THE SPECIAL STATUS OF AGRICULTURE IN LATIN AMERICAN FREE TRADE AGREEMENTS

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Abstract - *This paper provides a review of agriculture-related provisions in free trade agreements signed by Latin American countries and in force by December 2004. It is shown that the exceptional treatment received by the agricultural sector in the WTO is also found in free trade agreements. Many agricultural products are excluded from tariff liberalization or are otherwise subject to long phase-out periods. With respect to technical barriers to trade, most agreements go little beyond the reiteration of multilateral commitments. Furthemore, rules of origin are stricter for agricultural goods. This suggests that market access for some developing countries will remain limited. Conversely, provisions on intellectual property protection in free trade agreements, particularly those signed with the United States, go well beyond WTO commitments.*

Keywords - TRADE, REGIONAL AGREEMENTS, AGRICULTURE, LATIN AMERICA AND THE CARIBBEAN, MARKET ACCESS, NON TARIFF BARRIERS.

JEL Classification: F13, F15, Q17.

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INTRODUCTION

The Uruguay Round achieved relatively modest commitments with respect to agriculture. As far as market access is concerned, signatory countries mainly agreed to replace non-tariff barriers by tariffs, and to reduce the latter somewhat, depending on their degree of economic development. In addition, special safeguard measures taking the form of additional duties in response to exceptional increases (decreases) in the volume (price) of imports were allowed. As far as internal support measures are concerned, the commitments for reduction were even more modest. Apart from the most obviously trade-distorting subsidies, a great number of internal support measures, such as government services like pest control and research, direct payments to producers, and public spending in rural development programs, were not bound to any limits.

The negotiations that began in 2000 under Article 20 of the Agreement on Agriculture ("Continuation of the Reform Process") and that since the Doha Ministerial in 2001 "make special and differential treatment for developing countries integral throughout the negotiations" have been complex and the deadline for conclusion, January 2005, missed. A broad framework agreement has been reached in August 2004 establishing a number of principles that will guide the more complex negotiation of "modalities"[1]. Notably, it establishes that all forms of export subsidies and all equivalent export measures are to be eliminated by a credible end date (WTO, 2004, p.8).

Has agricultural sector liberalization fared differently under the regional free trade agreements (FTAs) that have mushroomed since the mid-nineties? This is especially relevant in that the latter are viewed as an alternative to a multilateral agreement with an uncertain outcome within an uncertain time frame. This paper, which provides a review of agriculture-related provisions in free trade agreements signed by Latin American countries and in force by December 2004[2], shows that the special status, and thus treatment, conferred to agriculture in the WTO, is widely reproduced in the regional sphere. For instance, there tend to be more products excluded altogether from trade liberalization in the agricultural sector than in other sectors and the number of products excluded tends to be large. Sugar, meats, cereals and dairy are the most common exceptions. In certain cases, bilateral trade agreements are stricter than what has

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[1] Modalities are numerical targets for achieving the general objectives of substantial improvement in market access and reduction in trade-distorting subsidies.

[2] With the exception of the CAFTA-DR agreement, which by that date had not been ratified by any of the signatory countries, and was also considered. The Central America-Panama FTA was not considered, given that it is only in force between one Central American country (El Salvador) and Panama.

been agreed multilaterally (e.g. with respect to the protection of new varieties of plants and/or geographical indications). On the other hand, there are few instances where non-tariff barriers such as sanitary and phytosanitary measures, or agricultural marketing standards, have been relaxed by making application procedures more explicit or by recognizing at least to some extent the equivalence of each party's system. This holds even in those agreements where exclusions from tariff liberalization are limited (e.g. CAFTA-DR; Chile-United States FTA). Finally, agricultural goods face strict and complex rules of origin that create new challenges for exporters.

The agreements under scrutiny include nine agreements between Latin American countries (which, with one exception, involve either Chile or Mexico as one of the signatory parties), and twelve agreements with countries outside the region. The latter are: the United States (FTAs with Mexico – NAFTA – Chile, and the Central American countries plus the Dominican Republic – CAFTA – DR), the European Union (with Mexico and Chile), Canada (with Chile and Costa Rica), Israel (with Mexico), the European Free Trade Association (with Chile and Mexico), South Korea (with Chile) and Taiwan (with Panama). Chile is currently negotiating a FTA with several countries in the Asia-Pacific region, including China, New Zealand and Singapore. An agreement between Mexico and Japan has entered into force in April 2005. Negotiations are also under way between the Common Market of the South (MERCOSUR), and the European Union (EU), as well as between the latter and the Andean Community (CAN). Negotiations between various Andean countries (Colombia, Peru and Ecuador) and the United States are expected to conclude this year (see Appendix 1).

Despite the commonalities mentioned before, it is important to note that this group includes agreements between highly heterogeneous countries, both as far as the overall economic development level is concerned, but also with regards to the structure of bilateral trade. For instance, whereas the US was the main agricultural trade partner of the Central American countries already in 2000 (representing approximately 30% or more of both each of these countries' imports *and* exports of goods of agricultural origin), the trade flows underlying some of the FTAs considered here were small in relative terms (for example, in that year, South Korea held a 0.03% market share in Chile's total imports of goods of agricultural origin and likewise represented a mere 0.5% of Chile's exports)[3].

Besides this introduction, the paper is divided in three main parts. The coverage and liberalization schedule of agricultural products in the aforemen-

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[3] Author's calculations based on COMTRADE data. Goods of agricultural origin correspond to chapters 1-24 of the Harmonized System (1996), excluding fish and fish products, in addition to the following chapters: 2905.43, 2905.44, 2905.45, 33.01, 35.01-35.05, 3809.10, 3823, 3824.60, 41.01-41.03, 43.01, 50.01-50.03, 51.01-51.03, 52.01-52.03, 53.01 and 53.02.

tioned universe of trade agreements are reviewed in part 1. Special provisions regulating the use of special agricultural safeguards, export subsidies, other measures of internal support and antidumping remedies, are detailed in part 2. Part 3 systematizes the advances and shortcomings of these agreements with respect to multilateral regulations as far as technical barriers to trade and protecttion of intellectual property are concerned. An overview of the main regimes of rules of origin is also provided in this part of the paper. Finally, a summary and some brief conclusions are offered.

1. MARKET ACCESS FOR AGRICULTURAL GOODS IN FTAS

1.1. Coverage of agricultural goods and tariff elimination schedules

In general, tariff elimination schedules for agricultural goods tend to be longer than for other sectors. In the case of the agreements signed by the EU with Mexico and Chile, for instance, the average phase-out period is 1.71 and 1.14 years, respectively, versus 5.09 and 3.78 years in the case of agricultural goods[4] (Estevadeordal and Suominen, 2004). In the Bolivia-Mexico FTA, agricultural goods represent 79% (100%) of the products with longest phase-out periods (10 and 15 years, respectively) (ALADI, 2001).

In addition, the agricultural sector concentrates most of the products excluded from liberalization. Many of these are either "sensitive" or "special" as defined in the multilateral negotiations since the Cancún Ministerial in 2003 (that is, products that are "politically sensitive", and products that are specially important for the food security, livelihood security and rural development of developing countries, respectively). For instance, in the Bolivia-Mexico FTA, almost 100% of the products excluded are agricultural goods, and in the G3 agreement, the percentage is similarly high in the Mexico-Colombia tariff schedules, 90% – although a lot smaller for Mexico-Venezuela (approximately 30%; here the exclusions are concentrated in the textile sector, which accounts for 70% of the total number of excluded products). The same holds for the Chile-Mexico FTA (almost 80%)[5].

Nevertheless, FTAs show some heterogeneity with respect to the treatment of the agricultural sector, and can roughly be divided into four categories, as depicted in Figure 1.

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[4] In addition, for most agricultural goods that receive some kind of preferential treatment, the tariff reduction with respect to the pre-FTA level is quite small. One exception is Section 1 of the Harmonized System (Live animals and products of animal origin, including meats and dairy), where the Most Favoured Nation (MFN) tariff is very high, and thus the preferential tariff is still significant.

[5] Author's calculations based in ALADI (2002) figures.

The first group of agreements consists of those where few or no products are excluded from liberalization and phase-out periods are relatively short. The Chile-United States agreement stands out because no product is excluded from the tariff elimination schedule, and because applied tariffs are reciprocally and completely eliminated for the majority of agricultural goods either immediately or in the short-run. In the Chile-Mexico and G3 agreements, although a few products considered "sensitive" are excluded, tariffs on the remaining agricultural goods are eliminated upon entry into force of the agreement.

Figure 1: Coverage and tariff elimination schedules for agricultural goods

	Short-term liberalization for most products	***Medium to long-term liberalization for most products***
Few or no products excluded	Chile-United States Chile-Mexico G3 (Mexico-Colombia-Venezuela)	CAFTA-Dominican Republic Chile-South Korea NAFTA Mexico-Nicaragua
Many products excluded	Israel-Mexico EFTA-Mexico Chile-EFTA	Costa Rica-Mexico Bolivia-Mexico Central America-Dominican Republic Central America-Chile Mexico-Northern Triangle (El Salvador-Guatemala-Honduras) Mexico-Uruguay Canada-Chile Canada-Costa Rica Chile-European Union Mexico-European Union Panama-Taiwan

Source: The author based on the texts of the agreements, downloadable from the Foreign Trade Information System of the Organization of American States, OAS-SICE (www.sice.oas.org).

A second group of trade agreements have a short list of exclusions, but relatively long tariff elimination schedules for some sensitive products. This is the case of NAFTA (only between Canada and Mexico), CAFTA-Dominican Republic (CAFTA-DR) and the Mexico-Nicaragua agreements. For example, in CAFTA-DR, so-called "non-Hilton beef" (that is, meat of a relatively low quality) has a 15 year period until full liberalization is reached, both in the Central American countries and the United States. During this period, El Salvador and Guatemala have established duty-free quotas similar to the current import level, and Costa Rica and Nicaragua negotiated a special safeguard measure with a relatively low trigger volume, as discussed later. The United States have also given concessions in the form of duty-free quotas to Costa Rica, El Salvador, Honduras and Nicaragua. Chicken leg quarters, due to the risk of dumping from United States exports, will be fully liberalized only in 17-18 years, starting with a high base-tariff (varying between 151% – Costa Rica – and 164% – other Central American countries). The United States have given immediate free access to Central American chicken (ECLAC, 2004)[6]. The agreement between Chile and South Korea is relatively special in that Chile has

[6] One should note that in the case of meats, sanitary barriers present a significant barrier for Central American exporters. As described later, in most FTAs, there has been little advance in the recognition of the equivalence of the sanitary and phitosanitary systems between signatory parties.

limited its list of exclusions to the products currently still subject to price bands (wheat, vegetable oils, sugar) while South Korea postponed the negotiation of a significant number of goods pending the outcome of the Doha Round negotiations, although its formal list of exclusions is also limited to a few products.

In a third group, there is a relatively large number of agricultural goods excluded altogether from any concessions (or that remain with large above-quota duties), and the remainder are for the most part liberalized either in the medium or long-run, usually with large grace periods. The percentage of agricultural tariff lines excluded from liberalization varies between 12-11% (Canada-Costa Rica[7], respectively); 11% (Costa Rica-Mexico[8]); 15% (Mexico-Northern Triangle[9]); and 10-29% (Chile-EU[10]). It should be noted that these percentages could be quite significant while representing a relatively reduced percentage of bilateral trade. In the Chile-EU agreement, for instance, the tariff lines excluded by the EU (Chile) represented a mere 0.4% (5.8%) of the value of total agricultural imports originating in Chile (the EU), according to 1998-2000 averages (Leiva, 2003). In the presence of high tariffs, however, the weight of excluded products in trade flows is clearly not a good measure of their actual significance. When tariffs are prohibitive, there is simply no trade and the weight of the excluded product is zero. This does not necessarily mean that the product is not relevant to the exporting partner. The persistence of Chilean negotiators in obtaining tariff-free quotas from the EU for meats and cheese reflects precisely the fact that Chile has the potential to become a competitive exporter in certain market niches, while the tariffs applied to these products by the EU are extremely high and thus Chilean exports incipient (ODEPA, 2004a and 2004b).

In some cases, the asymmetry in the level of development between signatory countries has been taken into account, by establishing, for instance, longer tariff elimination schedules for the less-developed party, or allowing certain products considered important in terms of food security to be excluded non-reciprocally. This is the case of Mexico, in NAFTA and the agreement with the European Union (EU); of Nicaragua, in the agreement with Mexico; of Costa Rica, in the agreement with Canada; and of the Central American countries in CAFTA-DR.

Finally, in a fourth group of agreements (Israel-Mexico, EFTA-Mexico, Chile-EFTA) the commitments with respect to agricultural goods are modest, excluding many products, and consist mainly of permanent tariff reductions (ODEPA, 2003).

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[7] Source: COMEX, 2001.
[8] Source: author's calculations based on figures of COMEX, 1994.
[9] Source: ECLAC, 2001.
[10] Source: Leiva, 2003.

Why this heterogeneity? First, it is clearly easier to liberalize agricultural trade with countries that produce in counter season and thus do not compete directly with each other (eg. Chile and the United States versus Mexico and the European Union). Second, countries that have liberalized trade unilaterally at a very early stage, and which have gone through extensive structural reforms (such as Chile), are obviously more prone to liberalize trade completely, since they have little to lose, and possibly a lot to gain from FTAs covering multiple aspects of bilateral relations beyond trade (eg. Investment). Conversely, countries that still apply very high tariffs and/or heavily subsidize domestic production (some Andean countries, the European Union, the EFTA countries, and the United States) will face strong internal pressure to keep these "sensitive" products out of the agreements from agricultural lobbies whose political influence often outweighs their economic and social significance. Third, in many Latin American countries some products are important in terms of contribution to internal production and employment, and the liberalization of bilateral trade with heavy-subsidizers and/or (artificially) low production costs would simply swamp the domestic markets and compromise the livelihoods of many. In addition, some of these products are very important in terms of contribution to total exports. Whereas some countries (eg. Mexico) have enough resources to implement public programs that compensate affected producers, others simply do not (eg. Ecuador or Bolivia). Recall that, unlike what happens under MEDA (the Euro-Mediterranean Partnership), FTAs in the Americas do not involve compensations from the most developed party to the less developed one(s) in order to support economic transition. Longer phase-out periods as those mentioned above are not an equivalent for two main reasons: time to modernize needs to be accompanied by financial resources; and the implementation of tariff-quota regimes is often not respected. A combination of political and economic considerations, thus, drives the outcome of international trade negotiations. All these factors are discussed more extensively in the next section.

1.2. Exclusions: modalities and economic significance

This section focuses on the first three groups of agreements defined above given that, as mentioned, in the fourth group there is only a short list of agricultural products for which trade is fully liberalized. Although there is some variation across FTAs, some agricultural products are systematically either completely excluded from liberalization, or simply granted duty-free quotas, accompanied by the maintenance of high out-of-quota tariffs. These include raw and refined sugar, meats (especially poultry), dairy products and cereals. Sugar is excluded from all FTAs, with the exception of Canada-Costa Rica and Chile-United States (although not *de facto* in the latter case). In CAFTA-DR sugar is only excluded by the United States. Poultry is excluded in thirteen FTAs, and in the case of the Chile-South Korea agreement, it is exempt from liberalization by the former and negotiations postponed pending the results of the Doha Round.

Table 1: Agricultural products most frequently excluded from tariff liberalization

Sugar	*Poultry*	*Beef*	*Pork*	*Dairy*	*Cereals*
Excluded in:					
All agreements except *Canada-Costa Rica* and *Chile-United States*. Within *NAFTA*, trade between Mexico and the United States will be liberalized, but not between Canada and Mexico. In CAFTA-DR sugar is only excluded by the United States (d)	*NAFTA* (between Canada and Mexico), *Costa Rica-Mexico, G3, Bolivia-Mexico, Canada-Chile, Central America-Dominican Republic, Central America-Chile* (between Chile and Costa Rica) (c), *Mexico-NT, Canada-Costa Rica, Mexico-EU, Chile-EU* (a), *Chile-South Korea* (b), *Panama-Taiwan, Mexico-Uruguay*	*G3, Bolivia-Mexico, Central America-Chile* (between Chile and El Salvador), *Mexico-NT* (excluded only by Mexico), *Canada-Costa Rica* (excluded only by Costa Rica), *Mexico-EU, Chile-EU* (a), *Chile-South Korea* (b), *Mexico-Uruguay*	*G3, Bolivia-Mexico, Central America-Chile* (between Chile and El Salvador), *Mexico-NT, Canada-Costa Rica* (excluded only by Costa Rica), *Mexico-EU, Chile-EU* (a), *Panama-Taiwan* (d), *Mexico-Uruguay* (excluded only by Uruguay)	*NAFTA* (between Canada and Mexico), *Bolivia-Mexico, Central America-Dominican Republic, Chile-Mexico* (excluded only by Mexico), *Chile-South Korea* (b), *Panama-Taiwan* (d), *Mexico-Uruguay* (e)	*G3, Bolivia-Mexico, Canada-Chile* (excluded only by Chile), *Central America-Dominican Republic, Chile-Mexico, Central America-Chile Mexico-NT, Canada-Costa Rica* (excluded only by Costa Rica), *CAFTA-DR* (all Central American countries, except Costa Rica) *Mexico-EU, Chile-EU, Chile-South Korea* (b), *Panama-Taiwan, Mexico-Uruguay*

Source: The author based on the texts of the agreements, downloadable from the Foreign Trade Information System of the Organization of American States, OAS-SICE (www.sice.oas.org). Obs.: (a) Excluded only by the EU, but with the concession of a duty-free quota to Chile); (b) Excluded by South Korea pending Doha Round negotiations. (c) Note that the Central America-Dominican Republic FTA is not in force yet for Nicaragua and that the Central America-Chile FTA is only in force for Costa Rica and El Salvador. (d) With concession of a duty-free quota by Taiwan for some specific products (sugar, pork chops, non-concentrated milk). (e) Mexico excludes only some cheeses, and increases the duty-free quota.

This arrangement also applies to beef, dairy products, some cereals, some types of vegetable oils, some fruits, some vegetables, and tobacco. Cereals and dairy products are also exceptions in most FTAs, although there are variations with respect to which cereals and dairy products are excluded depending on each party's domestic sensibilities. For instance, in the Mexico-Uruguay FTA, Mexico excludes only some cheeses, for which there is not withstanding an increase in the preexistent duty-free quota, whereas Uruguay excludes nearly all dairy products. This is hardly surprising, given the structure of bilateral trade. Whereas Mexico exports mainly non-agricultural manufactures to Uruguay, the latter is

essentially an exporter of agricultural goods, for which Mexico is a very important client. In 2003, Mexico was the only importer of Uruguayan powder milk (9.7 million $US), and the main importer of homogenized milk (11.7 million $US; 89% of Uruguayan homogenized milk exports) and cheese (14.2 million $US; 66%) (SE Mexico, 2004).

Other common exclusions are eggs, oils of vegetable origin, beans, coffee, some fruits and vegetables (bananas, grapes, apples, citrus, avocados, tomatoes, olives), potatoes and onions, tobacco, and some alcoholic beverages (in the case of the agreements signed with the EU, all wines and spirits covered by geographical indications are excluded).

Sugar is excluded under several different arrangements, as described here next. In the case of the agreements between Mexico and Costa Rica and Nicaragua, the former grants a preferential quota to the latter two countries only in the case of a deficit. In the G3 agreement, a Sugar Analysis Committee ("Comité de Análisis Azucarero") has been created to determine the quotas to be granted by Mexico, and, should the parties not arrive to a consensus, the product is added to the list of exclusions. In addition, Colombia and Venezuela are allowed to keep their respective price band mechanisms. In the CAFTA-DR FTA, the United States can compensate Central American sugar exporters instead of eliminating tariffs. In the case of the Chile-United States agreement, as suggested above, sugar is a *de facto* exclusion, insofar as it establishes as a condition for granting preferential treatment that the recipient party is a net exporter, and neither of them are.

Finally, in the agreements where sugar is not excluded, phasing-out is achieved under special conditions and in the long run. In the case of Mexico and the United States (Canada and Mexico signed a separate bilateral agreement for market access in agricultural products), duties applied to sugar imports will be reciprocally and progressively eliminated within 15 years of the entry into force of NAFTA. During the first 6 years, tariffs were reduced in the United States, while Mexico adjusted its tariff regime. During this period, in the years when Mexico was able to produce more than its internal consumption, Mexican sugar was allowed to enter the United States up to a maximum of 25,000 metric tones (MT). Between the 7th and 14th year of NAFTA being in force, this quota is multiplied by ten, but Mexico is considered a net exporter only if its production of sugar exceeds the combined consumption of sugar and High Fructose Corn Syrup (HFCS). The inclusion of HFCS for the effect of determining Mexico's status as a net exporter of sugar was a result of an agreement parallel to NAFTA added to the latter in order to obtain the approval of the American Congress, and its validity was never recognized by Mexico. Nonetheless, in practice, the entry of Mexican sugar in the United States is administered according to this rule (Mitchell, 2004).

It should be noted that some products excluded from full liberalization have been granted preferences under tariff-quotas. In the Chile-EU FTA, for instance, this is the case of meat (concession of the EU), olive oil (concession of Chile), and cheeses (reciprocal). Quotas for meat grow 10% annually, and 5% for olive oil and cheeses. Agroindustrial products such as cacao preparations, confectionery and cookies are also granted a tariff-free quota by the EU, although not subject to an annual increase (Rudloff and Simons, 2004a).

In terms of their weight in agricultural production and area under cultivation, agricultural goods excluded from liberalization have varying degrees of importance, depending on the country considered, although there are also some commonalities (see Table 2). Maize, for instance, is important on both counts in most Latin American countries, especially for Guatemala and Mexico. Wheat occupies a significant percentage of cultivated land only in Chile (42%) – where it is protected with price bands – and Uruguay (30%), but represents a relatively insignificant percentage of the value of agricultural production due to its low unit value. Sugar cane (sugar beets in the case of Chile) does not significantly contribute to either production or area under cultivation in some of the countries considered here (Bolivia, Chile, Mexico and Uruguay), but is important in the Dominican Republic, the Central American countries, Colombia and Venezuela. In addition, sugar exports account for a substantial percentage of total agricultural exports in Guatemala (18.2%), the Dominican Republic (17.2%), and El Salvador (10.8%)[11].

The EU and the United States, on the other hand, as a result of significant internal support measures and trade barriers, are today large sugar producers.[12] Together with India and Brazil, the EU is one of the most important sugar producers in the world (14% of the total world value, ex aequo with the other two countries) while the United States and China produce 6% of the total each. After Brazil, the EU is the second largest net exporter, according to 2002 data. The protectionism in some developing countries is partially a defense mechanism against the plummeting in sugar world prices that the subsidies in the developed world have originated (Mitchell, 2004). The competitiveness of Brazil in sugar production (as in other products typically excluded from FTAs, such as beef and poultry, or at least certain cuts thereof) has made the negotiations where this country is involved (EU-MERCOSUR, FTAA) particularly complex.

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[11] All export shares are calculations of the Agricultural Development Unit based in COMTRADE data for 2002, except for the Dominican Republic (2001). The percentages are 8.5%, 7.3%, 6.4% and 3.6%, for Honduras, Colombia, Nicaragua and Bolivia, respectively. In the remaining countries considered here they account for less than 2%.

[12] Despite the fact that the cost of producing sugar from cane is approximately half the cost of producing it from beets, in 2000, 27% of the world's sugar came from beets, which are almost entirely produced in the EU, the United States, Japan and Eastern Europe. In Latin America, only Chile is a relevant producer of sugar beets.

As far as products of animal origin are concerned, poultry and dairy are the most frequent exceptions among the countries that have signed FTAs so far, followed by beef and pork. Not surprisingly, these are also amongst the agricultural products facing the highest peak tariffs in developed country markets (Laird, Cernat and Turrini, 2003).

Table 2: Contribution to value of production and cultivated area for main exceptions in FTAs and selected Latin American countries, 2000 (percentages; NE = not excluded by the reporting country)

Reporting country	*Bolivia*	*Chile*	*Colombia*	*Costa Rica*	*Dom. Republic*	*El Salvador*	*Guatemala*	*Mexico*	*Nicaragua*	*Panama*	*Uruguay*	*Venezuela*
Main crops (% of production)												
Sugar cane (a)	6.6	6.8	15.6	9.9	8.3	4.6	19.2	8.2	24.0	6.6	0.4	12.5
Maize	12.9	NE	NE	0.7	NE	7.2	30.1	31.4	20.5	5.0	1.2	NE
Rice	6.8	NE	NE	7.1	45.8	0.6	1.3	0.6	NE	23.9	41.6	NE
Wheat	1.8	11.1	0.2	0.0	NE	0.0	NE	4.8	NE	NE	4.6	0.0
Main livestock products (% of production)												
Poultry	8.11	24.8	28.7	23.1	46.8	23.9	41.7	29.7	NE	33.8	5.4	48.2
Milk	75.2	35.1	34.5	41.6	12.0	39.9	24.5	25.9	NE	17.4	28.2	15.7
Beef	10.8	22.1	30.0	27.3	NE	26.8	NE	27.4	NE	NE	43.8	28.0
Main crops (% of cultivated area)												
Sugar cane	4.7	5.5	13.4	11.1	17.0	9.7	13.1	4.7	7.7	11.0	0.7	10.5
Maize	19.3	NE	NE	4.3	NE	49.9	47.9	61.5	38.4	18.3	13.2	NE
Rice	10.0	NE	NE	19.3	19.5	2.0	1.2	0.7	NE	45.8	41.1	NE
Wheat	6.5	42.3	0.6	-	NE	-	NE	5.3	NE	NE	30.0	0.1

Source: The author, with data from ECLAC-IICA (2001). Obs.: In the case of Guatemala, although wheat is not excluded, flour thereof is. (a) Sugar beets in the case of Chile.

Livestock and dairy production in Latin America is very heterogeneous and highly technified farms coexist with a large number of small producers with low levels of both technology use and conformity to sanitary norms. Most of the production goes to the internal market, with the exception of Nicaragua. In this country, in 2002, beef represented 18% of total agricultural exports and dairy products 9%. In all other countries considered in Table 2, exports of products of animal origin do not reach 2% of total agricultural exports. It should be noted that although Nicaragua has not excluded beef from tariff liberalization, it benefits from a special safeguard measure applicable with a relatively low trigger import volume until the end of the phase-out period (see chapter 3).

Scattered evidence for Latin America shows that, at least in the pork and poultry subsectors, production is highly concentrated in a reduced number of producers, whereas for those countries where recent census information is available, small producers are still responsible for a significant part of sugar cane

(beet) and cereal production, although here too markets are highly segmented and purchases concentrated in relatively few buyers[13].

The aforementioned evidence suggests that the exclusion of at least some agricultural products is essentially of a political nature, depending on how well producers are organized and are thus able to influence the outcome of international trade negotiations. Political analyses of such negotiations seem to confirm this view. In the Chile-United States FTA there are no exceptions, but the products subject to price bands in Chile have the longest phase-out periods in the agreement. This arrangement is a compromise between the initial position of the SNA ("Sociedad Nacional de Agricultura"), the only producer association that opposed the FTA, particularly the elimination of the price band mechanism, and the pro-liberalization position of export producers in Chile's Central Valley (Porras, 2003). In the first negotiation round of NAFTA, on the other hand, all Mexican producer associations agreed that "sensitive" products such as maize and beans should be excluded and that tariffs applied to products such as milk, rice and sorghum should have long phase-out periods, given the lower level of development of Mexico's agriculture. In addition, Mexican producers pressed the Government to push for immediate liberalization of the fruit and vegetable trade. Following the negative response of the North American negotiators, the Mexican Government finally settled for a minimum ground acceptable to both the most influent lobbies in the country, the associations representing export agriculture, and the United States. At the same time, with the imminent risk of serious social unrest in the countryside, it was forced to commit important public resources to compensatory measures, such as direct transfers to producers (Porras, 2000).

In the agreements signed by the EU, "the pattern of product coverage of liberalized imports into the EU reflects the degree of EU domestic protection and the risk, or existence, of internal surpluses for the respective products" and ultimately the Common Agricultural Policy (CAP). For products with high domestic protection (bovine animals and beef, domestic swine, poultry, dairy, cereals, sugar, some fruits and vegetables[14], olive oil, citrus fruits and grapes, flowers and rice) there is little incentive to accept tariff reductions, as this could determine a fall in internal prices. For some of these products (meats, dairy, cereals and sugar) there are additionally "remarkable" surpluses, meaning that

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[13] In Chile, for instance, 85% of poultry is produced in five plants. One of these accounts for more than 50%. In addition, the supply chain exibits a strong degree of vertical integration, from the production of eggs, to chicken feed, slaughtering and distribution of the final product (ODEPA, 2004a).

[14] Basically, those subject to the EU's Entry Price System: tomatoes, cucumbers, artichokes, courgettes, apples, pears, peaches, apricots, cherries, plums, grape must and juice. Under this system, when the CIF price of imports falls below a given threshold price, an additional tariff is applied to the general tariff, up to a certain limit. The threshold price varies from season to season.

the EU has simultaneously the interest in increasing access to external markets (Rudloff and Simons, 2004a, pp. 3-4).

In general, efforts to reduce protection in developed countries have been strongly opposed by domestic producers while consumers have voiced little opposition to high prices resulting from such subsidies given the reduced weight of food in the household budget (see Mitchell, 2004, for an analysis of the sugar world market). Developing countries see these concessions as acceptable given other objectives considered more important and that are furthered by FTAs, such as attracting foreign direct investment or ensuring access to products deemed competitive in the long run. Perroni and Whalley (1996) argue that the reduction of uncertainty with respect to potential increases in tariffs implicit in the signature of a FTA, even when the benefits are not particularly significant *vis-a-vis* the pre-existing tariff preferences, like in the case of the CAFTA-DR agreement, is highly valued by developing countries.

2. MARKET ACCESS: SPECIAL PROVISIONS

2.1. Special agricultural safeguards (SSGs)

"Safeguards are contingency restrictions on imports taken temporarily to deal with special circumstances such as a sudden surge in imports. (...) The special safeguards provisions for agriculture differ from normal safeguards (...) [in that], in agriculture (...): higher safeguards duties can be triggered automatically when import volumes rise above a certain level, or if prices fall below a certain level; and it is not necessary to demonstrate that serious injury is being caused to the domestic industry". Notwithstanding, "special agricultural safeguards can only be used on products that were tariffied — which amount to less than 20% of all agricultural products (as defined by "tariff lines"). But they cannot be used on imports within the tariff quotas, and they can only be used if the government reserved the right to do so in its schedule of commitments on agriculture" (WTO, 2004, p.39). In Latin America, this includes only eleven countries (Barbados, Costa Rica, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama and Venezuela). Only three (Barbados, Costa Rica and Nicaragua) have actually used the SSG between 1995 and 2004, one important explanation being the prevalence of high consolidated tariffs in the agricultural sector combined with ineffective trigger mechanisms (thus the less cumbersome alternative to simply raise the applied tariff up consolidated levels). Disaggregated statistical data for domestic consumption, required to calculate import trigger volumes, are not available in many developing countries, and thus a predefined import/consumption factor is considered, further reducing the likelihood that the SSG is applied (Paz, 2005).

The right to use SSGs will lapse in the absence of an agreement in the current negotiations. In the first phases of the Doha Round, South Korea and

Japan proposed "a new form of special safeguard that would apply to perishable and seasonal products" to which a number of countries objected, saying that this would increase protectionism. Other proposals brought forth at that stage included substituting the current safeguards with a countervailing mechanism for developing countries to use on subsidized imports from developed countries, or allowing developing countries to use special safeguards for all products while simultaneously eliminating the right to use SSGs by developed countries. According to more recent proposals, current SSGs would disappear for developed countries and a "new special safeguard mechanism (SSM) would be available as safety net for developing countries" (WTO, 2004, p.39-41). The SSM would be constructed to avoid the shortcomings of the SSG discussed in the previous paragraph, with the goal of stimulating rural development, food security and livelihood security (Paz, 2005).

The FTAs including SSGs are: NAFTA (bilaterally between Mexico and the two other parties), G3 (only between Mexico and Venezuela), Mexico-Northern Triangle, Canada-Costa Rica (only for Costa Rica), Chile-United States and CAFTA-DR. The safeguard mechanism in the Chile-United States agreement has the particularity to be the only one triggered by price and not by volume. In any case, the penalty imposed by triggering the SSG cannot exceed the Most Favoured Nation (MFN) tariff (applied at that moment; applied at the time the FTA was signed; or the lowest of the two), cannot be applied to raise zero in-quota duties, and its use is limited in time.[15] Parties are prevented to use the SSG and general safeguards simultaneously[16].

The agreements that Chile has signed with both the EU and South Korea include an emergency safeguard clause for (all) agricultural goods, applicable when imports cause serious injury or disturbance in the markets. This safeguard allows the party affected by an import surge to either suspend tariff reductions or raise the applied tariff up to a certain limit. Contrary to the safeguards mentioned above, these are not automatic, do not define a trigger, and may involve a compensation to the affected Party. The penalties imposed cannot exceed the lesser of the MFN duty or the base duty to which reductions are to be applied.

At least in the case of CAFTA-DR, as pointed out by ECLAC (2004), the trigger over-quota volumes negotiated (as well as the initial duty-free quotas and respective over-quota tariff periodical reductions) are fairly large for some products, especially rice and corn. This means that for these products, the access for North American exports is in fact immediate. Further, applicable tariffs once

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[15] In CAFTA-DR, however, the possibility to extend the applicability of SSGs will be reviewed 14 years after the treaty enters into force.

[16] Dairy products, meats and some cereals, are frequently subject to SSGs in these agreements. Some fruits and vegetables (mainly processed), are protected with SSGs by the United States in the FTA with Chile.

the trigger import volume has been exceeded are biased against countries applying lower tariffs, given the limitations on the size of the penalty described above. In any case, the use of SSGs is limited in time. Overall, it seems as if most FTAs *de facto* restrict the developing party's possibilities of defense against future import surges, with respect to what is foreseeable to be agreed in this multilateral round of negotiations.

2.2. Export subsidies, domestic support measures and antidumping remedies

Domestic support exceeding the reduction commitment levels in the so-called Amber Box is prohibited. 34 WTO members (including Argentina, Brazil, Colombia, Costa Rica, Mexico and Venezuela in Latin America) have commitments to reduce trade-distorting domestic support (that is, linked to production or trade), also known as "amber box". With the exception of LDCs, countries without these commitments must keep this support under the so-called *de minimis* level (5% of the value of production, for developed countries; 10% in the case of developing countries). Subsidies tied to production-limiting programs, or "blue box", are exempt from this rule. Internal support measures without, or with minimal effects on trade or production, such as public spending on rural development programs, are not subject to any restrictions (the "green box"). According to the August 2004 framework agreement, developed countries must substantially reduce the overall level of distorting domestic support. Countries with higher subsidies will have to make deeper cuts, and there will be product-specific caps, as well as caps on blue box supports, currently exempt. Developing countries will be exempt from reducing the *de minimis* amount if it is mainly used to support "subsistence and resource-poor farmers" (WTO, 2004, p. 58).

Export subsidies are prohibited in general, although temporary exemptions for developing countries are contemplated with respect to marketing, handling and international transport support. In addition, 25 WTO members are allowed to subsidize exports for products on which they have reduction commitments. In Latin America, these include Brazil, Colombia, Mexico, Panama, Uruguay and Venezuela. According to the August 2004 framework, all forms of export subsidies will be eliminated, including export credits, export credit guarantees and certain insurance programs, certain practices of state-trading enterprises and certain types of food aid. The details as to exactly how and when this would happen are under negotiation. Developing countries will be subject to relatively less stringent conditions (WTO, 2004).

All FTAs considered in this paper specify that the signatory parties share the objective of multilateral elimination of export subsidies for agricultural goods in the WTO. In almost all of them, there is in addition a commitment to reciprocally eliminate export subsidies (although products excluded from trade liberalization are also excluded from this commitment). The agreements not

including this commitment are: Central America-Dominican Republic, Mexico-EU, Mexico-Israel, Mexico-EFTA, Chile-EU, Chile-South Korea and Panama-Taiwan. In addition, the Bilateral Protocol between Chile and Costa Rica of the Chile-Central America FTA establishes that products favored by the duty draw-back system in Chile are exempt from export subsidy elimination in Costa Rica and in addition, will not benefit from tariff reductions until they comply with WTO rules. This also applies in the context of the FTA between Canada and Chile with respect to fruit and vegetable juices, fresh asparagus, dried apples and sparkling wine (ODEPA, 2003).

In some cases, the commitment to reciprocally eliminate subsidies is accompanied by the possibility to reintroduce (or maintain) them if one of the parties imports subsidized products from a non-Party. This is what happens in NAFTA, the Chile-United States and Mexico-Uruguay FTAs, and CAFTA-Dominican Republic. In the latter, it is additionally specified that the exporting Party may do so "only to the extent necessary to counter the trade-distorting effect of subsidized exports of the good from the non-Party to the importing Party's territory" (Article 3.14 of the agreement).

In general, as far as domestic support measures are concerned, the Parties recognize that they can have distorting effects on production and trade, and that, as much as possible, the Parties should make an effort to move towards measures that minimize such effects, or that are exempt from reductions in the WTO. However, it is also in general mentioned that any of the Parties may modify domestic support measures at their own discretion, including those that fall in the "amber box", according to WTO rights and obligations.

Moreover, in some agreements it is explicitly stated that one or more Parties have the right to maintain their price band mechanisms. This is the case of Colombia and Venezuela in the G3 FTA, who are allowed to maintain price bands on a number of agricultural goods, such as pork, bacon, milk, butter, rice, wheat, barley, wheat and maize flour, oils of vegetable origin, among others. In the agreement between Chile and Central America, it is also established that the Parties can, under certain circumstances, use price bands, and that in its implementation, the Parties commit to not including new products nor modifying the mechanism or implementing it in a way leading to a reduction in market access. However, in the case of its total or partial dismantling after the entry into force of the agreement, with respect to any country (Party or non-Party of the FTA), the Party that uses price bands will not grant a less favorable treatment to the other Party than what the one granted to a non-Party.

Finally, in most FTAs (and also in the regional customs unions), each Party reserves the right to apply countervailing duties and/or antidumping measures to imports, according to WTO rules. There are two exceptions, the Chile-EFTA and Chile-Canada FTAs, where it is established that such measures

must not be applied between the Parties of the agreement. The same was also proposed by Chile to Mexico, but the issue was eventually left for future negotiations (Peña, 2001). In the Chile-Central America FTA, the Parties simply commit to promote reforms to avoid that this kind of measures become obstacles to trade, for which they commit to establish a work program two years after the agreement's entry into force, and to cooperate in the WTO and the Free Trade Area of the Americas (FTAA).

3. TECHNICAL REGULATIONS, PROTECTION OF INTELLECTUAL PROPERTY AND RULES OF ORIGIN

3.1. Technical regulations and standards specific to agriculture

The Technical Barriers to Trade Agreement (TBT) "tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade", "recognizing nevertheless countries' rights to adopt the standards they consider appropriate – for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, countries are not prevented from taking measures necessary to ensure their standards are met". It is recommended that they "use international standards where these are appropriate, but it does not require them to change their level of protection as a result". In addition, "the agreement sets out a code of good practice for the preparation, adoption and application of standards by central government bodies". For instance, the "procedures used to decide whether a product conforms with national standards have to be fair and equitable", and countries are encouraged to "recognize each other's testing procedures". Finally, the agreement requires the establishment of national enquiry points where manufacturers and exporters can easily find out what the "latest standards are in their prospective markets" (WTO, 2003).

With the exception of the Canada-Chile FTA, which does not include a chapter on technical barriers to trade, all FTAs considered here establish the objective of increasing and facilitating trade through the improvement of the implementation of the TBT. A handful of agreements reiterate the TBT obligetions, explicitly state the obligation to accord national treatment to agricultural goods traded between the Parties, and create a special committee, or working group, on technical and marketing regulations for agricultural goods (in addition to the Committee on Technical Barriers to Trade of a more general scope)[17].

The agreement between Chile and the United States is the only one including mutual recognition provisions, albeit limited to grading programs for

[17] This is the case of NAFTA, although only between Mexico and the United States, and the Costa Rica-Mexico, G3 (Mexico-Colombia-Venezuela), Mexico-Nicaragua and Chile-United States FTAs.

the marketing of beef. This involves an acknowledgement by Chile that the USDA's Agricultural Marketing Service (AMS) is a competent entity of grading quality of meats to be exported from the United States to Chile, and the recognition, by the United States, that the certification entities inscribed in the "Registro de Certificadores de Carne" in Chile's Servicio Agrícola y Ganadero (SAG) are those competent in certifying Chilean meats exported to the Unites States (Annex 3.17 of the agreement). Finally this FTA creates a Working Group on Agricultural Trade that will review, in coordination the Committee on Technical Barriers to Trade the operation of the aforementioned standards and resolve any issues that may arise regarding the same DIRECON (2003).

3.2. Sanitary and phitosanitary measures

The Sanitary and Phytosanitary Measures Agreement (SPS) deals specifically with food safety and animal and plant health and safety. "It allows countries to set their own standards. But it also says that regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjusttifiably discriminate between countries where identical or similar conditions prevail". In addition, "WTO members are encouraged to use international standards" (the World Organization for Animal Health, the Internacional Plant Protection Convention and the Codex Alimentarius Convention, with respect to food safety). "However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary. And they can to some extent apply the "precautionary principle", a kind of "safety first" approach to deal with scientific uncertainty" (WTO, 2003). This principle has been invoked for instance by the EU to ban imports of hormone treated beef and to apply since 1998 a moratorium on the approval of biotech products.

Other relevant provisions of the SPS agreement include: (i) "adaptation to regional conditions" (that is, each country shall adapt its SPS measures to the characteristics of the imported good's origin and destination areas); (ii) procedural aspects, such as those related to transparency and the obligation to create national enquiry points; and (iii) special and differential treatment for less developed countries (for instance, with respect to implementation deadlines) (Rudloff and Simons, 2004b). Food safety issues are being discussed for the first time in agricultural negotiations, essentially to determine whether the SPS agreement is sufficiently clear to balance consumer concerns while at the same time avoiding protectionism (WTO, 2004).

In the FTAs under scrutiny here, the emphasis accorded to facilitating the implementation of the SPS agreement varies between two extremes. On the one hand, we find once more the Canada-Chile FTA, which does not include any

provisions in this regard (recall that the same holds for technical barriers). On the other extreme, one finds the Chile -EU agreement. In between the two extremes there are:

(1) The agreements where the chapter on the subject is limited to establishing that the Parties adopt the rights and obligations of the SPS agreement (CAFTA-DR, Chile-United States, Canada-Costa Rica, Mexico-EU, Mexico-Israel, Mexico-EFTA and Chile-EFTA). Note that this group of FTAs includes those that are more aggressive with respect to tariff elimination, contemplating very few exceptions, such as the CAFTA-DR and Chile-United States FTA.

(2) The remaining agreements, where the Parties explicitly confirm the SPS provisions, but go a step further in clarifying definitions and some procedural aspects (for instance with respect to notifying, publishing and providing information on domestic SPS measures) and at the same time emphasize cooperation and mutual recognition between the Parties, facilitating the application of SPS measures in a consistent manner. Special and differential treatment, however, is not considered in any of the FTAs. Moreover, in these agreements it is established that when the Parties have recurred to technical consultations, these will constitute those foreseen in the chapter on dispute settlement of the agreement. This creates flexibility in the settlement of eventual disputes (Dispute Settlement Body of the WTO *or* Dispute Settlement mechanism specific to the FTA).

With respect to settlement dispute, it is interesting that in CAFTA-DR, and the Chile-United States and Canada-Costa Rica FTAs, mentioned in paragraph (1), it is explicitly stated that the Parties must use the WTO Dispute Settlement Body to solve disputes on SPS measures (and not the Dispute Settlement Mechanism of the treaty), and that in the remaining FTAs in paragraph (1) dispute settlement is not mentioned.

With three exceptions (Mexico-Israel, Mexico-EFTA and Chile-EFTA, all of which are fairly limited with respect to liberalization of the agricultural sector, as explained in chapter 1) all FTAs create a joint committee in order to foster technical cooperation, give recommendations on specific problems, and facilitate discussion on bilateral SPS issues, in order to avoid disputes between the Parties.

The treaty between Chile and the EU is the one going the farthest beyond the provisions of the SPS agreement[18]. The "Agreement on Sanitary and Phytosanitary Measures Applicable to Trade in Animals and Animal Products, Plants,

[18] This agreement initially does not apply to sanitary measures related to: Food additives (all food additives and colours); Processing aids; Flavours; Irradiation (ionization); Chemicals originating from the migration of substances from packaging materials; Labelling of foodstuffs; Nutritional labelling; Feed additives; Animal feeding stuffs; Medicated feeds and premixes; Genetically Modified Organisms (GMO's).

Plant Products and other Goods and Animal Welfare", establishes, for instance: detailed equivalency procedures; guidelines for information verification, monitorring and certification; deadlines and requirements with respect to consultations and exchange of information; provisional approval of agricultural establishments for import purposes without prior inspection in certain sub sectors considered a priority, subject to certain guarantees to be provided by the exporting party's competent authorities; and finally, the mentioned provisions also apply to the development of animal welfare standards, a unique feature among the FTAs considered (Rudloff and Simons, 2004b).

Animal welfare is also being discussed in multilateral agricultural negotiations, with some countries advocating voluntary or mandatory labeling in order to allow consumers to make informed choices, including the European Union, and other countries arguing that this is a subject for the TBT Committee or the food labeling committee of *Codex Alimentarius*. In addition, there are proposals to include subsidies to compensate farmers for the extra costs incurred to respect higher standards with respect to animal welfare in the "green box" (WTO, 2004).

3.3. Protection of intellectual property rights

3.3.1. Protection of geographical indications

The Trade-Related aspects of Intellectual Property rights Agreement (TRIPS), in force since January 1995, is the most comprehensive multilateral agreement on intellectual property, and covers, among other areas, geographical indications (GIs). According to Article 22.1 of this agreement these are defined "as indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin". Further, according to the 2nd paragraph of the same article, "interested parties must have legal means to prevent use of indications which mislead the public as to the geographical origin of the good, and use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention". In addition, protection against the registration of trademarks must be provided (Article 22.3). In the particular case of wines and spirits, however, the TRIPS provisions are more stringent. In this case, the aforementioned obligations apply "even where the public is not being misled, there is no unfair competition and the true origin of the good is indicated or the GI is accompanied be expressions such as "kind", "type", "style", "imitation" or the like (Article 23)". Notwithstanding, there are exceptions that limit the scope of protection in this case. For example, Members are not obliged to bring a GI under protection, where it has become a generic term for describing the product in question". This is the case of "chablis", a term used in the United States to refer to white wines.[19] Also,

[19] Source: United States Patent and Trademark Office (http://www.uspto.gov).

"measures to implement these provisions shall not prejudice prior trademark rights that have been acquired in good faith"[20].

Thus it "is impossible to label a North American wine as *Rioja type*, but no provision forbidding a North American farmer to label his cheese as "*manchego type*", if the label also includes a statement that it is made in the United States". Also, because the name "Parma" was registered in Canada prior to TRIPS entering into force, Italian producers of Parma ham (Prosciutto di Parma) "have to resort to expensive litigation, re-label their product as the "n° 1 ham" and compete with a lower-quality product actually labeled "Parma". The same happens in Mexico and Argentina[21].

The European Union, and a group of other countries including Cuba, Honduras, Nicaragua, the Dominican Republic and Venezuela in Latin America, wishes to extend the more stringent protection given to wines and spirits in the TRIPS agreement, to other products of agricultural origin, such as cheeses and hams. Other countries, including Argentina, Australia and the United States, have repeatedly voiced their opposition, arguing that this would result in a reducetion of the prospective market for emerging economies and greater uncertainty with respect to current market access[22].

Given the limitations of the protection offered by the TRIPS agreement, many FTAs include more stringent provisions on the protection of Gis (Table 3)[23]. When broader commitments on the reciprocal protection and recognition of GIs are included, a list of GIs is typically added. The inclusion of GI provisions in such FTAs means that: (*i*) they can not be exempt from protection under the exceptions to the general TRIPS rule laid out above, for wines and spirits; and may (*ii*) in the case of other products (see Chile-South Korea FTA), or expressions that do not quite match the GI definition in TRIPS (see Chile-EU FTA), enjoy a degree of protection not offered multilaterally.

Another group of FTAs where the United States is a member, including both the Chile-United States FTA and the CAFTA-DR, which generically protect all GIs, explicitly state that there are grounds for refusing protection or

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[20] That is, prior to the entry into force of TRIPS (WTO, "Overview: the TRIPS Agreement": http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm).

[21] Source: European Commission, DG Trade (http://europa.eu.int/comm/trade/issues/sectoral/intell_property/argu_es.htm).

[22] "EU member states approve expanded geograhical names list", *Inside US Trade*, August 29, 2003; and Correa (2002).

[23] In the case of Mexico and the EU, a special agreement on mutual recognition and protection of spirits came into force in 1997, prior to the FTA. Tequila and mezcal were not recognized as GIs in the EU before its entry into force, and in practice were not protected. To this date, non-european GIs cannot be registered in Europe. This may change in the future, given a recent ruling of the DSB of the WTO against this limitation.

recognition of a GI, and in fact expand the exceptions contemplated in the TRIPS agreement, since the refusal to recognize or protect a GI is allowed if it is "likely to be confusingly similar to a trademark that is the subject of a good-faith *pending* application or registration" (that is, not only if this happened prior to the entry into force of the TRIPS agreement). NAFTA has similar provisions.

Given EU's concerns in this matter, and Chilean competitiveness in wine production, it is not surprising that the agreement between the two is the most comprehensive. Not only does it protect an extensive list of GIs (although only with respect to wines and spirits), but also traditional expressions and complementary quality mentions.[24] In addition, Chile agreed to eliminate the use of trademarks that contain European GIs (in 5 years, for exports, and in 12 years, in the domestic market), the most relevant being "champaña"[25]. Moreover, the EU recognizes Chilean "Pisco" but reserves the right to eventually recognize the similarly named Peruvian spirit (a reservation also included in the Chile-Mexico and Chile-South Korea FTAs) (DIRECON, 2002). Notwithstanding, Chile achieved one important concession from the EU, with respect to the recognition of enological practices (a permanent theme of dispute between the latter and the United States).

Finally, notice that in the Mexico-EU agreement, wine GIs are not protected. Several wines with European GIs are produced in the United States and further exported to Mexico. Clearly, given NAFTA rules, an agreement with the EU is not possible.

3.3.2. Intellectual property issues relevant to the agricultural sector

Contrary to what happens with geographical indications, the United States have pushed for greater protection to patents, including agrochemicals, pharmaceuticals and new varieties of plants. The focus of the section, which draws from OXFAM (2004) and Lalitha (2004), is thus on NAFTA, CAFTA-DR and the Chile United States FTAs. Note however that, given MFN treatment obligations in TRIPS, accepting greater protection to patents in agreements with the United States may force developing countries to provide similar patent protection to third countries.

[24] A traditional expression is a "a name traditionally used to refer, in particular, to the production or ageing method or the quality, colour, type of place, or a particular event linked to the history of the product concerned of wine that is recognized by the laws and regulations of a Party for describing and presenting a product originating in that Party". Complementary quality mentions are those terms named as such in the Chilean legislation (Annex V: Agreement on Trade in Wine, Article 3).

[25] A similar agreement was reached between the EU and South Africa, also a competitive wine producer.

Table 3: Scope of protection of geographical indications in Latin American FTAs (in cronological order)

FTAs between LAC countries	
Costa Rica-Mexico	Only in the case where the use of the GI induces the consumer in error or is protected by one of the Parties.
Group of Three	Only in the case where the use of the GI induces the consumer in error or is protected by one of the Parties.
Bolivia-Mexico	Limited to: Tequila and Mezcal; Singani (Bolivia).
Mexico-Nicaragua	Limited to: Tequila and Mezcal (a).
Central America-DR	Protection provided in accordance with TRIPS.
Chile-Mexico	Full protection to: Tequila and Mezcal; Pisco, pajarete, vino asoleado (Chile); Chilean wines with Denomination of Origin (c). No exceptions.
Central America-Chile	Does not have provisions on intellectual property.
Mexico-Northern Triangle	Only in the case where the use of the GI induces the consumer in error or is protected by one of the Parties.
Mexico-Uruguay	Only in the case where the use of the GI induces the consumer in error or is protected by one of the Parties. Full protection for tequila and mezcal.
FTAs with countries outside LAC	
NAFTA	Exceptions to recognition or protection of GIs under certain circumstances.
Canada-Chile	Limited to: Chilean Pisco; Canadian whisky.
Canada-Costa Rica	Protection provided in accordance with TRIPS.
Chile-United States	Generic, with exceptions to recognition or protection of GIs under certain circumstances.
CAFTA-DR (b)	Generic, with exceptions to recognition or protection of GIs under certain circumstances.
Mexico-Israel	Limited to: Tequila and mezcal.
Mexico-EFTA	Protection provided to all GIs "in accordance with TRIPS".
Mexico-EU	Full protection for: Tequila and mezcal; EU's spirits with Denomination of Origin (d).
Chile-EU	Full protection for: EU's wines and spirits with Denomination of Origin, Chilean pisco and Chilean wines with Denomination of Origin. Traditional expressions and complementary quality mentions are also offered protection. No mention to other GIs (that is, beyond wines or spirits).
Chile-South Korea	Generic protection to all GIs, including: Ginseng, kimchi, boseong tea (South Korea); pisco, pajarete, vino asoleado, and a list of Chilean wines with Denomination of Origin. Others may be added in the future. (e)
Panama-Taiwan	Protection effective only "with regard to GI's protected by the legislation of the Party demanding protection ". Seco (Panama) is explicitly mentioned.
Chile-EFTA	Protection provided "in accordance with TRIPS".

*Source***:** *The author, based on the texts of the agreements, Foreign Trade Information System of the Organization of American States, OAS-SICE (www.sice.oas.org). Obs.: (a) May include Nicaraguan products. These will be accepted when they do not conflict with Mexico's obligations in other treaties. (b) May include Central American products in the future. (c) To be agreed upon, based on list included in the FTA. (d) Those listed in annex 2 of the Agreement on Mutual Recognition and Protection of Spirits. (e) "Within two years from the entry into force of this Agreement, both Parties shall enter into consultations to protect additional geographical indications" (Article 16.4-5).*

With respect to the protection of new agrochemical and pharmaceutical products, both the CAFTA-DR and the Chile-US FTA go beyond TRIPS provisions. First, countries commit to a 10-year ban on the use of trial data for the approval of generic agrochemicals (5 years for pharmaceuticals). This means that following the registration of an agrochemical, even if the patent itself has expired, trial data cannot be relied upon in order to approve an equivalent generic product. Clearly, if costly and time-consuming trials have to be repeated in order to obtain marketing approval from government authorities, there is little incentive for potential generic producers to enter the market, especially if the market at stake is relatively small, as is the case of Chile, the Dominican Republic and the Central American countries. In the case of NAFTA, test data must be protected for at least 5 years. In TRIPS, it is established that trial data for products that use new chemical entities must be protected against unfair commercial use, but *how* this is achieved is left at each country's discretion. Further, the protection of data is subject to exceptions (e.g. public interest), and limited to *new chemical entities* (Article 39.3). In CAFTA-DR, Article 15.10 refers to *new pharmaceutical products* that use chemical entities not previously approved in the Party", further expanding the scope of protection.

In addition, both CAFTA-DR and the Chile-US FTA extend protection from 20 to 25 years to compensate for delays in issuing patents. In NAFTA, Parties *may* extend the term of the patent, but are not obligated to do so. TRIPS does not require extension of the 20 year patent term under any circumstance. A *de facto* extension of the period of patent monopoly in the CAFTA-DR and Chile-US FTAs is also created by the provision preventing generic producers to obtain marketing approval *at any time* during the patent period, even if they generate their own safety and efficacy tests. TRIPS establishes that generics producers could obtain marketing approval (subject to the product being determined to be safe and effective) *before* patent expiry, thus enabling them to enter the market as soon as the patent has expired. The limitations on granting marketing approval could also prevent the use of compulsory licensing (the right to authorize the production of cheap generic versions of a patented product in the name of public interest). Compulsory licensing is also restricted by the protection of trial data outlined above.

Finally, in the negotiations with the Andean countries, the US has tried to include protection for so-called "second-use" patents, that is, the possibility to protect new uses found for certain agrochemicals or pharmaceuticals for which the original patent has expired.

With respect to the protection of new varieties of plants, we find that in both CAFTA-DR and the Chile-US FTA, the Parties commit to subscribe or accede to the 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV 1991), which strengthens the commercial breeder's rights beyond those of its 1978 predecessor in various ways, including

the minimum period (from 15 years [18 for vines and trees], to 20 and 25 years, respectively) and scope[26] of protection. Under TRIPS, developing countries can choose to adopt either a patent or a *sui generis* system[27]. In NAFTA, as in the agreements signed between Chile and Mexico and the EU, the accession to UPOV 1978 is acceptable.

Further, in the Chile-United States FTA, Paragraph 2 of Article 17.9 ("Patents") reads: "Each Party will undertake reasonable efforts, through a transparent and participatory process, to develop and propose legislation within 4 years from the entry into force of the Agreement that makes available patent protection for plants that are new, involve an inventive step, and are capable of industrial application". Such a process has been undertaken and the outcome has been to maintain the *sui generis* regime. In CAFTA-DR, on the other hand, "any party that provides patent protection for plants or animals on or after the date of entry into force of the Agreement shall maintain such protection" and, those countries where protection is not provided upon entry into force of the Agreement, "shall undertake all reasonable efforts to make such patent protection available" (Article 15.9, paragraph 2). This strongly increases the likelihood of adoption of a protection system based on patents. Now, whereas UPOV 1991 is more restrictive than UPOV 1978 it does include compulsory exceptions to the breeder's right: breeder's rights do not extend to acts done privately and for non-commercial purposes; acts done for experimental purposes; and acts done for the purpose of breeding other varieties. It also includes an optional exception, consisting of the possibility to "restrict the breeder's right in relation to any variety in order to permit farmers to use for *propagating purposes, on their own holdings*, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety" (Article 15.2). A patent system, on the other hand, would not have to include such restrictions.

3.4. Rules of origin

This chapter is based in a comparative study of the WTO (2002), including information for four bilateral agreements signed by Latin American countries (Canada-Chile, Chile-Mexico, Mexico-EU and Mexico-Israel) plus NAFTA, and

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[26] For instance, breeder's rights are extended to "essentially derived varieties", i.e., those that are clearly distinguishable from the initial variety but which retain its main characteristics (text of the UPOV 1991, Article 14.5.b) and to *harvested* material (Article 14.2). Under UPOV 1978, the "essentially derived variety" concept does not exist, and only *propagating* material is protected. In addition, the acts that require authorization from the breeder are limited to production for purposes of commercial marketing, the offering for sale, and marketing. Under UPOV 1991, the list is broadened to include production, conditioning, exporting, importing and stocking for any of the aforementioned purposes (Article 14.1).

[27] Many joined the less restrictive UPOV 1978 (thus becoming TRIPS compliant) but currently only membership to UPOV 1991 is open. Chile, Panama and Nicaragua were Parties to UPOV 1978 by the time negotiations with the United States took place.

in two other recent studies authored by Estevadeordal and Suominen (2003, 2004), which are partially based on the former, but add information for more FTAs (in the region, Chile-EU, EFTA-Mexico, Chile-United States, G3, Costa Rica-Mexico, Bolivia-Mexico, Chile-South Korea, Central America-Chile, Chile-MERCOSUR, Bolivia-MERCOSUR), plus the CAN.

The WTO Agreement on Norms of Origin establishes that non-preferential rules have to be based on the MFN principle. Since 1995 these follow a harmonization process under the WTO Comitte on Rules of Origin and The Technical Committee of the World Customs Cooperation Council, although progress has been slow. With respect to preferential rules of origin, Annex II of the aforementioned agreement simply establishes that WTO members commit themselves to administer preferential schemes in a transparent manner. Rules of origin are an essential element of FTAs though. On the one hand, it is the origin of a good that determines whether it receives preferential treatment or not; on the other, such norms prevent that the differentials in tariffs applied to the imports of third parties can be eschewed using the territory of the Party with the lowest tariffs as an export platform (trans-shipment).

Notwithstanding, evidence shows that rules of origin can also serve protectionist interests. For instance, in NAFTA, the sectors with the strictest rules of origin are also those with the longest tariff phase-out periods (Estevadeordal, 2000). The same happens in the agreements between the EU and Chile, Mexico and South Africa. In addition, the costs associated to the administration of rules of origin are far from trivial and can represent an important burden to countries with limited resources. Garay and Quintero (1997) estimate that in Europe, the costs of gathering, processing and saving the information required for origin verification reach approximately 3% of their price. Those costs reach approximately 2% of the value of Mexican exports to the United States (Cadot et al., 2002). Self-certification in the exporting party, as in NAFTA, reduces costs in that party, but leads to high verification costs in the importing party. Public intervention, as in the two-step certification method used in Europe and FTAs with the EU, is more burdensome but leaves the obligation to verify that origin requirements are met to the authorities of the exporting country.

For commodities, including agricultural products such as cereals and livestock, origin is granted on the basis of being "completely obtained" in the territory of one of the Parties. In this case, operations such as transport, selection and classification, packaging, labeling, mixing and slaughtering are in general considered insufficient to confer origin to goods with imported content. In the case of transformed goods, there are three basic criteria to determine origin, all of which serve to establish whether they have gone "through substantial transformation": (*i*) change of tariff classification; (*ii*) minimum percentage of domestic content or maximum percentage of imported content (these vary between 25-60%, and 30-60% in the FTAs considered here, respectively), or

minimum of originary parts; and (*iii*) list of technical requirements (used for textiles and chemicals). Rules of tolerance, or "de minimis", with respect to the value of imported inputs in goods where they otherwise would not be allowed usually apply, and range between 7-10% of the final value of the product.

Although there are different systems of rules of origin, relying in different proportions on these three main criteria, what is important to note, given the objectives of this paper, is that the stringency applied to products of agricultural origin is relatively similar in all agreements considered, and significantly higher than the stringency applied to other economic sectors – with the exception of textiles and apparel. The agricultural sector also constitutes an exception in the application of the *de minimis* rule. Sometimes the general rule does not apply at all (for instance, dairy products and preparations thereof, citrus juices and sugar, in the Chile-United States FTA), or is applied with modifications (for instance, in most FTAs the non-originating agricultural input has to belong to a different subheading than the good for which origin is being determined).

SYNTHESIS AND CONCLUSIONS

The special status, and thus treatment, conferred to agriculture in the WTO, is widely reproduced in the regional sphere. There tend to be more products excluded altogether from trade liberalization in the agricultural sector than in other sectors and there is an important proportion in most FTAs with long phase-out periods. Sugar, dairy products, cereals and meats are the most common exclusions. The agreements where the United States is a signatory party are an exception as far as coverage is concerned. Long phase-out periods combined with the possibility to apply special safeguard measures to protect "sensitive" products from import surges are nevertheless present in NAFTA and CAFTA-DR. These would however be relatively more effective in protecting North American producers.

As far as non-tariff barriers are concerned, there is little advance with respect to multilateral obligations. In some cases, timid steps have been taken towards trade facilitation in the areas of SPS measures and agricultural standards. These include the clarification of definitions and of some procedural aspects, as well as the creation of institutional mechanisms that enable cooperation between the Parties. The agreement between Chile and the EU is the one going the farthest beyond the provisions of the SPS agreement, including detailed equivalency procedures and the provisional approval of agricultural establishments for import purposes without prior inspection in certain sub sectors considered a priority. Conversely, in some of the agreements that have only a limited number of agricultural products excluded from liberalization (Chile-United States and CAFTA-DR, for instance), the chapter on SPS measures simply establishes that the Parties adopt the rights and obligations of the SPS agreement, and must use the WTO Dispute Settlement Body to disputes

on SPS-related matters rather than the Dispute Settlement Mechanism of the treaty. With respect to technical regulations and standards specific to agricultural goods, mutual recognition provisions are only present in the Chile-United States FTA, and limited to a specific aspect and product (quality grading programs for the marketing of beef). All other agreements simply reiterate the Parties' commitment to improve the implementation of the TBT.

New barriers are raised by complex and overlapping systems of rules of origin. The agricultural sector, together with textiles and apparel, has the strictest rules of origin in all agreements considered, and the most exceptions with respect to the so-called "de minimis" rule.

Regarding export subsidies, most agreements establish their elimination on reciprocal trade, thus going beyond current WTO commitments, but the products excluded from tariff liberalization are also excluded from this obligation. Furthermore, countries are allowed to reintroduce such subsidies if the counterpart is importing similar subsidized goods from a third party. Not surprisingly, the commitments with respect to domestic support measures and antidumping remedies are basically inexistent.

On the other hand, the provisions on intellectual property in FTAs tend to be stricter than what has been agreed multilaterally in the agreements between Latin America countries and countries outside the region: (i) with respect to protection of geographical indications in the agreements where the European Union is a Party; and (ii) with respect to the patenting of agrochemicals and pharmaceuticals, and increased protection of new plant varieties, in the Chile-United States FTA and CAFTA-DR. This will likely also be the case in the FTAs under negotiation between the United States and a number of Andean countries.

Finally, it is not clear to what extent Latin American countries that have signed FTAs will be able to take advantage of certain trade defense mechanisms foreseen in the August 2004 framework agreement of the WTO, such as the new special safeguard mechanism (SSM). As explained before, current Uruguay-round SSGs would disappear for developed countries and a new mechanism would be available as safety net for developing countries.

Note also that a number of relevant issues are left for further research. For instance, to what extent have FTAs actually lowered tariffs for Latin American countries? This is especially relevant for Central American countries given that they already enjoyed preferential treatment from the United States prior to CAFTA-DR. The same holds for Andean countries. Another important issue left for further research concerns implementation, which remains a problem, especially between developing countries (World Bank, 2004). Finally, the differenttiated potential impacts of trade liberalization in the agricultural sector, according to farm size, use of technology and market access are extremely relevant issues and the subject of ongoing research in ECLAC.

APPENDIX

Free trade agreements and customs unions signed by Latin-Americans countries, chronological order

Agreement	*Signed*	*Entry into force*
Customs Unions		
Central American Common Market (CACM)[28]	1960	1961
Andean Community (CAN)[29]	1969	1969
Caribbean Community and Common Market (CARICOM)[30]	1973	1973
Common Market of the South (MERCOSUR)[31]	1991	1995
Agreements between Latin American countries		
Costa Rica-Mexico	1994	1995
Group of Three, G3 (Colombia, Mexico and Venezuela)[32]	1994	1995
Bolivia-Mexico	1994	1995
Mexico-Nicaragua	1997	1998
Central America-Dominican Republic	1998[33]	2001[34]
Chile-Mexico	1998	1999
CARICOM-Dominican Republic	1998	-
Central America-Chile	1999	2002[35]
Mexico- El Salvador, Guatemala, Honduras (TN-Triangle of the North)	2000	2001
Central America-Panama	2002	2003[36]
Mexico-Uruguay	2003	2004
CARICOM-Costa Rica	2004	-
CAN-MERCOSUR	2004	-
Bolivia-Chile	In negotiation	
Bolivia-Peru	In negotiation	
Chile-Ecuador	In negotiation	

[28] The CACM members are: Costa Rica, Honduras, El Salvador, Guatemala and Nicaragua.

[29] The CAN members are: Bolivia, Colombia, Ecuador, Peru and Venezuela.

[30] The CARICOM members are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Monserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

[31] The MERCOSUR members are: Argentina, Brazil, Paraguay and Uruguay. The MERCOSUR has signed several Economic Complementation Agreements (ACE) with the CAN (2002), Peru (2003), Colombia, Ecuador and Venezuela (2003; in force since 2004), Bolivia (1996, in force since 1997), Chile (1996; in force the same year) and Mexico (2002).

[32] Applied bilaterally between between Mexico and Colombia; and Mexico and Venezuela.

[33] Applied bilaterally between each Central American country and the Dominican Republic.

[34] In force since 2001 for El Salvador, Guatemala and Honduras; 2002 for Costa Rica. A Protocol with Nicaragua was signed in 2000.

[35] Applied bilaterally between each Central American country and Chile, and entered into force in 2002 for Costa Rica and El Salvador.

[36] In force only between El Salvador and Panama.

Agreements with countries outside Latin America		
NAFTA (Canada, Mexico, United States)	1992	1994
Canada-Chile	1996	1997
Mexico-European Union	2000	2000
Mexico-Israel	2000	2000
Mexico- European Free Trade Agreement (EFTA)	2000	2001
Canada-Costa Rica	2001	2002
Chile-European Union	2002	2003
Chile-United States	2003	2004
Chile-South Korea	2003	2004
Panama-Taiwan	2003	2004
Chile-EFTA	2003	2004
CAFTA-DR (Costa Rica, Honduras, El Salvador, Guatemala, Nicaragua, Dominican Republic, United States)	2004	-
Mexico-Japan	2004	2005
Central America- European Union	In negotiation	
CAN- European Union	In negotiation	
Canada – Central America 4 (El Salvador, Guatemala, Honduras and Nicaragua)	In negotiation	
Chile-China	In negotiation	
MERCOSUR-European Union	In negotiation	
United States-Andean countries	In negotiation	
United States-Panama	In negotiation	

Source: Salazar-Xirinachs (2002); updated by the author with information of the Foreign Trade Information System of the Organization of American States, OAS-SICE (www.sice.oas.org).

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LE RÉGIME SPÉCIAL DE L'AGRICULTURE DANS LES ACCORDS LATINO-AMERICAINS DE LIBRE-ÉCHANGE

Résumé - *Cet article analyse les dispositions spéciales pour les produits agricoles dans les accords de libre-échange signés par des pays latino-américains et en vigueur en décembre 2004. On montre comment le traitement particulier accordé au secteur agricole dans le cadre de l'OMC se retrouve, à quelques exceptions, au niveau des accords régionaux. De nombreux produits agricoles sont exclus des calendriers de libéralisation des droits de douane ou ne sont supprimés que très graduellement. En ce qui concerne les obstacles techniques au commerce, la plupart des accords vont peu au-delà des engagements multilatéraux. De plus, les règles d'origine appliquées aux marchandises agricoles sont parmi les plus strictes. Elles laissent supposer que l'accès aux marchés, du moins pour une partie des pays en voie de développement, demeurera limité. En revanche, les dispositions sur la protection de la propriété intellectuelle dans les accords de libre-échange, en particulier dans ceux impliquant les États-Unis, sont plus strictes que dans le cadre de l'OMC.*

EL TRATO ESPECIAL ACORDADO AL SECTOR AGROPECUARIO EN LOS ACUERDOS DE LIBRE COMERCIO LATINOAMERICANOS

Resumen - *Este documento revisa las disposiciones que afectan al sector agropecuario en los tratados de libre comercio firmados por países Latinoamericanos y vigentes en Diciembre del 2004. Con algunas excepciones, se muestra que el trato especial otorgado al sector agropecuario en la OMC se reproduce en los tratados de libre comercio vigentes en la región. Muchos productos agropecuarios son excluidos de las listas de desgravación arancelaria o tienen plazos de desgravación relativamente largos. Con relación a las barreras técnicas al comercio, la mayoría de los acuerdos no va mucho más allá de la reiteración de los compromisos multilaterales. Las reglas de origen aplicadas al sector agropecuario están entre las más estrictas. Esto sugiere que el acceso a mercados para por lo menos algunos países en desarrollo permanecerá limitado. En forma inversa, las disposiciones sobre protección de propiedad intelectual en los acuerdos de libre comercio, particularmente con Estados Unidos, son mucho más exigentes que lo dispuesto en la OMC.*