

United States Increases Entertainment Exports to Latin American Markets

December 1, 2011 by Whitney A. Hodges

On September 30, 2011, the United States government signed an Export Trade Certificate of Review for the Latin American Multichannel Advertising Council ("LAMAC"). This certification will allow seven United States-based entertainment firms to increase the exportation of multimedia entertainment to Latin American countries and will likely pave the way for other United States-based entertainment studios to enter the market. The LAMAC's Certificate of Review was signed by Under Secretary for International Trade, Francisco Sánchez.

Background

A Certificate of Review is a legal document issued by the Department of Commerce with the concurrence of the Department of Justice pursuant to Title II of the Export Trading Company Act of 1982 (15 U.S.C. § 4001-21). The certificate provides antitrust protection for the export activities specified in the certificate that is applicable to the holder and members identified in the certificate. This protection provides immunity from federal and state antitrust suits, shortens the statute of limitations for private antitrust actions, alters the burden of proof to the advantage of the certificate holder, provides recovery of legal expenses in cases in which the certificate holder prevails, and reduces liability from treble to single damages.

Any United States exporter able to demonstrate the proposed export activity sought to be certified will not result in substantial lessening of competition within the United States is eligible to apply for a certificate. Individuals, partnerships or corporations formed under United States laws, state and local government entities, associations, or combinations of these entities are eligible to apply.

The antitrust protection offered by a Certificate of Review is an incredibly valuable asset as it allows United States exporters to work collectively without threat of antitrust liability. This cooperative effort enables two or more exporters to lower costs by sharing market information, negotiating high volume freight rate discounts, and operating joint sales and warehouse facilities. These, and other joint export activities, result in economies of scale and minimize individual risk. Thus, a Certificate of Review helps United States exporters improve their export competitiveness by providing legal clearance to coordinate and to recognize greater profits.

Currently, seventy certificates have been issued and there are approximately 2,500 firms participating in this program. In 2010, the exports associated with the Export Trade Certificate of Review programs totaled an estimated \$19.6 billion.

LAMAC's Certificate of Review

LAMAC applied to the Office of Competition and Economic Analysis, International Trade Administration, United States Department of Commerce for a Certificate of Review on February 3, 2011 (Application No. 11-00001). The seven members identified in the application are: Discovery Latin America, LLC; Fox Latin America Channel, Inc.; NGC Networks Latin America, LLC; Turner Broadcasting Systems Latin America, Inc.; A&E Mundo, LLC; History Channel Latin America, LLC; and E! Entertainment Television Latin American Partners, L.P.

LAMAC's Certificate of Review allows LAMAC to engage in distribution of Pay TV channel programming and ancillary rights – cable television rights, broadcast or satellite television rights, copyrights, and neighboring rights, etc. It also allows LAMAC members to: (i) exchange information on foreign market conditions and customers; (ii) collect and disseminate foreign market research information and analysis; (iii) negotiate and enter agreements with foreign entities, including audience data providers and advertisers, to reduce trade barriers and expand markets; (iv) develop and recommend common business models; (v) enter into, terminate, amend, and enforce exclusive agreements to provide, produce, negotiate, and administer Export Trade and Export Trade Facilitation Services; (vi) enter into, terminate, amend, and enforce territorial and customer restraints regarding the sale, licensing and/or transfer of title of its exports services into the foreign markets; (vii) enter into, terminate, amend, and enforce agreements for tying

of distributions rights and price settings; (viii) refuse to deal with, or provide quotations to, non-members regarding export distribution rights; (ix) provide accounting, tax, legal and consulting assistance and services to LAMAC members; and (x) engage in joint promotional activities aimed at developing the export markets.

LAMAC's Certificate of Review identifies Latin America as the export market. The designation includes Mexico, the Caribbean, Central America, and South America.

This Certificate of Review contains the potential to be a very profitable endeavor as the United States remains the world leader in creative content, offering a robust selection of movies, television shows, and other Spanish- and Portuguese-language programming. LAMAC members now stand poised to capture a large portion of Latin American TV advertising capital.

Under Secretary Sánchez deemed this Certificate of Review as "an important step toward realizing the tremendous export potential for U.S. producers of Spanish-language content." Sánchez also added that the Central and South America regions are expected to be the strongest growth market for entertainment and media "with a compound annual growth rate in excess of ten percent through 2015." The overarching hope, as articulated by Sánchez, is that as LAMAC members recognize growing advertising revenue, the opportunity for U.S. filmed content will expand. "This will benefit not only the big U.S. studios, but the hundreds of independent and TV production houses."