

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

### **Draft Agreement**

#### **Chapter on Subsidies, Anti-Dumping and Countervailing Duties**

• CHAPTER ON SUBSIDIES, ANTIDUMPING AND COUNTERVAILING DUTIES

〔 PART I  
ANTIDUMPING AND COUNTERVAILING MEASURES 〕

〔 ARTICLE 1  
GENERAL PROVISIONS 〕

[1.1 N / *The Parties may only initiate investigation procedures and [examinations] and apply anti-dumping [and, where applicable, countervailing duties], on goods from another Party when the investigating authority of the importing country has acted entirely in accordance with the provisions of this Chapter.*

1.2 *[For the purposes of the previous Article 1] [For any provision which is not contemplated in this Chapter], the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 of the WTO (Antidumping Agreement) [or, where applicable, the Agreement on Subsidies and Countervailing Measures of the World Trade Organization,][and the national legislation of each Party] shall be applied in addition to all procedures for investigation and application of antidumping duties provided the provisions thereof are consistent with this Chapter.]*

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

〔 ARTICLE 2  
DETERMINATION OF DUMPING 〕

[2.1 / ~~For the purpose of this Agreement,~~ *For the purpose of this Chapter*] a product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.]

[2.2 *[For the purpose of the determination of normal value,]* When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because / ~~of the particular market situation or~~ the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the product when exported to an appropriate third country, domestic market sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative / ~~or only in those cases where third country prices do not exist or that these are not representative will the margin of dumping be determined by comparison~~ with the cost of production in the country of origin plus a reasonable amount for, administrative, selling and general costs / ~~and for profits.]~~

*[For the purposes of this paragraph, when determining a reasonable quantity for profits the gross profit margin obtained by the exporter in the productive activity under review, in the ordinary course of trade and in competitive market conditions, will be used. Competitive market conditions shall be understood as the existence of a plural number of companies in the relevant market for the product under investigation or the non-existence of high barriers to access to competition.]*

**[2.2.1** Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production<sup>1</sup> plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time in substantial quantities<sup>2</sup> and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

**[2.2.2** For the purpose of paragraph 2, *[ no profit margin should be added to the calculation of normal value under the aforementioned methodology.]* the amounts for administrative, selling and general costs ~~[and for profits]~~ shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

~~*(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.]*~~

**[2.2.1.1** For the purposes of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations. *[Normal value shall be determined on the basis of costs representative of normal operating conditions and not on the basis of costs affected by random events. Costs shall be adjusted appropriately to take into account generally accepted business practices in circumstances where economies are undergoing a programme of structural adjustment or recovering from the impact of a natural disaster.]*

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<sup>1</sup> *[ In an investigation involving small and medium-sized enterprises, Authorities should generally use a variable costs standard in determining the margin of dumping.]*

<sup>2</sup> *[Sales in substantial amounts of products will be deemed to have been sold]* when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents ~~[not]~~ less than 20 per cent *[account for at least 40%] [ no less than 40%]* of the volume sold in transactions under consideration for the determination of the normal value.

*[ When sales in the domestic market produced at prices below the total average costs do not exceed 40%, they may not be excluded from the normal value calculation. If more than 40% of domestic market sales are made at a loss, these sales shall be excluded from the normal value calculation; in this case, the price of the remainder of domestic market sales shall be used to determine the normal value, as long as these sales correspond to at least 10% of the total sales of said market, or represent at least 5% of the exports of the product considered to the Member importer.]*

[2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, *[only if it is demonstrated that the relationship does affect the export price]* or not resold in the condition as imported, on such reasonable basis as the authorities may determine.]

[2.3 N *[Export price may not be constructed unless the investigating authority has determined either that there is no export price or that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party. The investigating authority shall provide detailed reasons in support of such a determination.]*]

[2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. *[For the comparison of the two prices to be considered equitable, the adjustments required by differences that influence the comparability of the prices will be made] [Due allowance shall be made in each case, on its merits,]* for differences which affect price comparability, including differences in conditions and terms of sale, *[levies on imports and indirect taxes] [taxation,]* levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability *[such as transportation and storage, insurance, unloading and ancillary costs, packaging, credit, aftersale costs, commissions paid, and currency conversions.] [These adjustments shall be calculated using the data from the investigation period].*

*[When the normal value is being reconstructed, the indirect taxes shown to apply to inputs shall not be calculated, in order to guarantee an equitable comparison with the export price, which does not include such taxes.]*

In the cases referred to in paragraph 3 *[of Article 2 of the WTO Antidumping Agreement]. [When the export price is being reconstructed]* allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the *[interested]* parties *[in question]* what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

[2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall *[normally] [only]* be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. *[A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average to weighted average or transaction-to-transaction comparison.] [In the calculation of the margin of dumping "zeroing" will not be used.]*

[2.8 N *[In cases where the investigated imports relate to tenders or long-term contracts, the following documents may be considered as evidence for determining the margin of dumping, provided their definition does not conflict with the legislation in force: a) for normal value – the bid documents and the award price in the exporting country in question; b) export price – the bid documents and the award prices resulting from the tender.]*]

[2.9 N *[For the purpose of determining the margins of dumping, the period of investigation shall [normally comprise the 12 months as near as possible to the date of the opening of the investigation. In exceptional cases, this time limit may be shorter, but never less than six.] [shall normally be 12 months and in no case less than 6 months, and shall normally include the most recent data available before the initiation of the investigation.] [cover the imports made during a period of at least six months prior to the start of the investigation, and it shall not cover imports made two years prior to the date on which the request for the investigation to start is submitted.]*]

*Only in exceptional circumstances may the investigating authority accept a different period, when so required by the production cycle of the like product.]*

*[ The examination period for sales below cost and the investigation period for existence of dumping should normally, in a particular investigation, coincide. If they do not, the authorities must explain the reasons for the adoption of a different period.]*

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ARTICLE 3  
DETERMINATION OF INJURY  
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**[3.1** A determination of injury shall be based on positive evidence and involve an objective examination of: a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and b) the consequent impact on domestic producers of such products. *[ For this purpose, an examination that is based on the use of statistics covering aggregate groups of products that include the like product under investigation shall neither be allowed nor considered objective.]*

**[3.2** With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms ~~[-or and]~~ relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance. *[ In the case of products exported by smaller economies, the investigating authority must terminate an investigation (...) When the price of the dumped imports in the importing country is not lower than the price of the like product in the importing country.]*

**[3.3** Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in paragraph **[8]** of Article **[5]** and the volume of imports from each country is not negligible and b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.<sup>3</sup> *[ The analysis of the terms of competition between the imported products and the domestic like product shall also include careful consideration of the situation where imports from countries with large market shares are cumulated with imports from countries with a small market share, so as to exclude the latter countries from enforcement, since they do not contribute to the injury.] [For the purpose of determining injury, no investigating authority of a Party may make a cumulative assessment of the effects of imports from a small economy.]*

**[3.4** The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance. *[ In order to determine the existence of material injury or a threat of material injury, it will be required that the domestic industry suffer a loss for the determined period. The determination of material injury or the threat of material injury in the presence of positive profits may be an exception, provided it is justified by the special circumstances of that domestic industry.]*

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<sup>3</sup> *[Provided that imports from FTAA member countries may only be cumulated with imports from other FTAA member countries.]*

**[3.5 *[To impose antidumping [or countervailing measures]*** It must be demonstrated that the dumped *[or subsidized]* imports are, through the effects of dumping, *[or subsidies]* as set forth in paragraphs 2 and 4, *[causing injury the principal or dominant cause of injury to the domestic industry]* within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.]

**[3.7** A determination of a threat of material injury shall be based on *[circumstantial evidence]* facts and not merely on allegation, conjecture and remote possibility *[and the injury must be imminent]*. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

- i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
  - ii) sufficiently freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
  - iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;
  - iv) inventories of the product being investigated.
- [ v) the significant increase in absolute terms of imports dumped on the domestic market,*
- vi) the existence of underutilized capacity in the domestic industry*
- vii) the increase in stocks of the product under investigation in the domestic industry. ]*

*[ v) In order to determine the existence of material injury or a threat of material injury, it will be required that the domestic industry suffer a loss for the determined period. The determination of material injury or the threat of material injury in the presence of positive profits may be an exception, provided it is justified by the special circumstances of that domestic industry.]*

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

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

**[3.10 N *[For the purpose of determination of injury, the period of investigation for the determination of injury in an antidumping or countervailing duty investigation [ shall normally be 3 years, including the entire period of investigation for the determination of dumping, and shall include the most recent data available before the initiation of the investigation.] [ shall not be less than three years, and shall include the time taken to investigate and determine whether dumping has occurred or the amount of the subsidy. [ In order to ensure the***

*transparency of the proceedings, the time periods referred to in the preceding paragraph shall begin as of the opening of the investigation and relevant notification to the interested parties and Government.]*  
*Further, if the time period for obtaining information to determine injury, in a specific investigation, as determined by the investigating authority, is different from that provided for in the first paragraph, the reasons for such discrepancy shall be included in the public notice or in the relevant report.]]*

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ARTICLE 4  
DEFINITION OF DOMESTIC INDUSTRY  
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[4.1 For the purposes of this ~~Agreement Chapter~~, the term domestic industry shall be interpreted as referring to ~~the domestic producers as a whole of the like products~~ ~~the totality of domestic producers of the like product~~ or ~~when this is not possible~~ to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that: ...]

[4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in ~~paragraph Article 4.1 (ii) of the WTO Anti-dumping Agreement or Article 16 of the Agreement on Subsidies and Countervailing Duties~~ anti-dumping duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of antidumping duties on such a basis, the importing Member may levy the antidumping duties without limitation only if (a) the exporters shall have been ~~offered a proposal for price undertaking and~~ given an ~~adequate~~ opportunity ~~for consultation~~ ~~to cease exporting at dumped prices to the area concerned or otherwise given assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given,~~ and (b) such duties cannot be levied only on products of specific producers which supply the area in question.]

[4.3 Where two or more countries have reached ~~under the provisions of paragraph 8 (a) of Article XXIV of GATT 1994~~ such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.

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ARTICLE 5  
INITIATION AND SUBSEQUENT INVESTIGATION  
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[5.4 An investigation shall not be initiated ~~pursuant to paragraph 1~~ unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made “by or on behalf of the domestic industry” if it is supported by those domestic producers whose collective output constitutes more than 50 percent of the total production of the like product  
~~produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.]]~~

[5.5 ~~Prior to announcing the initiation of an investigation, the investigating authority of the importing Party shall avoid~~ ~~The authorities shall avoid, unless a decision has been made to initiate an investigation,~~ ] any publicizing of the application for the initiation of an investigation.  
~~More specifically, no investigating authority may engage in any preliminary investigations or hearings prior to the official declaration that an investigation is being initiated.]~~  
After receipt of a properly documented application and [ ~~before~~ ] [ ~~prior to~~ ] [ ~~at least seven (7) working days prior to~~ ] [ ~~proceeding to initiate an investigation~~ ] [ ~~the official declaration that an investigation is being initiated~~ ] [ ~~issuing the formal notice announcing the start of the investigation~~ ], the authorities shall notify the government of the exporting Member concerned.

*[ The authorities shall notify the government of the exporting Party that they have received the duly documented application.]*

*[ Said notification shall be sent to the diplomatic representatives of the exporting Party and shall indicate the product referred to in the request and the date on which the request was submitted; it shall also contain information to identify the requesting domestic producers and the foreign producers and/or exporters, and it shall indicate the date upon which the investigation is planned to start.]*

**[5.6** If , in special circumstances, the authorities concerned decide to initiate an investigation, *[ for dumping or subsidies]*, without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence *[ that the industry is highly fragmented (which hinders the possibility of organizing the sector of domestic industry and filing the petition), in addition to evidence of injury and the causal relationship, which justify the initiation of an investigation.]* of dumping *[ or subsidies]*, injury and a causal link as described in paragraph 2, to justify the initiation of an investigation.]

**[5.8** An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping *[subsidies]* or of injury to justify proceeding with the case. *[ In the case of products exported by smaller economies] [or when there is reasonable evidence to suggest that the alleged subsidy is a governmental measure of assistance, whether direct or indirect to encourage rural development, upgrade productive capacity or diversify investment in FTAA small economies.]* There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible.

*[ For the purposes set forth above]* The margin of dumping shall be considered to be *de minimis* when this margin is lower than 2%, *[ 5%]*, expressed as a percentage of the export price. The volume of exports shall ~~*[also normally]*~~ be regarded as negligible if the volume of dumped imports from a particular country *[ a smaller economy]* is found to account for less than 3% *[ 10%]*,

*[ 7%]* of imports of the like product in the importing Member, unless countries which individually account for less than 3% *[ 7%]* of imports of the like product in the importing Member collectively account for more than 7% *[ 15%]* of imports of the like product in the importing Member.

*[the injury shall be considered insignificant if the volume of imports of dumped products accounts for less than 5% of the domestic market.]<sup>4</sup> ]*

**[5.11** N *[ No new investigation covering the same product may be initiated for 12 months from the date of a final resolution against the application of an antidumping duty, unless requested by at least [75%] of the domestic industry.]*

**[5.12** N *[ The authority shall immediately terminate the investigation, without imposing any antidumping duties, when an investigation has lasted more than 12 months from the date on which the investigation was declared initiated.]*

**[5.13** N *[ In cases where only a part of the domestic industry that supported the initiation of the investigation withdraws, in order for the procedure to continue, the part that did not withdraw shall have to comply with the representation requirements for initiation. The withdrawal of the petitioners can lead to fines if the authorities determine that the accusation intentionally caused a distortion in the import market.]*

**[5.14** N *[ The Parties shall provide for the right of a Party applying for an investigation to desist from requesting such investigation.*

**2.** *Should an abandonment take place once the investigation has been initiated, the investigating authority shall notify the applicants. Where the number of applicants not desisting represent less than 50 per cent of the national production, the investigation shall be terminated and all interested parties shall be notified. Under no circumstances shall the investigation be self-continued.]*

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<sup>4</sup> *[For the purposes of paragraph 8 of Article 5 of the Antidumping Agreement in investigating exporters based in FTAA smaller economies the margin of dumping shall be considered to be de minimis if this margin is less than 5%, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular FTAA smaller economy is found to account for less than 6% of imports of the like product in the importing FTAA member, unless exports from FTAA smaller economies which individually account for less than 6 % of the imports of the like product in the importing FTAA member collectively account for more than 15% of imports of the like product in the importing FTAA member.]*

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ARTICLE 6  
EVIDENCE  
]

[6.1.2 Subject to the requirement to protect confidential information, evidence *[copies of the public versions of each report, document, and]* piece of evidence presented in writing by one interested party ~~*[shall be made available promptly shall on a timely basis supply the other interested parties]*~~ to other interested parties participating in the investigation.]

[6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defense of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. *[The date of the hearing shall be notified to interested parties with no less than 15 working days in advance. In holding the hearing ~~Provision of such opportunities must take account of,~~* the need to preserve confidentiality and of the convenience to the parties must be taken into account. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.]

[6.3 Oral information provided under paragraph 2 *[and other written documents regarding the information and arguments offered during the investigation]* shall be taken into account by the authorities ~~*[-only]*~~ in so far as *[it is subsequently reproduced]* ~~*[they are submitted]*~~ in writing *[within 10 working days following the public hearing]* and made available to other interested parties, ~~*[as provided for in subparagraph 1.2.]*~~

[6.4 The authorities shall ~~*[whenever practicable]*~~ provide ~~*[-timely adequate]*~~ opportunities for all interested parties to see all *[public]* information ~~*[for that is relevant to]*~~ the presentation of their cases ~~*[-that is not confidential as defined in paragraph 5.]*~~ and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.]

[6.15 N *[Information deemed public by investigating authorities shall be:*

- a) any information that has been distributed through any means of dissemination, irrespective of its coverage, or that was made available to the public by the individual submitting such information, or that such individual agreed to have disseminated by a third party;*
- b) summaries of confidential information;*
- c) public information included in the minutes or proceedings of on-the-spot investigations and the annexes thereof;*
- d) any other information or data that qualifies as public information pursuant to the national legislation of each Party and other international agreements]*

[Annex I, paragraph 2. If in exceptional circumstances, it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the Exporting Member should be so informed. Such non-governmental experts should be subject to ~~*[effective]*~~ sanctions *[equivalent to those facing government officials]* for breach of confidentiality requirements. *[The authority shall provide for specific mechanisms to implement such sanctions.]*

[12.3 S *[In investigations on subsidies, if an interested party or Government denies access to necessary information or does not provide it in the established time periods or significantly impedes the investigation, positive or negative preliminary or final determinations may be made using the best information available, taking into account the following conditions:*

- 1. As soon as possible after the initiation of the investigation, the investigating authority shall specify in detail the information required from any interested party or Government, and the manner in which that information should be structured in the response of that party or Government. The investigating authority shall ensure that the party or Government is aware that if information is not supplied within the established time period, the decision-making authority shall be free to base its decision on the facts at its disposal, including those contained in the application for the initiation of the investigation by the requestor.*

2. *The investigating authority may also request that an interested party provide its response in an electronic medium. If such a requirement is established, the technical authority shall consider the reasonable ability of the interested party or Government to respond in the manner requested. The investigating authority shall require an electronic response or a response in a particular medium if the interested party or Government does not maintain computerized accounts or if presenting the response in the form requested would result in an unreasonable extra burden on the interested party or Government.*

3. *All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion and which is supplied in the electronic form requested by the investigating authority, shall be taken into account when determinations are made. If an interested party or Government does not respond in the electronic medium requested, but the investigating authority finds that the circumstances set out in the preceding paragraph have been satisfied, the failure to respond in the required electronic medium shall not be considered to significantly impede the investigation.*

4. *Where the investigating authority does not have the ability to process information if provided in an electronic medium, the information shall be supplied in the form of written material or any other form acceptable to the investigating authority.*

5. *Even though the information provided may not be ideal in all respects, this shall not justify the authorities from disregarding it, provided the interested party or Government has acted to the best of its ability.*

6. *If evidence or information is not accepted, the investigating authority shall immediately inform the interested party or Government that has supplied such information of the reasons for not accepting it, and shall provide it the opportunity to provide further explanations, due account having been taken of the time limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information shall be given in any published determinations.*

7. *If the investigating authority has to base its findings, including those related to the amount of the subsidy, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, it shall act with special circumspection. In such cases, the investigating authority shall, where possible, check the information with other independent sources at its disposal, such as published price lists, official import statistics and customs statistics, and with information obtained from other interested parties or Governments during the investigation. If an interested party or Government does not cooperate, and thus relevant information is being withheld from the investigating authority, this situation could lead to a result which is less favorable to the party or Government than if it did cooperate.}]*

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

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

~~*[ Such disclosure should take place in sufficient time for the parties to defend their interests.]*~~

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

*Final comments [ and observations and comments] on such facts, shall deal with the essential facts, and may include statements on any evidence involved in the proceeding and that is provided [ during the investigation*

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

[6.11 For the purposes of this Agreement, “interested parties” shall include an exporter, foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters, or importers of such product; the government of the exporting Member; and a producer of the like product in the importing Member or a trade and business association, a majority of the members of which are producers of the like product in the territory of the importing Member. *[ as well as industrial users of the product and relevant consumer organizations which have a legitimate interest. The aforementioned list is not exhaustive and shall not prevent the investigating authority from including domestic or foreign persons as interested parties other than those listed previously.]*

[6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable. <sup>5]</sup>

[  
ARTICLE 7  
PROVISIONAL MEASURES  
]

[7.1 Provisional measures may be applied only if:

- i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;
- ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry;<sup>6</sup> and
- iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.<sup>7</sup>

[7.3 Provisional measures shall not be applied *[ sooner than 60 days] [ during the first 90 days]* from the date of initiation of the investigation.]

[7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, *[ – examine whether apply] a [provisional] duty lower than the [ preliminary] margin of dumping [ would-be sufficient] to remove injury, [the provisional duty may be imposed for a period not exceeding six months.] [ these periods may be six and nine months, respectively.]*

<sup>5</sup> *[ In an investigation where a preliminary or final determination is made on the facts available Authorities shall indicate on the record how effect has been given to Article 6.13 of the Antidumping Agreement.]*

<sup>6</sup> *[A preliminary affirmative determination shall be based on evidence establishing a strong prima facie case and that there is a substantial issue to be investigated.]*

<sup>7</sup> *[In principle preliminary measures shall not be imposed unless authorities judge that the consequent injury to a domestic industry is not adequately compensable unless interim relief is granted, and that the balance of interests favours the granting of relief sought. In exceptional cases where the threat of consequent injury affect a critical growth industry in an FTAA small economy special flexibility shall be accorded.]*

ARTICLE 8  
UNDERTAKINGS

[8.1 Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases ~~[ under such undertakings]~~ *[ in price undertakings voluntarily entered into by exporter]* shall not be higher than necessary to eliminate the margin of ~~[ dumping]~~ *[ - injury]*. ~~[ -It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry]~~ *[ In any case, the investigating authority shall ensure such price increases are lower than the margin of dumping.]*

[8.3 *[ Subject to the provision of Article 8.5],* Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.<sup>8]</sup>

[8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.<sup>9]</sup>

ARTICLE 9  
IMPOSITION AND COLLECTION OF DUTIES

[9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all *Members* ~~[ -and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry]~~ *[The investigating authority shall impose an anti-dumping duty,] [- whether provisional or definitive]* *[ that is less than the margin of dumping if such lesser duty would be adequate to remove the injury to the domestic industry.]*

*[ For this purpose, the amount of the antidumping duty shall be assessed, taking into account, inter alia, the price of the product investigated in the market of the importing Party compared with the price of the domestic product, the prices at which the imported like product imported from other countries not under investigation is sold in the domestic market, as well as the international prices of the product in question.]*

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

[9.3 The amount of the antidumping duty ~~[ shall not exceed]~~ *[ shall be, at its maximum level, equivalent to the]* margin of ~~[ dumping]~~ *[ injury or to the margin of threat of injury.]* ~~[ as established under Article 2.]~~

<sup>8</sup> *[Should the case arise where an undertaking offered by a small and medium sized exporter is not accepted authorities shall provide to the exporter the reasons which have led them to reject the undertaking and shall give the exporter an opportunity for a fair hearing.]*

<sup>9</sup> *[In investigations involving small and medium-sized exporters the authorities of the importing Member shall suggest price undertakings in preference to the imposition of provisional measures or anti-dumping duties. No small and medium-sized exporter, however, shall be forced to enter into such undertakings.]*

**[9.3.1** When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made. *[ Where antidumping or countervailing duty has been estimated and secured by cash deposit, bond or other security, a final assessment of the duty liability shall be made within twelve months of the date on which a request for a final assessment was made. If the final assessment is made after the twelve-month period, such an assessment shall not result in the levying of antidumping or countervailing duties in addition to the amount of the estimated antidumping or estimated countervailing duty. The twelve-month period is subject to the normal time requirements for judicial review.]* Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.]

**[9.4** When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, *[ and the dumping margins found do not exceed the margin of injury,]* any antidumping duty applied to imports from exporters or producers not included in the examination *[ shall not exceed] [ shall be, at its maximum level, equivalent to]:*

- i) the weighted average margin of dumping established with respect to the selected exporters or producers or,
- ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined,

*[ provided that the authorities shall disregard for the purpose of this paragraph any zero and] [ without excluding negative, zero, or] de minimis [margins] [and margins established under the circumstances referred to in paragraph 8 of Article 6.]* The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.<sup>10</sup>  
*[ In cases where the margin of injury is lower than the margin of dumping, the margin of injury shall be applied to all the companies.]*

**[19.1 S** If, after reasonable efforts have been made to complete consultations, a Member makes a final determination of the existence and amount of *[ -the a]* subsidy and that, through the effects of *[ the that]* subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Article, *[ the Party may not impose or maintain countervailing duties if the exporting Party withdraws] [ -unless] the subsidy or subsidies [ -are withdrawn.]*

## ARTICLE 11 DURATION AND REVIEW OF DEFINITIVE DUTIES AND UNDERTAKINGS

**[11.2** The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that *[the antidumping duty is no longer warranted, it] [ the margin of dumping is de minimis, or that the volume of*

<sup>10</sup> *[ When authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not apply to small and medium sized exporters or producers based in small economies.]*

*dumped imports, actual or potential, or the injury, is negligible, as defined in paragraph 8 of Article 5, the antidumping duty]* shall be terminated immediately.]

[11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than *[ five years 36 months]* from its imposition *[ (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.] [ If the duration of the measure exceeds 3 years, the importing country shall conduct a review no later than halfway through the period of enforcement, to ascertain whether it is appropriate to maintain, modify or terminate the duty for the remaining period stipulated in the paragraph above.]* The duty may remain in force pending the outcome of such a review.]

[11.6 N *[ The above-mentioned review shall be conducted in accordance with the provisions of this chapter and shall assess in detail the existence of dumping, injury and causal link.]]*

**ARTICLE 12  
PUBLIC NOTICE AND EXPLANATION OF DETERMINATIONS**

[12.4 N *[ Upon request of an interested party, investigating authorities shall, upon request of any of the interested parties, hold technical information meetings in order to explain the methodology used including technical reports, spreadsheets, computer software, and any other element which may have led to the preliminary or final determination, due regard being paid to the requirement for the protection of confidential information.*

*The time period for requesting the convening of technical information meetings shall be within five days following the determination notification.]]*

**ARTICLE 14  
ACTION ON BEHALF OF A THIRD COUNTRY**

[14.1 An application for antidumping action on behalf of a third country shall be made by the authorities of a third country requesting action. *[ The parties shall provide ample opportunity to consult with those Parties considered to be importing from outside the region at dumped or subsidized prices. The purpose of such consultations shall be to identify the condition of entry for those goods, so that the consulting Party may assess whether or not to request the imposition of anti-dumping or countervailing duties upon the third country.]]*

[14.2 Such an application shall be supported by price information to show that the imports are being dumped *[ or subsidized]* and by detailed information to show that the alleged dumping *[ or subsidy]* is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.]

**ARTICLE 15  
DEVELOPING COUNTRY MEMBERS**

[15.1 It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping *[ or countervailing]* measures under this Agreement. *[ Possibilities of constructive remedies provided for by this Agreement shall be explored]* Before applying anti-dumping *[ or countervailing]* duties, *[ exporters shall be offered a price undertaking or the exporting country shall be warranted the opportunity to eliminate the subsidy programs, whatever the case may be.*

*Investigating authorities shall provide adequate opportunities for consultations to discuss the price undertaking or subsidy program elimination or any other constructive remedies provided for by this Agreement or other international agreements] [~~where they would affect the essential interests of developing country Members~~].*

[  
ARTICLE 17  
CONSULTATION AND DISPUTE SETTLEMENT  
]

*[17.1 N / Any dispute arising between and among the Parties with respect to the implementation of this Chapter shall be referred to the FTAA Dispute Settlement Mechanism and Procedures.] [ in this Agreement.] [ FTAA Dispute Settlement Mechanism and Procedures]. [ For this purpose, this Chapter shall be subject to the same rules governing interpretation and examination of facts and evidence that are applied to the other chapters of the FTAA.]*

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

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

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

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

*5. Each FTAA Party undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Party concerning an application for anti-dumping action on behalf of that Party in accordance with the provision of paragraphs 1 and 2 of this Article.]*

*[17.2 N / Within three years of the entry into force of this Agreement the Parties shall review the feasibility of establishing a binational and/or inter-subregional mechanism to replace judicial, arbitral or administrative tribunals or proceedings for the purpose, inter alia, of the prompt review of administrative actions relating to the final determinations and reviews of determinations within the meaning of Article \_ of this Chapter. The provisions of Article 17.6 of the Antidumping Agreement therefore would be deleted.]*

*[17.1 (DS) Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the [ Member Party] concerned bring the measure into conformity with that agreement. [ In addition to its recommendations,] The panel or Appellate Body may [ suggest recommend] ways [ and time] in which the [ Member Party] concerned [ could implement the recommendations shall bring the measure into conformity with the Agreement.]*

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

*[ Where an antidumping or countervailing duty decreases or is eliminated as a result of a recommendation by a panel or the Appellate Body, the importing Party shall promptly proceed to modify any bonds that had previously offered or to reimburse any security paid in excess of the final margin, including any interest accruing therefrom.]*

[  
ARTICLE 18  
PUBLIC INTEREST  
]

*[18.1 N [ No antidumping duties, including provisional duties, may be imposed before the consumers have been afforded the opportunity to voice their opinion regarding the advisability of levying said duty on the product under investigation.]]*

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

*[ In this regard, after an investigation has been initiated, the antidumping authorities shall invite, to the extent possible, duly organized and identified final and intermediate consumers to submit information on the impact of the imports of the like product on their business performance and the potential effects of the enforcement of antidumping measures. They shall be granted reasonable time periods and opportunity during the investigation to air their views. To this end, the antidumping authorities may submit questionnaires to the economic agents referred to in paragraph (.).]*

*The Parties undertake, to maintain, as far as possible, consistency in the implementation of their antidumping and competition policies in their trade relations.*

*In this connection, the antidumping authorities shall, in order to have as many facts as possible for reaching a decision on the imposition of definitive antidumping duties, take steps to seek the opinion of the relevant authorities on the effects that a possible imposition of antidumping duties could have on the market of the importing Party.]]*

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

[  
ARTICLE 19  
ELIMINATION OF ANTIDUMPING MEASURES  
]

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

[ANTIDUMPING AND COUNTERVAILING DUTY MEASURES]

[1. *[ No provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of another Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice, and judicial precedents. Each Party reserves the right to change or modify its antidumping law or countervailing duty law.]]*