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FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter on Subsidies, Anti-Dumping and Countervailing Duties

- **[CHAPTER ON SUBSIDIES, ANTI-DUMPING AND COUNTERVAILING MEASURES**

ARTICLES 1-17

ARTICLE 1
[GENERAL PROVISIONS]

[1.1. Except as otherwise provided in this Chapter, the *Marrakesh Agreement* Establishing the World Trade Organization[1] and any successor agreements, shall govern the rights and obligations of the Parties in respect of subsidies and the application of antidumping and countervailing duties.[2] [3] **]**

[1.1. The Parties may only initiate and conduct investigation procedures[4] and apply anti-dumping and countervailing duties on goods from any other contracting Party in conformity with the provisions of this Chapter. Unless expressly provided for in this Chapter, the provisions of the World Trade Organization Agreements[5] and subregional and national legislation shall be applied in addition to the above.**]**

[1.1 In applying antidumping and countervailing duty measures, Parties shall abide by the rights and obligations established under the World Trade Organization (WTO) Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement).[6] The procedural provisions[7] set forth in this chapter shall also apply in antidumping and countervailing proceedings conducted by one Party with respect to imports from another Party. No provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the application of anti-dumping or countervailing duties.**]**

[1.2 Parties will endeavor to provide technical assistance to other Parties, taking into consideration differing levels of development and size, in order to assist Parties in fulfilling their WTO obligations with respect to the application of anti-dumping and countervailing duties.**]**

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[1] This is subject to confirmation that the reference to the *Marrakesh Agreement*, by virtue of Article II.2 thereof, also encompasses the annexed agreements thereto.

[2] Includes review procedures.

[3] The negotiating Group recognizes that:

i. the work being undertaken in the Technical Committee on Institutional Issues in respect of the priority of agreements will be relevant to the ultimate need for, and content of, a Chapter-specific General Provision in respect of this matter;

ii. the relationship between this Chapter and regional agreements remains to be determined; and

iii. further consideration will need to be given to appropriate language to ensure that, where a successor agreement to the Marrakesh Agreement accords more preferential treatment than that required by this Chapter, the more preferential treatment will apply.

[4] Includes annual review or examination procedures and antidumping and countervailing duty sunset procedures.

[5] And of any other successor agreement(s).

[6] This article is not intended to incorporate by reference the WTO agreements.]

[7] Procedural provisions means the process by which antidumping and countervailing duty investigations and reviews are conducted (e.g., access to information, notice to parties, disclosure of results, opportunity to comment) and does not include the substantive rules governing the determination or calculation of dumping, subsidies, countervailing duties and injury. Nothing in this Agreement is intended to modify the substantive rules of the WTO Anti-dumping and SCM Agreements.]

ARTICLE 2
[DETERMINATION OF DUMPING] [OR SUBSIDIES]

[2.1 The authority may construct the normal value based on the cost of production in the country of origin plus a reasonable quantity for administrative, selling and general costs, and for profits, solely in those cases where:

a. Sales of the like product in the exporting party are not made in the normal course of trade, are made in special market situations, or there is a low volume of sales in the domestic market of the exporting country, and

b. There is no comparable price to that of the like product when the like product is exported to an appropriate third country because they are not made in the normal course of trade or the prices are not representative.

The decision to construct the normal value shall be accompanied by the legal reasoning that supports it. The reasoning must demonstrate that the decision is clearly substantiated on positive evidence.**]**

[2.2. In relation with subparagraph iii) of Article 2.2.2 of the WTO Antidumping Agreement, a greater amount of profits than that declared by the exporter or producer in question shall not be attributed, if the exporter or producer is operating in a competitive market, a competitive market being understood to be a market characterized by a plural number of companies in the relevant market for the product being investigated or the non-existence of high barriers to access to the competition.**]**

[2.3. For the purpose of footnote 5 of Article 2.2.1 of the WTO Antidumping Agreement, sales shall be considered to have been made at prices below per unit costs in substantial quantities when:

a. the authorities establish that the weighted average sales prices of transactions considered in determining the normal value is below the weighted average per unit costs, or

b. the volume of sales made at prices below the per unit costs accounts for at least 40% of the volume sold in transactions under consideration for the determination of the normal value. If more than 40% of domestic market sales are made at a loss, these sales may be excluded from the normal value calculation, in which case, the price of the remainder of sales to the domestic market shall be used to determine the normal value, as long as such sales correspond to at least 10% of the total sales of said market, or account for at least 5% of the exports of the product under consideration to the importing Member.**]**

[2.3. For the purpose of determining the normal value, the investigating authorities shall consider sales made above per-unit costs of production when they represent at least 5% of the importing country's total exports of the product under investigation.**]**

[2.4. With regard to article 2.2 of the WTO Antidumping Agreement, when the normal value is being constructed owing to the fact that domestic sales have been ruled out because they are being made at a loss, no profit should be added in the calculation of the constructed value.**]**

[2.5. For the purpose of article 2.2 of the Antidumping Agreement of the WTO, normal value shall be determined on the basis of costs representative of normal operating conditions and not on the basis of costs affected by random events. Costs shall be adjusted appropriately to take into account generally accepted business practices in circumstances where economies are undergoing a programme of structural adjustment or recovering from the impact of a natural disaster.**]**

[2.6. Export price may not be constructed unless the investigating authority has determined either that there is no export price or that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party. The export price between related companies may not be ruled out solely by virtue of this fact, but shall be examined and accepted if it is found that the relationship does not affect the price. The investigating authority shall provide detailed reasons in support of such a determination.**]**

[2.7. For the comparison of the two prices to be considered equitable, adjustments required by differences that influence the comparability of the prices will be made. Such differences include, *inter alia*, differences in conditions

and terms of sale, levies on imports and indirect taxes, levels of trade, quantities, physical characteristics, transportation and storage, insurance, unloading and ancillary costs, packaging, credit, aftersale costs, commissions paid, and currency conversions. These adjustments shall be calculated using the data from the investigation period. When the normal value is being constructed, the indirect taxes shown to apply to inputs shall not be calculated, in order to guarantee an equitable comparison with the export price, which does not include such taxes.**]**

[2.8. With respect to the fair comparison referred to in paragraph 2.4.2 of the WTO Antidumping Agreement, the comparison will be made between weighted averages. In the case where there are different types of products, '*zeroing*' will not be allowed.**]**

[2.8. For the purposes of Article 2.4.2. of the Antidumping Agreement, the existence of margins of dumping may be established by a comparison of normal value and export prices on a transaction-by-transaction basis, provided that the investigating authorities present in the pertinent determination the reasons which justify the use of this method and the criteria for the selection of transactions involving the normal value for the purpose of comparison with export prices.**]**

[2.8. With respect to the fair comparison referred to in paragraph 2.4.2 of the WTO Antidumping Agreement, the determination of the dumping margin shall be established solely:

a) on the basis of a comparison of a weighted average normal value with a weighted average of the export prices of all comparable transactions; or
b) by a comparison of normal value and export prices on a transaction-to-transaction basis, in which case the investigating authority shall give detailed reasons to justify the use of this method.

In the case of investigations that include different types of products, '*zeroing*' shall not be allowed.**]**

[2.9. In those cases where the investigated imports arise from tenders or long-term contracts, the following documents, among other elements of evidence for determining the margin of dumping, may be considered: a) in the case of normal value, the bid documents and the price awarded in the exporting country in question; b) in the case of export price, the bid documents and the award prices resulting from the tender.**]**

[2.10. For the purpose of determining the margin of dumping or amount of the subsidy, the period of investigation shall normally correspond to the twelve (12) months as near as possible to the opening date of the investigation and shall, under no circumstances, be shorter than six (6) months.

The examination period of below-cost sales and the investigation period for the existence of dumping shall normally coincide. In the event that such periods do not coincide, the investigating authorities shall explain the reasons that justify the adoption of a different period.**]**

ARTICLE 3
[DETERMINATION OF INJURY]

[3.1. A determination of injury shall be based on positive evidence and involve an objective examination of: (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products; and (b) the consequent impact of these imports on domestic producers of such products. For this purpose, [an examination that is based on the use of statistics covering aggregate groups of products that include the like product under investigation shall neither be allowed nor considered objective**.**] [examinations based on the use of statistics on the volume of imports covering aggregate groups of products that include the product under investigation shall be allowed, provided that the investigating authority uses the most disaggregated statistical information available for the product under investigation.]**]**

[3.2. With regard to the accumulation of imports, the parties shall consider the situation carefully when imports from countries with large market shares are accumulated with those from countries with small market shares, and shall exclude the latter from their enforcement of antidumping duties, to the extent that they do not contribute to the injury.**]**

[3.3. For the purpose of determining injury, no investigating authority may make a cumulative assessment of the effects of imports from a small economy.**]**

[3.4. For the purposes of Article 3.3 of the Antidumping Agreement, in the analysis of the conditions of competition between the imported products and between the latter and the like domestic product, the investigating authorities may examine, *inter alia*:

1) physical characteristics and uses as well as the degree of interchangeability, fusion or substitution of those products. Considerations such as quality, function, technical specifications, specific requests and perceptions of consumers can be relevant;
2) levels in the volume of imports from each country of accumulation, in absolute terms or relative to the production or consumption of the importing country;
3) whether there exist sales of the like domestic product and imported product through the same distribution channels, in the same geographic areas and periods.
4) levels of prices for the like domestic product and for the imported product from each country considered for accumulation purposes.

No one or several of these factors can necessarily give decisive guidance on whether the accumulation of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic products.**]**

[3.5. In order to determine the existence of material injury, there shall normally be a requirement that the domestic industry incur losses during the determined period. The determination of material injury in the presence of positive earnings may be an exception, provided that it is justified in terms of special circumstances of that domestic industry.**]**

[3.6. For the purposes of the determination of the causal link, the investigating authorities shall exclude from the dumped imports those originated in exporters for whom a *de minimis* or negative margin of dumping has been determined.]

[3.7. In addition to the provisions of Article 3.5 of the WTO Antidumping Agreement and Article 15.5 of the WTO Agreement on Subsidies and Countervailing Measures, before antidumping or countervailing duties can be imposed, proof shall be submitted that the dumped or subsidized imports constitute the principal or dominant cause of the injury caused to the domestic industry.

The investigating authority shall determine that the dumped exports cause or threaten to cause injury if the exporters under investigation as a whole have substantial market power in the country of origin or receive a subsidy which enables the practice of dumping. The exporters as a whole will be considered to have substantial market power if they have the capacity to fix the sale price and displace their competitors in the market of origin.]

[3.8. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[8] In making a determination regarding the existence of a threat of material injury, the authorities shall consider all relevant factors, including factors such as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.**]**

[3.8. For the purposes of determining the existence of a threat of material injury, the authorities shall consider, in addition to the factors set out in Article 3.7 of the WTO Antidumping Agreement, all the relevant factors listed in Articles 3.1, 3.2, and 3.4 of the Agreement.**]**

[3.9. In investigations involving products sold totally or partially through tenders, the investigating authorities may, for purposes of calculating the apparent consumption by the importing country, consider the dates on which the tenders were awarded to be the effective dates on which the product involved was sold. In such case, the product that was the object of the tender shall, for purposes of analyzing the injury, be considered to have been sold or imported on the date on which the tender was awarded.**]**

[3.10. For the purpose of the determination of injury in antidumping or countervailing duty investigations, the period of investigation for the determination of injury should not be less than three (3) years and shall include the entire period of investigation for the determination of dumping or the amount of the subsidy.**]**

[8] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.

ARTICLE 4
[DEFINITION OF DOMESTIC INDUSTRY]

[4.1. The term "domestic industry" shall be interpreted as referring to the totality of domestic producers of the like product, or, when this is not possible, to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.**]**

ARTICLE 5
[INITIATION AND SUBSEQUENT INVESTIGATION]

[5.1 (11.4 SCM) An [antidumping or subsidy] investigation shall not be initiated unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product.

In the case of fragmented domestic production that entails an extremely high number of producers, an investigation may be initiated with the support of at least X% of the total affected domestic production, whenever said situation is justified and duly substantiated according to the investigating authority.**]**

[5.2. After evaluating that which is established in Article 5.6 of the WTO Antidumping Agreement, the authorities concerned may initiate an investigation, for dumping or subsidies, without having received a written application submitted by or on behalf of a domestic industry for the initiation of such investigation, only if they have sufficient evidence that the domestic industry does not have the possibility of organizing itself and filing the petition in this respect before the competent authority.**]**

[5.3. An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping, subsidies or of injury to justify proceeding with the case or when there is reasonable evidence to suggest that the alleged subsidy is a governmental measure of assistance, whether direct or indirect to encourage rural development, upgrade productive capacity or diversify investment in FTAA small economies.**]**

[5.4. In order to ensure the transparency of the proceedings, the periods of investigation for the determination of the margin of dumping or amount of the subsidy and the injury shall be recorded in the act opening the investigation and in the relevant notifications to the interested parties and Governments.

Further, if the time period for obtaining information to determine injury, in a specific investigation, as determined by the investigating authority, is different from that provided for in article 3.8, the reasons for such discrepancy shall be included in the public notice or in the relevant report.**]**

[5.5 For the purposes of Article 5.8 of the Antidumping Agreement, the margin of dumping shall be considered to be de minimis when this margin is lower than 5 (five) percent, expressed as a percentage of the export price. The volume of dumped [or subsidized] imports shall be regarded as negligible when it is established that those from or originating in a particular account for less than 7 (seven) percent of imports of the like product in the importing Party, unless the countries which individually account for less than 7 (seven) percent of imports of the like product in the importing Party collectively account for more than 15 (fifteen) percent of such imports. [Injury shall be regarded as negligible if the volume of dumped imports accounts for less than [5] [x] percent of the domestic market.]**]**

[5.6 (11.11 SCM) The final determination of the anti-dumping and subsidy investigations shall be announced, made public and enter into force within one year of the initiation date and, in special circumstances, which shall be made known to the interested parties, within a period of [18 (eighteen) months,] beginning on the initiation date of the investigation. Should the above-mentioned time periods be exceeded, the investigation shall terminate without

imposing anti-dumping or countervailing duties. [Any provisional duties or cash deposits collected shall be refunded with interest.]**]**

[5.7 (11.12 SMC) The Parties shall provide for the right of domestic producers to desist, at any time, from [the antidumping or subsidy] investigation. Should an abandonment take place once the investigation has been initiated, the investigating authority shall notify the remaining applicants. Should only a part of the domestic industry withdraw, the remaining part shall comply with the representation requirements for initiation, otherwise, the investigation shall not continue.**]**

ARTICLE 6
[EVIDENCE]

[6.1. (12.1.1 SCM) The known interested parties shall receive the appropriate questionnaire to be used in an anti-dumping or subsidy investigation, and shall be given at least 30 (thirty) working days for reply once the investigation has officially been initiated. The authorities in accepting or denying an extension of the period to provide information, provided that the request for an extension was made in writing 5 (five) days prior to the expiry of the time period, shall take into account the following:

i. the time available for the conduct of the investigation and making the necessary determinations, including the time periods established in national legislation, regulations, and schedules governing the conduct of the investigation at hand, and whether the information can be considered in a subsequent phase of the investigation;
ii. previous extension(s) of time granted during the investigation;
iii. the ability of the party from whom information is sought to respond to the information questionnaire, in light of the nature and extent of the required information, including the party's available resources, personnel, and technological capability;
iv. any unusual burdens that will be incurred by the party being asked for information in searching for, identifying and/or compiling the required information;
v. whether the party requesting the extension has provided a partial response to the questionnaire, or has previously provided information required in the same investigation, although the absence of a partial response alone is not an appropriate basis for denial of a request;
vi. any unforeseen circumstances affecting the ability of the party to provide the required information within the time limit established;
vii. whether other parties have been granted extensions of time for similar reasons during the same phase of the investigation.

The decision whether to grant or deny a request for an extension of time to provide information should be made promptly, and if denied, the party making such a request should be informed of the reason for its denial.

These same elements shall be weighted for granting or denying time period extension requests made by one of the interested parties to submit arguments, information and supplementary or complementary evidence.

The authorities, once the established time periods, and the extensions granted, if any, have expired, shall only admit information and evidence of a supervening nature, when this circumstance is demonstrated, provided that it is submitted prior to the closing of the hearing or the conclusion of the investigation.**]**

[6.2. (12.1.4 SCM) Each Party shall ensure that the interested parties filing written submissions to the authorities send a copy of the public version of what is presented, on the same date to the other interested Parties in the investigation, to the address indicated in the territory of the importing Party. Should this duty not be fulfilled, the authorities shall have the power to deny the submitted information.**]**

[6.3 During the antidumping and countervailing duty investigations, interested parties shall be given the opportunity to hold hearings in order to present opposing views and offer rebuttal arguments. The date of the hearing shall be notified to the interested parties at least [15] [30] days in advance.**]**

[6.4. (12.4 SCM) The importing Party shall establish monetary and other sanctions, in proportion to the unfavorable effects that occur in the event of disclosure or unjustified use of confidential information to which any person may have had access.**]**

[6.5 For the purposes of Article 12.7 of the WTO Agreement on Subsidies and Countervailing Measures, the provisions of Annex II of the Antidumping Agreement with respect to the best information available shall be applied, *mutatis mutandis* to the best information supplied by the government of exporting Parties and the interested Parties.**]**

[6.6 Prior to making a final determination and after having analyzed the information and evidence collected by them, the authorities shall report on the essential facts that were considered and used for the decision to apply, or not, a final measure and the arguments, information and evidence provided by the interested Parties to the investigation, in relation to:

i) The information and methodology used to determine the margin of dumping (normal value, export price and adjustments) or the amount of the subsidy;

ii) The information and methodology used to analyze the harm or material injury and the causal link;

iii) The arguments, information and evidence submitted by the interested Parties.

In the disclosure of the essential facts, the authorities shall protect the information that is, by its very nature, confidential or has been provided by the interested Parties as such.

A reasonable time period of at least ten (10) days shall be provided to the interested Parties, beginning on the day that they were informed of the essential facts, to present their observations and comments.**]**

[6.6. The authorities shall, before a final determination is made, until the end of the evidentiary phase, and once the information provided has been analyzed by the authorized interested parties or interested Governments and gathered by the investigating authority the authorities shall inform such parties or Governments of the essential facts under consideration which form the basis for the decision whether to apply definitive measures relating to:

- the information and the methodology for determining the dumping margin (normal value, export price and adjustments) or the amount of the subsidy;
- the information related to the analysis of the injury and of the causal relationship; and
- the arguments of the authorized interested parties and of the interested Governments;
- and, as appropriate, of associations of consumers or users of the product involved.

The interested parties and Governments shall be granted a reasonable period of time, of at least ten days from the date the essential facts are received by the interested parties and Government, to present their final comments on such facts.

Final comments on such facts, shall deal with the essential facts, and may include statements on any evidence involved in the proceeding and that is provided prior to the close of the period for the presentation of evidence, established by the investigating authority. If any interested party or Government presents new evidence, it shall not be considered in making the final determination, taking into account the fact that it would be impossible for the investigating authority to verify such evidence and for the other parties to respond accordingly. Once the time period for the presentation of final pleadings and written submissions has expired, the investigative stage of the proceedings shall be concluded, and subsequent statements shall not be considered.**]**

[6.7. Without prejudice to Article 6.11 of the Antidumping Agreement and of Article 12.9 of the Agreement on Subsidies and Countervailing Measures, during antidumping and countervailing duty investigations, "interested parties" shall also include:

i. The governments of the exporting Parties;
ii. Industrial users of the product subject to the investigation, trade and business associations and organizations representing consumers of said product, which have a legitimate interest.

The list above is not exhaustive and shall not preclude the authorities from allowing nationals or foreigners other than those previously mentioned to be included as interested parties.**]**

[6.8. In an investigation where a preliminary or final determination is made on the facts available Authorities shall indicate on the record how effect has been given to Article 6.13 of the Antidumping Agreement.**]**

ARTICLE 7
[PROVISIONAL MEASURES]

[7.1. With regard to article 7.1 of the WTO Antidumping Agreement, a preliminary affirmative determination shall be based on evidence establishing a strong prima facie case and that there is a substantial issue to be investigated.

In principle preliminary measures shall not be imposed unless authorities judge that the consequent injury to a domestic industry is not adequately compensable unless interim relief is granted, and that the balance of interests favors the granting of relief sought. In exceptional cases where the threat of consequent injury affect a critical growth industry in an FTAA small economy special flexibility shall be accorded.**]**

[7.2. The review provided for in Article 7.4 of the WTO Antidumping Agreement [shall] [may] include, inter alia, the price of the domestic product, the prices at which the imported product from other countries not under investigation is sold in the domestic market, and the international prices of the product in question [on the basis of the information available to the investigating authority].**]**

ARTICLE 8
[PRICE]CR [UNDERTAKINGS]

[8.1. Price increases under price undertakings shall be less than the margin of dumping or the amount of the subsidy if such increases would be adequate to remove the injury to the domestic industry.**]**

[8.2. With respect to Article 8.3 of the WTO Antidumping Agreement, should the case arise where an undertaking offered by a small and medium sized exporter is not accepted authorities shall provide to the exporter the reasons which have led them to reject the undertaking and shall give the exporter an opportunity for a fair hearing.**]**

[8.2. In case the authorities decide to refuse a price undertaking offered by an exporter, they shall provide to it the reasons which have led them to consider acceptance of an undertaking as inadequate, and shall give this exporter an opportunity to make comments thereon. In case the time limit of the investigation do not allow it, the authorities shall inform the reasons for their refusal in the public notice or in a separate report related to the final determination.**]**

ARTICLE 9
[IMPOSITION AND COLLECTION OF [ANTIDUMPING] DUTIES]
[PROCEDURE FOR A NEW EXPORTER]

[9.1. The authorities shall impose a definitive anti-dumping or [countervailing] duty lower than the margin of dumping or [amount of the subsidy] if such lesser duty would be adequate to remove the injury or threat of injury to the domestic industry.

[The amount of the injury shall be assessed, taking into account, inter alia, the price of the domestic product, the prices at which the imported product from other countries not under investigation is sold in the domestic market, as well as the international prices of the product in question.]**]**

[9.1. Each Party's domestic law shall allow for the imposition of an antidumping or countervailing duty that is less than the full margin of dumping or full amount of subsidy but sufficient to eliminate injury to the domestic industry.**]**

[9.2. In imposing duties, in the event the margins of dumping found are not higher than the margin of injury, the duty to be applied to enterprises not investigated, may be, at its maximum level, equivalent to the weighted average of the margins of dumping of the sample of the companies investigated, without excluding negative, zero or de minimis margins.

In cases where the margin of injury is lower than the margin of dumping, the margin of injury shall be applied to all the companies.**]**

[9.3. (19.3 SCM) If a product is subject to definitive *anti-dumping* or countervailing duties in the territory of an importing Party, the exporters or producers of the exporting country who have not exported the product to the importing Party during the period of investigation and show that they are not related to any of the exporters or producers who are subject to the *antidumping* duties, or who are subject to countervailing duties for reasons other than having refused to cooperate, may request that the investigating authority carry out reviews of new exporters in order to determine individual margins of *dumping* for them.

The procedure for a new exporter shall be initiated at the request of a party and must be completed within a period no longer than 6 months from the date of publication of the public notice of initiation. During the review, no *antidumping* or countervailing duties shall be levied on imports from those exporters or producers. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a positive determination of *dumping* or of the amount of the subsidy and that the exporter benefited from the subsidy, *antidumping* or countervailing duties can be levied retroactively to the date of the initiation of the review.

The investigating authority shall issue only an initial and a final determination. The review shall comprise only an analysis of the relevant individual margin of *dumping*, or of the amount of the subsidy, and whether the exporter benefited from the subsidy. The information submitted by the new exporter or producer shall refer to customary exports to the market of the importing Party of the product subject to *antidumping* or countervailing duties. The information submitted by the new exporter or producer may be subject to verification by the investigating authority.

The other provisions of the *Antidumping* Agreement and the Agreement on Subsidies and Countervailing Measures shall apply *mutatis mutandis*.**]**

[9.4. Antidumping or countervailing duties shall not be collected in prospective and retrospective basis systems when the margin of dumping or the amount of subsidy is *de minimis*.**]**

[9.5. The amounts collected due to antidumping or countervailing duties shall not be destined to the domestic producers of the like product to the product subject to these duties.**]**

ARTICLE 10
[DURATION AND REVIEW OF DEFINITIVE [ANTIDUMPING] DUTIES AND [PRICE] UNDERTAKINGS]

[10.1 If, as a result of the review under paragraph 2 of Article 11 of the WTO Antidumping Agreement, the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible, as defined in paragraph 8 of Article 5, the antidumping duty shall be terminated immediately.**]**

[10.2. Any definitive anti-dumping duty shall be removed on a date not later than XX months from its imposition, without any possibility for extension.**]**

[10.2 In cases where, during the period of application of antidumping duties, there have been no imports of a product subject to an antidumping measure or imports thereof have been negligible, within the meaning of paragraph 8 of Article 5 of the Antidumping Agreement, the total period of application of the definitive antidumping duties, including the initial period of application and all extensions, shall not exceed 8 years.**]**

[10.2. In respect of the duration of the measures established consistently with this chapter, the members renounce the application of antidumping duties for more than three years, including any extensions.**]**

[10.3. The provisions of articles 11.4 and 13 of the Agreement on Subsidies and Countervailing Measures and articles 5.4 and 5.5 of the Antidumping Agreement of the WTO shall apply to reviews undertaken in conformity with this article. The investigating authority may initiate a review requested by domestic producers only if the application is supported by the domestic industry and shall notify the government of the exporting Member on the existence of a properly documented application for the initiation of the review before its initiation. In case of countervailing duty reviews, the investigating authority shall provide opportunities for the government of the exporting Member to hold consultations prior to initiating such review and during the review.**]**

ARTICLE 11
[PUBLIC NOTICE AND EXPLANATION OF DETERMINATIONS]

[11.1. (11.5 SMC) The investigating authority shall notify the government of the exporting Party that they have received a properly documented application at least eight (8) days prior to the declaration that an investigation is formally initiated. That notification shall be forwarded to the diplomatic representation of the exporting Party and shall contain information to identify the product subject to the application investigation, the period of investigation proposed in the application, the targeted country or countries, the date of submission of the application, information identifying the applicant domestic producers, known importers and producers and/or foreign exporters.

[The investigating authority shall avoid any publicizing of the application for the initiation of an investigation. More specifically, no investigating authority may engage in any preliminary hearings prior to formally initiating an investigation.] In determining the initiation and/or in the public notice the analysis undertaken to verify the accuracy and adequacy of the information and evidence submitted to prove the possible existence of dumping or subsidization, injury, and the causal link shall be indicated.**]**

[11.2. (22.2 SCM) The public notice of the preliminary determinations shall contain the following:

i. the name(s) of the domestic producer(s) of the like product who submitted the application, the names of other domestic producers of the like product, and the name(s) of the importer(s), exporter(s), and the foreign producer(s) of the product under investigation who became parties after initiation of the investigation.

ii. information concerning the procedural background of the investigation, including the date that the application was received, the date that the application was accepted as properly documented, and the date of initiation, as appropriate under each Party's practice.

iii. the description of the product under investigation to which the preliminary determination applies, including the tariff classification for Customs purposes of the product, and the country(ies) of origin or export.

iv. information concerning the like product and domestic industry, including information regarding any exclusion of producers for the purposes of defining the domestic industry and of the preliminary injury determination.

v. information concerning the domestic market for the product, and a description of the international market for the product.

vi. the periods of data collection for both the preliminary *dumping* analysis and preliminary injury analysis, and an explanation of the selection of such periods, where appropriate.

vii. information concerning the estimation of the dumping margin, including information concerning the normal value, the export price and the comparison of the normal values with the export prices, established dumping margins, and the methodology used in the sampling on a sufficiently detailed basis, as well as the justification for the selection of the sample.

viii. information concerning the evaluation of injury, including information concerning the effects of the dumped imports on the volume and price of the like product in the domestic market, the impact of the subject imports on the domestic industry and, if relevant, the evaluation of cumulation criteria.

ix. information concerning the preliminary evaluation of the causal relationship between the *dumped* imports and any injury, including the examination of any other factors besides the dumped imports which are also causing injury to the domestic industry at that time.

x. information concerning verification, if undertaken.

xi. information concerning the continuation of the investigation, including such matters as time frames for the presentation of further submissions, information, arguments and evidence, hearings, the requirements for undertakings, if offered, and name, address, telephone and telefax numbers and email address of the official responsible for the investigating authority.**]**

[11.3. (22.8 SCM) For the purpose of preliminary or final determinations, the investigating authority shall hold technical information meetings at the request of any of the interested parties to explain the methodology used in determining the margins of *dumping* and the calculation of the subsidies, as well as the injury and the arguments for causality, with information from the firm, for which purpose the investigating authority shall duly protect confidential information.

The time period for requesting the convening of such meetings will be within 8 (eight) days following publication of the public notice of the preliminary or definitive determination.**]**

ARTICLE 12
[DEVELOPING COUNTRIES]

[12.1 (27 SCM) The Party that decides to apply a provisional or definitive measure to products originating in developing country Parties, should impose an antidumping or countervailing duty that is less than the margin of dumping or the amount of the subsidy, if this lesser duty is sufficient to remove the injury to the domestic industry (art. 9.1 FTAA).**]**

[12.2 Once a preliminary affirmative determination of dumping or subsidy, of injury and its causal link has been adopted, and at least 20 days prior to the establishment of the definitive antidumping or countervailing duty, the investigating authority shall inform the exporters, in writing, of the possibility of reaching voluntary price undertakings and how they could review their prices or cease exports to the area in question at dumped or subsidized prices, so that the authorities are satisfied that the injurious effect of the dumping or subsidy is removed and, furthermore, in the case of subsidies, the government of the exporting Party shall be afforded the opportunity to remove or limit the subsidy; or any other alternative proposed by exporters or the government of the exporting Party that is acceptable to the investigating authority. Price increases stipulated in these undertakings shall not be higher than necessary to offset the margin of dumping or the amount of the subsidy. Price increases shall be less than the margin of dumping or the amount of the subsidy if this is sufficient to remove the injury to the domestic industry.**]**

[12.3. The margin of dumping for exports from developing countries shall be considered to be de minimis when this margin is lower than five percent, expressed as a percentage of the export price, and the volume of dumped or subsidized imports from developing countries shall be regarded as negligible when it is established that imports from, or originating in, a given developing country account for less than seven percent of imports of the like product in the importing Party, unless the developing countries that individually account for less than seven percent of imports of the like product in the importing Party collectively account for more than fifteen percent of such imports. Injury shall be regarded as negligible if the volume of dumped imports from developing countries accounts for less than [x] percent of the domestic market of the importing country.**]**

ARTICLE 13
[JOINT COMMITTEE][9]

[13.1 (24 SCM) A "Joint Committee" on antidumping or subsidies composed of representatives from each of the Parties is established. The "Joint Committee" shall elect its own Chairman, who will be assigned to the post for two years. The Committee shall meet not less than twice a year, and when it is deemed necessary, to review the information and documentation provided by the Parties under this article. The "Joint Committee" shall be responsible for, inter alia, the receipt, control and review of documents that the Parties submit in accordance with the following two paragraphs of this article. This information shall be available for the Parties' consultation.**]**

[13.2 Each Party shall notify the following to the "Joint Committee": i) information on the competent authority to initiate and carry out investigations concerning this Chapter, including, inter alia, the name of the authority and incumbent, address, telephone, fax and email, as well as any changes that may arise, ii) domestic legislation applicable to the procedures that govern the initiation and development of antidumping and subsidies investigations and, iii) reforms to said legislation.**]**

[13.3 The Parties shall notify without delay to the "Joint Committee" all preliminary or definitive antidumping or countervailing measures adopted, including extensions or continuation, elimination or revocation of measures; initiation of investigations, dismissal and disclaim of said investigations; annual and five year reviews; and procedures against the circumvention of antidumping or countervailing measures. In January and July of each year, the Parties shall submit semi-annual reports on the aforementioned measures or investigations carried out by the Parties during the preceding six months. The semi-annual reports shall be submitted in accordance with the format that the Parties approve.**]**

[9] The negotiating Group recognizes that the work being undertaken in the Technical Committee on Institutional Issues (TCI) will be relevant to the content of this Article.

ARTICLE 14
[CONSULTATION AND DISPUTE SETTLEMENT][10]

[14.1. Any dispute arising between the Parties in connection with the interpretation or implementation of this Chapter shall be settled in conformity with the procedures set forth in the Chapter on Dispute Settlement of the FTAA Agreement.**]**

[14.2. As soon as possible after an application under Article 5 of the WTO Antidumping Agreement is accepted, and in any event before the initiation of any investigation, FTAA Parties the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 5 of the WTO Antidumping Agreement and arriving at a mutually agreed solution.**]**

[14.3. Furthermore, throughout the period of investigation, FTAA Parties the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.[11]**]**

[14.4. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.**]**

[14.5. The FTAA Parties which intend to initiate any investigation or is conducting such an investigation shall permit, upon request, the Party or Parties the products of which are subject to such investigation access to non-confidential evidence, including the non-confidential summary of confidential data being used for initiating or conducting the investigation.**]**

[14.6. Each FTAA Party undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Party concerning an application for anti-dumping action on behalf of that Party in accordance with the provision of paragraphs 2 and 3 of this Article.**]**

[14.7. Within three years of the entry into force of this Agreement the Parties shall review the feasibility of establishing a binational and/or inter-subregional mechanism to replace judicial, arbitral or administrative tribunals or proceedings for the purpose, inter alia, of the prompt review of administrative actions relating to the final determinations and reviews of determinations within the meaning of Article _ of this Chapter. The provisions of paragraph 6 of Article 17 of the Antidumping Agreement therefore would be deleted.**]**

[14.8. (13 and 30 SCM) The Party that intends to carry out reforms of its domestic legislation on antidumping or subsidies shall hold, subject to written request of the other Party, consultations to resolve the questions set forth regarding said reforms in order to clarify whether or not these are contrary to the provisions of this Chapter. The consultations shall not be an obstacle to the approval of the legislative reforms.**]**

[14.9. When, in the context of an antidumping or subsidy investigation, the exporting Party considers that the investigating authority of the importing Party adopted provisional or definitive antidumping or countervailing measures contrary to the provisions of this Chapter, the importing Party shall provide adequate opportunities for consultations in this regard, prior request in writing from the exporting Party.**]**

[14.10. In the event that a mutually satisfactory solution is not reached in the consultations referred to in paragraphs 8 and 9 of this article, the exporting Party may request that the disputes be resolved in conformity with the dispute settlement mechanism provided for in this Agreement. Any disputes that may arise in connection with unfair practices in international trade can only be resolved, by request of the complainant, before one of the international

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[10] The negotiating Group recognizes that the work being undertaken in the Negotiating Group on Dispute Settlement will be relevant to the ultimate need for, and content of, this Article.

[11] **[**It is particularly important, in accordance with the provisions of this paragraph, that no affirmative determination whether preliminary or final be made without reasonable opportunity for consultation having been given.**]**

dispute settlement mechanisms provided for in trade agreements and treaties to which both the importing and exporting State are Party. The selected dispute settlement mechanism shall be exclusive of the others.**]**

[14.11. When a dispute settlement mechanism provided for under this Agreement determines that an antidumping or countervailing measure is incompatible with this Chapter, it may recommend to the importing Party, the way and time in which it shall bring its measure into conformity with the Agreement.**]**

[14.12. When an antidumping or countervailing duty decreases or is removed in compliance with a decision of the challenge mechanism, the importing Party shall proceed promptly to return, restore, modify or cancel previously offered guarantees with their respective interests.**]**

ARTICLE 15
[PUBLIC INTEREST]

[15.1. After all the requirements for the imposition of an antidumping or countervailing duty have been fulfilled, the investigating authority shall, on its own initiative or upon request by any domestic interested person, conduct a public interest inquiry if there are reasonable grounds to consider that the imposition of such a duty, or the imposition of such a duty in the full amount, might not be in the public interest. The procedures for such inquiries shall allow the investigating authority to take due account of the representations made by any domestic person whose interests might be affected by the imposition of the antidumping or countervailing duty, including industrial users of the product under investigation and representative consumer organizations. The procedures shall also allow the investigating authority to take due account of representations made by the domestic competition law authority.**]**

[15.1 Throughout an antidumping or countervailing duty investigation, the investigating authority shall, on its own initiative or upon the request of any interested party, take into account a public interest analysis if there are reasonable grounds for believing that the imposition of duties might not be in the public interest. For the final determination, once all requirements for the imposition of antidumping or countervailing duties have been met, the authority shall consider the evidence presented, including that presented by industrial users of the product under investigation and representative consumer organizations and the analyses conducted by the national competition-law authorities.**]**

[15.1. Throughout the antidumping investigations conducted in conformity with the provisions of this Chapter, the authorities shall consider the broader interest of other economic agents in the market for the like product, who are not part of the domestic industry affected.**]**

[15.1. Throughout an antidumping investigation, the respective authorities shall take into account for their final determination a public interest analysis if there is evidence that the imposition of duties, or the imposition of such duties in the full amount, might not be in such interest. The procedures for such inquiries shall allow the investigating authority to take due account of the evidence presented by any domestic person whose interests might be affected by the imposition of duties, including industrial users of the product under investigation and representative consumer organizations. The procedures shall also allow the investigating authority to take due account of analyses made by the domestic competition law authority.**]**

[15.1. After all the prerequisites for the imposition of provisional countervailing duties have been fulfilled, the authority shall, on its own initiative or at the request of any directly affected part of the domestic industry, give industrial users of the product under investigation and representative consumer organizations, in those cases where the product is sold retail, the opportunity to furnish any information that may be relevant to the investigation on dumping, injury, and the causal link between one and the other. The procedures shall also allow the investigating authority to take due account of representations made by the domestic competition law authority.

The procedures set forth in the preceding article shall not be considered a requirement for the authority to proceed with the investigation.**]**

ARTICLE 16
[ELIMINATION OF ANTIDUMPING MEASURES]

[16.1. When the free trade area is established and goods circulate among countries of the FTAA fundamentally free of restrictions, the countries shall renounce the use of antidumping measures for reciprocal trade.**]**

ARTICLE 17
[FINAL PROVISIONS][12]

[17.1 (31 and 32 SCM) The Parties may only apply antidumping or countervailing measures in strict compliance with the provisions of this Chapter.**]**

[17.2 The provisions set forth in this Chapter shall apply, *mutatis mutandis*, to investigations and reviews of existing measures initiated subsequent to this Agreement's entry into force.**]**

[17.3 Each Party shall adopt all the actions and measures necessary of a general or particular nature to ensure that, by no later than the date of this Agreement's entry into force, the corresponding provisions of its laws, regulations, procedures and administrative practice applied to the other Parties, are in conformity with the provisions of this Agreement.**]**

[12] The negotiating Group recognizes that the work being undertaken in the Technical Committee on Institutional Issues (TCI) will be relevant to the content of this Article.

ARTICLE X
[DEFINITIONS]

[X.1. The authorities shall consider "public information":

i) That which has been made known by whatever means of disclosure, regardless of its coverage, or placed at the disposal of the public by the person presenting it, or had authorized a third person to disclose it;

ii) The summaries of confidential information;

iii) Public information found in the verification reports;

iv) Any other information or facts considered to be public information in accordance with the internal legislation of each Party and other international treaties.**]]**