

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

### **Draft Agreement**

#### **Chapter IX Agriculture**

## CHAPTER IX: Agriculture

### [Part I:]

#### [<sup>1</sup> Section A General Provisions

#### Article 1.<sup>2</sup> Definitions

1.1. For the purposes of this Chapter:

**[export subsidies for agricultural products** [means] [does not mean] 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.]

**[an agricultural export subsidy** means 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, export credit guarantees or export insurance programs, and international food aid programmes, [which are granted consistent with WTO rights and obligations, shall not be deemed to be export subsidies for purposes of this Agreement.] [which are not granted in accordance with the provisions of Annexes 1, 2, 3 and 4 of Subsection B.3. of this Chapter, shall be deemed to be export subsidies].]

[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 Subsection B.3. of this Chapter] shall not be considered to constitute export subsidies for purposes of this Agreement.]

**[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.]

**[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.]

**[current total aggregate measurement of support** means the support effectively accorded during any year of the implementation period.]

**[implementation period** means the period beginning with the year in which the Tariff Elimination Program begins until the year in which a zero percent (0%) tariff level is achieved.]

**[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.]

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

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

[**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.]

[**an emergency situation** means 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.]

## **Article 2. Scope and Coverage**

2.1. 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 Part II on Sanitary and Phytosanitary (SPS) Measures of this Chapter].

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

## **Article 3. Relation to Other Provisions**

[Relation to Other Chapters of the FTAA]

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

[Multilateral Disciplines]

[3.2. Trade disciplines resulting from multilateral negotiations on agriculture in the WTO shall automatically be incorporated in this Chapter.]

[3.2. The trade disciplines pertaining to this Chapter, shall be compatible with the provisions of the WTO Agreement on Agriculture and its subsequent agreements.]

## **Section B Substantive Provisions**

### **[Subsection B.1. Market Access**

#### **Article 4. Tariffs**

[Tariff Elimination Program]

[4.1. 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.]

[4.2. 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.]

[4.3. The Parties do not undertake tariff commitments on the agricultural products included in Annex XX.]

[Other Measures Affecting the Applied Tariff]

[Price bands and margins]

[4.4. 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.]

[4.4. The Parties may apply price bands or price margins and other price-stabilizing mechanisms on agricultural products in their reciprocal trade.]

#### **[Article 5. Non-Tariff Measures]**

[5.1. For agricultural products, the provisions of Article 4.2 of the WTO Agreement on Agriculture shall apply.]

[5.2. Counter-notification Mechanism of Non-tariff measures. The process and format to be used in cases of counter-notification of non-tariff measures to prevent them from becoming non-tariff barriers are contained in Annex XX.]

#### **[Article 6. Safeguards [for Agricultural Products]]**

[6.1. 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.]

[6.2. 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.]

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

[6.4. 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.]

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

[6.6. A Party may impose a safeguard measure in the form of additional import duties, consistent with paragraphs 7 through 13, on an originating agricultural good listed in that Party's section of Annex XX. The sum of any such additional duty and any import duties or other charges applied pursuant to the Party's tariff elimination schedule shall not exceed the lesser of:

- a) the prevailing most-favored-nation (MFN) applied rate; or
- b) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.]

[6.7. A Party may impose a safeguard measure only if the unit import price of the good enters the Party's customs territory at a level below a trigger price for that good as set out in that Party's section of Annex XX.

- a) The unit import price shall be determined on the basis of the import price of the good in the currency of the Party imposing the safeguard. *Comment: the precise specification of the import price will need to be determined based on the currency used for importation.*
- b) The trigger prices for the goods eligible for a safeguard measure, which reflect historic unit import values for the products concerned, are listed in Annex XX. The Parties may mutually agree to periodically evaluate and update the trigger prices.]

[6.8. The additional duties under paragraph 7 shall be set in accordance with the following schedule:

- a) if the difference between the unit import price of the item expressed in terms of domestic currency (the "import price") and the trigger price as defined under paragraph 7 b) is less than or equal to ten percent (10%) of the trigger price, no additional duty shall be imposed;
- b) if the difference between the import price and the trigger price is greater than ten percent (10%) but less than or equal to forty percent (40%) of the trigger price, the additional duty shall equal thirty percent (30%) of the difference between the MFN rate applicable under paragraph 6 and the preferential tariff rate;
- c) if the difference between the import price and the trigger price is greater than forty percent (40%) but less than or equal to sixty percent (60%) of the trigger price, the additional duty

shall equal fifty percent (50%) of the difference between the MFN rate applicable under paragraph 6 and the preferential tariff rate;

- d) if the difference between the import price and the trigger price is greater than sixty percent (60%) but less than or equal to seventy-five percent (75%), the additional duty shall equal seventy percent (70%) of the difference between the MFN rate applicable under paragraph 6 and the preferential tariff rate; and
- e) if the difference between the import price and the trigger price is greater than seventy-five percent (75%) of the trigger price, the additional duty shall equal one hundred percent (100%) of the difference between the MFN rate applicable under paragraph 6 and the preferential tariff rate.]

[6.9. No Party may, with respect to the same good, at the same time:

- a) impose a safeguard measure under this Article; and
- b) take a safeguard measure under Chapter XX (Safeguards).]

[6.10. No Party may impose a safeguard measure on a good that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and no Party may continue to maintain a safeguard measure on a good that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.]

[6.11. A Party may impose a safeguard measure only during the tariff elimination period. No Party may impose a safeguard measure on a good once the good achieves duty-free status under this Agreement. No Party may impose a safeguard measure that increases a zero in-quota duty on a good subject to a tariff-rate quota.]

[6.12. A Party shall implement any safeguard measure in a transparent manner. Within sixty (60) days after imposing a measure, a Party shall notify the other Parties, in writing, and shall provide relevant data concerning the measure. On request, the Party imposing the measure shall consult with the affected Parties with respect to the conditions of application of the measure.]

[6.13. The general operation of the agricultural safeguard provisions and the trigger prices for their implementation may be the subject of discussion and review in the Committee on Agriculture.]

[6.14. For purposes of this Article, safeguard measure means an agricultural safeguard measure described in paragraph 6.]

## **[Subsection B.2. Export Subsidies**

### **Article 7. Elimination of Export Subsidies**

[FTAA Elimination of Export Subsidies for Agricultural Products]

[7.1. 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.]

[7.1. As of the date of entry into force of this Agreement, export subsidies as defined in Article 1. (Definitions) 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.]

[Multilateral Elimination of Export Subsidies for Agricultural Products]<sup>3</sup>

[7.2. 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.]

[Non-compliance]

[7.3. 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>4</sup> [except the Parties with small economies.]]

[7.3. Where a Party does not fulfill the commitments established in paragraph 1, 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]

[7.4. Notwithstanding paragraph 1 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 XX Unfair Practices in this Agreement.]

[7.5. Notwithstanding the provisions of paragraph 1 of this Article on the elimination of export subsidies, Parties with smaller economies shall eliminate export subsidies within a period of (...) 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.]

[7.6. Notwithstanding the provisions of paragraph 1 of this Article, [Parties with smaller economies] [developing countries] retain the right to use export subsidies provided for in Article 9.4 of the WTO Agreement on Agriculture in relation to subparagraphs 9.1 (d) and (e) of the said Agreement.]

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<sup>3</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.]

<sup>4</sup> The procedure intended to ensure the transparent application of this provision is to be defined.]

**[Article 8. Treatment of Imports from non-Parties benefiting from Export Subsidies]**

[8.1. 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. ]

[8.2. 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:

- a) 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.
- b) 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. ]

[8.3. 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.]

[8.4. 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.]

[8.5. 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.]

[8.6. 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 paragraph 2 above], the exporting Party:

- a) [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]
- b) [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.]]

[8.7. 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 (7) 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 seventy-two (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.]

[8.8. No Party shall be required to engage in any mechanism in addressing subsidized imports from non-Parties.]

**[Article 9. Treatment of Export Subsidies by Parties to non-Party markets]**

[9.1. The provisions of the WTO shall apply in respect of the treatment of subsidized exports of agricultural products by the Parties to third markets.]

[9.1. 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.]

[9.2. 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.]

[9.3. For the purposes of what is provided for in paragraph 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.]

[9.4. 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 1 and 3, it shall request the subsidizing exporting Party, in writing, for consultations to ensure compliance in paragraph 1. In the event that a Party was displaced in a non-Party market by a Party not complying with the provisions in paragraph 1, the affected Party shall have the right to request compensation and the subsidizing exporting Party shall be obliged to provide such compensation.]

[9.5. 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 10. Measures and Practices Having an Equivalent Effect to Export subsidies on agricultural products]**

[10.1. In accordance with the definition of an agricultural export subsidy of Article 1. (Definitions), 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 1 (Export Credits)] [and in Annexes 2, 3, and 4 (Food Aid) of] the Subsection B.3. of this Chapter.]

**[Subsection B.3. 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 11. Domestic Support Measures]**

[WTO Disciplines and Commitments on Domestic Support<sup>5</sup>]

[11.1. 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.]

[11.2. 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.]

[11.3. 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.]

[FTAA Disciplines and Commitments on Domestic Support]

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

[11.4. 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:

- a) General Services (Number 2 of Annex 2 of the WTO Agreement on Agriculture);
- b) Domestic Food Aid (Number 4 of Annex 2 of the WTO Agreement on Agriculture);

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<sup>5</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.]

- c) 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]

[11.5. 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 paragraph 4.]

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

[11.7. 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.]

[11.7. Parties<sup>6</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.]

[11.8. The elimination of the Total AMS referred to above shall be made on the basis established in [this Article] [paragraph 9] 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 Subsection B.1. of this Chapter.]

[11.9. 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 (...), reduced by (...) percent; 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 fifty percent (50%).]

[11.10. 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.]

[11.11. 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 XX (to be subsequently defined) of Annex 2 of the WTO Agreement on Agriculture.]

[11.12. 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

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<sup>6</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)]

measures that do not satisfy the criteria of Annex XX, or that are exempted from reduction consistent with the previous paragraph XX.]

[11.13. The Parties undertake not to reintroduce measures and practices that distort trade and production of agricultural products covered in Article XX 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 XX.]

[Exempt Measures]

[11.14. 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 XX 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]

[11.15. 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]

11.16. 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]

[11.17. 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.]

[11.18. The Parties shall notify each year, in accordance with Article XX 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 12. [Differential] Export Taxes]**

[12.1. Effective on the date of entry into force of the Agreement, Parties agree to eliminate 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].]

[12.2. 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.]

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

### **[Article 13. State Trading Enterprises]**

[13.1. 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.]

[13.2. 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.]

[13.3. 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.]

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

## **Section C Procedures and Institutions**

### **Article 14. [Consultations and] Dispute Settlement**

[14.1. 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]].]

[14.1. 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.]

[14.1. 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.]]

### **[Article 15. Committee on Agriculture]**

[15.1. A Committee on Agriculture [for the FTAA Member countries] is hereby established.]

[15.1. 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.

15.2. The Committee shall be established within six (6) months of the Agreement coming into force. Any decisions made by the Committee shall be by consensus.

15.3. 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>7</sup>
- c) To submit periodic reports on its activities to the Commission as appropriate.]

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[<sup>7</sup> Based on the assumption that an FTAA Commission or executive body will be created.]

**[[Part II:][CHAPTER]<sup>8</sup> : Sanitary and Phytosanitary Measures**

**[Article 16. Scope and Coverage]**

[16.1. This [Section][Chapter] applies to sanitary and phytosanitary measures, as defined in Annex A of the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures. Any changes to these definitions shall be automatically applied to this [Section][Chapter].]

**[Article 17. Relation to Other Provisions]**

[17.1. The Parties reaffirm their rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measure, including those arising from binding commitments agreed in the WTO system [and from recommendations/decisions adopted by the WTO Committee on Sanitary and Phytosanitary Measures].]

**[Article 18. Implementation of the Agreement on the Application of WTO SPS Measures at 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 with the purpose of facilitating trade in live animals, plants, products and by-products thereof, and other products subject to the application of sanitary and phytosanitary measures between the Parties, while simultaneously protecting the life and health of human beings, animals, and plants.]

**[Article 19. Harmonization]**

[19.1. The Parties shall endeavour to work together in the framework of the regional and sub regional sanitary and phytosanitary organizations that exist in the Hemisphere in order to develop harmonized sanitary and phytosanitary standards, guidelines, and recommendations. Likewise, the Parties shall submit the harmonized standards, guidelines, and recommendations for consideration by the corresponding international organizations, as necessary.]

[19.1. The Parties will work together in the framework of the regional and sub regional sanitary and phytosanitary organizations that exist in the Hemisphere in order to establish, recognize, and apply common sanitary measures. Likewise, the Parties shall submit the harmonized sanitary and phytosanitary measures for consideration by the corresponding international organizations, as necessary.]

[19.2. The Parties agree to collaborate in monitoring, at the hemispheric level, the process of international harmonization as established by the Committee on Sanitary and Phytosanitary Measures of the WTO.]

**[Article 20. Equivalence]**

[20.1. The Parties agree that the general objective of equivalence agreements shall be to promote increased mutual trust and cooperation between national sanitary and phytosanitary authorities and thereby to facilitate trade and to efficiently attain the importer's country appropriate level of protection.]

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<sup>8</sup> The decision on whether this text will be a Chapter or Part II of the Chapter on Agriculture is pending.

[20.2. To that effect, the Parties [undertake to abide by][take note of] the Decision on the Implementation of Article 4 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures adopted by the WTO SPS Committee (WTO/G/SPS/19 and WTO/G/SPS/19/Add.1) and the guidelines on equivalence that are established by Relevant International Bodies recognized by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.]

[20.3. In the equivalence recognition process, the Parties shall take into account the differences in the levels of development and size of the economies, according to what is established in Article 25.1. (Technical Cooperation and Assistance) of this [Section][Chapter] and in Article 10 of the WTO SPS Agreement and in particular the minimization of the implementation costs and the adjustment of the levels of technology.]

[20.4. The parties shall establish the methodology to be followed so as to attain equivalence and they shall set mutually agreed deadlines of not more than (...) months to complete the process.]

[20.5. The methods to determine the conditions of equivalence shall give more emphasis to inspection procedures and to the sanitary or phytosanitary conditions in the zone of origin of the product, and shall consider the conditions in accordance with the level of development of the Parties and the size of their economies.]

**[Article 21. Risk Assessment and Appropriate Level of Sanitary or Phytosanitary Protection]**

[21.1. The Parties agree that their objective is to institute a process in which transparent, science-based decisions are made in a predictable [and timely] manner [and according to agreed schedules], that is designed to reduce to a minimum the negative effects resulting from the application of the principle of risk assessment in hemispheric trade.]

[21.1. The Parties agree that the objective of the principle of risk assessment is to apply measures strictly necessary for the protection of human, animal and plant health in a manner which is transparent and science-based where decisions are made in a predictable manner and according to agreed schedules.]

[21.2. Whenever there is a need to conduct a risk assessment for products or product categories, the exporting country must submit the necessary information requested by the importing country.]

[21.3. The assessment shall be finalized within a period not exceeding (...) calendar months for countries with small economies and not exceeding (...) months for other countries, as of the date that the exporting Party requested access.]

[21.4. If the importing Party considers that the information provided in accordance with paragraph 2 is insufficient for conducting the assessment, said Party shall communicate this fact to the exporting Party in order to suspend the counting of the established timeframe. In such cases, the importing Party shall identify the missing information precisely. Once such information has been received, the counting of the timeframe for completing the assessment shall continue.]

[21.5. Where an importing Party decides to conduct a new risk assessment of a product in which there is smooth and regular trade, said Party may not interrupt trade in the affected products, except in the case of a sanitary or phytosanitary emergency situation or unless there is a change in the sanitary or phytosanitary status of one of the Parties.]

[21.6. Each Party may exceptionally adopt the provisional measures necessary for the protection of human, animal, or plant health, pursuant to Article 5.7 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. These measures must be notified to the other Parties within two (2) business days and, if so requested, consultations on the situation shall be held in a period not exceeding thirty (30) days. Parties shall take due consideration of any information provided during such consultations and shall endeavour to avoid any unnecessary disruption of trade.]

**[Article 22. Emergency Measures]**

[22.1. In case of a sanitary or phytosanitary emergency, 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.]

**[Article 23. Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence]**

[23.1. The Parties recognize the regionalization criterion set out in Article 6 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and agree that the decisions on regionalization regarding animal diseases and plant pests shall be adopted pursuant to international standards, if any.]

[23.2. The Parties shall recognize, within a short period of time, the pest- or disease-free areas and areas of low pest or disease prevalence of other Parties when these have been recognised as such by the competent international organizations, in particular by the International Office of Epizootics and by international and regional organizations operating within the framework of the International Plant Protection Convention.]

[23.3. Where a Party seeks recognition of a pest- or disease-free area or of areas of low pest or disease prevalence and the situation is different than that provided for in paragraph 2, said Party shall request that the importing Party recognize that situation. The importing Party may request additional information for the purpose of proceeding with said recognition.]

[23.4. When the exporting Party seeks recognition of a zone or region that is pest- or disease-free, or in which the prevalence of the pest or disease is low, such status must be officially recognized by the sanitary and phytosanitary authorities of the requesting country prior to such request.]

[23.5. The Party that receives the request to grant recognition pursuant to paragraph 3 shall issue a decision within a timeframe previously agreed with the other Party, not to exceed (...) months, and may verify, inspect, test, and carry out other procedures, when deemed necessary. If it denies recognition, it shall provide the technical justification for its decision in writing.]

[23.6. If the Party receiving the additional information needed for recognition, as foreseen in paragraph 3, considers it to be insufficient, said Party shall immediately notify the Party requesting recognition. In such an event, counting of the timeframe stipulated in paragraph 5 shall be immediately suspended, until the missing information is forwarded. Once said information is received, the counting of the timeframe for completing the evaluation will continue.]

[23.7. The importing Party shall not prevent access to its territory of a product from a zone or region which it has recognized as pest- or disease-free or as of low prevalence of the pest or disease, even if the

country as a whole has not been declared free from the pest or disease or with low prevalence thereof. Said area must be subject to effective surveillance measures and efforts to combat or eradicate the pest or disease.]

[23.8. These procedures may be modified by agreement between the Parties, within the Committee established in Article XX, by means of a written record that also indicates the date on which the modified procedures shall take effect.]

**[Article 24. Control, Inspection and Approval Procedures]**

[24.1. Any restriction on an importing Party's market access stemming from changes in control and inspection procedures which are not justifiable under WTO SPS provisions shall be considered an unjustified barrier to trade.]

[24.2. The parties shall allow the import of products and sub-products of animal or plant origin provided they receive the approval of the country's control system, or the approval of processing plants or other facilities.]

[24.3. The Parties agree to incorporate provisions to recognize food control systems applied by an exporting country's competent authorities into food import control systems. Recognition of the exporting country's food safety control may include, among others, the use of memoranda of understanding, mutual recognition agreements, equivalence agreements, and unilateral recognition.]

[24.4. Said recognition may include, as appropriate, the conformity assessment procedures applied during production, manufacturing, importation, preparation, storage, and transportation of food products, or to specific processes or production units.]

[24.5. At the request of the exporting country, the importing country shall provide information on the general features of food import control systems. Among them, the importing country shall indicate the requirements to be met by imported foods, the definition of the responsibilities of competent authorities, as well as the guidelines, regulations, and current laws governing import procedures.]

[24.6. When the competent authority of the exporting Party requests that the competent authority of the importing Party inspect a production unit or production process in its territory, the competent authority of the importing Party shall, upon completing the review of the documents necessary for the risk assessment, carry out the inspection within a period not exceeding (...) days. This period may be extended by agreement between the Parties in cases where such extension can be justified, for example, for reasons related to the seasonality of a product. Once inspection is completed, the competent authority of the importing Party shall issue a decision based on the results of the inspection and shall notify the exporting Party within (...) days after the completion of the inspection.]

**[Article 25. Technical Cooperation and Assistance]**

[25.1. Recognition of the differences in levels of development and size of the economies may be given expression in specific ways, inter alia, through technical cooperation with, or assistance to, countries, in particular smaller economies, through flexibility in the time limits afforded to countries for adopting equivalent measures and in the area of risk assessment.]

[25.2. In accordance with Article 9 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, the Parties agree to facilitate the development and the implementation of programs for cooperation and technical assistance to other Parties, especially taking into account the level of development and the size of the economies of the hemisphere, either bilaterally or through appropriate international or sub regional organizations. Such assistance may be provided in, among others, the areas of:

- [a] the application of this [Section][Chapter];]
- [b] the application of the WTO SPS Agreement;]
- [c] production technologies;]
- [d] information sharing on new research data;]
- [e] infrastructure;]
- [f] more active participation in appropriate international organizations and their subsidiaries;]
- [g] institutional capacity and the establishment of national regulatory frameworks;]
- [h] financial strengthening and strengthening of the physical technical/infrastructure of national agricultural health systems;]
- [i] harmonization;]
- [j] support for the development and application of international and regional standards;]
- [k] mutual recognition and equivalence agreements;]
- [l] risk assessment and human resource training;]
- [m] transparency;]
- [n] strengthening of technical capacity in methodologies to eradicate pests and disease from areas;]
- [o] recognition of pest- or disease-free areas or areas of low pest or disease prevalence;]
- [p] control, inspection, and approval procedures;]
- [q] identification of, consultation on, and solution of problems and disputes with regard to sanitary and phytosanitary measures;]
- [r] any pertinent, circumstantial issue that may arise]]

**[Article 26. Transparency]**

[26.1. FTAA countries shall submit to the FTAA Administrative Secretariat a copy of their notifications on sanitary and phytosanitary measures in English and Spanish made pursuant to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, after these notifications have been translated and distributed by the WTO Secretariat.]

[26.2. The counternotification procedures approved within the framework of the FTAA provide additional transparency under this Agreement.]

**[Article 26. Transparency]**

[26.1. In order to implement Annex B of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, the Parties agree to comply with the notification and counternotification procedures for sanitary and phytosanitary measures set out in documents to be defined and in the pertinent Decisions approved by the WTO Committee on Sanitary and Phytosanitary Measures.]<sup>9</sup>

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<sup>9</sup> A proposal has been tabled stating that the full text of the documents mentioned should be included in the body of this Section or Chapter.]

**[Article 27. Consultations]**

[27.1. No provision of this Section 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.]

**[Article 28. Counternotification]**

[28.1. Where a Party considers that a sanitary or phytosanitary measure of another Party is adopted or applied in a manner incompatible with the obligations assumed in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures or that it does not comply with the provisions of this [Section][Chapter], it may initiate the counter notification procedure approved within the framework of the FTAA.]

[28.2. Without prejudice to the foregoing, any Party may at any time avail itself of the dispute settlement procedures, as established in Chapter XX of this Agreement.]

**[Article 29. Dispute Settlement]**

[29.1. The Parties agree to use the WTO Consultation and Dispute Settlement Procedures for any formal disputes regarding the concrete application of the commitments assumed through the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.]

[29.2. Without prejudice to the preferential right among Parties provided for in existing sub regional 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 [Section][Chapter] that are not comprised in the preceding paragraph.]

[29.3. Once a Party has initiated dispute settlement procedures under this Agreement or the WTO Dispute Settlement Understanding, the forum selected shall be used to the exclusion of any other, in accordance with the provisions of Article 6. (Choice of Forum) of the FTAA Chapter on Dispute Settlement.]

**[Article 30. Institutional Issues]**

[30.1. Under this [Section][Chapter], the Parties hereby establish the FTAA Committee on Sanitary and Phytosanitary Measures, (hereinafter, the FTAA SPS Committee), to serve as a forum for holding [technical] consultations, to attend to specific problems, and to provide necessary support for implementing the provisions and attaining the objectives related to sanitary and phytosanitary measures established in this Agreement.]

[30.2. The FTAA SPS Committee shall be composed of representatives of each of the Parties.]

[30.3. The FTAA SPS Committee shall promote transparency in the area of sanitary and phytosanitary measures, including through overseeing the implementation of the FTAA notification and counternotification process, with a view to identifying and resolving sanitary and phytosanitary problems between Parties in order to prevent formal disputes.]

[30.4. In addition, the FTAA SPS Committee shall provide a regular forum for:

- a) Advancing hemispheric cooperation to realize the full benefits of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures in areas such as: transparency, harmonization, equivalence, risk assessment, enquiry points, technical assistance, recognition of pest-free or disease-free areas, and control, inspection and approval procedures, among others.
- b) Advancing, to the extent possible, cooperation among Parties in other international fora through:
  - i) consultations on strategies, positions, and priorities to be advanced by member countries in the framework of the relevant international standards-setting bodies, including their regional counterparts;
  - ii) consulting and coordinating on strategies, positions, and priorities in the WTO SPS Committee as well as other international and regional entities, and
- c) Exchanging views regarding the design and delivery of effective technical assistance and cooperation programs to facilitate the achievement of the above.]

[30.5. FTAA Ministers may direct the FTAA SPS Committee to work on specific matters as appropriate. The FTAA SPS Committee shall report annually to Ministers on these issues. Annex 5 provides the list of initial issues that Ministers have identified for the purpose of developing practical mechanisms to facilitate the full implementation of the WTO SPS Agreement in the hemisphere. The FTAA SPS Committee shall address these issues and provide recommendations to Ministers within one year of the coming into force of the FTAA.]

[30.6. The FTAA SPS Committee shall meet when required, normally each year, and shall report on its activities and work plans to the FTAA Commission, and may recommend the setting-up of work groups, including their scope and mandates, whenever it deems appropriate.]

**[Article 31. Competent authorities]**

[31.1. The Parties shall notify the proper sanitary and phytosanitary authorities and the contact points shall notify the FTAA SPS Committee of any significant change to the structure, organization, and jurisdiction of its sanitary and phytosanitary authorities.]

[ANNEX 1]

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

[Definition and Scope]

[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 Article 2.1. of this Chapter.

[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.]

[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.]

[Disciplines]

[4. 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.]

[5. Terms and conditions for granting of credits]

[a] General Considerations]

[i] 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.]

[ii] 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.]

[b] Term of payments]

[Pre-shipment operations]

[i] 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.]

[ii] The term of payment for pre-shipment credit operations covered by this [Section] [Annex] shall not exceed ninety (90) days.]

[Post-shipment operations]

- [iii) 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.]
  
- [iv) The payment period for products covered by this [Section] [Annex] shall not exceed one hundred and eighty (180) days, and may be extendable [for more than] one hundred and eighty (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:]]
  - 1) Bovines for animal improvement purposes: the term of payment shall not exceed two (2) years for contracts of up to US\$150,000 and three (3) years for contracts in excess of US\$150,000.
  - 2) Other animals for purposes of animal improvement: the term of payment shall not exceed twelve (12) months.
  - 3) Plant material for reproduction: the term of payment for plant material (seeds, tubers and similar material), exported for purposes of reproduction, shall not exceed twelve (12) months.]

[c) Payment of capital]

[Pre-shipment operations]

- [i) 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]

- [ii) 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 [c) ] [b) iii)]]

[d) Interest payments]

- [i) The form of interest payment shall be defined by free negotiation between the Parties, observing the terms defined in items b) and [d)].]
  
- [ii) For the purpose of the provisions of this Section, interest excludes:
  - 1) any payment, such as premiums or other surcharges, for the purpose of ensuring or guaranteeing credit to exporters;
  - 2) any other payment, such as bank fees or commissions, related to export credit; and
  - 3) discounts made by importing countries.]

[e] Cash payment]

- [i] Parties shall require importers of agricultural products included in [item d) 1)] [in paragraphs 1), d 2), d 3) of provision b) iv)] that have received official resources to make cash payment of a minimum of fifteen percent (15%) of the exported value, prior to or on the date of shipment of the goods.]
- [ii] Exported value shall be understood to mean the total value to be paid by the importer, excluding interest.]

[f] Sharing of risk]

- [i] 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 eighty-five percent (85%) of the value of the transaction.]

[g] Minimum interest rate] [To be defined]

[h] 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.]

[6. Non-compliance]

- [a] 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 2]

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

[1. General Considerations

- a) 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.
- b) 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.
- c) This Annex contains an illustrative list of commercial transactions considered to be food aid.]

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

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) In order to arrive at the value of the UMR, the following procedures shall be adopted:
  - i) 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 five (5) years. In order to facilitate the task of calculation, the Hemispheric Data Base<sup>10</sup> (HDB) shall provide the necessary trade statistics. The Party shall forward the relevant trade information to assist in the work of the HDB.

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[<sup>10</sup>Or equivalent to be created in the context of the FTAA.]

- ii) 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:
  - 1) substantial change in the ratio between production and consumption, in the recipient Party, of the agricultural product supplied as food aid;
  - 2) substantial change in the balance of payments position or in the general economic situation of the recipient Party;
  - 3) 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.
- iii) The UMR obtained shall be included in the prior notifications to the FTAA Agriculture Committee<sup>11</sup> and shall be responsive to the interests of the Party receiving the food aid and of other Parties that are food exporters.
- iv) 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.
- v) 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

- a) Prior to carrying out any food aid transaction, the aid-supplying Party shall:
  - i) 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.
  - ii) notify the FTAA Agriculture Committee<sup>12</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.
- b) The following transactions are exempt from the procedure established in the preceding paragraph:
  - i) 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

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[<sup>11</sup>Or equivalent to be created in the context of the FTAA.]

[<sup>12</sup> Or equivalent to be created in the context of the FTAA.]

that they do not interfere significantly with normal patterns of production of and trade in agricultural products;

- ii) 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
  - iii) Emergency situations, such as those defined below.
- c) For the transactions enumerated in paragraph b) supra, the donor Parties shall provide notification on an ex post facto basis, up to (...) <sup>13</sup> months after the donation has been made, and shall respond to potential requests for consultations from the Parties concerned. ]

#### [4. Prohibitions

- a) 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.
- b) In food aid transactions, the recipient Party may not re-export the products received under concessional terms to other Parties.
- c) 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.
- d) 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 (3) countries are involved.]

#### [5. Penalties

- a) 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.]

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[<sup>13</sup>To be determined in the “rules of procedures” of the “FTAA Committee on Agriculture”. ]

[ANNEX 3]

[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 4]**

[1. 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. ]]

[ANNEX 5]

**[Initial Ministerially-mandated Work Programme for the FTAA SPS Committee]**

[1. Pursuant to Article 30.5. (Institutional Issues), Ministers assign the following issues to the FTAA SPS Committee to develop practical mechanisms to facilitate the full implementation of the WTO SPS Agreement in the hemisphere. The FTAA SPS Committee shall address these issues and provide recommendations to Ministers within one (1) year of the coming into force of the FTAA.]