

Ministry of Industry and Commerce

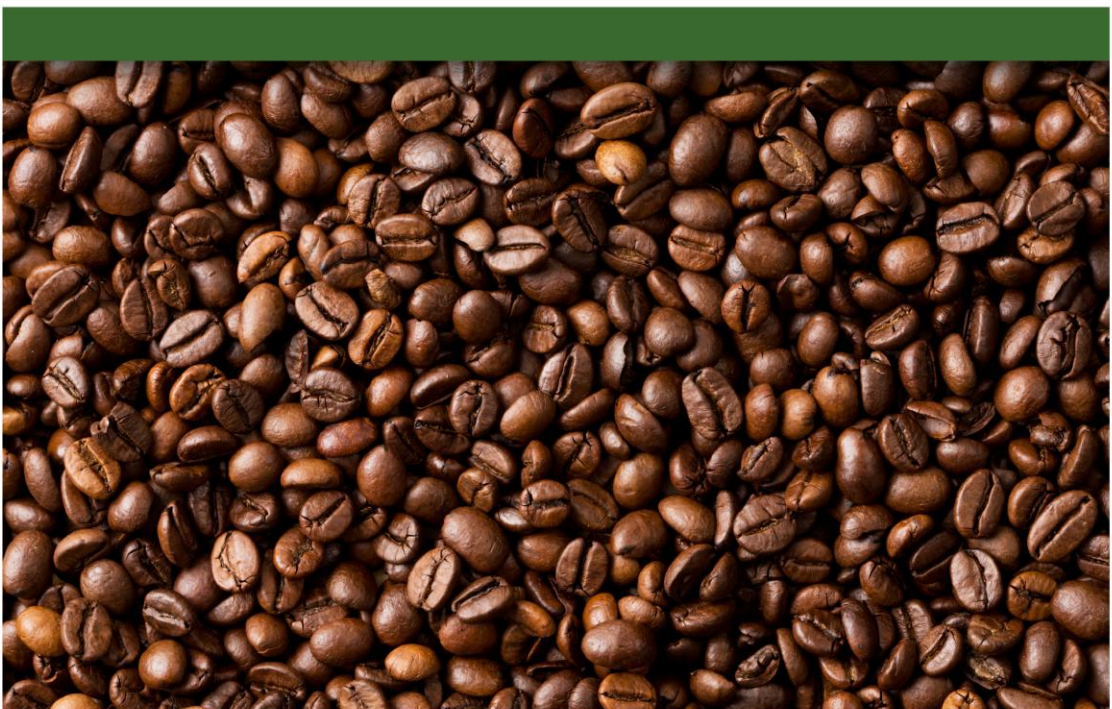


agriculture

MANUAL

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Manual for the U.S. Agriculture Products Market
A Tool for Lao Exporters of Agricultural Products



April 2011

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**Ministry of Industry
and Commerce**



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Acronyms

ADVANCE	ASEAN Development Vision to Advance National Cooperation and Economic Integration
AEC	ASEAN Economic Community
APHIS	Animal and Plant Health Inspection Service
ASEAN	Association of Southeast Asian Nations
BTA	Bilateral Trade Agreement
CAFTA	Central American Free Trade Agreement
CBP	U.S. Customs and Border Patrol
CIF	Cargo Insurance Freight
C-TPAT	Customs Trade Partnership
DDU	Delivered Duty Unpaid
FOB	Free on Board
FAS	Foreign Agricultural Service
FAVIR	Fruits and Vegetables Import Requirements
FSIS	Food Safety and Inspection Service
FTA	Free Trade Agreement
GSP	U.S. Generalized System of Preferences
HACCP	Hazard Analysis and Critical Control Points
HTSUS	Harmonized Tariff Schedule of the United States
IFOAM	International Federation of Organic Agriculture Movements
IPPC	International Plant Protection Convention
ISF	Importer Security Filing
ISO	International Organization for Standardization
NAFTA	North American Free Trade Agreement
NOP	U.S. National Organic Program
NTR	Normal Trade Relations
OCIA	Organic Crop Improvement Association
OIE	Office of International Epizootics
PPQ	Plant Protection and Quarantine
QAI	Quality Assurance International
SPS	Sanitary and Phytosanitary
U.S.	United States
USAID	United States Agency for International Development
USDA	U.S. Department of Agriculture
WTO	World Trade Organization

Preface

This manual provides background and references for Lao exporters of agricultural products seeking to develop business opportunities in the U.S. market, following the normalization of economic relations between the United States and the Lao PDR. It is one of five manuals prepared by the USAID/LUNA-Lao Project and the Foreign Trade Policy Department (FTPD) of the Ministry of Industry and Commerce (MOIC). Other manuals have been prepared for textiles and apparel, handicrafts, wood products, and silk products.

The primary author of this manual is Michael Blakeley, LUNA-Lao's marketing expert, who conducted the study under the supervision of Teri Lojewski, former Project Director, and Steve Parker, current LUNA Project Director. It benefited from inputs and comments by FTPD/MOIC staff.

The LUNA Project supports the Lao PDR to draft, analyze, promulgate and implement the legal and economic policy reforms and institutional capacity building needed to accomplish the following objectives:

- Support the effective implementation of the U.S.- Lao PDR Bilateral Trade Agreement (BTA);
- Support the timely accession of the Lao PDR to the World Trade Organization (WTO); and,
- Support the Lao PDR to fulfill its commitments to the ASEAN Economic Community (AEC)

Effective implementation of these trade agreements contributes importantly to support the long-term development strategy of the Lao PDR to sustain strong, broad-based economic growth and poverty reduction with strengthened rule of law and governance.

LUNA is one of four technical assistance projects funded by the ADVANCE Project. The U.S. Agency for International Development (USAID) and U.S. State Department launched the ASEAN Development Vision to Advance National Cooperation and Economic Integration (ADVANCE) program in October 2007. It was established to deliver targeted, quick-response technical assistance on a regional, sub-regional, and bilateral level in collaboration with the ASEAN Secretariat and Member States. ADVANCE is the main U.S. mechanism for supporting public and private sector integration in the ASEAN region.

We hope that this manual will provide useful information to Lao exporters about the U.S. agricultural products market.



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Introduction

In 2008, total Laos' exports exceeded \$1 billion. Its major agricultural exports consist mostly of food products—coffee, locust beans, tea, ginger, preserved fruits, cabbages and cauliflowers, sweet potatoes, dried fruit, bananas and plantains, maize, and other fruit or vegetable or seed-based products in preserved forms.¹ Laos' exports to the U.S. were \$41.9 million in 2008, which included \$3.67 million in agricultural goods, nearly all of it coffee and a small quantity of nuts (cashews).

With the U.S. tariff rate reductions authorized by the Lao–U.S. Bilateral Trade Agreement (BTA) in 2005, Laotian exporters should be able to increase exports of agricultural products to the U.S. market. This manual provides guidance for exporters seeking to develop new business or increase existing business in the U.S. market for agricultural and food products. It provides an overview of the U.S. market (Chapter 1), details on market characteristics (Chapter 2), overviews of U.S. import requirements (Chapter 3) and of related export requirements (Chapter 4), and a listing of market resources (Chapter 5).

¹ These goods were identified by analyzing Laos export performance for 2008. Each commodity group had exports greater than \$1 million.

1. Overview of the U.S. Agricultural Products Market

According to the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture (USDA), the U.S. imported more than \$80 billion in agricultural products in 2008.² This marks a 12 percent increase over 2007 and a significant increase of 36 percent over 2005, the first year that U.S. agricultural imports exceeded its exports. Not surprisingly, the leading suppliers to the U.S. are from North America and Europe (Table 1).

Table 1 U.S. Imports of Agricultural Products 2008

Supplier	Value (\$billions)	Share of U.S. Imports of Agricultural Products
North America	28.9	36%
European Union-27	15.5	19%
South America	9.5	12%
Southeast Asia	84.4	10.4%

SOURCE: U.S. Bureau of the Census Trade Data. Reported by the U.S. Department of Agriculture Export/Import Statistics for Bulk, Intermediate, and Consumer Oriented (BICO) Foods and Beverages

Four of the top ten supplier countries to the U.S. are in Asia: China (4), Indonesia (5), Thailand (9), and Malaysia (10). In 2007, China increased its shipments 26 percent and India 21 percent; and since 2003 Brazil, Indonesia, Thailand, and Mexico have registered increases in exports to the U.S. ranging from 14 to 19 percent. Most U.S. imports of fresh produce are from Latin America, but processed products are increasingly shipped from Asia.

U.S. food consumption consists increasingly of imported food products, a vast difference from the 1970s and 1980s. Many agricultural-product imports with a large share of domestic consumption are items the U.S. does not produce in large quantities, such as bananas or coffee. As the number of different products imported into the U.S. has grown, so has the number of source countries. In 2007, 319 fruit products were imported from 121 countries; 41

² The USDA defines agricultural products to include live animals, meat, and products of livestock, poultry, and dairy; hides and skins (but not leather products); animal fats and greases; food and feed grains and grain products; oilseeds and oilseed products; fruits, nuts, and vegetables and products of these; juices, wine, and malt beverages (not distilled spirits); essential oils; planting seeds; raw cotton, wool, and other fibers (not manufactured products of these); unmanufactured tobacco (not manufactured tobacco products); sugar and sugar products; coffee, cocoa, tea, and products of these; rubber and allied products; and stock for nurseries and greenhouses, spices, and crude or natural drugs. Fish, shellfish, and forestry products are not included in "agriculture."

of these products and 10 of the countries were new since 1998.³ New products included fresh and processed fruit and vegetables, including exotic tropicals such as durian, lychee, and guava, and many other fresh and processed fruit, vegetables, and spices.⁴

All U.S. agricultural import groups have continued to grow since 1990. Horticultural products, which make up half of these imports, include fruits, vegetables, nuts, wine, and nursery products, mostly imported from Canada and Mexico. The North American Free Trade Agreement (NAFTA) is partly responsible for expansion of this trade between Canada, Mexico, and the United States. Most tropical products—such as coffee, cocoa, and rubber—come from Indonesia, Brazil, and Mexico. Animals and animal products are next in importance among U.S. agricultural imports, with Canada, Mexico, and Oceania the top suppliers of these.

Laos exports a wide range of agricultural products, but few are destined to the United States. In 2008, Laos exported only coffee and cashews (cashews are included under the category “edible fruits and nuts, dried nes” in Table 2 below) to the United States, with exports to the U.S. making up approximately 7 percent of the total value of Lao agricultural exports. Coffee imports from Laos to the U.S. in 2008 were significantly less than in 2007.

The U.S. market for agricultural products is quite competitive, with imports of coffee totaling \$3.4 billion and cashews \$633 million in 2008.⁵ Both of these goods have a zero tariff, so trade preferences have no impact. U.S. tariff rates for agricultural products are discussed in more detail in Chapter 3.

Exporting agricultural products to the U.S., however, is challenging because of the many regulations applied by numerous agencies, and how the presentation and form of the product (e.g., fresh, preserved, packed for retail consumption) affect the application of those regulations. Given the intense competition among supplier countries, U.S. importers are demanding in what they require of foreign suppliers. Nevertheless, as the largest consumer market in the world—and one with an appetite for diverse and innovative food offerings—many different types and quality of agricultural products are imported into the U.S. market.

Under the U.S.-Laos BTA implemented in 2005, the U.S. extended Normal Trade Relations (NTR) status to products of Laos and, accordingly, tariff rates for many products were reduced significantly. Pre- and post-BTA tariff rates for select agriculture products imported to the U.S. from Laos in recent years are specified in Chapter 3. As part of the BTA, Laos agreed to implement a variety of reforms to its trade regime, including providing most favored nation and national treatment for products of the United States, improving transparency in rule-making, establishing a regime to protect intellectual property rights, and implementing WTO-compliant customs regulations and procedures.⁶

³ “Amber Waves” September 2009.

⁴ Ibid.

⁵ Values are for “Cashew nuts, fresh or dried, shelled” and “Coffee, not roasted, not decaffeinated.” These definitions are consistent with the actual product exported from Laos. Additional import categories for coffee and cashew exist, which means that the actual total value imported is likely higher.

⁶ The BTA is available through USTR at www.ustr.gov/countries-regions/southeast-asia-pacific/laos.

Table 2 Laos Exports of Agricultural Products to the World and the United States (2008)

Product	Export Value (\$000's)	
	To the World	To the United States
Cabbages, kohlrabi, kale and sim edible brassicas nes, fresh or chilled	2,869	0
Manioc (cassava), fresh or dried, whether or not sliced or pelleted	843	0
Sweet potatoes, fresh or dried, whether or not sliced or pelleted	814	0
Bananas including plantains, fresh or dried	3,003	0
Edible fruits and nuts, dried nes	1,590	101
Fruits, fresh nes	473	0
Coffee	22,956	3,566
Tea	579	0
Maize (corn) nes	16,168	0
Cereals unmilled nes	2,186	0
Rice in the husk (paddy or rough)	552	0
Rice, husked (brown)	489	0
Vegetable products nes used primarily for human consumption	4,653	0
Plants & parts of plants (incl seed & fruit) used in pharm, perf, insect etc nes	1,157	0
Sesamum seeds, whether or not broken	891	0
Total	59,223	3,667

SOURCE: International Trade Centre, TradeMap www.intracen.org.

2. U.S. Market Characteristics

CONSUMER INFLUENCE ON FOOD IMPORTS

Growing demand among U.S. consumers for a more varied and healthy diet has contributed to growth in imports of many tropical products, such as spices, fruits, vegetables, green tea, and unsaturated oils. Imported food products are also one of the fastest growing categories in U.S. supermarkets. More American shoppers seek ethnic foods that originate in other countries or fruits and vegetables that may not be in season in the United States, but are in season elsewhere. A growing immigrant population is also driving demand for imported foods. For example, General Mills Inc., a major global food producer and seller, is beginning to import frozen flat breads such as “roti” and “nan” from India. Such ethnic foods are claiming more and more shelf space in supermarkets.

INDUSTRY TRENDS IN SOURCING

Various factors influence U.S. import patterns of food and agricultural products. For example, imports of fresh fruit are influenced by the proximity to sourcing countries and U.S. phytosanitary requirements. Meanwhile, preserved or processed food products can be readily transported across great distances and are not subject to the same level of regulation as fresh, perishable products. This has enabled countries in Asia and other distant regions to increase exports of (especially processed) food products to the United States. The dominance of Western Hemisphere suppliers not only benefit from close proximity and ease of transport, but also from free-trade agreements, such as NAFTA, which ease some of the phytosanitary requirements. Phytosanitary regulations are explained in more detail in Chapter 3.

A growing share of U.S. imports reflects intra-industry trade, whereby U.S.-based agricultural processors have some processing carried out offshore and then import products at different levels of processing from subsidiaries and other sources in foreign markets.⁷ Spreading food manufacturing over many countries minimizes production and distribution costs, and enables quick replenishment of inventories. For example, imports of fruit juice have grown significantly as U.S. fruit growers send bulk commodities (e.g., apples for apple juice) overseas for less expensive processing and eventual re-export to the United States. U.S. growers also source or even invest overseas to import fruits and vegetables from countries with opposite growing seasons in order to ensure year-round delivery of certain fruits and vegetables. In fact, the U.S. consumer has come to expect fruits and vegetables to be available regardless of the time of year. Thus, Sunkist Growers Inc., a large citrus cooperative owned by growers in California and Arizona, imports navel oranges from South Africa for sale under its brand when U.S. oranges are out of season.

⁷ Extracted from “Market Access for High-Value Foods, Agricultural Economic Report No. 840”, U.S. Department of Agriculture, Economic Research Service.

BUYERS' NORMS AND STANDARDS FOR U.S. FOOD IMPORTS

The norms and standards of U.S. buyers often go above and beyond minimal regulatory requirements for processed foods imports. Competitive suppliers must comply with at least some, if not all, of these norms and standards. For example, most U.S. food importers will not import from factories that do not have a certified Hazard Analysis and Critical Control Points (HACCP) plan in place.

Hazard Analysis and Critical Control Point

As a management system, HACCP strives to ensure food safety through analysis and control of biological, chemical, and physical hazards at each stage of product development – from raw material production, procurement and handling to manufacturing, distribution and final consumption. HACCP is not legally mandatory for food imports, but most U.S. buyers require it. Once a supplier implements HACCP procedures, ISO standards are much more easily achieved (discussed below).

Traceability

Traceability entails developing an “information trail that follows the food product’s physical trail.”⁸ It is important to U.S. buyers given the health risks of agricultural products used for and in food. Major retailers, such as chain stores, want to be able to tell their customers what happens to their products at all stages of production. In essence, manufacturers and exporters need to document and keep records of all purchasing transactions, processing steps, labor used, dates of processing, and locations for the product before it arrives in the United States. Thus, manufacturers are strongly encouraged to keep accessible records of production to ensure compliance with buyers’ traceability requirements.

International Organization for Standardization

The International Organization for Standardization (ISO) is a global network that identifies and develops international standards for business, government, and societies. It has member organizations in every country that propose and develop new standards. ISO came into being when many companies in Europe decided they needed standardized rules to ensure that they received quality goods from suppliers. The ISO website is <http://www.iso.org>.

While ISO is not traditionally requested by U.S. companies, the process for certification is respected and helps convince a U.S. buyer that a factory is in good working order with efficient systems in place. Manufacturers also seek ISO certification because they find that being certified gives them a marketing advantage over uncertified competitors. ISO has two series of standards:

- ISO 9000, which is concerned with *quality management* in terms of enhancing customer satisfaction by meeting customer needs and applicable regulatory requirements; and,
- ISO 14000, which is concerned with *environmental management*, especially minimizing harmful environmental effects caused by company activities.

⁸ “Traceability from a U.S. Perspective” Meat Science, Volume 71, Issue 1, September 2005, Pages 174-193.

Organic Certification and Labeling

Demand for organically-certified products is growing in the United States. Organic products are those that have been produced from raw materials that are grown in areas free of pesticide or other chemicals in the growing area, that have been produced without the introduction of chemical inputs and remain purely “natural”, and that have been certified by a third party confirming these characteristics. It may require up to three years for a facility to gain certification by a third-party certifier (discussed below). Being able to put the word “organic” on a product is a valuable advantage in today's consumer market.

Certification is intended to protect consumers from misuse of the term and to facilitate purchases of organic goods. U.S. law defines three levels of organics. Products made entirely of certified organic ingredients and methods can be labeled “100% organic.” Products with 95 percent organic ingredients can be labeled “organic.” Products containing a minimum of 70 percent organic ingredients can be labeled “made with organic ingredients.” Products may also display the logo of the certification body that approved them. Products made with less than 70 percent organic ingredients cannot advertise this fact to consumers and may only mention it in the product's ingredient statement.

International certification bodies, recognized by the USDA, include the International Federation of Organic Agriculture Movements (IFOAM), the Organic Crop Improvement Association (OCIA), and Oganisme de Controle et de Certification (ECOCERT). ECOCERT is the world's largest organic certification organization and would be an appropriate certifier of goods produced in Laos.⁹ It has offices in 20 countries, operates in more than 85 countries, and certifies more than 40,000 farms and companies worldwide. Where formal agreements do not exist between countries, organic exports are often certified by agencies from the importing countries, who may establish permanent foreign offices for this purpose.

Fair Trade

The “fair trade” system ensures consumers that products have been produced by persons who have been treated fairly, especially with regard to wages and working conditions. The principles of fair trade require that producers receive a guaranteed price for their goods and the security of long-term trading contracts; that producers benefit from guaranteed minimum health and safety conditions; that no producers, workplaces, or environments are unfairly exploited; and that opportunities for education and training among producers, especially women and children, are actively fostered.

As with organic products, some companies have chosen to make fair trade certification a matter of policy in sourcing goods, especially from developing countries. The certification system covers a growing range of products, including bananas, coffee, cocoa, cotton, dried and fresh fruits and vegetables, honey, juices, nuts and oil seeds, oranges, quinoa, rice, spices, sugar, tea, and wine. Certification involves independent auditing of producers to ensure that certain standards are met. Companies offering products that meet fair trade standards may apply for licenses to use the Fairtrade Certification Mark on their labels. Fairtrade Labeling Organizations International oversees fair trade labeling.

⁹ For more information on ECOCERT, see: <http://www.ecocert.com/?lang=en>.

RELEVANT PRODUCT SEGMENTS

Numerous countries supply the U.S. with the types of agricultural products that Laos exports. Import patterns are influenced by proximity and growing seasons. The following categories are most relevant for Laos' exports.

Coffee and Tea

The total volume of coffee imported into the U.S. increased from 1.13 million metric tons in 1998 to 1.37 million metric tons in 2007. During that period, imports of roasted coffee grew more rapidly than imports of non-roasted coffee, yet roasted coffee still accounted for less than 10 percent of total coffee imports in value and volume.¹⁰ Import volumes from newer sources have grown rapidly in recent years, while a decline in prices is causing a downward trend in value. Between 1998 and the early 2000s, coffee prices declined globally, largely because of expanded production in Brazil and Vietnam.

In the first quarter of 2009, U.S. coffee imports increased by 1.8 percent, at 5.83 million bags compared to 5.72 million bags imported in the fourth quarter. But that first quarter amount was less than the amount imported during any of the first three quarters of 2008, and was down 7.9 percent from the high of 6.33 million bags imported in the second quarter of 2008.¹¹ Accounting for 19 percent of U.S. coffee imports in 2007, Colombia remains the largest supplier, but Brazil is catching up fast, accounting for 18 percent of U.S. imports in 2007. Imports from other countries such as Guatemala, Vietnam, Indonesia, and Costa Rica are also growing and becoming substantial.

Coffee is a type of agricultural product that U.S. consumers are willing to pay a premium for to ensure "organic" production.¹² The U.S. organic coffee market topped \$1.3 billion in 2008. Forty countries supply the world with organic coffee, with Peru, Ethiopia, Brazil, and Mexico the leading suppliers.

Another trend is "cause coffee" or "fair trade" coffee, which is produced by workers who are paid a higher relative wage than workers producing conventional coffee and whose working conditions comply with or are better than what local labor laws require. Two organizations, Transfair and the Rainforest Alliance, provide fair trade labeling. From 2001-2006, fair trade coffee sales rose 54 percent.¹³

While the U.S. imports coffee from more than 80 countries, it has fewer than 100 importer companies. Arabica is the dominant variety imported into the U.S. – mostly in green form by well-known coffee roasters and distributors. Sourcing of coffee beans is done primarily by importers and traders in the United States. Traders identify sources and then work through local traders and exporters to secure import. Sometimes sourcing is driven by the traders' customers, usually coffee roasters who tend to procure smaller volumes and therefore don't usually import directly themselves.

¹⁰ "U.S. Food Import Patterns, 1998-2007" http://usda.mannlib.cornell.edu/usda/current/FAU/FAU-08-06-2009_Special_Report.pdf.

¹¹ National Coffee Association of USA, Inc., "CoffeeTrax."

¹² According to research conducted by The Hartman Group and reported in the *Coffee Reporter Newsletter* (July 2009), when consumers were asked about which organic food categories they'd be willing to pay a premium for, 52 percent of them said coffee.

¹³ "Sales" considered at the consumer level, not importer level. Reported by Transfair USA.

Fruits and Nuts

U.S. imports of fresh fruits come primarily from the Western Hemisphere, with Mexico alone accounting for 30 percent of all such imports in 2007. Mexico's supply dominance is due to proximity and ease of transport, but also to NAFTA, which expedited phytosanitary qualification of certain produce. Countries in the Western Hemisphere also dominate U.S. imports of preserved fruits, with Canada, Mexico, and Chile accounting for about 60 percent of such import value in 2007.¹⁴ Canada was the leading source, with frozen berries and dried fruits accounting for most of its exports to the United States. China has also emerged as a major supplier of preserved fruit to the U.S. market.

The value of U.S. imports of nuts in 2007 was \$948 million. India, Vietnam, Brazil, and Mexico together accounted for about 70 percent of such imports. India is the largest exporter to the U.S., followed by Vietnam. Although both countries export a variety of nuts, the bulk of their exports were cashews, which Laos also exports to the United States.

Vegetables

U.S. imports of vegetables exceeded \$1 billion in 2007. About 60 percent of these imports are in fresh form; 15 percent in frozen, dried, or otherwise preserved form; and 25 percent in processed form. Given their proximity and the advantages of trade preferences with the U.S., Mexico and Canada are the dominant suppliers of vegetable products to the United States. As U.S. consumers have become more and more aware of the health benefits of vegetables, their demand for fresh vegetables has risen and several U.S. firms are investing in foreign production facilities to ensure year-round availability of certain vegetables.

Frozen, dried, or otherwise preserved vegetables can be transported easily across long distances. As a result, middle-income countries, led by China, India, and other countries in Central and South America, have emerged as significant sources of preserved vegetable product imports into the United States.

Grains

Imports of bulk grain rose steadily from 1998–2007, but still make up only 2 percent of total food imports. Wheat, mainly from Canada and Mexico, accounted for most of the rise. In keeping with growing demand for ethnic foods, demand for rice has also grown. Rice imports grew from \$133 million in 1998 to \$247 million in 2007. Thailand was the main source (60 percent), followed by India, China, and Pakistan. The four countries together accounted for more than 90 percent of U.S. rice imports.¹⁵

While most bulk grain imports consist of wheat, corn, and rice, imports of semi-processed grain forms, such as meal and flour, have grown rapidly. The largest component of U.S. grain and grain product imports, however, consists of processed products, such as breads, cookies, pasta, breakfast cereals, mixes, and doughs. The U.S. imported \$3.6 billion worth of processed cereal products in 2007.¹⁶

¹⁴ "U.S. Food Import Patterns, 1998-2007" http://usda.mannlib.cornell.edu/usda/current/FAU/FAU-08-06-2009_Special_Report.pdf.

¹⁵ Ibid

¹⁶ Ibid.

MARKET ACCESS FOR AGRICULTURAL PRODUCTS

Trade preference programs can have a major impact on trade flows, given the wide range of tariffs and regulations to which agricultural imports are subject. In particular, a free-trade agreement (FTA) can not only reduce tariff rates but, often quite importantly, it can also expedite phytosanitary qualification processes.

Free-Trade Agreements

Ordinarily, trading partners must follow a routine procedure whereby U.S. officials qualify each product as meeting U.S. import requirements. Some FTAs, such as NAFTA, have sanitary and phytosanitary chapters that help expedite approval processes. NAFTA member Canada is the top U.S. source of bulk and semi-processed food imports, while Mexico is the top source for consumer-ready food products. Australia's share of U.S. milk powder imports grew from 16 percent in 1998 to 25 percent by 2007 after the U.S.-Australia FTA came into effect in 2005. U.S. imports of fresh fruits and vegetables from Chile grew after the US-Chile FTA, as have imports of fruits, vegetables, and horticultural products from signatories of the U.S.-Central America FTA (CAFTA).

U.S. Generalized System of Preferences

The U.S. GSP¹⁷ is a trade preference program for imports from developing countries. Currently, it provides duty-free entry for about 4,800 products from 131 developing countries and territories. In 2008, the most recent year for which data are available, the U.S. extended duty-free treatment under the program to imports worth \$31.7 billion from eligible countries. Each year, the U.S. reviews the list of articles and countries eligible for duty-free treatment. Any person may petition to request modifications to the list of countries eligible for GSP treatment. Petitions are subject to public hearings and a full review by the major executive branch departments sharing a role in U.S. trade policy. Modifications made pursuant to the annual review are implemented by Executive Order, or Presidential Proclamation.

The GSP statute sets forth eight mandatory criteria that a country must satisfy before it can be designated a GSP beneficiary.

1. The first of these mandatory criteria specifies that a Communist country may not be a GSP beneficiary unless it receives Normal Trade Relations (NTR) treatment, is a WTO member and a member of the International Monetary Fund, and is not dominated by international communism. By virtue of the fact that Laos is not a member of the WTO alone, it currently is not eligible to be designated as a GSP beneficiary.

In addition to the first mandatory GSP designation criterion regarding Communist countries, a country, before it can be designated a GSP beneficiary, must also

2. Not be a party to an arrangement of countries nor participate in actions the effect of which are (a) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and (b) to cause serious disruption of the world economy.

¹⁷ For more information on the GSP program please visit <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp>

3. Not afford preferential treatment to products of a developed country that has, or is likely to have, a significant adverse effect on U.S. commerce;
4. Not have nationalized, expropriated or otherwise seized property of U.S. citizens or corporations without providing, or taking steps to provide, prompt, adequate effective compensation, or submitting such issues to a mutually agreed forum for arbitration.
5. Not have failed to recognize or enforce arbitral awards in favor of U.S. citizens or corporations.
6. Not aid or abet, by granting sanctuary from prosecution, any individual or group that has committed an act of international terrorism.
7. Have taken or be taking steps to afford internationally recognized worker rights, including a) the right of association, b) the right to organize and bargain collectively, c) freedom from compulsory labor, d) a minimum age for the employment of children, and e) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.
8. Implement any commitments it makes to eliminate the worst forms of child labor.

In determining whether to designate a country as a GSP beneficiary, the President must also consider the following six discretionary criteria:

- Expression by a country of its desire to be designated as a GSP beneficiary country.
- The level of economic development, including per capita GNP, the living standards of its inhabitants, and any other economic factors that he deems appropriate.
- Whether other major developed countries are extending generalized preferential tariff treatment to such country.
- The extent to which such country has assured the U.S. that it will provide equitable and reasonable access to its markets and basic commodity resources and the extent to which it has assured the U.S. it will refrain from engaging in unreasonable export practices.
- The extent to which such country provides adequate and effective protection of intellectual property rights, including patents, trademarks, and copyrights.
- The extent to which such country has taken action to reduce trade distorting investment practices and policies, including export performance requirements, and to reduce or eliminate barriers to trade in services.

Finally, before designating a country as a GSP beneficiary, the President must consider the following four factors:

- The effect such action will have on furthering the economic expansion of the country's exports.
- The extent to which other major developed countries are undertaking a comparable effort to assist a developing country by granting generalized preferences with respect to imports of products of the country.
- The anticipated impact of such action on the U.S. producers of like or directly competitive products.
- The extent of the country's competitiveness with respect to eligible products.

3. U.S. Import Requirements

KEY U.S. REGULATORY AGENCIES FOR FOOD IMPORTS

Several U.S. agencies may have authority over the import of agricultural and food products, depending on the presentation of the product (perishable or preserved). As with any import, food or otherwise, the U.S. Customs and Border Patrol (CBP) oversees the import process, including verification of documents required for goods entering the United States. Food imports are also subject to scrutiny from the U.S. Food and Drug Agency (FDA) and in some cases by the U.S. Department of Agriculture (USDA).

U.S. Food and Drug Agency

The FDA is the federal agency responsible for ensuring that foods are safe, wholesome, and sanitary. The FDA also ensures that these products are honestly, accurately, and informatively represented to the public. Imports of food products must receive clearance from the FDA. When the importer files the import declaration for a food product or any product regulated by the FDA, the CBP will notify the FDA and seek “clearance,” meaning that the import was not rejected for health or sanitary reasons. Exporters should be aware that U.S. buyers typically impose payment terms on foreign suppliers that do not allow payment before imports have received “FDA clearance.” In some cases, imports may be subject to random inspection by the FDA at the port of entry.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) placed new responsibility on foreign facilities exporting food products to the United States. Due to certain provisions of the Bioterrorism Act, the FDA has established new regulations for food imports requiring that (1) food facilities be registered with the FDA and (2) the FDA be given advance notice of shipments of imported food. Owners, operators, or agents in charge of U.S. or foreign facilities that manufacture, process, pack, or hold food for consumption in the United States are required to register the facility with the FDA. More information on this matter can be found on the FDA website listed in Chapter 5.

U.S. DEPARTMENT OF AGRICULTURE

In regulating domestic and imported agriculture, the USDA aims to protect food, agriculture, and natural resources. The USDA’s Animal and Plant Health Inspection Service (APHIS) is charged with monitoring imports of animal and plant imports that could include pests or other risks to domestic agriculture. APHIS determines the “enter-ability” of a commodity on the basis of the disease and pest status of the exporting country. APHIS does not inspect imports for quality or safety, which is a duty of the FDA. For more information, please visit the APHIS website identified in Chapter 5.

Within APHIS, the Plant Protection and Quarantine (PPQ) branch regulates the importation of plants and plant products under the authority of the Plant Protection Act. PPQ maintains its import program to safeguard U.S. agriculture and natural resources from risks associated with the entry, establishment, or spread of animal and plant pests and noxious weeds. APHIS and the PPQ branch have direct input to the U.S. sanitary and phytosanitary regulations (discussed below).

APHIS recently launched a new, searchable database, known as FAVIR, to monitor fruit and vegetable imports. FAVIR allows users to search for authorized fruits and vegetables by commodity or country, and to determine the general requirements for importing them into the United States. The database includes emergency pest notifications to alert users should the import status of a commodity or country change. It also allows APHIS officials and the CBP's agricultural inspectors to quickly determine whether or not a commodity is authorized entry into the United States, as well as the general requirements for importation.

The Food Safety and Inspection Service (FSIS), another branch of the USDA, has specific regulatory oversight of imports of meat, poultry, and egg products.

IMPORT DOCUMENTATION FOR AGRICULTURAL AND FOOD PRODUCTS

Agricultural and food imports must be accompanied by standard documentation (described in Chapter 4) and, depending on product presentation, a phytosanitary certificate. This is applicable to any product imported in fresh or perishable form. Food products that have been transformed or further processed are usually considered industrial and are not subject to this certification requirement. In most cases the U.S. buyer who imports the product will know what documentation is necessary and will advise the exporter. Under the Bioterrorism Act of 2002, exporters must also provide documentation proving that they are registered with the FDA.

As with any imported product, exporters are encouraged to work with their U.S. buyer, or the buyer's freight forwarder or customs representative, to ensure that documentation requirements are met at the time of export.

Labeling

Labeling is extremely important in the process of importing goods, especially food products. Every imported item must be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin. The CBP generally defines the ultimate purchaser as the last U.S. person who will receive the article in the form in which it was imported. So, articles arriving at the U.S. border in retail-ready packages—including food products, such as a bottle of Italian olive oil—must carry such a mark. However, if the article is destined for a U.S. processor, where it will undergo "substantial transformation" (as determined by Customs), then that processor or manufacturer is considered the ultimate purchaser.

Each master carton or other outside packaging of the good inside a shipping container should have a label showing, at a minimum, accurate weights (gross and net), a product description, and the names and addresses of the importer and exporter.

SANITARY AND PHYTOSANITARY MEASURES

U.S. food safety programs operate within the constraints of internationally-accepted trade rules. Most important is the WTO “Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures” adopted in the 1994 “Uruguay Round” of agreements. This document sets out the basic rules for ensuring that each country’s laws and regulations on food safety and animal and plant health are transparent, scientifically defensible, and fair. Regional and bilateral FTAs entered into by the U.S. may contain SPS language as well. Such language in most of the FTAs generally references the signing parties’ rights and obligations under the multilateral SPS agreement.

The U.S. also participates in the three major international scientific bodies designated by the WTO to deal with SPS matters. One, the Codex Alimentarius Commission, focuses on human food safety. The others are the Office of International Epizootics (OIE) for animal health and diseases, and the International Plant Protection Convention (IPPC) for plant health. These bodies meet regularly to discuss threats to human and agricultural health, evaluate SPS-related disputes, and develop scientifically-based SPS standards.

To comply with SPS measures in the United States, supplier countries must determine whether a phytosanitary certificate will be required for a particular product. A phytosanitary certificate is a document that is required by many countries for the import of non-processed, plant products. Export commodities must meet certain standards or criteria outlined by the importing country (or state). These plant health requirements pertain to storage pests, plant diseases, chemical treatments, and weeds. Some countries require a growing-season inspection of the field from which a plant product is harvested before a certificate may be issued, particularly if the product is seed to be used for propagation. Usually, however, pre-shipment inspection is all that is necessary.

The purpose of the certification process is to facilitate the entry of plants or plant products into the country of destination. This is accomplished by certifying that the plants or plant products were inspected and conform to any phytosanitary entry requirements of the importing country before they leave the port.

Items that usually require a phytosanitary certificate include plants, bulbs and tubers, seeds for propagation, fruits and vegetables, cut flowers and branches, grain, and growing medium. Certificates may also be required for plant products that have been processed if, by their nature or that of their processing, they could introduce regulated pests (e.g. wood, cotton). A certificate may also be required for other regulated articles where phytosanitary measures are technically justified (e.g., empty containers, vehicles, organisms).

Phytosanitary certificates are not usually required for plant products that have been processed in such a way that they have no potential for introducing regulated pests, or for other articles that do not require phytosanitary measures.

TREATMENT OF GOODS IMPORTED FROM LAOS

While the process for importing goods into the U.S. is routine, the tariff rate applied to each product can vary depending on the status of the trading partner. Table 3 compares the pre- and post-BTA tariffs for several agricultural products imported into the U.S. from Laos in recent years. Extension of NTR rates resulting from the BTA reduced tariff rates substantially for dried

fruits and nuts, but the tariff rate for coffee remains the same at a zero tariff rate. Thus, the BTA should make Laos cashew exports much more competitively priced on the U.S. market.

Although tariff rates applied to imports from Laos declined as the U.S. extended NTR rates through the BTA, the BTA served only to eliminate the high rates that discriminated against imports from Laos because of the lack of economic relations between the two countries. With NTR rates, Lao exporters face the same tariff rates as exporters from almost every other country in the world. With regard to trade policy, a country’s exports into the U.S. gain a competitive advantage due to lower tariff rates only as a result of U.S. free-trade or preferential-trade arrangements, where better than NTR rates are provided in line with the terms of the preferential agreement. The impact of the preference will depend on the magnitude of the NTR tariff – the higher the tariff rate, the greater the competitive impact of the trade preference. As shown in Tables 3 and 4, NTR rates for many agricultural products are low enough that exporters with preferential agreements gain a relatively small competitive advantage over Lao agricultural exporters; whereas for several products such as cassava, the preference can have a significant effect.

Table 3 Pre- and Post-BTA Tariffs on Select U.S. Agricultural Imports from Laos

Product	HTS Code	U.S. Tariff Rate	
		Pre-BTA	Post-BTA
Fruits and nuts, dried nes	081340	35%	1.8%
Fruits, fresh nes	081090	\$.028/kg	2.2%
Coffee	090111	Free	Free
Tea	909230	Free	Free
Maize (corn) nes	100590	\$.098/kg	\$0.0005 - \$0.0025 per kg
Cereals unmilled nes	100890	10%	1.1%
Vegetable products nes used primarily for human consumption	121299	\$2.74/ton	\$1.24/ton or \$0.0015 per kg

APPLIED TARIFFS

All goods imported into the U.S. are subject to tariffs according to the product classification where they fit. For some products the tariff rate is zero, meaning no duty is applied to the product for all trading partners, not only those party to a special trade arrangement with the United States. The tariff is applied at the time of import and is paid by the importing entity. If the importer of record is a third party, such as a freight forwarder hired by the buyer, the buyer will pay the duty as part of its payment to the freight forwarder for services.

Agricultural products are subject to a range of tariff rates. For example, some goods that may compete with domestic agriculture might be subject to a relatively high tariff (exceeding 10 percent), while some frequently imported goods not produced in the United States, such as coffee, have a zero tariff rate. Table 4 presents U.S. tariff information for the most popular exports of agricultural goods from Laos.

Table 4 U.S. Tariffs Applied to Select Agriculture Imports (for NTR Countries)

Product	HTS Code	U.S. Tariff Rate	2008 Lao Export Value to World \$000'
Cabbages, kohlrabi, kale and sim edible brassicas nes,fresh or chilled	070490	\$0.0054 cents/kg for 07049020 and 20% for 07049040	2,869
Manioc (cassava), fresh or dried, whether or not sliced or pelleted	071410	7.9% - 11.3%	843
Sweet potatoes, fresh or dried, whether or not sliced or pelleted	071420	4.5% - 6%	814
Bananas including plantains, fresh or dried	080300	0 - 1.4%	3,003
Fruits, dried nes	081340	1.8%	1,590
Fruits, fresh nes	081090	2.2%	473
Coffee	090111	Free	22,956
Tea	909230	Free	579
Maize (corn) nes	100590	\$0.0005 - \$0.0025 per kg	16,168
Cereals unmilled nes	100890	1.1%	2,186
Rice in the husk (paddy or rough)	100610	\$0.018 per kg	552
Rice, husked (brown)	100620	\$0.0083 - \$0.021 per kg	489
Vegetable products nes used primarily for human consumption	121299	\$1.24/t or \$0.0015 per kg	4,653
Plants & parts of plants (incl seeds & fruit) used in pharm, perf, insect etc nes	121190	0%	1,157
Sesamum seeds, whether or not broken	120740	0%	891

SOURCE: U.S. International Trade Commission (USITC) and International Trade Centre TradeMap databases.

THE IMPORT PROCESS

Buyers importing goods into the U.S. are responsible for arranging for the import or the paying of duties while ensuring compliance with all applicable import regulations. The importer usually hires third parties, such as licensed customs brokers and freight forwarders, to undertake steps in the import process and relies on the exporter to provide specific documents (see Chapter 4). In general, the U.S. import process is efficient and straightforward, as follows.

1. **File an import declaration with the U.S. Customs and Border Patrol (CBP).** U.S regulations require that import declarations be made by licensed customs brokers who are usually hired by the importer for each transaction. In filing the declaration, the broker uses documents submitted by the exporter—either to the importing client or directly to the broker at the client’s request—at the time of shipment. Brokers use a

Pre-Arrival Processing System (PAPS) to file declarations in advance of the arrival of the goods.

2. **Clear goods for entry into U.S. commerce.** After receiving the declaration, the CBP informs any other relevant agencies (e.g., the Food and Drug Administration) of any actions required of them, such as an inspection at the port of entry. If no inspection or other action requiring goods to be at the port of entry is necessary, goods can be “cleared for entry into U.S. commerce” before they arrive. Clearance, however, may be delayed or prolonged if a declaration is not made correctly or if import traffic is heavy. In such cases, the sea container will remain at the port of entry “in bond,” which means the goods are not yet imported and are not eligible to be recovered by the importing party.
3. **Recover goods.** Once goods are cleared for entry, the CBP informs the customs broker, who then informs the importer client that the goods are eligible for recovery. A freight forwarder hired by the importer will recover the goods from the port and deliver them. In order to recover the goods, the freight forwarder must have a copy of the import declaration that shows the goods have been cleared by the CBP.

IMPORTER SECURITY FILING

A new rule—Importer Security Filing and Additional Carrier Requirements—went into effect on January 26, 2010. Under the rule, the Importer Security Filing (ISF) Importer, or its agent (e.g., licensed customs broker), must electronically submit certain cargo information to the CBP in the form of an Importer Security Filing before merchandise arriving by vessel can be imported into the United States. The ISF Importer is the party causing the goods to arrive within the limits of a port in the U.S. and is usually the goods’ owner, purchaser, consignee, or agent, such as a licensed customs broker. The rule applies only to cargo arriving in the U.S. by ocean vessel; it does not apply to cargo arriving by other modes of transportation.

Eight data elements must be submitted no later than 24 hours before the cargo is laden aboard a vessel destined to the United States:

1. Seller
2. Buyer
3. Importer of record number / FTZ applicant identification number
4. Consignee number(s)
5. Manufacturer (or supplier)
6. Ship to party
7. Country of origin
8. Commodity Harmonized Tariff Schedule of the United States (HTSUS) number

For elements 5-8 above ISF Importers may submit a range of acceptable responses based on facts available at the time of submission. The filing, however, must be updated as soon as more accurate or precise data become available and no later than 24 hours before the ship is due to arrive in port.

Two additional data elements—consolidator name and the location of container stuffing—must be submitted as early as possible, but no later than 24 hours before the ship’s arrival at a U.S. port.

4. Related Export Requirements

EXPORTER RESPONSIBILITIES

U.S. companies use a variety of payment terms when sourcing products overseas and those terms affect exporters' responsibilities and requirements in ensuring the efficient export of merchandise. Because most major U.S. companies have an in-house entity or a third party coordinate shipments, exporters have few responsibilities when shipping under Free on Board (FOB) or even Cargo Insurance Freight (CIF) terms. But under other terms, such as Delivered Duty Unpaid (DDU), exporters not only provide documents but may also coordinate shipment, pay duties applied to merchandise when it enters the United States, and arrange for delivery of merchandise to the customer's preferred location. Freight forwarders can manage most of these activities as well as the customs entry, given their close relationships with customs brokers. U.S. sourcing executives normally use forwarders or request the factory to use them when coordinating delivery of an order. Nonetheless, exporters should anticipate managing the activities described below.

SHIPPING DOCUMENTATION

Documentation for exports of goods is just as important as the quality of the goods themselves. Faulty information or incomplete documentation can cause transport delays or import rejections. Freight forwarders, and especially buyers who regularly import agricultural products, can often provide assistance for shipment documentation. Table 5 lists documents required for import into the U.S. and also some documents that can be requested by buyers, such as insurance or third-party inspections. As always, exporters are encouraged to confirm all documentation requirements with their buyers.

PHYTOSANITARY CERTIFICATE

If the good to be imported requires a phytosanitary certificate, the exporter will be responsible for obtaining that certificate from the Laotian authorities. The exporter must:

1. Apply for the inspection and certification of each shipment for which they are requesting a phytosanitary certificate – at the point of origin, at a port where the shipment will transit or at the actual port of export. The application must be received far enough in advance of the shipping or loading dates to provide for sampling and inspection (minimum of 1-2 weeks).
2. Make the shipment available for inspection. The plants or plant products must be accessible to the certifying official so that the official can verify and inspect the material described on the application.

3. Provide for any required treatments, reconditioning, or other actions necessary to meet U.S. import requirements.
4. Export only plants or plant products that have been properly inspected and certified.
5. Safeguard the certified shipment from re-infestation between the date of certification and the date of actual shipment.

Table 5 Typical Shipping Documentation and Party Responsible for Importing into the U.S.

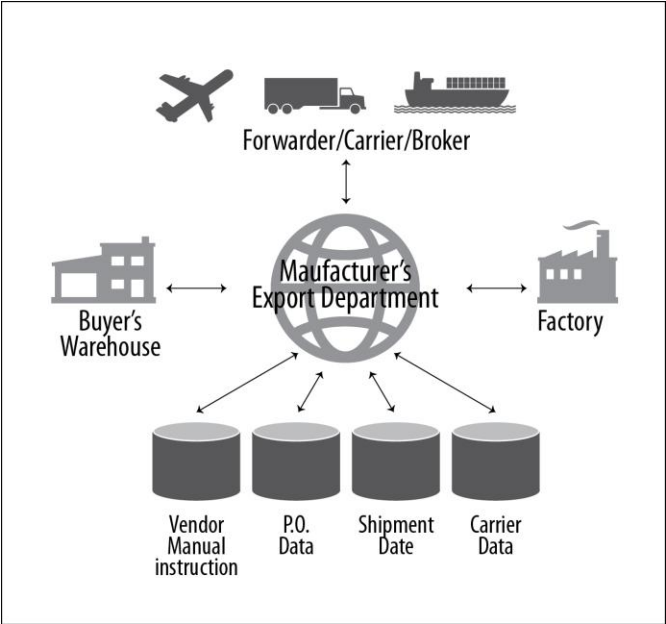
Documentation	Prepared By
Mandatory	
Commercial invoice	Exporter
Export packing list	Exporter
Certificate of origin	Exporter (official government document)
Inward cargo manifest	Shipping company
Bill of lading	Freight forwarder
Phytosanitary certificate ^a	Exporter
Not Mandatory	
Shipper's export declaration	Freight forwarder
Insurance certificate	Freight forwarder
Letter of credit (if this is the agreed payment arrangement)	Importer (Buyer)

^aWhether a phytosanitary certificate is required depends on the form of the good; all shipments of perishable goods must be accompanied by a phytosanitary certificate.

EXPORT LOGISTICS

Sending products from one country to another involves many parties—freight forwarders, transportation carriers, customs agencies, and more. Generally importers prefer goods to be delivered to their warehouses. To deliver to a U.S. customer's warehouse, exporters should have their own logistics specialists to ensure effective coordination and efficient shipment tracking. Most successful suppliers to the U.S. market have export departments staffed with English speakers familiar with documentation required to export food products to the United States. The department must manage communication among three to five entities as shown in Figure 1.

Figure 1 Coordinating Responsibilities of the Export Department



5. Resource Guide

U.S. Department of Agriculture

<http://www.usda.gov>

Animal Plant Health Inspection Service (APHIS)

<http://www.aphis.usda.gov>

Customs Trade Partnership (C-TPAT)

http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/what_ctpat/ctpat_overview.xml

U.S. Food and Drug Administration (FDA) and exporter registration

<http://www.fda.gov>

Food Safety and Inspection Service (FSIS)

<http://fsis.usda.gov/oa/programs/import.htm>

Hazard Analysis Critical Control Points (HACCP)

<http://www.fda.gov/Food/FoodSafety/HazardAnalysisCriticalControlPointsHACCP/default.htm>

Homeland Security Customs and Border Patrol

<http://www.cpb.gov>

National Coffee Association

<http://www.ncausa.org/i4a/pages/index.cfm?pageid=39>

National Organic Program

<http://www.ams.usda.gov/nop/indexIE.htm>

USDA Organic certification information

http://www.usda.gov/wps/portal/!ut/p/.s.7.0.A/7.0.10B?navid=ORGANIC_CERTIFICATIO&parentnav=PRODUCERS&navtype=RT

Fair Trade Labeling Organization

<http://www.fairtrade.net/>

WTO Sanitary and Phytosanitary Standards (SPS) page

http://www.wto.org/english/tratop_e/sps_e/sps_e.htm