

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter on Agriculture

• **CHAPTER ON AGRICULTURE**

SECTION ONE: GENERAL PROVISIONS

Article 1: [Scope and Coverage] [Scope of application]

[1.1 With the exception of the Section Five (Sanitary and Phytosanitary Measures),] [This [Chapter] [Agreement] applies to] [The provisions of this Agreement apply to] [measures and practices affecting trade in] the [agricultural] products [listed] [that are included] in [its] Annex 1 to [this Chapter] [the WTO Agreement on Agriculture] [hereinafter referred to as agricultural products] [with any subsequent changes agreed in the WTO to be automatically effective for this Agreement. (Annex 1 of the WTO Agreement on Agriculture is reproduced in Annex 1 of this Chapter for reference.)] [The provisions of Section Five apply to SPS measures as defined in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.]

[1.1. The agricultural provisions of this Chapter apply to the Agricultural products listed in Annex 1 to the WTO Agreement on Agriculture, with any subsequent changes agreed in the WTO to be automatically effective for this Agreement.]

[Article 2.a.: Multilateral Disciplines]

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

[Article 2.b: Relation to Other Chapters of [this Agreement] [the FTAA]]

[2.1. In the event of any [inconsistency] [contradiction] [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.]]

[Article 2.c.: Smaller Economies

2.1. The concerns of smaller economies are to be fully considered in the provisions and application of the Articles of this Chapter]

SECTION TWO: [MARKET ACCESS] [TARIFFS AND NON-TARIFF MEASURES]

[Article 3: National Treatment]

[3.1. Each FTAA member country, shall accord national treatment to the agricultural products of other member countries pursuant to Article III of the 1994 General Agreement on Tariffs and Trade (GATT 1994). In accordance, the provisions of Article II of GATT 1994 and its interpretative notes are incorporated into this [Agreement] [Chapter] and are an integral part thereof.]

[Article 4: Tariffs]

[4.1. Relation to [Other] [Subregional Trade] Agreements]

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

[4.2. Tariff Elimination]

[4.2. The Parties agree to eliminate tariffs from trade between them in originating goods, following the Tariff Liberalization Program established in Annex The percentage preferential margins shall apply to the tariffs in effect at the time the goods are shipped to the market for consumption.

The preferential margin applicable to originating goods as a result of new tariff openings, shall not be lower than those applicable to the original tariff item.]

[4.2.1. The base tariff for agriculture products of each of the Parties are specified in the country schedules annexed to this [Chapter] [Agreement] and are an integral part of this Chapter.]

[4.2.2. As provided in the in the Annex to this Chapter, the parties shall apply, for trade among the Parties, the tariffs contained in country schedules.]

[i)Except as otherwise provided in this Agreement, no Party may increase any existing MFN applied tariff, or adopt any new tariff or any other duties and charges (to be defined) in connection with importation, on an [originating] agricultural product.]

[ii) Except as otherwise provided [in this Agreement,] each Party shall progressively eliminate the tariffs and any other duties or charges (to be defined) in connection with importation applicable to [substantially all] originating agricultural products in accordance with the country schedules attached to this Agreement.]

[iii) During the tariff elimination process, the Parties agree to apply to originating goods traded among them the lesser of either the tariff established under the tariff reduction program, or the applicable tariff determined in accordance with Article I of GATT 1994.]

[iv) The Parties may maintain or increase a tariff when this is permitted pursuant to a dispute settlement provision of the WTO Agreement, or any other agreement negotiated in accordance with the WTO.]

[Exceptions]

[4.2.3. Products that create non-seasonal structural distortions to the pattern of consumption of the Parties shall not benefit from the Tariff Reduction Program.]

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

[4.2.3.2. The Parties agree to condition the initiation and fulfillment of the Tariff Reduction Program on Parties meeting their commitments regarding the elimination of export subsidies and other measures and practices that distort agricultural production and trade, pursuant to the provisions contained in the respective sections of this Chapter.]

[4.3. Acceleration of Tariff Elimination]

[4.3. On the request of any Party, consultations shall be carried out to examine the possibility of accelerating the elimination of tariffs for originating agricultural products set out in country schedules. An agreement between two or more Parties to accelerate the elimination of tariffs shall supersede any tariff rate or staging category set out in the country schedules when approved by each Party in accordance with its applicable legal procedures and shall apply to imports from any FTAA Party.]

[4.3.1. Two or more Parties may agree to accelerate the Tariff Liberalization Program set forth in this Article for trade between them.]

[4.4. Price bands and margins]

[4.4. By the time tariff elimination is initiated, the price bands or margins for intra-hemispheric trade in agricultural products shall have been eliminated.] [The Parties shall not apply price bands or margins and other price stabilization mechanisms for agricultural products in their reciprocal trade.]

[The Parties may apply price band systems or other mechanisms for stabilization of prices on agricultural products to trade between themselves.]

[4.5. Export Taxes and other Levies]

[4.5.1. [Except as otherwise provided for in Annex XX] 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, 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.]]

[4.5.1. The Parties agree not to limit exports of agricultural products through new export levies and other measures of an equivalent effect, as well as to pursue the complete elimination of any export levy affecting products of agriculture origin.]

[4.5.2. 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.]

[4.6 When a Party decides unilaterally reduce a tariff in a temporary or definitive manner, the Party shall apply the tariff preference granted at that reduced tariff level. In the case that the Party increases tariffs again, the Party may only do it up to the level that is permitted according to the schedules of tariff elimination.]

[Article_ : Other Measures Affecting the Applied Tariff

x.1. The Parties may apply to trade between them price band systems or other mechanisms for stabilization of prices on agricultural products.]

[Article 5: Non-Tariff Measures]

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

[5.1. Non-tariff barriers, measures that affect the applied tariff and measures having an equivalent effect to non-tariff barriers]

[5.1.1. Before the beginning of tariff negotiations, the Parties shall have the right to counter-notify those measures that affect the applied tariff as well as those measures from other Parties which are considered to be non-tariff barriers or which are considered to have an equivalent effect to non-tariff barriers, including sanitary and phytosanitary measures and technical barriers to trade which are understood to be a discriminatory or unjustifiable discrimination among the Parties or a hidden barrier to international trade, given they are not consistent with the principles and obligations established multilaterally.]

[5.1.2. Mechanisms to deal those counter-notifications]

[5.1.2. The manner to deal with such measures shall be defined during the negotiating process. Once the FTAA has been established, there would be a mechanism of counter-notifications of new measures of this type, as well as procedures on how to deal with them.]

[Article 6: World Trade Organization (WTO) Negotiations*]

[6.1. Parties shall [cooperate] [participate] in the multilateral negotiations on agriculture being held in accordance with Article 20 of the WTO Agreement on Agriculture with the objective of achieving the maximum possible improvement in market access opportunities for all agricultural products.]

[6.2. [In consistency with this Article,] the trade disciplines produced in the [multilateral negotiations on agriculture] [under the framework of the WTO] shall be [automatically] incorporated into this Chapter [to the extent that they help to improve the market access of agricultural products of the countries in the hemisphere.]]

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

[Article 7: Special [agricultural] Safeguard Provisions [SAS]]

[7.1. [Considering that the agricultural sector should become fully integrated into the general commitments of the FTAA] [this Agreement] [T][t]he Parties agree to [eliminate] [not to apply] special safeguard measures [for agricultural products] [once the tariff elimination process has been initiated] [may apply an automatic SAS while this Agreement remains in force to imports of a product originating in another Party covered in Annex I to the WTO Agreement on Agriculture which at the date of its application is incorporated in the Tariff Liberalization Program] [Consequently, the Parties may not apply any [special]] automatic safeguard measure or any such measure not requiring evidence of injury to domestic industry. [Nonetheless, each Party maintains its rights and obligations [with respect] under Article XIX of the 1994 GATT [and] the WTO Agreement on Safeguards [and] the WTO Agreement [on Agriculture]] [The agricultural products covered in this Chapter shall be subject to general FTAA disciplines on safeguards.]]

[7.1. [Only the countries with small economies in the hemisphere shall be able to apply special safeguard provisions for agricultural products,] [The conditions of application and the Parties to which the SAS may be applied are stipulated in] [through methods yet to be defined in Annex x.]]

[* This draft Article is an interim proposal pending progress in the WTO negotiations on agriculture. This Article could then be replaced with an Article to incorporate that progress in accordance with the mandate of the FTAA Negotiating Group on Agriculture.]

SECTION THREE: EXPORT [SUBSIDIES]

Article 8: [Definitions] [Identification of Export Subsidies¹]

[8.1. "Export subsidies" [on agricultural products] [refers to] [means] [those measures and practices] subsidies contingent [de jure or de facto] [on] [export performance] [as the unique condition or among various conditions], including but not limited to the export subsidies listed under Article [9] [9.1] of the WTO Agreement on Agriculture [and in [considering the definition of subsidy set out in] [Article 1 and those definitions cited as examples in]] [Article 1 and in] Annex I of the WTO⁺ Agreement on Subsidies and Countervailing Measures, and [with any subsequent changes agreed in the WTO to be automatically effective for this Agreement] [and subsidies on the granting of export credits, [export credits] guarantees or insurance programs*.]] [and international food aid unless such aid meets the conditions stipulated in Article 10.4 of the WTO Agreement on Agriculture.]

[8.1. Export subsidies means those subsidies as defined in Article 1.(e) of the WTO Agreement on Agriculture]

[8.1. Export subsidies means subsidies contingent on export performance as defined in Article 1e) of the WTO Agreement on Agriculture, with any subsequent changes agreed in the WTO to be automatically effective for this Agreement.]

[8.2. However, export credits, export credit guarantees or insurance programs, when provided consistently with WTO rights and obligations, [and international food aid] [and in consistency with the provisions of annexes 12.2.1, 12.2.2,12.2.2.1 and 12.2.2.2] shall not be considered to constitute export subsidies for purposes of this Agreement.]

Article 9: Elimination of Export Subsidies

[Elimination of Export Subsidies for Trade in Agricultural Products in the FTAA]

[9.1. [The Parties recognize that export subsidies for agricultural products prejudice trade in the Hemisphere. Therefore,] [As of the date] [on which this Agreement enters into force, no Party shall maintain or introduce] [of] [implementation of this Agreement] [the beginning of the tariff reduction process] [entry into force] [no Party shall maintain or introduce] [[T][t]he Parties agree to eliminate and prohibit the reintroduction in any form of] [for trade among them] export subsidies for agricultural products exported to other Parties, [except as provided for under the provisions of this [Article]] [defined in the previous article, and to not apply new measures and practices having a similar effect or that involve circumvention of the established commitment.]

[9.1.1. Notwithstanding the general obligation not to grant export subsidies on trade in the hemisphere, a party has the right to resort to export subsidies an any agricultural product to the extent and for such time as may be necessary to offset an export subsidy granted by a non-party affecting the party's exports of that product in the hemisphere.]

[9.2 In addition, the Parties waive their GATT 1994 rights in reciprocal trade regarding the use of export subsidies and such rights that may stem from multilateral negotiations on agriculture within the framework of the WTO.]

[9.2. notwithstanding the provisions in the previous paragraph, the countries with small economies shall eliminate export subsidies within a period of x years following the entry into force of the FTAA.]

[Multilateral Elimination of Export Subsidies]

¹ [other measures and practices to be identified in the notification and counter-notification process during the negotiating process shall be used for broadening the definition of export subsidies]

⁺ [these WTO provisions are reproduced in Annex 2 for reference]

^{*} to be defined: the conditions that determine whether an export credit, export credit guarantee or insurance programs constitute export subsidies for agricultural products.

[9.3. The Parties [agree to] [share the objective of the multilateral elimination of export subsidies for agricultural products and shall] [work toward] a[n] [multilateral] agreement in the WTO [negotiations on agriculture] to eliminate export subsidies for agricultural products [as quickly as possible] and to prevent their reintroduction in any form. [Accordingly,] [the Parties agree to cooperate to:] [the Parties [also] agree to:]]

[a] [Prevent any WTO member from using] [work toward agreements with non-Parties not to use] export subsidies for exports of agricultural products to any [FTAA] Party from the date of implementation of this Agreement [until full implementation of the comprehensive multilateral elimination of export subsidies];]

[b] [work toward reaching an] [reach] agreement on rules to ensure that government-funded export credit and export credit guarantee programs, export market promotion and development activities, certain types of food aid, or other forms of export assistance do not become a substitute for export subsidies;]

[c] eliminate those elements of Article 13 of the WTO Agreement on Agriculture (the “peace clause”) that restrict Members’ rights to pursue WTO dispute settlement in cases where export subsidies cause nullification or impairment of access or disrupt sales in third country or import markets.]

[9.3. The Parties agree to work toward a multilateral agreement in the WTO negotiations on agriculture to:

(a) eliminate export subsidies for agricultural products as quickly as possible and to prevent their reintroduction in any form

(b) Prevent any non-FTAA WTO member from using export subsidies for exports of agricultural products to any FTAA Party from the date of implementation of this Agreement until full implementation of the comprehensive multilateral elimination of export subsidies under Article 9.3.(a); and

(c) Reach agreement on rules to ensure that government-funded export credit and export credit guarantee programs, export market promotion and development activities, certain types of food aid, or other forms of export assistance do not become a substitute for export subsidies.]

[9.4. Other Provisions] [Non-compliance]

[9.4.1. Where a Party applies export subsidies to trade in any product between and among the Parties, the other Parties shall cancel the preferences granted on the same product until the Party that is applying such subsidies eliminates them² [except the countries with small economies.]]

[9.4.2. Where a Party does not fulfill the commitments established in Articles ... and ..., the Parties concerned may apply to agricultural products the provisions of this Agreement on Subsidies and Countervailing Measures to counteract such practices.]

[9.5. Special and Differential Treatment]

[9.5.1. Without prejudice to this Article, member countries identified in Annex XX (developing countries) may phase out their subsidies in a period of XX years from the date of entry into force of the FTAA.]

[Article 10: Treatment of Imports from non-Parties benefiting from Export [Subsidies]]

[10.1. Where [an exporting Party considers that] a non-Party is exporting an agricultural product to the territory of another Party with the benefit of export subsidies, the importing Party shall, on written request of [an] [the] exporting Party, consult with the exporting Party with a view to [agreeing on specific measures] [[the importing

² [the procedure intended to ensure the transparent application of this provision is to be defined]

Parties' application of] enforce countervailing duties pursuant to Article 13.c)i of the WTO's 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] [For the treatment of subsidized imports of agricultural products not originating in Parties] [apply relevant WTO provisions]] that the importing Party [shall] [may] adopt to counter the effect of such subsidized imports.]

[10.2. If the importing Party [does not implement such agreed measures,] [would not maintain the consultations or begin for the application of countervailing or anti-dumping duties mentioned in paragraph 10.1 above] the exporting Party [may use an export subsidy for 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] [whose exports were displaced by the subsidized [exports] [operation] shall be entitled to cancel trade preferences for products from the Party importing the subsidized product in an amount equal to the affected trade or to apply other countervailing measures as agreed on within the scope of the FTAA.]]

[10.2. If the importing Party adopts the agreed-upon measures, the exporting Party shall refrain from applying any export subsidy to exports of such product to the territory of the importing Party.]

[10.1. In the event that the commitment by non FTAA WTO Members under Article 9.3.b) of this Chapter has not yet been implemented as of the date of implementation of this Agreement and if a non Party is exporting an agricultural product to another Party with the benefit of export subsidies, the importing Party shall, on request of an exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counteract the effect of the subsidized imports. If the importing Party does not implement such agreed measures, the exporting Party may utilize an export subsidy for 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.

[10.2. If an exporting Party introduces an export subsidy in accordance with this Article, the importing Party may increase the rate of duty on such imports from the exporting Party up to the lesser of the rates being applied to the imports from the non Party or the applied most-favoured-nation tariff at that time.]

[10.3. If an exporting Party introduces an export subsidy in accordance with the provisions of this Article, the importing Party may increase the rate of duty on such imports from the exporting Party up to the [lesser] [greater] of the rates being applied to the imports from the non-Party or the applied most-favoured-nation tariff in effect at that time.]

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

[Article 11: Treatment of Export Subsidies by Parties to non-Party markets]

[11.1. WTO provisions shall apply to exports of agricultural products subsidized by the Parties intended for non-Party markets.]

[11.1. Pending the full implementation of a multilateral elimination of export subsidies, Parties agree to cooperate in order to prevent adverse effects in the use of export subsidies when competing with other Parties in non-Party markets; in the event that a Party may be suffering an adverse effect in a non-Party market as a result of an export subsidy used by another Party, at the request of the affected Party, consultations shall be held with the objective of reaching an agreement on measures that would alleviate such adverse effect.]

[11.1. From the date of implementation of this agreement until full implementation of the comprehensive multilateral elimination of export subsidies under Article 9.3.a), if Parties utilize export subsidies for exports of agricultural products to Non-Parties, Parties agree to take into account the interests of other Parties and endeavour 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.]

[11.1. 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.]

[11.1.1. For the purposes [of this Article] [of what is provided for in paragraph 11.1] 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.]

[11.1.2. Parties shall give notice regarding their export subsidy programs that are to be eliminated, along with the annual amounts and values by destination of those subsidies corresponding to 1995 no later than six months prior to the end of negotiations.]

[11.1.3. 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 this Article] [in paragraphs 11.1 and 11.1.1] it shall request the subsidizing exporting Party, in writing, for consultations to ensure compliance [with the terms of the provisions in this Article.] [in paragraph 11.1] In the event that a Party was displaced in a non-Party market by a Party not complying with the provisions [in this Article] [in paragraph 11.1], the affected Party shall have the right to request compensation and the subsidizing exporting Party shall be obliged to provide such compensation.]

[11.1.4. In the event that the subsidizing exporting Party repeats non-compliance with the commitments under this Article, any 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 this Agreement.]

[Article 12: Measures and Practices Having an Equivalent Effect to Agricultural Export Subsidies]

[12.1. The Parties shall not apply any measures and practices in a manner that results in, or which threatens to lead to, the circumvention of [the elimination of] [disciplines relatives to] export subsidies in trade in agricultural products among the Parties [as established under Article 9]; nor shall non-commercial transactions be used to circumvent such commitments [except for small economies.]]

[12.2. In accordance with Article 8.1, the Parties agree to comply with the conditions and disciplines for the provision of export credits [and food aid] for agricultural products [as provided] in [Annex 12.2.1 (Export Credits)] [and in Annexes 12.2.2, 12.2.2.1, and 12.2.2.2 (Food Aid)] of this Agreement.]

SECTION FOUR: OTHER MEASURES AND PRACTICES THAT DISTORT TRADE [AND PRODUCTION] IN AGRICULTURAL PRODUCTS

[Article 13: Domestic Support Measures]

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

[13.1.1. Consequently, the Parties agree that their domestic support measures shall comply with the provisions of this Article]

[13.1.1. The parties also recognize that domestic support reduction commitments can only be achieved in multilateral negotiations. Accordingly, the parties agree to work toward an agreement in the WTO to substantially reduce and more tightly discipline trade-distorting domestic support.]

[General Disciplines and Commitments on Domestic Support]

[13.2. The Parties agree to [cooperate in subsequent] [work toward an agreement] WTO negotiations on agriculture [to define further disciplines and commitments on domestic support measures] [to achieve:]

[1] the [maximum possible reduction or] elimination of production and trade-distorting domestic support, including support under “production limiting” or “blue box” programs [for the countries that are not small economies]]

[2] an overall limit [or elimination] on the amount of domestic support of all types (green, blue and amber),]

[3]) [the elimination of or] a review of the criteria for the “green [box”] category to ensure that green support does not distort production and trade, [and] [and [permanent international recognition] agreement] that such support [“green box” support] should not be countervailable,] and]

[4] agreement that “green box” support should not be countervailable.]

[Article 13.x.: Identification of Other Measures And Practices That Distort Trade [And Production] In Agricultural Products

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

i) General Services (Number 2 of Annex 2 of the WTO Agreement on Agriculture)

ii) Domestic Food Aid (Number 4 of Annex 2 of the WTO Agreement on Agriculture)

iii) Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters (Number 8 of Annex 2 of the WTO Agreement on Agriculture)]

[Article_ : [Elimination of] other measures and practices that distort trade and production of agriculture products]

[13.2. As of the date of entry into force of this Agreement, the Parties agree to eliminate measures and practices that distort agricultural production and trade, [as defined in Article] [including] [with the exception of [Article 6.2 and Annex 2] [Annex 2(2), 2(4), 2(8)] of the WTO Agreement on Agriculture] insofar as they distort trade of

agricultural products in their reciprocal trade.] [Accordingly, the Parties agree on the following disciplines and commitments concerning domestic support measures:]

[13.2. Upon entry into force of this agreement, when the countries that are not small economies decide to support their agricultural producers, they shall ensure that such measures are in conformity with annex 13.2.4.1]

[13.2.1. Definitions]

[13.2.1.1 Domestic support means any [policy or measure] [subsidy that is applied to the agricultural sector and is not subject to export measures] [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.]]

[13.2.2.1. 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 reduction under the provisions [of this Article and its Annexes] [in paragraphs 13.2.4. and Annex 13.2.4.1.]

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

[13.2.2.3. Implementation period means the period beginning with the year in which the tariff reduction process begins until the year in which a 0% tariff level is achieved.]

[13.2.3. Commitments on Domestic Support]

[13.2.3.1. The FTAA member countries agree to not apply domestic support measures in agriculture that are not in conformity with the provisions [of this Section.] [in paragraphs 13.2.4 and Annex 13.2.3.1]]

[13.2.3.2. Taking into account the objective of the negotiating mandate of the FTAA regarding the establishment of disciplines on measures and practices that distort the trade in agricultural products in the hemisphere, the FTAA member countries³ 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. This implies that by that time any product-specific and non-product-specific AMS shall not exceed the “de minimis” levels established in [this Article.] [paragraph 13.2.4.4.]]

[13.2.3.3. The elimination of the Total AMS referred to above shall be made on the basis established in [this Article] [paragraph 13.2.3.4] 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 accordance with the timetable for tariff reduction provided in the [Chapter on Market Access for Agricultural Products.] [contained in the countries’ schedules which are mentioned in paragraph 4.2.2 of Section 2 “Market Access” of this Chapter.]]

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

- a) the mean of the Current Total AMS for the years (J,J,J), reduced by X%; and

³ These countries are: Argentina, Brazil, Canada, Colombia, Costa Rica, Mexico, United States and Venezuela. Because the other FTAA countries 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 Agreement on Agriculture)]

b) The Total AMS bound under the WTO, for the year 2000 by developed countries, and for the year 2004 by developing countries, both reduced by 50%.]

[13.2.4. Exempt Measures]

[13.2.4.1. Domestic support measures exempted from reduction commitments must satisfy the basic requirement of having minimal or no trade distorting or production effects. Thus, all measures that are to be exempted shall meet the following criteria:

a) the support in question shall be provided by a government program financed with public funds (including foregone fiscal revenues) that do not, as a consequence, imply transfers to consumers, and

b) the support in question shall not have the effect of providing price support to producers and also the criteria and terms of specific policies set out in [Annex 13.2.4.1] to this Article.]

[13.2.4.2. Direct or indirect government support measures to stimulate agricultural and rural development are an integral part of developing countries' development programs. Subsidies for investments that are generally available for agriculture in FTAA developing member countries and subsidies for agricultural inputs that are generally available for low-income or limited-income producers in developing member countries shall be exempted from the reduction commitments of domestic support that would normally apply to such measures. All domestic support that satisfies the criteria set out in this paragraph shall be exempted of reduction commitments.]

[13.2.4.3. 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 [Annex 13.2.4.3 (illustrative list of Parties' domestic support commitments).]]

[13.2.4.4. No FTAA member country shall be required to include the calculation of the Current Total AMS, nor to reduce or eliminate:

i) the domestic support granted to specific products that it would otherwise be required to include in the calculation of its Current AMS, when such support does not exceed 5% of the total value of the output of an agricultural product during the corresponding year; and

ii) the non-product-specific domestic support that it would otherwise be required to include in the calculation of its Current AMS, when such support does not exceed 5% of the value of its total agricultural output.

iii) In the case of developing member Parties, the de minimis percentage established in this paragraph shall be 10%.]

[13.2.4.5. The calculation of Current Total AMS of a FTAA member country shall include any domestic support measures established for agricultural producers, including possible modifications to same, and any subsequent measures that do not satisfy the criteria of [Appendix I to this Section] [Annex 13.2.4.1. to this Chapter], or that are exempted from reduction by virtue of any other provision [in this Section.] [of this Article].]

[13.2.5. [Non-Circumvention] [and commitment not to re-introduce]]

[13.2.5.1. Parties agree that they shall not apply domestic support policies or measures to agriculture that entail circumvention of the commitments established in this [Section]]

[13.2.5.1. The Parties undertake not to reintroduce measures and practices covered in Article ... and not to apply new measures and practices that have a similar effect or that involve circumvention of the commitment established in Article ...]

[13.2.6. Non-compliance]

[13.2.6.1. Should any Party fail to comply with the disciplines on domestic support established in this Section, any Party may suspend the tariff preferences accorded in an amount equivalent to the value of the injury caused or apply other compensatory measures agreed to under the FTAA.]

[13.2.6.1. In the case that a Party applies measures and practices that distort trade and production of agricultural products in trade of any product among the Parties, the other Parties may cancel preferences granted on the same product until the Party that has applied such measures and practices eliminate them⁴.]

13.2.6.1.2. In any case, when a Party does not comply with the commitments established in Article XX, the affected Parties may apply on the agricultural products, the provisions on Subsidies and Compensatory Measures of this Agreement in order to counteract such practices.]

[13.2.6.1. When the application of any type of domestic support measures to an agricultural product causes or threatens to cause damage to the production or trade of another party, it shall, to that extent, be subject to investigation in the field of unfair international trade practices and, if pertinent, be subject to the application of countervailing quotas, in accordance with chapter yy of this agreement.]

[Special and Differential Treatment]

[13.3. without prejudice to the above paragraphs, the countries with small economies may apply domestic support measures in accordance with the provisions established in the WTO agreement on agriculture and resulting agreements.]

[Exchange of Information / Notifications]

[13.4. 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.]

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

[Article 14: [Differential] Export Taxes]

[14.1. Effective (date of entry into force of the Agreement), the Parties agree to eliminate any differential between the rate of export tax charged on a primary agricultural product and the rate of export tax charged on any product or byproduct produced from the primary product.]

[14.1. The Parties agree that at the moment of initiating the tariff elimination process, the difference between the rates of differential export taxes of products and/or by products obtained from the processing of a given primary input and the export tax on the latter, shall be up to a maximum of X percentage points]

[14.2. 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, 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.]

[Article 15: State Trading Enterprises]

⁴ [the procedure to ensure a transparent application of this provision is to be defined]

[15.1. The Parties agree to the staged elimination of the exclusive export rights granted to state trading enterprises engaged in the export of agricultural products by permitting private traders to participate in, compete for, and transact for exports of agricultural products.]

[15.1.1. In the transition period from exclusive export rights held by the state trading enterprise to full competition with private traders, such state trading enterprises shall provide information on its acquisition costs, export pricing, and other sales information. To ensure that such enterprises compete fairly with private traders in export 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.]

[15.1. 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 export]monopoly on agricultural products, in order to avoid restrictions to and discrimination upon access in addition to other distortions in agricultural trade.]

[15.1. 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.]

[15.2. At the beginning of the tariff elimination process, disciplines on State trading enterprises shall be established in order to prevent market access restriccions and discrimination and other trade distortions.]

SECTION FIVE: SANITARY AND PHYTOSANITARY MEASURES

[Article 16: General Provisions, Rights and Obligations of the Parties]

[Article 16: Definitions]

16.1. This Section applies to sanitary and phytosanitary measures as defined in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, with any subsequent changes agreed in the WTO to be automatically effective for this Agreement.]

[16.1. [This Section] [Chapter] applies to products that [fall] [are included] [within the scope] of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures [(WTO SPS Agreement)] [according to what is established under such Agreement] [and according to the General Provisions established under its Article 1 and according to the Rights and Obligations established under its Article 2. The definitions established in the Zoosanitary Codex of the International Office of Epizootics, the International Plant Protection Convention and the Codex Alimentarius Commission also apply to this [Section.]] [chapter, as do decisions established by subregional organizations of which the Parties are members, when the Parties have agreed to their use.]]

[16.1.1. This Chapter shall not entail greater obligations or commitments than those deriving from the WTO SPS Agreement]

[16.1. Parties [agree to] reaffirm their rights and obligations under the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures.]

[16.2. [The Parties agree on the provisions of this Section to ensure the consistency of the application of sanitary and phytosanitary measures for trade between the Parties] [In accordance] with the Parties' rights and obligations [and principles] under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures [, the Parties agree to cooperate to [further the implementation of] [implement in a specific manner] the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. [In consistency with these objectives, in the application of sanitary and phytosanitary measures the Parties shall take into consideration the appropriate level that will ensure adequate protection and the technical and economic feasibility of the Parties.]]

[16.3. [In consistency with the provisions of this Article,] the Parties [agree] [commit] to cooperate to facilitate trade in animals, plants, products and byproducts thereof [and food] and [other goods related to trade therein, to address food safety matters] and to strengthen the [modalities necessary to prevent the introduction or avoid the spread of plant pests or [of human (food safety) or] animal diseases in their respective territories.]] [respective operational structures for security, tax revenue collection, and epidemiological inspection and control]]

[16.4. Where [In] identical or similar conditions exist, a sanitary or phytosanitary measure shall not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of a non-Party country.]

[16.2. The parties agree to strengthen their collaboration on matters within the purview of the WTO SPS Committee and strengthen their collaboration in the development of international standards, guidelines or recommendations in the Codex Alimentarius Commission, the international Plant Protection Convention and the International Office of Epizootics.]

[16.3 the parties also agree to undertake activities , such as, inter alia:

- i) the exchange of information on new research data;
- ii) the exchange of information on the development and use of risk assessment processes; and]
- iii) the coordination of technical assistance.]

[Article 17: Implementation of the WTO Agreement on the Application of SPS Measures in the FTAA]

[17.1 The results of revisions to the Agreement on the Application of Sanitary and Phytosanitary Measures adopted by the World Trade Organization shall be incorporated in this Section.]

[17.1. In accordance with the provisions of this Article, and based on the definitions contained in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, the following [guidelines] [procedures] [principles] should be used for the purpose of this Section:]

[a) International Standards] [Article _: Harmonization]

[a.1. Parties shall apply to trade among them the international standards recommended by the relevant international bodies and their subsidiaries,] [in particular the codex alimentarius commission, the international office of epizootics, and international and regional organizations that operate under the framework of the international plant protection convention and] [in particular the organizations mentioned under Article 18.1.]

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

[b) Harmonization]

[b.1. [Parties agree that the concept of harmonization shall be the same as that in Article 3 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and in item 2 of Annex A thereto.] Parties shall, whenever possible, seek to coordinate positions at the fora where international sanitary and phytosanitary standards, guidelines and recommendations are prepared.]

[b.2. The Parties agree to establish [, whenever possible,] harmonized sanitary and phytosanitary systems for sampling and diagnostic methods, inspection and certification of animals, plants, products and by-products thereof, as well as for food safety.]

[b.3. International standards and harmonization]

[To expedite the application of sanitary and phytosanitary measures and procedures in the territories of the Parties and, thereby, to facilitate trade flows, the procedures shall fall within the framework of the following principles:

a) each Party shall use international or subregional standards, guidelines or recommendations for its sanitary or phytosanitary measures, in order to harmonize them and make them compatible with those of the other Party.]

b) without prejudice to the provisions in letter a), each Party shall adopt, apply, establish or maintain a sanitary or phytosanitary measure that will provide a degree of protection different from that which would be attained through a measure based on an international OR SUBREGIONAL standard, guideline or recommendation, or that is stricter than they are, as long as there is scientific justification for doing so.]

c) the Parties agree to establish harmonized [systems] [services] of measures and procedures in the sanitary and phytosanitary field of methods for sampling, diagnosis, inspection and certification of animals, plants, their products and byproducts, as well as food safety.]

[c) Equivalence]

[c.1. The Parties agree on [the general provisions and procedures for the application] [apply the criteria] of the equivalence according to the provisions of Article 4 of the SPS WTO Agreement.]

[c.2. Parties shall establish bilateral or [sub-regional] agreements, or agreements among [all] the Parties, in order to determine the equivalence criteria that will ensure an adequate level of sanitary or phytosanitary protection.]

[c.3. Equivalence agreements between Parties shall be established in accordance with the standards approved by the competent international [or subregional] organizations. [Where these organizations do not exist, standards agreed to in the region may be used.]]

[c.3. In any case, the methods to determine the conditions for equivalence shall give more emphasis to inspection procedures,, to the sanitary and phytosanitary condition in the area from where the product originates, and shall consider the conditions according to the level of development and size of the economies.]

[c.4. The Parties agree that the general objective of equivalence agreements shall be to facilitate trade in products subject to sanitary and phytosanitary measures between the signatory countries by simplifying physical control procedures for the entry of such agricultural and agrifood products and promoting increased mutual trust between the respective competent national authorities.]

[c.4. The Parties agree that the general objective of equivalence agreements shall be to facilitate trade, promoting increased mutual trust between the national authorities who signed such agreements, and that the specific objective shall be to eliminate physical controls that are in place to verify that products that come into the territory of the importing Party fulfill the requirements of the importing Party.]

[c.5. The specific objective of the equivalence agreements shall be to simplify physical control procedures for the entry of the products which are the object of this chapter, in order to verify that products entering the importing country's territory meet the sanitary and phytosanitary requirements established by the importing country.]

[c.6. The equivalence shall apply to [normative rules] and sanitary and phytosanitary measures for [trade in] [sectors or sub sectors of live] animals, plants, products and byproducts thereof, or other [related] goods [related to trade therein], as well as any inspection, recognition, control, testing [approval] and certification [systems] [services], or part thereof, or anything related to specific rules on inspection, hygiene, or food safety requirements. [To establish equivalence, it shall also be taken into account the size of the economies and level of development of the Parties.]]

[c.7. The Parties shall hold further consultations in order to determine the provisions that enable [the demonstration and recognition] [broaden the knowledge of] of the equivalence of sanitary and phytosanitary measures in the sectors or parts thereof not incorporated into their respective bilateral agreements.]

[c.7.1. Equivalence]

[to expedite the application of sanitary and phytosanitary measures and procedures in the territories of the parties and, thereby, to facilitate trade flows, the sanitary and phytosanitary control, inspection and approval procedures shall fall within the framework of the following principles:

- i) without reducing the level of appropriate protection of animal and human life and health (food safety) and to preserve plant health in their territories, the parties shall, accept, insofar as possible, the equivalence of their respective sanitary and phytosanitary measures;
- ii) each party shall accept the sanitary and phytosanitary measures of the other party as equivalent, even when they differ from its own, when it demonstrates through scientific information and risk assessment methods based on international or subregional standards, guidelines or recommendations agreed to by them, that the measures achieve an adequate level of the protection required;

iii) to recognize the equivalence of their sanitary and phytosanitary measures, the parties shall facilitate access to their territories for conducting control, inspection and approval procedures.]

[c.7.1. When equivalence agreements and consultations are entered into by Parties, it should be borne in mind that:]

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

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

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

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

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

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

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

[c.7.2. With a view to [facilitating the determination of] [simplifying the mechanisms to determine] equivalence, consideration should be given to the existence of [a smooth and regular flow of] trade in the products for which the declaration of equivalence is being sought [; to] [or] the absence of any previous cases of rejection for sanitary or phytosanitary reasons [; and to the proven experience of the exporting Party's inspection and certification systems for these products.]]

[c.7.3. When an equivalence agreement is being negotiated and until equivalence is determined, the Parties shall not, in their mutual trade, apply conditions for the products referred to in this [Section] [Section] that are more restrictive than those in force, except for those related to sanitary or phytosanitary emergencies.]

[c.7.4. In the process of recognizing the equivalence of their sanitary and phytosanitary measures, the Parties shall, through bilateral consultations, deal with aspects related to the effectiveness of the measure, the impact on trade, and minimizing the cost of applying and adjusting the levels of technology, which shall be specified in the mutual recognition instruments.]

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

[d.1. The Parties agree to implement the provisions of article 5 of the WTO SPS Agreement and to adopt the criteria and guidelines issued by the relevant international organizations. [The Parties agree to set the period established under Article 5.8 of the WTO SPS Agreement according to 30 days.]

[When a Party has reason to believe that a specific sanitary or phytosanitary measure establish or maintained by another Party restrict or may restrict its exports and that measure is not based on competent international or subregional standards, guidelines or recommendations, or such standards do not exist, it may ask for an explanation of the reasons for these sanitary and phytosanitary measures and the Parties that maintain these measures must provide an explanation within a period of thirty (30) days following the date on which the competent authority receives the request.] [When a Party has reason to believe that a specific sanitary or phytosanitary measure establish or maintained by another Party restrict or may restrict its exports and that measure is not based on competent international or subregional standards, guidelines or recommendations, or such standards do not exist, it may ask for an explanation of the reasons for these sanitary and phytosanitary measures and the Parties that maintain these measures must provide an explanation within a period of thirty (30) days following the date on which the competent authority receives the request.]

[d.2. The Parties [shall harmonize the methodology] [and for that end] [may request regional [subregional] agricultural health organizations [, to research centres or consortia dealing with agricultural sanitary issues] to draft harmonized guidelines, principles, and methodologies for risk assessment [with the objective of promoting the application of common criteria and procedures in the FTAA] [to conduct risk assessment studies related to trade among them]]

[d.2.1. In accordance with the guidelines issued by the appropriate international or sub-regional organizations:

- a) the Parties shall ensure that their sanitary and phytosanitary measures are based on an appropriate assessment of the circumstances involving the existing risks of human (food safety) and animal life and health, or to preserve plant health, bearing in mind the guidelines and risk assessment techniques prepared by competent international or subregional organizations;
- b) when establishing their appropriate level of protection, the Parties shall take into account the objective of minimizing adverse effects on trade and, seeking to achieve consistency in such levels of protection, shall avoid making arbitrary or unjustifiable distinctions that could cause discrimination or result in disguised restriction to trade between the Parties;
- c) a risk analysis conducted by a Party should comply with the period of time previously agreed to by the Parties. If the results of the analysis imply that the importation will not be accepted, the scientific basis for the decision should be provided in writing.]

[d.3. Whenever risk assessment is necessary] [the results of risk assessment studies] [to grant a product market access, [it should be carried out] [shall be communicated by the Party conducting the studies to the Party concerned] within a time period no longer than X calendar months [for the countries with small economies and x2 calendar months for the remaining countries] from the date of the request from the requesting party. The information pertinent to the assessment, including requests for clarification or supplementary information, shall be gathered, processed and analyzed within that time.]

[d.4. Once the time period stipulated has expired without the importing Party having completed the risk assessment, or if [it is the understanding of] the exporting Party [demonstrates that it has scientific justification that there is no risk involved for the importing party, and the importing party does not allow the imports in question] that the risk assessment was not conducted properly, the said exporting Party may take recourse to the FTAA⁵ forum competent in the subject area, [without prejudice to recourse to the body mentioned in point IV.8] with a view to having the restriction imposed on the affected product lifted.]

[d.5. Where a Party decides to conduct a new risk assessment of a product for which [there exists a smooth and regular] trade [exists,] that Party may not interrupt the trade in the affected products, except in the case of a sanitary or phytosanitary emergency situation.]

⁵ [to be created]

[d.6. In cases of sanitary or phytosanitary protection emergencies, it shall be the responsibility of the importing party, at the request of any of the other [members,] [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.]

[d.6. when assessing the risk for a good, and when establishing their level of appropriate protection, the parties shall take into account, inter alia, the following factors:

- i) the scientific and technical information available;
- ii) the existence of pests or diseases and the recognition of pest- and disease-free areas and areas of low pest and disease prevalence;
- iii) the epidemiology of pests and diseases of quarantine importance;
- iv) an analysis of critical points of control for sanitary (food security) and phytosanitary aspects;
- v) food additives and physical, chemical and biological contaminants;
- vi) pertinent ecological and environmental conditions;
- vii) production processes and methods, and inspection, sampling and testing methods;
- viii) the structure and organization of sanitary and phytosanitary services;
- ix) protection procedures, epidemiological surveillance, diagnoses and treatments to ensure food safety;
- x) production or sales losses in the event of a pest or disease entering, taking root, propagating or spreading;
- xi) quarantine measures and applicable treatments to satisfy the importing party in relation to risk mitigation; and
- xii) pest or disease control or eradication costs in the territory of the importing party and the cost-effectiveness ratio of other possible risk reduction methods.]

[d.7. when countries with small economies conduct a risk assessment and conclude that the scientific information is insufficient, they may adopt a provisional sanitary or phytosanitary measure based on the information available and including that from the competent international or subregional organizations and the sanitary and phytosanitary measures of the other party. once the necessary information is available, the party shall conclude the assessment and, when appropriate, modify the sanitary or phytosanitary measure.]

[d.8. when a party is able to attain an appropriate level of protection through the gradual application of a sanitary or phytosanitary measure, it may, at the request of the other party and in conformity with this chapter, allow such gradual application or grant specific exceptions to the measure during established periods, taking into account the export interests of the requesting party.]

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

[e.1. The Parties agree that the provisions of [Article 6] of the SPS Agreement promote and generate new opportunities for trade in animals, plants, products and byproducts thereof, and create greater incentives for exporting Members to control or eradicate pests and diseases, and to protect the integrity of production areas. Such provisions also protect Member States from the spread of pests and diseases that could prove harmful to human beings, animals and plants.]

[e.2. The Parties shall harmonize the criteria and procedures they use to recognize pest- or disease-free areas and areas of low pest or disease prevalence. The Party from whom such recognition has been requested shall announce its decision no later than [x] calendar months from the date of the request by the affected Party [for countries with small economies and no later that x2 calendar months for the other FTAA countries [for countries with small economies and [X] for the other FTAA Parties.]]

[e.3. The Parties shall [[accept] [recognize] automatically] [will request] [among each other] the pest- or disease-free areas and areas of low pest or disease prevalence recognized by the relevant international [or regional guidelines and recommendations] organizations in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention]]

[e.3. The Parties shall recognize pest- or disease-free areas and areas of low pest or disease prevalence, in accordance with international or regional guidelines and recommendations, considering, among other key factors, geographical situation, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in the area.]

[e.4. Where a Party considers that it has a special sanitary or phytosanitary situation with respect to a specific disease, it may apply for recognition of that situation. The importing Member may also request additional guarantees for the importation of animals, plants, products and by-products thereof or other goods related to trade therein, in the light of the recognition of the special situation.]

[e.4. The Party that declares an area in its territory free from a specific pest or disease should objectively demonstrate to the importing party that it is so and guarantee that it will remain so, based on the protection measures adopted by those responsible for sanitary or phytosanitary services.]

[e.4.1. The Party interested in obtaining recognition that an area is free from some pest or disease should request another Party to grant such recognition and should provide it with all the relevant scientific and technical information.]

[e.4.2. the party requested to grant such recognition shall issue a statement within a period of time previously agreed to with the other party and may verify inspection, testing and other procedures. if it denies recognition, it shall provide technical grounds for its decision in writing.]

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

[e.6. Parties further agree:]

[i) To hold [ongoing] consultations for the purpose of specifying in greater detail implementation of article 6 of the WTO/SPS Agreement with respect to the consideration of conditions in the regions of origin and destination of agricultural products.]

[ii) To draft [regionalization approval procedures, based on [Annex C] of the WTO/SPS Agreement, in order to avoid discriminatory treatment and] [faster] administrative procedures [related to the evaluation of the information necessary for an application for [necessary for analysis and recognition of] regionalization.]

[iii) [To improve] [To establish] notification [and dissemination] procedures, [for the purpose of making more transparent the status of] pending applications for regionalization and any situations in

which regionalization has resulted in liberalized market access. [Transparency in regionalization procedures will enable the Parties to monitor the applications and findings of other Parties, expediting the processing thereof and avoiding discriminatory treatment.]

[iv) To avoid arbitrary or unjustifiable discrimination among different Parties whenever identical or similar conditions prevail.] [During the process of analysing the requests for recognition of free areas of various pests where identical or similar conditions exist, arbitrary or unjustifiable discrimination should be avoided.]

[v) To grant standards-setting organizations in the [Hemisphere[/subregional]] [subregion] a greater role in order to facilitate the exchange of information for the study and approval of applications for regionalization [at the national level.]]

[e.7. The Parties shall enter into agreements on specific requirements whose fulfillment will allow a good produced in an area of low pest or disease prevalence to be imported if the appropriate protection level is achieved.]

[f) Transparency]

[f.1. In relation to notification of proposed sanitary or phytosanitary regulations, in accordance with the provisions in Annex B to the WTO-SPS Agreement, the Parties agree to ensure transparency and the consistency of their sanitary and phytosanitary measures with international regulations.]

[f.2. The Parties undertake to supply, at the request of an interested Party, complete and precise information on sanitary and phytosanitary measures, for the purposes of evaluating compliance with the commitments set out in this Chapter.]

[f.3. FTAA member countries agree to identify competent national authorities in the fields of animal health, plant health and food safety.]

[f.4. The Parties shall use [notification and information centers] [focal points of contact] established in the SPS Agreement as channels of communication. [When dealing with] [In the adoption of] emergency measures, the Parties agree to [notify each other in writing immediately, briefly indicating the objective and justification for the measure, as well as the nature of the problem.] [disseminate immediately through focal points of contact]

[f.5. The Parties shall make sure that there is an information center that can respond to reasonable requests from the other Party, and shall provide the relevant documentation, in accordance with the principles established in paragraph 3 of Annex B of the WTO/SPS Agreement.]

[f.6. Additionally, each Party, when proposing the adoption or modification of a generally applied sanitary or phytosanitary measure shall notify the following, [through its competent authorities:]

[i) when changes or modifications of sanitary or phytosanitary have a significant affect on trade between the Parties, at least sixty (60) days before the new provision enters into force in order to allow the other Party to make observations. Emergency situations shall be exempt from the deadline mentioned above.]

[ii) Changes that occur in the area of animal health, such as the appearance of exotic diseases and diseases included on List A of the OIE, within twenty-four (24) hours after the problem is detected.]

[iii) Changes that occur in the field of plant protection, such as the appearance of pests and diseases subject to quarantine or the dissemination of pests and diseases under official control, within seventy-two (72) hours after verification.]

[iv) Findings of epidemiological importance and significant changes related to diseases and pests not included in the previous subparagraphs that can affect trade between the Parties, within a period of no more than ten (10) days.]

[v) Parties shall have the right to submit counter-notifications of sanitary and phytosanitary measures applied by another Member, which Member shall reply to such counter-notifications within a time-frame no greater than [14 days.]] [x1 for the countries with small economies and 14 days for the other countries]

[vi) [Each] [The] Parties shall maintain an updated, free-access database on sanitary and phytosanitary measures [through focal points]. [The database shall follow homogeneous criteria.] In particular, the Parties agree to establish appropriate methods [mechanisms] for the exchange of information [concerning essential information for the cases] on the registers of importation rejected, related inspection dates, and other problems related to food safety, animal and plant health.]

[vii) Parties agree to establish an official list of enquiry points for the exchange of information and notification.]

[viii) Parties will inform each other about the appropriate national authorities for sanitary and phytosanitary issues]

[f.7. the parties shall submit notification of the causes or reasons for which a good of an exporting party is rejected.]

[g) Control, Inspection and Approval Procedures]

[g.1. The Parties shall, in accordance with this [Chapter] [Section], apply the provisions set forth in [Annex C] of the WTO/SPS Agreement, [as well as provisions established by subregional organizations], in the operation of control, inspection and approval procedures, including [those for recognizing pest- or disease-free areas and areas of low pest or disease prevalence], systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.]

[g.2. The Parties shall harmonize [or make equivalent] control, inspection and approval procedures, as well as sanitary and phytosanitary certification for the purposes of trade among them.]

[g.2. As far as possible, the member countries of the FTAA shall endeavor to harmonize their control, inspection and approval procedures for those products traded most heavily among them.]

[g.3. Any restriction of an importing member country's market access stemming from changes in control and inspection procedures without due justification shall be considered an unjustified barrier to trade.] [any change in control, inspection and approval procedures without due justification must not constitute a disguised barrier to trade among the Parties.]

[g.4. Parties may conduct inspection and verification procedures that shall consist of the following:]

[i) Evaluation of sanitary and phytosanitary services.]

[ii)Review of [assurances offered by] the inspection programs of the competent authorities.]

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

[iv) Verification of controls [in the territory of the exporting Member.]]

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

[g.5. The Parties shall [analyze] [establish] the measures necessary to carry out verification and inspection activities and the competent authorities of [each Member shall afford the assistance necessary for such activities,] allowing access to the relevant installation and information, such that the [controls and set out in this article may be [carried out effectively and satisfactorily.]]

[g.6. The Parties may permit the importation of animal or plant products or byproducts from processing plants [and other installations, once they have been] approved and certified in accordance with their respective national sanitary and phytosanitary legislation, [and without prejudice to periodic evaluations of agreed procedures] [that the mutual inspection, verification and recognition constitute a barrier to trade.]]

[h. [Safeguards] [Provisional Measures]]

[h.1. Each Party shall adopt the provisional measures necessary for the protection of human health, animal health or plant health, pursuant to article 5.7 of the WTO/SPS. These measures shall be notified to the other [Members] [[other] Parties] within twenty four [working] hours and, if so requested, consultations on the situation shall be held within [fourteen] days. [[Members shall take into due consideration any information provided during such consultations and shall endeavor to avoid any unnecessary disruption of trade.]]

[Article 18: Technical Assistance and Cooperation]

[18.1. The Parties agree to strengthen their collaboration, [particularly for countries with small economies] [towards implementation of] [on] matters within the purview of [the FTAA and] WTO SPS Committee and strengthen their collaboration in the development of international standards, guidelines or recommendations in the Codex Alimentarius Commission, the International Office of Epizootics, and the International Plant Protection Convention and the [international and] [sub]regional organizations operating within its framework.] [The Parties agree to strengthen their ...collaboration on issues pertaining to the mandate of the SPS WTO Committee and of the FTAA.]

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

a) [processing technologies] [the application of this Section];

b) [the exchange of information on new research data;] [the application of the WTO SPS Agreement;]

c) [infrastructure;] [More active participation in appropriate international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and in international and regional organizations that operate in the framework of the International Plant Protection Convention;]

d) [institutional and regulatory cooperation; [Financial strengthening and strengthening of physical and technical infrastructure of national animal health systems;]]

e) [harmonization [and equivalence] ; [Support for formulating and implementing international and regional standards;]]

f) [mutual recognition and equivalence agreements;]

- g) [risk assessment;] [Education, instruction and training of necessary human resources; and]
- h) [transparency] [Strengthening technical capacity in risk assessment and methodology for the elimination of areas of pests and disease.]
- [i) recognition of pest- or disease-free [areas] [zones];][or low incidence] or illnesses]
- [j) control, inspection and approval procedures; and]
- [k) identification, consultation and resolution of SPS-related problems [inclusive of disputes].]
- [l any relevant matters which may arise from time to time]

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

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

[18.3. As provided for under [this] Article [20], the FTAA Committee on SPS Measures, shall provide the [regular] [an annual] forum for consultation [and cooperation] as established under this [Section.] [Chapter]]

[Article _ : Special and Differential Treatment⁶]

[Article 19: [Consultations and] Dispute Settlement]

[19.1. Technical consultations]

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

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

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

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

⁶ [to be defined]

[19.2. [Consultations and] Dispute Settlement]

[19.2.1. The Parties agree to use the WTO Dispute Settlement Procedures for any formal disputes regarding sanitary and phytosanitary measures [or control, inspection and approval procedures].]

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

[Article 20: Institutional Issues]

[20.1. [through this article and] in consistency with the Provisions of this [Section] [Chapter], the Parties hereby establish [the FTAA] Committee [on Sanitary and Phytosanitary Measures] with the purpose of implementing, [inter alia] the following: [to serve as a forum for holding technical consultations. This Committee shall perform the functions of providing necessary support for implementing the provisions and attaining the objectives of the WTO SPS Agreement in the Americas.]]

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

[a) ensure compliance with [the] [this] SPS [Section of this] [Chapter];]

[b) study matters submitted by a Party that considers that an existing measure or a measure proposed by another Party affects the effective application of any commitment undertaken in this [Section] [Chapter];]

[c) evaluate and recommend to the Administration Committee proposed modifications, amendments or additions to the provisions of this [Section] [Chapter];]

[d) propose to the Administration Committee that it review existing measures or measures proposed by a Party that it feels are incompatible with the obligations of this [Section] [Chapter];]

[e) carry out other tasks entrusted to it by the Administration Committee, by virtue of the provisions of this [Section] [Chapter] and other aspects derived from same;]

[f) foster the active participation of the Parties in international [and subregional] organizations;]

[g) prepare and update a register of qualified specialists in the areas of food safety, plant protection and animal health; and]

[h) [identify and] implement the work plan of technical assistance and institutional cooperation.]

[20.2. Competent Authorities]

[20.2.1. The application of measures related to plant health, animal health, and food safety, shall be the responsibility of the [Ministers] [national organizations] [secretariat or institutions] responsible in this area, without prejudice to changes in areas of competence that may be stipulated in subsequent modifications to the administrative legislation of each of the Parties.]]

[20.2.1.1. competent authorities means authorities that are legally responsible for guaranteeing fulfillment of the sanitary and phytosanitary demands included in this chapter.]

[20.1. Recognizing the benefits from a hemispheric program of technical and institutional cooperation and assistance, a Committee on Sanitary and Phytosanitary Measures is hereby established. This Committee would provide a regular forum for consultation and cooperation to enhance the effectiveness of Parties' regulations in this area in a manner which is fully consistent with and supportive of relevant WTO rights and obligations. The Committee would address SPS issues of relevance to the Parties, including:]

[a) the development of operational guidelines to facilitate implementation of mutual recognition and equivalence agreements, product control, inspection and approval procedures, risk assessments, etc.];

[b) enhanced transparency of SPS measures, including counter-notification of such measures;]

[c) identification and resolution of SPS related problems;]

[d) institutional and regulatory cooperation;]

[e) recognition of pest or disease free areas;]

[f) hemispheric coordination in multilateral fora on sanitary and phytosanitary issues;]

[g) harmonization of relevant international sanitary and phytosanitary standards, guidelines and recommendations; and]

[h) technical assistance.]

[Article X: Special and Differential Treatment. (To be defined)]

SECTION SIX: **[INSTITUTIONAL ISSUES]**

[Article 21: Committee on Agriculture]

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

Article 22: [Consultations and] Dispute Settlement

[22.1. The FTAA [Chapter on] provisions [concerning] [for] [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]]]

[22.1. 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.]

[ANNEX 1

PRODUCT COVERAGE

**WTO Agreement on Agriculture
ANNEX 1**

PRODUCT COVERAGE

1. This Agreement shall cover the following products:

- i) HS Chapters 1 to 24 less fish and fish products, plus*
- ii)

HS Code	2905.43	(mannitol)
HS Code	2905.44	(sorbitol)
HS Heading	33.01	(essential oils)
HS Headings	35.01 to 35.05	(albuminoidal substances, modified starches, glues)
HS Code	3809.10	(finishing agents)
HS Code	3823.60	(sorbitol n.e.p.)
HS Headings	41.01 to 41.03	(hides and skins)
HS Heading	43.01	(raw furskins)
HS Headings	50.01 to 50.03	(raw silk and silk waste)
HS Headings	51.01 to 51.03	(wool and animal hair)
HS Headings	52.01 to 52.03	(raw cotton, waste and cotton carded or combed)
HS Heading	53.01	(raw flax)
HS Heading	53.02	(raw hemp)

2. The foregoing shall not limit the product coverage of the Agreement on the Application of Sanitary and Phytosanitary Measures.]

[*The product descriptions in round brackets are not necessarily exhaustive.]

^{††}This Annex will be updated automatically when changes are agreed in the WTO. This product coverage may have to be converted to conform with HS 96 nomenclature for detailed tariff negotiations.]

[ANNEX 2⁷
DEFINITION OF EXPORT SUBSIDIES

For ease of reference, this Annex contains the following texts of Articles 1.(e) and 9.1 of the WTO Agreement on Agriculture and Annex I of the WTO Agreement on Subsidies and Countervailing Measures:

i) WTO Agreement on Agriculture

Article 1

Definition of Terms

In this Agreement, unless the context otherwise requires:

(e) "export subsidies" refers to subsidies contingent upon export performance, including the export subsidies listed in Article 9 of this Agreement;

ii) WTO Agreement on Agriculture

Article 9

Export Subsidy Commitments

1. The following export subsidies are subject to reduction commitments under this Agreement:

(a) the provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance;

(b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;

(c) payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;

(d) the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;

(e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments;

(f) subsidies on agricultural products contingent on their incorporation in exported products.

iii) WTO Agreement on Subsidies and Countervailing Measures:

ANNEX I

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

[⁷ This Annex will be updated automatically when changes to any of these provisions are agreed in the WTO.]

- b) Currency retention schemes or any similar practices which involve a bonus on exports.
- c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
- d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available⁸ on world markets to their exporters.
- e) The full or partial exemption remission, or deferral specifically related to exports, of direct taxes⁹
The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;
The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;
The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;
"Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;
"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;
"Remission" of taxes includes the refund or rebate of taxes;
"Remission or drawback" includes the full or partial exemption or deferral of import charges, or social welfare charges paid or payable by industrial or commercial enterprises.¹⁰ Paragraph e) is not intended to limit a Member from taking measures to avoid the double taxation of foreign-source income earned by its enterprises or the enterprises of another Member.
- f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.
- g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes⁵⁸ in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

⁸The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

⁹For the purpose of this Agreement:

¹⁰The Members recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Members reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Member may draw the attention of another Member to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Members shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Members under GATT 1994, including the right of consultation created in the preceding sentence.

h) The exemption, remission or deferral of prior-stage cumulative indirect taxes⁵⁸ on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).¹¹ This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.

i) The remission or drawback of import charges⁵⁸ in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.

j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.]

¹¹Paragraph h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph g).

[ANNEX 12.2.1]

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

[1. DEFINITION AND SCOPE]

[1.1. Export credits for agricultural products are considered to be any type of financial activity whose source is official resources, for the purpose of improving and marketing agricultural products, for export, [covered by the FTAA Agreement on Agriculture.] [included in Annex I of this Chapter.]]

[1.2. An illustrative, though not an exhaustive list of institutions and programs to be covered by this Annex can be found below [under its appendix], and shall be periodically revised.]

[1.3. For the purposes of this Annex, official resources may take the form of credits, financing, interest rates, and export credit insurance and guarantees, among others.]

[2. DISCIPLINES]

[2.1. All export-related credit operations of [undertaken by] institutions and programs involved with official resources for agricultural products shall respect the terms of this Annex, including private and State-owned enterprises that hold exclusive or special rights to market agricultural products, resulting from statutory or constitutional rights, the exercise of which could affect their acquisitions or sales, or influence imports or exports.]

[2.2. Terms and conditions for granting of credits]

[2.2.1. General Considerations]

[2.2.1.1 This [Section] [Annex] establishes the most generous terms and conditions to be used in the context of the FTAA. All Parties, taking into account the risk of such terms and conditions becoming common practice in domestic agricultural policies, shall adopt the measures necessary to prevent such practices becoming generalized.]

[2.2.1.2 The Parties shall observe the credit terms and conditions for agricultural products that traditionally use credit terms and conditions less favorable than those authorized by this Section.]

[2.2.2. Term of payments]

[Pre-shipment operations]

[2.2.2.1 The term of payment for credit operations in the pre-shipment period is the time between the date on which the resources are available to the beneficiary and the date of maturity of the capital.]

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

[Post-shipment operations]

[2.2.2.3 The term of payment for post-shipment export financing is the time between the date of shipment or of the delivery of the goods, invoice, commercial contract, or requirements contract and the maturity date of the final capital installment.]

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

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

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

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

[2.2.3. Payment of capital]

[Pre-shipment operations

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

[Post-shipment operations]

[2.2.3.2 The principal value [of the capital] of the export credit shall be paid in a single installment or in equal and successive installments, based on the [predetermined] [mentioned] events set forth in item [2.2.3.] [2.2.2.3.]]

[2.2.4. Interest payments]

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

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

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

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

c) discounts made by importing countries.]

[2.2.5. Cash payment]

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

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

[2.2.6 Sharing of risk]

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

[2.2.7 Minimum interest rate: To be defined]

[2.2.8. General Provisions

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

[2.3. Non-compliance]

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

[ANNEX 12.2.2]

[DISCIPLINES FOR MONITORING THE PROVISION OF FOOD AID]

[1. General Considerations]

1.1 The purpose of these provisions is to ensure that food and other agricultural products exported as food aid do not displace normal commercial importations and do not act as a disincentive to domestic production in the recipient countries. In this respect, all food aid provided by the Parties in the context of the FTAA should serve only for additional consumption.

1.2 Any type of credit or donation provided by the Parties to finance commercial food aid activities should be based on standards established under these provisions.

1.3 This Annex contains an illustrative list of commercial transactions considered to be food aid.]

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

[2.1 Additional consumption is understood to mean consumption that has occurred when such food aid was not present. In order to identify this additional amount of consumption, the Parties shall use the mechanism known as Usual Marketing Requirements (UMR), to which the recipient Party shall be required to adhere, under the contractual terms governing each food aid transaction.

2.2. Any transaction for which consultation and prior notification is required shall be subject to determining the UMR, in order to ensure that the transaction results in additional consumption and does not adversely affect normal production and trade patterns for agricultural products.

2.3 The recipient Party shall, apart from the food aid received, maintain, at a minimum, the volume of importations to be specified by calculating the UMR.

2.4 The calculation of the UMR shall, however, reflect the recent import performance of the recipient Party. At the same time, considerations regarding the balance of payments and the development needs of the recipient countries may be taken into account in determining the UMR.

2.5 In order to arrive at the value of the UMR, the following procedures shall be adopted:

a) As a starting point, the aid-supplying Party shall calculate the value represented by the commercial importations of the agricultural products to be supplied through the food aid, for a representative period of time, such as, for example, the last 5 years. In order to facilitate the task of calculation, the Hemispheric Data Base¹² (HDB) shall provide the necessary trade statistics. The Party shall forward the relevant trade information to assist in the work of the HDB.

b) It should also be taken into consideration that the UMR obtained through the procedure stipulated in the preceding paragraph may be modified based on the following considerations:

b1) substantial change in the ratio between production and consumption, in the recipient Party, of the agricultural product supplied as food aid;

b2) substantial change in the balance of payments position or in the general economic situation of the recipient Party;

¹² Or equivalent to be created in the context of the FTAA.

b3) any factor that could affect the representativeness of the import statistics of recipient Parties, as well as such other factors as may be presented by the parties involved in the transactions being analyzed.

c) The UMR obtained shall be included in the prior notifications to the FTAA Agriculture Committee¹³ and shall be responsive to the interests of the party receiving the food aid and of other Parties that are food exporters.

d) For each recipient Party and for each agricultural product involved in the food aid transaction, a single UMR, valid for a given (tax, calendar or agricultural) period shall be established.

e) In case of unforeseen circumstances that substantially affect the balance of payments or the general economic situation of the recipient Party during the period when a given UMR is in force, the UMR may be renegotiated through consultations with all concerned Parties.]

[3. Procedures for notification and consultation]

[3.1 Prior to carrying out any food aid transaction, the aid-supplying Party shall:

a) hold bilateral consultations with other potentially concerned Parties, based on the interests of the Parties exporting the agricultural products included in the transaction with the recipient Party;

b) notify the FTAA Agriculture Committee¹⁴ of the main characteristics of the transaction to be carried out, in order to allow other Parties to be able to request consultations on the transactions involved.

3.2 The following transactions are exempt from the procedure established in the preceding paragraph:

a) transactions carried out through inter-governmental organizations, such as the World Food Programme (WFP), which has special rules on consultation, or inter-governmental organizations such as the United Nations International Children's Emergency Fund (UNICEF), the nature and volume of whose operations are such that they do not interfere significantly with normal patterns of production of and trade in agricultural products;

b) transactions carried out through private charitable institutions, the nature and volume of whose operations are such that they do not interfere significantly with normal patterns of production of and trade in agricultural products; and

c) Emergency situations, such as those defined below.

3.3 For the transactions enumerated in Article 3.2 supra, the donor Parties shall provide notification on an ex post facto basis, up to (x)⁴ months after the donation has been made, and shall respond to potential requests for consultations from the Parties concerned.]

[Prohibitions]

[4.1 Food aid transactions that are tied directly or indirectly too commercial importation of agricultural products or of other products or services from the Parties supplying food aid to the recipient Parties are prohibited.

4.2 In food aid transactions, the recipient Party may not re-export the products received under concessional terms to other Parties.

¹³ Or equivalent body to be created in the context of the FTAA.

¹⁴ Or equivalent body to be created in the context of the FTAA.

4.3 Likewise, the recipient Party may not export surplus quantities of those products (produced domestically), or products similar to those received in food aid, when the stocks of such products may be the result of donations or importations made under concessional terms.

4.4 When triangular transactions occur, in which an agricultural product supplied as food aid is sent to a third country for processing, that country shall ensure that the product arrives at its final destination. The same principles shall be applied to transactions in which more than three countries are involved.]

[5. Penalties]

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

[ANNEX 12.2.2.1]

[LIST OF FOOD AID TRANSACTIONS]

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

[ANNEX 12.2.2.2]

[1. An emergency situation is defined as a situation that is the result of natural disasters or disasters caused by man, that effectively contribute to or promote:

- a) the limiting of access to sources of food and/or income;
- b) the interruption of the normal functioning of the food market;
- c) the compromising of food production.

2. Following is an illustrative list of natural disasters and disasters caused by man:

- a) Natural disasters: volcanic eruptions, earthquakes, hurricanes, tornadoes, typhoons, sea quakes, torrential rains, floods, fires, pests and diseases.
- b) Disasters caused by man: civilian populations and refugees that are victims of civil conflicts and war.]

[ANNEX 13.2.3.1]

[[DOMESTIC SUPPORT:] MEASURES [AND PRACTICES THAT DISTORT PRODUCTION AND TRADE OF AGRICULTURAL PRODUCTS] EXEMPTED FROM [REDUCTION] [ELIMINATION] COMMITMENTS [FOR COUNTRIES THAT ARE NOT SMALL ECONOMIES]]

[1. General services

Policies in this category involve expenditures (or revenue foregone) in relation to programmes which provide services or benefits to agriculture or the rural community. They shall not involve direct payments to producers or processors. Such programmes, which include but are not restricted to the following list, shall meet the general criteria of Article 9, and policy-specific conditions where set out below:

- a) research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;
- b) pest and disease control, including general and product-specific pest and disease control measures, such as early-warning systems, quarantine and eradication;
- c) training services, including both general and specialist training facilities;
- d) extension and advisory services, including the provision of means to facilitate the transfer of information and the results of research to producers and consumers;
- e) inspection services, including general inspection services and the inspection of particular products for health, safety, grading or standardization purposes;
- f) marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers; and
- g) infrastructural services, including: electricity reticulation, roads and other means of transport, market and port facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidized provision of on-farm facilities other than for the reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.]

[2. Public stockholding for food security purposes¹]

[Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.]

[The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the

¹ For the purposes of paragraph 2 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.]

government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.]

[3. Domestic food aid²]

[[3.1] Expenditures (or revenue foregone) in relation to the provision of domestic food aid to sections of the population in need.]

[Eligibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidized prices. Food purchases by the government shall be made at current market prices and the financing and administration of the aid shall be transparent.]

[3.2. the party that establishes a domestic food aid program, in accordance with paragraph 4 of annex 2 to the agreement on agriculture, which forms part of the WTO agreement, shall ensure, through the instruments it deems necessary, that the benefits of this program are received only by the consumers of that party.]

[3.3. if requested by a party, consultations shall be conducted to ensure compliance with the provisions in paragraph 3.2.]

[4. Direct payments to producers. To be defined.]

[5. Decoupled income support. To be defined.]

[6. Government financial participation in income insurance and income safety-net programmes. To be defined.]

[7. Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters

(a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.

(b) Payments made following a disaster shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster in question.

(c) Payments shall compensate for not more than the total cost of replacing such losses and shall not require or specify the type or quantity of future production.

(d) Payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.

(e) Where a producer receives in the same year payments under this paragraph and under paragraph 6 (income insurance and income safety-net programmes), the total of such payments shall be less than 100 per cent of the producer's total loss.]

² For the purposes of paragraphs 2 and 3 of this Annex, the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph.

[8. Structural adjustment assistance provided through producer retirement programmes

- a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non-agricultural activities.
- b) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.]

[9. Structural adjustment assistance provided through resource retirement programmes. To be defined.]

[10. Structural adjustment assistance provided through investment aids

- (a) Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages. Eligibility for such programmes may also be based on a clearly-defined government programme for the reprivatization of agricultural land.
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than as provided for under criterion (e) below.
- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) The payments shall be given only for the period of time necessary for the realization of the investment in respect of which they are provided.
- (e) The payments shall not mandate or in any way designate the agricultural products to be produced by the recipients except to require them not to produce a particular product.
- (f) The payments shall be limited to the amount required to compensate for the structural disadvantage.]

[11. Payments under environmental programmes . To be defined]

- [a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.
- b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.]

[12. Payments under regional assistance programmes

- a) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.

- b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production.
- c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- d) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.
- e) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.
- f) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.]

[Domestic aid applied in accordance with the terms indicated in paragraphs 2, 3 and 11, shall be subject to a *de minimis* level (to be defined)]

ANNEX 13.2.3.3.

ILLUSTRATED REDUCTION TIMETABLE OF GLOBAL MEASUREMENT OF SUPPORT IN THE FTAA

(millions of US\$)

	Base	Down payment										
	AMS	50%	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Argentina	79.60	39.80	35.82	31.84	27.86	23.88	19.90	15.92	11,94	7,96	3,98	-
Brazil	912.00	456.00	410.40	364.80	319.20	273.60	228.00	182.40	136,80	91,20	45,60	0
Canada	4,301.00	2,150.50	1,935.45	1,720.40	1,505.35	1,290.30	1,075.25	860.20	645,15	430,10	215,05	0
Colombia	345.00	172.50	155.25	138.00	120.75	103.50	86.25	69.00	51,75	34,50	17,25	0
C. Rica	16.00	8.00	7.20	6.40	5.60	4.80	4.00	3.20	2,40	1,60	0,80	0
Mexico	8,387.00	4,193.50	3,774.15	3,354.80	2,935.45	2,516.10	2,096.75	1,677.40	1,258,05	838,70	419,35	0
USA	19,03.00	9,551.50	8,596.35	7,641.20	6,686.05	5,730.90	4,775.75	3,820.60	2,865,45	1,910,30	955,15	0
Venezuela	1,131.00	565.50	508.95	452.40	395.85	339.30	282.75	226.20	169,65	113,10	56,55	0

Source: Section I, Part IV, List of Commitments under the WTO]