

**FTAA – Free Trade Area of the Americas**

**Draft Agreement**

**Chapter on Agriculture**

• **CHAPTER ON AGRICULTURE**

**[<sup>1</sup> SECTION ONE:      GENERAL PROVISIONS**

**Article 1<sup>2</sup>: Scope and Coverage**

1.1. The provisions of this Chapter apply to the Agricultural products listed in Annex 1 of the World Trade Organization Agreement on Agriculture, with any subsequent changes to Annex 1 agreed in the WTO to be automatically effective for this Agreement [, with the exception of Section 5 on Sanitary and Phytosanitary (SPS) Measures of this Chapter].

[1.2. The provisions of Section Five apply to SPS measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.]

**[Article 2: Multilateral Disciplines ]**

[2.1<sup>A</sup> Trade disciplines resulting from multilateral negotiations on agriculture in the WTO shall automatically be incorporated in this Chapter.]

[2.1<sup>B</sup> The trade disciplines pertaining to this Chapter, shall be compatible with the provisions of the WTO Agreement on Agriculture and its subsequent agreements.]

**[Article 3 : Relation to Other Chapters of the FTAA ]**

[3.1<sup>A</sup> Trade in agricultural products is subject to the relevant provisions of other Chapters of this Agreement except to the extent of any inconsistency with this Chapter. In the event of any inconsistency between the provisions of this Chapter and those of any other Chapter of this Agreement, the provisions of this Chapter shall prevail to the extent of such inconsistency.]

[3.1<sup>B</sup> For those matters regulated herewithin, the provisions of this Chapter shall prevail over the provisions of any other Chapter of this Agreement.]

**[Article 4: Chapter Specific Definitions] ]**

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<sup>1</sup> This bracket applies to the entire section.

<sup>2</sup> The numbering is provisional and will change as the negotiations progress.

**<sup>3</sup> SECTION TWO: MARKET ACCESS<sup>4</sup>**

**[Article 5<sup>5</sup>: National Treatment ]**

[5.1. Each Party, shall accord national treatment to the agricultural products of other Parties pursuant to Article III of the 1994 General Agreement on Tariffs and Trade (GATT 1994). Accordingly, the provisions of Article III of GATT 1994 and its interpretative notes are incorporated in this [Agreement] [Chapter] and are an integral part thereof. ]

**Article 6: Tariffs**

***[Relation to other Trade Agreements within the hemisphere ]***

[6.1 The preferences applied to trade between the Parties, together with the tariff reduction or elimination programs agreed to in bilateral or subregional agreements, shall remain in effect so long as the preferences or residual tariffs agreed to under those Agreements are greater or less than those resulting from the Tariff Elimination Program established in this Section. ]

***[Tariff Elimination Program]***

[6.2<sup>A</sup> The Parties agree to eliminate tariffs from reciprocal trade between the Parties on originating agricultural products, according to the Tariff Elimination Program established in Annex XX. [unless otherwise established in this Agreement.] ]

[6.2<sup>B</sup> Except as otherwise provided in this Agreement, each Party shall progressively eliminate the tariffs [and any other import-related duties or [customs] charges (to be defined)] that may be applied to [substantially all] originating agricultural products, in accordance with the Parties' tariff elimination schedules attached as annexes to this Agreement.]

[6.3.<sup>A</sup> Except as otherwise provided in this Agreement, no Party may increase any existing customs duty or adopt any new customs duty on an originating agricultural product at a level higher than that specified in that Party's commitments contained in the schedules annexed to this Agreement.

Except as otherwise provided for in this Agreement, each Party shall progressively eliminate its customs duties on originating agricultural products in accordance with the terms established in that country's schedules annexed to this Agreement.]

[6.3.<sup>B</sup> As of the entry into force of this Agreement, no Party may adopt a new tariff, or any other duty or charge (to be defined) in connection with the importation of an agricultural product in trade among Parties.]

[6.4 [Except as otherwise provided in this Agreement,] The Parties may maintain [for trade within the hemisphere] [for imports from another FTAA Party] or increase a customs tariff when this is permitted pursuant to dispute settlement provisions of the WTO [FTAA] Agreement, or any other agreement negotiated in accordance with the WTO [FTAA].]

6.5 A Party may create new tariff openings provided that, the [residual applied tariff is no higher] [margin of preference is no lower] than the one applicable to the original tariff item breakdown. This criterion shall also be

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<sup>3</sup> This bracket applies to the entire section.

<sup>4</sup>It remains to be determined to what extent specific market access provisions will be required for agricultural products in addition to the general market access provisions in the Chapter on Market Access.]

<sup>5</sup> The numbering is provisional and will change as the negotiations progress.

adopted, in the event that changes in the chapters, headings or subheadings occur during modifications to the Harmonized System.

[6.6 When a Party decides unilaterally to reduce a tariff temporarily or definitively, the Party shall apply the tariff preference granted at that reduced tariff level. In the event the Party increases tariffs again, the Party may only do so up to the level that is permitted in the tariff elimination schedules.]

[6.7 A Party may increase a customs duty to a level not greater than the one established in the Tariff Elimination Program when that customs duty has previously been unilaterally reduced to a level less than that established in the Tariff Elimination Program.]

[6.8 The Parties do not acquire tariff commitments on products included in Annex ...]

[6.9 The Parties agree to condition the initiation and completion of the Tariff Liberalization Program on Parties meeting their commitments in respect of the elimination of export subsidies and other measures and practices that distort agricultural production and trade, pursuant to the provisions set out in the respective sections of this Chapter.]

[6.10 The Parties agree to apply the Tariff Elimination Program, unless there exists re-introduction of exports subsidies and/or that there is non-compliance with commitments established under this Agreement, on all other practices that distort trade of agricultural products, including those that have equivalent effect to export subsidies. In these cases, the Parties may suspend tariff concessions of the affected agricultural products.]

#### ***Acceleration of Tariff Elimination***

[6.11<sup>A</sup> On the request of any Party, consultations shall be carried out to examine the possibility of accelerating the elimination of tariffs for originating agricultural products set out in country schedules. All Parties shall be afforded an opportunity to participate in such consultations. An agreement to accelerate the elimination of tariffs by a Party shall supersede any tariff reduction or staging category set out in that Party's schedule when approved in accordance with its applicable legal procedures and shall apply to originating imports from any Party.]

[6.11<sup>B</sup> At the request of any Party, consultations shall be carried out to examine the possibility of accelerating the elimination of tariffs for originating agricultural products set out in Parties' schedules. An agreement between two or more Parties to accelerate the elimination of tariffs shall supersede any tariff rate or phasing category set out in the Parties' schedules when approved by each Party in accordance with its applicable legal procedures. [These tariff concessions shall apply to imports from any FTAA Party. ] [These tariff concessions will only be extended to those parties that agree on accelerated tariff reduction.] [Two or more Parties may agree, in their reciprocal trade, to accelerate the Liberalization Program set out in this Article.]

#### ***[Export Taxes and other Levies<sup>6</sup>]***

[6.12<sup>A</sup> No Party shall adopt or maintain any tax, duty or other charge on the exportation of an agricultural product and its by-products to the territory of another Party, unless such other Party applies tariff escalation on those products. ]

[6.12<sup>B</sup> The Parties may maintain differential export tariffs among basic products and their derivatives in so far as the importing Party applies tariff escalation on those products.]

[6.13 The Parties reserve the right to impose export taxes on the goods listed in Annex XX.]

[6.14 Other Measures Affecting the Applied Tariff]

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<sup>6</sup> [Export levy means the customs duties and any other tax of equivalent effect, whether fiscal, monetary, exchange rate-related or of any nature affecting exports. Similar fees and surcharges, where equivalent to the cost of the services rendered, are not included in this definition.]

**[Price bands and margins ]**

[6.15<sup>A</sup> The Parties agree that, as of the entry into force of this Agreement, they shall not apply price band or price margin mechanisms, or other price-stabilizing mechanisms on agricultural products.]

[6.15<sup>B</sup> The Parties may apply price bands or price margins and other price-stabilizing mechanisms on agricultural products in their reciprocal trade.]

**[Article 7: Non-Tariff Measures]**

[7.1. Except as otherwise provided for in this Agreement, no Party may adopt or maintain any prohibition, restriction, or licensing requirement on the importation of any originating agricultural product of another Party or on the exportation of any agricultural product destined for the territory of another Party], except in accordance with the provisions of World Trade Organization agreements which specifically allow such measures]. ]

**[Non-tariff barriers]**

[7.2 Counter-notification Mechanism and Elimination of Non-tariff barriers]

**[Article 8: World Trade Organization (WTO) Negotiations\*]**

[8.1. Market access improvements and improved trade rules and disciplines resulting from WTO multilateral negotiations on agriculture shall automatically apply for trade between FTAA Parties.]

**[Article 9: Safeguards [for Agricultural Products]]**

[9.1 The Parties agree that, as of the entry into force of this Agreement, they shall not apply the special safeguard measures for agricultural products referred to in Article 5 of the WTO Agreement on Agriculture.]

[9.2 The Parties may apply an automatic Special Agricultural Safeguard, while this Agreement remains in force, to imports of a product originating in another Party that is covered in Annex I to the WTO Agreement on Agriculture and that at the date of its application is incorporated in the Liberalization Program.] [The conditions of application and the Parties to which the Special Agricultural Safeguard may be applied, will be defined in Annex XX.]

[9.3 Only the Parties with small economies in the hemisphere may apply special safeguard mechanisms for agricultural products.]

[9.4 The Parties shall not apply any special safeguard measure, or any other type of mechanism that operates automatically or that does not require evidence of injury to domestic industry. ]

[9.5 The agricultural products covered in this Chapter shall only be subject to general disciplines on safeguards established in this Agreement.]

[9.6 Notwithstanding the above, each Party retains its rights and obligations in respect of safeguards under Article XIX of GATT 1994 [the WTO Agreement on Safeguards] [and the WTO Agreement on Agriculture]. ]

[9.7 Any agreement reached at the level of the WTO that allows for implementation of safeguards provisions by developing countries will be automatically incorporated into this Agreement.]

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[\*The need for this article will have to be determined near the end of the negotiating process in light of developments in the WTO Negotiations on Agriculture. The San Jose Ministerial Declaration indicates that progress made in WTO negotiations on Agriculture is to be incorporated.]

**7 SECTION THREE: EXPORT SUBSIDIES**

**Article 10<sup>8</sup>: Definition**

[10.1<sup>A</sup>. “Export subsidies for agricultural products” refers to export subsidies contingent on export performance as defined in Article 1(e) of the WTO Agreement on Agriculture with any subsequent changes agreed in the WTO, to be automatically effective for this Agreement.]

[10.1<sup>B</sup> An agricultural export subsidy is defined as any subsidy contingent, *de jure* or *de facto*, on export performance of an agricultural product, including those measures cited by way of example in Article 9.1 of the WTO Agreement on Agriculture and Annex 1 of the Agreement on Subsidies and Countervailing Measures. For purposes of this definition, export credits<sup>9</sup>, export credit guarantees or export insurance programs, and international food aid programmes, which are not granted in accordance with the provisions of Annexes 12.2.1, 12.2.2, 12.2.2.1 and 12.2.2.2 of the Section Four of this Chapter, shall be deemed to be export subsidies.]

[10.2 However, export credits, export credit guarantees or insurance programs and international food aid, when provided consistently with WTO rights and obligations, [and in consistency with the provisions of Annexes in Section Four of this Chapter] shall not be considered to constitute export subsidies for purposes of this Agreement.]

**Article 11: Elimination of Export Subsidies**

***[FTAA Elimination of Export Subsidies for Agricultural Products]***

[11.1 As of the date of entry into force of this Agreement, Parties shall eliminate and shall not introduce or reintroduce in any form export subsidies for agricultural products exported to other Parties. In addition, Parties shall not apply new measures or practices that would circumvent this export subsidy elimination commitment.]

***[Multilateral Elimination of Export Subsidies for Agricultural Products<sup>10</sup>]***

[11.2 Parties agree to continue to work together in the WTO negotiations on agriculture to achieve the elimination of export subsidies for agricultural products on a multilateral basis as quickly as possible.]

11.3 As of the date of entry into force of this Agreement, export subsidies as defined in paragraph 10.1 above shall be eliminated from trade among the Parties. Parties shall not reintroduce such export subsidies [except as provided for under the provisions of this Section]. The Parties also agree not to apply new measures and practices having a similar effect or that involve circumvention of the established commitment.

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<sup>7</sup> This bracket applies to the entire section.

<sup>8</sup> The numbering is provisional and will change as the negotiations progress.

<sup>9</sup> Some delegations consider that export credits, export credit guarantees, export insurance programs and food aid are multilateral issues which have to be addressed in appropriate multilateral forum, such as the WTO, not in a regional trade agreement such as the FTAA. Other delegations are not in agreement with these proposals because they contradict the Ministerial mandates for treatment of these issues in the FTAA.]

<sup>10</sup> FTAA Trade Ministers agreed, in their Toronto Declaration of November 4, 1999, “to work towards the objective of reaching an agreement, during the next WTO Multilateral Negotiations on Agriculture, on the elimination of export subsidies on agricultural products and on the prohibition of their reintroduction in any form”. The need for this Article will have to be determined near the end of the negotiations to take into account progress in the WTO negotiations.]

**[Non-compliance]**

[11.4<sup>A</sup> Where a Party applies export subsidies to trade in any product between and among the Parties, the other Parties shall suspend the tariff elimination schedule commitments on the same product until the Party that is applying such subsidies eliminates them<sup>11</sup> [except the Parties with small economies.]]

[11.4<sup>B</sup> Where a Party does not fulfill the commitments established in Article 11.3, the Parties concerned may apply to agricultural products the provisions on Subsidies and Countervailing Measures of the FTAA Agreement to counteract such practices.]

**[Treatment of the differences in the levels of development and size of the economies.]**

[11.5 Some delegations consider that, notwithstanding subparagraph 2 on the elimination of export subsidies, the smaller economies shall maintain their rights and obligations in conformity with the WTO agreements and subsequent modifications thereto. Likewise, if the application of any type of export subsidy on their agricultural products should cause or threaten to cause injury to the output of other Parties, the subsidy shall be subject to an investigation pursuant to the terms of the Chapter X Unfair Practices in this Agreement. Other delegations do not agree with this proposal.]

[11.6 Notwithstanding the provisions of paragraph 11.1 of this article on the elimination of export subsidies, Parties with smaller economies shall eliminate export subsidies within a period of X years from the date of entry into force of the FTAA, in conformity with their rights and obligations set out in Annex VII of the Agreement on Subsidies and Countervailing Measures and subsequent modifications thereto in the WTO. Likewise, they reserve the rights derived from related agreements in this area in respect of ongoing negotiations in the WTO.]

**[Article 12: Treatment of Imports from non-Parties benefiting from Export Subsidies]**

[12.1 The provisions of the WTO shall apply in respect of the treatment of subsidized imports of agricultural products which do not come from the Parties. ]

[12.2<sup>A</sup> No Party shall be required to engage in any mechanism in addressing subsidized imports from non-Parties.]

[12.2<sup>B</sup> If a non Party is exporting an agricultural product to another Party with the benefit of export subsidies, the importing Party shall, on request of an exporting Party, consult with the exporting Party with a view to:

- Agreeing on specific measures that may be adopted by the importing Party to counter the effect of subsidized imports of agricultural products not originating from the Parties.
- The importing Party applying countervailing duties pursuant to Article 13.c) i) of the WTO Agreement on Agriculture and in accordance with the provisions set forth in Part V of the WTO Agreement on Subsidies and Countervailing Measures, when possible, or, anti-dumping duties to the benefit of a third country under the terms of Article 14 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. ]

[12.3 Parties agree to work together in the WTO negotiations on agriculture to prohibit the use of export subsidies for agricultural products exported from non FTAA countries to FTAA Parties until achievement of multilateral elimination of export subsidies for agricultural products.]

[12.4 If a Party is experiencing adverse effects because a non-Party is exporting an agricultural product to another importing Party with the benefit of an export subsidy, the importing Party shall, on request of the adversely affected Party, consult with the adversely affected Party with a view to agreeing on specific measures that may be adopted by the importing Party to counter or minimize the effect of such imports of agricultural products not originating from the Parties.]

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[<sup>11</sup> The procedure intended to ensure the transparent application of this provision is to be defined.]

[12.5 If the importing Party implements the measures agreed upon, the exporting Party shall refrain from applying any export subsidy to exports of the same agricultural product to the territory of the importing Party.]

[12.6 If the importing Party [does not implement such agreed upon measures] [ refuses to hold the abovementioned consultations or to initiate the procedures for the imposition of the countervailing antidumping duties mentioned in subparagraph 12.2 above], the exporting Party:

- [may apply an export subsidy to its exports of the same agricultural product to the importing Party until such time as the non-Party ceases to export that agricultural product to the importing Party with the benefit of export subsidies]
- [may cancel trade preferences in respect of products from the Party importing the subsidized product to an amount equivalent to the trade affected or it may apply other measures with countervailing effect as agreed upon within the FTAA.]]

[12.7 An exporting Party shall deliver written notice to the importing Party and to other Parties who are exporters of the product concerned at least seven days prior to adopting an export subsidy measure on an agricultural product exported to the territory of another Party. The exporting Party shall consult with the importing Party within 72 hours of receipt of the importing Party's written request with a view to minimizing any adverse impact on the market of the importing Party for that product. The importing Party shall, when requesting consultations with the exporting Party, at the same time, deliver written notice to other exporting Parties of the request. Another exporting Party may request to participate in such consultations. ]

**[Article 13: Treatment of Export Subsidies by Parties to non-Party markets]**

[13.1<sup>A</sup> The provisions of the WTO shall apply in respect of the treatment of subsidized exports of agricultural products by the Parties to third markets.]

[13.1<sup>B</sup> From the date of entry into force of this Agreement until the multilateral elimination of export subsidies for agricultural products, if a Party utilizes export subsidies for exports of agricultural products to non-Parties, that Party shall take into account the interests of other Parties and endeavor to minimize any adverse effect on exports from other Parties. If a Party is suffering an adverse effect in a non-Party market because of an export subsidy by another Party, the Party using the export subsidy agrees to consult on request with the adversely affected Party with the objective of reaching agreement to alleviate the adverse effect.]

[13.2 Parties agree that the funds no longer used to subsidize exports of agricultural goods to other Party markets shall not be used to subsidize exports to non-Party markets.]

[13.3 For the purposes of what is provided for in paragraph 13.1, Parties shall deduct from the base level amounts of export subsidies declared/consolidated under the WTO Agreement on Agriculture those intended to other Party markets in the same period. ]

[13.4 When a Party identifies that, in a given year, another Party exported to non-Parties an agricultural product with subsidies in value or amounts higher than those indicated by the procedures in paragraphs 13.1 and 13.3, it shall request the subsidizing exporting Party, in writing, for consultations to ensure compliance in paragraph 13.1. In the event that a Party was displaced in a non-Party market by a Party not complying with the provisions in paragraph 13.1, the affected Party shall have the right to request compensation and the subsidizing exporting Party shall be obliged to provide such compensation.]

[13.5 In the event that the subsidizing exporting Party repeats non-compliance with the commitments under this Article, the affected Party may cancel commercial preferences for products from that exporting Party in an amount equal to the affected trade or may apply countervailing measures as agreed upon within the scope of the FTAA. ]



**[Article 14: Measures and Practices Having an Equivalent Effect to Export subsidies on agricultural products ]**

[14.1 In accordance with Article 9.1, the Parties agree to comply with the conditions and disciplines for the provision of export credits [and food aid] for agricultural products as provided in [Annex 12.2.1 (Export Credits)] [and in Annexes 12.2.2, 12.2.2.1, and 12.2.2.2 (Food Aid) of] the Section Four of this Chapter.] ]

**[<sup>12</sup>SECTION FOUR: DISCIPLINES TO BE ADOPTED FOR THE TREATMENT OF ALL THE OTHER PRACTICES THAT DISTORT TRADE IN AGRICULTURAL PRODUCTS, INCLUDING THOSE WHICH HAVE AN EQUIVALENT EFFECT TO AGRICULTURAL EXPORT SUBSIDIES**

**[Article 15<sup>13</sup>: Domestic Support Measures]**

***WTO Disciplines and Commitments on Domestic Support*<sup>14</sup>**

[15.1. The Parties recognize that domestic support measures can be of [crucial] importance to their agricultural sectors, but may also have severe distorting effects on the production and trade of agricultural products.]

[15.2. Recognizing that disciplines and reduction commitments for domestic support measures can be achieved [only] in multilateral negotiations, the Parties agree to continue to work toward an agreement in the WTO negotiations on agriculture to substantially reduce and more tightly discipline trade-distorting domestic support.]

[15.3. To this end, the Parties agree to work toward an agreement in the WTO negotiations on agriculture to achieve:

- (a) the elimination or maximum possible reduction of production and trade distorting domestic support, including support under “production limiting” or “blue box” programs;
- (b) an overall limit on the amount of domestic support of all types (the total of “green”, “blue” and “amber”);
- (c) a review of the criteria for the “green box” to ensure that such support does not distort production and trade; and
- (d) agreement that “green box” support should not be countervailable.]

**[15.4 FTAA Disciplines and Commitments on Domestic Support]**

**[Definitions ]**

[15.5 Domestic support means any [policy or measure that affects decisions to produce, applied by a Party, to sustain the prices of agricultural products, increase the revenues of farmers, and/or improve production and/or marketing conditions.]]

[15.6 Aggregate Measurement of Support (AMS) means the annual level of support, expressed in monetary terms, provided for an agricultural product in favor of the producers of agricultural products, or of non-product-specific support provided in favor of agricultural producers in general, other than support provided under programs that may qualify as exempt from [elimination] [reduction] under the provisions as established in this Article. ]

[15.7 Current Total Aggregate Measurement of Support means the support effectively accorded during any year of the implementation period.]

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<sup>12</sup> This bracket applies to the entire section.

<sup>13</sup> The numbering is provisional and will change as the negotiations progress.

<sup>14</sup> This section will have to be revised near the end of the negotiating process in light of developments in the WTO negotiations on agriculture. The San Jose Ministerial Declaration indicates that progress made in the WTO negotiations on agriculture is to be incorporated.

[15.8 Implementation period means the period beginning with the year in which the Tariff Elimination Program begins until the year in which a 0% tariff level is achieved.]

**[Identification of Other Measures and Practices that Distort Trade [and Production] in Agricultural Products]**

[15.9 For the purposes of this Agreement, other measures and practices that distort trade and production of agricultural products, are identified as any measure or practice other than the following, provided that the following measures meet the requirements set out in subparagraphs “a” and “b” of number 1 of Annex 2 of the WTO Agreement on Agriculture:

- (i) General Services (Number 2 of Annex 2 of the WTO Agreement on Agriculture);
- (ii) Domestic Food Aid (Number 4 of Annex 2 of the WTO Agreement on Agriculture);
- (iii) Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters (Number 8 of Annex 2 of the WTO Agreement on Agriculture)]

**[Commitments on Domestic Support]**

[15.10 As of the date of entry into force of this Agreement, the Parties agree to eliminate, for trade among themselves, measures and practices that distort agricultural production and trade, as defined in Article 14.2.1.]

[15.11 Parties agree not to apply domestic support measures in agriculture that are not in conformity with the provisions of this Article ].

[15.12<sup>A</sup> Parties that have bound commitments for reducing domestic support in Part IV, Section I, of their Lists of Commitments under the WTO Agreement on Agriculture, shall eliminate these upon the entry into force of the FTAA, except for the *de minimis* levels established in Article 6.4 of the aforementioned Agreement.]

[15.12<sup>B</sup> Parties<sup>15</sup> that have bound commitments for reducing total AMS in the WTO must reduce their total AMS until it is completely eliminated by the end of the implementation period.]

[15.13 The elimination of the Total AMS referred to above shall be made on the basis established in [this Article] [paragraph 15.14] by means of a reduction in the amounts of the Current Total AMS using the linear formula and automatically in the period of implementation, in consistency with the timetable for tariff elimination contained in the countries’ schedules and as established in Section Two of this Chapter]

[15.14 The basis on which the timetable for reducing the Total AMS shall be applied shall be the lesser of the amounts resulting from the following calculations:

- a) the mean of the Current Total AMS for the years (J,J,J), reduced by X%; and
- b) the Total AMS bound under the WTO, for the year 2000 by developed countries, and for the year 2004 by developing countries, both reduced by 50%.]

[15.15 A Party shall be considered to have complied with its commitments to reduce domestic support in every year in which its domestic support for agricultural producers, expressed in terms of Current Total AMS, if it does not exceed the corresponding level of annual or final [bound] [agreed] commitment, calculated in accordance with the contents of the Article. ]

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[<sup>15</sup> Argentina, Brazil, Canada, Colombia, Costa Rica, Mexico, United States and Venezuela. Because the other Parties do not have bound commitments for reducing AMS under the Uruguay Round, they are prohibited from granting support to agricultural products beyond the *de minimis* level. (Art. 7.2 of the WTO Agreement on Agriculture)]

[15.16 The Parties agree that, starting with the entry into force of the present Agreement, the Parties will not apply domestic support measures that are indicated in paragraphs ... (to be subsequently defined) of Annex 2 of the WTO Agreement on Agriculture.]

[15.17 The calculation of Current Total AMS of a Party shall include any domestic support measures established for agricultural producers, including possible modifications to same, and any subsequent measures that do not satisfy the criteria of Annex\_, or that are exempted from reduction consistent with the previous paragraph ...]

[15.18 The Parties undertake not to reintroduce measures and practices that distort trade and production of agricultural products covered in Article... and not to apply new measures and practices that have a similar effect of distorting trade and production of agricultural products or that involve circumvention of the commitment established in Article .... ]

**[Exempt Measures]**

[15.19 The domestic support measures that comply with the provisions established in Article 6.2 of the WTO Agreement on Agriculture, together with the paragraphs established in ... of the same Agreement, as well as those that do not exceed the *de minimis* levels established in Article 6.4 of the same Agreement, shall be exempt from reduction commitments that are established in the present Article.]

**[Non-compliance]**

[15.20 In the event a Party does not comply with the commitments stipulated in this Section, the other Parties shall suspend tariff preferences granted to the product which is the object of non-compliance originating from the said Party until the non-compliance is remedied. Additionally, the affected parties may impose, in respect of the product, which is the object of non-compliance, countervailing duties in accordance with the provisions set out in (Chapter XX or Section XX or Article XX or Annex XX) of this Agreement. ]

**[Differences in the Levels of Development and Size of the Economies within the FTAA]**

15.21 Countries which benefit from special and differential treatment based on the level of development and size of their economies, especially smaller economies, may maintain the measures and practices set out in Article 6.2 and 6.4.b of the WTO Agreement on Agriculture and successor agreements.

**[Exchange of Information / Notifications ]**

[15.22 To ensure transparency, the FTAA Committee on Agriculture shall, at least once a year, analyze the state of all domestic support measures in the Parties, as well as any modification in such measures, so as to assess compliance with the provisions in this article. Furthermore, the Parties shall exchange public information on a timely basis or at the request of any Party.]

[15.23 The Parties shall notify each year, in accordance with Article ... those measures that can be considered non-trade and production – distorting measures, explaining the type of measure, the amount of support funding, and stating if the measure is specific or general in its application.]

**[Article 16: [Differential] Export Taxes ]**

[16.1 Effective on the date of entry into force of the Agreement, Parties agree to [eliminate] [apply to a maximum of x % points] any differential between the rate of export tax charged on a[n] [primary] agricultural product and the rate of export tax charged on any product or byproduct produced from [the primary product][that agricultural product].]

[16.2 No Party shall adopt or maintain any tax, duty or other charge on the exportation of an agricultural product to the territory of [another Party][all Parties], unless such taxes or duties are applied on such goods when they are used for domestic consumption and when they are exported to the territory of other Parties. ]

[16.3 Parties that are smaller economies will be exempt from any provisions of this Agreement in respect of export taxes.]

**[Article 17: State Trading Enterprises<sup>16</sup>]**

[17.1 The Parties agree to the phased elimination of the exclusive importation and/or exportation rights granted to state trading enterprises engaged in the importation and/or exportation of agricultural products by permitting private traders to participate in, compete for, and transact for importation and/or exportation of agricultural products.]

[17.2 In the transition period from exclusive importation and/or exportations rights held by the state trading enterprise to full competition with private traders, such state trading enterprises shall provide information on its acquisition costs, importation and/or exportations pricing, and other sales information. To ensure that such enterprises compete fairly with private traders in importation and/or exportations sales during the transition period, the national government is prohibited from providing government funds, loans, guarantees or other financial support to the state trading enterprise.]

[17.3 By the time the tariff elimination program is initiated, disciplines shall have been established for the operations of state and private trade enterprises, which have an import and/or importation and/or exportations monopoly on agricultural products, in order to avoid restrictions to and discrimination upon access in addition to other distortions in agricultural trade.]

[17.4 State trading enterprises of agricultural products mean those enterprises owned by the State or those enterprises to which the State, by a fact or law, have granted exclusive or special rights to trade agricultural products.]

[17.5 Any discipline provided for in respect of State Trade Enterprises shall not apply to Parties with smaller economies.]

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[<sup>16</sup> Some delegations consider that this is a multilateral issue which has to be addressed in the appropriate multilateral forum, such as the WTO, not in a regional trade agreement such as the FTAA. Other delegations do not agree with this statement.]

**[<sup>17</sup>SECTION] [CHAPTER] FIVE: SANITARY AND PHYTOSANITARY MEASURES]**

**Article 17<sup>18</sup>: General Provisions, Rights and Obligations of the Parties**

[17.1. This [Section] [Chapter] applies to sanitary and phytosanitary measures as defined [in Annex A] in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures [; any subsequent changes to these definitions agreed on the WTO SPS Agreement shall automatically apply to this Agreement].]

[17.2. The Parties reaffirm their rights and obligations under the WTO *Agreement on the Application of Sanitary and Phytosanitary Measures*.]

[17.3 Recognition of differences in levels of development and size of the economies may be given expression in specific ways, *inter alia*, by adopting equivalent measures, through risk assessment, and through technical cooperation with, or assistance to, countries, in particular smaller economies.]

**[Article 18: Implementation of the WTO Agreement on the Application of SPS Measures in the FTAA]**

[18.1. The Parties agree to cooperate to further the implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. In consistency with these objectives, in the application of sanitary and phytosanitary measures the Parties shall take into consideration the appropriate level that will ensure adequate protection and the technical and economic feasibility of the Parties.]

[18.2. In consistency with the provisions of this Article, the Parties agree to cooperate to facilitate trade in animals, plants, products and byproducts thereof, food products and other related products, and to strengthen the modalities necessary to prevent the introduction or avoid the spread of pests and diseases of plants, animals or human diseases associated to food safety.]

[18.3 In order to fully implement the WTO Agreement on the Application of SPS Measures in the hemisphere, the Parties agree to comply with the following provisions:]

***[a) Harmonization and International Standards ]***

[a.1. Parties shall apply to trade among them the international standards recommended by the relevant international bodies and their subsidiaries, [in particular the Codex Alimentarius Commission, the International Office of Epizootics, and international and regional organizations that operate under the framework of the International Plant Protection Convention.]]

[a.2 Where a Party considers that an international standard referred to in the previous paragraph is not sufficient to ensure the appropriate level of sanitary and phytosanitary protection it requires, or that no such standard exists, the Party shall notify the other Parties of this and engage in consultations with interested Parties to define and adopt the necessary standard for application in trade among them. ]

[a.3 The Parties shall promote bilateral or subregional agreements with a view to achieving the harmonization of sanitary and phytosanitary measures, particularly in respect of procedures related to the inspection and certification of animals, plants, their products and by-products, as well as those related to food safety, among others, thereby facilitating trade between the Parties.]

[a.4 The Parties shall develop, with the participation of agricultural health and food safety organizations, actions geared towards reaching subregional harmonization agreements and, where possible, at the Hemispheric level, as well as to strengthen those already in force.]

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<sup>17</sup> This bracket applies to the entire section.

<sup>18</sup> The numbering is provisional and will change as the negotiations progress.

***[b) Equivalence]***

[b.1. The Parties agree to comply with points 1-7, established in the WTO Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures, approved by the SPS Committee of the same organization. (WTO/G/SPS/19)]

[b.2. The methods to determine the conditions for equivalence shall give more emphasis to inspection procedures, to the sanitary and phytosanitary condition in the area from where the product originates, and shall consider the conditions according to the level of development and size of the economies.]

[b.3. The Parties agree that the general objective of equivalence agreements shall be to facilitate trade and to promote increased mutual trust between national authorities.]

[b.4. The equivalence shall apply to normative rules and sanitary and phytosanitary measures concerning trade in live animals, plants, products and byproducts thereof and related goods as well as to inspection, recognition, control, testing, approval, certification services and food safety requirements. [To establish equivalence, it shall also be taken into account the size of the economies and level of development of the Parties.]]

[b.5. When equivalence agreements and consultations are entered into by Parties, it should be borne in mind that:]

[(i) the determination of equivalence should be understood as a process through which it is objectively demonstrated that the exporting Party's sanitary and phytosanitary measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection.]

[(ii) The measure whose equivalence is being considered for recognition, shall be determined, based on the objective of the measure, for a product or group of products, and not for the national control [system] [service] as a whole.]

[(iii) Doing an evaluation, including an assessment, based on the circumstances, of the risk or risks it is intended to prevent and an identification of the level of sanitary or phytosanitary protection that is considered appropriate;]

[(iv) the sanitary and phytosanitary measures recognized as equivalent in these agreements shall be sufficient to achieve the appropriate level of protection established by the importing Party and be based on scientific evidence.]

[(v) it is incumbent upon the exporting Party to demonstrate that its sanitary and phytosanitary measures allow achievement of the importing Party's appropriate level of protection to the same extent as that achieved by the importing Party's sanitary measures. It is the responsibility of the importing Party to promptly and appropriately provide any necessary information requested by the exporting Party.]

[(vi) The final determination of whether a sanitary or phytosanitary measure applied by the exporting Party achieves the appropriate level of protection required by the importing Party, shall be the sole responsibility of the importing Party, provided that is based on scientific and technical principles.]

[(vii) Parties shall implement [reasonable] [common] procedures to facilitate the access of tests and other relevant material to their territories for inspection purposes [during the negotiation of the Agreement.] ]

[b.6. With a view to simplifying the determination of equivalence, consideration should be given to: the existence of a smooth and regular flow of trade in the products for which the declaration of equivalence is being sought, the absence of any previous cases of rejection for sanitary or phytosanitary reasons, and proven experience of the exporting Party's inspection and certification systems for these products.]

[b.7. When an equivalence agreement is being negotiated and until equivalence is determined, the Parties shall not, in their mutual trade, apply conditions for the products referred to in this [Section] that are more restrictive than those in force, except for those related to sanitary or phytosanitary emergencies. ]

[b.8. In the process of recognizing the equivalence of their sanitary and phytosanitary measures, the Parties shall, through bilateral consultations, deal with aspects related to the effectiveness of the measure, the impact on trade, and minimizing the cost of applying and adjusting the levels of technology, which shall be specified in the mutual recognition instruments.]

***[c) Assessment of Risk [and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection] ]***

[c.1. The Parties [shall harmonize the methodology] and may request regional, subregional agricultural health organizations, SPS research centres or consortia, to draft harmonized guidelines, principles, and methodologies for risk assessment with the objective of [promoting the application of common criteria and procedures in the FTAA] [conducting risk assessment studies related to trade among them]]

[c.2. Whenever results of risk assessment studies are necessary for the purpose of allowing market access for a product, these should be communicated by the Party that undertook the study to the interested Party within a time period [agreed to by the Parties involved] [no longer than X calendar months [for the countries with small economies and xx calendar months for the remaining countries]] from the date of the request from the requesting Party. The information pertinent to the assessment, including requests for clarification or supplementary information, shall be gathered, processed and analyzed within that time. ]

[c.3. Once the time period stipulated has expired without the importing Party having completed the risk assessment or if the exporting Party demonstrates that it has scientific justification that there is no risk involved for the importing party, the exporting Party may take recourse to the FTAA<sup>19</sup> forum competent in the subject area, [without prejudice to recourse to the body mentioned in these provisions] with a view to having the restriction imposed on the affected product lifted. ]

[c.4. Where a Party decides to conduct a new risk assessment of a product for which there is smooth and regular trade, that Party may not interrupt the trade in the affected products, except in the case of a sanitary or phytosanitary emergency situation.]

[c.5. In cases of sanitary or phytosanitary protection emergencies, it shall be the responsibility of the importing Party, at the request of any of the other Parties, to immediately present scientific justification for the measure adopted. The importing party shall also be responsible for promptly adapting the measure to the results of the risk analysis conducted.]

[c.6. When a Party is able to attain an appropriate level of protection through the gradual application of a sanitary or phytosanitary measure, it may, at the request of the other Party and in conformity with this chapter, allow such gradual application or grant specific exceptions to the measure during established periods, taking into account the export interests of the requesting Party.]

[c.7. To ensure consistency in the application of the appropriate level of SPS protection, the Parties agree to observe the guidelines to promote the practical application of Article 5 of the WTO SPS Agreement, elaborated by the Committee. (WTO/G/SPS/15)]

***[c.8. [Safeguards][Provisional Measures]***

Each Party shall adopt the provisional measures necessary for the protection of human health, animal health or plant health, pursuant to article 5.7 of the WTO/SPS. These measures shall be notified to the other Parties within twenty four [working] hours and, if so requested, consultations on the situation shall be held within [fourteen] days. Parties shall take into due consideration any information provided during such consultations and shall endeavor to avoid any unnecessary disruption of trade.]

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<sup>19</sup> [to be created]



***[d) Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas of Low Pest or Disease Prevalence]***

[d.1. The Parties shall harmonize the criteria and procedures they use to recognize pest- or disease-free areas and areas of low pest or disease prevalence. The Party from whom such recognition has been requested shall announce its decision no later than X calendar months from the date of the request by the affected Party [for Parties with small economies] and no later than XX calendar months for the other FTAA Parties.]

[d.2. The Parties [shall [accept] [recognize] automatically] [may request] from other Parties the pest- or disease-free areas and areas of low pest or disease prevalence recognized by the relevant international [or regional] organizations in particular the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention.]

[d.3. Where a Party considers that it has a special sanitary or phytosanitary situation with respect to a specific disease, it may apply for recognition of that situation. The importing Party may also request additional guarantees for the importation of animals, plants, products and by-products thereof or other goods related to trade therein, in the light of the recognition of the special situation.]

[d.4. The Party which received the request to grant such recognition shall issue a statement within a period of time previously agreed to with the other Party and may verify inspection, testing and other procedures. If it denies recognition, it shall provide technical grounds for its decision in writing.]

[d.5. No Party shall prevent access to its territory of a product from an area/region in an exporting Party that is a specific pest- or disease-free area/region or where the prevalence of the pest or disease is low, even though the country as a whole has not been declared country-free from the pest or disease or with low prevalence thereof. In the case of an area/region with low prevalence of a specific pest or disease, the area/region should be subject to effective surveillance measures and efforts to combat or eradicate the pest or disease.]

***[e) Transparency ]***

***[f) Control, Inspection and Approval Procedures]***

[f.1. The Parties shall, where appropriate, harmonize or make equivalent control, inspection and approval procedures, as well as sanitary and phytosanitary certification for [trade among them] [products traded most heavily among them]]

[f.2. Any restriction of an importing Party's market access stemming from changes in control and inspection procedures without due justification shall be considered an unjustified barrier to trade.]

[f.3. Parties may conduct inspection and verification procedures that shall consist of the following:]

[(i) Evaluation of sanitary and phytosanitary services]

[(ii) Review of the inspection programs of the competent authorities.]

[(iii) Periodic evaluation, previously agreed upon by the Parties, of the effectiveness of the control programs.]

[(iv) Verification of controls in the territory of the exporting Party]

[(v) Any other control method approved by common agreement by the competent authorities of the Parties.]

[f.4. The Parties may permit the importation of animal or plant products or byproducts from processing plants [and other installations], once they have been approved and certified in accordance

with their respective national sanitary and phytosanitary legislation, and without prejudice to periodic evaluations of agreed procedures]

**[Article 19: Technical Assistance and Cooperation]**

[19.1. In accordance with Article 9 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, Parties agree to facilitate develop and implement programmes for technical assistance to other Parties, [especially on the basis of their level of development and the size of their economies], either bilaterally or through the appropriate international [and subregional] organizations. Such assistance may be, inter alia, in the areas of:]

- [(i) the application of this Section;]
- [(ii) the application of the WTO SPS Agreement;]
- [(iii) processing technologies;]
- [(iv) the exchange of information on new research data;]
- [(v) infrastructure;]
- [(vi) More active participation in appropriate international organizations and their subsidiary bodies; ]
- [(vii) institutional and regulatory cooperation;]
- [(viii) Financial, physical and technical infrastructure strengthening of national SPS systems;]
- [(ix) harmonization;]
- [(x) support for formulating and implementing international and regional standards;]
- [(xi) mutual recognition and equivalence agreements; ]
- [(xii) risk assessment and education, instruction and training of necessary human resources; ]
- [(xiii) transparency]
- [(xiv) strengthening technical capacity and methodology for the elimination of areas of pests and disease;]
- [(xv) recognition of pest- or disease-free areas or low incidence or illnesses;]
- [(xvi) control, inspection and approval procedures; ]
- [(xvii) identification, consultation and resolution of SPS-related problems including of disputes;]
- [(xviii) any relevant matters which may arise from time to time]

[19.2. This assistance may take the form of advice, credits, donations and grants, seminars/workshops including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets. ]

[19.3. Where substantial investments are required in order for an exporting Party to fulfill the sanitary or phytosanitary requirements of an importing Party, the latter shall consider providing such technical assistance, as needed on the basis of [the level of development and size of the economy,] [favoring the countries with small economies] to allow the exporting Party to maintain and expand its market access opportunities for the product involved.]

**[Article 20: Consultations and Dispute Settlement ]**

***[Technical consultations]***

[20.1 Where a Party considers that a sanitary or phytosanitary measure [or control, inspection and approval procedures] of another Party is interpreted or implemented in a manner inconsistent to the provisions of this chapter, the onus of [proving][indicating] such inconsistency shall be on the Party initiating the consultation according to the provisions of the WTO SPS Agreement or to criteria approved by appropriate international organizations.]

[20.2 No provision of this chapter shall prevent a Party, where that Party has a doubt about the implementation or interpretation of the contents thereof, from initiating consultations with another Party.]

[20.3 Where a Party requests consultations and notifies the FTAA Committee on Sanitary and Phytosanitary Measures to that effect, the Committee shall facilitate the consultations, with the possibility of referring them to a specialized group or agency for advice or non-binding technical recommendation.]

[20.4 . Where Parties have engaged in consultations under this article, without satisfactory results, such consultations, if so agreed by the Parties, shall constitute the consultations stipulated in Article \_\_\_\_ of the Chapter on Dispute Settlement of the Free Trade Area of the Americas.]

**[Dispute Settlement]**

[20.5 The Parties agree to use the WTO Consultation and Dispute Settlement Procedures for any formal disputes regarding sanitary and phytosanitary measures.]

[20.6 Without prejudice to the preferential right among Parties provided for in existing subregional agreements, [the FTAA Dispute Settlement Body] shall be responsible for solving any dispute that may arise between or among the Parties from the provisions of this Chapter. ]

**[Article 21: Institutional Issues]**

[21.1<sup>A</sup>. The Parties hereby establish the FTAA Committee on Sanitary and Phytosanitary Measures to serve as a forum for holding technical consultations, providing necessary support for implementing the provisions and attaining the objectives of the WTO SPS Agreement in the FTAA.]

[21.2<sup>A</sup>. The Committee shall promote and facilitate ad hoc consultations on specific sanitary and phytosanitary issues, on the basis of which it will be possible to identify progress and existing problems, as well as to provide clarification on the application of the principles of the Agreement. The Committee shall have, among others, the following functions:]

- [(i) ensure compliance with this SPS [Section] [Chapter];]
- [(ii) study matters submitted by a Party that considers that an existing measure or a measure proposed by another Party affects the effective application of any commitment undertaken in this [Section] [Chapter];]
- [(iii) evaluate and recommend to the Administration Committee proposed modifications, amendments or additions to the provisions of this [Section] [Chapter];]
- [(iv) propose to the Administration Committee that it review existing measures or measures proposed by a Party that it feels are incompatible with the obligations of this [Section] [Chapter];]
- [(v) carry out other tasks entrusted to it by the Administration Committee, by virtue of the provisions of this [Section] [Chapter] and other aspects derived from same;]
- [(vi) foster the active participation of the Parties in international [and subregional ] organizations;]
- [(vii) prepare and update a register of qualified specialists in the areas of food safety, plant protection and animal health; and]
- [(viii) identify and implement the work plan of technical assistance and institutional cooperation.]

[21.3<sup>A</sup> More specifically, the Committee would address SPS issues of relevance to the Parties, including:]

- [i) the development of operational guidelines to facilitate implementation of mutual recognition and equivalence agreements, product control, inspection and approval procedures, risk assessments, etc.];]
- [ii) enhanced transparency of SPS measures, including counter-notification of such measures;]
- [iii) identification and resolution of SPS related problems;]
- [iv) institutional and regulatory cooperation;]
- [v) recognition of pest or disease free areas;]
- [vi) hemispheric coordination in multilateral fora on sanitary and phytosanitary issues;]
- [vii) harmonization of relevant international sanitary and phytosanitary standards, guidelines and recommendations;]
- [viii) technical assistance.]
- [ix) the promotion of discussion on hemispheric issues with a view to preventing disputes among Parties.]

[21.4<sup>A</sup> The Committee shall meet when required, normally each year and shall report on its activities and work plans to the executive body<sup>20</sup> of the FTAA.]

**[Article 21<sup>B</sup> Committee on Sanitary and Phytosanitary Measures]**

[21.1<sup>B</sup>. Recognizing the benefits of a hemispheric technical and institutional cooperation program, a Committee on Sanitary and Phytosanitary Measures comprising representatives of each Party with responsibilities for sanitary and phytosanitary matters is hereby established.]

[21.2<sup>B</sup>. The Committee shall promote transparency in the area of sanitary and phytosanitary measures, including through overseeing the implementation of the FTAA notification and counter-notification process, with a view to identifying and resolving sanitary and phytosanitary problems between Parties in order to prevent formal disputes.]

[21.3<sup>B</sup>. The Committee shall provide a regular forum for:

- (1) advancing hemispheric cooperation to realize the full benefits of the WTO SPS Agreement in areas such as: harmonization, equivalence, risk assessment, enquiry points, technical assistance, recognition of pest-free or disease-free areas, and control, inspection and approval procedures;
- (2) advancing cooperation among Parties in other international fora through:
  - consulting on strategies, positions and priorities to be advanced by member countries within the relevant international standards setting bodies including their regional counterparts;
  - consulting and coordinating on strategies, positions and priorities in the WTO SPS Committee as well as other international (e.g. FAO) and regional (e.g. IICA, PAHO, IDB, OAS, ECLAC) bodies; and
  - promoting the objectives of this Chapter through other hemispheric institutions (e.g. IICA, PAHO, IDB, OAS, ECLAC);
- (3) exchanging views regarding the design and delivery of effective programs of technical assistance and cooperation to facilitate achievement of the above.]

[21.4<sup>B</sup>. The Committee:

- (1) shall meet when required, normally each year, and shall report on its activities and work plans to the FTAA Commission<sup>21</sup>; and
- (2) may, as it considers appropriate, establish and determine the scope and mandate of working groups.]

**[Competent Authorities]**

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<sup>20</sup> A proposal was made to the FTAA Technical Committee on Institutional Issues (FTAA.TNC/w/93) that an executive body be formed. It would be made up of Vice Ministers responsible for trade and would be responsible, inter alia, for overseeing the work of the various FTAA committees.

<sup>21</sup> Based on the assumption that an FTAA Commission or executive body will be created.

**[<sup>22</sup>SECTION SIX: [ INSTITUTIONAL PROVISIONS]**

**[Article 23<sup>23</sup>: Committee on Agriculture]**

[23.1<sup>A</sup> A Committee on Agriculture [for the FTAA Member countries] is hereby established. ]

[23.1<sup>B</sup> The Parties shall create a Committee on Agriculture, made up of representatives from each Party, which shall normally meet at least once a year or at the request of one or more Parties.

23.2.<sup>B</sup> The committee shall be established within six months of the Agreement coming into force. Any decisions made by the committee shall be by consensus.

23.3.<sup>B</sup> The committee shall have the following functions:

(a) To monitor the application and administration by the Parties of the provisions of this Chapter.

(b) To assess any proposed modification, amendment or addition to the relevant provisions in order to improve the application of what is set forth in this Chapter and to recommend pertinent changes to the Commission<sup>24</sup>.

(c) To submit periodic reports on its activities to the Commission as appropriate.]

**Article 24: [Consultations and] Dispute Settlement**

[24.1<sup>A</sup> The FTAA [Chapter] [provisions] concerning [consultations and] Dispute Settlement shall apply to consultations and the settlement of disputes [under this Agreement] [concerning rights and obligations created by this Chapter [for agriculture products]].]

[24.1<sup>B</sup> Without prejudice to the preferential right among Parties in existing sub regional agreements, the dispute settlement body established under this Agreement will be responsible for settling divergences that may arise among the Parties under this Chapter.]

[24.1<sup>C</sup> The Parties agree to use the procedures set out in the Chapter on Dispute Settlement to resolve any disputes which may arise concerning the provisions of this Chapter.]]

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<sup>22</sup> This bracket applies to the entire section.

<sup>23</sup> The numbering is provisional and will change as the negotiations progress.

<sup>24</sup>Based on the assumption that an FTAA Commission or executive body will be created.

[ANNEX 12.2.1]

**[RULES FOR THE PROVISION OF EXPORT CREDITS FOR AGRICULTURAL PRODUCTS]**

**[1) DEFINITION AND SCOPE]**

- [1.1. Export credits for agricultural products are considered to be any type of financial activity whose source is official resources, for the purpose of improving and marketing agricultural products, for export, [covered by the FTAA Agreement on Agriculture.] [included in Annex I of this Chapter.]]
- [1.2. An illustrative, though not an exhaustive list of institutions and programs to be covered by this Annex can be found under its appendix, and shall be periodically revised. ]
- [1.3. For the purposes of this Annex, official resources may take the form of credits, financing, interest rates, and export credit insurance and guarantees, among others. ]

**[2) DISCIPLINES]**

- [2.1. All export-related credit operations of undertaken by institutions and programs involved with official resources for agricultural products shall respect the terms of this Annex, including private and State-owned enterprises that hold exclusive or special rights to market agricultural products, resulting from statutory or constitutional rights, the exercise of which could affect their acquisitions or sales, or influence imports or exports. ]
- [2.2. Terms and conditions for granting of credits ]
  - [2.2.1. General Considerations ]
    - [2.2.1.1 This [Section] [Annex] establishes the most generous terms and conditions to be used in the context of the FTAA. All Parties, taking into account the risk of such terms and conditions becoming common practice in domestic agricultural policies, shall adopt the measures necessary to prevent such practices becoming generalized. ]
    - [2.2.1.2 The Parties shall observe the credit terms and conditions for agricultural products that traditionally use credit terms and conditions less favorable than those authorized by this Section. ]
  - [2.2.2. Term of payments ]
    - [Pre-shipment operations ]
      - [2.2.2.1 The term of payment for credit operations in the pre-shipment period is the time between the date on which the resources are available to the beneficiary and the date of maturity of the capital. ]
      - [2.2.2.2 The term of payment for pre-shipment credit operations covered by this [Section] [Annex] shall not exceed 90 days. ]
    - [Post-shipment operations ]
      - [2.2.2.3 The term of payment for post-shipment export financing is the time between the date of shipment or of the delivery of the goods, invoice, commercial contract, or requirements contract and the maturity date of the final capital installment. ]

[2.2.2.4 The payment period for products covered by this [Section] [Annex] shall not exceed 180 days, and may be extendable [for more than] 180 days at the request of the debtor Party, [except in the cases listed below.] The period of extension shall be substantiated by the debtor Party and be approved by the other Parties. [The exceptions to this requirement are as follows:]]

[a] Bovines for animal improvement purposes: the term of payment shall not exceed 2 years for contracts of up to US\$150,000 and 3 years for contracts in excess of US\$150,000.

b) Other animals for purposes of animal improvement: the term of payment shall not exceed 12 months.

c) Plant material for reproduction: the term of payment for plant material (seeds, tubers and similar material), exported for purposes of reproduction, shall not exceed 12 months. ]

[2.2.3. Payment of capital ]

[Pre-shipment operations]

[2.2.3.1 The value of export credit capital shall be paid in a single installment or in equal and successive installments beginning on the date on which the resources are available to the beneficiary. ]

[Post-shipment operations ]

[2.2.3.2 The [principal] value [of the capital] of the export credit shall be paid in a single installment or in equal and successive installments, based on the [predetermined] [mentioned] events set forth in item [2.2.3. ] [2.2.3.3.]]

[2.2.4. Interest payments ]

[2.2.4.1 The form of interest payment shall be defined by free negotiation between the Parties, observing the terms defined in items 2.2.2 and [2.2.4]. ]

[2.2.4.2 For the purpose of the provisions of this Section, interest excludes:

a) any payment, such as premiums or other surcharges, for the purpose of ensuring or guaranteeing credit to exporters;

b) any other payment, such as bank fees or commissions, related to export credit; and

c) discounts made by importing countries. ]

[2.2.5. Cash payment]

[2.2.5.1 Parties shall require importers of agricultural products included in [item 2.2.4 (a)] [in paragraphs a), b), c) of provision 2.2.2.4.] that have received official resources to make cash payment of a minimum of 15 percent of the exported value, prior to or on the date of shipment of the goods. ]

[2.2.5.2 Exported value shall be understood to mean the total value to be paid by the importer, excluding interest. ]

[2.2.6. Sharing of risk ]

[2.2.6.1 Any type of credit guarantee dealt with in this [Section,] [Annex] including those financed with resources from national treasuries, shall include a minimum level of private sector participation. The official insurance agency may only cover up to 85 percent of the value of the transaction. ]

[2.2.7. Minimum interest rate.] [To be defined]

[2.2.8. General Provisions]

[Parties shall not use any form of official resource with a view to refinancing the payment of capital and interest on export credits for agricultural products. ]

[2.3. Non-compliance ]

[2.3.1. If a Party fails to comply with the disciplines established under this [Section,] [Annex] any other Party may cancel trade preferences granted to the product benefiting from the subsidized credit or may apply other countervailing measures agreed upon under this Agreement.]



**[ANNEX 12.2.2]**

**[DISCIPLINES FOR MONITORING THE PROVISION OF FOOD AID IN THE FTAA]**

[1. General Considerations

- 1.1. The purpose of these provisions is to ensure that food and other agricultural products exported as food aid do not displace normal commercial importations and do not act as a disincentive to domestic production in the recipient countries. In this respect, all food aid provided by the Parties in the context of the FTAA should serve only for additional consumption.
- 1.2. Any type of credit or donation provided by the Parties to finance commercial food aid activities should be based on standards established under these provisions.
- 1.3. This Annex contains an illustrative list of commercial transactions considered to be food aid. ]

[2. Procedure to determine Usual Marketing Requirements (UMR)

- 2.1. Additional consumption is understood to mean consumption that has occurred when such food aid was not present. In order to identify this additional amount of consumption, the Parties shall use the mechanism known as Usual Marketing Requirements (UMR), to which the recipient Party shall be required to adhere, under the contractual terms governing each food aid transaction.
- 2.2. Any transaction for which consultation and prior notification is required shall be subject to determining the UMR, in order to ensure that the transaction results in additional consumption and does not adversely affect normal production and trade patterns for agricultural products.
- 2.3. The recipient Party shall, apart from the food aid received, maintain, at a minimum, the volume of importations to be specified by calculating the UMR.
- 2.4. The calculation of the UMR shall, however, reflect the recent import performance of the recipient Party. At the same time, considerations regarding the balance of payments and the development needs of the recipient countries may be taken into account in determining the UMR.
- 2.5. In order to arrive at the value of the UMR, the following procedures shall be adopted:
  - a) As a starting point, the aid-supplying Party shall calculate the value represented by the commercial importations of the agricultural products to be supplied through the food aid, for a representative period of time, such as, for example, the last 5 years. In order to facilitate the task of calculation, the Hemispheric Data Base<sup>25</sup> (HDB) shall provide the necessary trade statistics. The Party shall forward the relevant trade information to assist in the work of the HDB.
  - b) It should also be taken into consideration that the UMR obtained through the procedure stipulated in the preceding paragraph may be modified based on the following considerations:
    - b1) substantial change in the ratio between production and consumption, in the recipient Party, of the agricultural product supplied as food aid;
    - b2) substantial change in the balance of payments position or in the general economic situation of the recipient Party;

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[<sup>25</sup> Or equivalent to be created in the context of the FTAA.]

- b3) any factor that could affect the representativeness of the import statistics of recipient Parties, as well as such other factors as may be presented by the Parties involved in the transactions being analyzed.
- c) The UMR obtained shall be included in the prior notifications to the FTAA Agriculture Committee<sup>26</sup> and shall be responsive to the interests of the Party receiving the food aid and of other Parties that are food exporters.
  - d) For each recipient Party and for each agricultural product involved in the food aid transaction, a single UMR, valid for a given (tax, calendar or agricultural) period shall be established.
  - e) In case of unforeseen circumstances that substantially affect the balance of payments or the general economic situation of the recipient Party during the period when a given UMR is in force, the UMR may be renegotiated through consultations with all concerned Parties. ]

[3. Procedures for notification and consultation

- 3.1. Prior to carrying out any food aid transaction, the aid-supplying Party shall:
  - a) hold bilateral consultations with other potentially concerned Parties, based on the interests of the Parties exporting the agricultural products included in the transaction with the recipient Party;
  - b) notify the FTAA Agriculture Committee<sup>27</sup> of the main characteristics of the transaction to be carried out, in order to allow other Parties to be able to request consultations on the transactions involved.
- 3.2. The following transactions are exempt from the procedure established in the preceding paragraph:
  - a) transactions carried out through inter-governmental organizations, such as the World Food Programme (WFP), which has special rules on consultation, or inter-governmental organizations such as the United Nations International Children's Emergency Fund (UNICEF), the nature and volume of whose operations are such that they do not interfere significantly with normal patterns of production of and trade in agricultural products;
  - b) transactions carried out through private charitable institutions, the nature and volume of whose operations are such that they do not interfere significantly with normal patterns of production of and trade in agricultural products; and
  - c) Emergency situations, such as those defined below.
- 3.3. For the transactions enumerated in Article 3.2 supra, the donor Parties shall provide notification on an ex post facto basis, up to (x)<sup>29</sup> months after the donation has been made, and shall respond to potential requests for consultations from the Parties concerned. ]

[4. Prohibitions

- 4.1. Food aid transactions that are tied directly or indirectly too commercial importation of agricultural products or of other products or services from the Parties supplying food aid to the recipient Parties are prohibited.
- 4.2. In food aid transactions, the recipient Party may not re-export the products received under concessional terms to other Parties.

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<sup>26</sup> Or equivalent body to be created in the context of the FTAA.]

<sup>27</sup> Or equivalent body to be created in the context of the FTAA.]

<sup>29</sup> To be determined in the "rules of procedures" of the "FTAA Committee on Agriculture". See footnote 3]

- 4.3. Likewise, the recipient Party may not export surplus quantities of those products (produced domestically), or products similar to those received in food aid, when the stocks of such products may be the result of donations or importations made under concessional terms.
- 4.4. When triangular transactions occur, in which an agricultural product supplied as food aid is sent to a third country for processing, that country shall ensure that the product arrives at its final destination. The same principles shall be applied to transactions in which more than three countries are involved. ]

[5. Penalties

- 5.1. In the event that Parties do not comply with the disciplines established in this subchapter on food aid, any other Party may suspend trade preferences granted, in direct proportion to the value of the injury caused, or may apply other countervailing measures agreed upon in the framework of this Agreement.]

**[ANNEX 12.2.2.1]**

**[LIST OF FOOD AID TRANSACTIONS]**

1. Agricultural products produced domestically that are donated by one government to the government of an importing Party or to an inter-governmental organization or private institution, for free distribution directly to final consumers in the importing Party.
2. Agricultural products produced domestically that are donated by one government to the government of an importing Party or to an inter-governmental organization or private institution, for free distribution in the importing Party through sale in the open market.
3. Cash donations made by the government of an exporting Party to an importing Party for the specific purpose of acquiring a given product in the exporting Party.
4. Cash donations made by a government of a supplier Party (or Parties) to a recipient Party for the specific purpose of acquiring a product from a Party (or Parties) or from local suppliers of the recipient Party, for delivery to/in the recipient Party involved.
5. Cash donations made by a government to an inter-governmental organization or to a private institution for the specific purpose of acquiring products in the open market (including local purchases), for delivery to/in recipient Parties (developing countries).
6. Transfers of products carried out according to the standards and procedures established by the World Food Programme.
7. Sales in the currency of the importing Party not transferable or convertible to currency or to goods and services capable of being used by the supplier Party.
8. Sales in the currency of the importing Party partially convertible to currency or to goods and services capable of being used by the supplier Party.
9. Government-sponsored loans of agricultural products that are reimbursable in cash.
10. Government and non-governmental barter transactions that do not involve price concessions.
11. Barter transactions not sponsored by a government that involve price concessions.
12. Sales in non-convertible currency that do not involve price concessions.]

**[ANNEX 12.2.2.2]**

- [1. An emergency situation is defined as a situation that is the result of natural disasters or disasters caused by man, that effectively contribute to or promote:
- a) the limiting of access to sources of food and/or income;
  - b) the interruption of the normal functioning of the food market;
  - c) the compromising of food production. ]
- [2. Following is an illustrative list of natural disasters and disasters caused by man:
- a) Natural disasters: volcanic eruptions, earthquakes, hurricanes, tornadoes, typhoons, sea quakes, torrential rains, floods, fires, pests and diseases.
  - b) Disasters caused by man: civilian populations and refugees that are victims of civil conflicts and war. ]]