPA and the CBERA program is that the ATPA offers tariff preferences for a limited duration of 10 years.

[26] Barbados, Costa Rica, Dominica, the Dominican Republic, Grenada, Jamaica, St. Lucia, and Trinidad and Tobago have all signed and ratified TIEAs.

[27] Commercial banks can charge below-market interest ~~rates on section~~ 936 loans because they are able to pay lower interest rates than commercial banks can in the United States on section 936 deposits. The combination of Federal and local tax preferences continues to make it more profitable for section 936 firms to retain profits in Puerto Rico than to repatriate them, despite receiving lower interest rates on their deposits.

[28] USITC, *Sixth CBERA Report, 1990*, table B-5, p. B-9.

[29] "Statement on Andean Region Trade Intitiatives," Nov. 1, 1989, *Weekly Compilation of Presidential Documents*, vol. 25, No. 44, Nov. 6, 1989, pp. 1659-1660.

Chapter 5
Case Study on Chile

CONTENTS

CHAPTER 5
CHILE

Since 1973, economic policymakers in Chile generally have shown a commitment to free-market policies, despite subsequent periods of political instability. Chile is now fully integrated into the world economy with sustainable economic growth, generally transparent and nondiscriminatory trade and investment regimes, and relatively few barriers to trade and investment.

This chapter addresses three main areas relating to Chilean policy: (1) recent economic history and current economic, trade, and investment trends; (2) policies on trade, investment, and intellectual property protection; ongoing policy liberalization; and remaining barriers; and (3) Chilean trade and investment barriers in specific economic sectors.

ECONOMIC OVERVIEW

The Chilean economy, currently in its eighth consecutive year of expansion, has grown at a real average annual rate of 5.4 percent since 1984.[1] As a result of this strong growth, led primarily by exports, Chile has successfully resolved its foreign debt crisis of the early 1980s.[2] Chile's outstanding foreign debt as of yearend 1991 totaled about $17.1 billion, down from a peak of nearly $21 billion in 1986.[3] Chile's annual inflation rate in 1991 was 17.8 percent, low in comparison to other Latin American countries.

[1] United Nations, Economic Commission for Latin America and the Caribbean (ECLAC), *Preliminary Overview of the Economy of Latin America and the Caribbean, 1991*, LC/G.1696, Dec. 18, 1991, table 2, p. 37.

[2] "Chile Lands $320 Million," *LDC Debt Report: Latin American Markets*, Jan. 21, 1991, p. 3.

[3] ECLAC, *Preliminary Overview*, table 17, p. 52.

In 1990, Chile's real gross domestic product (GDP) of $32.3 billion (1988 dollars) was only one-tenth that of Brazil and was fifth among the countries examined in this report (appendix C, table C-1). However, Chile had the third-highest per capita GDP, $2,451 (1988 dollars).

Leading Economic Sectors

Service sectors, including government, finance, housing, education, health, and wholesaling and retailing, accounted for about half the GDP during 1980-90 (table 5-1). Trade and foreign investment in most of these areas are limited by the small size of the market, the nature of the service, and government restrictions.

Chile is one of the world's largest copper producers and exporters. The relative importance of copper exports peaked in the early 1970s, when copper made up roughly 70 percent of Chilean export earnings (table 5-2). As a result of this dependence on copper export earnings, the Chilean economy was subject to cyclical downturns due to volatile international copper prices. To counter these downturns, in 1985, with the mining sector accounting for 8.7 percent of total GDP,[4] the Chilean Government launched a program to diversify exports and to reduce the country's dependence on copper. By 1990, mining fell to 7.3 percent of GDP and copper exports accounted for only 46 percent of total Chilean export earnings.[5]

[4] In addition to copper, Chile is also a major producer of silver, gold, rhenium, selenium, and lithium carbonate.

[5] CORFO, "Copper Price Decline Emphasizes Diversification Virtues," *Chile Economic Report*, Nov. 1991, p. 4.

Table 5-1
Sector contribution to Chilean GDP, selected years 1965-90

(Percent)

Sector	*1965*	*1970*	*1975*	*1980*	*1985*	*1990*
Agriculture[1]	9.0	8.5	10.3	8.3	9.5	9.1
Mining	7.5	6.6	7.9	7.2	8.7	7.3
Manufacturing	24.8	24.7	21.5	21.6	20.4	20.6
Wholesale and retail	15.9	16.5	13.9	18.5	16.8	18.1
Services[2]	28.6	29.7	33.3	31.5	30.5	29.6
Utilities[3]	1.7	1.7	2.3	2.1	2.5	2.5
Construction	7.8	7.5	5.6	5.3	5.9	5.8
Transport and communications	4.7	4.9	5.2	5.6	5.6	6.9
Total	100.0	100.0	100.0	100.0	100.0	100.0

[1] Includes forestry and fishing.
[2] Includes the financial sector, housing, education, health, other services, public administration, and taxes on imports.
[3] Includes electricity, gas, water, and sanitation services.

Note.—Because of rounding, figures may not add to the totals shown.

Source: Central Bank of Chile and the Embassy of the United States, Santiago.

Table 5-2
Chilean merchandise trade, by sectors, selected years 1965-89

Commodity	*1965*	*1975*	*1985*	*1988*	*1989*
			Imports (million dollars)		
Agricultural products	162	323	313	396	394
Fuels	35	303	529	580	806
Other mining products	15	36	53	85	110
Chemicals	78	165	414	713	842
Other basic manufactures	70	143	342	621	931
Machinery and transport	214	501	860	1,935	2,874
Other	30	63	232	401	537
Total	604	1,534	2,744	4,731	6,496
			Import percentage distribution		
Agricultural products	26.8	21.0	11.4	8.4	6.1
Fuels	5.8	19.8	19.3	12.3	12.4
Other mining products	2.5	2.4	1.9	1.8	1.7
Chemicals	12.9	10.7	15.1	15.1	13.0
Other basic manufactures	11.6	9.3	12.4	13.1	14.3
Machinery and transport	35.4	32.7	31.4	40.9	44.2
Other	5.0	4.1	8.5	8.5	8.3
Total	100.0	100.0	100.0	100.0	100.0
			Exports (million dollars)		
Agricultural products	48	282	1,228	2,247	([2])
Fuels	([1])	14	17	12	([2])
Other mining products	131	206	609	805	([2])
Copper ores	17	26	285	495	([2])
Unwrought copper	464	955	1,245	2,566	([2])
Chemicals	12	62	97	206	([2])
Other basic manufactures	9	86	122	264	([2])
Machinery and transport	4	14	25	53	([2])
Other	3	4	38	146	([2])
Total	688	1,649	3,665	6,794	([2])
			Export percentage distribution		
Agricultural products	7.0	17.1	33.5	33.1	([2])
Fuels	([1])	.9	.5	.2	([2])
Other mining products	88.8	72.0	58.3	56.9	([2])
Copper ores	2.4	1.6	7.8	7.3	([2])
Unwrought copper	67.4	57.9	34.0	37.8	([2])
Chemicals	1.8	3.8	2.6	3.0	([2])
Other basic manufactures	1.3	5.2	3.3	3.9	([2])
Machinery and transport	.6	.8	.7	.8	([2])
Other	.4	.3	1.1	2.2	([2])
Total	100.0	100.0	100.0	100.0	([2])

[1] Less than $50,000 or 0.05 percent.
[2] Not available.

Note.—Because of rounding, figures may not add to the totals shown.

Source: United Nations Trade Data System.

Since the 1960s, the Chilean agricultural sector has maintained a fairly constant contribution to total GDP of roughly 10 percent or slightly less (table 5-1). Expansion in this sector contributed to the post-1984 recovery of the Chilean economy, with export earnings from this sector growing at an annual rate of 16 percent between 1984 and 1989.[6] Fruit production for export has been growing rapidly and accounts for the bulk of agricultural exports. Domestic wheat production grew rapidly in the 1980s aided by the establishment of a wheat import price band in 1985, and replaced imports almost completely.

Since 1965, manufacturing has accounted for over 20 percent of Chilean GDP and is an important—but declining—portion of total Chilean exports. The bulk of industrial production is geared towards domestic consumption and final consumer goods rather than

[6] Inter-American Development Bank (IDB), *Chile: Socioeconomic Report*, GN-1730-1, Aug. 29, 1991, p. 135.

intermediate or capital goods.[7] Manufactured exports tend to be natural resource intensive, i.e., canned fruits and vegetables, chemicals, and base metal products.

Recent Economic History

The Frei Era (1964-70)

The era of President Frei generally was one of low but stable growth and high inflation. Policies were introduced to raise minimum wages, increase public investment, make the tax code more progressive, introduce land reform, and promote exports and both domestic and foreign investment. The Frei government also advocated "Chileanization" of the important copper sector.[8] This policy involved the Chilean Government's buying majority ownership with a view to eventual control and offering tax advantages in return for agreements on production and export targets. To support these efforts, the Constitution was amended to allow the Chilean Government to expropriate private property for social purposes.

Protection of domestic manufacturing industries and export promotion were policies of the Frei administration. Crawling-peg minidevaluations were one of the means used to increase manufacturing exports. Under this foreign-exchange regime, a country fixes the value of its currency to another currency and establishes a range in which the exchange rate is allowed to vary over time. This pegged exchange rate is adjusted to keep the country's exports priced competitively in international markets. Aided by the pegged exchange rate, Chile's exports of basic manufactures such as unwrought copper and chemicals increased in nominal terms between 1965 and 1975 (table 5-2).

The reform package of the Frei government did not prove successful. The Frei administration was caught between the political left, which wanted wage concessions and land reform, and the political right, which responded to the constitutional amendment for property takeover with reduced private investment.[9] The apprehension of private investors about the Frei reforms increased because the constitutional changes authorized the Government to generally take over land for social purpose, not just land necessary for the specific reform. In the end, inflation accelerated, investment declined, and real GDP growth fell from a peak of 11.2 percent in 1966 to 2.1 percent by 1970.

The Allende Era (1970-73)

The Allende government's goals included nationalization of all foreign firms and domestic monopolies and a continuing private sector of small and medium-sized firms and landowners.[10] Policies pursued by the Allende government included expropriation and nationalization of copper mines and other large foreign investments, large increases in minimum wages and public sector salaries, price controls, increased social spending, and land reform. The Allende government was faced with labor unrest, declining industrial production and a deteriorating economy. The real GDP growth rate turned negative in 1972 and, although the inflation rate fell in 1971, it increased substantially in 1972.

The Pinochet Era (1973-89)

After overthrowing the Allende government in a military coup, the Pinochet regime introduced orthodox free-market and monetarist economic policies. The military regime attempted to reduce inflation and remove nonmarket distortions simultaneously.[11] The regime privatized many Government-owned firms, reduced public expenditures significantly, and deregulated interest rates and many domestic prices.

The Government also took steps to liberalize trade and investment. To make Chilean exports competitive in international markets, the overvalued currency was devalued by 70 percent between September and October 1973, multiple exchange rates were consolidated into a three-tier exchange-rate system, and a crawling-peg system was reinstated.[12] Import quotas were removed, the average tariff rate was cut from 105 percent to 69 percent, and the maximum tariff rate was cut from 750 percent to 120 percent. To attract foreign investment, the Pinochet regime enacted Decree Law 600 to guarantee investors a stable legal environment in which to operate as well as access to foreign exchange to repatriate their profits and investment capital.

In late 1974 and early 1975, Chile was hit hard as international copper prices collapsed. The Pinochet government responded to the ensuing balance-of-payments crisis and rising inflation with an abrupt stabilization program in 1975. Expansion of the money supply was curtailed,[13] and the fiscal deficit was cut by 80 percent by eliminating 100,000 government jobs.[14]

In 1976, a new, lower tariff structure was introduced with rates of 25, 30, and 35 percent for primary, semimanufactured, and manufactured goods

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[7] B. Milius, "The Economy," in A.T. Merrill, ed., *Chile: A Country Study* (Washington, DC: American University, 1982), p. 129.

[8] J. Sheahan, *Patterns of Development in Latin America* (Princeton: Princeton U. Press, 1987), p. 207.

[9] Ibid., p. 209.

[10] Ibid., p. 213.

[11] See V. Corbo and J. de Melo, "Lessons From the Southern Cone Policy Reforms," *World Bank Research Observer*, vol. 2, No. 2 (July 1987), pp. 111-142.

[12] C. Pietrobelli, "Real Effective Exchange Rates: Methodological Proposals for a Computable Index and an Application to Chile (1973-86)," *Economia Internazionale*, vol. 44, No. 1 (Feb. 1991), p. 76.

[13] V. Corbo and A. Solimano, "Chile's Experience With Stabilization Revisited," in M. Bruno and others, *Lessons of Economic Stabilization and Its Aftermath*, (Cambridge, MA: MIT Press, 1991), pp. 57-91.

[14] See S. Edwards, "Stabilization With Liberalization: An Evaluation of Ten Years of Chile's Experiment With Free-Market Policies, 1973-1983," *Economic Development and Cultural Change*, vol. 33, No. 2 (Jan. 1985), pp. 223-254.

respectively. In 1977, Chile withdrew from the Andean Pact, which was pursuing highly protectionist policies, and announced that, with the exception of automobiles and a few other items, tariffs were to be lowered to 10 percent by 1979.

An economic crisis erupted in late 1981, and real GDP declined by 14.1 percent in 1982. The crisis was attributable to a rash of failures of privatized financial institutions that had taken on large amounts of debt in the previous years.[15] The global economic recession in 1982 exacerbated the crisis. Restraints on monetary expansion resulted in high domestic real interest rates. These rates attracted foreign capital, with adverse consequences for the current account. The resulting inflow of capital, accompanied by pressure from imports, and upward pressure on the currency had significant adverse effects on the Chilean industry. During this time, many Chilean firms could not compete in global markets and an estimated 2,000 medium and large enterprises were driven out of business.[16]

External conditions for Chile worsened substantially in 1982 with a rise in international interest rates, a decline in the terms of trade, and decreased inflows of international capital. Chile began to have problems servicing its foreign debt. Chile formulated an adjustment process to address the worsening economic situation in conjunction with international creditors. The Chilean Government rescheduled its foreign debt and obtained external resources needed to cover its financial requirements. In 1985 the Chilean Government initiated the "chapter 19" debt conversion ("debt-equity swap") program, in which private investors were allowed to take over some of Chile's foreign debt in exchange for an equity investment in a Chilean enterprise.

Another part of the 1982 adjustment process concerned tariffs. Chile raised its uniform tariff rate to 15 percent and further increased it to 35 percent by 1984. However, by January 1988, Chile rolled back the uniform rate to 15 percent.

Economic growth resumed after 1984, largely aided by favorable copper prices and increased noncopper exports. To moderate the impact of variable international copper prices on Government revenues and foreign-exchange earnings, Chile, in conjunction with the World Bank, established a Copper Stabilization Fund in 1985. Through this fund, the Chilean Government builds up foreign-exchange reserves during periods of high copper prices and draws on these reserves when copper prices are low.

The Aylwin Administration (1990-present)

The Aylwin coalition accepted the market- and export-based growth model inherited from the Pinochet era but also included public infrastructure investment and the alleviation of poverty as priorities.[17] A large part of Chilean society (e.g., the poor) did not share in these benefits.[18] In 1990 the Aylwin administration convinced the business community to accept higher taxes to create a fund for investment in social infrastructure, the main goal of which was to provide job skills and training for unemployed youth.[19] The Chilean economic growth rate slowed in 1990 to only 2.1 percent, partly in response to higher taxes and the administration's focus on curtailing inflation.

Current Trade and Investment Patterns

Trade Patterns

During the last decade, a larger share of Chile's exports shifted from developing countries to developed countries. Almost 75 percent of Chile's exports now go to developed nations, led by the United States, Japan, and Germany. Exports to Asia also rose, to nearly 10 percent of total exports. However, Chilean exports to Latin American nations fell by about 50 percent and currently account for 12 percent of Chile's total exports. The decline in these exports reflects the economic difficulties that the region experienced during the 1980s and Chile's focus on trade with North America, Europe, and Asia.[20]

Historically, the United States has been Chile's largest trading partner; however, in 1991, Japan supplanted the United States' position,[21] with the European Community a close third. Nevertheless, trade between the United States and Chile continues to grow. The leading U.S. exports to Chile in 1991 were machinery and transportation equipment. The leading U.S. imports were agricultural products, especially fruits for the winter market, and mineral and metal products, primarily copper (table C-10).

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[15] Eliana A. Cardoso, "Privatization Fever in Latin America," *Challenge*, Sept.-Oct. 1991, p. 36.

[16] A. Foxley, "Chile: After Pinochet Comes Progress," *The International Economy*, vol. 3, No. 1 (Jan./Feb. 1989), p. 50.

[17] The current finance minister, Alejandro Foxley, wrote in 1989 "The challenge is to redistribute income without preventing growth and while keeping inflation low and government deficits under control." Foxley, "Chile: After Pinochet Comes Progress," p. 53.

[18] Eduardo Aninat, "Comment on 'The Chilean Economy in the Eighties: Adjustment and Recovery' by Juan A. Fontaine," in S. Edwards and F. Larraín, eds., *Debt, Adjustment and Recovery: Latin America's Prospects for Growth and Development*, (Oxford: Basil Blackwell, 1989), p. 235.

[19] See C. Graham, "Chile's Return to Democracy," *The Brookings Review*, vol. 8, No. 2 (spring 1990).

[20] GATT Secretariat, *Trade Policy Review Mechanism (TPRM): The Republic of Chile*, C/RM/S/14A, June 3, 1991. Nonetheless, Latin America continued to maintain its share of Chile's import market at about 30 percent.

[21] Andrés Velasco, Coordinator of International Finance, Ministry of Finance, Republic of Chile, prehearing statement submitted to the Commission by Patricio Silva, Ambassador, Embassy of Chile, Jan. 15, 1992.

Since President Aylwin's election and his demonstration of Chile's commitment to labor reforms and liberalized economic policies, the U.S. Government has restored Chilean eligibility for two U.S. programs. Effective February 1991, the United States restored access for Chilean products under the U.S. Generalized System of Preferences (GSP) program.[22] The Chilean Government met the conditions for reinstatement by demonstrating that it was providing for internationally recognized labor rights and passing a new intellectual property law protecting pharmaceutical patents.[23]

On December 1, 1990, Secretary of State James A. Baker III transmitted to Congress his certification lifting the Kennedy-Harkin amendment that had prevented U.S. military sales and military assistance to Chile since 1976.[24] In making this certification, the Secretary of State determined that Chile has made significant progress in complying with internationally recognized principles of human rights, is not aiding or abetting international terrorism, and has taken appropriate steps to bring to justice those indicted by a U.S. grand jury in connection with the 1976 murders in Washington, DC, of Orlando Letelier, former Chilean opposition party leader, and his assistant, Ronni Moffitt. In addition, the Secretary of State also determined that the security assistance relationship with Chile is in the national interest of the United States.

Investment Patterns

New foreign investment authorized under the Chilean Foreign Investment Statute rose from nearly $900 million in 1989 to an estimated $1.1 billion in 1990 and had already topped $830 million by July 1991.[25] Much of the new foreign investment by the United States and other countries has been in mining operations, the principal Chilean export sector. Between 1985 and 1989, the mining sector's share of new foreign investment rose from 7 percent to 66 percent, whereas the share of new foreign investment in all Chilean industries fell from 77 percent to 10 percent.[26] Copper is particularly attractive to foreign investors. A partial listing of copper projects under development or consideration is shown in the following tabulation:

Project	*Companies*	*Start-up*
Disputada[1]	Exxon (U.S.)	1992
Cerro Colorado ...	Rio Algom (Canada)	1993
Quebrada Blanca .	Cominco (Canada) and two Chilean companies	1993
Collahuasi	Shell (Netherlands), Chevron (U.S.), and Falconbridge (Canada)	1994
Zaldivar	Outokumpu (Finland)	1994
Canadelaria	Phelps Dodge (U.S.) and Sumitomo (Japan)	1995

[1] Expansion of an existing mine.

Cumulative sectoral foreign investment authorized by the Chilean Foreign Investment Committee between 1982 and July 1991 is shown in table 5-3; however, the actual amounts invested may be significantly lower.

Since the mid-1970s, the United States has been Chile's primary source of new investment. However, in 1990 the United States' share of new investment (16 percent) fell behind Canada's share (34 percent).[27] The United States continues to hold the largest share of accumulated foreign-investment stock in Chile, accounting for 41 percent of total foreign investment during 1982-90. Much of the U.S. investment has occurred in the mining sector and, more recently, the forestry sector. Major U.S. investors in Chile include Exxon Minerals, which signed a contract in 1989 to invest $1.2 billion over 10 years in the mining sector, and a joint venture involving Scott Paper and Citicorp as minority partners with Royal Dutch Shell to produce eucalyptus pulp for export.[28]

On October 2, 1990, President Bush announced that Chile was reinstated as eligible for financing and political-risk insurance coverage under the Overseas Private Investment Corporation (OPIC) after the Aylwin administration modified the Labor Code to recognize internationally accepted labor standards for worker rights.[29] The OPIC insures U.S. investors against risk in potentially unstable markets and provides financing for investment projects.

[22] Presidential Proclamation, "To Amend the Generalized System of Preferences, Proclamation 6244," *Federal Register*, vol. 56, No. 25 (Feb. 6, 1991), p. 4707.

[23] U.S. Department of Commerce, "Chile: Market-Opening Measures Are Expected to Continue," *Business America*, by Randolph Mye, Apr. 22, 1991, p. 13.

[24] James A. Baker III, U.S. Secretary of State, "Certification Under Section 726(b) of the International Security and Development Act of 1981," Dec. 1, 1990. The certification was transmitted by letter from the Acting Assistant Secretary of State for Legislative Affairs to the President of the Senate, Speaker of the House of Representatives, and appropriate committee chairmen.

[25] Republic of Chile, Foreign Investment Committee, *Foreign Investment Report*, July 1991.

[26] Ibid., p. 37.

[27] The increase in Canadian investment is largely attributable to Canadian purchases of two large gold mines. Such large-scale Canadian investment is unlikely to be repeated in the near future. Embassy of the United States, Santiago, "Chile—Economic Trends," June 1991.

[28] Velasco, prehearing statement, p. 8.

[29] "Statement by Press Secretary Fitzwater on President Bush's Meeting With President Patricio Aylwin Azocar of Chile," Oct. 2, 1990, *Weekly Compilation of Presidential Documents*, Oct. 8, 1990, p. 1508. Chile had been suspended from OPIC programs in 1988 because of U.S. concern over worker rights there.

Table 5-3
Cumulative authorized foreign investment in Chile, by sectors, 1982-July 1991

Sector	*Amount*	*Percent of total*
	Million dollars	
Mining	4,959	52.9
Services[1]	2,445	26.1
Industry	1,594	17.0
Forestry	138	1.5
Construction	100	1.1
Agriculture	86	.9
Transport	34	.3
Aquaculture	19	.2
Total	9,375	100.0

[1] Includes investment funds.

Source: Chilean Foreign Investment Committee.

Trade and Investment Policies and Liberalization

Unlike most other Latin American countries, Chile has pursued export-oriented economic growth since the 1970s except for a temporary setback during the economic crisis of 1984-85. Chile has maintained a relatively open economy with low uniform tariffs, few nontariff barriers to trade, and transparent regulations governing trade and foreign investment with minimal government intervention.

Chile makes and implements trade policy through a series of decrees, regulations, and constitutional provisions. Article 19 of the Chilean Constitution[30] establishes the freedom to engage in economic activities "not contrary to public morals, public order or national security," guarantees nondiscrimination on the part of the Chilean Government in economic matters, and establishes the right to own private property. This provision allows the Chilean Government to regulate trade and investment in certain products and activities.

Chile's principal trade law is the October 1989 Central Bank Law (Law 18,840), which established the Central Bank as an autonomous institution that has as its primary responsibility "to safeguard the stability of the currency and to ensure the normal flow of internal and external payments." The law prohibits the Central Bank from "directly or indirectly financing" spending by or loans to the Government or Government institutions and restricts financing only to banking institutions.[31] Beyond these responsibilities, the law codifies previously established trade-related provisions, including the freedom to import and export, as well as unrestricted access to foreign exchange for international trade. The law also prohibits quotas except in retaliation against countries identified as restricting Chilean trade.[32] To date, the Chilean Government has never exercised this retaliatory authority.[33]

Other general trade and trade-related rules are established in the 1986 Law on Regulations of Merchandise Imports (Law 18,525), which includes provisions for tariff surcharges, customs valuation procedures, and a price-band mechanism for certain agricultural products.[34] Chilean rules of origin are established either in the 1980 Montevideo Treaty governing trade among members of the Latin American Integration Association (LAIA)[35] or are specified in trade agreements signed by the Chilean Government.

The President of Chile is responsible for the formulation and implementation of trade policies. However, all major trade-related laws, including tariff rate changes, must be approved by vote of the bicameral Chilean Congress.[36] Although the Chilean President has full authority to negotiate, sign, and ratify international agreements,[37] the President must submit proposed international treaties and agreements to the Chilean Congress for approval before Presidential ratification, signature, and the exchange or deposit of

[30] Chile's political and legal systems are governed by the Political Constitution of 1980, as modified by the 1989 plebiscite that returned Chile to a civilian, democratically elected government.

[31] Presidencia de la República, Ministerio de Relaciones Exteriores, Ministerio Secretaría General de Gobierno, "The New Central Bank," *Chile 1991.*

[32] General Agreement on Tariffs and Trade, Secretariat, *Trade Policy Review Mechanism (TPRM): The Republic of Chile*, C/RM/S/14A, June 3, 1991, summary observations.

[33] U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.

[34] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, summary observations.

[35] LAIA rules of origin use the concept of "wholly processed" and "substantial transformation." For assembled products, LAIA rules require that the c.i.f. value of imported components not exceed one-half the f.o.b. value of the final product. For further information, see GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 62.

[36] GATT, "Council Reviews Trade Regimes of Thailand and Chile," *GATT Focus*, No. 83, Aug. 1991, p. 7.

[37] Art. 32 of the Chilean Constitution. Information provided by the Embassy of Chile, letter to the Commission, Jan. 8, 1992, app. 1.

corresponding instruments of ratification.[38] The Central Bank implements monetary policy.

Since its accession to the General Agreement on Tariffs and Trade (GATT) in 1949, Chile has participated in all of the rounds of multilateral trade negotiations. Chile is a signatory to three of the Tokyo Round codes:[39] standards, subsidies, and import licensing. Chile also is an "observer" to five Tokyo Round codes: customs valuation, antidumping duties, government procurement, bovine meat, and dairy products.

Chile was reviewed under the GATT Trade Policy Review Mechanism (TPRM) in 1991.[40] During the review, the Council "commended Chile for its open trade policy orientation and its adherence to the fundamental principles of the GATT." The Council noted that Chile's trade and foreign investment policies had fostered economic development, making the country a "model" for developing countries in implementing trade reforms and appropriate sequencing of macroeconomic policies. The Council also praised Chile's "firm commitment to the multilateral trading system and its active participation in the Uruguay Round."[41]

Import Policies

Although Chile has no barriers specifically erected to impede flows of U.S. goods, services, and investment,[42] it does have significant barriers that limit U.S. market access in a few sectors, notably agriculture and motor vehicles. Chilean imports of used automobiles are banned, and imports of wheat, sugar, and edible vegetable oils are subject to a price-band mechanism that generally discriminates against foreign suppliers. Chile has no import-licensing requirements. However, imports must be covered by an import permit ("informe de importación") issued by the Central Bank of Chile (for copper) or a commercial bank (for other imports). This permit, which requires the importer to provide data on the import price, freight, insurance, and payment terms, is used for statistical and exchange-planning purposes and, according to the GATT Council, is not employed to delay or restrict imports.[43] Imports generally must be shipped within 120 days from the date of approval of the permit.[44]

Import Tariffs

Chile has had a uniform tariff rate structure since 1975. This rate steadily declined during the 1980s, with the exception of the temporary increase in 1982-84 (table 5-4).

During the Tokyo Round, Chile pledged to bind virtually all its tariffs at 35 percent ad valorem effective July 1, 1980. The only exception was for automobiles, tariffs on which were GATT-bound at 35 percent ad valorem effective January 1, 1986.[45] The most recent change in tariffs occurred in May 1991, when the uniform rate was reduced again, to 11 percent ad valorem. Chile applies the uniform tariff to all countries, whether contracting parties to GATT or not. About 90 percent of Chile's imports receive such treatment.

During the 1991 TPRM, the GATT Council expressed concern that the significant gap between Chile's current 11-percent uniform duty rate and the 35-percent GATT-bound tariff contributes to uncertainty for exporters, thereby restricting trade. The Council questioned whether the Chilean Government would consider a further reduction in its GATT-bound tariff to increase the predictability of Chilean tariff levels.[46]

In response to these concerns, the Chilean Government reiterated its firm commitment to the uniform tariff, underscored Chilean legal restrictions on other forms of trade restraints, and emphasized that tariff rate changes can only be accomplished by vote of the Chilean Congress. However, during interviews with U.S. officials in August 1991, Chilean Minister of Finance Alejandro Foxley noted that the Chilean Congress took only 4 days to pass the 1991 legislation reducing the uniform tariff.[47] Minister Foxley also underscored the Chilean Government's concern that a significantly lower tariff rate will erode Government revenues and threaten the Chilean administration's commitment to a balanced budget. He also stated that tariff reductions may affect domestic policies. For example, to compensate for the loss of revenues resulting from the new 11-percent uniform tariff rate, the Chilean Government raised offsetting taxes on gasoline.

In the Uruguay Round negotiations Chile has offered to reduce its bound rates from 35 percent to 25 percent on the condition that other developing

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[38] Art. 50 of the Chilean Constitution. Information provided by the Chilean Government, Sept. 10, 1991.

[39] For a discussion of the Tokyo Round agreements, see USITC, *Operation of the Trade Agreements Program: 42nd Report, 1990* (OTAP), USITC publication 2403, July 1991, pp. 51-61.

[40] The TPRM was initiated in December 1989 as part of the Mid-Term Review Agreements of the Uruguay Round to enable the GATT Council of Representatives to conduct a regular evaluation of trade policies of individual GATT members. For further information on the TPRM, see USITC, *OTAP: 1990*, p. 51.

[41] GATT, "Council Reviews Trade Regimes of Thailand and Chile," *GATT Focus*, No. 83, Aug. 1991, p. 5.

[42] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

[43] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 54.

[44] Ernst & Young, *Doing Business in Chile* (New York: Ernst & Young, 1991), p. 18.

[45] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 45.

[46] GATT, "Council Reviews Trade Regimes of Thailand and Chile," pp. 5-6.

[47] U.S. Congress, Senate Committee on Finance, *Trip Report on Congressional Delegation Bentsen*, 102d Cong., 1st sess. (Washington, DC: Government Printing Office, Dec. 1991), S. Prt. 102-57, p. 42.

Table 5-4
Chilean tariff changes, 1975-91

Period	*Tariff action*
1975	Unified rate structure established.
1973-79	Gradually reduced to 10 percent.
1980	GATT-bound at 35 percent ad valorem.
1982-84	Temporarily increased to 35 percent.
1985	Reduced to 20 percent.
1988	Reduced to 15 percent.
1991	Reduced to 11 percent.

Source: GATT Council, *Trade Policy Review Mechanism: The Republic of Chile*, C/RM/S/14A, June 3, 1991.

countries also participate in such reductions.[48] Concerning the gap between the uniform tariff and the higher GATT-bound tariff, Chilean Government representatives indicated that this gap affords Chile the flexibility to raise tariffs temporarily in times of economic difficulty. They emphasized that when such actions had been taken in the past, tariffs were raised uniformly against all trading partners.[49]

About 10 percent of Chile's imports are subject to duties lower than the uniform 11-percent rate, including imports into free-trade zones (FTZs) and customs-free storage areas,[50] and imports from other Latin American countries under various preferential tariff arrangements.[51] Imported capital goods are eligible for duty deferral.

Products dutiable at rates above the 11-percent uniform rate include used goods and products subject to trade remedies. Imports of most used goods[52] are taxed at 50 percent of the uniform rate, in addition to the uniform duty, for a total duty of 16.5 percent.[53] For items subject to trade remedies, Chile reserves the right to raise duties to the GATT-bound level upon an affirmative determination by the Import Distortions Investigation Commission (Comisión de Investigación de Distorsiones a la Importación) of injury or threat of injury to domestic industry.[54] In such a case, the President is authorized to apply fixed or variable tariff surcharges through minimum customs values and official reference prices. In addition, article 12 of Law 18,525 authorizes the imposition of special import tariffs on certain agricultural products.[55]

Tariff Surcharges and Minimum Customs Values

Although Chile has no regulations providing for dumping relief and it is not a member of the GATT Antidumping Code and Customs Valuation Code, it applies countervailing measures and unfair import countermeasures to correct determined international price distortions. Unfair import countermeasures normally apply to all Chilean trade partners, not just to the offending country.[56] Such countermeasures are implemented for a period not to exceed 1 year, although minimum customs values may be extended if the price conditions leading to the affirmative injury decision persist.[57]

The Commission during 1981-85 initiated 135 countervailing-duty cases but made only 1 affirmative finding.[58] Since 1986, the Chilean Commission has initiated only one investigation, which led to a provisional affirmative determination.[59] None of the countervailing-duty cases involved the United States.[60] Chile applied tariff surcharges to only four imported goods in 1991 (table 5-5). Chile also applied minimum

[48] Velasco, prehearing statement.
[49] GATT, "Council Reviews Trade Regimes of Thailand and Chile," p. 7.
[50] Customs-free storage areas are designated in 10 Chilean cities to help promote regional economic development and export-oriented industries. Imports into FTZs do not require an import permit and are exempt from duty. See GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 77, and Ernst & Young, *Doing Business in Chile*, p. 20.
[51] These include products from members of the Latin American Integration Association (LAIA/ALADI) and the Chile-Mexico Free Trade Agreement.
[52] Other than capital goods and noncommercial goods with an f.o.b. value not exceeding $1,000. GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 52.
[53] U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.
[54] Law 18,525 of 1989 transferred this authority from the Central Bank to the newly created Chilean Commission. The Commission has 5 working days to review a complaint and publish a notice in the *Official Gazette* that an investigation is being initiated. It has 90 days from the publication date to conclude the case. Final decisions are transmitted to the Ministry of Finance, which has 5 days to notify complainants, and are published in the *Official Gazette*. Appeals of decisions must be lodged through the Chilean court system, not within the investigative process itself. GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, pp. 50 and 64.

[54]*—Continued*

[55] Information based on data from USTR, dated November 1991.
[56] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.
[57] GATT, *TPRM: Chile*, C/RM/G/14, p. 42, and *TPRM: The Republic of Chile*, C/RM/S/14A, p. 48.
[58] A 10-percent duty was imposed in May 1986 on drawn flat glass from Portugal.
[59] In October 1990, Chile introduced a provisional 5-percent countervailing duty on woven cotton fabrics from Pakistan.
[60] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, pp. 64-65, and GATT, Secretariat, *Trade Policy Review Mechanism: The Republic of Chile*, C/RM/S/14B, June 3, 1991, table IV.9, p. 21.

Table 5-5
Articles subject to tariff surcharges during 1991

Product	Tariff Surcharge	Actual or scheduled expiration
	Percent	
Tires	3	January 1992
Wheat flour	12	Not available[1]
Woven fabrics and sacks of cotton	8	July 1991
Woven fabrics of cotton and synthetic staple fibers	5	July 1991

[1] Surcharge on wheat flour was provisionally imposed in January 1991.

Source: GATT Council, *Trade Policy Review Mechanism: The Republic of Chile*, C/RM/S/14B, June 3, 1991, table IV.7, p. 19, and U.S. Department of Commerce.

customs values that year to imported powdered milk, certain woven fabrics, towels, and artificial respiration and breathing apparatus.[61]

The GATT Council found that the cumulative effect of tariff surcharges and minimum customs values could have a "substantial" role in restricting import competition and noted that such arrangements increased the scope for administrative discretion and reduced the transparency of the Chilean tariff system.[62] The Council requested clarification as to Chile's use of these measures to provide temporary import relief and asked whether these measures were intended to form the basis for antidumping and countervailing-duty actions. The Council also asked whether Chile would consider joining the GATT Antidumping and Customs Valuation Agreements.[63]

According to the Chilean Government, the unfair import countermeasures are implemented to correct the effects of international price distortions on domestic production and are not intended to discriminate against imports. Chile also stated that minimum customs values must take account of the products' normal value and that regulations governing minimum customs values do not allow prices to be set arbitrarily.[64] Moreover, Chile asserts that the procedures followed by the Import Distortions Investigation Commission are public and transparent and the Chilean Commission's determinations are subject to appeal. Chilean officials stated that Chile would reconsider its position on joining the two GATT codes as part of the final Uruguay Round agreement.[65]

Official Import Reference Prices

The Chilean National Customs Service sets official import reference prices on certain goods to verify that customs valuations are accurately declared. Reference prices are based on prices prevailing in world markets, but a margin of 10 percent between the declared import price and the reference price is generally tolerated.[66] The U.S. Embassy in Santiago reports that Chile uses reference prices for "monitoring purposes only" and not to delay or restrict imports.[67] Such prices help Chile detect underinvoicing or overinvoicing[68] of exports and imports and are a "control mechanism" that "helps to keep the trading system honest and free of distortions."[69]

Export Policies

With the exception of exports of copper, Chile's export policies involve little discretionary Government intervention. Exports of over $1,000 must be accompanied by a 1-page report filed with the Central Bank or, for copper exports, the Chilean Copper Commission, prior to shipment. The normal shipping period is within 90 days from the issue of the export report. All foreign-exchange proceeds from exports must be remitted to Chile within 120 days of export, although extensions may be authorized, and must be converted into Chilean currency through a commercial bank in Chile within 11 days of receipt by the exporter.[70] Exporters may be exempted from obligatory return or sale of their foreign-exchange earnings if they use the foreign exchange to settle payments for their own imports.[71] Exports are exempt from the national value-added tax, and the Chilean Government has established a streamlined procedure to

[61] GATT, *TPRM: The Republic of Chile*, C/RM/S/14B, table IV.6, p. 17.
[62] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, summary observations.
[63] GATT, "Council Reviews Trade Regimes of Thailand and Chile," p. 6.
[64] Embassy of Chile, letter to the Commission, Jan. 8, 1992, app. 1.
[65] GATT, "Council Reviews Trade Regimes of Thailand and Chile," p. 7.

[66] Reference prices are applied to a long list of products. See GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 49.
[67] U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.
[68] Underinvoicing and overinvoicing may be used to move large sums of capital internationally under the guise of legitimate trade. These practices are most commonly used in nations that limit access to foreign exchange. Ingo Walter, *International Economics*, 2nd ed. (New York: The Ronald Press Co., 1975), p. 348. Reference prices enable a government to monitor the real value of commonly traded commodities and thus to detect when the stated value of a transaction is significantly different from the reference value.
[69] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.
[70] Ernst & Young, *Doing Business in Chile*, p. 20.
[71] GATT, *TPRM: Chile*, C/RM/G/14, p. 50.

refund these taxes to exporters.[72] Generally, Chile offers no special finance mechanism for exporters,[73] although a special export financing facility is being established under the aegis of the Inter-American Development Bank to promote Chilean export diversification.

Although Chilean legislation prohibits voluntary arrangements to restrict exports, the Government controls production and exports of certain strategic commodities, mainly copper, to support prices on world markets. Nevertheless, foreign investors in the Chilean mining sector contacted during the course of this investigation cited no instances of discretionary Chilean Government actions that interfered with their operations. In addition, as a signatory to the Convention on International Trade in Endangered Species (CITES), Chile bans exports of about 30 species of Chilean flora and fauna unless specifically approved for export by the Chilean Commission of Technological and Scientific Research, the national scientific authority.[74]

Duty Drawback Schemes

A standard drawback scheme established in 1988 (Law 18,708) allows exporters to recover customs duties paid on imported inputs, including parts and components, used in the production of exports. This scheme does not permit the reimbursement of tariff surtaxes and countervailing duties. The main sectors benefiting from the scheme are petrochemicals and mining. Standard drawbacks of customs duties totaled $19.5 million in 1989.[75]

In 1986 Chile established a simplified tax drawback scheme covering the input costs of small, nontraditional exporters. Eligible exported goods must be of national origin, i.e., entirely processed in Chile using domestic inputs or with imported inputs representing not more than 50 percent of the f.o.b. value of the product. This program was designed for small exporters that are not required to keep formal accounting records or records of duties paid for the imports they use in manufacturing products for export.[76] For this simplified drawback scheme, the duty rebate is based on the value of export sales rather than the actual value of import duties paid.[77]

Following modifications introduced in December 1990 (Law 19,024), small firms are reimbursed at a maximum of 10 percent of the f.o.b. value of their exports.[78] This reimbursement represents an estimate of the duties actually paid for imported components in the exported articles. Alternatively, exporters may choose to apply for reimbursement of the full value of all paid duties.[79] Exports benefiting from the drawback of actual customs duties are ineligible for the simplified scheme, reimbursements under which totaled $66.4 million in 1989.[80]

The Chilean Government maintains that its drawback programs are not subsidies. Moreover, Chilean officials state that the purpose of the simplified drawback scheme is not to subsidize exports but to create a system through which small exporters could benefit from duty drawback.[81] The GATT Council questioned whether Chile's simplified duty drawback allows the possibility of a discriminatory subsidy for small exporters.[82] The Chilean Government acknowledged that "[t]o the extent that ten percent of exports might exceed tariffs on imported inputs, this [simplified drawback] can be viewed as a subsidy."[83] However, Chilean officials underscore the "self-correcting" nature of the simplified drawback schemes— "when exports grow, the company ceases to be eligible for the drawback."[84]

The current assessment of the Office of the United States Trade Representative is that "[i]n general, Chile does not subsidize exports."[85] However, the U.S. Department of Commerce in 1988 determined that the simplified drawback program, together with a stamp and seal tax exemption for exporters, contributed to an export subsidy of 12.25 percent for standard carnations from Chile, and the U.S. International Trade Commission determined that U.S. imports of these flowers materially injured the U.S. industry.[86] The United States has imposed countervailing duties of 10 percent on Chilean standard carnations since January 1990.

Production and Export Incentives

Chile provides research and development credits and incentives to selected small and medium-size firms through the Production Promotion Corporation

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[72] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

[73] Embassy of Chile, letter to the Commission, Jan. 8, 1992, app. 1.

[74] The CITES became effective in Chile in 1975 and prohibits certain imports. Ibid. and GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 54.

[75] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 70, and C/RM/S/14B, table IV.11, p. 23.

[76] Information provided by the Chilean Government, Sept. 10, 1991.

[77] Velasco, prehearing statement.

[78] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 70.

[79] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

[80] Also excluded are copper waste and scrap, bovine hides, and goat skins. GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 70.

[81] Information provided by the Chilean Government, Sept. 10, 1991.

[82] GATT, "Council Reviews Trade Regimes of Thailand and Chile," pp. 6-7.

[83] Velasco, prehearing statement, app. 1.

[84] Ibid.

[85] Office of the United States Trade Representative, *1992 National Trade Estimate Report on Foreign Trade Barriers*, p. 41.

[86] USITC, *Certain Fresh Cut Flowers From Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, Kenya, Mexico, the Netherlands, and Peru* (investigations Nos. 701-TA-276 and 731-TA-328 (final)), USITC publication 2119, Aug. 1988.

(CORFO), an autonomous Government-owned holding company established in 1939. CORFO is largely self-financed or financed through loans from international organizations. CORFO investments in 1989 totaled $4.2 million, 37 percent of which was in the fishing sector, 29 percent in the agricultural sector, and 21 percent in the forestry sector.

A CORFO-related agency, the Technological and Production Development Fund (FONTEC), participates in technological research and promotes research and development activities in industry and agriculture. FONTEC supplies a maximum of 60 percent of a project's total cost. Upon completion of the project, part or all of the FONTEC credit may be converted into a grant depending on how the enterprise chooses to use the results or findings of the FONTEC-backed research.[87]

In early 1992, the Aylwin administration announced the creation of a new export-financing facility to be managed by CORFO. The purpose of this facility is to help diversify Chile's export base, particularly exports of capital goods, consumer durables, and engineering services.[88] Some of the funding for this program will come from a $150 million Inter-American Development Bank loan.

Export-processing activities, such as manufacturing and assembly of imported material, are restricted to the FTZs in Iquique in the far north and Punta Arenas in the far south and to the "free zone extension" sector in Arica near the northern border with Peru. The FTZ-produced goods may be exported freely, but duties and taxes are payable if goods are sent to other areas of Chile. Until 1992, firms in FTZs received a Government wage subsidy equal to 17 percent of salaries, to a maximum of 10,200 Chilean pesos—about $30 per worker per month.[89]

Import duties on machinery and equipment that qualify as capital goods may be deferred for up to 7 years.[90] Market interest rates apply to the deferred duties. According to the 1991 GATT review, to be eligible for duty deferral, imported capital goods must exceed $3,300 c.i.f., except transport vehicles, which must be valued at $4,200 or more.[91] The portion of duties that may be deferred is determined by the ratio of export sales to total sales. For example, if all production is exported, no duties are paid on imports of capital goods. Domestically produced capital goods are eligible for a tax credit of 11 percent of export value.[92]

Exporters of nontraditional goods are eligible for access to a Guarantee Fund, which guarantees up to 50 percent of public and private-sector loans of about $185,000[93] or less. Users of the fund must pay a fee of 1 percent of the guaranteed amount for the service,[94] and trade credits must first be obtained from recognized financial institutions.[95] The main sectors benefiting from the fund are agriculture, wood furniture, fishing, and footwear. The GATT Council found that these guarantees offer only limited coverage and are of little significance compared with Chile's overall exports.[96]

The Chilean Export Promotion Agency (PROCHILE) provides export promotion and marketing assistance to Chilean exporters. It has the specific objectives of promoting nontraditional exports, stimulating export diversification, penetrating new export markets, and expanding exports to existing markets. GATT found that PROCHILE's activities benefit mainly small exporters.[97]

Foreign Investment Policies

Chile's foreign investment regime is generally free of restrictions because of liberalization measures that were implemented beginning with the 1974 promulgation of Decree Law 600, the Chilean Foreign Investment Statute. Foreign ownership is allowed in almost all sectors of the Chilean economy with the exception of military-related industries. Certain restrictions on foreign investment apply, including the need for official authorization for foreign investment in the broadcast media, shipping, and mining sectors. Foreign personnel may not constitute more than 15 percent of an enterprise's total employment (excluding executives and board members). Procedures for professional accreditation may delay or restrict the entry of foreign professionals into Chile. However, the Commission received no complaints from investors on this issue during the course of this investigation.

The Chilean Government generally does not discriminate between foreign and domestic investors. Chile's taxation policies are nondiscriminatory, and the foreign investors contacted during Commission interviews in Chile during January 1992 described Chile's tax system as favorable for foreign business operations. However, the Chilean Government imposes certain restrictions on capital outflows.

Foreign currency may be brought into Chile through either informal or formal channels. The

[87] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, pp. 73 and 75.
[88] U.S. Department of State Telegram, Jan. 24, 1992, Santiago, message reference No. 00609.
[89] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 78.
[90] The list of eligible items, maintained by the Ministry of Finance, consisted of some 680 tariff lines in 1990. It included fishing nets; hand tools; iron or steel articles; boilers, machinery and mechanical appliances; electrical machinery; railway or tramway locomotives and rolling stock; other vehicles; aircraft; ships, boats, and floating structures; scientific and medical instruments; and medical furniture. GATT, *TPRM: The Republic of Chile*, C/RM/S/14B, table IV.14, p. 26.
[91] These minimum values are adjusted annually.
[92] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 75, and U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.
[93] This amount is adjusted annually.
[94] U.S. Department of State Telegram, Dec. 20, 1991, Santiago, message reference No. 10173.
[95] GATT, *TPRM: Chile*, C/RM/G/14, p. 52.
[96] Ibid.
[97] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. xviii.

informal channel includes unregistered currency exchanges made at private foreign-exchange houses and unregistered currency exchanges directly between individuals and legal entities. The formal channel includes foreign currency officially registered and exchanged in accordance with either the Foreign Investment Statute or with chapter 19 of the Chilean Central Bank's foreign-exchange regulations.[98] For formally registered investments, investors are given guaranteed future access to foreign exchange to repatriate their capital outlays and their earnings.[99] Investments made through informal channels do not receive such guarantees.

Foreign Investment Statute

The Foreign Investment Statute, or Decree Law 600, is Chile's primary legal instrument establishing and guaranteeing nondiscriminatory treatment of foreign investors.[100] Enacted in 1974 under the Pinochet regime, the statute guarantees foreign investors free access to most economic sectors with minimal discretionary Government intervention.[101] Such guarantees were important to rebuild investor interest and confidence during Pinochet's rule of Chile. The Aylwin administration plans to seek Chilean legislative approval of a similar law to give Chile an investment statute approved by a democratically elected administration.[102] All regulations governing or amending foreign investment require approval of the Chilean Congress.

Investment Approval

Foreign investment under Decree Law 600 must be registered with the Foreign Investment Committee (FIC).[103] Registration with the FIC also is required for foreign investors in joint venture projects. In addition, the FIC must approve all new investments and investment expansions that: (1) are valued over $5 million; (2) involve public services normally conducted by the Government, such as utilities; (3) involve the media; or (4) include the participation of a foreign government.[104]

FIC approval is generally granted within 6 weeks after an investment request has been formally initiated and can be granted within 2 weeks depending on the size of the investment, the information provided by the investors, and scheduling of FIC meetings.[105] According to the FIC, during its 17-plus years of operation it has approved over 3,000 contracts, with total investments of over $14 billion involving 54 countries.[106] No U.S. investment requests have been rejected, and no investments have been rejected in over 18 months.[107]

Although the Chilean Government has considerable latitude in approving investments, none of the business officials contacted during the course of this investigation reported instances of discriminatory treatment or a lengthy investment-approval process. Chilean officials state that the basis for denial of approval include national security interests, adverse environmental impact, and investments contrary to public morals, such as gambling ventures.[108] In the absence of a timely decision by the FIC or an adverse decision, foreign investors may appeal the decision through the Chilean court system.[109] One foreign businessman in Chile contacted during the course of this investigation stated that the FIC occasionally asks applicants to change certain aspects of their proposed investment to better conform with Chilean regulations to ensure approval. Moreover, rather than reject a proposal, the FIC will ask applicants to withdraw applications.[110]

Some investments, including those valued at $5 million or less, can be authorized in a matter of days directly by the FIC executive secretary.[111] Chile is considering a proposal that would provide a more streamlined investment registration and approval process in which investments would be automatically approved unless specifically denied within 30 days.[112] Chilean officials indicate that they are pursuing this streamlined process even though the Chilean

[98] Ernst & Young, *Doing Business in Chile*, pp. 1 and 11.

[99] Information based on Commission interviews with officials of the Chilean Foreign Investment Committee (FIC) in Washington, DC, on Dec. 11, 1991, and on printed information provided by the FIC dated Dec. 10, 1991.

[100] The statute is applicable to foreign individuals and legal entities as well as to Chilean citizens residing or domiciled abroad who invest in Chile. It does not regulate investments of less than $25,000. Ernst & Young, *Doing Business in Chile*, p. 12.

[101] Republic of Chile, Foreign Investment Committee, *Chile: Your Best Business Partner* (pamphlet).

[102] U.S. Department of State Telegram, Jan. 24, 1992, Santiago, message reference No. 00609.

[103] The FIC comprises the Ministers of Economics, Development and Reconstruction; of Finance; of Foreign Affairs; the Director of the National Planning Office; the President of the Central Bank of Chile; and the appropriate specialty in the case of investment applications relating to matters concerning Ministries not represented on this Committee. Republic of Chile, FIC, *Foreign Investment Statute: Decree Law 600*, Mar. 1991, title III, art. 13.

[104] FIC, *Foreign Investment Statute: Decree Law 600*, title III, art. 16.

[105] Information based on interviews with FIC officials in Washington, DC, on Dec. 11, 1991, and on printed information provided by the FIC dated Dec. 10, 1991. The approval process takes an average of 2 to 6 weeks. See Velasco, prehearing statement.

[106] FIC, *Chile: Your Best Business Partner* (pamphlet).

[107] U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.

[108] Information based on Commission interviews with FIC officials in Washington, DC, on Dec. 11, 1991.

[109] FIC, *Foreign Investment Statute: Decree Law 600*, title II, art. 10.

[110] Information based on Commission interviews with business representatives in Chile, Jan. 13-17, 1992.

[111] Information based on Commission interviews with FIC officials in Washington, DC, on Dec. 11, 1991.

[112] Information provided by the Chilean Government, Sept. 10, 1991.

Government has received no complaints on these matters.[113]

Investment Contracts

Once approved, foreign investment is officially authorized by means of a contract signed by the FIC and the foreign investors. The contract establishes the term granted to the investors in which capital may be transferred into Chile. This term is 3 years for most projects but may extend to 8 years for certain industrial projects and investments valued over $50 million, and up to 12 years for specially determined mining projects requiring prior exploration.[114] These guarantees and conditions cannot be abrogated during the period agreed to in the contract, except with the consent of both the investor and the Chilean Government, even if new Chilean legislation is enacted altering the country's investment regulations.[115] The contract guarantees investors free access to the official foreign-exchange market in order to repatriate capital and earnings during the time specified in the contract. In addition to "locking in" the legal framework for investment, the contract allows investors to "lock in" an income tax rate.[116]

Whereas profits can be repatriated freely, capital can be repatriated only 3 years after the date it was first brought into Chile, unless otherwise specified in the contract.[117] The Chilean Government contends that this measure is not intended to restrict foreign investment,[118] but instead, to prevent short-term—and potentially economically destabilizing—speculative capital movements. This concern is rooted in the experiences of the Chilean economic recession and debt crisis of the early 1980s; during this period, domestic capital sources dried up and the Chilean Government erected barriers to keep scarce capital in Chile to accumulate currency reserves.[119] A number of observers believe that elimination of the restriction on investment-capital repatriation could relieve the inflationary pressure exerted by excessive capital in Chile. The Aylwin administration has proposed shortening the repatriation period from 3 years to 1 year.[120]

Decree Law 600 specifically provides that foreign investment and firms "shall not be discriminated against, either directly or indirectly."[121] The only exception is a provision that allows the Chilean Government to restrict access to domestic credit by foreign investors. One source reports that such a restriction currently is not enforced.[122] In 1991, the Chilean Government-owned Banco del Estado approved the first-ever loan by a Chilean bank to a foreign private investor in the mining sector. Critics in Chile, however, complained that the bank should have devoted its resources to domestic rather than to foreign investors.[123]

Decree Law 600 provides two benefits to foreign investors in Chile involved in export-oriented production. First, the law establishes a special regime for access to foreign currency markets for repatriation of capital and earnings. Second, the law grants the right to maintain foreign currency abroad to pay for certain expenses.

Expropriation Regulations

The Chilean Constitution permits expropriation of property for the "common good." The United States views this general language as too broad and falling short of the international legal norm. Victims of expropriation in Chile have the legal right to challenge the action and are entitled to indemnification for the property loss.[124] There have been no expropriations since 1973,[125] and foreign investors generally are not concerned with the potential for expropriation in Chile, given its open-door policy to foreign investment.

Reserve Requirement for Short-term Investments

The Chilean Government relies on maintaining a competitive exchange rate through crawling-peg devaluations to enhance the competitiveness of its goods in global markets and promote continued export-led growth.[126] During 1991 the Chilean Government became concerned that inflows of foreign investment, particularly in the booming Chilean stock market, would cause its currency to appreciate, thereby decreasing the value of Chilean exports and choking the nascent 1991 economic recovery. In June 1991 the Chilean Government imposed a requirement that foreign investors post a cash reserve ("encaje") of 20

[113] U.S. Department of State Telegram, Jan. 24, 1992, Santiago, message reference No. 00609.

[114] FIC, *Foreign Investment Statute: Decree Law 600*, title I, art. 3.

[115] Information based on Commission conversations with Chilean Government representatives, November-December 1991.

[116] Foreign investors can choose one of two tax treatment plans. For more information, see Ernst & Young, *Doing Business in Chile*, p. 15. In January 1992, President Aylwin introduced legislation that would lower the optional tax rate from 49.5 percent to 39.5 percent. Chilean Government representative, telephone interview by the Commission, Jan. 29, 1992.

[117] IMF, *Exchange Arrangements and Exchange Restrictions: Annual Report, 1991*, p. 99.

[118] Information based on printed material provided by the FIC dated Dec. 10, 1991.

[119] U.S. Department of State Telegrams, Santiago, Sept. 27, 1991, message reference No. 07869, and Jan. 24, 1992, message reference No. 00609.

[120] U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.

[121] Title II, art. 9.

[122] Ernst & Young, *Doing Business in Chile*, p. 16.

[123] U.S. Department of State Telegram, Dec., 24, 1991, Santiago, message reference No. 00609.

[124] Based on information from the Chilean Government, Sept. 10, 1991.

[125] U.S. Department of State Telegram, July 10, 1990, Santiago, message reference No. 20049.

[126] U.S. Department of State Telegram, Dec. 13, 1991, Santiago, message reference No. 09992.

percent of the amount of foreign-source loans to be maintained in the Chilean banking system for less than 1 year.[127] The reserve amount is to be deposited with the Chilean Central Bank for 1 year without interest.[128] As an alternative to the 20-percent reserve requirement, investors were given the option of either paying a tax equal to the interest forgone on 20 percent of their investment or purchasing the equivalent amount of Chilean Central Bank bonds.[129] These options allowed investors greater access to their funds. Originally, dollar-denominated interest-bearing bank accounts were not covered by the reserve requirement, but in January 1992, the Central Bank announced that the reserve requirement gradually would be extended to include such deposits.[130]

The 20-percent reserve requirement was enacted to discourage short-term and speculative investments in Chile financed by low-interest foreign loans that were viewed as contributing to inflationary pressures and currency appreciation. This requirement, along with other credit restrictions, increased the cost of retaining foreign loans in Chile by an estimated 32 percent.[131]

Dispute-settlement Mechanisms

Investors unable to settle disputes through informal negotiations are allowed to seek arbitration of their disputes either in Chilean national courts or through international dispute-resolution mechanisms.[132] Chile signed the World Bank's International Convention for the Settlement of Investment Disputes (ICSID), also known as the "Washington Agreement," in July 1991.[133] This agreement regulates proceedings involving conciliation and arbitration and establishes mechanisms to settle controversies outside the national jurisdiction.

Privatization Program

A far-reaching privatization program initiated in 1974 has been a catalyst for foreign investment in Chile over the past two decades. Privatization complemented the Government's goals of reducing discretionary intervention in the economy, reducing Government spending, and making Chilean industries globally competitive. Chile and Mexico are the two most successful Latin American nations at privatizing large segments of their economies.[134]

Chile reduced its Government owned or controlled enterprises from approximately 500 in the mid-1970s to about 50 today.[135] More than half of the reduction stemmed from the sale of subsidiaries of CORFO, which at one time controled 277 companies[136] and was the most powerful holding company in Chile.[137] Many of the remaining 31 CORFO holdings are not expected to be sold quickly, either because they are highly subsidized and would require extensive investments to become profitable or because they are lucrative operations.[138] The cumulative net impact on Chilean fiscal revenues of the privatization program during 1986-89 is estimated at 2 to 2.5 percent of GDP.[139] Privatized firms include LAN Chile (airline), SOQUIMICH (chemicals), Laboratorio Chile (pharmaceuticals), IANSA (sugar), Compania Minera Disputada de las Condes (mining), and ENAEX (explosives). Major U.S. banks and a U.S.-based oil company have purchased significant holdings in the newly privatized firms.[140]

Debt-for-Equity Swap Program

To stimulate foreign investment while reducing the country's foreign debt, the Chilean Government instituted a program to provide foreign investors with financial incentives to commit long-term capital in Chilean enterprises. Chapter 19 of the Chilean Central Bank's foreign-exchange regulations authorizes foreign investors to purchase certain Chilean foreign debt obligations and to convert these obligations into equity investments in Chilean enterprises. This so-called "debt-for-equity swap" program was launched in May 1985.[141]

Since 1985 Chile has reduced its foreign commercial bank debt by about 70 percent, or by $10.3 billion, largely through debt-swap arrangements.[142] However, in recent years, chapter 19 arrangements have declined in number and in value due to the shortage of eligible Chilean debt obligations and because Chile's foreign debt has increased significantly in value in the secondary debt market.[143] As a result,

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[127] "Chile," *Lagniappe Letter*, July 12, 1991, p. 5.

[128] U.S. Department of State Telegram, Jan. 23, 1992, Santiago, message reference No. 00579.

[129] Ibid. In effect, this measure gives foreign investors access to domestic credit.

[130] U.S. Department of State, Jan. 23, 1992, Santiago, message reference No. 00579.

[131] "Chile: Fast-Paced Growth Upsets Smooth Running of Economic Policy," *Lagniappe Letter*, Aug. 23, 1991, p. 5.

[132] Information based on interviews with FIC officials in Washington, DC, on Dec. 11, 1991.

[133] Republic of Chile, FIC, *Chile: Foreign Investment Report* (pamphlet), July 1991, p. 23.

[134] Eliana A. Cardoso, "Privatization Fever in Latin America," *Challenge*, Sept.–Oct. 1991, p. 36.

[135] Ibid., p. 39, and based on Commission estimates from data compiled from numerous sources.

[136] Cardoso, "Privatization Fever in Latin America," p. 39.

[137] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 73.

[138] U.S. Department of State Telegram, June, 24, 1991, Santiago, message reference No. 04848.

[139] U.S. Department of Commerce, *Chile Poised to Meet Challenges of Free Trade Era*, by Alice L. Mayo, Oct. 30, 1991, p. 2.

[140] Chilean-American Chamber of Commerce, prehearing statement, Jan. 10, 1992, pp. 2-3.

[141] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 34.

[142] J.F.H. Purcell, J. Chang, and D.W. Damrau, *Chile: An Investment-Grade Credit*, Salomon Brothers, Sovereign Assessment Group, May 1991, p. 4.

[143] The value of the debt on the secondary market now sells for about 90 cents on the dollar, compared with 30 cents on the dollar at the start of the debt-swap program in 1985. U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

approved chapter 19 investments totaled only $15.8 million in the first quarter of 1991, compared with $723.1 million during the same period in 1989.[144] Although chapter 19 is no longer an attractive option for foreign investors, the program was highly successful and very popular during the late 1980s.

Protection of Intellectual Property

Chilean progress has been slow in developing measures to protect intellectual property rights (IPR) and to meet internationally recognized standards. Certain Chilean IPR policies have been longstanding sources of conflict between the United States and Chile. A new industrial property law for patents and trademarks, although a significant advance for Chile in providing IPR protection and one of the most liberal IPR laws in Latin America, nevertheless falls short of internationally recognized standards.

The Law on Industrial Property (Law 19,039) covering patents and trademarks became effective on September 30, 1991.[145] Few of the exclusions from patentability in Chile's former patent law have been carried into the new law.[146] Most important, the new law extends patent protection to products and processes relating to pharmaceuticals, thus making Chile and Mexico the only Latin American countries that protect pharmaceutical patents.

For most inventions already protected by a foreign patent, or a pending foreign application, transitional patent protection will be granted for the remaining period of the foreign patent if the patent does not exceed 15 years. Except in the case of pharmaceutical inventions, foreign applicants will be able to file an application in Chile without loss of novelty within 1 year of the first-filed patent application. The new law also creates a special Court of Arbitration for industrial property matters to hear appeals of some administrative decisions of the Industrial Property Office. The new court is expected to strengthen the protection offered by the Chilean industrial property system.[147] However, the new law provides protection for only 15 years from the date a patent is granted instead of the international standard of 20 years from the date a patent application is filed.[148]

The 1991 Industrial Property Law essentially recodified Chile's previous trademark law.[149] Registration provides ownership and exclusive use of the mark for 10 years, and registrations may be renewed indefinitely.[150] Noteworthy changes in the new law include the formal recognition of well-known international marks and the extension of the period for cancellation from 2 to 5 years.[151] There continues to be no provision for compulsory use of marks in the new law.[152]

Chile is a signatory to many international copyright agreements,[153] but the protection it provides does not always meet the international standard. For example, the term of copyright protection in Chile is the author's life plus 30 years, whereas the Berne Convention standard is life plus 50 years. Chile is reportedly considering legislation to harmonize its protection for foreign works with the provisions of the Berne Convention.[154]

Within the last few years, video and audio tapes have been protected under Chile's copyright laws.[155] Changes in copyright law and enforcement have begun to protect newer technologies. Currently, software is protected by an amendment to the Law of Intellectual Property, although the legislation is expected to be revised to provide better protection.[156] Efforts to increase enforcement of existing copyright laws have been improving, as evidenced by several legal actions being taken against software pirates.[157] The U.S. Patent and Trademark Office is not aware of any serious problems with copyright enforcement in Chile.[158] However, piracy of sound recordings and computer software has been reported by industry sources.[159]

Although it has recently strengthened its protection for intellectual property, Chile remains on the "watch list" under the "special 301" provision of the Trade Act of 1974.[160] This provision carries the possibility of

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[144] Ibid.

[145] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

[146] Food and drinks, medicines, and chemicals were excluded from patent protection under the former Chilean patent law. See, e.g., George Taylor, "Protecting Intellectual Property," *The Journal*, Nov. 1991, p. 19.

[147] *World Intellectual Property Reporter*, vol. 5 (Oct. 1991), p. 266.

[148] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

[149] Decree law 958 of 1931.

[150] Ernst & Young, *Doing Business in Chile*, p. 22.

[151] U.S. Patent and Trademark Office, staff of the Office of Legislative and International Affairs, telecommunication with the Commission, Nov. 1991.

[152] Ibid.

[153] Chile is a signatory of the Berne Convention for the Protection of Literary and Artistic Works; the Universal Copyright Convention; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication.

[154] U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.

[155] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

[156] U.S. Department of Commerce, *Guide to Computer Hardware and Software Markets in Latin America*, July 1990.

[157] U.S. Patent and Trademark Office, staff of the Office of Legislative and International Affairs, telephone conversation with the Commission, Nov. 1991.

[158] Ibid.

[159] Eric H. Smith, general counsel, International Intellectual Property Alliance, posthearing statement, Jan. 31, 1992.

[160] Section 301 concerns investigations by USTR into allegations that foreign countries are denying benefits to the United States under trade agreements or are otherwise engaged in unjustifiable, unreasonable, or discriminatory acts that burden or restrict commerce of the United States.

retaliatory action if a targeted practice concerning intellectual property is not addressed. Countries placed on the "watch list" are monitored by the Office of the United States Trade Representative to determine whether their practices merit a "special 301" investigation that could lead to retaliatory actions.

Sector-Specific Barriers

The principal Chilean import barriers are in agriculture, pharmaceuticals, motor vehicles, and some service industries (figure 5-1). The following section describes the sector-specific barriers.

Agriculture

The Chilean agricultural sector can be divided into an export-oriented, relatively "free market" sector producing fruits and vegetables, fish, forest products, and seeds for planting, and a traditional farming sector that depends on Government support and import protection to produce grain, sugar beets, oilseeds, and dairy products.[161] The export-oriented sector in Chilean agriculture is competitive in world markets because of its high-quality products, competitive prices, and efficient marketing system. However, the traditional crop-producing sector is not competitive in international markets, according to a number of studies.[162] To counter this lack of competitiveness, Chile instituted a Government-supported import price-band policy, a type of variable tariff surcharge.[163]

Variable Tariff Surcharges

The leading barrier to U.S. agricultural products in Chile is the import price-band system first introduced in the early 1980s.[164] Chilean wheat, sugar, and vegetable oil producers are heavily protected through the import price-band system, resulting in near self-sufficiencies in grain and sugar beets. The price-band system has insured that domestic prices for these products remain well above world prices, and has sharply restricted U.S. exports of grain and oilseed products to Chile.

Under the price-band system, floor and ceiling prices, related to a 5-year moving average of representative international prices, are set for imports. A tariff surcharge is then assessed to bring the price of the import up to the floor price.[165] The floor price has been far higher than international prices for wheat and vegetable oil and has thus raised domestic prices well above world and U.S. export prices. In early 1991 the floor price for imported wheat was $201 per metric ton, compared with the international price of $115 per metric ton. This discrepancy provided a tariff surcharge of 75 percent in addition to the standard tariff of 11 percent.[166] The price band provides substantially more tariff protection than the GATT-bound Chilean tariff of 35 percent on wheat imports.[167]

A Chilean Government-owned marketing board (COTRISA) provides import protection to Chilean grain farmers by marketing both domestic and imported wheat.[168] COTRISA buys domestic wheat insuring a minimum producer price, and as the sole importer is able to ensure that imports do not undercut the minimum domestic price.[169]

Chile contends that the price bands do not constitute price-support mechanisms, because price bands are used not to cover increased domestic production costs but rather to correct for alleged artificial distortions in global markets. Chile, a member of the CAIRNS group[170] of agricultural exporters and a supporter of agricultural trade liberalization,[171] claims that the distortions are caused by subsidies and support measures applied by other producing nations.[172] Chile also asserts that the composite tariff (uniform tariff rate plus the price-band surcharge) is subject to a maximum rate equal to the 35-percent GATT-bound tariff and that the composite tariff does not exceed this rate.[173]

Contrary to the Chilean position, the GATT Council found that Chile's composite tariffs for agricultural products covered by price bands were in some cases much higher than the GATT-bound rate.[174] For wheat, the main crop grown in Chile, GATT found that the composite tariff had an ad valorem equivalent

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160—*Continued*

For example, section 301 may be used to increase opportunities for exporting U.S. goods and services, provide more equitable conditions for U.S. investment abroad, and obtain more effective protection worldwide for U.S. intellectual property.

161 U.S. Foreign Agricultural Service (FAS) Telegram, *Agricultural Situation Report—Chile*, Oct. 25, 1991, p. 4.

162 Donna Roberts and Paul Trapido, U.S. Department of Agriculture, Economic Research Service, *Government Intervention in Latin American Agriculture, 1982–87*, Sept. 1991, p. 67.

163 FAS Telegram, *Chile*, p. 8.

164 For a full description of the price-band system, see GATT, *TPRM: Chile*, C/RM/G/14, pp. 48 and 57, and *TPRM: The Republic of Chile*, C/RM/S/14A, pp. 83-90.

165 U.S. Foreign Agricultural Service, *Trade Policies and Market Opportunities for U.S. Farm Exports: 1990 Annual Report*, Aug. 1991, p. 51.

166 U.S. Congress, House Committees on Foreign Affairs and Ways and Means and Senate Committees on Foreign Relations and Finance, *Country Reports on Economic Policy and Trade Practices*, prepared by the U.S. Department of State, 102d Cong., 1st sess. (Washington, DC: Government Printing Office, Feb. 1991), p. 419.

167 GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 90.

168 Ibid., pp. 87-88.

169 FAS, *Trade Policies*, p. 51.

170 The CAIRNS group also includes the countries of Australia, Argentina, Brazil, Canada, Colombia, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand, and Uruguay.

171 U.S. Department of Commerce, Foreign and Commercial Service, *Chile: Country Marketing Plan: FY 1991*, p. 30.

172 GATT, "Council Reviews Trade Regimes of Thailand and Chile," p. 7.

173 U.S. Department of State Telegram, Sept. 27, 1991, Santiago, Message Reference No. 07869.

174 GATT, *TPRM: The Republic of Chile*, C/RM/S/14B, table V.5, p. 32.

Figure 5-1
SELECTED SECTOR-SPECIFIC TRADE AND INVESTMENT BARRIERS: CHILE

General	• Uniform 11 percent ad valorem tariff on almost all imports. • 20-percent reserve requirement on short-term investments.
Agriculture	• Grain and sugar tariffs, including variable levies or import price bands, may exceed GATT-bound 35-percent rate. • Government-owned marketing board (COTRISA), the sole wheat importer, ensures that imports do not undercut the minimum domestic price. • Preferential rates for imports from Argentina have shifted trade towards that country and have discouraged U.S. exports to Chile. • Sanitary and phytosanitary regulations are not transparent.
Pharmaceuticals	• The 15-year patent term is inadequate. • No provision for protection of foreign patents filed before September 1991.
Motor vehicles	• A series of special taxes effectively elevates the price of imports by 33 percent to 35 percent. • Minimum local-content requirements for domestic motor vehicle production. • Used vehicles may not be imported.
Business and professional services	• Restrictions on the use of foreign-produced advertising materials. • Prohibition of foreign-owned advertising firms from using 100-percent foreign-owned advertising. • Limitations on the ability of foreign legal service providers to practice law, establish wholly foreign-owned practices, hire Chilean lawyers, and use the international firm's name. • Foreign accountants are subject to restrictions concerning the use of firm's name, the ability to hire and form partnerships with local accountants, and the scope of services they may offer.
Banking services	• The Superintendency of Banks and Financial Institutions has ceased to issue new banking licenses. • Foreign banks are subject to discriminatory tax treatment; such banks must pay a 2.6-percent tax for every $1,000 of deposits that they hold.

Source: Compiled by staff of the U.S. International Trade Commission.

of 98 percent in December 1990, 122 percent in January 1991, and 135 percent in February 1991. GATT also found that the composite tariff for vegetable oils exceeded 35 percent in November 1990 and January 1991 and that the tariff for raw sugar exceeded 40 percent in January and February 1991. Moreover, the GATT Council expressed concern that Chile's price-band mechanism cannot distinguish between "distorted" prices and normal price fluctuations associated with shifts in world supply and demand. Thus, price bands "have the potential to substantially increase assistance during periods of falling world prices."[175]

Trade barriers to U.S. grain and oilseed products have sharply curtailed U.S. sales to Chile. Chilean production of grain and oilseed products would be sharply lower but for the import price band and import duties. The liberalization measures adopted by the Chilean Government for the industrial sectors have not been extended to the grain and oilseed sector and thus are expected to have little, if any, positive effect on U.S. exports of grain and oilseeds. Moreover, regional integration efforts and preferential tariffs under the LAIA have actually reduced U.S. export prospects for wheat and vegetable oil. The U.S. Department of Agriculture (USDA) has indicated that if the profiled barriers to U.S. grain and feed exports had been eliminated, U.S. exports of these products to Chile could have increased by about $19 million in 1990.[176]

Sanitary and Phytosanitary Requirements

Chile's sanitary and phytosanitary regulations and quarantine rules are strict because the agricultural sector is so important to the Chilean economy. These measures have been crucial in keeping Chilean agriculture free of diseases and pests. According to the Chilean Government, the regulations are based on an "acceptable risk" policy and are the minimum necessary to prevent the importation of diseases.[177]

[175] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, summary observations.

[176] FAS, *Trade Policies*, p. A-7.

[177] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, summary observations.

These Chilean requirements are not transparent because there is no formal procedure for issuing sanitary standards for agricultural products.[178]

The Chilean Government's Agricultural and Livestock Service (SAG) is responsible for setting requirements for imports of specific agricultural products.[179] SAG regularly publishes a schedule of diseases considered to be a risk to Chile. Products subject to sanitary and phytosanitary regulations include live animals (imports of which also require a health certificate from the recognized authority in the country of origin), meat and edible meat offals, dairy products, animal and vegetable oils, fruits and vegetables, beverages, spirits, and vinegar.[180] Imports of fish and shellfish require prior authorization from the Chilean National Fishing Service.[181]

Certain imports must meet special requirements. All imported corn and wheat must be fumigated on arrival in Chile. Carnation seeds must be treated with mercurial fungicide if imported from Argentina, Europe, New Zealand, or the United States.[182] In addition, despite accompanying certification that these procedures have been followed, SAG has the authority to impose mandatory quarantines.

The U.S. Embassy in Santiago has found that the lack of transparency in Chile's phytosanitary requirements impedes the importation of U.S. products. The Embassy reported that "neither Chilean voluntary standards nor mandatory regulations are published in draft form for public comment."[183] The Embassy also stated that the Chilean Government is slow to respond to requests for information about animal and plant health requirements for new products or commodities being exported to Chile. In addition, USDA reports that since the 1989 poisoned grape incident, Chile has had an unofficial policy of closely monitoring imports from the United States and restricting entry of products unless all the paperwork is completely correct.[184] However, the U.S. Embassy reported that Chilean authorities often eliminate or liberalize specific rules when these requirements are challenged by U.S. officials.[185]

Chilean regulations for pesticides and pesticide residues in food differ from U.S. measures. Chilean rules generally are based on Codex[186] standards for maximum residue limits for food, which can be higher or lower than U.S. tolerance levels.

Pharmaceuticals

IPR protection for pharmaceuticals in Chile has been a "long-standing source of conflict" between Chile and the United States.[187] Chile enacted a pharmaceutical patent law in January 1991 and implemented it in October 1991. However, industry sources are concerned about two aspects of the new law.[188]

First, the law's 15-year period of patent protection is considered inadequate given the lengthy development stage—usually 8 to 10 years—typical of new drugs. Secondly, industry sources are concerned that pharmaceutical patents are excepted from the transition or "pipeline" protection afforded other types of inventions. For pharmaceuticals already patented in foreign nations but not yet marketed in Chile, patent protection in Chile is available only if the foreign patent applications were filed in their country of origin after the enactment of Chile's new law (i.e., after September 30, 1991).[189] According to a U.S. pharmaceutical industry representative, "Without pipeline protection, the pharmaceutical industry will not benefit from the net effect of the patent law until after this century."[190]

Motor Vehicles

Import Ban On Used Automobiles

Used automobiles are the only items specifically barred from being imported into Chile. The import ban is mainly designed to aid the development of the Chilean auto industry. It also reflects Government policies to avoid imports of stolen automobiles and unsafe or excessively polluting vehicles. The prohibition does not apply to imports under section 0 of the Chilean Customs Schedule or special-purpose vehicles such as ambulances, armored vehicles for the transport of valuables, concrete mixers, fire engines, mobile homes, prison vans, street-cleaning vehicles, and snow plows.[191]

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[178] Procedures are allowed to take into account the opinions of qualified experts or organizations. Information provided by the Chilean Government, Sept. 10, 1991.

[179] The California State World Trade Commission stated in its posthearing brief (p. 3) that "Chile bans the importation of deciduous fruit."

[180] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 58.

[181] Ibid., p. 94.

[182] GATT, *TPRM: The Republic of Chile*, summary observations.

[183] U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.

[184] FAS Telegram, *Chile*, p. 14.

[185] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

[186] Refers to Codex Alimentarius Commission, a joint body of the United Nations Food and Agriculture Organization and World Health Organization. The 138 member nations of Codex, which publishes lists of international food standards and codes of practice, work to protect consumer health and insure fair food trade. *Encyclopedia of Associations: International Organizations, 1991*, pt. I, ed. Linda Irvin (Detroit: Gale Research, 1991), p. 246.

[187] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874.

[188] Gerald J. Mossinghoff, president, Pharmaceutical Manufacturers Association, written submission to the Commission, Jan. 31, 1992, pp. 2-3.

[189] U.S. Patent and Trademark Office, staff of the Office of Legislative and International Affairs, telephone conversation with the Commission, Nov. 1991.

[190] Mossinghoff, p. 3.

[191] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 53.

During the 1991 TPRM the GATT Council questioned Chile's import ban on used automobiles as a barrier to trade. The Chilean Government did not specifically respond to this issue but did state that new automobiles may be freely imported.[192] Chilean Government officials have indicated that the import ban is a holdover from the former military regime and that the Aylwin administration is interested in phasing out the ban.[193]

Tariff Surcharges

To protect the Chilean motor vehicle sector, Chile assesses a tariff surcharge on imported vehicles and maintains local-content rules that effectively raise the price of imports by as much as 35 percent.[194] Imports of assembled and unassembled new vehicles into Chile are subject to a tax based on the number of cylinders in the vehicle's engine and the vehicle's final purchase value.[195] This tax disproportionately affects U.S. imports because U.S. vehicles are generally larger and more powerful vehicles. The surtax, which does not apply to passenger vehicles with more than 15 seats, tractors, and trailers, is reportedly scheduled to be reduced by 10 percent annually between 1990 and 1995.[196] The surtax affords some import protection to foreign firms, such as General Motors, that already operate in Chile.[197]

Incentives provided to the domestic motor vehicle industry encourage domestic production. Chilean Law 1,239 established minimum local-content requirements for domestic motor vehicle production. Local-content requirements were reduced from 45 percent in 1978 to 13 percent in 1990. The local-content legislation also includes a provision that permits exports of automotive parts to count towards the local-content requirement. Chile also provides domestic assemblers with a tax credit, based on domestic content, that ranges from 2.6 percent for 13-percent Chilean content to 8 percent for 40-percent local content.[198]

Services

Chile has lifted all restrictions on foreign investment and activity in a few key services industries, including insurance, telecommunications, and information services. However, Government restrictions still exist in other major sectors such as banking and professional business services. Moreover, foreign investment in broadcast communications requires the approval of the Government's Foreign Investment Committee, while the Chilean Constitution allows the Government to regulate investment and trade in certain activities like communications media.[199] The Government reportedly is reviewing its censorship rules.[200]

The Chilean financial services sector is one of the most liberal in Latin America, although impediments to trade still exist. Foreign banks are reported to outnumber domestic banks in Chile. Currently, 22 foreign banks, including 8 U.S. banks, conduct business in the country. However, the Superintendency of Banks and Financial Institutions has ceased to issue new banking licenses on the grounds that too many banks presently reside in Chile.

Government restrictions affect many businesses that provide services. The Government of Chile restricts the use of foreign-produced advertising materials and prohibits foreign-owned advertising firms from using 100-percent foreign-produced advertising. Chile has a number of limitations on the ability of foreign legal service providers to practice law, to establish wholly foreign-owned practices, to hire Chilean lawyers, and to use the international firm's name. Foreign accountants are also subject to restrictions concerning the use of their international firm's name, the ability to hire and form partnerships with local accountants, and the scope of services they may offer.[201]

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[192] GATT, "Council Reviews Trade Regimes of Thailand and Chile," p. 7.

[193] Information obtained during Commission interviews with Chilean officials at the Embassy of Chile in Washington, DC, on Dec. 11, 1991.

[194] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874, reporting on the 1992 Trade Act Report for Chile.

[195] Ibid.

[196] GATT, *TPRM: The Republic of Chile*, C/RM/S/14A, p. 113.

[197] U.S. Department of State Telegram, Nov. 4, 1991, Santiago, message reference No. 08874, reporting on Sept. 16-17 meeting of the U.S.-Chile FTA working group.

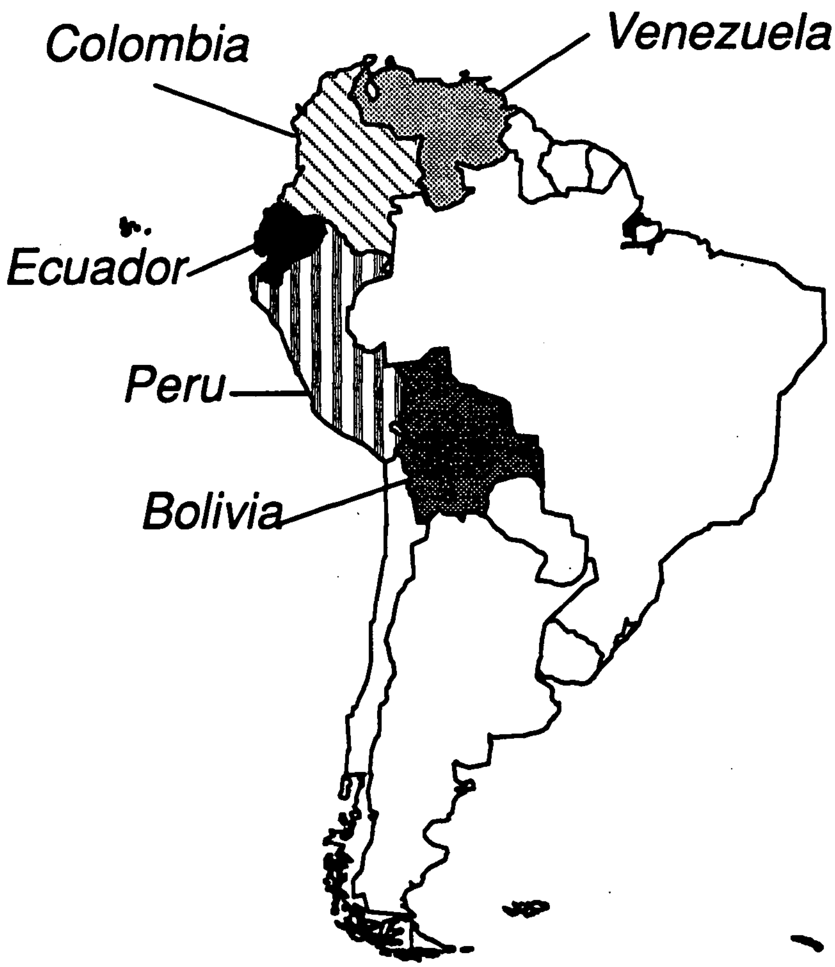
[198] Ibid.

[199] U.S. Department of State Telegram, Sept. 27, 1991, Santiago, message reference No. 07869.

[200] Ibid.

[201] Office of the United States Trade Representative, *Services Barriers Tabled by the United States*, Oct. 16, 1991.

Chapter 6
Andean Countries



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CHAPTER 6
ANDEAN COUNTRIES

The Andean Region comprises Bolivia, Colombia, Ecuador, Peru, and Venezuela.[1] Although history and geography have produced cultural diversity along the Andean range, these countries have signaled their commitment to build upon past alliances to further regional integration. Of this group, Colombia and Venezuela, the closest historical allies, account for over three-quarters of total U.S. trade with the region, but Bolivia has made the most dramatic economic turnaround in the last 10 years. Because of their significance, these three countries are discussed in greater detail below.

Trade plays a significant role in the regional economy; in 1988, it generated about 18 percent of the Andean gross domestic product (GDP). In 1990, the United States[2] accounted for 47 percent of the region's exports and 38 percent of its imports, compared with the European Community (EC), which accounted for 18 and 24 percent, respectively.[3] The Andean region's trade with other developing countries in the Western Hemisphere represented 19 percent of its total trade. Bilateral trade among the Andean nations is small, representing only 4 percent of the region's total trade. Infrastructure deficiencies, such as few good roads, often make it less costly and more efficient to export outside the region than within it.

Venezuela and Colombia, the largest economies of the region, accounted for 71 percent of the region's trade in 1990 (table 6-1). Based on official statistics of the U.S. Department of Commerce, over 75 percent of the region's exports to the United States in 1990 were from these two countries, as shown in the following tabulation (in millions of current dollars):

Partner	*U.S. exports*	*U.S. imports*
Venezuela	3,020	9,132
Colombia	1,985	3,154
Peru	755	727
Ecuador	659	1,358
Bolivia	135	199
Total	6,554	14,571

This chapter discusses trade and investment policies, reforms, and other issues affecting market access in Bolivia, Colombia, and Venezuela. Appendix C contains tables showing U.S. trade with these countries in selected sectors.

[1] These nations are members of the Andean Group, discussed in more detail in chapter 3.

[2] For further discussion of U.S. trade with Latin America, see chapter 2.

[3] International Monetary Fund, *Direction of Trade Statistics*, 1991 Yearbook, country tables.

Table 6–1
Andean nations: Global exports, imports, and trade balance, 1986–90

(Million 1988 dollars)

	1986	*1987*	*1988*	*1989*	*1990*[1]
Exports:					
Venezuela	10,422	10,240	11,052	11,725	12,839
Colombia	6,224	6,709	6,726	7,339	8,065
Peru	4,233	3,926	3,691	4,394	4,046
Ecuador	2,388	2,004	2,648	2,611	2,637
Bolivia	671	630	671	752	838
Total	23,938	23,509	24,788	26,821	28,425
Imports:					
Venezuela	12,289	12,560	14,943	9,770	9,652
Colombia	5,441	5,732	6,107	5,799	6,187
Peru	4,228	4,856	4,161	3,429	3,903
Ecuador	2,128	2,455	2,200	2,304	2,361
Bolivia	918	990	842	881	968
Total	25,004	26,593	28,253	22,183	23,071
Trade balance:					
Venezuela	(1,867)	(2,320)	(3,891)	1,955	3,187
Colombia	783	977	619	1,540	1,878
Peru	5	(930)	(470)	965	143
Ecuador	260	(451)	448	307	276
Bolivia	(247)	(360)	(171)	(129)	(130)
Total	(1,066)	(3,084)	(3,465)	4,638	5,354

[1] Preliminary.

Source: Inter–American Development Bank, *Economic and Social Progress in Latin America: 1991 Report* (Washington, DC: The Johns Hopkins University Press, 1991), p. 276.

Bolivia

In 1985, Bolivia initiated a series of sweeping reforms to stabilize the economy and open the domestic market. Faced with serious economic problems, including hyperinflation, burgeoning foreign debt, and heavy reliance on weakening markets for tin and silver, Bolivia abolished foreign exchange controls to make foreign exchange freely available and convertible, eliminated Government subsidies and price controls, liberalized banking restrictions,[4] and introduced new foreign debt management programs to encourage investment.[5]

Economic Profile

These economic reforms helped spur economic growth, reduce inflation, and increase trade and private investment. The rescheduling and reduction of Bolivia's foreign debt, which totaled $3.4 billion in 1991, have freed funds for domestic expenditures. During the past 5 years, Bolivia's GDP has grown steadily and inflation has declined, as shown in the following tabulation (in percent):[6]

Year	*Inflation*	*GDP growth*
1986	66.0	-2.5
1987	10.7	2.6
1988	21.5	2.9
1989	16.6	2.8
1990	18.0	2.6
1991[1]	12.6	2.9

[1] Inflation rate is preliminary and GDP growth as of August.

Growth occurred in all sectors—agriculture, manufacturing, and services.

The reforms introduced in 1985 helped stabilize the Bolivian economy, enabling the Paz Zamora administration, which took office in 1989, to revitalize the economy and increase growth. Bolivia's goals are to obtain a fourth structural adjustment program (SAP) from the International Monetary Fund (IMF), improve the medium-term balance of payments problem, expand and diversify exports, and attract foreign investment.[7] Bolivia has been negotiating an enhanced SAP similar to the third SAP, under which the IMF would contribute $60 million for balance-of-payments support to attract other international sources of finance.[8]

Bolivia relies heavily on imported intermediate products. Imports supply at least 90 percent of required raw and semifinished material for Bolivian industries. The United States is the second largest foreign supplier to Bolivia after Brazil, shipping mostly machinery and equipment and agricultural products (table C-8). U.S. products generally compete successfully in the Bolivian market because of favorable exchange rates and a reputation for high quality, although they face increasing competition from Brazilian, Argentine, and Japanese goods.

External debt continues to hamper Bolivia's economy. The composition of the debt changed over the past decade from mostly short-term, high-interest commercial and bilateral debts to longer term, more concessional loans. Currently, Bolivia's external debt totals $3.4 billion, of which $1.7 billion is owed to multilateral development banks, $1.4 billion to bilateral lenders, and only $257 million to private creditors and commercial banks.[9]

The international community remains committed to helping Bolivia's reform process, as evidenced by pledges of loans and grants by the World Bank and other institutions. These pledges, totaling just over $700 million for 1992, are targeted at supporting structural development, including privatization, mining reform, pension and public sector reform, public enterprise management regulations reform, social sector support, primary education, water purity, environmental reform, agriculture, and infrastructure development.[10]

Trade and Investment Policies and Liberalization

The Government's consolidation and expansion of reforms initiated in 1985 have succeeded in significantly opening the Bolivian economy. Recent initiatives in trade and investment policy, such as tariff reductions, removal of restrictions on foreign investment in most industry sectors, opening of mining and hydrocarbon ventures to foreign participation, and privatization efforts, make Bolivia an attractive market for U.S. goods and investment. However, U.S. trade and investment may continue to be inhibited because of concerns summarized in figure 6-1 and weak intellectual property rights; limited access within the hydrocarbons sector to international dispute settlement;

[4] Supreme Decree 21060 of August 1985. U.S. Department of Commerce, International Trade Administration, *Bolivia-Commercial Activities Report 1989*.

[5] U.S. Department of Commerce, "Business Prospects Improve in Bolivia's Mining and Hydrocarbons Industries," *Business America*, by Kurt Wrobel and Laura Zeiger, May 6, 1991, p. 28.

[6] U.S. Department of State Telegram, "Bolivian Periodic Economic Notes - Sep-Oct, 1991," Nov. 21, 1991, La Paz, message reference No. 17764; Inter-American Development Bank (IDB), *Economic and Social Progress in Latin America: 1991 Report* (Washington, DC: The Johns Hopkins University Press, 1991); and U.S. Department of State Telegram, "Bolivian Periodic Economic Notes - August 1991," Sept. 17, 1991, La Paz, message reference No. 13737.

[7] U.S. Department of State Telegram, "Consultative Group Meeting," message reference No. 30459.

[8] "Bolivia Goes for Fourth SAP," *Latin American Weekly Report*, June 6, 1991, p. 7.

[9] U.S. Department of State Telegram, "Bolivia's Foreign Debt," Dec. 27, 1991, La Paz, message reference No. 19749. Does not include private non-guaranteed debt.

[10] U.S. Dept. of State Telegram, "Consultative Group Meeting."

Figure 6–1
SELECTED SECTOR–SPECIFIC TRADE AND INVESTMENT BARRIERS: BOLIVIA

General	• Two–tier tariff structure: 5 percent for capital goods; 10 percent for all other goods. • Preshipment inspection tax of 1.7 percent to 1.9 percent for imports valued over $1,000 f.o.b.; 10 percent value added tax.
Agriculture	• Import–licensing requirement for sugar and wheat.
Minerals and metals	• Foreign mining firms must form joint ventures with domestic companies to operate within 50 kilometers inside country borders.
Business and professional services	• U.S. or other foreign firms must have a local address and a legal representative or local agent to bid for Government contracts.
Telecommunication and information services	• Monopoly on all basic telecommunication services by Government–owned telecommunication administrations

Source: Compiled by staff of the U.S. International Trade Commission.

and import-licensing requirements on sugar, wheat, and national security items.

Import Policies

Bolivia has significantly liberalized its import policies since the initiation of the 1985 reforms. It adopted a uniform tariff of 20 percent ad valorem in August 1986 and, by 1990, steadily reduced the rate to the current two-tier structure of 5 percent for capital goods and 10 percent for all other goods.[11] Bolivia now has lower tariffs than the other Andean nations and will maintain these duties under the Andean decision on common external tariffs. In acceding to the GATT in August 1990, Bolivia agreed to bind its tariffs at a uniform rate of 40 percent ad valorem.[12]

Bolivia has eliminated all nontariff measures except import-licensing requirements for sugar, wheat, and national security items. These licenses are aimed mainly at stopping imports of contraband from neighboring nations and reportedly have little effect on U.S. access to Bolivia's agricultural market.[13] Bolivia also assesses a preshipment inspection tax of 1.7 to 1.9 percent on all imports valued over $1,000 f.o.b.

Export Policies

Bolivia has been encouraging export diversification into nontraditional products like agricultural commodities in order to reduce its dependence on the mining sector and the illicit production of coca and cocaine products. However, its landlocked location and poor infrastructure have hindered export diversification efforts. Moreover, in early 1991 Bolivia eliminated an export-promotion program under which exporters of nontraditional products were granted rebate certificates equal to the 10 percent VAT paid on all goods. Bolivia had earlier cut the rebate to 6 percent under pressure from the IMF to minimize this drain on scarce Government resources.[14] In 1991, Bolivia also created a "drawback" plan under which exporters of certain goods are reimbursed 2 to 4 percent of duties paid on imported raw materials.[15] No other direct or indirect export subsidies exist.[16]

Investment Policies

The Government of Bolivia recognizes the importance of foreign direct investment (FDI) to Bolivia's economic growth. According to Bolivian Finance Minister David Blanco, Bolivia needs $800 million of investment annually to achieve GDP growth of 3.5 to 4 percent a year. Only a fourth of this total, or $200 million, is available from domestic savings, leaving the country dependent on foreign capital flows.[17] The Government last registered FDI in 1984, when it totaled $524 million. Three-fourths of this total, or $400 million, came from the United States.[18] Currently, about 70 percent of U.S. FDI in Bolivia is in the petroleum industry.[19]

Bolivia has recently liberalized its investment regime, including the privatization of government enterprises. In September 1990, Bolivia enacted legislation that, unlike the previous law, permits full foreign ownership, imposes no screening procedures, requires no registration of FDI, and accords national treatment to foreign investors. However, certain

[11] U.S. Department of State Telegram, "Economic Trends Report," May 10, 1991, La Paz, message reference No. A-02.

[12] GATT, *Report of the Working Party on the Accession of Bolivia, Addendum*, document L/6542/Add.2, p. 2.

[13] U.S. Department of Commerce, International Trade Administration, Market Research Reports, "Bolivia-Economic Policy and Trade Practices," 1991, p. 5, Export Connection, NTDB, IT Market 111109295.

[14] Ibid.

[15] U.S. Dept. of State Telegram, "Economic Trends Report."

[16] U.S. Department of State Telegram, "Trade Act Report - Bolivia," Nov. 21, 1991, La Paz, message reference No. 17764.

[17] U.S. Dept. of State Telegram, "Economic Notes - Sep-Oct, 1991."

[18] U.S. Dept. of State Telegram, "Investment Climate Report 1990."

[19] U.S. Dept. of State Telegram, "Trade Act Report: Bolivia."

exceptions remain in the mining and hydrocarbons sectors and in telecommunication services, where government telecommunication authorities still retain their monopoly on basic services. The code also permits foreign investors to own property; to remit dividends, interest, and royalties abroad; to import and export freely; to contract for insurance; and to make payments or write contracts in any currency. In addition, the code permits the establishment of joint ventures and free-trade zones.[20] In June 1991, the Government issued a supreme decree authorizing the sale of 60 companies owned by regional development corporations and required signature of performance contracts by major Government-owned firms.[21]

Despite these encouraging changes, Bolivia's small domestic market and underdeveloped infrastructure, as well as alleged bureaucratic corruption and Government delays in payment and contract finalization, may discourage investors.[22] The Government has also faced strong opposition to its privatization program, especially from organized labor.[23] In addition, concern has been expressed over Bolivia's proposed environmental law. U.S. and Bolivian critics charge that the legislation, if enacted, might lead to a decline in FDI because it is overly broad and does not set clear standards.[24]

Bolivia has recently eased its restrictions on FDI in the mining and hydrocarbons sectors, the only sectors in which such restrictions still exist but which remain among the best investment prospects.[25] In the mining sector, Bolivia lifted the ban on foreign operations within 50 kilometers inside its border where rich gold and silver deposits exist;[26] now, such operations are allowed under joint venture or service contract with Bolivian miners and COMIBOL (the Government mining firm). However, because of security concerns the Mining Code still prohibits participation in the Bolivian mining sector by firms based in adjacent countries.[27]

Bolivia also liberalized its taxation system for the mining sector, which had been based on tax royalties on assumed profits. Most foreign firms, including U.S. firms, should now be able to obtain tax credits in their home countries for taxes paid on operating profits to the Bolivian Government. Mining firms may continue to use the royalty system until October 1999 for those operations existing before the passage of the new tax law. However, all new investment must operate under the new tax system.[28]

Recent changes in Bolivia's Hydrocarbons Code now permit the Government petroleum company, Yacimientos Petroliferos Fiscales Bolivianos (YPFB), to form joint ventures or partnership contracts with private investors for hydrocarbon industrialization projects. However, these contracts require executive branch consent in the form of supreme decrees issued by the government.[29] In addition, the dispute resolution mechanism in the code limits foreign investor access to international arbitration, which is otherwise guaranteed by the Investment Code. Article 26 of the Hydrocarbons Code provides that disputes between the parties that cannot be resolved by common accord shall be submitted to the appropriate Bolivian court. Only technical discrepancies may be settled by international arbitration.[30] This provision has stalled progress on a U.S.-Bolivian bilateral investment treaty initiated in July 1990. Although Bolivia signed the International Center for the Settlement of Investment Disputes Convention in May 1991, the Convention has not yet been ratified by the Bolivian Congress.

Protection of Intellectual Property[31]

There is growing concern in the Bolivian Government over the inadequacy of the nation's intellectual property rights (IPR) protection. The Government is drafting a modern law on patents and trademarks but plans to await the outcome of the Uruguay Round negotiations on IPR, as well as implementation of Andean Group Decision 311, before submitting any new legislation to its Congress. Bolivia's entry into GATT and the deliberations of the recently created U.S.-Bolivia Council on Trade and Investment may help to speed IPR reform. U.S. firms have had few specific complaints about Bolivia's IPR protection, perhaps because it is a small market.

Patents and trademarks

Bolivia's 1914 patent law, still in effect, declares any inventions contrary to law and public security, and all chemical, pharmaceutical, and therapeutic compositions unpatentable. The term of a Bolivian patent is 15 years from the date it is granted. Bolivian

[20] U.S. Department of Commerce, International Trade Administration, "Marketing in Bolivia," *Overseas Business Reports*, Jan. 1989, addendum.

[21] U.S. Dept. of Commerce, "Bolivia: Trade and Investment Policy Issues."

[22] Ibid.

[23] U.S. Dept. of State Telegram, "Investment Climate Report 1990."

[24] U.S. Dept. of State Telegram, "Economic Notes, Sep-Oct, 1991."

[25] U.S. Dept. of State Telegram, "Economic Trends Report."

[26] U.S. Embassy, La Paz, *Industrial Outlook Report - Minerals 1989*, Sept. 20, 1990, p. 4.

[27] U.S. Department of State Telegram, "Bolivian Congress Approves a New Mining Code," Apr. 10, 1991, La Paz, message reference No. 04808.

[28] Ibid.

[29] Bolivia, *Hydrocarbons Law*, translated by the U.S. Department of State, Division of Language Services.

[30] Ibid.

[31] Information in this section is, except as noted, from U.S. Congress, House Committees on Foreign Affairs and Ways and Means and Senate Committees on Foreign Relations and Finance, *Country Reports on Economic Policy and Trade Practices*, prepared by the U.S. Department of State, 102d Cong., 1st sess. (Washington, DC: Government Printing Office, Feb. 1991), p. 402; U.S. Dept. of State Telegram, "Trade Act Report - Bolivia;" and U.S. Patent and Trademark Office, Office of Legislative and International Affairs, interview by the Commission, Oct. 1991.

law does not protect the patent owner from imports that are made using a patented process. A Bolivian patent is subject to compulsory licensing to others if the patent owner does not produce the patented item in Bolivia within 2 years of the patent issue date. The Government of Bolivia may revoke a patent that has not been used for more than 1 year, unless nonuse is justified, and may expropriate inventions related to warfare without compensating the patent owner.

International trademarks are not recognized or protected under Bolivia's current trademark law of 1918. The law requires extensive bureaucratic procedures for foreign firms wishing to register trademarks in Bolivia. Foreign firms can contest the registration of their trademark by others by filing protests with the Ministry of Industry, Commerce, and Tourism, but the filings must be handled by Bolivian lawyers.

Copyrights

A 1947 Bolivian law grants copyright protection to literary, scientific, and artistic works and permits the author or inventor to retain exclusive use or right to authorize the use of the work. Copyright protection is limited to the life of the author plus 30 years,[32] and a work must be registered within 1 year of publication to receive such protection. The Government may expropriate, without payment to the author or the author's heirs, any work that is out of print. Text books, scientific books, and magazines are subject to compulsory licensing for translation and publication.[33]

The copyright law does not address movies or videocassettes, and no restrictions exist on computer software or satellite signal piracy. Computer software piracy is common in Bolivia, where many computer outlets routinely offer pirated software packages free of charge as an incentive to buy their product. The General Regulations for Television Service, issued by the National Telecommunications Service in May 1986, protects foreign and local copyrighted films against unauthorized broadcasting. However, unauthorized public performances of films and music videos and piracy of sound recordings are reportedly widespread.[34] The Bolivian Congress is currently debating a law that would prohibit the copying of videocassettes.

Colombia

In 1989, Colombia unveiled a 5-year plan of sweeping reforms to spur economic growth and investment. Known as "Apertura" (opening), the plan is designed to open the economy to encourage foreign competition and investment. The key points of the plan are liberalization of trade and investment regimes, removal of the Central Bank monopoly on foreign currency, privatization of Government firms, and reform of labor and tax laws.[35] The current Cesar Gaviria administration has begun implementing other reforms, such as IPR reform and debt reduction.[36] Colombia, with an external debt of $17 billion, is one of the few major Latin American nations to consistently pay its creditors. As a result of the recent reforms, Colombia now has an essentially free market exchange system.[37]

Economic Profile

Real GDP grew by 3.6 percent in 1990, consistent with about 3.5 percent annual growth during 1980-90 (table C-1). GDP growth for 1991 is expected to fall to between 2 to 2.5 percent, given the Colombian Government's efforts to moderate economic expansion to curb inflation.[38] The Government estimates that GDP growth will rise to 5 to 6 percent a year once Apertura is fully implemented and inflation is brought under control.[39] Inflation, which rose to 26.8 percent in 1991, has remained a persistent problem, partly because of massive capital inflows from the repatriation of illegal narcotics earnings.[40]

Agriculture and manufacturing are the major sectors in the Colombian economy, generating 43 percent of 1990 GDP (table C-2). Although Colombia continues to rely heavily on coffee, petroleum, and coal for export earnings, it promotes nontraditional exports such as textiles and metals.[41] Despite the Government's concerted efforts, the nation remains a thriving trade base for contraband goods, including consumer goods and cocaine.[42]

Colombia's most important trading partner is the United States. The U.S. trade deficit with Colombia almost tripled in nominal terms during 1988-90 to $1.2

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[32] The standard for copyright protection under the international Berne Convention, to which Bolivia is not a signatory, is life plus 50 years.

[33] Decree law 006996 of 1964.

[34] Eric H. Smith, general counsel, International Intellectual Property Alliance, posthearing statement, Jan. 31, 1992.

[35] U.S. Department of State Telegram, "Colombian Export Economy," May 14, 1991, Bogota, message reference No. 07164, and Embajada de Colombia, Washington, DC, press release, May 14, 1991.

[36] U.S. Department of State Telegram, "1992 Trade Act Report - Colombia," Nov. 19, 1991, Bogota, message reference No. 17776.

[37] U.S. Department of Commerce, *Colombia: Fiscal 1992 Country Marketing Plan*, draft, Aug. 20, 1991.

[38] U. S. Department of Commerce, "Colombia: Reform Measures Under Way as the Recession Recedes," *Business America*, by Laurie MacNamara, Apr. 6, 1992, p. 25.

[39] U.S. Department of Commerce, Office of Latin America, "Colombia's Growth Record Makes It a Latin American Success Story," *Business America*, by Rodrigo Soto, May 20, 1991, p. 20.

[40] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."

[41] U.S. Department of State Telegram, "Economic News Briefs - Colombia," Nov. 26, 1991, Bogota, message reference No. 18188.

[42] The large volume of contraband trade in Colombia is not measured by officially reported trade data used in this report.

billion, as U.S. imports rose by 47 percent, to $3.2 billion, and U.S. exports rose by 15 percent, to almost $2 billion. U.S. trade with Colombia declined in 1991, with the U.S. trade deficit narrowing to $824 million (table C-11). Manufactured goods accounted for most U.S. exports to Colombia in 1990, whereas fuels and raw materials (61 percent), food (20 percent), and manufactured goods (16 percent) accounted for most U.S. imports from Colombia (table C-11).

FDI in Colombia rose by 22 percent during 1986-89, to $3.3 billion. The United States was the major FDI source, supplying 70 percent, or $2.3 billion, of the 1989 total. Mining and manufacturing attracted 88 percent, or $2.9 billion, of the total.[43]

New FDI in Colombia is likely to grow as a result of the Government's pledge to privatize many Government enterprises in an effort to reduce the fiscal deficit and improve economic efficiency. The Gaviria administration is moving to privatize over 20 hotels and 5 banks (3 enterprises were sold during July-October 1991) that were nationalized during the 1982 financial sector crisis. In addition, the Government is seeking to privatize the nation's ports system and to sell state equity in 27 industrial holdings of the Industrial Development Institute (IDI) over the next 4 years.[44] For the nation's rail system, it plans to separate the maintenance and operation of the railroad from administrative functions and allow private companies to share some managerial functions with the Colombian railroad company, Ferrovias.[45]

Trade and Investment Policies and Liberalization

Colombia has recently liberalized its trade and investment policies under the Apertura plan. It reduced tariffs, removed most import licensing requirements, and lifted restrictions on profit remittances abroad by foreign firms. Colombia also eliminated foreign exchange licensing requirements, but importers must register the payment schedule on the import license, which may not be subsequently altered.[46]

Nevertheless, significant trade and investment barriers still remain in effect, including tariff and import surcharges, import licensing for many agricultural goods, a Government wheat monopoly, and a price-band variable levy on selected agricultural products. Discriminatory government procurement measures, cargo reserve restrictions, foreign television programming limits, and weak IPR protection are also disincentives to foreign trade and investment. Colombia allegedly maintains trade-distorting price controls on a number of products that can skew price comparisons between domestic and imported products and hinder FDI by reducing or eliminating the ability of investors to recover their costs.[47]

Import Policies

Tariffs and surcharges

Colombia reduced its tariffs significantly in 1990 and 1991 and created four ad valorem rate levels of 0, 5, 10, and 15 percent. The duty-free rate, accounting for 45 percent of total tariff categories, applies to imports of raw materials, intermediate goods, capital goods not produced in Colombia, and some consumer goods.[48] The rates of 5 and 10 percent apply to imports of raw materials, intermediate goods, and capital goods produced in Colombia. The 15-percent rate applies mainly to finished consumer goods. These rates, however, are not bound in the GATT and can be raised by the Colombian Government at a later date. Exceptions to these rates include agricultural products subject to the recently introduced price-band system and motor vehicles. Colombia also grants preferential tariffs for many goods and preferential tax rates for wines from nations of the Latin American Integration Association (LAIA).

Colombia assesses a surcharge on almost all imports based on the c.i.f. value. This levy was reduced from 13 to 5 percent early in 1992.[49]

Other barriers

Under the Apertura plan, Colombia has eliminated its most significant nontariff barrier—import licensing requirements for most products.[50] Import licenses are now required principally for certain agricultural goods,[51] controlled drugs and chemicals, national security-related items, and government imports, which account for 2 percent of the 5,162 items in the Colombian tariff schedule.[52] Registration requirements also exist for imported inputs for assembly industries. Finally, Colombia eliminated its prohibited import list and moved some tariff articles to the list of products requiring import licenses.

Government procurement policies discriminate against foreign bidders in public works projects.[53] According to Decree 222, enacted in 1987, for several

[43] U.S. Dept. of Commerce, *Colombia: Fiscal 1992 Country Marketing Plan*, p. 2.

[44] Six have already been sold and sales of 10 more are being negotiated.

[45] U.S. Dept. of State Telegram, "Economic News Briefs."

[46] U.S. Dept. of Commerce, *Colombia: Fiscal 1992 Country Marketing Plan*, p. 33.

[47] Jeffrey Lang, of Winthrop, Stimson, Putnam & Roberts, written submission to the Commission, Feb. 4, 1992, on behalf of the Coalition for Free Market Pricing (members are E.I. du Pont de Nemours, FMC, Procter & Gamble, Pfizer International, and Colgate-Palmolive).

[48] Office of the United States Trade Representative (USTR), *1992 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: USTR, 1992).

[49] U.S. Department of Commerce, "Colombia: Reform Measures Under Way," p. 25.

[50] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."

[51] U.S. Dept. of Commerce, "Colombia's Growth Record," p. 20.

[52] USTR, *1992 Foreign Trade Barriers*.

[53] U.S. Dept. of Commerce, "Colombia's Growth Record," p. 21.

major public-work projects only government-to-government contracts are acceptable. But U.S. law constrains the U.S. Government from participating in commercial contracts with foreign nations, precluding U.S. participation in these projects. The decree further requires foreign contractors to associate with or subcontract to a Colombian firm at least 40 percent of a contract's value and requires foreign bids to be increased by 20 percent in value when domestic bids exist.[54] Foreign bidders, unlike domestic ones, must list all costs and expenses. Decree 222 also effectively discriminates against U.S. firms in competition with other bidders on certain projects and equipment sales where maximum financing rates set by the Colombian Ministry of Finance are below those of the U.S. Export-Import Bank. Even mixed credit packages, funded by the Export-Import Bank and suppliers with overall rates that meet Government requirements, reportedly have been unacceptable. The Colombian Government is reportedly drafting legislation to revise the decree.[55]

Colombia has relaxed its price controls since 1989, but continues to apply them to about 30 goods and services.[56] To the extent that Colombian prices are held below world prices, the controls act as a deterrent to imports and FDI. Colombia maintains price ceilings on selected consumer and essential goods such as cooking oil, coffee, and pharmaceuticals, and regularly adjusts the controlled prices in line with inflation.[57]

Export Policies

As a condition for U.S. acceptance of Colombian accession to the GATT Subsidies Code, the Government of Colombia began a 5-year plan in mid-1990 to phase out export subsidies that were inconsistent with the Code.[58] Colombia agreed to phase out several export subsidies beneficial to Colombian exporters of manufactured and processed agricultural goods. The subsidies included a rebate of taxes on products destined for export (the CERT program); preferential export financing from PROEXPO, the Government export promotion agency; and duty exemptions under the Vallejo plan for imported capital equipment used for export production.[59] In 1991, Colombia converted PROEXPO into an import-export bank offering trade financing at market rates[60] and announced a 50-percent cut in 1992 funding for CERT, to $90 million. About a fourth of Colombian exports are currently eligible for CERTS.[61]

[54] USTR, *1992 Foreign Trade Barriers*.
[55] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."
[56] U.S. Dept. of Treasury, Oct. 9, 1991.
[57] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."
[58] U.S. Congress, *Country Reports*, p. 427.
[59] USTR, *1992 Foreign Trade Barriers*.
[60] Republic of Colombia, National Planning Department, *World Strategic Opportunities: Business Guide for Foreign Investment in Colombia* (Colombia: KPMG Peat Marwick, 1991), p. 63.
[61] U.S. Dept. of State Telegram, "Economic News Briefs - Colombia."

As a result of a bilateral agreement with Colombia on the phase-out of its subsidies, the United States now grants Colombia an injury test in countervailing-duty (CVD) proceedings.[62] In a 1983 CVD case involving fresh cut flowers, the United States found that the Colombian export subsidies equaled 4 percent of the f.o.b. value of the imported merchandise.[63] Moreover, to comply with CVD suspension agreements, Colombian exporters of miniature carnations, roses, and other cut flowers have continued to renounce export subsidies found to be countervailable or potentially countervailable. The status of CVD and any antidumping orders in effect involving Colombian products is shown in appendix C, table C-5.

Investment Policies

Colombia has significantly liberalized FDI policies in the past 2 years. It now grants equal treatment to foreign and local investors, although restrictions or required prior Government approval still apply for FDI in some sectors. Registration of FDI is still required, although the process is now pro forma.[64] FDI is banned in national security sectors. In the petroleum, mining, and the financial services sector, prior approval is required.[65] Foreign investment in the petroleum sector is generally viewed favorably if undertaken with ECOPETROL, the state oil company.[66] Colombia now permits complete foreign ownership of financial institutions and FDI is also permitted in public utility services, including telecommunications, subject to prior approval of the National Planning Department.[67]

In November 1991, with the enactment of resolution 51 of the National Economic and Social Policy Council, Colombia lifted all restrictions on profit remittances abroad.[68] Previously annual remittances had been restricted to 100 percent of the registered capital base (up from 25 percent in December 1990).[69] The Government still levies remittance taxes, although these taxes will reportedly be reduced over the next 4 years from 20 to 12 percent.[70] Resolution 51 also allows foreign capital funds to invest in shares of Colombian firms through stockbrokers (after approval by the National Stock Trading Commission).[71] Royalty contracts, which must be approved by the Royalties Commission, are

[62] USTR, *1992 Foreign Trade Barriers*.
[63] 48 *Federal Register* 2158.
[64] U.S. Department of Commerce, International Trade Administration official, interview by the Commission, Mar. 19, 1992.
[65] "Regional Developments," *The International Lawyer*, Fall 1991, p. 764.
[66] USTR, *1992 Foreign Trade Barriers*.
[67] U.S. Dept. of State Telegram, "Economic News Briefs - Colombia."
[68] U.S. Dept. of Commerce interview.
[69] U.S. Dept. of Commerce, "Colombia's Growth Record," p. 21.
[70] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."
[71] U.S. Department of State Telegram, "Colombia Further Liberalizes Foreign Investment Regime," Jan. 7, 1992, Bogota, message reference No. 00209.

frequently rejected if the contracts stipulate royalties in excess of 4 percent of sales.[72]

Colombia has also liberalized its foreign exchange regime to ensure foreign exchange availability. With the enactment in January 1991 of Law 9 to Regulate the Exchange and Investment of Foreign Currency, Colombia liberalized its foreign exchange controls, gold market, and futures and options trading. The law also eliminated foreign exchange licensing requirements, although importers must register the agreed payment schedule on the import license, which may not be altered.[73] In June 1991, Colombia transferred responsibility for public exchange transactions from the Central Bank to commercial financial institutions, which are now authorized to handle currency exchanges and transactions.

To attract FDI, Colombia has agreements with the U.S. Overseas Private Investment Corporation (OPIC), under which OPIC will provide political risk and currency convertibility coverage to U.S. firms investing there. Colombia intends to join the World Bank's Multilateral Investment Guarantee Agency (MIGA), although the Colombian Congress has yet to ratify this agreement.[74]

New FDI in Colombia may be hindered by the new Colombian Constitution, which in specific cases permits expropriation for the public good. The provisions were included to allow the exercise of eminent domain because such problems have hampered large public works projects in the past. However, the basis for expropriation will not be clearly defined until implementing legislation is passed by the new Congress.[75]

Protection of Intellectual Property[76]

In November 1991, Colombia agreed to replace Andean Pact Decision 85 governing industrial property with Decision 311, providing stronger IPR protection. Colombia considers Decision 311 to be self-implementing, providing minimum standards for IPR protection with no need for further legislative enactments by its national legislature. However, Colombia is currently drafting legislation and implementing regulations intended to go beyond the standards for protection found in Decision 311.[77] Moreover, Decision 311 has been amended by Decision 313, which if enacted and enforced, will improve the patent and trademark protection offered by Decision 311.

Patents

Colombia's adoption of Decision 311 eliminates most exclusions from patentability. Under the current law, the following types of inventions are not patentable:

- pharmaceutical products, medicines, therapeutically active substances;
- beverages and goods for human, vegetable, or animal use;
- vegetable varieties or animal breeds, essentially biological procedures for obtaining vegetables or animals;
- foreign inventions for which the patent is applied for more than 1 year after the foreign filing date, even though no foreign patent has been issued and the foreign applications have not been laid open prior to the filing in Colombia; and
- inventions that are contrary to public order or to good customs.

In addition, patent terms will be extended from 5 to 15 years from the date of patent grant, and use of compulsory licenses will be restricted.

Trademarks

Colombia's trademark protection system requires registration and use of the trademark in Colombia. With the adoption of Decisions 311 and 313, trademark protection will increase from 5 years (with renewal for subsequent 5-year periods contingent upon proof of trademark use in an Andean Pact nation) to 10 years, with 10-year renewal terms. However, if a trademark is not used for 5 years in Colombia, the trademark registration will be subject to cancellation, unless its use is impossible due to circumstances beyond the trademark owner's control. Because use can be in any of the Andean Group nations, excuse for nonuse may only be accepted if it can be proven that use was impossible in all Andean nations.

High tariffs, import licensing, and other import restrictions have reportedly hampered many U.S. trademark owners' use of their trademarks in Colombia or other Andean nations. Colombia does not consider import restrictions a justification for failure to meet the use requirement, unless all Andean countries maintain similar restrictions. While deficiencies in Colombia's trademark law leave many U.S. trademark owners reluctant to license their trademark in Colombia, no trademark enforcement problems have been reported to the U.S. Patent and Trademark Office.

A trademark owner may not, in a license agreement, limit the export of goods bearing the trademark. This prohibition can create problems in other nations where the owner may have another licensee. The owner also cannot oppose imports of

[72] USTR, *1992 Foreign Trade Barriers.*

[73] U.S. Dept. of Commerce, *Colombia: Fiscal 1992 Country Marketing Plan*, p. 33.

[74] U.S. Dept. of State Telegram, "Colombia Further Liberalizes Foreign Investment Regime."

[75] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."

[76] The information presented in this section is mainly from USTR, *1992 Foreign Trade Barriers*, and interviews with officials of the U.S. Patent and Trademark Office, except as noted.

[77] Jaime Garcia Parra, Ambassador, Embassy of Colombia, transcript of hearing, Jan. 22, 1992, p. 161.

trademarked goods from other nations that are party to the Cartagena Agreement, even if these goods are not authorized to bear the trademark.

Copyrights

Colombia has a modern copyright law and belongs to both the Berne Convention and the Universal Copyright Convention. However, Colombia's 30-year term for works of legal entities (i.e., motion pictures, sound recordings, and computer programs) is short in comparison to that of the Berne Convention standard of life of the author plus 50 years.

Prior to 1989, computer software was not explicitly covered under the Colombian copyright regime. Although Colombian courts held that software was protected under law 23 (1982) on copyrights, legal registration requirements were needed. In July 1989, the President of Colombia issued Decree 1360, which classified computer software as a literary work and set out the conditions for registration of software in the National Registry of Author's Rights. Consistent with Colombia's Berne Convention obligations, this registration is voluntary. Registration requires submission of the software and the program description or auxiliary material (as defined in the decree) to identify the software's authorship. The decree provides that a program will be regarded as an unpublished work unless the author of the program determines otherwise.[78] Semiconductor mask work layout designs receive no copyright protection.

Lack of adequate enforcement of copyright laws in Colombia remains a serious problem. The U.S. motion picture industry estimates that pirated videocassettes account for 80 percent of the Colombian video market. Some progress has recently been made in stricter enforcement of video piracy regulations. Although hard data are not available, it is likely that the incidence of piracy of other works is also high, with computer software and musical recordings particularly hard hit. Satellite signal and cable television piracy also continues to be widespread.

The Office of the United States Trade Representative placed Colombia on the "watch list" under the special 301 provision of the Trade Act of 1988 because of Colombia's inadequate patent protection and the lack of protection for computer software. Although Colombia has since extended protection to computer programs, it remains on the watch list.

Sector-Specific Barriers

In addition to more general restrictions on investment and trade, barriers also exist for specific sectors (fig. 6-2).

[78] U.S. Department of Commerce, International Trade Administration, *Guide to Computer Hardware and Software Markets in Latin America*, July 1990.

Agriculture

Colombia has used restrictive domestic support prices and import tariff and nontariff measures to pursue its policy of food self-sufficiency. A 1991 USDA report indicated that tariff and nontariff measures restrict U.S. rice, wheat, and barley sales to Colombia to about $100 million a year.[79]

In 1990, Colombia assessed an import duty of 15 percent ad valorem and an import surcharge of 16 percent, or a composite tariff of 31 percent on wheat, sorghum, and barley.[80] Composite tariffs of 36 percent were levied on imported soybeans and soybean meal, 56 percent on soybean and sunflower oils, and 46 percent on tallow. Colombia cut the import surcharge on these products in half in 1991.

Colombia had for many years required import licenses for agricultural goods and still requires them for many food items. Specific labels to meet health and safety regulations are required for the approval of import licenses for food items.

Colombia recently eliminated the Government import monopoly on all agricultural goods except wheat. Previously, IDEMA, a Government agency, was the sole authorized importer of grain, oilseeds, and vegetable oil, selling the imports to domestic processors at price-supported levels only when domestic shortages existed.

Concurrent with the dismantling of the Government agricultural monopoly, Colombia adopted an import price band system similar to the one used in Chile[81] for imported wheat, barley, corn, milled rice, sorghum, soybeans, sugar, and dry milk. Despite the price controls, Colombia imports sizable amounts of U.S. grain and oilseed products.

Colombia restricts imports of U.S. wine coolers because their alcohol content is below the 10-percent level that the Health Ministry regards necessary to prevent bacteria formation; the restriction is under Government review.[82]

Motor Vehicles

Colombia's motor vehicle industry is small and made up mostly of joint ventures between leading global producers and local assembly operators. Most of the vehicles made in Colombia are assembled from imported kits. The foreign firms have entered into joint venture agreements with local entities because of Colombia's former prohibitions on imports, extensive local content rules, and high local tariffs.[83]

[79] U.S. Foreign Agricultural Service (FAS), *Trade Policies and Market Opportunities for U.S. Farm Exports: 1990 Annual Report*, Aug. 1991, pp. 64-65.
[80] Ibid.
[81] See chapter 5 for a discussion of Chile's price band system.
[82] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."
[83] U.S. Dept. of Commerce, *Colombia: Fiscal 1992 Country Marketing Plan*, p. 2.

Figure 6-2
SELECTED SECTOR-SPECIFIC TRADE AND INVESTMENT BARRIERS: COLOMBIA

General	• Limits on repatriation of profits to firm's total invested capital. • Preferential treatment to Colombian bidders in Government procurement contracts. • Four-tier tariff schedule: free for imported goods not produced in Colombia; 5 to 10 percent for goods produced in Colombia; 15 percent for finished consumer goods. • Port taxes of 8 percent, import surcharges of 5 percent, a value-added tax of up to 35 percent.
Grain and oilseed products	• Tariffs, up to 56 percent for most leading grain and oilseed products; variable levies or import price bands are also imposed on these products. • High domestic support prices for wheat, corn, milled rice, barley, sorghum, soybeans, sugar, and dry milk.
Pulp and paper	• Tariff on paper and/or paperboard, converted paper products, and printed material is 15 percent; tariffs on pulp and waste paper products are either 5 percent or 10 percent, depending on the product.
Minerals and metals	• Average tariff on steel products: 5 to 15 percent. • Government approval for mining projects.
Motor vehicles	• Tariffs up to 35 percent on automobiles depending on engine capacity as well as an import surcharge of 5 percent; tariffs of 30 percent and 3 percent, respectively, on trucks and automobile assembly kits. • Domestic-content requirements implemented through trade balancing (importers use locally produced parts or export a fixed share of the imported products' value), export performance, and use of local parts stipulations.
Agricultural equipment	• Tariff: 0 to 10 percent.
Electronic equipment	• Tariffs: Computer equipment 0 to 10 percent, all other: 0 to 15 percent. • Weak enforcement of software copyright protection.
Scientific and medical instruments	• Tariff: 15 percent.
Business and professional services	• Restrictions on the right to practice and right of establishment (e.g., law). • Government procurement restrictions (e.g., consulting firms must bid through local representatives). • Domestic-content requirements (e.g., 50 percent of the content of any television commercial must be produced locally). • Colombia has a 20-percent ceiling on foreign equity participation in advertising services.
Telecommunication and information services	• Foreign direct investment subject to prior approval of the National Planning Department. • Lack of copyright protection of certain data bases
Transportation services	• Cabotage restrictions.

Source: Compiled by staff of the U.S. International Trade Commission.

As part of its ongoing liberalization program, Colombia has reduced its import duties on motor vehicles on several occasions. In January 1992, Colombia cut its MFN tariff from 75 to 35 percent ad valorem for automobiles with an engine capacity of 1,800 cc or more, to 30 percent for trucks, and to 3 percent for automobile assembly kits. Colombia has announced plans to reduce its tariffs further to force local assemblers to become more competitive with foreign motor vehicle assemblers.

Colombia also limits the use of foreign parts in domestic vehicles to 33 percent of the vehicle's value. Colombian motor vehicle manufacturers must use local parts if they meet international quality standards and cost less than 140 percent of the imported price. In addition, Colombia maintains a trade-balancing requirement for imported parts that requires importers to use domestic parts or to export a fixed percentage of the value of the imported product. Colombia also levies a VAT of 35 percent and an import surcharge of 5 percent on imported vehicles.[84]

Steel

Venezuela and Colombia in March 1991 signed a preferential trade agreement that reportedly will eliminate tariffs on most of their bilateral steel trade. The pact also calls for 3-year bilateral steel quotas covering 65 product categories. These measures are designed to protect and modernize Colombia's steel industry, while permitting Venezuela access to Colombia's iron ore and coal reserves.[85] A March 1991 agreement between Colombia and its Andean partners (excluding Ecuador) also eliminates steel tariffs between the countries and sets up a common import tariff of 5-15 percent.[86]

Services

Motion pictures and television

In June 1989, Colombia adopted a resolution enforcing and implementing an agreement with the United States on film, video, and television program imports and royalty remittances. This agreement reforms the film remittance system, previously the greatest trade barrier in the motion picture and television industries. The new system sets an annual budget for film remittances and provides for automatic approval of remittances up to $40,000 for films, $5,000 for videos, and $4,000 for television programs, per 60 minutes of transmission.[87]

The resolution did not eliminate quantitative restrictions on foreign television programming. INRAVISION, the Government television network monopoly, limits foreign programming to 45 percent of total air time.[88] In addition, a minimum of 50 percent of the content of any television commercial must be produced locally, and any portion of the commercial produced outside of Colombia must use a three-person crew employed by a Colombian production company.[89] Moreover, approval procedures for license agreement remittances for theatrical features, television, and video material may act as a trade barrier.[90]

Maritime transportation

Cargo reserve requirements were abolished in January 1992, although the Government reserves the right to impose restrictions on vessels of countries that impose requirements on Colombian ships.[91]

Colombia has eliminated measures that limited shipping service permits to a few firms. Permits are now given to small shippers with minimum requirements. Colombia has also lifted restrictions limiting chartering activity to a percentage of tonnage capacity.[92]

Other services

Law 9 and resolution 49, passed in December 1990, have opened up Colombia's financial sector to FDI.[93] The new laws allow up to 100-percent foreign ownership of financial institutions, although investments of more than 20 percent require approval from banking regulators. In September 1991, Citibank purchased the remaining 51 percent of Banco International for $23.3 million. Earlier that month, Banco Mercantil de Venezuela purchased Banco de Trabajadores for $5.3 million.[94]

U.S. market access is more restricted in segments of the insurance sector. Colombia requires that marine insurance and all reinsurance for imports must be placed with Colombian insurance firms.[95] Recent deregulation measures in the insurance sector include allowing 100 percent foreign equity investment in insurance firms (up from 40 percent), removal of uniform commercial tariffs for insurance firms accepting obligatory insurance, and establishment of "solvency margins" to guarantee the existence of liquid resources to respond to the insured community.[96]

Significant restrictions reportedly exist in franchising. Current Colombian laws impede franchising by requiring that a franchise both disclose trade secrets and other confidential information and secure remittances. Levels of royalty remittances depend on the level of know-how transferred to the franchisee.[97]

Colombia also has regulations that limit U.S. market access in professional services. Foreign firms must make their bids for government projects and contracts through local representatives. To contract with government or quasi-government agencies, U.S. consulting firms must form a joint venture with a Colombian firm and subcontract at least 40 percent of the contract value to the Colombian firm. If more than 10 workers are hired, at least 80 percent of the

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[84] U.S. Department of State Telegram, "Tariff Duties for the Auto Industry Reduced," Jan. 31, 1992, Bogota, message reference No. 01509.

[85] "Andean Group Makes Progress in Steel Area," *American Metal Market*, Nov. 22, 1991, p. 4, and "Question Marks Over New Opportunities for Steel," *Metal Bulletin Monthly*, Oct. 1991, p. 41.

[86] "Andean Pact Moves to Boost Steel Trade," *Metal Bulletin*, Nov. 19, 1991, p. 41.

[87] U.S. Congress, *Country Reports*, p. 429.

[88] USTR, *1992 Foreign Trade Barriers.*

[89] USTR, *Services Barriers Tabled by the United States*, Oct. 16, 1991, p. 2.

[90] USTR, *1992 Foreign Trade Barriers.*

[91] Ibid.

[92] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."

[93] U.S. Dept. of Commerce, *Colombia: Fiscal 1992 Country Marketing Plan.*

[94] U.S. Department of State Telegram, "Economic News Briefs - Colombia," Sept. 6, 1991, Bogota, message reference No. 13878.

[95] U.S. Department of Commerce, International Trade Administration official, telephone interview by the Commission, Jan. 30, 1992.

[96] U.S. Dept. of Commerce, "Colombia's Growth Record," p. 21.

[97] U.S. Dept. of State Telegram, "1992 Trade Act Report - Colombia."

workforce, if qualified and available, must be Colombian nationals.[98] Colombia has a 20-percent ceiling on foreign equity participation in advertising services. In addition, it requires pre-approval of advertising, which can take up to a year, delaying product launches and upgrades and reducing the efficiency of consumer product launches.[99] In the legal sector, the provision of legal advice on foreign/international law is limited to those licensed in Colombian law.[100]

Venezuela

Venezuela is a major world crude petroleum producer and supplier and a founding member of the Organization of Petroleum Exporting Countries (OPEC). The nationalized petroleum industry is the major source of Government revenue and foreign exchange, and its growth has enabled Venezuela's 20 million residents (the fifth largest population in Latin America) to achieve a standard of living much higher than that of the region as a whole (table C-1).

Venezuela was, nevertheless, beset with severe debt, balance-of-payments problems, and inflation in the 1980s, prompting President Carlos Andres Perez to set out a new economic plan in early 1989. He moved to free the exchange rate, create positive real interest rates, lift most price controls, adjust prices upward for public goods and services, and cut public spending. To spur trade and investment, the Government sought to liberalize trade and foreign investment rules, simplify trade procedures, cut corporate and individual tax rates, and privatize Government-owned enterprises.

The initial effects of these austere measures were painful for most Venezuelans. Economic activity and living standards fell, resulting in eruptions of domestic unrest—including a failed military coup attempt in February 1992—and a sharp drop in the public approval rating of President Perez.

Venezuela's reforms, as well as its accession to the GATT in September 1990, helped the nation obtain financial assistance from the international community and restructure its foreign debt under the Brady plan. In December 1990, the Government reached agreement with commercial banks under the Brady plan to reduce public debt and debt service obligations on $19.8 billion of $27.1 billion in outstanding foreign debt.

Economic Profile

Recent Trends

Venezuela is still recovering from the economic setback of 1989, when real GDP fell by 9.2 percent. GDP rose by a revised 4.4 percent in 1990 and by an estimated 8.5 percent in 1991, possibly as a result of higher oil export revenues.[101] In addition, in 1991, Venezuela eliminated its fiscal deficit, cut inflation to an estimated 25 percent from 84 percent in 1989, and posted a large balance-of-payments surplus.[102]

In 1990, the nationalized petroleum industry generated 23 percent of Venezuela's GDP, 80 percent of export earnings, and 75 percent of Government revenue.[103] Mining, notably the extraction of iron ore and bauxite to produce steel and aluminum, is also dominated by Government firms and is a major source of economic activity. Venezuela is seeking to diversify its economy by encouraging the ongoing development of export industries, such as aluminum, steel, petrochemicals, cement, forestry, and consumer goods.

The United States is Venezuela's chief trading partner, accounting for roughly half its exports and imports in 1990 (table C-13). In 1990, Venezuela ranked 23rd as a market for U.S. exports and 14th as a source of imports, 90 percent of which consisted of energy products. The growth in U.S. exports to Venezuela during the 1980s was temporarily halted in 1989, when the Perez administration adopted economic austerity measures and significantly devalued the bolivar relative to the dollar, sharply reducing imports.[104] U.S. exports to Venezuela rebounded sharply in 1991, to a high of $4.5 billion. U.S. imports from Venezuela accelerated in 1990, by 41 percent over the 1989 level, to a record $9.1 billion before receding to $7.8 billion in 1991. This change in trade levels reflected the rise in exports of crude petroleum by Venezuela to refineries it owned in the United States for processing and re-export for domestic use.

The United States is the largest source of FDI in Venezuela, supplying 58 percent of total FDI during the 1980s. Europe, led by the United Kingdom and Switzerland, supplied an additional 26 percent. U.S. FDI in Venezuela during 1990 totaled $1.6 billion, with most of it earmarked for manufacturing ($963 million) and petroleum ($278 million).[105]

Recent Economic Reforms

Government-owned firms dominate in such key Venezuelan sectors as hydrocarbons, basic petrochemicals, steel, aluminum, iron and bauxite mining, basic services, and utilities. President Perez plans to privatize public sector firms, creating new opportunities for foreign investors. Venezuela has thus

[98] Ibid.

[99] The Procter & Gamble Co., written submission to the Commission, p. 6.

[100] USTR, *1992 Foreign Trade Barriers*.

[101] IDB, *Economic and Social Progress in Latin America: 1991 Report*, pp. 169-172.

[102] Center for Strategic and International Studies (CSIS), *The United States and Venezuela: New Opportunities in an Established Relationship* (Washington, DC: CSIS, 1991), p. 9.

[103] U.S. Department of State, *Venezuelan Petroleum Industry Development and Outlook, 1990*, Oct. 1991, p. 4.

[104] U.S. Department of Commerce, International Trade Administration official, interview by the Commission, Jan. 21, 1992.

[105] U.S. Department of Commerce, *Survey of Current Business*, Aug. 1991, table 11.3 (U.S. Direct Investment Position Abroad on a Historical-Cost Basis, 1990), p. 88.

far privatized the telephone company, several banks, sugar mills, the ports, a shipyard, and an airline.

Sales of Government firms in 1991 yielded about $2.1 billion, according to the Venezuelan Investment Fund (FIV), which has responsibility for the nation's privatization program. Most of the funds came from the $1.9 billion sale of 40 percent of the telephone company (CANTV) to a consortium of firms including U.S.-based GTE (58-percent share) and AT&T (5 percent). This and other sales of public sector companies enabled the Government to reduce its workforce by 55,000 employees, with 35,000 workers becoming stockholders in the newly privatized firms. Government-owned firms scheduled for sale in 1992 include a hotel, a cable-car system, and the airline, Aeropostal.[106]

The Government plans also to sell its share of Grupo Siderpro, a steel pipe producer, with the aid of First Boston Corp.[107] However, the Government's proposed sale of Sidor, another steel producer, has met strong political resistance. The two Government corporations that jointly own Sidor disagree on the proposed sale, with FIV in favor and CVG (the minerals company) in opposition.[108] The union that represents two-thirds of Sidor's workforce also opposes the sale.[109] Perhaps to make Sidor more attractive to private investors, the Government recently approved a restructuring plan for Sidor that calls for a capital injection of $868 million and a 15-year loan for $578 million. The reorganization plan will allow Sidor to pay off its $1.45 billion external debt.[110]

Venezuela unified its exchange rate in March 1989, eliminating prior exchange authorizations and preshipment inspections and making it essentially free of controls.[111] The Central Bank of Venezuela intervenes in the exchange market only to correct abrupt fluctuations; it maintains that the exchange rate will be set by market forces.

Venezuela enacted a new labor law effective May 1, 1991. Article 27 of the law provides that, for companies with 10 or more employees, 90 percent of the employees must be Venezuelan. Remuneration for foreign workers must not exceed 20 percent of total wages paid.[112]

[106] U.S. Department of State Telegram, "Venezuela Economic News Briefs: Nov. 19-25," Nov. 16, 1991, Caracas, message reference No. 12575.

[107] "Seventy State-Run Companies To Be Privatized This Year," *Venezuelan News & Views*, Embassy of Venezuela, Washington, DC, p. 5.

[108] "Sidor Seeks to Boost Output," *Metal Bulletin*, Nov. 9, 1989, p. 27. FIV stands for Fondo de Inversiones de Venezuela. CVG stands for Corporación Venezolana de Guayana.

[109] John Sweeney, "Venezuelan Political Battle Over SIDOR Brews," *American Metal Market*, Nov. 27, 1989, p. 52.

[110] "State Aids Sidor Restructuring," *Metal Bulletin*, Dec. 9, 1991, p. 19.

[111] U.S. Department of State Telegram, "Trade Act Report - Venezuela."

Trade and Investment Policies and Liberalization

Venezuela's trade regime has been significantly liberalized with the implementation of its June 1989 trade plan and its September 1990 GATT accession protocol. Nevertheless, significant trade and investment barriers still exist for selected sectors, including motor vehicles, pharmaceuticals, agriculture, services, and energy (fig. 6-3). IPR protection remains weak, but enactment of the Andean Group Decision 311 and the passage of proposed legislation would strengthen protection significantly.

Import Policies

Tariffs

In its GATT accession protocol, Venezuela agreed to bind its tariffs immediately at 50 percent ad valorem. It adopted lower GATT-bound rates of 15 to 35 percent for several hundred tariff lines that together account for one-third of Venezuelan imports. Venezuela also agreed to further reduce its GATT-bound rates, as shown in the following tabulation (in percent ad valorem):

Year	*Rate*
1988	130
1989	80
1990	50
1991	40
1992	30
1993	20

The maximum or GATT-bound rates generally apply to consumer household goods. Other goods are subject to lower tariffs, currently ranging from 5 to 20 percent ad valorem.[113] It also recently implemented a duty drawback scheme that allows imports for use in the production of export goods to enter free of duty and taxes.

Tariffs for motor vehicles range from 5 to 25 percent ad valorem. The duty rate assessed on imported automobile kits, from which most cars produced in Venezuela are made, is to remain at 10 percent through 1993. Imported luxury cars over 3 liters are subject to a 50-percent duty and 60-percent surcharge; trucks and buses are subject to a 30-percent duty. Despite the overall reduction in tariff rates, customs duty collections are expected to increase because of the virtual elimination of tariff exemptions.[114]

[112] Ibid.

[113] Venezuela currently waives the duty on wood pulp because local production of the product is insufficient to meet domestic demand.

[114] U.S. Congress, *Country Reports*, p. 556.

Figure 6-3
SELECTED SECTOR-SPECIFIC TRADE AND INVESTMENT BARRIERS: VENEZUELA

General	• Only sector-specific barriers were identified.
Grain and oilseed	• Tariffs range from 10 to 40 percent depending on the food product. • Licenses and quotas remain for imports of some basic commodities, including feed grains, pork, soybean meal, sugar, and milk.
Pulp and paper	• The declared duty on all imports of wood pulp and waste paper is being waived.
Minerals and metals	• Aluminum fabricated products: 5 to 20 percent, plus 1-percent customs service fee. • Steel tariffs range from 5 to 10 percent; preferential tariffs granted to steel produced in Colombia, Bolivia, and Peru. • Iron ore mining sector reserved for Government-owned enterprises. • Government approval required for debt-equity swaps for aluminum investments.
Crude energy products	• All hydrocarbon sector activities from exploration to final sale reserved for the Government.
Motor vehicles	• Tariffs: 30 percent on passenger automobiles; 10 percent on automotive kits through 1993; 50-percent duty and 60-percent surcharge on luxury automobiles with engines over 3 liters; and 30 percent on trucks and buses. • Local export requirement: 40 percent of the value of an imported passenger vehicle must be of Venezuelan manufacture. • Domestic-content requirements implemented through import compensation or export performance stipulations.
Electronic equipment	• Tariffs: no set tariffs; subject to bilateral negotiations. • Copyright laws do not explicitly protect computer software; inadequate enforcement of copyright, patent, and trademark legislation.
Banking services	• Discriminatory regulations regarding capitalization and permissible liabilities apply to banks with foreign ownership exceeding 20 percent of equity. • Capital investments by foreign banks cannot exceed $2.7 million; beyond this level, capital can be augmented only by increases in retained earnings. • Foreign banks may not receive savings deposits, issue negotiable certificates of deposit, or maintain liabilities exceeding 14 times paid-in capital and reserves, whereas Venezuelan banks may maintain liabilities up to 20 times such capital. • Foreign banks are prohibited from purchasing foreign exchange from the Central Bank.
Business and professional services	• Denial of national treatment (regarding citizenship requirements and the use of a firm's name). • Professional licensing requirements (e.g., law). • Restrictions on the right to practice and right of establishment (e.g., foreign attorneys cannot have or form partnerships with local lawyers). • Domestic-content requirements (e.g., all postproduction processing of advertisement must be done locally). • Foreign equity participation in professional services companies limited to 20 percent.
General services	• Foreign capital participation limited to 20 percent of a firm's equity in banking, insurance, financial services, guard or security services, and other professional services, and radio, television, and other Spanish-language media.

Source: Compiled by staff of the U.S. International Trade Commission.

In December 1991, Venezuela agreed to further reduce its applied tariffs as part of the creation of common external tariffs for Andean Group nations. Duties were lifted for intraregional trade in many raw materials, production inputs, and goods not made inquantity in the region.[115] Another 50 tariff items will enter duty free by the end of 1992. Agricultural tariffs will be decided separately; automobiles will have a maximum applied external tariff of 40 percent ad valorem until January 1, 1994, when the rate drops to 25 percent. An import tax on food grains from Andean Group nations, imposed since November 1990, will continue.[116]

[115] U.S. Department of State Telegram, "Andean Pact Presidents," Dec. 10, 1991, Bogota, message reference No. 18891.

[116] USTR, *1992 Foreign Trade Barriers.*

Import Licensing

Venezuela agreed to eliminate GATT-inconsistent import restrictions on manufactured goods by the end of 1993 and on agricultural products by the end of 1995. Import bans were largely removed by the end of 1991[117] and import-licensing requirements are being phased out. For nonagricultural goods, import licenses are required for only 10 of the 6,145 tariff items in the Venezuelan tariff code.[118] In agriculture, import licenses are required only for pork, soybean meal, sugar, and milk. Quantitative restrictions have applied to imports of feed grains since November 1990.[119]

Export Policies

The United States in recent CVD proceedings found that some Venezuelan programs conferred subsidies on certain products. The programs included preferential input pricing, short-term financing by FINEXPO (the Central Bank export-financing agency), interest-free loans, and export bonuses. As a result of the U.S. findings and in the context of its World Bank trade policy loan, Venezuela announced its intent to reduce or phase out various subsidies. In 1990, it reduced the 30-percent export bonus to 5 percent for manufactured goods and to 6 percent for agricultural items.[120] Under Executive Decree 780, published in May 1991, Venezuela replaced the export bonus for manufactured goods with a duty drawback plan that provides for a partial rebate of import duties paid on an exported product. The rebate is equal to 2 percent of the value of exports through special suspended-duty regimes and 5 percent for other exports. Under Decree 1597 of June 1991, agricultural exports are eligible for an export bond of 10 percent (up from 6 percent).

FINEXPO, in December 1990, effectively reduced its financing subsidy, defined as the difference between the Government and commercial rates, by raising its interest rates. The interest rate is now 90 percent of the average national interest rate, as measured by Venezuela's main commercial banks. Venezuela has not yet signed the GATT Subsidies Code, which would require elimination of such export subsidies.[121]

Investment Policies

Venezuela made sweeping changes to its FDI policies with the adoption of Decree 727 in January 1990. The decree allows unrestricted capital movements, unlimited profit remittances, full capital repatriation, and unfettered access to credit and capital markets. It also grants foreign investors the right to buy debt and equity securities.

The decree stripped the Superintendency for Foreign Investment (SIEX) of discretionary authority to give entry permission for FDI. Thus, foreign firms may now set up branches without prior SIEX approval. Such approval is no longer required for trademark and patent licenses, technical know-how, and technical assistance and distribution agreements. SIEX approval is needed for royalties of more than 5 percent of net sales and paid by a foreign firm to its foreign parent. Decree 727 also lifted restrictions on FDI in several sectors formerly reserved for national firms, namely retail, telecommunications, and water and sewage services. In telecommunications, for example, Venezuela opened its cellular services market in May 1991 and awarded a license to a consortium led by U.S.-based BellSouth.

Venezuela continues to restrict FDI in selected sectors. In the motor vehicle sector, Venezuela requires both foreign and national investors to comply with an automotive industry plan. Moreover, although foreign investors can now participate in areas previously reserved for the state, such as coal mining and petrochemicals, the Government still retains control over the iron ore and petroleum sectors.[122] All facets of the hydrocarbon sector, from exploration to final sale, are reserved for the Government or its entities, including the national petroleum company, Petroleos de Venezuela (PDVSA). When in the public interest, the Government may enter into joint ventures or contractual arrangements with foreign firms provided that the agreements guarantee Government control over the operation, are of limited duration, and have the approval of the Venezuelan Congress. Currently, a \$3.5-billion project involving Exxon, Shell, Mitsubishi, and LAGOVEN (part of PDVSA) is awaiting congressional approval.[123]

Despite reforms, a recent survey by the U.S. General Accounting Office of U.S. oil companies found lingering reluctance about investing in Venezuela.[124] Companies cited the absence of clear guidelines explaining permissible activities for foreign companies. When participating in these activities, contractual obligations required Congressional authorization of foreign investment.

Venezuela also maintains a 20-percent ceiling on foreign ownership in "basic" sectors, such as banking, insurance, professional business services, television, radio, Spanish-language broadcasting, and guard and security services. The Government announced plans to liberalize its FDI policies for banking. It plans to raise

[117] U.S. Department of State Telegram, "Foreign Economic Trends Report - Venezuela," Dec. 12, 1991, Caracas, message reference No. 13174.

[118] Ambassador Miguel Rodríguez-Mendoza, President, Foreign Trade Institute, written brief, Jan. 31, 1992, submitted to the Commission by Carlos Bivero, Deputy Chief of Mission, Embassy of Venezuela, pp. 2-3.

[119] USTR, *1992 Foreign Trade Barriers*.

[120] U.S. Congress, *Country Reports*, p. 559.

[121] U.S. Dept. of State Telegram, "1992 Trade Act Report - Venezuela."

[122] Ibid.

[123] U.S. Department of Commerce, International Trade Administration official, telephone interview by the Commission, Jan. 24, 1992.

[124] U.S. General Accounting Office, *Venezuelan Energy: Oil Production and Conditions Affecting Potential Future U.S. Investment*, GAO/NSIAD-92-73, Dec. 1991.

investors.[125] The programs are being developed in conjunction with financial-sector loans from the World Bank and the IDB.[126]

Taxes

On September 1, 1991, Venezuela enacted a new income tax law that, with the noted exceptions, cut the maximum tax rate to 30 percent and exempted dividends to foreign investors from taxation. The maximum tax rate had been 50 percent for all firms except those in mining (60-percent maximum rate) and in joint ventures with PDVSA (82 percent). Although joint ventures with PDVSA in refining heavy oil and natural gas will now be subject to the 30-percent maximum rate, joint ventures with PDVSA in hydrocarbons will be subject to a maximum rate of 67.7 percent. Given that high tax rates have often been cited by U.S. business as a barrier to FDI in Venezuela, the new tax rates, which apply to income of U.S. firms' subsidiaries and U.S. citizens there,[127] may spur FDI, especially in the mining and hydrocarbon sectors.[128]

Investment incentives

Aside from liberalizing its investment policies, Venezuela offers a number of tax incentives to attract investment. Decree 1058 of April 1986 created a 5-year tax holiday, beginning with the date of commercial operation, for firms investing in the petrochemical sector. To qualify, the Government must establish that the project makes extensive use of Venezuelan goods and services, that the foreign financing does not require guarantees or securities from the Venezuelan Government or its entities, and that a portion of the capital raised will be offered to small private investors through the stock exchange in an effort to promote private ownership of the industry.

Venezuela also offers firms a 5-year tax holiday on 25 to 50 percent of their income taxes provided that the firm has at least the required minimum number of shareholders owning at least half its stock. Shareholders of these "open capital companies" or SAICAs (Sociedades Anonimas Inscritas de Capital Abierto) also receive the 5-year tax holiday for dividend and interest income and capital gains. Venezuela also offers a tax credit for investments in fixed assets for the generation and distribution of electrical power and for agriculture, stock-raising, fishing, transportation, and hotels.[129]

Given Venezuela's history of nationalizing industries, the Government has sought to reduce the risk of expropriation perceived by foreign investors. In 1990, Venezuela signed a bilateral agreement with the United States through the Overseas Private Investment Corporation to guarantee U.S. capital against risk from arbitrary expropriation, civil unrest, and asset inconvertibility.[130] These types of guarantees would be particularly important in the international assessment of investment risk in Venezuela and to potential U.S. petroleum investors, such as Amoco and Chevron, whose Venezuelan assets were expropriated in the 1970s.[131]

Government procurement

Venezuela is not a party to the GATT Government Procurement Code; the Law of Tenders, effective August 1991, governs most Venezuelan procurement. It permits preferences for both general and selective tenders based on factors such as local production, content, size of investment, and technology transfer,[132] when deciding among national and foreign-based offers within a "reasonable range."[133] Reportedly, these discriminatory preferences are especially critical at this time, because they could possibly limit foreign participation in several Government-funded, $1-billion -plus, "mega-projects" in the aluminum, pulp and paper, iron and steel, and petrochemical sectors.[134]

Protection of Intellectual Property[135]

In 1991, USTR placed Venezuela on the "watch list" under section 301 of the Trade Act of 1974 because of its weak IPR protection. Venezuela is considering legislation to update its patent, trademark, and copyright laws. Although the proposed legislation may need to be harmonized with the recent Decisions 311 and 313 of the Andean Group, Venezuela remains committed to enacting legislation that will strengthen IPR protection. Venezuela has also indicated plans to seek membership in the Paris Convention for the Protection of Industrial Property.[136]

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125 U.S. Congress, *Country Reports*, p. 557.

126 USTR, *1992 Foreign Trade Barriers.*

127 "Venezuela Approves Sharp Tax Cut," *International Business Chronicle*, Sept. 2-15, 1991, p. 3.

128 U.S. Department of State Telegram, "Congress Approves Major Income Tax Reform," July 26, 1991, Caracas, message reference No. 07547.

129 U.S. Dept. of State Telegram, "Venezuela's Investment Climate," Apr. 30, 1990, Caracas, message reference No. 69781.

130 CSIS, *The United States and Venezuela*, pp. 11-12.

131 U.S. Department of State Telegram, "Venezuelan Economic News Briefs: Sept. 17-23," Sept. 23, 1991, Caracas, message reference No. 10016. In this telegram, the U.S. Embassy stated that a then recent *Wall Street Journal* article, drawing from a study by the London-based "The Economist" of different attributes of attractiveness for investment, ranked Venezuela 25th in investment risk, the highest of any Latin American country. Mexico ranked 32d and Chile 35th of the 129 nations in the survey.

132 USTR, *1992 Foreign Trade Barriers.*

133 U.S. Dept. of State Telegram, "1992 Trade Act Report - Venezuela."

134 U.S. Dept. of State Telegram, "Foreign Economic Trends Report."

135 Information in this section is mainly from U.S. Dept. of State Telegram, "1992 Trade Act Report - Venezuela;" USTR, *1992 Foreign Trade Barriers;* and interviews and telecommunications from the U.S. Patent and Trademark Office, Nov. 1991 and Jan. 1992, except as noted.

136 *World Intellectual Property Report*, vol. 5 (Oct. 1991), p. 275.

Patents

The Venezuelan Congress is considering draft IPR legislation that would make genetically engineered inventions patentable, extend the patent term to 20 years from the date of filing, and provide product-by-process patents (but not product patents)[137] for pharmaceuticals, foodstuffs, and agrochemicals. The legislation would also modify compulsory licensing requirements.

Current Venezuelan law does not protect processed foods, chemical preparations, pharmaceuticals, plants, or micro-organisms. Chemical processes, as opposed to products, are patentable. The current patent term is 5 to 10 years at the choice of the applicant, and patents may be renewed indefinitely. A registered foreign patent has the unexpired term of the corresponding prior foreign patent, not to exceed Venezuela's term for patent protection. Venezuela does not have a grace period for filing a patent application once the invention is made public. However, a 1-year exception is made for foreign patents.

Venezuelan patents lose their validity unless work is commenced within 2 years from the date of grant of the patent and is not interrupted for more than the same period except by a force majeure, duly proved before Venezuela's Industrial Property Registry. Working a patent requires domestic production of the patented product; importation does not satisfy the requirement. The Venezuelan Government may expropriate any patent by reason of social or public interest; it is unclear whether compensation must be paid.

Trademarks

Under the current law, trademark protection is based upon registration and use. Trademarks must be used within 2 years of registration. Although there is no specific protection for internationally well-known marks, the registration of marks that may lead to error through suggesting a false origin or quality is prohibited. Oppositions to registrations may be filed within 30 days after the mark is published. Service marks are not registrable.

Trademark piracy, which is reportedly common in the clothing, toy, and sporting goods areas, remains a problem for some U.S. firms. It is possible for a trademark pirate to find an unregistered trademark that is used on a product sold in Venezuela, register it, and bring legal action to stop the use of the prior bona fide user. Thus, the prior trademark user is precluded from using the mark in Venezuela without a license from the registrant or buying an assignment of the registration.[138]

Such pirated trademarks can be canceled within 2 years of registration if they are shown to be detrimental to a third party, but cancellation is not easily achieved. The trademark law creates a presumption that the registrant is the owner of the trademark, and Venezuelan procedure makes presumptions difficult to overcome. Moreover, cancellation for nonuse of the mark by the pirate is difficult to achieve because it is nearly impossible to prove nonuse unless the item is one that requires a health license or other Government approval. Since only legalized or original documents are admissible as evidence in cancellation proceedings, photocopies of magazine articles, invoices, telexes, or newspapers are not admissible to show prior use of the trademark.

Venezuela is currently considering legislation to update its trademark protection. Under the proposed legislation, trademarks would be registered for 10 years and could be cancelled at any time upon a showing of nonuse for 5 consecutive years with the trademark owner bearing the burden of proving that the trademark was in use. The legislation would also cover registration of trade names and service marks and would, consistent with the Andean Group Decision 311, recognize well-known international trademarks.[139]

Copyrights

Current copyright law protects all works of authorship. Although computer software is not explicitly mentioned in the copyright statute, software can and has been copyrighted in Venezuela. Legislation amending the current copyright law is under review in the Venezuelan Congress. The proposed amendments include an expressed provision for the protection of computer software.

Software and video piracy are reportedly common in Venezuela, as are frequent unlicensed public showings of feature films in small towns, hotels, and condominiums. Enforcement of copyright laws in Venezuela is weak, and penalties (e.g., fines from $3 to $60) for violating the copyright laws are insufficient to deter pirates.

Sector-Specific Barriers

Despite liberalization of many trade and investment barriers, certain sectors are still subject to controls (figure 6-3).

Agriculture

Sanitary and Labeling Regulations

Venezuela requires sanitary certificates from the Ministries of Health and Agriculture and from the country of origin for imports of certain agricultural goods and pharmaceuticals. In August 1990, it began requiring sanitary certificates from the country of origin for another 203 agricultural items, for which the

[137] Ibid. The product-by-process patents would protect only products that are made by a particular process. In contrast, the product patents would protect products no matter how they are made.

[138] About 90 percent of the trademark infringement cases brought by pirate trademark registrants are settled when the legitimate owner of the mark buys out the pirate or makes the pirate the Venezuelan distributor of the goods bearing the mark.

[139] *World Intellectual Property Report*, p. 275.

U.S. Government does not issue such certificates.[140] However, in lieu of the newly required certificates, Venezuela has been accepting U.S. Animal and Plant Health Inspection Service documentation.[141] Venezuela's wine labeling rules have restricted U.S. market access. The rules are much stricter than those in other major wine markets. Under Venezuelan rules, alcohol content can vary only by 0.5 percent from the label-specified amount as opposed to 1.5 percent in the United States and other nations.[142]

Price Controls

The Perez administration in early 1989 dismantled price controls on all goods and services except a "basic basket" of primary necessities.[143] In 1991, the administration removed price controls on five basic food staples for which Venezuela is import dependent—white corn flour, vegetable oil, pasta, rice, and dried milk.[144] However, as part of a series of measures responding to the political crisis in Venezuela, President Perez in March 1992 announced that prices of the food staples would be "stabilized," i.e., the Government will reduce import tariffs if world prices exceed a designated threshold level.

Motor Vehicles

The motor vehicle industry in Venezuela is subject to export performance requirements that effectively limit imports of auto parts. Under Executive Decree 1095, published in September 1990, the performance requirement is intended to offset a specified portion of the foreign exchange spent on the imported parts. Automobile assemblers and parts manufacturers importing auto parts must use and/or export Venezuelan-produced auto parts.[145] For new auto plants in Venezuela, an amount equal to at least 70 to 75 percent of the value of the parts imports during the years 1992-95 must be spent on local parts for either local use or export. The equivalent amount for new heavy truck and bus plants is 50 to 55 percent, and, for established heavy truck and bus plants, 55 percent.[146] The decree authorizes the Government to fine firms that fail to meet these requirements and eliminates local content rules for the sector, including the requirement that motors be assembled locally.[147]

Services

Venezuela maintains significant trade barriers in certain services sectors. It prohibits the use of foreign television commercials and requires all postproduction processing of advertisements be done locally.[148] In addition, if foreign actors are used to make commercials locally, payment must be made to Venezuelan talent unions. Performance requirements mandate that 60 percent of all 35 millimeter motion picture prints be processed in local laboratories. Furthermore, theaters must exhibit 18 Venezuelan movies a year or devote 126 days of playing time to local films.[149]

Legislation introduced in the Venezuelan Congress in July 1991 would, if enacted, allow foreign firms greater participation in the banking and insurance/reinsurance sectors. The bill would permit foreign financial firms to open branches and acquire an equity position in existing domestic firms. Full national treatment would be phased in gradually.[150] Venezuela has not issued new banking licenses or allowed foreign banks to expand existing branch networks since the 1960s. For banks with more than 20-percent foreign ownership, capital investment by foreign banks cannot exceed $2.7 million, the minimum amount necessary to maintain banking operations in Venezuela. Beyond this level, capital can be augmented only by increases in retained earnings. Foreign banks may not issue negotiable certificates of deposit, accept savings deposits, or buy foreign exchange from the Central Bank. They also may not maintain liabilities exceeding 14 times paid-in capital and reserves, whereas Venezuelan banks may maintain liabilities up to 20 times such capital.[151]

Restrictions also limit U.S. market access in professional services. Legal professionals must be licensed in Venezuelan law to provide legal advice on foreign and international law. Foreign attorneys cannot hire or form partnerships with Venezuelan lawyers and, as with foreign management consultants, cannot practice under their international firm's name.[152] In the insurance sector, only local companies can insure imports receiving government-approved tariff reductions or government financing or imports purchased by the government. The current 20 percent foreign equity investment limit will reportedly be liberalized in the insurance sector.[153]

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[140] U.S. Dept. of State Telegram, "1992 Trade Act Report - Venezuela."
[141] U.S. Congress, *Country Reports*, p. 558.
[142] USTR official, interview by the Commission, Nov. 20, 1991.
[143] U.S. Congress, *Country Reports*, p. 556.
[144] U.S. Department of State Telegram, "Whither Food Price Policy," Caracas, Mar. 11, 1992, message reference No. 02663.
[145] U.S. Dept. of State Telegram, "1992 Trade Act Report - Venezuela."
[146] USTR official, interview by the Commission, Nov. 20, 1991.
[147] U.S. Dept. of State Telegram, "1992 Trade Act Report - Venezuela."
[148] U.S. Dept. of Commerce officials, interview by the Commission, Nov. 1991.
[149] USTR official, interview by the Commission, Nov. 20, 1991.
[150] U.S. Dept. of State Telegram, "1992 Trade Act Report - Venezuela."
[151] U.S. Department of the Treasury, *National Treatment Study 1990*, pp. 327-8.
[152] USTR, *Services Barriers Tabled by the United States*.
[153] USTR, *1992 Foreign Trade Barriers*.

Chapter 7
Southern Common Market Countries

CONTENTS

CONTENTS-*Continued*

CHAPTER 7
SOUTHERN COMMON MARKET COUNTRIES

The Southern Cone consists of Argentina, Chile, Paraguay, and Uruguay. Geography has played an important role in the relations of these nations. The Andes Mountains, which traverse the region from north to south, have served as a formidable barrier to both travel and commerce between Chile and the rest of the region. On the other hand, the river transport systems of the Rio Parana and Rio Uruguay (which join to form the Rio de la Plata) have helped integrate the remainder of the Southern Cone (Argentina, Paraguay, and Uruguay) with southern Brazil.

Most recently, this region has overcome persistent political, geographic, and linguistic divisions, enabling Argentina, Brazil, Paraguay, and Uruguay to reduce intraregional trade barriers and establish the Southern Common Market (MERCOSUR). This chapter focuses on the trade and investment policies, reforms, and other issues affecting market access in the two largest MERCOSUR nations, Argentina and Brazil (table 7-1). These two nations together accounted for 53 percent of Latin America's population and 62 percent of its gross domestic product (GDP) in 1990. The statistical tables in appendix C show U.S. trade with these countries in selected sectors.

Argentina

Argentina experienced a sharp economic downturn during the 1980s. The costly 1982 war against the United Kingdom in the Falkland Islands prompted the end of Argentina's military dictatorship. Economic policies implemented by the new civilian administration failed to address Argentina's key problems: unbalanced public accounts and the financing of the public debt. As a result, Argentina entered a spiral of deficit spending, extreme inflation, capital flight, rising foreign debt, and a lack of public confidence in Government policies. On average, the Argentine economy contracted at an annual rate of 1.9 percent during the decade (table C-1).

Economic Profile

Recent Trends

To cope with these problems, Argentina's President Carlos Menem instituted a radical shift in the country's economic policies when he took office in July 1989. As components of an anti-inflation program to halt the economic downturn, the Menem economic team implemented market-oriented economic reforms by accelerating economic deregulation, privatizing Government-owned enterprises, and liberalizing the trade and investment regimes. The economy began to grow again in 1991, unemployment fell to below 7 percent, and investment as a share of GDP rose to

Table 7-1
MERCOSUR countries: Exports, imports, and trade balance, 1986-90

(Million 1988 dollars)

	1986	*1987*	*1988*	*1989*	*1990*[1]
Exports:					
Brazil	26,734	31,877	36,046	37,879	37,701
Argentina	9,192	9,104	11,067	11,580	13,655
Uruguay	1,857	1,700	1,763	1,866	2,541
Paraguay	959	1,310	1,388	1,736	1,778
Total	38,742	43,991	50,264	53,061	55,675
Imports:					
Brazil	20,694	20,085	19,859	21,634	24,193
Argentina	7,734	8,205	7,273	6,009	5,888
Uruguay	1,360	1,479	1,445	1,511	1,687
Paraguay	1,113	1,329	1,444	1,646	1,735
Total	30,901	31,098	30,021	30,800	33,503
Trade balance:					
Brazil	8,304	11,158	19,168	16,112	11,027
Argentina	2,446	968	4,234	5,709	8,224
Uruguay	669	1,567	(1,998)	5,858	10,735
Paraguay	(162)	(97)	69	(74)	(243)
Total	11,257	13,596	21,473	27,605	29,743

[1] Preliminary.

Source: Inter-American Development Bank, *Economic and Social Progress in Latin America*: 1991 Report (Washington, DC: The Johns Hopkins University Press, 1991), p. 276.

almost 14 percent.[1] Inflation, which rose to annual rates of 3,079 percent in 1989 and 2,314 percent in 1990,[2] fell to an annualized rate of 18 percent in 1991.[3] Argentina also resumed partial payments to foreign creditors in June 1990, after a 2-year suspension of foreign debt repayments.[4]

Manufacturing, which received significant Government aid under previous administrations, generates roughly a fourth of Argentina's GDP and agriculture contributes an additional 15 percent (table C-2). Agriculture supplies a major, but declining, portion of Argentina's exports (almost 60 percent in 1989).[5]

Argentina's export-driven economy posted a record $8.1 billion trade surplus in 1990.[6] Argentina's foreign trade is not dominated by a single import source or export market. Other Latin American nations, led by Brazil, accounted for almost 20 percent of Argentine exports and 32 percent of the imports. The United States is Argentina's single largest trading partner, accounting for 13 percent of Argentine exports and 18 percent of the imports in 1989. Following 3 years of trade deficits, the United States recorded a trade surplus with Argentina in 1991, as U.S. exports in all major sectors rose and U.S. imports from Argentina, especially energy products, declined (table C-7).

Argentina's economic reforms have been reinforced by international financial institutions. In June 1991, the International Monetary Fund (IMF) approved a $1.04 billion standby loan to support the economic reform program in place. Three months later, the Paris Club rescheduled the official debt until the end of 1992. Other support from both the Inter-American Development Bank (IDB) and the World Bank has been forthcoming.

Argentina has agreements with several nations to protect and promote bilateral investments and also to provide for a dispute-settlement mechanism. These agreements have been reached with the United Kingdom, Italy, Belgium, Germany, Spain, Brazil, Switzerland, and France.[7] In June 1991, Argentina and the United States signed a framework agreement under the U.S.-proposed Enterprise for the Americas Initiative, creating a Council on Trade and Investment to monitor bilateral trade and investment opportunities and relations.[8] Argentina signed an investment treaty with the United States in November 1991.

Recent Reforms

The economic reforms initiated by the Menem administration in 1989 have affected virtually all sectors of economic activity. The Law on the Reform of the State and the Economic Emergency Law were both enacted shortly after President Menem took office in 1989, and the Law of Convertibility and the Deregulation Decree were announced in 1991. These measures have become the centerpieces of this reform effort.

The Law on the Reform of the State (law 23,696) abolished most Government subsidies, suspended tax exemptions for geographic regions and industrial sectors, and provided the mandate and authority for the ongoing privatization program.[9] The Economic Emergency Law (law 23,697) eliminated export taxes on industrial goods, reduced import tariffs, reinstated limited prefinancing for certain exports, allowed preferential treatment for new investment, and greatly modified the 1963 "Buy Argentine" requirement for Government purchases.

The Law of Convertibility (law 23,928) fixed the Argentine exchange rate at 10,000 australs per dollar. On January 1, 1992, Argentina replaced the austral with the peso, which trades at par with the dollar. The law backed the Argentine money supply with liquid international reserves in gold and foreign exchange and abolished restrictions on buying or selling foreign exchange in Argentina. Another new law bars the Central Bank from covering budget deficits by printing new currency unless it is backed by either gold, a limited amount of domestic debt (in dollars), or foreign currency reserves. The convertibility law also abolished price indexing which automatically adjusted wages and prices to keep pace with inflation. These two laws appear to be easing Argentina's historically high inflation rate and are expected to contribute to a new stability in expectations and prices, which in turn should normalize credit conditions in the country.

The Deregulation Decree (No. 2284) abolished many regulations and ordered the closing of a number of Federal agencies that regulated agricultural production and distribution. In foreign trade, the decree ended restrictions and other limits on all goods except autos and raw hides and terminated virtually all export taxes. In a move to further facilitate the shipment of Argentine goods, the President ordered all

[1] U.S. Department of State Telegram, "Trade Act Report for 1992: Argentina," Buenos Aires.

[2] Ibid and U.S. Department of State Telegram, Dec. 5, 1991, Buenos Aires, message reference No. 12200.

[3] U.S. Department of Commerce, "Argentina: Market-Opening Measures May Spur U.S. Exports," *Business America*, by Randolph Mye, Apr. 6, 1992, p. 27.

[4] U.S. Department of State Airgram, "Economic Trends: Argentina," Apr. 30, 1991, Buenos Aires, E.O. No. 12356, p. 7.

[5] Argentina is the world's fifth-largest exporter of wheat and the third-largest exporter of soybeans and soybean products. Oilseeds and oilseed products are the single most important agricultural crop in the nation, accounting for 45 percent of Argentina's agricultural exports and 28 percent of its overall exports.

[6] U.S. Department of Commerce, "Deregulation Is Transforming the Argentine Economy," *Business America*, by Randolph Mye, Feb. 11, 1991, p. 26.

[7] The Economist Intelligence Unit (EIU), *Argentina: Country Report* (London: EIU), No. 1 (1991), p. 19.

[8] "Trade and Investment in South America," *U.S. Department of State Dispatch*, June 24, 1991, p. 450.

[9] General Agreement on Tariffs and Trade (GATT), *Trade Policy Review Mechanism (TPRM): Argentina*, C/RM/G/18, Nov. 8, 1991, submitted by the Government of the Argentine Republic, p. vi.

ports in the country, traditionally governed by local regulations, to operate 24 hours a day.[10]

In addition, the Menem administration adopted privatization as a key component of its reform program. Many of the state enterprises have long operated at losses, which amounted to nearly 6 percent of Argentina's GDP in 1989.[11] Accordingly, it targeted 25 Government-owned firms for sale under the 1989 Economic Emergency Law (decree 23,311/90) and the Law on the Reform of the State. Among the first to be privatized were Aerolineas Argentinas (national airline) and ENTEL, the Government-owned telephone system. Their sale in 1990 generated $391 million in cash receipts plus the cancellation of $6.3 billion in external debt obligations.[12] It also shifted 56,000 workers from the public to the private sector.[13] As of yearend 1991, privatization has yielded some $2.5 billion in cash receipts and the cancellation of $6.5 billion in external debt obligations. President Menem has set a goal of completing all further privatization by the end of 1992.[14]

The recent reforms have increased economic stability and renewed public confidence. Currency and gold reserves that back the monetary base grew from $4.8 billion in March 1991 (before the convertibility law) to $6.8 billion six months later. Dollar deposits by Argentine citizens in local banks grew rapidly in the period, from $1.5 billion to $5.7 billion.[15]

Trade and Investment Policies and Liberalization

Argentina acceded to the General Agreement on Tariffs and Trade (GATT) in 1968 and has conditionally acceded to the Customs Valuation Code. Its acceptance of the codes covering standards and import licensing was pending at yearend 1991. Argentina signed the GATT Tokyo Round Anti-Dumping Code in April 1991, although the action is still subject to ratification. New trade legislation currently being prepared is intended to bring the Argentine laws on dumping into conformity with the GATT code. In September 1991 the United States and Argentina signed an export-subsidy agreement in which Argentina pledged to discipline its use of export subsidies and bring them more into line with the GATT Subsidies Code, which it subsequently signed in November 1991. The move was seen as another example of the Menem administration's desire to bring about genuine economic reform. Under terms of the agreement, the United States will now apply an injury test to imports from Argentina that are the subject of countervailing-duty proceedings.

Import Policies

Before 1989, Argentina protected and promoted its domestic industries behind high tariff and nontariff walls. Nearly 7,000 tariff items, representing 50 percent of Argentina's domestic production, were subject to either quantitative import restrictions or import-licensing restrictions.[17] Reforms by the Menem government have considerably reduced such restrictions and have eliminated or lowered tariffs on imports.

Tariffs

Beginning in 1988, the Alfonsin and Menem administrations progressively reduced tariffs from an average of more than 49 percent ad valorem to 11.4 percent in 1991. In the process, the maximum tariff rate, which had ranged from 90 to 110 percent for consumer durables, transportation equipment, and machinery, was lowered to a uniform rate of 22 percent with the exception of a 35-percent rate for 24 tariff items (mainly for automotive and consumer electronics goods).

In April 1991, the Government instituted a three-tier tariff scheme with ad valorem rates of zero for primary products and capital goods without domestic production (47 percent of Argentine tariff items); 11 percent for intermediate goods (24 percent of the items), and 22 percent for finished goods (28 percent of the items).[17] In October 1991, the maximum rate for the 24 tariff items involving automotive and consumer electronics was raised to 35 percent. In addition, preference pricing in the electronics sector and quotas on all but nine automotive tariff items were removed. In November 1991, Argentina increased the minimum rate to 5 percent for primary products and also increased the intermediate rate to 13 percent.[18] In January 1992, the automotive duty was rolled back to 22 percent.[19] No other levies are currently applied to Argentine imports.

Nontariff Barriers

Argentina has significantly liberalized its nontariff barriers in recent years. Before 1986, Argentina banned imports on 36 percent of its tariff articles. By December 1990, the number of banned products was less than 5 percent of all tariff articles.[20] The

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[10] Argentine Presidential Decree No. 2284, Oct. 31, 1991, art. 17 (English translation provided by the Embassy of the Argentine Republic).

[11] International Monetary Fund, Economic and Social Development Department, *Argentina Socioeconomic Report*, Jan. 1991, p. 5.

[12] Alieto Guadagni, Assistant Secretary for International Economics, Argentine Ministry of Foreign Affairs, written submission to the Commission, Jan. 22, 1992, p. 5 and appendix, exhibit 3.

[13] Prior to privatization, Government-owned enterprises were Argentina's leading employer, employing about 3 percent of the labor force.

[14] Guadagni, written submission, p. 5.

[15] U.S. Dept. of State Airgram, "Economic Trends," p. 15.

[16] General Agreement on Tariffs and Trade (GATT), Secretariat, *Trade Policy Review Mechanism: Argentina*, C/RM/S/18A, Nov. 8, 1991, p. xii.

[17] Ibid., p. 68.

[18] Guadagni, prepared statement, p. 5.

[19] "Argentina," *Latin American Weekly Report*, WR-92-01, Jan. 9, 1992, p. 3.

[20] U.S. Dept. of Commerce, "Deregulation Is Transforming the Argentine Economy," p. 26.

remaining products are still banned because of health, safety, and environmental reasons or military restrictions.

In April 1991, Argentina abolished import-licensing requirements for all but 25 products, mainly in the automotive sector. Such licenses, formerly Argentina's most significant trade barrier, are now granted automatically by Argentine commercial banks. The import-licensing program now serves solely as a statistical check on the outflow of foreign exchange.

Export Policies

Argentina had traditionally applied export duties to some products, mainly agricultural goods, to discourage or inhibit their sale abroad. The Presidential decree of October 1991 abolished almost all export duties, which had been a major source of tax revenue for Argentina.[21] In 1989-90, for example, Argentina had applied export taxes to agricultural and industrial goods, effectively creating a multiple-exchange-rate system; one vestige of this program is a differential soybean oil and meal tax.

The 1989 Economic Emergency Law (EEL) suspended most of Argentina's export subsidies. By yearend 1990, 13 of the 17 Argentine programs under which exporters had received direct or indirect subsidies had been either suspended, eliminated, or significantly scaled back as a result of the tight fiscal policy of the Government.[22] The Central Bank has since used the EEL to put its export-financing programs on a market-rate basis. Previously, up to 80 percent of the value of eligible exports could be financed for a period of up to 8-1/2 years at a maximum of 3 points below the market interest rate. The Central Bank, under communication A 1807, suspended the scheme in March 1991 but set up a new line of export credit of $60 million in September 1991.[23]

Although the PEEX export program (Programa Especial de Exportaciones) to spur sales of high-valued, technological goods and services was abolished in 1988, benefits are still in the pipeline. Under the PEEX, a reimbursement of 15 percent of the value of shipments over and above a base figure was available over a defined period of time. Benefits are currently paid under the terms of the EEL by means of Government bonds that can be used to pay foreign trade taxes (BOCREX). The PEEX will end in 1993, when the remaining contracts are concluded.[24]

Argentina still has several programs to support the export of Argentine goods. A May 1991 decree (1,011/91) eliminated rebates of import levies and reduced the levels of tax reimbursement. Argentina retains a duty-drawback plan that provides for a full or partial reimbursement of VAT, other taxes, and duties on imported raw materials.[25]

A reimbursement is allowed for the export of goods originating in the Patagonia region of the country, the only region still benefiting from a Government program to encourage production or the use of ports in an area.[26] The amount of the reimbursement, which takes the form of an EEL-sanctioned BOCREX, ranges from 7 to 12 percent, depending on the port from which goods are exported. The program will gradually disappear, with an annual reduction in the amount of the allowable reimbursement of 1 percent beginning in 1995.

A commercial free-trade zone was established in August 1991 in La Plata, the capital of the Buenos Aires Province. Preparation of goods for export is anticipated although there are no officially designated export-processing zones in the country.[27]

The Presidential Decree of October 1991 abolished all restrictions on exports, provided that the goods are not illegal or dangerous substances and that they comply with environmental and sanitary regulations.[28] Argentina does not currently maintain any administrative controls over foreign exchange from exports, and such transactions are now freely permitted in all foreign currencies.

Foreign Investment Policies

Argentina's privatization program and the deregulation of its oil and gas industries have spurred foreign direct investment (FDI), particularly in the energy, motor vehicle, food and beverage, machinery, and financial services sectors.[29] Annual inflows of new FDI in Argentina grew from $490 million in 1987 to some $2 billion in 1990. The United States has traditionally been Argentina's leading source of FDI. U.S. direct investment in Argentina in 1990 was $2.9 billion (historical-cost basis), or about a fourth of total

[21] In 1989, export tax receipts accounted for 11 percent of Argentina's tax revenues. In 1987 the export tax rate averaged 18.2 percent for agricultural goods (except oilseeds) and 9.5 percent for manufactures. GATT, *TPRM: Argentina*, C/RM/S/18A, pp. 83 and 84.

[22] U.S. Congress, House Committees on Foreign Affairs and Ways and Means and Senate Committees on Foreign Relations and Finance, *Country Reports on Economic Policy and Trade Practices*, prepared by the U.S. Department of State, 102d Cong., 1st sess. (Washington, DC: Government Printing Office, Feb. 1991), p. 380.

[23] Argentine export-financing policies are now in conformity with GATT and OECD guidelines. See GATT, *TPRM: Argentina*, C/RM/G/18, p. 6.

[24] GATT, *TPRM: Argentina*, C/RM/S/18A, p. 87.

[25] GATT, *TPRM: Argentina*, C/RM/G/18, p. 3, and *TPRM: Argentina*, C/RM/S/18A, p. 88. See also World Bank, *Argentina - Reforms for Price Stability and Growth*, A World Bank Country Study, Washington, DC, 1990, p. 156.

Statistics showing the amount and shares of export taxes and reimbursements in Argentina are provided in table IV.10 of GATT, *Trade Policy Review Mechanism: Argentina*, C/RM/S/18B, Nov. 8, 1991, p. 23.

[26] GATT, *TPRM: Argentina*, C/RM/G/18, p. 4.

[27] U.S. Congress, *Country Reports*, p. 378.

[28] Argentine Presidential Decree No. 2284, art. 20.

[29] U.S. Department of Commerce, *Investment Climate Statement: Argentina*, May 31, 1991.

FDI in Argentina.[30] Other major sources of FDI in Argentina during 1985-90 were Italy, Germany, France, and Switzerland.

Argentina has significantly liberalized its foreign investment regime. The 1989 EEL and the 1989 Presidential Decree 1,225 have played key roles in the liberalization effort. The EEL essentially eliminated the distinctions between foreign and domestic capital, guaranteeing national treatment to foreign investors in most instances. It also lifted all general restrictions on profit remittances and capital repatriation, abolished performance requirements and most sectoral restrictions, and removed all restrictions on the import of foreign technology and capital.[31]

The EEL also suspended a law that required prior authorization by the executive branch for FDI in selected industries, such as defense, nuclear energy, air transportation, public services, mass media, financial and insurance services, shipbuilding, and education. Currently, no executive branch authorization is needed for investment in projects of general interest or for investments that improve productivity, enhance exports, or create jobs. Government approval may be required, however, when

- there is a perceived need for sovereign control;
- potential investors apply for special promotional benefits;
- the value of the investment exceeds $20 million; or
- the investor is a foreign state or government institution.

The EEL also created the Registry of Foreign Investment. All foreign investors are invited to register their investments for statistical purposes and to acquire remittance rights for potential future profits. FDI can now be made in the form of convertible foreign currency, merchandise, profits, or external debt certificates.

Under the 1989 regulations, the Government can limit profit remittances only in periods of grave balance-of-payments problems. At such times, foreign investors can be paid in foreign currencies as long as payments are derived from monies generated from exports. Argentina no longer taxes profit remittances that surpass 12 percent of the value of registered capital.[32]

Although Argentina has liberalized its FDI regime considerably, several major barriers remain. FDI registered under article 16 of the 1989 EEL can be repatriated only after 3 years. There are restrictions on foreign participation in sectors such as the air transport and nuclear industries[33] and on foreign ownership of land along Argentina's border. Foreign investors must formally petition the Superintendent of National Frontiers for permission to locate in or acquire land in Argentina's frontier zones.

Protection of Intellectual Property

Patents

The Menem administration is taking steps to reform Argentina's patent statute, which dates back to 1864. Under the 1864 law, virtually every invention is patentable except for pharmaceutical compositions, certain plants, and inventions contrary to the morals or laws of Argentina. The law provides patent coverage for industrial products, new processes, and new applications of known processes for obtaining an industrial result or product, including pharmaceuticals. The patentability of genetically engineered animals is, of course, not addressed in the 1864 statute.

Patents may be granted for terms of 5, 10, or 15 years, depending on a governmental judgment that is based on the merit of the invention and the will of the applicant. No renewals of patent terms are granted. Foreign patents may be ratified for a maximum of 10 years, but their term in Argentina may not exceed the term of the original foreign patent.

In Argentina, a patent will lapse if it is not worked within 2 years from grant or if working is interrupted for a period of time. Only a "force majeure" or other circumstances recognized by the Government will excuse nonworking.[34] Under Argentine law, owners of improvement patents are entitled to a compulsory license to the patent on which their improvement is based. Argentina's patent law does not define infringement to include the use, sale, or importation of a product made using a process patented in Argentina.[35]

Trademarks and Copyrights

Argentina's 1980 trademark law and copyright protection are generally considered to be adequate.[36] Use is obligatory for trademarks, but in the case of a trademark registered in several classes, the use of the trademark in only one class is enough to secure its validity.[37]

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[30] "U.S. Net International Investment Position, 1990," *U.S. Department of Commerce News*, Bureau of Economic Analysis, July 2, 1991, p. 9.

[31] EIU, *Argentina: Country Report*, p. 36.

[32] Ibid.

[33] U.S. Department of State Telegram, Oct. 1991, Buenos Aires, message reference No. 10887.

[34] Law 311, art. 47. This working provision is inconsistent with the Lisbon Act of the Paris Convention to which Argentina is a signatory.

[35] Staff of the U.S. Patent and Trademark Office, Office of Legislative and International Affairs, telecommunication with the Commission, Nov. 1991.

[36] U.S. Congress, *Country Reports*, p. 381. Argentina is a signatory of the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, and the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

[37] *World Intellectual Property Report*, vol. 4 (June 1990), p. 3.

Although Argentine copyright law does not explicitly protect computer programs, imported software is protected under section 13 of law 11,723, which extends the protection of Argentine legislation to all works published overseas "provided they belong to nations which respect intellectual property rights."[38] Computer programs of foreign origin are also afforded protection under the Universal Copyright Convention, to which Argentina is a signatory. The National Registry of Copyrights accepts computer programs for registration under a voluntary registration system: the vendors deposit copies of their products at the registry, inside a sealed envelope.[39] This procedure creates a presumption on behalf of the depositor.

The Motion Picture Export Association of America (MPEAA) reports that video and cable television piracy is a serious problem. According to MPEAA, 90 percent of the approximately 600 cable television systems transmit unauthorized U.S.-owned material. Furthermore, the Recording Industry Association of America (RIAA) estimates that 30 percent, or nearly $10 million, of the sound recording market is pirated.[40]

No enforcement problems have been identified by the U.S Patent Office, but penalties for copyright infringement are considered weak.[41] Although software piracy is still a significant problem, the Argentine Government has recently embarked on antipiracy campaigns.[42]

Sector-Specific Barriers

This section reviews Argentine barriers that affect U.S. market access or investment flows in selected agricultural, manufacturing, and services sectors. Figure 7-1 is a tabulation containing selected sector specific barriers.

Agriculture

Few trade and investment barriers now exist in Argentina's important grain- and oilseed-processing industries. However, the differential export tax on soybean oil and meal still remains in place. The 6-percent tax, which favors Argentine soybean processors (at the expense of farmers), is intended to discourage exports of low-valued, unprocessed soybeans and encourage exports of higher valued processed soybean products.[43] U.S. producers suggest that the primary effect of this tax system is to increase competition in third-party markets such as the EC.

Argentina has a provisional export ban on hides and skins[44] and a voluntary export restraint on exports of sheep meat to the EC. It also grants export financing for some fruits and fruit products and subsidizes sugar production.

Motor Vehicles[45]

Restrictive tariffs, quotas, local-content rules, and export performance requirements limit U.S. market access and investment flows in Argentina's motor vehicle sector. In late 1991, Argentina lifted the sector's import-licensing requirements. Passenger cars and parts, once included on the prohibited imports list, can now be imported, although they are subject to a 22 percent duty.

Local-content rules, specified in Decree 201 of 1979, limit the amount of foreign components that can be used in the manufacture of Argentine-made vehicles to 12 percent of vehicle cost for passenger cars, 18 percent for light trucks, and 25 percent for transport vehicles. The performance requirement, detailed in Decree 569 of October 1991, calls for firms importing automotive products to earn at least 80 cents in exports for each dollar's worth of imports in 1992. The export requirement is currently scheduled to rise to $1 in 1993. Firms failing to reach the required level must limit their imports of parts to the 1991 level, whereas those meeting or exceeding the level are eligible to import parts at lower tariffs, to increase foreign content, or some combination of the two.[46]

Argentina also imposes import quotas on passenger vehicles and parts. Decree 997/91 initially set the quota at 7,200 units, but the quota was later increased to 8,000 units (6,800 cars and 1,200 pickup trucks,

[38] U.S. Patent and Trademark Office telecommunication.

[39] U.S. Department of Commerce, International Trade Administration, *Guide to Computer Hardware and Software Markets in Latin America*, July 1990.

[40] Office of the United States Trade Representative (USTR), *1992 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: USTR, 1992), p. 8.

[41] U.S. Patent and Trademark Office telecommunication.

[42] U.S. Dept. of Commerce, *Guide to Computer Hardware*.

[43] In 1986 USTR instituted a 301 investigation in response to a petition from U.S. industry alleging that the

[43]*—Continued*
differential in Argentine export taxes (higher for soybeans than for soybean products) provided Argentine crushers with an unfair cost advantage that burdens U.S. exports in third-country markets. USTR suspended the case in 1987, based on Argentina's pledge to eliminate the export taxes and thus any differential. In February 1988, Argentina reduced the tax differential by 3 percentage points, but 5 months later adopted a tax rebate on oil and meal exports to third countries. After talks with the United States, Argentina suspended the rebate in late 1988. USTR, "Section 301 Table of Cases," Feb. 20, 1992, p. 24.

[44] The rationale for the ban is to ensure an adequate supply of hides and skins for the domestic tanning and leather goods industries. The U.S. Department of Commerce has found that the hide ban constitutes an upstream subsidy. Leather from Argentina is now subject to countervailing duties. This practice was also the subject of a 301 investigation in 1981 (case No. 301-24). See also GATT, *TPRM: Argentina*, C/RM/G/18, p. 2.

[45] The category of "motor vehicles" includes motorcycles, passenger automobiles, trucks and buses, and parts.

[46] GATT, *TPRM: Argentina*, C/RM/G/18, p. 133.

Figure 7-1
SELECTED SECTOR-SPECIFIC TRADE AND INVESTMENT BARRIERS: ARGENTINA

General	• Newly established across-the-board five-tiered tariff schedule with maximum rate of 35 percent.
Agriculture	• Tariffs: Paper and paper board: 7.5 percent, with a maximum tariff of 22 percent.
Minerals and metals	• Tariffs: Most imports of steel products: 13 percent. Imports of steel production inputs, such as coal and iron ore: 5 percent.
Chemicals	• Lack of process or product patent protection for pharmaceuticals.
Motor vehicles	• Tariffs: Selected auto sector products subject to maximum 22-percent rate. • Non-MERCOSUR countries subject to an import quota of 8,000 units. • Preferential trade arrangements among MERCOSUR countries. • Motor vehicle imports subject to local-content and export performance requirements.
Electronic equipment	• Tariffs: Selected consumer electronics subject to maximum 35-percent rate. • Lack of explicit copyright protection for computer software. • Significant piracy of sound-recording equipment and cable and television programming.
Scientific and medical instruments	• Tariffs: Range from 0 to 22 percent. • Ineffective protection of intellectual property rights.
Banking services	• Foreign banks must obtain Central Bank approval to establish operations. • Foreign acquisitions of branches subject to right of first refusal by Argentine banks.
Business and professional services	• Prohibition on airing foreign broadcast materials in advertising. • Restrictions on the right to practice and the right of establishment. • Executive approval required for investments in selected media sectors. • Residency requirements invoked for certification in some professions. • Broadcast advertisements subject to local participation requirements.
Insurance services	• Companies that enjoy Government benefits must insure with an Argentine-domiciled firm. • Marine insurance for imports or exports reserved for domestic firms. • Public works projects must be insured by Government-owned insurance company.
Architectural, engineering, and design services	• Discriminatory Government procurement practices.

Source: Compiled by staff of the U.S. International Trade Commission.

vans, and other utility vehicles).[47] Argentine imports of passenger vehicles from MERCOSUR nations (mainly Brazil) were limited to 18,000 units in 1991 and 12,000 in 1992.[48] Recently signed protocols (Nos. 1 and 21) to the 1986 Brazil-Argentina economic integration agreement will eliminate import duties and taxes on automotive products. The two nations have agreed to exchange 20,000 vehicles (15,000 from Brazil and 5,000 from Argentina) and automotive parts. The agreement calls for duty-free bilateral trade in motor vehicles of $300 million in 1991 and $500 million in 1992.[49] The countries also agreed to eliminate all tariffs and other import restrictions on bilateral automotive trade by 1993.

Steel Mill Products

Recent reports indicate that Argentina has kept steel prices artificially low to control inflation. Although no official price controls exist on steel, Argentine steelmakers agreed in 1991 to a price reduction of 18 to 27 percent in return for a Government agreement to implement policies that

[47] Quotas of 6,120 cars and 1,080 utility vehicles were set aside for manufacturers' representatives or official distributors, leaving only 680 cars and 120 utility vehicles for others to import. No single firm can import more than 15 percent of the total quota. Individuals may import only one vehicle, and firms may import two, provided that one is a utility vehicle.

[48] GATT, *TPRM: Argentina*, C/RM/S/18B, p. 78.

[49] "Brazil, Argentina Totter Towards Free Auto Trade," *Ward's Automotive International*, Dec. 1990, p. 1.

would stimulate growth in steel-consuming industries.[50]

In November 1991, Argentina reinstated a tariff (5 percent ad valorem) for steel production inputs like coal and iron ore and raised the duty on intermediate steel products from 11 to 13 percent.

Pharmaceuticals

The lack of protection for pharmaceuticals is perhaps the main barrier to U.S. market access and investment in the Argentine sector. Argentina permits local firms to market copies of drugs that are under foreign patent, provided they obtain the necessary public health authorizations.[51]

In response to a petition in 1988 from the Pharmaceutical Manufacturers Association (PMA), the United States Trade Representative (USTR) initiated an investigation under section 301 of the Trade Act of 1974 into Argentina's patent practices.[52] According to a report prepared by the U.S. Department of State for Congress, inadequate intellectual property protection in Argentina has resulted in annual losses to U.S. pharmaceutical patentholders of about $30 million in sales.[53] PMA withdrew its petition a year later, following signs of progress in Argentina toward the enactment of an adequate patent law.[54]

The Menem administration in October 1991 submitted to the Argentine Senate a bill which, if enacted, would extend patent protection to pharmaceuticals and establish a patent term of 20 years from the date of patent application.[55] The bill would also provide for the issuance of licenses to produce patented products using different manufacturing processes. In return for such a license, a cross license to use the new process would be granted to the product patent owner.

The bill faces strong opposition in the Argentine Congress from Argentine firms that manufacture copied, or "pirated," products and from local pharmaceutical companies that fear that international pressure will force lawmakers to overlook the interests of the local industry. Traditionally, lack of pharmaceutical patent protection has been viewed as a means to foster the development of a national pharmaceutical industry and to forestall the formation of multinational monopolies.[56] The Argentine Chamber of Medical Specialties, however, supports patent reform, arguing that foreign protection is necessary to ensure access to the know-how required to develop and market new pharmaceuticals.[57]

Energy

In 1989, President Menem opened the Government-owned Yacimientos Petroliferos Fiscales (YPF) petroleum monopoly to private investors, both domestic and foreign, in an effort to attract much-needed capital and technology to significantly expand production.[58] As of January 1, 1991, the price of crude was deregulated, and YPF no longer has a monopoly in any segment of the industry. Private firms are now able to market their output at world prices on either the world or domestic market. Firms can import products subject to a tariff of 22 percent ad valorem. The refining industry was also opened to both domestic and foreign investors, which can now compete directly with YPF. Refineries are no longer held to any local-content rules.

Services

Air Courier and Shipping

In late 1991, Argentina abolished its restrictive cargo regime that had limited all import and most export cargo to ships of bilateral trading partners.

After the U.S. industry in 1983 filed a petition with USTR under section 301 of the Trade Act of 1974 regarding treatment of air courier services, Argentina promised to eliminate all discriminatory import treatment.[59] Argentina's postal monopoly (ENCOTEL) currently assesses a tax on shipments by international air courier services in excess of fees charged in most other nations. The future reorganization and planned privatization of ENCOTEL may eliminate such discriminatory treatment.

Banking

U.S. banks appear to receive national treatment once established in Argentina, although establishing operations is reportedly difficult at present. Foreign banks must obtain the approval of the Central Bank Board and register with the Ministry of Finance to establish banking operations in Argentina. The Central Bank Board reportedly exercises broad discretionary powers when considering the establishment of foreign

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[50] "Argentine Mills Agree to Cut Price," *Metal Bulletin*, June 13, 1991, p. 18.

[51] *World Intellectual Property Report*, vol. 4 (Jan. 1990), p. 3.

[52] PMA petition, dated Aug. 10, 1988, as reported in *World Intellectual Property Report*, vol. 2 (Nov. 1988), p. 214.

[53] U.S. Congress, *Country Reports*, p. 381.

[54] *World Intellectual Property Report*, vol. 3 (Nov. 1989), p. 231.

[55] U.S. Patent and Trademark Office, Office of Legislative and International Affairs, telephone conversation with the Commission, Nov. 1991.

[56] *World Intellectual Property Report*, vol. 5 (Sept. 1991), p. 234.

[57] Ibid.

[58] Pennwell Publications Co., *International Petroleum Encyclopedia*, Vol. 24, 1991, p. 150.

[59] U.S. air couriers alleged that Argentina acted unreasonably in granting exclusive control over the international air transportation of time-sensitive commercial documents to the Argentine postal system (ENCOTEL). In 1985, Argentina lifted the ban but replaced it with heavy discriminatory taxes, which, following bilateral consultations, were reduced in 1988. In 1989, the United States and Argentina reached an agreement regarding Argentina's fees and providing for non-discriminatory treatment of foreign air couriers. USTR, "Section 301 Table of Cases," p. 17.

banks, and the Board need not provide detailed justifications for its rulings.[60] Since 1984, the Central Bank has refused foreign banks' applications for establishment, claiming that there are an excessive number of banks in the Argentine market.[61] In addition, the foreign acquisition of branches of Argentine banks is subject to right of first refusal by other Argentine banks.

Business and Professional Services

Argentina imposes requirements on the accounting and advertising professions that effectively discriminate against foreign competition. Argentina maintains a 2-year residency requirement for certification as an accountant and does not allow foreign firms to practice solely under their international names. In advertising, Argentine law bars the airing of foreign broadcast materials.

The Government of Argentina encourages the use of local contracting and consulting firms, making it difficult for foreign service providers to obtain access to a project unless associated with a local firm. In a case where two or more foreign firms show equal merit, preference will be given to the firm that grants the largest amount of local participation.[62]

Insurance

Foreign insurance providers have historically faced obstacles in Argentina. For example, any local business that insures any type of Government-funded project must insure with an Argentine-domiciled firm. The purchase of foreign marine cargo insurance is also significantly restricted. Recent reforms, however, have significantly liberalized regulations in the insurance market. Foreign firms that are established as local companies can now operate as equals with Argentine-owned insurance companies. Branches of foreign-owned companies, however, continue to face restrictive access.

The Government of Argentina encourages foreign companies to buy local firms and allows them to change the previous company's name at will. With the dissolution of the Government-owned reinsurance monopoly, INDER, in early 1992, the requirement that 60 percent of each policy be reinsured with the state has been eliminated. In an effort to facilitate the consolidation of the insurance industry, the Superintendent of Insurance will not issue new licenses until 1994, except for pension funds.[63]

[60] Argentine law reportedly does, however, direct the Board to examine specific issues in its rulings, e.g., the effect on Argentina's foreign trade, present competitive conditions in the domestic banking market, and the rights of establishment granted Argentine firms in the foreign banks' home country.

[61] U.S. Department of the Treasury, *National Treatment Study 1990*, p. 103.

[62] *Exporters' Encyclopedia, pp. 2-43.*

[63] USTR, *1992 Foreign Trade Barriers*, pp. 8-9.

Telecommunication and Information Services

U.S. firms' access to the Argentine telecommunication and information services market had been inhibited by Argentina's trade and investment measures designed to maintain the monopoly of Argentina's domestic telecommunications authority (TA). In privatizing the TA recently, Argentina removed most foreign investment and leased-line restrictions, such as volume-sensitive pricing.[64] These efforts, coupled with an increasingly modern and expanded telecommunications infrastructure,[65] have enabled U.S. firms to penetrate the Argentine telecommunication services market.

Brazil

Brazil is Latin America's most populous nation and largest economy. Protectionist economic policies and a large domestic consumer market spurred Brazil's economic expansion of the 1960s and 1970s. However, mismanagement of domestic economic policies led to hyper-inflation, unchecked budget deficits, and the accumulation of the largest foreign debt in the developing world. During the 1980s, Brazil's real GDP expanded at an average annual rate of only 1.3 percent (table C-1), compared with 8.6 percent in the 1970's.[66]

In March 1990, the newly elected President Fernando Collor de Mello, a member of the minority National Reconstruction Party (PRN), instituted a number of economic and trade reforms. Despite these efforts, however, the Brazilian economy continued to weaken. In 1990, real GDP dropped by 5.1 percent.

Economic Profile

Brazil has a diversified economy. Manufacturing and financial services are the largest sectors, generating 57 percent of GDP in 1990 (table C-2). Agriculture, forestry, and fishing accounted for 10 percent.

Export subsidies, barriers to imports, a competitive exchange-rate policy, and weak domestic markets encouraged a relatively high trade surplus during the 1980s. Annual trade surpluses, which peaked in 1988, have slowed in recent years, as shown in the following tabulation (in billions of dollars).

[64] In November 1990, the Government-owned provider of basic voice telephone service in most Argentine Provinces, Empressa Nacional de Telecomunicaciones (ENTEL), was split into two regional entities and privatized. A consortium including Citibank, Telefonica (Spain), and Techint (Argentina) bought a 60-percent share of Telco Sur in the South, while a consortium including J.P. Morgan, France Telecom, STET (Italy), and Perez Company (Argentina) bought a 60-percent share of Teleco Norte in the North.

[65] Central Intelligence Agency, *World Fact Book 1991*, p. 15.

[66] IDB, *Economic and Social Progress in Latin America: 1991 Report*, p. 273.

Year	Exports	Imports	Trade balance[1]
1986	22.4	14.1	8.3
1987	26.2	15.0	11.2
1988	33.8	14.7	19.1
1989	34.4	18.3	16.1
1990	31.4	20.7	10.7
1991[2]	32.0	21.0	11.0

[1] Does not include services.
[2] Preliminary.

This trend stems in part from the discontinuation of many of Brazil's export subsidy programs and import-liberalization measures, and the real appreciation of Brazil's currency. In addition, coffee prices continued to decline throughout the period, reaching a 16-year low by yearend 1991, and world prices for oil, for which Brazil is heavily import dependent, increased.[67]

The United States and the European Community are Brazil's principal trading partners, each supplying about 21 percent of Brazil's imports and receiving 24 percent and 31 percent, respectively, of its exports in 1990.[68] Latin American nations accounted for a combined 12 percent of Brazil's exports and 19 percent of its imports in 1990.

Brazil is the United States' largest trading partner in Latin America, ranking 16th as a market for U.S. exports and 15th as a source of U.S. imports in 1990. Brazil's declining overall trade surplus is mirrored in a shrinking U.S. trade deficit with Brazil (table C-9), which narrowed from $5.0 billion in 1988 to $573 million in 1991, $2.3 billion lower than in 1990.[69] Manufactured goods constituted almost 85 percent of U.S. exports to Brazil in 1990. Principal U.S. imports from Brazil included manufactured goods (65 percent), food (21 percent), and fuels and raw materials (13 percent).

Brazil is a contracting party to the GATT. As of yearend 1991, it was a signatory to the GATT codes on standards, subsidies, bovine meats, customs valuation, and antidumping.[70]

Trade and Investment Policies and Liberalization

President Collor's government has signaled its intent to move toward swift and comprehensive policy reform and liberalization.[71] In light of this commitment, the Collor administration has proposed and implemented changes in import and export policies, as well as in policies affecting foreign investment and foreign exchange, and the protection of intellectual property. In addition, the Government-owned sector of the economy, which accounted for well over half of Brazil's GDP prior to March 1991, has been targeted for privatization.

Import Policies

The Collor administration is primarily using tariffs (as opposed to import licenses) to regulate imports.[72] In the past, Brazil justified its nontariff import barriers by invoking GATT article XVIIIb, which allowed certain restrictive practices on balance-of-payments (BOP) grounds. In June 1991, however, the Collor government terminated BOP-based restrictions. With the rescission of the Law of Similars in 1990, the National Informatics Law of 1984, scheduled to expire in October 1992, remains the last major statutory nontariff barrier to imports in Brazil.

Tariffs

In February 1991 Brazil instituted a 4-year duty reduction plan for some 12,400 items.[73] Under this plan, the weighted average duty rate of 32 percent in 1990 will be reduced by more than half by July 1993 to 14.2 percent.[74] Reported staged duty reductions for selected products are shown in table 7-2. All goods in which Brazil is either internationally competitive or that currently are not produced in Brazil became free of duty.

State and federal taxes also affect market acces in Brazil. The industrial product tax (IPI) is Brazil's value-added Federal sales tax on manufactured products, both domestic and imported.[75] The States also levy a value-added tax (ICMS)[76] on most domestic and foreign goods (commodities included).

[67] Brazil continues to be the world's largest coffee exporter, accounting for over 26 percent of global coffee shipments in 1990-91. U.S. Department of Agriculture (USDA), *World Coffee Situation*, Circular Series (FCOF 2-91), Dec. 1991, p. 5.

[68] Central Bank of Brazil, as reported by the International Monetary Fund, table 61, in its unpublished report, *Brazil-Recent Economic Developments*, Sept. 30, 1991.

[69] USTR, *1992 Foreign Trade Barriers*, p. 19.

[70] General Agreement on Tariffs and Trade, "Signatories to the Toyko Round Agreements: Status as of Dec. 31, 1991," (table).

[71] Collor Plan I was introduced in 1990. It froze prices, temporarily blocked Brazilian's access to their banking accounts, and replaced the Brazilian currency with a new monetary unit to break inflationary expectations. This plan was followed by Collor Plan II in January 1991 that reintroduced a temporary wage and price freeze.

[72] USTR, *1992 Foreign Trade Barriers*, p. 19.

[73] In Brazil, legislation sets out only the parameters within which tariff rates must fall. Actual rates are decided by the administering agencies.

[74] USTR, *1992 Foreign Trade Barriers*, p. 19.

[75] The IPI is assessed on the sum of the c.i.f. value plus the import duty. Although IPI rates are applied without distinction to point of origin (an import is subject to the same IPI rate as the corresponding domestic product), Brazil has used discretionary application of the tax to promote local suppliers.

[76] For manufactured products, the ICMS is levied on the product price plus the IPI. The States of Sao Paulo and Rio de Janeiro currently assess ICMS rates generally at 18 percent and 17 percent, respectively. Information provided by Sebastiao de Souza Mattos Neto, law firm of Baker & McKenzie, Chicago, IL, facsimile regarding "Products Imported Into Brazil," Apr. 9, 1992.

Although only about 4 percent of all Brazilian tariff items are bound under the GATT, Marcilio Marques Moreira, Minister of Economy, has suggested that Brazil's reluctance to bind its tariffs in the Uruguay Round is currently under review. The new goal is to bind the largest possible number of tariff items.[77]

Nontariff Barriers

The Collor administration has significantly reduced nontariff barriers, by abolishing Brazil's list of some 1,300 items that had been prohibited from entering the country and eliminating the requirement that companies submit annual import plans in order to receive official authorization to import products into Brazil.[78] Although import licenses still are required, they are now granted automatically within 5 days of a request[79] and are used primarily for statistical and foreign exchange administration purposes.

The Collor administration also suspended Brazil's Law of Similars, under which import licenses were denied to products "similar" to competing products already produced or capable of being produced in Brazil. However, the law will continue to be applied to computer and other parts and products incorporating digital technology until October 1992[80] and for human blood, nuclear material, arms and munitions, herbicides, and pesticides.

[77] U.S. Congress, *Trip Report on Congressional Delegation Bentsen* (Latin America Visit of Monday, Aug. 12, 1991, Through Sunday, Aug. 24, 1991), 102d Cong., 1st sess. (Washington, DC: Government Printing Office, Dec. 1991), S. Prt. 102-57, p. 34.
[78] *Gazeta Mercantil*, June 14, 1991, p. 2.
[79] USTR, *1992 Foreign Trade Barriers*, p. 19.
[80] U.S. Department of Commerce interview and U.S. Department of Commerce, *Country Market Plan, Brazil, Fiscal Year 1992*, draft, p. 47.

Government Procurement

Although the Government of Brazil is increasing the use of competitive bidding in public procurement,[81] technology transfer and financial packages are often required as conditions for awarding Government contracts.[82] Foreign exporters have complained that the Federal, State, and municipal governments have made purchases according to a constitutional "Buy Brazil" provision that provides for Government discrimination in favor of "Brazilian companies with national capital."[83]

In an effort to rectify this situation, the Collor administration recently rescinded a law that had prohibited foreign-owned firms from bidding on public sector contracts financed by international financial institutions.[84] It also announced measures that would permit Government agencies to purchase imported goods available on the domestic market.[85] Nevertheless, some Government-owned firms reportedly still specify contracts as open only to "national" firms, particularly with regard to service contracts.[86]

[81] Official at U.S. Department of Commerce, interview by the Commission, Nov. 14, 1991, and U.S. Congress, *Country Reports*, Mar. 1989, p. 636.
[82] Office of the United States Trade Representative, *1991 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: USTR, 1991), p. 20.
[83] For further discussion of "national capital" guidelines, see "Foreign Investment Policies" below.
[84] USTR, *1992 Foreign Trade Barriers*, p. 20.
[85] U.S. Department of Commerce, International Trade Administration (ITA), National Trade Data Bank, *Brazil: Economic Policy & Trade Practices*, Sept. 25, 1991.
[86] U.S. Department of Commerce interview. See also ITA, *Brazil: Economic Policy & Trade Practices*, and USTR, *1992 Foreign Trade Barriers*, p. 20.

Table 7-2
Selected scheduled import tariff reductions, 1990-94

(Percent ad valorem)

Item	*1990*	*1991*	*1992*	*1993*	*1994*
Capital goods:					
Machinery	40	30	25	20	20
Digital machinery	65	50	45	35	25
Tractors	45	40	45	30	20
Agricultural equipment	25	25	25	20	20
Computers	0	65	60	50	40
Consumer durables:					
Cars and trucks	85	60	50	40	35
VCRs	85	65	50	40	30
Bicycles	85	60	50	35	20
Toys	105	85	65	40	20
Consumer goods:					
Beer	85	55	40	30	20
Whiskey	85	75	65	40	20
Shampoos, perfumes	85	60	40	30	20

Source: *Brazil Watch*, Feb. 11-25, 1991.

Export Policies

Export Subsidies

Brazil's previous administrations provided a wide range of export subsidies for manufactured goods. These subsidies took the form of fiscal incentives, including exemptions or rebates from the IPI or ICM and from income taxes for profits earned through exporting. They also involved export-financing programs.[87] Exporters approved by the Commission for Granting Fiscal Incentives to Special Export Programs (BEFIEX) for export-promotion programs were granted accelerated depreciation of their fixed assets of domestic origin and were given a package of other tax benefits, including exemptions, suspensions, and refunds from duties on their imports.

In the early 1980s, the United States and the International Monetary Fund (IMF) pressured Brazil to phase out many export-subsidy programs. By 1989, many such programs had been eliminated. The Collor administration has demonstrated its commitment to reducing export-credit subsidies by eliminating all preferential tax rates for exports.[88] Although some companies apparently still enjoy BEFIEX preferences based on prior accords, no new contracts are being granted under the program.[89]

Export Financing

The Collor Government abolished the Central Bank's FINEX (Export Financing Fund) program and created FINAMEX, a new credit line principally to provide working capital.[90] The Government initially indicated that FINAMEX would grant preferential financing only for the production of machinery and equipment targeted for exports, but it later extended the program's mandate to subsidizing sales abroad as well.[91] The program, effective September 1991, provides loans that have a maximum 8-year repayment term and finance 85 percent of the value of the exported capital goods.

The Government created a special export/import-financing fund (PROEX) designed primarily to help exporters honor contracts that had been contingent on continued financing by FINEX. However, because of limited funding, only 200 of the 470 products formerly eligible under FINEX are eligible for PROEX funding. Eventually, the Collor government plans to replace its export-financing programs with a private Foreign Trade Financing Bank.[92]

[87] See also USITC, *Foreign Industrial Targeting and Its Effects on U.S. Industries, Phase III: Brazil, Canada, the Republic of Korea, Mexico, and Taiwan* (investigation No. 332-162), USITC publication 1632, Jan. 1985, pp. 49-50.

[88] Law 8,034.

[89] U.S. Department of Commerce interview.

[90] FINAMEX is administered by FINAME, a special agency linked to the National Bank of Social and Economic Development (BNDES). *Gazeta Mercantil*, Oct. 10, 1990.

[91] *Gazeta Mercantil*, Nov. 26, 1990.

[92] *Gazeta Mercantil*, Oct. 18, 1990.

Foreign Investment Policies

Constitutional limitations, problems in profit remittances, and restricted access to loans and capital markets in Brazil are major barriers to foreign investment in Brazil. Taxation policies, technology transfer restrictions, and bureaucratic impediments have also discouraged foreign investors over the years. Nevertheless, according to the Central Bank of Brazil, FDI in Brazil totaled about $36 billion in 1990.

The United States was by far the largest source of such investment, supplying slightly more than 40 percent, or $15.4 billion. U.S. FDI increased at rates of between 15 and 18 percent annually between 1986 and 1988 and then grew at a much slower 6-percent rate in 1989 and 1990. Other important sources of foreign investment were Germany and Japan, with about $5 billion and $3 billion, respectively. U.S. investment in Brazil in 1990 was concentrated in the manufacturing sector, as shown in the following tabulation (in millions of dollars):[93]

Sector	*U.S. investment*
All industries	15,416
Manufacturing	11,286
Finance	1,351
Services	865
Banking	851
Petroleum	650
Wholesale trade	302
Other	112

Chemicals and machinery, excluding electrical equipment, each represented 19 percent of the total, followed by the transportation equipment segment (about 13 percent) and the electric, electronic, and communications equipment sector (7 percent).

The most significant barriers to foreign investment are Brazil's Informatics Law of 1984 and Article 171 of the Brazilian Constitution, which limit foreign participation in certain sectors of Brazil's economy. Article 171 of the Constitution restricts foreign investment by distinguishing between Brazilian companies funded with foreign capital and Brazilian companies funded with Brazilian national capital. This constitutional provision may restrict ownership in key economic sectors to companies of "national capital" or may otherwise protect these firms. Article 171 also restricts the percentage of foreign ownership and control of sectors deemed important to national security and development. These sectors are not defined in the Constitution. Foreign investors are also limited to 40 percent of the voting capital of a privatized undertaking and 80 percent of total equity.

Recent changes confirm the Collor administration's commitment to liberalizing the foreign investment climate. Legislation was enacted to remove an excessive surtax on foreign dividend remittances, as of January 1, 1992, and to lower tax rates on corporate

[93] U.S. Department of Commerce, *Survey of Current Business*, Aug. 1991, p. 88.

income for foreign companies operating in Brazil, as of January 1, 1993. President Collor has also proposed and pursued enactment of amendments to Brazil's 1988 Constitution to open certain industries to FDI, to privatize some Government monopolies, and to provide incentives to foreign investors to reinvest profits in Brazil.

Proposed Constitutional Amendments

On October 4, 1991, President Collor submitted to Congress draft legislation that would revise the Constitution. The proposal contains 22 amendments designed to stimulate new investment from foreigners already in Brazil and to attract new foreign investors. A summary of the major proposed amendments addressing investment policy follows.[94]

- *Company Ownership*.-The amendment would eliminate the distinction between a "Brazilian company" and a "Brazilian-owned company" and would replace the language with the following: "A Brazilian company is a company constituted under Brazilian law and having its head office and management in Brazil."

- *Federal Monopolies*.-Under current provisions of the Constitution (art. 21, clause 11), only the Federal Government or duly licensed corporations in which the Government has a controlling interest may provide telecommunication services. The proposed amendment would remove the ownership restriction and would open the sector to foreign investment. The amendment would also extend the changes to oil refining and other activities in oil and natural gas.

- *Nuclear Power*.-Article 21, clause 23 of the Constitution limits ownership of nuclear power, including the fuel cycle, to the Federal Government. Provisions in the proposed amendment would allow the Government to license domestic and foreign corporations to undertake some commercial activities. These activities would include uranium mining and marketing activities but would exclude uranium enrichment and spent-fuel reprocessing.

- *Mining Rights*.-Article 176, paragraph 1 allows the Federal Government to give mining rights to Brazilian nationals or Brazilian-owned entities. The proposed amendment would delete the nationality and ownership qualifications.

- *Energy Monopoly*.-Article 177 grants the Brazilian Government a monopoly in the energy sector that extends to oil drilling and refining, shipping of crude oil and petroleum products, operating pipelines, and all activities in nuclear fuels. Under the proposed amendment, the reservation would be narrowed to primary products only, such as in the case of hydrocarbons, and to industrial processing of nuclear fuels, including enrichment and reprocessing.

Foreign Exchange Policy

The Collor government lifted Brazil's foreign exchange controls in March 1990. The administration withdrew the Central Bank's power to unilaterally determine the cruzeiro's value relative to the dollar and to allocate foreign exchange according to predetermined priorities. The Collor administration allowed the cruzeiro to "float" but, through daily interventions by the Central Bank in exchange markets, continued to influence the overall balance of trade.

The Central Bank's interventions initially resulted in a steady spread of some 12 percent between the official exchange rate and the unofficial market exchange rate. From September 1990 onward, however, the spread between the two rates began to widen and, as a result, the Central Bank stopped intervening on behalf of the currency in October 1991. The move indicated an apparent shift in the Collor administration's policy emphasis toward strengthening Brazil's deteriorating export performance and competitiveness in international markets. By January 1992, the exchange rate had declined and the spread between the official exchange rate and the market rate virtually disappeared.

Officially, Brazil now maintains a dual exchange system, featuring a "tourist rate" for individual transactions and an official or floating "commercial rate" that follows the dollar market and is subject to daily intervention by the Central Bank. All export and import transactions, profit and dividend remittances, capital repatriation, and new foreign investments must be conducted at the commercial rate.[95] However, because access to foreign exchange at the commercial rate must be approved by the Central Bank, there is also a third, unofficial government-tolerated "parallel rate" that is widely used as a speculative device and is quoted in newspapers.[96]

Profit Remittance and Reinvestment Policies

Although Brazil does not require foreign investors to register their investment with the Central Bank of Brazil, only registered foreign investment may be legally repatriated and dividends generated from such investment be remitted. Unregistered investment may be sold to other foreign or Brazilian investors. Current Brazilian law requires the Central Bank to formally appraise all registered foreign investment for the purpose of setting the basis upon which profit and dividend remittances are determined. A measure announced by the Central Bank in April 1991 (circular letter No. 2,161) simplified the procedure for profit and

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[94] "Congress Unwraps Collor's Package," *Gazeta Mercantil*, Oct. 14, 1991, pp. 4-5.

[95] Central Bank Resolution 1690, Oct. 3, 1990, and Central Bank Circular of the same date.

[96] U.S. Congress, *Country Reports*, p. 406.

dividend remittances and reduced the time for authorization to 1 week, compared with 4 to 6 weeks under the older, more complicated system.[97]

President Collor signed legislation, effective January 1, 1992, designed to stimulate reinvestment of foreign capital. Foreign firms operating in Brazil are now permitted to register reinvestments with the Central Bank at the exchange rate effective on the date of reinvestment.[98]

Taxation

Brazil historically has applied some of the highest taxes on foreign investment in the world, while maintaining a complicated tax schedule that reportedly included some 50 different schedules in 1991.[99] In December 1991, President Collor signed a new tax package into law[100] that significantly liberalized tax regulations as applied to foreign investment. Several significant changes affecting foreign investors have been implemented.[101] These changes include-

- as of January 1, 1993, a reduction from 25 percent to 15 percent in the withholding income tax on dividends remitted outside Brazil (article 77);

- as of January 1, 1992, the elimination of the excess remittance tax, which had ranged as high as 60 percent on some remittances exceeding a certain percentage of the original investment (article 76);[102] and

- as of January 1, 1992, Brazilian subsidiaries of foreign companies were permitted to pay royalties to their parent corporations[103] for patents, trademarks, and technical assistance under certain conditions (article 50).[104]

Protection of Intellectual Property

In May 1991, following the lifting in July 1990 of U.S. economic sanctions against Brazil under section 301 of the Trade Act of 1974, President Collor sent a draft intellectual property protection bill to the Brazilian Congress.[105] The draft would provide (1) full and immediate patent protection for pharmaceutical products and processes; (2) protection for biotechnological products and processes; (3) 20-year protection for all patents, with a possible extension of 5 years for companies that manufacture locally; (4) specific recognition of trade secrets; and (5) greater protection for well-known trademarks. The legislation also includes (1) broad, compulsory licensing provisions; (2) a working requirement; (3) lack of transition/pipeline protection for pharmaceuticals; and (4) acceptance of parallel importations. Under a compulsory licensing provision, the patentholder would lose exclusive rights to the patent if steps to "effectively develop" the patent have not been taken within 3 years. An escape clause would exempt the patentholder if it can be proven that development of the patented article would be "uneconomical" compared with prices of imports.

The May 1991 legislation apparently has been encumbered with a number of amendments and may still be a long way from being enacted.[106] In addition, according to USTR, the proposed law contains flaws.[107] At this time, Brazil remains on USTR's

[97] "Quicker and Easier Profit Remittances," *Gazeta Mercantil*, Apr. 22, 1991, p. 1.

[98] Under the previous rules, reinvestments were registered at an average exchange rate on the date the foreign company's profit was realized. For profit remittance purposes, however, foreign exchange rates prevalent on the date of exchange were used. Given the differential, foreign investors found it more advantageous to remit profits rather than reinvest them.

[99] "Increasing Investment in Brazil: A Status Report," research performed for the Brazil-U.S. Business Council under the Chairmanship of Adolph Posnick, Sept. 1991, p. 7.

[100] Law 8,383, Brazilian Tax Reform Act, which took effect on Jan. 1, 1992.

[101] Sebastiao de Souza Mattos Neto and Antonio Carlos Farroco, Jr., memorandum from Baker & McKenzie regarding "Brazil: 1991 Tax Reform Bill," Feb. 11, 1992.

[102] In addition to the corporate tax applicable to both domestic and foreign entities, an "excess remittance" tax was in effect for those average net dividends remitted outside Brazil that were above 12 percent of the value of the original investment. The level of tax on dividends applied to foreign corporations varied. If remitted profits and dividends were between 0 and 12 percent of registered capital, the tax rate was 25 percent; between 12 and 15 percent, the tax rate was 40 percent; between 15 and 25 percent, 50 percent; and over 25 percent, 60 percent.

[103] Prior to this new legislation, subsidiaries of foreign firms with operations in Brazil were prevented from paying their parent corporations for the transfer of new technology. This constraint slowed the transfer of technology to Brazil, particularly in the informatics sector. According to various industry sources, the Government of Brazil maintained this restriction to prevent foreign firms from charging their subsidiaries in Brazil excessively high prices for the use of such technology. Nevertheless, U.S. industry sources consider this to be a major impediment in receiving a profitable rate of return on their investments.

[104] The new tax law does not revoke article 14 of Law No. 4131, the Foreign Investment Law. Article 14 prohibits Brazilian subsidiaries from making payments to their parents for trademarks and patents. However, according to Sebastiao de Souza Mattos Neto of Baker & McKenzie in Chicago, IL, article 14 has been diluted so that Brazilian subsidiaries may make payments to their foreign parents for the use of patents and trademarks. Baker & McKenzie, "Memorandum Re: Brazil; 1991 Tax Reform Act," Feb. 5, 1992.

[105] The following discussion on this legislation is drawn from the *World Intellectual Property Report*, vol. 5 (July 1991), p. 167.

[106] U.S. Patent and Trademark Office interview.

[107] USTR, *1992 Foreign Trade Barriers*, p. 21.

"priority watch list" under the "special 301" provision of the Trade Act of 1974.

Patents

Under current Brazilian patent law, the term of a patent grant is 15 years from the date of filing the application. Patent rights will be forfeited if the invention has not been effectively worked within 4 years from the date of issue (5 years from date of issue if a compulsory license has been issued), or if working has been discontinued for more than 2 years. The patentee is obligated to grant a license to a party interested in exploiting the patent in Brazil if the patentee, in the absence of duly proven "force majeure," has not effectively exploited the patent in Brazil within 3 years of patent or has discontinued exploitations for more than 1 year. Importation is not considered "effective exploitation" for purposes of this provision.[108]

Under the current law the following are not patentable:

1. Substance, matter, or products obtained by chemical means or processes;
2. Food and chemical-pharmaceutical substances;
3. Metallic admixtures and alloys in general;
4. Uses or employment of means related to discoveries, including the discovery of varieties or species of micro-organisms for specific purpose;
5. Operating, surgical, or therapeutic techniques;
6. Results of the transformation of an atomic nucleus;
7. Inventions the purposes of which are contrary to law, morality, health, public safety, religious cults, or sentiments worthy of respect and veneration.

An invention may be expropriated, under Brazilian law, if it is held to be of interest to national security or if national interest requires that it be made available to everyone or exclusively to the Brazilian Government or an agency thereof. Brazil's patent law does not define infringement to include the use, sale, or importation of a product made using a process patented in Brazil.

Trademarks

A foreign mark is registered under the terms of the Paris Convention and carries certain rights, principally the right of the trademark holder to license or transfer the mark on payment of a royalty. Well-known marks are afforded special protection under Brazilian law, but the mark must be specially registered in Brazil to receive protection in all classes. The standard for well-known status, as determined by INPI, the Brazilian patent office, is that the mark be recognized throughout Brazil by diverse social classes. Declarations of notoriety are expensive and difficult to obtain.[109]

No protection is accorded to an unregistered owner even though the person may have been using the trademark for years.[110] Similarly, an unregistered owner may not prevent the use of a trademark by a third party or prevent the third party from registering the mark in that party's own name.[111] Besides registration, trademark use is essential to trademark protection in Brazil. A mark lapses or can be canceled if it is not used for 2 years from the date of registration or if its use is interrupted for 2 consecutive years, in the absence of a "force majeure."[112] Application for a declaration that a mark has lapsed may be made by any interested person. In the past, INPI has regularly granted such petitions for forfeiture of well-known marks under a provision of the industrial code.[113]

Well-known international marks have been lost because the "use" of a foreign mark was prohibited as a practical matter by import barriers. Brazilian companies simply filed to cancel existing registrations of foreign marks and simultaneously filed applications for the mark in question in their own names. Brazil's trademark law requires that applicants be engaged in the business for which the mark will be used. However, in the past, the INPI often failed to look beyond the existence of corporate documents to find compliance with the use requirement.[114]

Reportedly[115] some Brazilian companies engage in piracy by first obtaining the marks from foreign government trademark publications and popular products that appear on shelves overseas and then filing for registration of the mark in their own names. A foreign company that tries to buy its mark from a Brazilian registrant may spend from $5,000 to $200,000. A popular U.S. mark could sell for as high

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[108] Although this provision is consistent with the 1925 Hague Act of the Paris Convention, it is inconsistent with the 1967 Stockholm Act. Brazil is a signatory to both acts. Brazil is also signatory to the Convention Establishing the World Intellectual Property Organization; the Patent Cooperation Treaty; the Strasbourg Agreement Concerning the International Patent Classification; and the Convention on Inventions, Patents, Designs and Industrial Models (Buenos Aires 1910).

[109] U.S. Patent and Trademark Office interview.

[110] Matthew Bender, "Intellectual and Industrial Property," *Doing Business in Brazil*, ch. 16.

[111] Ibid. This practice contravenes the Paris Convention, Hague revision of 1925. Brazil is a signatory to the Paris Convention as well as the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods (Hague Act 1925; Stockholm Supplemental Act 1967).

[112] IPC, art. 94.

[113] *World Intellectual Property Reporter*, vol. 5 (Oct. 1991), p. 264.

[114] Ibid.

[115] The information cited in the remainder of this section comes from a Commission interview with an official at the U.S. Patent and Trademark Office.

as $1 million. Although the foreign company could keep its mark in use by licensing it to local manufacturers, few foreign companies found such an option palatable.

Recently, INPI has instituted measures designed to reduce trademark piracy. INPI has been conducting internal audits of its trademark registration procedures to ensure that registrations consistently meet all requirements of the law. INPI has also been examining registrations already on record to determine if the grants were the result of administrative irregularities. In June 1991, INPI modified its policies, and it no longer cancels marks when registrants have been closed out of the Brazilian market by import restrictions. Industrial property attorneys believe the changes are significant but are waiting to see the practical effects of the new policy.

Copyrights

Brazilian copyright law provides that all creative works of inspiration however expressed are protected as intellectual property. The term of protection for works other than computer software is the life of the author plus 60 years. Brazil's 1987 software law modified existing Brazilian intellectual property legislation to extend copyright protection to computer software. The term of copyright protection is 25 years beginning on the date that the software program was first commercialized anywhere in the world.[116]

Brazil is signatory to the Universal Copyright Convention (Paris Act, 1971) and the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971).[117] In accordance with Brazil's obligations under the Berne Convention, protection is automatic and is not subject to any formalities, such as registration. Except for the 25-year term for software protection, Brazil's copyright protection generally conforms to world standards.[118]

As with other copyrighted works, protection of computer software is automatic and is not subject to any formalities. There is, however, a voluntary registration system under the general supervision of the National Copyright Council.[119] The major benefit of registration is the procedural advantage arising from the legal record of authorship and ownership. Transfers of assignments of copyright also may be registered. There are civil and criminal remedies for infringement of software, including temporary restraining orders and damages and prison terms from 6 months to 2 years plus a fine.

Although progress has reportedly been made in enforcing copyright legislation, piracy of videocassettes, records, and computer software continues. Unauthorized performances of copyrighted films and plays are reportedly prevalent.[120]

Sector-Specific Barriers

This section reviews Brazilian barriers that affect U.S. market access or investment flows in selected agricultural, manufacturing, and services sectors. Figure 7-2 lists selected sector specific barriers.

Agriculture, Fisheries, and Forest Products[121]

Brazilian tariffs on agricultural imports previously ranged from 0 to 75 percent ad valorem, with an average trade-weighted duty rate of 23 percent. In early 1991, Brazil introduced a tariff structure, scheduled to be phased in by 1994, that would reduce tariffs to a range of 0 to 40 percent ad valorem, with an average duty rate of 20 percent.

During 1989-90, the Brazilian Government implemented economic reforms that entailed a reduction in minimum price supports for crops, a cut in Government credit for farmers, and disruption in the rural credit program, all of which contributed to a decline in agricultural output. To stimulate agricultural output, the Government in July and October 1991 increased farm credit by 50 percent above that in 1990 and reintroduced higher minimum price supports (indexed for inflation).

All grain imports into Brazil are subject to import duties, and to import licensing which, in the case of wheat and most other grains, has reportedly become a "simple bureaucratic procedure." The Brazilian Government operates an intervention system to control the flow of imports using licensing or tariffs; when supply shortages occur as in 1990 and 1991 with corn and rice, import duties are lowered or eliminated. In 1991 the Brazilian Government also established rules for compensatory taxation (higher import duties), by which farmers can seek legal protection from imports of allegedly subsidized agricultural products.

Most U.S. grain and oilseeds are subject to an averge duty rate of 20 percent; however, mandatory state taxes and other fees raise actual import fees to between 25 to 80 percent of the c.i.f. value. Wheat imports into Brazil are subject to a duty rate of 20 percent, with the exception of wheat from Argentina and Uruguay, which receive duty preferences. The duty on wheat is scheduled to be reduced to 10 percent by 1994.

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[116] U.S. Dept. of Commerce, *Guide to Computer Hardware.*

[117] Brazil is also signatory to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

[118] USTR, *1992 Foreign Trade Barriers*, p. 21. The Berne Convention standard is life plus 50 years.

[119] Ibid.

[120] Eric H. Smith, general counsel, International Intellectual Property Alliance, written submission to the Commission, Jan. 31, 1992.

[121] Information in this section is from U.S. Foreign Agricultural Service (FAS), *Trade Policies and Market Opportunities for U.S. Farm Exports: 1990 Annual Report*, Aug. 1991, and FAS, *Agricultural Situation Report-Brazil*, by John J. Reddington, U.S. Embassy, Brasilia, Mar. 26, 1991, and Mar. 1, 1992.

Figure 7-2
SELECTED SECTOR-SPECIFIC TRADE AND INVESTMENT BARRIERS: BRAZIL

General	• Foreign ownership restrictions in certain sectors of the economy.
Agriculture	• Tariffs: Grain and Oilseeds: Average 20 percent. Import quotas imposed and licenses required. Pulp (with one grade exception): 5 percent. Wood products: 20 percent. Most U.S. commodity-grades of paper and allied paper products: 20 to 40 percent.
Agricultural equipment	• Tariffs: Tractors: 40 percent. Other agricultural machinery: 25 percent.
Minerals and metals	• Tariffs: Steel products: Average 10 to 35 percent. Aluminum fabricated products: Up to 10 percent. Unwrought zinc and lead: 10 percent. Unwrought copper: 8 percent. • Ownership limitation up to 40 percent on foreign investment in privatized firms. • Foreign equity limited to 49 percent
Chemicals	• Lack of process or product patent protection for pharmaceuticals. • Price controls distort price comparisons between domestic and imported products.
Energy products	• Petroleum industry closed to foreign investment.
Motor vehicles	• Tariff: Complete vehicles: 85 percent. • Discriminatory taxes and fees based on engine displacement.
Machine tools	• Tariff: Machine tools that compete with those produced in Brazil: 15 percent.
Commercial aircraft	• Tariff: Imported aircraft under 40,000 kilogram (turboprop aircraft): 5 percent.
Electronic equipment	• Tariffs: Office equipment: 10 to 15 percent. Telecommunication equipment: 30 to 185 percent. Radio apparatus and television receivers and equipment: 0 to 60 percent. Electronic components: 30 to 55 percent. • Restrictions on imports of computer equipment, peripherals, and software. • Discriminatory software distribution requirements. • No explicit protection of copyrighted computer software. • Inconsistent enforcement of copyright, patent, and trademark legislation. • Domestic bias in Government procurement and fiscal incentive practices.
Scientific and medical instruments	• Tariffs: Range from 10 to 40 percent. • Ineffective protection of intellectual property rights. • Restrictions on devices incorporating digital technology.
Architectural, engineering, and design services	• Discriminatory Government procurement policies.
Business and professional services	• Discrimination against foreign technical service companies. • U.S. architectural, engineering, and construction industries subject to differential tax rates. • Nontransparency in Government regulations. • Barriers to the free provision of advertising services.
Insurance services	• Equity and voting stock restrictions on foreign investors. • Import insurance effectively restricted to domestic firms. • Source restrictions on Government-owned service providers. • Discriminatory tax laws favoring local firms. • Reinsurance purchases limited to the Government reinsurance monopoly.

Figure 7-2—Continued
SELECTED SECTOR-SPECIFIC TRADE AND INVESTMENT BARRIERS: BRAZIL

Oil and gasfield services	• Government-controlled petroleum industry. • Foreign investment restrictions. • U.S. service firms restricted by local-content and employment regulations, as well as technological transfer stipulations.
Telecommunication and nformation services	• Basic telecommunication services monopolized by Government. • Regulatory uncertainty for foreign investors. • Discriminatory billing practices. • Costly local-content requirements. • Restricted access to private telecommunication networks.
Banking services	• Transitional ban on the establishment of foreign banks since 1988. • Branching restrictions that favor domestic banks. • Certain banking sectors limited to domestic banking concerns. • Effective prohibition of U.S. acquisition of Brazilian banks.

Source: Compiled by staff of the U.S. International Trade Commission.

The Brazilian Government privatized the wheat marketing system in September 1990 but, as indicated above, continues to regulate the volume of imported wheat to "equalize" import prices with domestic prices, preventing imports of grain and oilseeds from underselling domestic products. The Government allows imports of wheat, corn, and rice only in periods of domestic shortage.

USDA estimated that in 1990, the effect of all Brazilian barriers to U.S. trade reduced U.S. exports to Brazil of wheat, rice, corn, cereal preparations (flour and starch), and dry edible beans by $312 million. In addition, Brazil's imports of government- assisted EC wheat and Canadian wheat under bilateral trade agreements in 1990 also affected the level of these U.S. exports. Brazil's trade agreement with Argentina in 1990 allowed a duty preference for Argentine wheat, corn, and dry edible beans over U.S. products. There are few barriers on foreign investment in grain and oilseed processing in Brazil.

Minerals and Metals

Overall, recent trade-liberalization measures in Brazil have improved market access and investment flows in the minerals and metals sector. These changes include the lowering of import tariffs, the elimination of import- and export-licensing restrictions, and the opening of privatization auctions to foreign investors. Nevertheless, there remains a 40-percent ownership limitation on foreign investment in privatized firms. Brazil's 1988 Constitution requires a majority domestic interest in all minerals operations. This stipulation is particularly significant for investors in this sector because of the considerable risk and long-term nature of developing minerals and metals projects. The Government of Brazil is currently considering a constitutional amendment to lift the foreign equity limitation in the minerals and metals sector.[126]

Steel Mill Products

Brazil nationalized its steel industry in the 1940s. Until October 1991, the Government owned all five coke-based integrated steel mills, which produced nearly two-thirds of Brazil's raw steel and almost all of its flat-rolled steel. Two mills were sold to private owners in late 1991 and one in early 1992. The head of Brazil's National and Social Development Bank, the agency in charge of privatizing Government-owned steel mills, was quoted as saying that Brazil also plans to auction Companhia Vale do Rio Doce (CVRD), which accounts for about 50 percent of Brazil's iron ore production.[127] However, since CVRD is already 49 percent foreign owned, any further investment by foreigners would require a change in the constitutional limitation on foreign investment.

Brazil retains "buy domestic" policies in Government procurement.[128] Furthermore, Government ownership limits foreign market access, especially in stainless steel and certain steel pipes, where a near state monopoly exists.[129] In addition, Brazil limits foreign ownership in the steel industry to 40 percent of equity and restricts the repatriation of

[126] U.S. Department of State Telegram, "Top Brazilian Mining Official Comments on Industry Prospects," Jan. 22, 1992, Brasilia, message reference No. 00660.

[127] "CVRD Expected to Hit Sales Block in 1993-94," *American Metal Market*, Jan. 29, 1992, p. 1.

[128] U.S. Department of Commerce, *Country Market Plan, Brazil, Fiscal Year 1992*, draft, pp. 49 and 54. Brazil has recently increased foreign access in bidding for Government contracts. See section on Government procurement.

[129] Steel industry consultant, telephone interview by the Commission, Oct. 1991.

profits.[130] The MERCOSUR regional trade bloc agreement, which would eliminate tariffs between Brazil and Argentina, may put U.S. producers at a cost disadvantage in two of the largest steel-consuming markets in the region.

Copper, Lead, Zinc, Tin, Magnesium, and Precious Metals

High tariffs are the main factor limiting U.S. market access in Brazil for most unwrought and wrought metals. There do not appear to be any nontariff measures that affect these products. Potential foreign investors see Brazil as having excessive nationalistic laws and an unrealistic tax structure.[131]

Chemical and Pharmaceutical Products

A major concern in the pharmaceutical sector in Brazil has been the protection of intellectual property rights. Brazil has excluded chemical and pharmaceutical products from patent protection since 1945,[132] and processes for manufacturing pharma- ceuticals have been excluded from patent protection since 1969.[133]

Citing this deficiency, the Pharmaceutical Manufacturers Association in July 1987 filed a petition under section 301 of the Trade Act of 1974 against Brazil that led to the initiation of an investigation of the Brazilian Government's denial of patent protection for pharmaceutical products. A Presidential determination that such practices were unreasonable and burdensome resulted in trade sanctions being imposed in 1988 on certain imports from Brazil.

On June 26, 1990, the Government of Brazil announced its intention to enact legislation providing patent protection for pharmaceutical products and production processes. In response, USTR terminated the section 301 investigation of Brazil on July 2, 1990, and lifted economic sanctions against $40 million of U.S. imports from Brazil, including pharmaceuticals. The Collor administration subsequently, in May 1991, submitted to the Brazilian Congress a draft intellectual property rights bill discussed earlier in this chapter.

Industry sources indicate that "pirated" goods continue to proliferate in Brazil. Such goods reportedly accounted for about 65 percent (or $62 million) of total sales of patented pharmaceutical products in Brazil in 1990.[134]

A spokesman for a U.S. chemical industry coalition cited Brazil's use of price controls as a trade and investment barrier for companies operating in the country.[135] As a trade barrier, price controls are said to distort price comparisons between domestic products and imported products. Price controls can also act as a barrier to investment in that they reduce or eliminate the ability of investors to recover their costs.

Energy

Brazil's petroleum industry is controlled by the Government-owned Petroleos Brasileiro, S.A. (Petrobras) and is closed to foreign investment. Industry sources do not anticipate that foreign investment will be allowed in the petroleum industry in the near future.

Under the Constitution, Petrobras maintains a monopoly in petroleum and natural gas exploration, refining, export/import activities, and maritime transportation of petroleum products.

Private firms, both domestic and foreign, may operate in the distribution of refined petroleum products. However, domestic prices for refined petroleum products remain regulated.[136]

Motor Vehicles

An overvalued currency, Government price controls, high capital costs, and hyperinflation in the 1980s contributed to the decline of the Brazilian motor vehicle industry. In 1990 the situation was exacerbated by price freezes, strikes and temporary plant closings, and Government anti-inflationary policies that depressed disposable personal income. During 1989-90, Brazilian motor vehicle exports (principally FIAT) were supported by government export-promotion programs and, when export promotions were terminated in 1990, exports collapsed.

In April 1990, the Brazilian Government opened its motor vehicle market to imports for the first time in 20 years. Initially, importers were limited to Brazilian-based manufacturers, and motor vehicle imports were limited to 10 percent of Brazil's total imports of all products, not to exceed $2 billion.[137] This provision limited U.S. exports to Brazil to only General Motors and Ford Motor Co. Although these restrictions were removed, the import duty on motor vehicles was fixed at 85 percent ad valorem for imports

[130] Brazilian steel industry representative, interview by USITC staff, Washington, Nov. 15, 1991. Recent reports indicate that the Collor administration is considering lifting the 40-percent foreign investment limitation and other investment restrictions. See Michael Kepp, "Brazil May Open Mill Privatization," *American Metal Market*, Jan. 3, 1992, pp. 1 and 16.

[131] U.S. Department of Commerce Telegram, "Mining Investment Sharply Lower During Year," Aug. 16, 1991, Rio de Janeiro, message reference No. 03619.

[132] *World Intellectual Property Report*, vol. 4 (Dec. 1990), p. 268.

[133] U.S. Congress, *Country Reports*, p. 411.

[134] "Foul Play Called by United States Over Patent Piracy in South America," *European Chemical News*, p. 24.

[135] Jeffrey Lang, of Winthrop, Stimson, Putnam & Roberts, written submission to the Commission on behalf of the Coalition for Free Market Pricing, Feb. 4, 1992.

[136] Pennwell Publications Co., *International Petroleum Encyclopedia*, vol. 24, (1991), p. 151.

[137] "Car Imports Freed," *Latin American Regional Report - Brazil Report*, R-B-91-04, May 2, 1991, p. 3.

of complete vehicles.[138] Hence, imports continue to represent a negligible portion of Brazil's motor vehicle market.[139]

Brazil also imposes other taxes and fees on imported motor vehicles that can elevate the price of an imported car by as much as 420 percent. These levies, based solely on engine displacement, tend to discriminate against large U.S. automobiles and trucks.[140] The most prominent national tax is the IPI, which applies to both domestic and imported manufactures and ranges from 10 to 42 percent, depending on the vehicle's engine size and horsepower.

President Collor's announced plans for an "industrial competitiveness incentive program" (PIC) will improve Brazil's investment climate, including the motor vehicle sector, by lowering the cost of capital investment by 25 percent and by abolishing valued-added taxes and levies on industrial products and machinery.[141]

Recently signed protocols (Protocols 1 and 21) to the 1986 Brazil-Argentina bilateral economic integration agreement will affect the movement of automobiles and automobile parts in the region and, consequently, U.S. market access. The details of these arrangements are discussed in the Argentine Motor Vehicles sectoral analysis earlier in this chapter.

Commercial Aircraft and Aircraft Engines

Brazil applies a 5-percent tariff on the c.i.f. value and other fees to small turboprop imports that can raise the price of such U.S. aircraft by at least 30 percent. This tariff especially affects the turboprop business aircraft that compete directly with those made by the Brazilian company Embraer. Presidential Decree 99,694 of November 1990 eliminated the IPI for all imports of aircraft except the turbojet business aircraft.[142] Aside from the duty, Brazil assesses an IPI tax of 10 percent on both domestic and imported turbojet aircraft and aircraft engines; a Federal customs clearing fee of 1.8 percent; and a customs broker fee of 0.45 percent, based on the f.o.b. value. Imports are also subject to a merchandise circulation tax, a 2-percent tax on airport development, a 9.9-percent import-licensing insurance fee, and several other taxes. Brazil also requires prior approval of the Brazilian Air Force for all aircraft imported into the country.

Electronic Equipment

Brazil's restrictive import policies for electronic products have fostered the development and expansion of a domestic electronic equipment industry in a climate virtually devoid of competition from imports.

Informatics

The informatics sector encompasses a wide range of products that includes microcomputers, semiconductors, software, telecommunications products, and electronic components. Since the early 1970s, the Government of Brazil has maintained so-called "market reserve" policies to foster the development of an indigenous "informatics" industry.

These policies restricted and sometimes prohibited foreign firms from competing in the country's markets for computer equipment, software, and other digital data processing equipment and subassemblies and gave financial incentives to domestically owned manufacturers of these products.

The Informatics Law of 1984[143] denied foreign firms access to the Brazilian informatics equipment market for a period of 8 years if "similar" equipment was produced locally. The immediate effect of the law was to bar foreign firms from entering Brazil's data processing and minicomputer markets. In December 1987, Brazil passed a new software law[144] that permitted foreign software companies to market their products in the country on a limited basis and established explicit copyright protection for computer software in Brazil. The rules for importing and selling software products were further liberalized in 1989; remittance of profits from the sale of imported software was also permitted, subject to certain taxes.[145]

Limited domestic production of software and restrictions on certain software imports had contributed to the expansion of software piracy; there reportedly were up to nine illegal copies for each legitimate personal computer software package sold in Brazil. However, piracy reportedly has declined significantly since the passage of the software legislation in 1987.

Under current regulations, production of computers and related digital processing equipment in Brazil is still reserved for Brazilian companies.[146] However, in October 1991, Brazil enacted a new Informatics Law (Law 8,248) that called for an end to Brazil's market reserve policy for all informatics products by October 1992. While the new law is generally regarded as less protectionist than its predecessor, it still allows foreign investors to acquire only up to 49 percent of a Brazilian

[138] U.S. Department of State Telegram, "GOB Reportedly Seeks to Liberalize Auto imports," May 4, 1990, Brasilia, message reference No. 007119.

[139] Brazil's informatics law also prevents vehicle manufacturers from modernizing their production by prohibiting imports of computerized equipment or controls for use in engine and braking systems and electronic transmissions.

[140] "Importers Jostle for Position as Brazil Opens Markets," *Ward's Automotive International*, July 1991, p. 1.

[141] "Automotive Investment in Brazil to Surge as a Result of Government Incentive Program," *Automotive Parts International*, Mar. 22, 1991, p. 3.

[142] U.S. Department of Commerce, *Brazil - FY '92 Country Market Plan*, U.S. Embassy, Brasilia, 1991, p. 54.

[143] Decree Law 7,232 of Oct. 29, 1984.

[144] Law No. 7,646 was enacted on Dec. 18, 1987, and implemented by Decree No. 96,036 of May 12, 1988.

[145] U.S. Government officials and industry representatives, interviews by the Commission.

[146] "1990 Investments Slashed," *Gazeta Mercantil*, Sept. 30, 1991, p. 5.

firm's voting capital in the informatics sector (up from the previous 30-percent rate) and fails to define what will be the legal standing of technological joint ventures after the market reserve policies expire in 1992.

Moreover, the new law continues to favor local suppliers in terms of government procurement and fiscal incentives. For example, local suppliers are exempt from the IPI tax. They can offset up to 1 percent of income taxes with purchases of informatics equipment produced by Brazilian firms, and they can also offset up to 50 percent of their income tax liability in exchange for research and development (R&D) expenditures within Brazil.[147] Foreign electronic equipment producers with manufacturing facilities in Brazil may also receive these incentives, but only if they devote 5 percent of revenues to R&D activities within the country and meet export and worker-training commitments.

Scientific and Medical Instruments

Brazil's use of the Law of Similars limited the nation's imports of lower grade medical and scientific instruments. Its informatics law has affected U.S. producers of advanced scientific and medical equipment by limiting imports of devices incorporating digital technology, including many advanced industrial process control and medical electronics instruments and systems.[148] Brazil has at times required U.S. and other foreign producers of such equipment to establish Brazilian majority-owned joint ventures to gain market access.[149]

Services

Banking Services

Transitional provisions in Brazil's Constitution have imposed a ban on the establishment of foreign banks since 1988. It appears that the ban will continue at least until the Brazilian Congress enacts legislation regulating the role of foreign capital in the country's financial sector. This prohibition effectively bans U.S. acquisitions of Brazilian banks. While all banks in Brazil are subject to branching restrictions, Brazilian banks may acquire other domestic banks as a means of increasing business.[150] Moreover, whereas U.S. banks are not authorized to collect fees and taxes on behalf of the Brazilian Government, Brazil's domestic banks are permitted to do so.[151]

Business and Professional Services

Brazil has restrictive regulations on the provision of services by foreign firms. Foreign ownership of television, radio, and print media is prohibited.[152] Brazilian firms can subcontract services to foreign firms only when domestic expertise is not available for a specific task. In bidding for foreign contracts, foreign firms may present a bid to provide technical services only when no Brazilian firm is qualified to provide these services (Decree No. 64,345).[153] Furthermore, it is difficult for foreign service firms to operate in Brazil unless the work is done in association with a local firm in order to establish a "legal presence." The Brazilian National Industrial Property Institute regulates the contracting of foreign specialized technical services that includes not only engineering services and industrial research and development, but also management studies.

Insurance Services

Brazil's nontariff trade measures as applied to insurance services are highly restrictive. No new insurance licenses have been granted since 1966. Foreign investors may own no more than 50 percent equity and 30 percent of voting stock in an existing insurance company, insurance brokerage, or private premium fund. There are rigorous restrictions on foreign marine insurance for imports and exports, meaning that goods entering or leaving Brazil must be insured by Brazilian companies.

Oil and Gasfield Services

The Brazilian petroleum industry remains Government controlled, and foreign investment restrictions still apply to most upstream and downstream sectors of the industry. U.S. firms, however, have been able to participate in the Brazilian markets for oil and gasfield services because the Government-controlled oil companies generally rely on outside contractors to provide these services. These firms cannot invest directly in the national oil industry nor can they hold claims to a percentage of the recovered oil.

On March 14, 1991, President Collor announced a "National Reconstruction Program" that would abolish preferences for Brazilian drilling contract service companies. However, since these changes have yet to be translated into Brazilian law, article 171 pertaining to market reservation in the mining and petroleum exploration sectors is still in effect.

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[147] *Increasing Investment in Brazil: A Status Report*, Brazil-U.S. Business Council, Sept. 1991, pp. 9 and 14. See also text of new Informatics Law, signed by President Collor on Oct. 23, 1991.

[148] U.S. Department of State Telegram, "1992 Trade Act Report: Brazil," Nov. 20, 1991, Brasilia, message reference No. 12412.

[149] U.S. Department of Commerce, "The Medical Instruments and Supplies Market in Brazil," *Market Research Reports*, July 1988.

[150] The Brazilian President recently empowered the Central Bank to authorize foreign banks' acquisition of additional branches, although the Central Bank has not indicated whether or when foreign branching restrictions will be lifted.

[151] U.S. Department of the Treasury, *National Treatment Study 1990*, p. 112.

[152] *Exporter's Encyclopedia*, p. 2-166.

[153] USTR, *1992 Foreign Trade Barriers*, p. 22.

Telecommunication and Information Services

The access of U.S. firms to the Brazilian telecommunication and information services markets historically has been inhibited by Government trade and investment measures designed to maintain the monopoly of Brazil's domestic telecommunications authority (TA). Furthermore, the wording of these regulations leaves great discretion to the TAs to decide what services can be provided competitively by private and foreign providers. For example, foreign firms are prevented from providing certain technical services unless Brazilian firms are unable to perform them. INPI, the National Institute of Industrial Property, approves all technical service contracts and often subjects them to substantial delays.[155] The Brazilian Government also has not yet categorized certain advanced telecommunication services such as personal communications networks. Under current guidelines, it is unclear whether these services fall under the public service category which, under current law, would preserve it for the state sector.[156]

Foreign investment regulations in Brazil require that companies be 51-percent controlled by Brazilian nationals. This measure denies U.S. service providers control over major management and policy decisions regarding their investments. In addition, U.S. firms are unable to offer cost-effective telecommunication and information services[157] in Brazil because international leased lines are priced on a volume-sensitive rather than a flat-rate basis.[158]

Finally, the 1984 Informatics Law prevents U.S. telecommunication and information services providers from exporting their own software and electronics equipment into the country. Because of this prohibition, U.S. service providers must pay higher prices for local goods, thus increasing the cost of providing services in Brazil.

In July 1991, the Brazilian Government removed restrictions for telephone switching equipment and allowed private use of public telephone lines for international data processing-a significant change for foreign firms that operate in Brazil and rely on this service.[159] Eventually, it is expected that sale of excess line capacity will be permitted among members of a private network. Because most private networks are operated by the financial services industry and multinational corporations, they are expected to be the first to benefit from this decree.

Transportation Services

Brazil maintains very broad-based restrictive practices in maritime transportation services. Brazil has cabotage restrictions,[160] cargo preference requirements,[161] and a Government-owned liner company. Various bilateral agreements also affect competition in maritime transportation.[162] Most Brazilian port facilities are Government owned and are often staffed by Government employees. Port costs tend to be extremely high. Privatization of the ports has, however, been one element of the Collor administration's economic liberalization plan.[163]

[155] U.S. Department of State Telegram, "Final Report: U.S.-Brazil Telecom," May 20, 1992, Brasilia, message reference No. 05251.

[156] Ibid.

[157] Representatives of the U.S. information services industry, interview by the Commission, Washington, DC, Nov. 1991.

[158] Flat-rate pricing allows a firm to have unlimited usage of a leased line at a specified price. Volume-sensitive pricing requires that a firm pay leasing charges to the network owner based on the level of usage.

[159] U.S. Department of State Telegram, Nov. 1991, Brazilia, message reference No. 333464.

[160] Cabotage laws prohibit foreign-flag vessels from plying the domestic trades in a specific country; a foreign flag vessel calling at two consecutive ports in a country may not pick up cargo in one and discharge it at the next.

[161] Cargo preference requirements refer to the obligation to transport certain types or amounts of a country's cargo on ships flagged by that same country.

[162] Bilateral agreements refer to agreements between two countries to split cargo (moving between those countries) between the ships flagged by those two countries. The split may be any negotiated ratio; it need not be equal.

[163] Voyce J. Mack, Deputy Director of the Office of International Transportation and Trade, U.S. Department of Transportation, *Statement Prepared for the USITC and the Senate Finance Committee*, Jan. 22, 1992.

CHAPTER 8
CENTRAL AMERICAN AND CARIBBEAN COUNTRIES

CONTENTS

CHAPTER 8
CENTRAL AMERICAN AND CARIBBEAN COUNTRIES[1]

Economic Trends in the Region

The Central American and Caribbean region, comprising many relatively small nations with a combined population of about 60 million, has suffered considerably during the past two decades. Torn by civil wars and regional conflicts, rising world market prices for energy imports, and falling prices for important basic agricultural exports, the region faced economic stagnation and mounting international debt. Although real gross domestic product (GDP) increased by 15.9 percent during 1981-91, per capita GDP actually decreased by 10.4 percent. Moreover, the region's terms of trade deteriorated by 10.4 percent during the period, and have improved little in the past 3 years.[2]

The United States is a major trading partner for the region and, in an effort to stimulate economic growth and diversify exports, is encouraging the export of nontraditional goods through the Caribbean Basin Economic Recovery Act (CBERA). Bananas, coffee, sugar, beef, and apparel accounted for more than half of U.S. imports from the region. The leading U.S. exports to the region included oil, airplanes, wheat, and corn.

In an effort to improve their competitive position in the global market, the Central American and Caribbean nations are focusing their trade policies on regional coordination in the removal and liberalization of trade barriers. Except for Honduras and Panama, which are in the process of applying for membership, all Central American nations are contracting parties to the General Agreement on Tariffs and Trade (GATT). Commitments made in acceding to the GATT and in fulfillment of various multilateral loan programs have also prompted these countries to reform their trade and investment regimes and undertake efforts to spur economic growth.

The remainder of this chapter focuses on Costa Rica and its trade and investment policies. Costa Rica traditionally has been one the strongest and most stable democracies in the Central American and Caribbean region, both politically and economically. In addition, Costa Rica has one of the most open investment climates in the region and is the United States' largest trading partner in Central America.

[1] See chapter 1 for a list of these countries.

[2] Data in the paragraph from the United Nations, Economic Commission for Latin America and the Caribbean (ECLAC), *Preliminary Overview of the Economy of Latin America and the Caribbean, 1991*, Dec. 1991, tables 2, 3, and 11-14, pp. 37, 38, and 46-49.

Costa Rica

A series of economic shocks hit Costa Rica in the late 1970s and early 1980s and, by 1982, the nation was facing its worst recession in over 30 years. During 1980-82, real GDP per capita fell by 14 percent, the unemployment rate virtually doubled, and inflation reached its peak at 109 percent in 1982.[3] Costa Rica's debt soared, as world prices for coffee, one of its main exports, plunged and oil prices doubled.[4] Capital flight, uncertain exchange-rate policies, and a lack of access to international financial markets forced a moratorium on Costa Rica's debt servicing. Thus, a decade-long struggle began against balance-of-payment imbalances and debt-servicing difficulties, aggravated by high interest rates and short-term borrowing.

Economic policies implemented during the period following the 1980-82 crisis led to a period of sustained recovery during the remainder of the decade. In conjunction with accession to the GATT and negotiations for new Structural Adjustment Loans (SALs) from the World Bank, Costa Rica has moved toward reform and more transparency in its trade policies. However, significant barriers still exist in selected sectors. They include import surcharges; prior import deposit requirements; high tariffs on automobiles; import price bands on grain and dairy products; export subsidies; banking and insurance restrictions; and inadequate intellectual property protection.

Economic Profile

The Costa Rican economy, traditionally dominated by agriculture, shifted during the 1980s to one characterized by an emerging industrial base and a broadened agricultural sector. Agriculture accounts for almost 20 percent of the nation's output, 25 percent of employment, and 70 percent of exports. Traditional exports such as coffee, bananas, and beef account for most of Costa Rica's agricultural production and exports. The manufacturing sector, led by food processing, petroleum distillation from imported crude oil, textiles, chemical products, and metals and metalworking, accounts for 20 percent of GDP and 33 percent of total merchandise exports. The rest of Costa Rica's economic activity consists mainly of services (appendix C, table C-2).

In 1990 Costa Rica faced an overall $98 million trade deficit,[5] which is projected to fall by slightly

[3] Inter-American Development Bank (IDB), *Economic and Social Progress in Latin America: 1990 Report* (The Johns Hopkins University Press: Washington, DC, 1990), p. 88 and table B-2, p. 265.

[4] U.S. Department of State, Bureau of Public Affairs, *Background Notes: Costa Rica*, Mar. 1989.

[5] Inter-American Development Bank (IDB), *Economic and Social Progress in Latin America: 1991 Report* (The Johns Hopkins University Press: Washington, DC, 1991), p. 276.

more than half in 1991.[6] The United States is Costa Rica's largest trading partner, accounting for roughly 40 to 45 percent of its exports and imports. Other Latin American nations accounted for 17 percent of Costa Rica's exports and 12 percent of its imports in 1989.[7] The U.S. trade deficit with Costa Rica in 1991 totaled $111 million, based on U.S. imports of $1.143 billion and U.S. exports of $1.032 billion (table C-12). Leading U.S. exports to Costa Rica in 1990 included oil, textiles and apparel, and grains. The main U.S. imports from Costa Rica included bananas, coffee, and apparel.

Trade and Investment Policies and Liberalization

When the Rafael Calderon administration took office in May 1990, it was confronted with record trade deficits, shrinking Central Bank reserves, and an increasing domestic debt.[8] In conjunction with its accession to the GATT in November 1990, the Government of Costa Rica pledged to pursue tariff reductions, the elimination of import deposits and surcharges, and the elimination or "tariffication" of nontariff barriers. Also on the agenda was the reform of the customs service, continuation of free-trade talks with several nations, removal of export subsidies, privatization of port operations, and competition in the insurance sector.[9]

In November 1990, Costa Rica and the United States signed a bilateral framework agreement under the Enterprise for the Americas Initiative to provide for bilateral consultations on trade and investment issues.[10] The two nations are in the final stages of negotiations for a bilateral investment treaty, although several outstanding issues, especially the prior deposit requirement, are holding up the agreement.[11]

Import Policies

Recent Costa Rican reforms in import policies have consisted of the lowering or elimination of tariffs and import duties and a move toward the removal or tariffication of existing quantitative restrictions. Figure 8-1 provides a tabulation of existing selected sector-specific trade and investment barriers.

Tariffs

Costa Rica has historically relied heavily on import duties for Government revenue. As part of its GATT accession and structural loan requirements, Costa Rica agreed to institute a more transparent, unified, and lower tariff and tax structure. In response, the uniform tariff has been reduced to 11 percent, with a bound ceiling of 35 percent, but over 200 exceptions are allowed. In April 1992, Costa Rica further reduced duties on a number of products as part of its goal of having a maximum 20-percent tariff for all products by April 1993.[12]

Import Surcharges and Taxes

On March 31, 1992, Costa Rica eliminated the Central Bank surcharge of 2 percent that had been applied to all imports.[13] Although Costa Rica has agreed to eliminate the customs tax, no timetable has been set for its elimination. In the past, the Central Bank has exercised its authority to impose much greater additional surcharges at any time, without legislative approval, to maintain foreign-exchange reserves. The Central Bank operates exchange controls, and all foreign-exchange transactions must take place either through the Central Bank, state commercial banks, or certain private banks authorized by the Central Bank.

Costa Rica applies a selective consumption tax of 5 to 75 percent on certain imports. It also assesses border fees and other charges which, along with a sales tax of 12-13 percent, can increase sharply the effective tariff rate on imported items.

Prior Deposit Requirement

Costa Rican law requires that the Central Bank supply foreign exchange freely. In practice, however, the availability of foreign exchange is restricted. Costa Rica requires that importers make a prior deposit of 30 percent of the purchase value of an import shipment in order to obtain foreign-currency authorization from the Central Bank. Prior to May 14, 1991, the prior deposit requirement was 100 percent of the import-shipment value. Administrative delays and the unavailability of foreign currency (primarily U.S. dollars) have caused importers to wait for up to 6 months for foreign currency.[14] The United States continues to seek the elimination of this requirement and the Calderon administration has listed its removal as one of its top trade policy priorities.

Export Policies

As part of its move toward promoting nontraditional exports, the Costa Rican Government introduced in 1985 a system of tax incentives for

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[6] U.S. Department of State Telegram, "1992 Trade Act Report for Costa Rica," Nov. 4, 1991, San Jose, message reference No. 11184.

[7] Not including Guatemala and Venezuela.

[8] U.S. Department of State Telegram, Feb. 21, 1991, San Jose, message reference No. 01966.

[9] U.S. Department of State Telegram, July 24, 1991, San Jose, message reference No. 07683.

[10] "Agreement Between the Government of the United States and the Government of the Republic of Costa Rica Concerning a United States-Costa Rica Council on Trade and Investment," signed Nov. 29, 1990.

[11] Representatives of the U.S. Department of Commerce, International Trade Administration, and the Office of the United States Trade Representative (USTR), conversations with the Commission, Jan. 21, 1992.

[12] U.S. Foreign Agricultural Service (FAS), "Agricultural Situation: Tariff Reductions Update—Costa Rica," AGR No. CS2010, Apr. 21, 1992, p. 1.

[13] Ibid.

[14] U.S. Department of State Telegram, Jan. 15, 1991, San Jose, message reference No. 00483.

Figure 8-1
Selected Sector-Specific Trade and Investment Barriers: Costa Rica

General	• Prior deposit requirement of 30 percent of the value on each import transaction.
Agriculture	• Tariffs, including variable levies or import price bands, impose restrictions on grain and oilseed products. • Import permits required for dairy, meat, vegetable and grain products.
Chemicals	• Reported subsidization of fertilizer industry. • Inadequate intellectual property rights protection.
Motor vehicles	• Tariff and associated taxes amount to 105 percent for autos and 61 percent for pickups. • Selective consumption taxes and quotas on used-car imports.
Electronic equipment	• Tariff: Radio apparatus and television equipment and apparatus: 15 percent.
Scientific and medical instruments	• Tariffs: Average about 12 percent ad valorem. • State Social Security Institute exempt from import duties. • Ineffective protection of intellectual property rights.
Business and professional services	• Foreign ownership restrictions. • Professional licensing requirements. • Restrictions on the right to practice and right of establishment. • Local bias in contract consideration. • Local participation requirements for consulting services competing for domestically funded projects. • Hiring limitations favor domestic labor pool.
Telecommunication and information services	• Regulatory uncertainty for foreign investors. • Basic telecommunication services monopolized by the Government. • Lack of explicit copyright protection for certain data bases. • Foreign investment prohibited in newspaper and communications firms, the telecommunication system, and distribution of electricity.
Insurance services	• Government-owned company controls the market, competition not permitted.

Source: Compiled by staff of the U.S. International Trade Commission.

exporters and for companies that generate foreign exchange, such as those involved in tourism. These incentives allowed (1) 100-percent income tax exemption on profits from nontraditional exports, (2) exemption from sales and consumption taxes, (3) exemption from import taxes for all goods used in the production of such exports, and (4) certificates of tax accrual (Certificado Abono Tributario, or CAT). CATs are negotiable tax rebate certificates that can be used in lieu of cash for settlement of most tax obligations. The elimination of the CAT is required by SAL requirements and the GATT accession agreements. The subsidy program is currently scheduled to be phased out in 1996, but the Calderon administration has requested a 3-year extension of the CAT to allow time for the subsidies to be reduced by 30 percent. As of October 1991, a 25-percent tax was levied on CATs.[15]

[15] U.S. Dept. of State Telegram, "1992 Trade Act Report."

Foreign Investment Policies

Foreign investment in Costa Rica in 1990 totaled $135 million, 75 percent of which, or $101 million, was U.S. investment.[16] This investment flowed primarily to the maquiladora industry and other labor-intensive industries, including areas such as agriculture, electronic and apparel assembly, toys, sporting goods, and health care products.[17]

Although Costa Rican foreign direct investment (FDI) policy permits U.S. companies and individuals to own equity in Costa Rican firms and is considered one of the more open in the region, there are several important areas in which the Government of Costa Rica has been slow to enact investment reforms. These areas include foreign-exchange transfers, intellectual

[16] Ibid.

[17] U.S. Department of Commerce, *LA/C Business Bulletin*, vol. 1, No. 6 (Oct. 1991).

property protection, Government-restricted sectors, and regulatory and bank reform.

Foreign Investment Restrictions

Though national treatment for foreign investment is guaranteed, the Central Bank maintains the ability to deny foreign-exchange access for investors, and foreign investment of over $50,000 must be registered with the Costa Rican Central Bank. Foreign investment is restricted to 49 percent in air-transport firms and is forbidden in several important sectors, including newspaper, communications, and customs brokerage firms.

Public utilities (including the public telephone system and the production and distribution of electricity), insurance, hydrocarbons and radioactive mineral extraction, refining, and port and airport operations are activities reserved under the Constitution for the Government and are therefore not open to private domestic or foreign investment. Foreign companies may also be denied medium and long-term credit, which the Government directs to priority sectors and domestic enterprises. Costa Rican policy requires that a company limit its foreign-born workforce to 10 percent of its total workforce and 15 percent of its payroll.

Despite recognizing private property rights, Costa Rican laws recognize squatter claims to land, and such standards have resulted in several U.S. citizens' losing property to squatters. Although ongoing, the resolution of the U.S. claims has been slow. The U.S. Overseas Private Investment Corporation (OPIC) has also recognized this problem and has reported that a lack of land titles complicates the registration of mortgages in Costa Rica.[18]

Foreign Capital Restrictions

In addition to the previously mentioned prior deposit requirement, the Costa Rican Government does not allow the repatriation of foreign capital for 2 years after investment. Moreover, the Central Bank may take up to 60 days to process transfers, with the average delay being 3 to 4 weeks. These delays cause many investors to turn to the parallel market, which is illegal but widely tolerated by local authorities.[19] The Costa Rican Government is reportedly considering legalizing the parallel market.

Protection of Intellectual Property

Although Costa Rica has a basic framework in place for the protection of intellectual property, there are significant deficiencies in its existing laws, including short patent terms, pervasive compulsory licensing, and numerous exclusions from patentability. Copyright and trademark piracy is widespread. Costa Rica is not a member of the Paris Convention for the Protection of Industrial Property, the primary international agreement for extending national treatment to foreign patent applicants, or any other international industrial property convention.[20]

Patents

Under Costa Rica's 1983 patent law, patents are granted for 12 years, with no extensions. In the case of an invention already patented abroad, the term of the Costa Rican patent is the unexpired term of the foreign patent, not to exceed 12 years.[21] In addition, certain types of inventions (i.e., medicines, pharmaceuticals, chemicals, fertilizers, and all food and beverage products) are given only 1-year patent terms for public policy reasons and some may be expropriated by Government entities when such expropriation is deemed in the public interest. Moreover, Costa Rica has a broad compulsory licensing regime that requires compulsory licensing of improvement patents.[22]

Trademarks

The absence of a use requirement and the lack of protection for foreign marks result in serious problems for firms seeking to do business in Costa Rica. Trademarks used in services and collective marks are protected in Costa Rica under the Central American Agreement for the Protection of Industrial Property of 1968 (Agreement). The term of a trademark registration is 10 years and may be renewed in increments of 10 years. The owner of a mark does not have the right to prohibit the importation of goods from the Central American Customs Union countries, even when use of the mark is unauthorized. Trademark piracy is a serious problem in Costa Rica. The U.S. Embassy in San Jose reports that counterfeit goods bearing well-known trademarks, particularly articles of apparel and handbags, are widely available in Costa Rica.

Costa Rican firms can and do register numerous famous U.S. trademarks, apparently in the hope of extracting licensing fees from the U.S. companies seeking to sell their products in Costa Rica. National law apparently provides no grounds for cancellation of these trademarks. The owner of a registered mark has the right to obtain damages for infringement, to press

[18] U.S. Department of State Telegram, Dec. 18, 1991, Washington, DC, message reference No. 7929.

[19] The parallel market is estimated to meet 25 percent of all foreign-currency needs. Dollars receive a 2- to 5-percent premium on the Central Bank rate.

[20] Information presented here on Costa Rica's protection of intellectual property was largely obtained through interviews with officials of the U.S. Patent and Trademark Office, Office of Legislative and International Affairs, and from material provided by this office dated Oct. 17, 1991, except as noted.

[21] A 6-month right of priority for applications filed in other countries will be granted on the basis of reciprocity.

[22] Improvement (or dependent) patents improve upon basic patents. To practice an improvement patent, one would necessarily have to practice the basic patent. Costa Rican law assures the inventor of the improvement patent a license to practice the basic patent, regardless of the wishes of the basic patentholder.

charges for criminal violation, and to demand that infringing goods be impounded, but criminal charges are brought only on the complaint of an injured party, and the burden of going forward with the case falls largely on the private complainant.

Copyrights

Costa Rica's copyright law, which dates from 1982, is generally considered adequate despite a lack of express protection for computer programs and data bases, a lack of clarity in the scope of protection for works embodied in satellite transmission, and excessively detailed provisions governing the contractual relations between copyright owners and users.

Enforcement remains a significant problem. U.S. industry sources report that sales of illicit audio cassettes take 20 to 25 percent of the market. Fines are as little as $50. Prison terms are from 1 to 12 months but are frequently suspended by the court.

As with trademarks, criminal charges are brought only on the complaint of an injured party, and the burden of going forward with the case falls largely on the private complainant. According to U.S. industry sources, all legal actions against pirates have been suspended pending a decision on the constitutionality of the 1982 copyright law; sources fear the case could take until 1995 to be decided.

Sector-Specific Barriers

Agriculture

Based on the Costa Rican Government's objective of self-sufficiency in basic foods, import permits are required for certain agricultural products, including dairy, meat, vegetable, and grain products. With the exception of basic foodstuff imports allowed in times of domestic shortages, the permit requirement can act as a virtual ban on imports because requests for permits are often denied.[23] In April 1992, Costa Rica announced that it will eliminate import permits for some types of beef and products.[24] The Costa Rican Government has indicated that the elimination or tariffication of existing quantitative restrictions and import permits for agricultural products is a principal objective of its trade policy agenda and committed in its GATT accession to eliminate import-permit requirements within 4 years.

In addition to certain import-permit requirements, the Costa Rican Ministry of the Economy sets producer, wholesaler, and retail prices for several agricultural products, including rice, wheat, flour, beans, milk, and eggs, with the price based on world market prices. During 1990-91, U.S. exports were not hindered, because the world market prices for basic grains were equal to or exceeded the Costa Rican prices.

[23] U.S. Foreign Agricultural Service, "Agricultural Situation: Tariff Reductions - Costa Rica," AGR No. CS2007, Mar. 27, 1992, p. 1.

[24] FAS, "Agricultural Situation: Tariff Reductions Update."

Motor Vehicles[25]

Following consultations with the United States, Costa Rica in December 1991 adopted a new customs classification structure that places U.S. vehicles on an "equal footing with Japanese imports" and significantly reduced import tariffs for motor vehicles.[26] Import tariffs for autos and pickups were reduced to 20 percent ad valorem from as high as 100 percent, and the Central Bank surcharge of as much as 19 percent was eliminated. At the same time, however, Costa Rica raised the consumption tax on autos to 47 percent from 12-13 percent and instituted one for pickups of 15 percent.

Under the new Costa Rican rules, all tariffs and related fees are based on the vehicle's value, and not on its engine size (autos) or payload capacity (pickups). These distinctions had favored smaller autos and larger pickups, which were supplied almost entirely by Japanese producers. U.S. producers generally do not manufacture the smaller autos (i.e., those with an engine size of not more than 1,500 cubic centimeters) in the United States and the U.S. industry's specifications for pickups appear to be stricter than those of Japan, resulting in substantially higher Costa Rican charges on the U.S. vehicles.[27] Nevertheless, even with the December 1991 reforms, Costa Rica's tariffs and related fees still amount to 105 percent ad valorem for autos, though down from as high as 220 percent, and 61 percent for pickups. In addition, Costa Rica's duties and associated fees for autos are more than double those of other nations in Central America.

[25] The information in this section is from Costa Rican-American Chamber of Commerce (AMCHAM), *Business Costa Rica*, Feb.-Mar. 1992, pp. 8 and 9, and U.S. Department of Commerce Telegrams, San Jose, "Tariff/Nontariff Barriers to U.S. Exports of Used Vehicles to Costa Rica," Apr. 19, 1991, message reference No. 016036, and "Latest Regulations on Costa Rican Import Duties and Fees for Vehicles," July 30, 1991, message reference No. 031094.

[26] Decree No. 20950-H of Dec. 24, 1991.

[27] According to AMCHAM, a Ford Ranger is classified under U.S. industry specifications as a three-quarter ton pickup, while a Japanese Toyota pickup is rated for a 1-ton load. Both vehicles, in practice, meet identical standards and compete directly in the U.S. market based on payload capacity. Costa Rica's efforts to give breaks to pickups that carried more or were fuel efficient resulted in this "semantic taxing" of Japanese trucks at 53 percent while U.S. pickups were charged 213 percent.

APPENDIX A
REQUEST LETTER AND *FEDERAL REGISTER* NOTICE

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

October 29, 1991

DOCKET NUMBER
1657
Office of the Secretary
Int'l Trade Commission

The Honorable
Anne E. Brunsdale
Acting Chairman
United States International
  Trade Commission
500 "E" Street, S.W.
Washington, D.C. 20436

Dear Madam Chairman:

As you know, on June 27, 1990, President Bush formally launched the Enterprise for the Americas Initiative (EAI) in an effort to achieve expanded trade among countries in the hemisphere, promote investment and support economic reforms in Latin American and Caribbean countries, and provide debt relief for Latin American and Caribbean countries. On March 1, 1991, the President requested an extension of "fast-track" negotiating authority. The subsequent extension of that authority by Congress gave the President authority to pursue the trade agreements envisioned under the EAI. However, the President indicated in his extension request that, while Chile could be a candidate for the negotiation of a free trade agreement within the two-year period of the extension, few, if any, other Latin American countries would be ready to negotiate such agreements.

Latin America is already a major U.S. trading partner. After a decade of debt-driven austerity and bilateral disputes on issues such as export subsidies, investment performance requirements, and protection of intellectual property rights, the United States and many of its Western Hemisphere trading partners appear poised to work together to provide a firm basis for renewed economic growth, stability, and expanded two-way trade. Over the past 18 months, several Latin American nations have signalled their intention to move away from policies of extensive state intervention in favor of market-oriented domestic economic policies and more liberal trade and investment regimes. These efforts are most welcome and could have important implications, not just for the Latin American economies themselves, but for the United States as well.

As we consider closer trade ties, it is important that U.S. business leaders and policymakers have a better understanding of the business climate in Latin America, including the scope of the changes being undertaken and their implications for future U.S.-Latin American relations. Accordingly, on behalf of the Senate Committee on Finance, I request that you conduct a fact-finding study under section 332(g) of the Tariff Act of 1930 to review recent economic and trade policies in Latin America, to assess current obstacles to U.S. market access in Latin America, and to analyze the effect of recent liberalization measures by these countries on flows of U.S. goods, services, and investment to Latin America.

The study should provide a concise overview of current obstacles to U.S. market access in Latin America consisting of (1) a brief summary of Latin America's economic performance during the past decade, (2) a profile of barriers to U.S. market access and of current Latin American trade, investment, and production patterns, and (3) highlights of recent events significantly influencing U.S.-Latin American economic relations, including a description of recent liberalization measures undertaken by these countries and of the EAI and other efforts to expand intra-regional trade.

In addition, because the President's request for an extension of fast-track authority specifically identified Chile as a potential candidate for the negotiation of a free trade agreement within the extension period, the study should include a case study on Chile. In general, the case study should provide a closer examination of Chilean trade and investment policies than is provided in the broader study of the other Latin [South] American countries. Specifically, the case study should include (a) a brief review of past trade-related economic policies, (b) a description of remaining barriers affecting U.S. market access, including current trade and investment restrictions, and (c) an overview of Chilean policies influencing Chile's exports to the United States.

Given the diversity of topics to be addressed, and the rapid pace of developments in regional relations, the Commission should provide an initial study by March 1, 1992, with follow-up reports as necessary to complete the investigation. In view of the time constraint, the study should be concise. Future studies could provide more detailed reviews of the trade and investment regimes of selected countries or of selected industries. Topics for future analysis should be developed in consultation between the Commission and Committee staff as events unfold.

Thank you for your cooperation.

Sincerely,

Lloyd Bentsen

Lloyd Bentsen
Chairman

[Investigation No. 332-318]

U.S. Market Access in Latin America: Recent Liberalization Measures and Remaining Barriers (With a Special Case Study on Chile)

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

Window fans, industrial oscillating fans, industrial ceiling fans, and commercial ventilator fans are not included within the scope of these investigations. Furthermore, industrial ceiling fans are defined as ceiling fans that meet six or more of the following criteria in any combination: a maximum speed of greater than 220 revolutions per minute (RPMs); a minimum air delivery capacity of 8,000 cubic feet per minute (CFM); no reversible motor switch; controlled by wall-mounted electronic switch; no built-in motor controls; no decorative features; not light adaptable; fan blades greater than 52 inches in diameter; metal fan blades; downrod mounting only—no hugger mounting capability; three fan blades; fan blades mounted on top of motor housing; single-speed motor."

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: James E. Stamps, Trade Reports Division, Office of Economics (202-205-3227), or Robert W. Wallace, Textiles Division, Office of Industries (202-205-3458), U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

The Commission instituted the investigation, No. 332-318, on December 2, 1991, following receipt on October 30, 1991, of a request from the Committee on Finance of the United States Senate for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested by the Committee, the Commission in its report on the investigation will seek to review recent economic and trade policies in Latin America, assess current obstacles to U.S. market access in Latin America, and analyze the effect of recent liberalization measures by these countries on flows of U.S. goods, services, and investment to Latin America.

More specifically, as requested by the Committee, the Commission will seek to provide in its report:

(1) A brief summary of Latin America's economic performance during the past decade;

(2) A profile of barriers to U.S. market access and of current Latin American trade, investment, and production patterns; and

(3) Highlights of recent events significantly influencing U.S.-Latin American economic relations, including a description of recent liberalization measures undertaken by these countries and of the Enterprise for the Americas Initiative and other efforts to expand intra-regional trade.

In addition, as requested by the Committee, the Commission's report will include a case study on Chile. In the case study the Commission will seek to provide a closer examination of Chilean trade and investment policies than in the broader study of the other Latin American countries. Specifically, the case study will include, as requested, (a) a brief review of past trade-related economic policies, (b) a description of remaining barriers affecting U.S. market access, including current trade and investment restrictions, and (c) an overview of Chilean policies influencing Chile's exports to the United States.

As requested by the Committee, the Commission intends to submit its report by March 1, 1992.

Written Submissions

In lieu of or in addition to participating in the hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. The Commission is particularly interested in receiving information concerning current barriers to U.S. exports and investment in Latin America and the view of U.S. business on recent economic and trade reforms in the region. Commercial or financial information that a party desires the Commission to treat as confidential must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6)—that is, it must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements and posthearing briefs should be submitted to the Commission at the earliest practical date and should be received no later than January 31, 1992. All submissions should be addressed to the Secretary to the Commission at the

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Stree SW., Washington, DC 20436, beginning at 9:30 a.m. on January 22, 1992. All persons will have the right to appear by counsel or in person, to present testimony, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, no later than noon, January 10, 1992. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is January 10, 1992. The deadline for filing posthearing briefs or statements is January 31, 1992. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Commission's Office in Washington, DC.

Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on 202-205-2648.

By order of the Commission.

Dated: December 3, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-29595 Filed 12-10-91; 8:45 am]

BILLING CODE 7020-02-M

APPENDIX B
LIST OF SUBMISSIONS AND HEARING PARTICIPANTS

SUBMISSIONS

U.S. CONGRESS

*Honorable Bill Richardson, U.S. House of Representatives
Third District, State of New Mexico

OTHER U.S. GOVERNMENT

*Giordano A. Chiaruttini, Deputy Director, Office of
International Trade, U.S. Small Business Administration

Antonio J. Colorado, Secretary of State
Commonwealth of Puerto Rico

Dr. Thomas J. Duesterberg, Assistant Secretary of Commerce for
International Economic Policy, U.S. Department of Commerce

Voyce J. Mack, Deputy Director, Office of International
Transportation and Trade, U.S. Department of Transportation

*David R. Malpass, Deputy Assistant Secretary
of Inter-American Affairs, U.S. Department of State

Jose E. Martinez, Director, U.S. Trade and Development Program

*James H. Michel, Assistant Administrator, Office of Trade and Investment,
Bureau for Latin America and the Caribbean,
U.S. Agency for International Development

*Dr. Margaret J. Sarles, Chairwoman, Latin American and Caribbean
Studies, Foreign Service Institute, U.S. Department of State

*H. Scott Shore, Deputy Vice President for Investment Development
U.S. Overseas Private Investment Corporation (OPIC)

Olin L. Wethington, Assistant Secretary for
International Affairs, U.S. Department of the Treasury

Melinda Keenan Wood, Director
U.S. Agency for International Development

EMBASSIES

Embassy of the Republic of Argentina
*Alieto Guadagni, Ambassador and Assistant Secretary
for International Economics
*Eugenio Diaz Bonilla, Minister of Agriculture and Attache
*Augustin Caballero, Minister of Economics and Commercial Attache
*Atilio Molteni, Minister
*Alfredo Morelli, Economic Affairs
*Julio Nogues, Ministry of Economy

Embassy of Bolivia
*Jorge Crespo-Velasco, Ambassador
*Luis Fernando Gonzalez-Quintanilla, Charge d'Affaires, a.i.

Brazilian Embassy
*Sergio Amaral, Minister-Counselor
*Aluisio Lima-Campos, Economic Advisor

Embassy of Chile
*Patricio Silva, Ambassador
*Enrique Silva Cimma, Minister of Foreign Relations
*Cristian Moran, Confederation of Production and Trade
*Andres Velasco, International Finance Coordinator, Ministry of Finance
*Alejandro Foxley Rioseco, Ministry of Finance

Embassy of Colombia
*Jaime Garcia Parra, Ambassador
*Antonio Copello, Minister of Plenipotentiary (D.C.M.)

Embassy of Ecuador
*Jaime Moncayo, Ambassador
*Javier Baquero, Economic Affairs

Embassy of Costa Rica
*Rodrigo A. Sotela, Minister Counselor

Embassy of Jamaica
Dr. Richard L. Bernal, Ambassador

Embassy of Peru
*Roberto Mac Lean, Ambassador
*Alberto Hart, Commercial Office

Embassy of Venezuela
Ambassador Miguel Rodriguez-Mendoza, President of Venezuelan Foreign Trade Institute
Carlos Bivero, Deputy Chief of Mission

OTHERS

AFL-CIO, Department of Economic Research
Rudolph A. Oswald, Director
*Bill Cunningham, Economist

Norman A. Bailey, President
Norman A. Bailey, Inc.

C. Fred Bergsten, Director
Institute for International Economics

*Joseph H. Blatchford of O'Connor & Hannan, on behalf of
Chilean-American Chamber of Commerce, Santiago, Chile
Inter-American Council of Commerce and Production, Buenos Aires, Argentina

Anne Chadwick, Manager of Trade Policy
California State World Trade Commission

*Isaac Cohen, Director
United Nations Economic Commission for Latin America
and the Caribbean

Bob Crawford, Commissioner of Agriculture
Florida Department of Agriculture & Consumer Services

V. Irene Darzenta of International Business-Government Relations Counsellors, on behalf of
The Brandy Export Association and The Wine Institute

Whitney Debevoise of Arnold & Porter, on behalf of
Empresa Electrica del Ecuador, Inc.

Steven W. Easter, Vice President
Blue Diamond Growers

Carlos M. Echeverria, Executive Director
Federation of Private Entities of Central America and Panama (FEDEPRICAP)
of Costa Rica

David J. Elliott, Associate Director, International Trade
The Procter & Gamble Co.

Center For Strategic and International Studies
M. Delal Baer, Deputy Director and Senior Fellow
Georges A. Fauriol, Director and Senior Fellow
Sidney Weintraub, Distinguished Visiting Scholar

G. Henry M. Schuler, Director, Energy Security Programs

*Peter B. Field, Director, Enterprise for the Americas Initiative
North-South Center, University of Miami

Ludlow Flower, III, Managing Director, Council of the Americas

*Harry A. Foster, Executive Director, Michigan Asparagus
Advisory Board

Peter Hakim, Staff Director, Inter-American Dialogue

Caribbean/Latin American Action
*Robert A. Holland, Member of Board of Trustees
*Peter B. Johnson, Executive Director

*Gary C. Hufbauer, Wallenberger Professor of International Diplomacy
at Georgetown University and Visiting Fellow at the Institute for International Economics

Purdy C. Jordan, President, Association of
American Chambers of Commerce in Latin America

Francis X. Kane, President, The Institute for Western
Hemispheric Studies

Diane M. Kohn, Executive Director, Association of
American Chambers of Commerce in Latin America

Jeffrey M. Lang of Winthrop, Stimson, Putnam & Roberts,
on behalf of the Coalition for Free Market Pricing

John Lindelow, Flipper Program Manager, Earthtrust

John F. McDermid, President, International Business-Government
Counsellors, Inc., on behalf of
The American Natural Soda Ash Corporation

Matthew T. McGrath of Barnes, Richardson & Colburn, on behalf of
Florida Citrus Mutual, California Citrus Mutual,
Citrus Grower Associates, Florida Citrus Packers,
Florida Department of Agriculture & Consumer Services,
Florida Department of Citrus, Florida Farm Bureau Federation,
Gulf Citrus Growers Association, and the Indian River Citrus League

*Keith Miceli, Executive Vice President, Association of American
Chambers of Commerce in Latin America

SUBMISSIONS—*Continued*

H. George Miller, Executive Director
Shippers for Competitive Ocean Transportation

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APPENDIX C
STATISTICAL TABLES

Table C–1
Latin America: Population, gross domestic product (GDP), and GDP per capita, by specified countries, 1981 and 1988–90

Country	1981	1988	1989	1990[1]	Average annual growth rate, 1980-90
					Percent
	Population				
	Thousands				
Argentina	28,663	31,534	31,929	32,322	1.4
Bolivia	5,720	6,918	7,113	7,314	2.8
Brazil	124,068	144,428	147,404	150,368	2.2
Chile	11,327	12,748	12,961	13,173	1.7
Colombia	27,495	31,725	32,349	32,978	2.1
Costa Rica	2,351	2,866	2,941	3,015	2.8
Venezuela	15,485	18,757	19,246	19,735	2.8
All other[2]	68,749	80,676	82,520	84,431	2.3
Total	283,858	329,652	336,463	343,336	2.2
	Gross domestic product				
	Million 1988 dollars				
Argentina	94,181	91,143	85,930	84,783	(1.9)
Bolivia	6,361	6,090	6,238	6,364	0.1
Brazil	279,447	335,268	343,679	326,195	1.3
Chile	26,337	28,757	31,670	32,284	2.7
Colombia	33,719	43,620	45,069	46,711	3.5
Costa Rica	3,946	4,644	4,884	5,057	2.3
Venezuela	57,161	63,593	57,715	59,955	0.4
All other[2]	104,553	107,114	104,031	103,655	0.2
Total	605,705	680,229	679,216	665,004	0.8
	GDP per capita				
	1988 dollars				
Argentina	3,286	2,890	2,691	2,623	-3.2
Bolivia	1,112	880	877	870	-2.6
Brazil	2,252	2,321	2,332	2,169	-0.8
Chile	2,325	2,256	2,443	2,451	1.0
Colombia	1,226	1,375	1,393	1,416	1.5
Costa Rica	1,678	1,620	1,661	1,677	-0.5
Venezuela	3,691	3,390	2,999	3,038	-2.3
All other[2]	1,521	1,328	1,261	1,228	-2.1
Total	2,134	2,063	2,019	1,937	-1.3

[1] Preliminary.
[2] Includes Bahamas, Barbados, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, and Uruguay.

Source: Inter-American Development Bank, *Economic and Social Progress in Latin America*: 1991 Report, tables A-1, B-1, and B-2, pp. 271 and 273, Washington, DC: Johns Hopkins University Press.

Table C–2
Value added for selected countries, by sectors and 1981, 1988–90

(Millions of 1988 dollars)

Country and sector	*1981*	*1988*	*1989*	*1990*[1]
Argentina:				
Agriculture, forestry, and fishing	10,516	11,576	11,304	12,451
Mining and quarrying	3,507	3,606	3,720	3,722
Manufacturing	22,235	22,663	21,069	19,544
Construction	10,532	5,665	3,882	3,433
Electricity and gas	1,602	2,303	2,271	2,272
Wholesale and retail trade	13,295	11,824	10,870	10,867
Transport and communication	5,270	5,673	5,502	5,503
Financial services	5,437	4,904	4,789	4,785
Government	([2])	([2])	([2])	([2])
Other services	11,756	13,220	13,370	13,175
Residual[3]	10,031	9,709	9,153	9,031
Total[4]	94,181	91,143	85,930	84,783
Bolivia:				
Agriculture, forestry, and fishing	1,513	1,749	1,729	1,702
Mining and quarrying	813	599	688	753
Manufacturing	909	816	844	871
Construction	239	175	187	193
Electricity and gas	58	71	71	78
Wholesale and retail trade	640	684	684	698
Transport and communication	595	718	732	754
Financial services	676	557	560	564
Government	420	325	328	347
Other services	498	396	415	406
Total[4]	6,361	6,090	6,238	6,366
Brazil:				
Agriculture, forestry, and fishing	26,132	30,782	31,462	30,075
Mining and quarrying	3,147	5,833	6,062	6,225
Manufacturing	80,278	94,195	97,143	87,915
Construction	22,619	24,336	26,188	22,953
Electricity and gas	5,017	8,451	8,734	8,893
Wholesale and retail trade	21,127	24,560	25,275	23,630
Transport and communication	10,429	16,517	17,602	18,559
Financial services	67,658	82,041	83,141	80,954
Government	22,869	26,566	27,116	27,677
Other services[5]	(6,473)	(10,405)	(11,612)	(11,755)
Residual[3]	26,644	32,392	32,568	31,069
Total[4]	279,447	335,268	343,679	326,195
Chile:				
Agriculture, forestry, and fishing	1,519	2,040	2,137	2,208
Mining and quarrying	2,137	2,563	2,776	2,756
Manufacturing	5,329	6,012	6,616	6,622
Construction	1,249	1,169	1,318	1,351
Electricity and gas	654	919	960	989
Wholesale and retail trade	4,923	4,787	5,456	5,591
Transport and communication	1,095	1,375	1,571	1,734
Financial services	4,736	4,129	4,495	4,577
Government	1,077	1,057	1,057	1,077
Other services	3,619	4,706	5,284	5,377
Total[4]	26,338	28,757	31,670	32,282

See footnotes at end of table.

Table C-2—Continued
Value added for selected countries, by sectors, 1981 and 1988-90

(Millions of 1988 dollars)

Country and sector	*1981*	*1988*	*1989*	*1990*[1]
Colombia:				
Agriculture, forestry, and fishing	6,196	7,306	7,635	8,063
Mining and quarrying	653	2,685	3,032	3,274
Manufacturing	7,399	9,229	9,498	9,992
Construction	1,989	2,884	2,895	2,751
Electricity and gas	729	1,006	1,069	1,114
Wholesale and retail trade	5,243	6,260	6,331	6,470
Transport and communication	3,092	3,605	3,736	3,885
Financial services	4,173	5,115	5,167	5,252
Government	2,500	3,466	3,598	3,760
Other services	1,745	2,063	2,108	2,150
Total[4]	33,719	43,619	45,069	43,620
Costa Rica:				
Agriculture, forestry, and fishing	708	834	882	918
Mining and quarrying	(6)	(6)	(6)	(6)
Manufacturing	840	987	1,024	1,057
Construction	144	140	157	151
Electricity and gas	98	137	144	151
Wholesale and retail trade	783	937	991	1,038
Transport and communication	171	231	251	266
Financial services	409	524	554	574
Government	587	611	623	632
Other services	206	244	258	268
Total[4]	3,946	4,644	4,884	5,055
Venezuela:				
Agriculture, forestry, and fishing	3,160	4,210	3,994	3,942
Mining and quarrying	6,817	6,976	7,046	7,790
Manufacturing	7,846	11,859	10,528	10,949
Construction	5,267	4,517	3,293	3,543
Electricity and gas	271	385	391	401
Wholesale and retail trade	9,620	12,441	10,474	10,757
Transport and communication	3,856	3,740	3,505	3,563
Financial services	8,696	9,041	8,518	8,887
Government	4,487	4,837	5,060	5,320
Other services	7,142	5,586	4,904	4,802
Total[4]	57,161	63,593	57,715	59,954
Other Latin American countries:[7]				
Agriculture, forestry, and fishing	12,810	14,144	14,405	14,359
Mining and quarrying	3,757	3,646	3,661	3,712
Manufacturing	22,242	22,582	20,728	20,368
Construction	7,194	6,032	5,763	5,634
Electricity and gas	1,211	1,701	1,689	1,751
Wholesale and retail trade	20,298	20,504	19,862	18,500
Transport and communication	5,993	6,827	6,815	6,829
Financial services	5,467	5,658	5,764	5,876
Government	6,956	8,058	7,668	7,627
Other services	14,462	13,220	12,889	14,244
Residual	2,300	2,295	2,293	2,236
Total[4]	102,690	104,667	101,537	101,136

See footnotes at end of table.

Table C-2—Continued
Value added for selected countries, by sectors, 1981 and 1988–90

(Millions of 1988 dollars)

Country	*1981*	*1988*	*1989*	*1990*[1]
Latin America:				
Agriculture, forestry, and fishing	62,554	72,641	73,548	73,718
Mining and quarrying	20,831	25,908	26,985	28,232
Manufacturing	147,078	168,343	167,450	157,318
Construction	49,233	44,918	43,683	40,009
Electricity and gas	9,640	14,973	15,329	15,649
Wholesale and retail trade	75,929	81,997	79,943	77,551
Transport and communication	30,501	38,686	39,714	41,093
Financial services	97,252	111,969	112,988	111,469
Government	38,896	44,920	45,450	46,440
Other services	32,955	29,030	27,616	28,667
Residual[3]	38,975	44,396	44,014	42,336
Total[4]	603,850	677,781	676,719	662,482

[1] Preliminary data
[2] Included in "Other services."
[3] Residual includes indirect taxes and subsidies not allocated by sector.
[4] Due to rounding of sector data, totals may not equal figures for GDP in table C–1.
[5] The figures are negative as imputed bank service charges are included.
[6] Included in "Manufacturing."
[7] Other is defined to include the following: Barbados, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, and Uruguay. In contrast to table C-1, the Bahamas are omitted.

Source: Inter-American Development Bank, *Economic and Social Progress in Latin America*, 1991 Report, tables B-3, B-8 to B-17, pp. 274, 277-281, Washington, DC: Johns Hopkins University Press.

Table C–3
Latin America: Total trade in goods and nonfactor services, by country groups, 1981 and 1988–90

(Millions of 1988 dollars)

Country group[2]	*1981*	*1988*	*1989*	*1990*[1]
Andean:				
Exports	21,228	24,788	26,821	28,425
Imports	35,663	28,253	22,183	23,071
Trade balance	(14,435)	(3,465)	4,638	5,354
Southern Market:				
Exports	32,237	50,264	53,061	55,675
Imports	37,397	30,021	30,800	33,503
Trade balance	(5,160)	20,243	22,261	22,172
Central America:				
Exports	5,411	5,121	5,424	6,091
Imports	7,112	6,704	7,017	7,093
Trade balance	(1,701)	(1,583)	(1,593)	(1,002)
Other:				
Exports	13,618	17,004	18,231	19,256
Imports	18,008	14,858	17,133	16,801
Trade balance	(4,390)	2,146	1,098	2,455
Latin America:				
Exports	72,494	97,177	103,537	109,447
Imports	98,180	79,836	77,133	80,468
Trade balance	(25,686)	17,341	26,404	28,979

[1] Preliminary.
[2] See chapter 1 for country group definitions.

Source: Inter-American Development Bank, *Economic and Social Progress in Latin America: 1991 Report*, Washington, DC: Johns Hopkins University Press, tables B–6 and B–7, p. 276.

Table C–4
U.S. exports of domestic merchandise, imports for consumption (customs basis), and trade balance with Latin America and selected Latin American country groups,[1] selected years 1980-91

(Millions of dollars)

Country group	1980	1983	1986	1988	1989	1990	1991
Andean:							
Exports	8,378	5,691	5,713	7,729	6,225	6,554	8,308
Imports	8,929	8,619	9,200	9,124	11,377	14,571	12,728
Trade balance	(551)	(2,928)	(3,487)	(1,396)	(5,152)	(8,016)	(4,420)
Southern Market:							
Exports	7,033	3,569	4,887	5,377	5,912	6,391	8,357
Imports	4,603	6,226	8,026	10,762	10,114	9,494	8,293
Trade balance	2,430	(2,657)	(3,139)	(5,385)	(4,202)	(3,103)	65
Central America:							
Exports	1,922	1,436	1,620	2,154	2,531	2,871	3,223
Imports	1,845	1,584	2,065	1,938	2,277	2,536	2,950
Trade balance	77	(148)	(445)	217	255	334	272
CARICOM:							
Exports	1,796	2,017	2,179	2,336	2,935	2,770	2,767
Imports	4,435	3,591	1,823	1,651	1,975	2,273	2,052
Trade balance	(2,639)	(1,574)	356	685	960	498	716
Latin America:							
Exports	23,085	16,140	17,986	22,413	23,355	24,823	29,097
Imports	24,415	24,805	24,263	27,176	29,756	32,867	30,582
Trade balance	(1,330)	(8,665)	(6,277)	(4,763)	(6,401)	(8,044)	(1,485)

[1] See chapter 1 for country group definitions.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table C-5
Antidumping and countervailing-duty (CVD) orders in effect for selected Latin American countries, as of Feb. 1, 1992

Country and commodity	*Effective date of original action* [1]
Argentina:	
Antidumping orders:	
Rectangular pipes and tubes	May 26, 1989.
Carbon steel wire rod	Nov. 23, 1984.
Barbed wire	Nov. 13, 1983.
Silicon metal	Sept. 26, 1991.
CVD orders:	
Leather	Oct. 2, 1990.
Welded carbon steel pipe and tube products	Sept. 27, 1988.
Textiles and apparel	Mar. 12, 1985.
Oil country tubular goods	Nov. 22, 1984.
Cold-rolled steel sheet	Apr. 26, 1984.
Wool	Apr. 4, 1983.
Leather wearing apparel	Mar. 18, 1983.
Nonrubber footwear	Jan. 17, 1979.
Wool garments	Nov. 16, 1978.
CVD suspension agreement (carbon steel wire rod)	Sept. 27, 1982.
Brazil:	
Antidumping orders:	
Nitrocellulose	July 10, 1990.
Disc wheels	May 28, 1987.
Orange juice	May 5, 1987.
Brass sheet and strip	Jan. 12, 1987.
Butt-weld pipe fittings	Dec. 17, 1986.
Pipe fittings	May 21, 1986.
Construction casting	May 9, 1986.
Silicon metal	July 31, 1991.
CVD orders:	
Brass sheet and strip	Jan. 8, 1987.
Castings	May 15, 1986.
Agricultural tillage tools	Oct. 22, 1985.
Pig iron	Apr. 4, 1980.
Cotton yarn	Mar. 15, 1977.
Certain castor oil products	Mar. 16, 1976.
CVD suspension agreements:	
Forged crankshafts	July 28, 1987.
Orange juice	Mar. 2, 1983.
Chile:	
Antidumping order (standard carnations)	Mar. 20, 1987.
CVD order (standard carnations)	Mar. 19, 1987.
Colombia:	
Antidumping order (fresh cut flowers)	Mar. 18, 1987.
CVD suspension agreements:	
Miniature carnations	Jan. 13, 1987.
Cut flowers	Jan. 12, 1983.
Costa Rica:	
CVD suspension agreement (fresh cut flowers)	Jan. 13, 1987.
Venezuela:	
Antidumping orders:	
Aluminum sulfate	Dec. 15, 1989.
Electrical conductor redraw rods	Aug. 22, 1988.
CVD orders:	
Aluminum sulfate	Dec. 19, 1989.
Electrical conductor redraw rods	Aug. 22, 1988.

[1] The U.S. Department of Commerce periodically reviews outstanding antidumping and CVD orders and suspension agreements, upon request, to determine whether the amount of the net margin of underselling (dumping) or the amount of the net subsidy has changed. If a change has occurred, the imposed antidumping or countervailing duties are adjusted accordingly.

Source: U.S. Department of Commerce, International Trade Administration, "Antidumping and Countervailing Duty Orders, Findings, and Suspension Agreements Currently in Effect," Feb. 1, 1992.

Table C-6
Latin America: U.S. exports of domestic merchandise, imports for consumption, and merchandise trade balance, by commodity groups, 1987–91[1]

(Millions of dollars)

Item	*1987*	*1988*	*1989*	*1990*	*1991*
U.S. exports of domestic merchandise:					
Agricultural products	2,504	2,782	2,796	2,727	2,920
Forest products	803	925	988	1,055	1,207
Fibers, textiles, and apparel	1,131	1,332	1,513	1,654	2,142
Chemicals and related products	3,356	3,832	3,939	4,150	4,712
Energy-related products	1,380	1,274	1,505	1,738	2,014
Minerals and metals	912	1,116	1,228	1,152	1,333
Machinery and equipment	5,662	6,545	6,496	6,972	8,689
Electronic equipment	1,925	2,407	2,490	2,572	3,031
Miscellaneous manufactures	1,030	1,185	1,235	1,399	1,567
Footwear	58	73	82	79	87
Special provisions	939	942	1,083	1,326	1,396
Total	19,700	22,413	23,355	24,824	29,098
U.S. imports for consumption:					
Agricultural products	7,002	6,952	6,663	6,908	6,767
Forest products	484	623	551	552	531
Fibers, textiles, and apparel	1,814	2,298	2,741	2,879	3,423
Chemicals and related products	882	1,217	1,457	1,457	1,459
Energy-related products	8,622	7,641	9,729	12,798	10,586
Minerals and metals	2,729	3,382	3,360	3,206	3,182
Machinery and equipment	1,812	2,396	2,273	2,046	1,610
Electronic equipment	431	471	492	421	428
Miscellaneous manufactures	597	694	836	785	839
Footwear	1,088	1,153	1,230	1,286	1,241
Special provisions	298	351	424	530	516
Total	25,759	27,178	29,756	32,868	30,582
U.S. merchandise trade balance:					
Agricultural products	-4,498	-4,170	-3,867	-4,181	-3,847
Forest products	319	302	437	503	676
Fibers, textiles, and apparel	-683	-966	-1,228	-1,225	-1,281
Chemicals and related products	2,474	2,615	2,482	2,693	3,253
Energy-related products	-7,242	-6,367	-8,224	-11,060	-8,572
Minerals and metals	-1,817	-2,266	-2,132	-2,054	-1,849
Machinery and equipment	3,850	4,149	4,223	4,926	7,079
Electronic equipment	1,494	1,936	1,998	2,151	2,603
Miscellaneous manufactures	433	491	399	614	728
Footwear	-1,030	-1,080	-1,148	-1,207	-1,154
Special provisions	641	591	659	796	880
Total	-6,059	-4,765	-6,401	-8,044	-1,484

[1] Import values are based on customs value; export values are based on f.a.s. value, U.S. port of export.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table C–7
Argentina: U.S. exports of domestic merchandise, imports for consumption, and merchandise trade balance, by commodity groups, 1987–91[1]

(Millions of dollars)

Item	*1987*	*1988*	*1989*	*1990*	*1991*
U.S. exports of domestic merchandise:					
Agricultural products	25	27	24	25	59
Forest products	26	18	29	22	34
Fibers, textiles, and apparel	24	10	9	21	91
Chemicals and related products	265	278	270	327	451
Energy-related products	100	66	75	72	81
Minerals and metals	36	54	48	38	61
Machinery and equipment	306	294	292	296	445
Electronic equipment	152	152	160	193	422
Miscellaneous manufactures	72	71	51	72	165
Footwear	0	0	0	1	5
Special provisions	49	46	41	55	83
Total	1,055	1,016	999	1,122	1,897
U.S. imports for consumption:					
Agricultural products	562	603	604	597	682
Forest products	8	22	18	16	6
Fibers, textiles, and apparel	70	113	126	81	37
Chemicals and related products	67	96	94	93	78
Energy-related products	84	97	182	358	153
Minerals and metals	181	336	215	166	134
Machinery and equipment	23	41	44	64	60
Electronic equipment	8	12	16	7	11
Miscellaneous manufactures	24	34	36	44	46
Footwear	25	26	25	33	34
Special provisions	10	14	8	14	11
Total	1,062	1,394	1,368	1,473	1,252
U.S. merchandise trade balance:					
Agricultural products	-537	-576	-580	-572	-623
Forest products	18	-4	11	6	28
Fibers, textiles, and apparel	-46	-103	-117	-60	54
Chemicals and related products	198	182	176	234	373
Energy-related products	16	-31	-107	-286	-72
Minerals and metals	-145	-282	-167	-128	-73
Machinery and equipment	283	253	248	232	385
Electronic equipment	144	140	144	186	411
Miscellaneous manufactures	48	37	15	28	119
Footwear	-25	-26	-25	-32	-29
Special provisions	39	32	33	41	72
Total	-7	-378	-369	-351	645

[1] Import values are based on customs value; export values are based on f.a.s. value, U.S. port of export.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table C–8
Bolivia: U.S. exports of domestic merchandise, imports for consumption, and merchandise trade balance, by commodity groups, 1987–91[1]

(Millions of dollars)

Item	*1987*	*1988*	*1989*	*1990*	*1991*
U.S. exports of domestic merchandise:					
Agricultural products	42	43	38	22	35
Forest products	1	1	1	1	1
Fibers, textiles, and apparel	5	3	3	4	4
Chemicals and related products	8	8	8	9	13
Energy-related products	0	6	2	2	2
Minerals and metals	3	5	7	8	7
Machinery and equipment	48	52	50	43	68
Electronic equipment	11	9	9	14	15
Miscellaneous manufactures	6	8	17	25	31
Footwear	0	0	0	0	0
Special provisions	11	9	5	5	7
Total	135	144	140	133	183
U.S. imports for consumption:					
Agricultural products	7	13	10	9	16
Forest products	3	10	12	18	24
Fibers, textiles, and apparel	5	4	3	5	7
Chemicals and related products	1	1	1	1	3
Energy-related products	0	0	0	0	3
Minerals and metals	89	85	79	144	124
Machinery and equipment	0	0	0	1	0
Electronic equipment	0	0	0	0	0
Miscellaneous manufactures	0	0	11	18	27
Footwear	0	0	0	0	0
Special provisions	0	1	0	3	1
Total	105	114	116	199	205
U.S. merchandise trade balance:					
Agricultural products	35	30	28	13	19
Forest products	-2	-9	-11	-17	-23
Fibers, textiles, and apparel	0	-1	0	-1	-3
Chemicals and related products	7	7	7	8	10
Energy-related products	0	6	2	2	-1
Minerals and metals	-86	-80	-72	-136	-117
Machinery and equipment	48	52	50	42	68
Electronic equipment	11	9	9	14	15
Miscellaneous manufactures	6	8	6	7	4
Footwear	0	0	0	0	0
Special provisions	11	8	5	2	6
Total	30	30	24	-66	-22

[1] Import values are based on customs value; export values are based on f.a.s. value, U.S. port of export.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table C-9
Brazil: U.S. exports of domestic merchandise, imports for consumption, and merchandise trade balance, by commodity groups, 1987–91[1]

(Millions of dollars)

Item	*1987*	*1988*	*1989*	*1990*	*1991*
U.S. exports of domestic merchandise:					
Agricultural products	277	71	193	173	254
Forest products	57	63	80	80	104
Fibers, textiles, and apparel	31	40	41	60	64
Chemicals and related products	705	707	828	977	1,061
Energy-related products	321	312	344	344	520
Minerals and metals	110	138	222	206	208
Machinery and equipment	1,431	1,610	1,553	1,738	2,358
Electronic equipment	691	882	908	836	909
Miscellaneous manufactures	151	197	308	310	302
Footwear	3	5	3	6	4
Special provisions	111	82	155	146	161
Total	3,888	4,107	4,635	4,876	5,945
U.S. imports for consumption:					
Agricultural products	1,974	2,021	1,549	1,642	1,379
Forest products	341	436	356	343	325
Fibers, textiles, and apparel	291	341	352	285	273
Chemicals and related products	348	492	461	436	383
Energy-related products	641	736	716	522	275
Minerals and metals	901	1,269	1,349	1,253	1,279
Machinery and equipment	1,673	2,216	2,054	1,776	1,383
Electronic equipment	242	259	271	216	208
Miscellaneous manufactures	183	237	254	187	187
Footwear	948	988	1,037	1,032	967
Special provisions	70	63	86	69	103
Total	7,612	9,058	8,485	7,761	6,762
U.S. merchandise trade balance:					
Agricultural products	-1,697	-1,950	-1,356	-1,469	-1,125
Forest products	-284	-373	-276	-263	-221
Fibers, textiles, and apparel	-260	-301	-311	-225	-209
Chemicals and related products	357	215	367	541	678
Energy-related products	-320	-424	-372	-178	245
Minerals and metals	-791	-1,131	-1,127	-1,047	-1,071
Machinery and equipment	-242	-606	-501	-38	975
Electronic equipment	449	623	637	620	701
Miscellaneous manufactures	-32	-40	54	123	115
Footwear	-945	-983	-1,034	-1,026	-963
Special provisions	41	19	69	77	58
Total	-3,724	-4,951	-3,850	-2,885	-817

[1] Import values are based on customs value; export values are based on f.a.s. value, U.S. port of export.
Source: Compiled from official statistics of the U.S. Department of Commerce.

Table C-10
Chile: U.S. exports of domestic merchandise, imports for consumption, and merchandise trade balance, by commodity groups, 1987-91[1]

(Millions of dollars)

Item	1987	1988	1989	1990	1991
U.S. exports of domestic merchandise:					
Agricultural products	44	59	44	77	84
Forest products	15	17	26	28	49
Fibers, textiles, and apparel	46	49	59	65	103
Chemicals and related products	184	238	262	251	307
Energy-related products	26	36	76	51	62
Minerals and metals	43	49	64	70	62
Machinery and equipment	263	382	555	729	711
Electronic equipment	79	103	147	139	192
Miscellaneous manufactures	43	52	64	77	92
Footwear	1	1	2	2	2
Special provisions	32	44	62	84	103
Total	776	1,030	1,361	1,573	1,767
U.S. imports for consumption:					
Agricultural products	401	440	486	608	584
Forest products	23	33	34	36	51
Fibers, textiles, and apparel	17	36	46	54	46
Chemicals and related products	44	65	90	86	92
Energy-related products	0	8	5	8	20
Minerals and metals	410	482	506	334	375
Machinery and equipment	3	5	4	3	3
Electronic equipment	1	0	1	0	0
Miscellaneous manufactures	7	11	12	13	25
Footwear	5	8	16	19	21
Special provisions	20	10	14	22	27
Total	931	1,098	1,214	1,183	1,244
U.S. merchandise trade balance:					
Agricultural products	-357	-381	-442	-531	-500
Forest products	-8	-16	-8	-8	-2
Fibers, textiles, and apparel	29	13	13	11	57
Chemicals and related products	140	173	172	165	215
Energy-related products	26	28	71	43	42
Minerals and metals	-367	-433	-442	-264	-313
Machinery and equipment	260	377	551	726	708
Electronic equipment	78	103	146	139	192
Miscellaneous manufactures	36	41	52	64	67
Footwear	-4	-7	-14	-17	-19
Special provisions	12	34	48	62	76
Total	-155	-68	147	390	523

[1] Import values are based on customs value; export values are based on f.a.s. value, U.S. port of export.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table C-11
Colombia: U.S. exports of domestic merchandise, imports for consumption, and merchandise trade balance, by commodity groups, 1987–91[1]

(Millions of dollars)

Item	1987	1988	1989	1990	1991
U.S. exports of domestic merchandise:					
Agricultural products	130	184	154	121	118
Forest products	48	54	60	63	82
Fibers, textiles, and apparel	59	75	81	112	119
Chemicals and related products	392	494	504	503	503
Energy-related products	26	32	49	35	74
Minerals and metals	52	85	97	66	85
Machinery and equipment	445	520	605	736	562
Electronic equipment	114	145	149	169	174
Miscellaneous manufactures	67	72	90	94	104
Footwear	1	1	2	1	1
Special provisions	47	58	68	84	78
Total	1,381	1,720	1,859	1,984	1,900
U.S. imports for consumption:					
Agricultural products	796	866	868	846	853
Forest products	17	22	22	24	30
Fibers, textiles, and apparel	102	131	161	188	250
Chemicals and related products	27	31	51	48	47
Energy-related products	1,078	851	1,160	1,708	1,233
Minerals and metals	90	125	134	140	134
Machinery and equipment	7	8	6	17	7
Electronic equipment	2	3	2	1	2
Miscellaneous manufactures	29	28	37	49	53
Footwear	7	12	17	23	31
Special provisions	42	70	73	110	84
Total	2,197	2,147	2,531	3,154	2,724
U.S. merchandise trade balance:					
Agricultural products	-666	-682	-714	-725	-735
Forest products	31	32	38	39	52
Fibers, textiles, and apparel	-43	-56	-80	-76	-131
Chemicals and related products	365	463	453	455	456
Energy-related products	-1,052	-819	-1,111	-1,673	-1,159
Minerals and metals	-38	-40	-37	-74	-49
Machinery and equipment	438	512	599	719	555
Electronic equipment	112	142	147	168	172
Miscellaneous manufactures	38	44	53	45	51
Footwear	-6	-11	-15	-22	-30
Special provisions	5	-12	-5	-26	-6
Total	-816	-427	-672	-1,170	-824

[1] Import values are based on customs value; export values are based on f.a.s. value, U.S. port of export.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table C-12
Costa Rica: U.S. exports of domestic merchandise, imports for consumption, and merchandise trade balance, by commodity groups, 1987-91[1]

(Millions of dollars)

Item	*1987*	*1988*	*1989*	*1990*	*1991*
U.S. exports of domestic merchandise:					
Agricultural products	51	76	91	93	85
Forest products	49	68	75	77	80
Fibers, textiles, and apparel	122	162	210	230	282
Chemicals and related products	109	127	156	168	173
Energy-related products	16	19	27	48	55
Minerals and metals	32	31	41	37	39
Machinery and equipment	94	96	130	153	140
Electronic equipment	43	47	54	57	55
Miscellaneous manufactures	26	29	42	45	47
Footwear	1	1	0	1	1
Special provisions	28	29	38	50	51
Total	571	685	864	959	1,008
U.S. imports for consumption:					
Agricultural products	385	389	447	443	505
Forest products	8	11	15	20	16
Fibers, textiles, and apparel	190	260	339	399	457
Chemicals and related products	17	15	23	23	30
Energy-related products	0	2	0	0	0
Minerals and metals	15	8	15	16	13
Machinery and equipment	12	19	24	28	37
Electronic equipment	1	23	35	20	21
Miscellaneous manufactures	18	33	48	40	47
Footwear	3	5	3	5	4
Special provisions	6	11	19	12	13
Total	672	776	968	1,006	1,143
U.S. merchandise trade balance:					
Agricultural products	-334	-313	-356	-350	-420
Forest products	41	57	60	57	64
Fibers, textiles, and apparel	-68	-98	-129	-169	-175
Chemicals and related products	92	112	133	145	143
Energy-related products	16	17	27	48	55
Minerals and metals	17	23	26	21	26
Machinery and equipment	82	77	106	125	103
Electronic equipment	25	24	19	37	34
Miscellaneous manufactures	8	-4	-6	5	0
Footwear	-2	-4	-3	-4	-3
Special provisions	22	18	19	38	38
Total	-101	-91	-104	-47	-135

[1] Import values are based on customs value; export values are based on f.a.s. value, U.S. port of export.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table C-13
Venezuela: U.S. exports of domestic merchandise, imports for consumption, and merchandise trade balance, by commodity groups, 1987–91[1]

(Millions of dollars)

Item	*1987*	*1988*	*1989*	*1990*	*1991*
U.S. exports of domestic merchandise:					
Agricultural products	479	656	429	345	315
Forest products	149	165	107	140	152
Fibers, textiles, and apparel	84	97	57	63	101
Chemicals and related products	626	748	467	513	682
Energy-related products	164	192	231	228	258
Minerals and metals	160	212	126	152	266
Machinery and equipment	1,344	1,661	1,048	1,099	2,045
Electronic equipment	276	431	289	248	386
Miscellaneous manufactures	140	196	126	148	193
Footwear	1	2	1	4	9
Special provisions	52	70	61	80	102
Total	3,475	4,430	2,942	3,020	4,509
U.S. imports for consumption:					
Agricultural products	77	71	119	106	89
Forest products	22	17	13	21	14
Fibers, textiles, and apparel	7	8	11	17	10
Chemicals and related products	43	83	37	61	72
Energy-related products	4,829	4,354	5,745	8,200	7,027
Minerals and metals	339	440	465	547	423
Machinery and equipment	23	35	55	89	68
Electronic equipment	2	2	3	6	2
Miscellaneous manufactures	6	8	13	15	12
Footwear	1	2	3	6	7
Special provisions	25	25	29	64	34
Total	5,374	5,045	6,493	9,132	7,758
U.S. merchandise trade balance:					
Agricultural products	402	585	310	239	226
Forest products	127	148	94	119	138
Fibers, textiles, and apparel	77	89	46	46	91
Chemicals and related products	583	665	430	452	610
Energy-related products	-4,665	-4,162	-5,514	-7,972	-6,769
Minerals and metals	-179	-228	-339	-395	-157
Machinery and equipment	1,321	1,626	993	1,010	1,977
Electronic equipment	274	429	286	242	384
Miscellaneous manufactures	134	188	113	133	181
Footwear	0	0	-2	-2	2
Special provisions	27	45	32	16	68
Total	-1,899	-615	-3,551	-6,112	-3,249

[1] Import values are based on customs value; export values are based on f.a.s. value, U.S. port of export.

Source: Compiled from official statistics of the U.S. Department of Commerce.