

NOTE: The English versions of the ABF Recommendations are the original texts as approved and verified by Workshop Authorities. In case of doubts with respect to Spanish or Portuguese translations, the English version controls.

- Technical Committee

<b>LIST OF BUSINESS ORGANIZATIONS</b>		
<b>BUSINESS ORGANIZATION</b>	<b>ACRONYM</b>	<b>COUNTRY / REGION</b>
American Electronics Association	<b>AEA</b>	<b>U.S.</b>
Asociación Hispanoamericana de Centros de Investigación y Empresas de Telecomunicaciones	<b>AHCIET</b>	<b>REGIONAL</b>
Asociación de Industrias Farmacéuticas Dominicana	<b>INFADOMI</b>	<b>DOMINICAN REPUBLIC</b>
Asociación de Industrias Farmacéuticas de Origen y Capital Nacional	<b>ADIFAN</b>	<b>PERU</b>
Asociación de Laboratorios Farmacéuticos	<b>ALAFAR</b>	<b>ECUADOR</b>
Asociación Latinoamericana de Industrias Farmacéuticas	<b>ALIFAR</b>	<b>REGIONAL</b>
Asociación Nacional de Laboratorios Farmacéuticos	<b>ALAFARPE</b>	<b>PERU</b>
Automotive Trade Policy Council	<b>ATPC</b>	<b>U.S.</b>
Cámara Argentina de Especialidades Medicinales	<b>CAEMe</b>	<b>ARGENTINA</b>
Cámara de la Industria Argentina de Fertilizantes y Agroquímicos	<b>CIAFA</b>	<b>ARGENTINA</b>
Cámara de la Industria del Calzado	<b>CIC</b>	<b>ARGENTINA</b>
Cámara de Industriales Cítricos de la Argentina	<b>CICA</b>	<b>ARGENTINA</b>
Cámara de Industriales de Pichincha	<b>CIPI</b>	<b>ECUADOR</b>
Cámara Industrial de Laboratorios Farmacéuticos Argentinos	<b>CILFA</b>	<b>ARGENTINA</b>
Coalition of Service Industries	<b>CSI</b>	<b>U.S.</b>
Coalizão Empresarial Brasileira	<b>CEB</b>	<b>BRAZIL</b>
Comisión ALCA Perú	<b>CALPE</b>	<b>PERÚ</b>
Conferencia Latinoamericana de Compañías Express & Air Courier Conference of America	<b>CLADEC/ACCA</b>	<b>REGIONAL</b>
Consejo Interamericano del Comercio y la Producción	<b>CICYP</b>	<b>REGIONAL</b>
Coordinadora de Productos Alimenticios	<b>COPAL</b>	<b>ARGENTINA</b>
Council of the Americas	<b>COAS</b>	<b>U.S.</b>
Croplife Latin America	<b>CROPLA</b>	<b>REGIONAL</b>
Distilled Spirits Council of the United States (DISCUS)	<b>DISCUS</b>	<b>U.S.</b>
Federación de Agricultura del Ecuador	<b>FAECU</b>	<b>ECUADOR</b>
Federación Centroamericana de Laboratorios Farmacéuticos	<b>FEDEFARMA</b>	<b>REGIONAL</b>
Federación Latinoamericana de la Industria Farmacéutica (FIFARMA)	<b>FIFARMA</b>	<b>REGIONAL</b>
Florida Customs Brokers and Forwarders	<b>FLOCUS</b>	<b>U.S.</b>
Fundación Centro Internacional de Investigación Jurídica(*)	<b>DIGIJ</b>	<b>ARGENTINA</b>
Generic Pharmaceutical Association	<b>GphA</b>	<b>U.S.</b>
Greater Miami Chamber of Commerce - International Services Network	<b>GMCC</b>	<b>U.S.</b>
Grocery Manufacturers of America	<b>GMA</b>	<b>U.S.</b>

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Industria Fonográfica Latinoamericana	<b>IFLA</b>	<b>REGIONAL</b>
Information Technology Industry Council	<b>ITI</b>	<b>U.S.</b>
International Intellectual Property Alliance	<b>IIPA</b>	<b>U.S.</b>
International Mass Retail Association	<b>IMRA</b>	<b>U.S.</b>
International Open Finance Association Inc. (*)	<b>IOFA</b>	<b>U.S.</b>
International Steel Group Inc.	<b>ISG</b>	<b>U.S.</b>
Motion Picture Association	<b>MPA</b>	<b>U.S.</b>
National Association of Manufacturers	<b>NAM</b>	<b>U.S.</b>
National Electrical Manufacturers Association	<b>NEMA</b>	<b>U.S.</b>
NAFTA Steel Producers	<b>NSP</b>	<b>REGIONAL</b>
Private Sector Organisations of Jamaica (PSOJ) on behalf of Private Sector Organisations of CARICOM	<b>PSOJ</b>	<b>REGIONAL</b>
Semiconductor Industry Association	<b>SIA</b>	<b>U.S.</b>
Sociedad Rural Argentina	<b>SRA</b>	<b>ARGENTINA</b>
Summit of the Americas Center – Florida International University (*)	<b>SOAC</b>	<b>U.S.</b>
Tampa Bay International Business Council	<b>TBIBC</b>	<b>U.S.</b>
Telecommunications Industry Association	<b>TIA</b>	<b>U.S.</b>
Television Association of Programmers – Latin America	<b>TAP</b>	<b>REGIONAL</b>
Transparency International (*)	<b>TI</b>	<b>REGIONAL</b>
Trinidad and Tobago Chamber of Industry and Commerce	<b>TTCIC</b>	<b>TRINIDAD &amp; TOBAGO</b>
Unión Industrial Argentina	<b>UIA</b>	<b>ARGENTINA</b>
U.S. Chamber of Commerce & Association of American Chambers of Commerce in Latin America & U.S. Section of the Brazil-U.S. Business Council	<b>AACCLA</b>	<b>REGIONAL</b>
U.S. Grains Council	<b>USGC</b>	<b>U.S.</b>
U.S. Telecom Association	<b>USTA</b>	<b>U.S.</b>

**(\*) Non Business Organizations.**

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: AGRICULTURE

#### WORKSHOP AUTHORITIES

**CHAIR**: Roberto Symonds (URUGUAY)

**RAPPORTEUR**: Sarah Thorn (US)

**VICE RAPPORTEUR**: David E. Bond (US)

#### AGENDA

#### **TOPIC N° 1: TARIFF ELIMINATION PROGRAM (“TEP”) - STRUCTURE, EXTENT, AND RATE OF TARIFF ELIMINATION**

#### **CONSENSUS RECOMMENDATIONS**

Art. 6.1: Preferences and benefits given under existing sub-regional and/or bilateral agreements should not be reduced by the FTAA.

Art. 6.3: Tariffs may be increased or imposed as long as they do not exceed commitments under the TEP (Art. 6.3<sup>A</sup> should be adopted).

Art. 6.11: Acceleration of tariff reductions under the TEP agreed to by one Party should apply to imports from all Parties on an MFN basis (Art. 6.11<sup>A</sup> should be adopted).

#### **NON-AGREED ISSUES**

Art. 6.2: All non-*ad-valorem* tariffs, duties, etc. should be translated into *ad-valorem* equivalents, and the total *ad-valorem* amount should serve as the basis for reductions under the TEP.

Tariff peaks should be reduced below a specific *ad valorem* rate within five years and before the general schedule for the reduction of duties enters into effect. Thereafter, tariffs should be reduced in a linear fashion, based on specific margins of preference. “Developed” countries should eliminate duties in not more than 10 years, and Mercosur countries should eliminate duties in not more than 18 years.

Some participants took the position that a distinction should be made with respect to the time allowed to implement the TEP based on the level of development of the countries and the size of economies. Other participants took the position that a distinction should be made with respect to time allowed to implement the TEP for developed countries vs. developing countries.

Art. 6.3: The Parties should agree to not raise tariffs during the negotiation process, except to correct distortions in the marketplace created by subsidies and other practices that distort trade.

#### **TOPIC N° 2: TEP – PRODUCT-SPECIFIC COMMITMENTS**

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### **CONSENSUS RECOMMENDATIONS**

Art. 6.2: Certain products should be subject to immediate tariff elimination.

### **NON-AGREED ISSUES**

Art. 6.2: Some participants stated that the following items should be reduced immediately to zero: frozen concentrated lemon juice (HTSUS 2009.31.60 & 2009.39.60); distilled spirits, and processed foods.

Some participants took the position that all products should be covered by the TEP, with no exclusions. Some participants took the position that certain products should be excluded.

### **TOPIC N° 3: - RELATIONSHIP TO UNDERTAKINGS REGARDING EXPORT SUBSIDIES AND DOMESTIC SUPPORT MEASURES**

#### **CONSENSUS RECOMMENDATIONS**

Art. 6.9: Export subsidies and other equivalent practices should be eliminated in equal reductions during a five-year period. Within the FTAA, if a Party's exports are "affected" by imports of subsidized products from another Party, the former Party may cancel its tariff reductions with respect to the latter Party or use other remedies set forth in the FTAA. [Pending definition of terms acceptable to all parties.]

Art. 6.10: The Parties should be permitted to suspend their TEP obligations on specific products if another Party re-introduces export subsidies or does not comply with obligations regarding trade-distorting practices and/or measures with equivalent effects to export subsidies on those products. [Provisionally accepted pending definition of terms].

### **TOPIC N° 4: - PRICE BANDS**

#### **NON-AGREED ISSUES**

Art. 6.15: Some participants believe that price bands and margins should not be permitted after the FTAA enters into effect (Art. 6.15<sup>A</sup> should be adopted). Other participants believe that price bands and margins should be permitted between Parties in their reciprocal trade (Art. 6.15<sup>B</sup> should be adopted).

### **TOPIC N° 5: SAFEGUARD MECHANISMS – NATURE AND STRUCTURE OF FTAA MECHANISMS**

#### **NON-AGREED ISSUES**

## **VIII ABF FINAL RECOMMENDATIONS**

Art. 9.1: Some participants believe that the special safeguard measures for agricultural products established in Art. 5 of the WTO Agreement on Agriculture should not apply to originating goods.

Art. 9.5: Others believe that agricultural products should be covered only by the general safeguard provisions of the FTAA.

### **TOPIC N° 6: - SCOPE AND DEFINITION OF EXPORT SUBSIDIES**

#### **CONSENSUS RECOMMENDATIONS**

Art. 10: In order to improve transparency, the Parties should identify and compile information on all measures that might be viewed as trade distorting, and this information should be updated periodically. This body of information would serve as the starting point for further FTAA negotiations.

#### **NON-AGREED ISSUES**

Art. 10.1: Some participants believe that the definition of “export subsidies” regulated by the FTAA should coincide with the definition set forth in Art. 1(e) of the WTO Agreement on Agriculture (Art. 10.1<sup>A</sup> should be adopted). Other participants believe that the definition of “export subsidies” regulated by the FTAA should be broader than that set forth in the WTO Agreement on Agriculture, and should include export credits, export credit guarantees, export insurance and food aid under certain circumstances (Art. 10.1<sup>B</sup> should be adopted).

### **TOPIC N° 7: - WHETHER EXPORT SUBSIDIES BE ADDRESSED BY THE FTAA**

#### **CONSENSUS RECOMMENDATIONS**

Art. 11.1: The FTAA should require the immediate elimination of existing export subsidies, and prohibit the introduction of new export subsidies within the hemisphere.

### **TOPIC N° 8: - EXPORT SUBSIDIES - FTAA DISCIPLINES**

#### **CONSENSUS RECOMMENDATIONS**

Art. 11.4: The Parties may suspend TEP commitments with respect to imports from a Party violating its commitments regarding the elimination of export subsidies, as well as apply measures pursuant to the FTAA provisions regarding subsidies and countervailing measures (Art. 11.4<sup>A</sup> and Art. 11.4<sup>B</sup> should be adopted).

### **TOPIC N° 9: - EXPORT SUBSIDIES - ACTION REGARDING IMPORTS FROM NON-PARTIES AND EXPORTS BY PARTIES TO NON-PARTIES**

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### CONSENSUS RECOMMENDATIONS

Art. 12.2: With respect to subsidized imports from third countries Article 12.2B should be adopted.

Art. 13: The FTAA should impose disciplines on export subsidies affecting exports by Parties to non-parties (Art. 13.1<sup>B</sup>, 13.2, and 13.3 should be adopted).

### TOPIC N° 10: - DOMESTIC SUPPORT MEASURES: WHETHER SUCH MEASURES SHOULD BE ADDRESSED IN FTAA.

#### NON-AGREED ISSUES

Art. 15: Domestic support and other measures with similar effects should be disciplined under the FTAA.

Some participants suggested that the FTAA negotiators should explore ways in which the safeguard mechanism can be used to protect countries against disruptive effects of public policies and practices that distort trade.

Other participants suggested that the FTAA should create mechanisms to neutralize the trade distorting effects of domestic agriculture support programs.

### TOPIC N° 11: - DOMESTIC SUPPORT MEASURES - DEFINITION AND SCOPE OF TERM

#### NON-AGREED ISSUES

Art. 15.5-15.8: The disciplines agreed to under the FTAA should cover certain supports/measures that are excluded from disciplines under Annex 2 of the WTO Agreement on Agriculture (green box). Only measures set forth in Annex 2 under General Services, Domestic Food Aid, and payments related to natural disasters should be excluded from FTAA disciplines.

### TOPIC N° 12: - DOMESTIC SUPPORT MEASURES - FTAA DISCIPLINES

#### NON-AGREED ISSUES

Art. 15.10-15.18: Price supports and other measures covered by Section IV of the FTAA should be eliminated during same period that tariffs are eliminated under the TEP, regardless of whether a Party's commitments under the WTO Agreement on Agriculture require such elimination (Art. 15.12<sup>B</sup> should be adopted).

The Parties must eliminate price supports and other measures covered by Section IV of the FTAA immediately upon the entry into

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force of the agreement, and such measures as well as measures with similar effects, in terms of distorting trade, may not be introduced (Art. 15.10 and Art. 15.18 should be adopted).

Disciplines under the FTAA on distortive domestic supports should be simplified, and require that all Parties limit the use of such supports to 5% of the value of total agricultural production. In addition, a date certain should be agreed upon for the elimination of such supports.

A Party that provides amber box supports should not receive any preference on exports to Mercosur countries of products that are benefited. Such products should be classified as "sensitive" and excluded from the TEP.

Art. 15.20: The Parties should suspend tariff elimination under the TEP with respect to exports of a Party that fails to meet its commitments under the FTAA with respect to the elimination of price supports and other measures (Art. 15.2 should be adopted).

### **TOPIC N° 13: - STATE TRADING ENTERPRISES**

#### **CONSENSUS RECOMMENDATIONS**

Art. 17: State Trading Enterprises should be addressed under the FTAA.

Art. 17.3: Should be adopted.

Exclusive import and/or export rights granted to State Trading Enterprises shall be eliminated when the FTAA enters into effect. Art. 17.1 should be preceded by the following language "After the entry into effect of this Agreement, ..." The term "State Trading Enterprises" should be defined as set forth in Art. 17.4.

Disciplines should be imposed on a regional basis. Negotiations should proceed based on three propositions: (1) no distinction should be made between private versus state owned entities; (2) disciplines regulating the activities of such entities should be based on open market concepts, and incorporate principles recognized in the FTAA chapter on competition; and (3) certain activities of such entities can create distortions in the market similar to those created by export subsidies (including special financing arrangements).

### **TOPIC N° 14: - SPS MEASURES**

#### **CONSENSUS RECOMMENDATIONS**

Art. 17: The FTAA must be fully consistent with WTO SPS Agreement.

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Art. 18.3: The Parties should work towards harmonization of standards, negotiation of equivalence agreements, and mutual recognition agreements with respect to nutrition labeling and fortification policies.

Art. 18.3(a): FTAA provisions must comply with international scientific standards.

Art. 18.3(c)(8): Any FTAA provisions should be fully consistent with Art. 5.7 of WTO SPS Agreement.

Art. 19: Technical assistance in applying the WTO SPS Agreement should be provided by the Parties, particularly of the sort specified in paragraphs v- viii, x-xii, xiv, and xvii of Article 19.1.

Art. 21: A Committee on SPS Measures should be established and the work plan set out in Art. 21.2<sup>A</sup> and 21.3<sup>A</sup> should be adopted.

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: COMPETITION POLICY<sup>1</sup>

#### **WORKSHOP AUTHORITIES**

**CHAIR**: Rosa Bueno de Lercari (PERU)

**VICE CHAIR**: Monica Ladd (JAMAICA)

**RAPPORTEUR**: Francisco Santeiro (US)

**VICE RAPPORTEUR**: David Daniel Sokol (US)

#### **AGENDA**

#### **GENERAL RECOMMENDATIONS**

Should there be any proof of anti-competitive conduct whether by a public or private entity being carried out within a Party's territory, and that said conduct negatively affects the interests of another Party, and in the event that said apparent conduct violates the competition law of the other Party where it is occurring, the affected Party may request the other Party's corresponding authority to take appropriate action according to its own legislation.

#### **CONSENSUS RECOMMENDATIONS**

Article 6.1- "Each party shall adopt or maintain competition laws or regulations, at a national or sub-regional level, to proscribe anticompetitive conduct by private and public economic agents so as to promote economic efficiency and consumer welfare."

Article 6.2- The last sentence shall read, "In determining whether conduct is anticompetitive, Parties shall apply a rule of reason."

Article 6.2- The third bullet should read, "Concentrations, mergers, or acquisitions whose consequences harm economic efficiency and consumer welfare."

Article 6.4(b)- The text should read "permit access on a non-discriminatory basis to natural or legal persons of the Parties to its procedures for enforcing its national or sub-regional competition laws."

Article 7- Exclusions of any kind shall be prohibited by the agreement.

Article 7- Insert a new Article 7.1 "Any authorizations under national or sub-regional competition measures shall be transparent and shall be reviewed periodically by the Party or sub-regional entity to evaluate if they are no more than necessary to achieve their overriding policy objectives." "Within 6

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<sup>1</sup> All references to the text are from the 3<sup>rd</sup> draft dated September 12, 2003.

## VIII ABF FINAL RECOMMENDATIONS

months after the entry into force of this Agreement, the Parties shall notify the Committee provided for in Article 12 of any existing authorizations. Thereafter, the Parties shall notify promptly the Committee of any new or significantly modified authorizations."

Insert also Article 7.1.1, "Furthermore, a Party shall ensure that any agreement it authorizes:

- (a) Acts solely in accordance with commercial considerations in harmony with the public interest and without prejudice to the provisions in this Chapter; and
- (b) Does not use its position to engage, directly or indirectly, in anticompetitive practices in markets outside the territory of the Party or Parties who have authorized it."

Article 7.1.2 would be inserted to read, "Subject to the principles of confidentiality, Parties shall publish on a timely basis all authorizations and contracts and other commercial benefits conferred by a Government on state owned enterprises and monopolies and which confer a competitive advantage on such entities and the reason for which they were granted."

Article 7.3- Cartels of any kind, including export cartels, should be prohibited by the agreement so the brackets regarding export cartels should be removed from the text.

Article 8.2 - Insert the words "both public and private" after the word anticompetitive.

Article 8.2 - This should apply to all cartels, including export cartels.

Article 8.4 - In the second line, delete the words "agree to consider" and replace with "will provide" in relation to notification, exchange of information, consultation, positive and negative comity and coordination in related matters.

Article 9.2.1- Replace with "No provision of this Agreement shall be construed to prevent a Party from maintaining or designating a monopoly provided that it is subject to national or sub-regional rules on promotion and protection of competition"

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Article 9.2.2- We adopt Alternative A of Article 9.2.2: “Where a Party designates a monopoly and such designation may affect the interests of persons of another Party, the Party shall:

- (a) At the time of the designation endeavor to introduce such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits of trade liberalization in the FTAA; and
- (b) Provide written notification as soon as possible to the Committee established in Article 12 of the designation and the conditions referred to in item (a), if any.”

Article 9.2.3- We support the inclusion of the following language: “Each party shall ensure that any privately owned monopoly that it designates after the date of entry into force of the Agreement and any government monopoly that it designates or has designated:

- (a) Acts in a manner that is not inconsistent with the Party’s obligations under this agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good or service such as, without limitation, the power to grant import or export licenses or authorizations with respect to the supply of a service, approve commercial transactions or impose quotas, fees or other charges,
- (b) Acts solely in accordance with commercial considerations, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d),
- (c) Provides non-discriminatory treatment to investments of investors, to goods, services and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and
- (d) Does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affects covered investments. The anticompetitive practices set out in this section shall include practices that distort markets. In establishing whether a practice is

## VIII ABF FINAL RECOMMENDATIONS

anticompetitive, the Parties shall take into account without limitation:

- (1) Preferential treatment by Government entities which can distort markets where private and public enterprises compete; and
- (2) The fact that the Government may pursue objectives other than profits.

Article 9.2.4- "Paragraph 9.2.3 does not apply to procurement by governmental agencies of goods or services for governmental purposes and not with a view to commercial resale or with view to use in the production of goods or the provision of services for commercial sale."

Article 9.3.1 "No provision of this Agreement shall be construed to prevent from maintaining or establishing a state enterprise, insofar as they are subject to national or sub-regional rules on promotion and protection of competition."

Article 9.3.2 Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under this Agreement.

Article 9.3.3 Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment to investments in the Party's territory of investors of another Party in the sale of its goods or services, without prejudice to the provisions in all chapters of this Agreement.

Article 10- We accept in full Alternative B regarding state aids, namely:

- 10.1 The Parties recognize that some state aids may distort competition by favoring specific enterprises of the production of certain goods.
- 10.2 Moreover, the Parties recognize that discriminatory state aids that adversely affect competition are contrary to the objectives of this Agreement.
- 10.3 Any Party that grants state aids shall provide detailed information on the aid granted, particularly in cases where another Party feels adversely affected and so requests.

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- 10.4 If a Party that has requested detailed information on a particular case of state aid feels, after reviewing the information obtained, that it is being adversely affected by the aid being granted by another Party, it shall have the right to hold consultations in order to seek a mutually acceptable solution.
- 10.5 When a Party has requested consultations in accordance with the previous paragraph, these consultations shall be held on a mutually agreed date, but no later than 60 consecutive days after the consultations are requested.

Article 11 - The adoption of national or sub-regional competition rules, the establishment of authorities to apply such rules, and the initiation of effective application of the provisions of this Chapter shall be carried out with the flexibility and progressivity, as quickly and reasonably as possible, taking into account the differences in the level of development, size, and vulnerability of economies that merit consideration for special and differential treatment.

### Article 12.2.1 Transparency and Competition Policy Review Mechanism

"The Parties recognize transparency as a fundamental principle and shall respect this principle by disclosing, upon request; all measures, contracts and designations involving derogation from the overriding principle of competition to all Parties affected or likely to be affected by the measure, contract or designation."

### Article 12.2.2

"Further recognizing the value of transparency of government policies affecting competition, the Parties agree to establish a Competition Policy Review Mechanism with the following objectives"

Article 12.2.2 becomes Article 12.2.3.

Article 12.2.3 becomes Article 12.2.4.

Article 16 - The Parties will work together on technical assistance activities relating to the development, adoption, implementation, and enforcement of competition laws and policies and will provide for technical assistance by sharing expertise and information, training officials, sending experts to participate in events related to competition issues, and exchanging personnel; when appropriate. We support that technical assistance will be provided.

We introduce an Article 17, entitled "Transparency, Non-Discrimination, and Due Process." Article 17.1 should read "Parties shall ensure the application of

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the principles of non-discrimination, transparency and due process to the national or sub-regional competition measures adopted or maintained according to sub-article 6.1 of this chapter and to each Party's law and their enforcement."

Article 17.2 shall read "With respect to regulatory policies and practices, the Parties undertake to observe that they are in accord with the provisions of this chapter, and that their design supports the use of pro-competitive regulatory principles, and that they respect the principles of transparency, non-discrimination and due process."

### **NON-AGREED ISSUES**

Article 6.1 - CARICOM has expressed its concerns however that a positive obligation to implement, maintain and enforce competition policy would impose obligations on its member states, which having regard to their size, level of development and status as small economies would prove unduly onerous. For this reason, CARICOM will insist that the implementation of its obligations be conditional upon the finalization of acceptable proposals regarding technical assistance, cooperation and transitional measures.

Article 11 - Special consideration is to be given to the CARICOM countries.

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: DISPUTE SETTLEMENT

#### **WORKSHOP AUTHORITIES**

**CHAIR**: DEBRA P. STEGER (CANADA)

**VICE CHAIR**: MANUEL JOSE VIAL VIAL (CHILE)

**RAPPORTEUR**: JULIO CESAR BARBOSA (UNITED STATES)

**VICE RAPPORTEUR**: JOSE ANTONIO SANTOS (UNITED STATES)

#### **CONSENSUS RECOMMENDATIONS**

##### **AGENDA**

##### **TOPIC N° 1: SCOPE OF APPLICATION**

Art. 1.10 The definition of “measure” for the purposes of this Agreement should include laws and regulations that are legally in effect, but which have not yet been applied.

##### **TOPIC N° 2: CONSULTATIONS AND ESTABLISHMENT OF PANELS**

Art. 7.43 Party to Party consultations must take place prior to the complaining Party proceeding to request the establishment of a neutral panel.

Art. 11.57 If consultations fail to reach a mutually agreeable resolution, the complaining Party may request the establishment of a neutral panel.

##### **TOPIC N° 3: APPELLATE BODY**

Arts. 29 and 30 There should be an Appellate Body, based on the model established by the Appellate Body of the World Trade Organization.

##### **TOPIC N° 4: NATURE OF FINAL DECISION**

Art. 34.173 The final decisions of the neutral panels and, where there has been an appeal, of the Appellate Body, are compulsory and binding on the Parties to the disputes.

##### **TOPIC N° 5: IMPLEMENTATION OF THE FINAL REPORT**

Art. 27.136 Prompt compliance with recommendations and rulings of the neutral panels and of the Appellate Body is essential in order to ensure effective resolution of disputes.

Compliance normally means removal or repeal of the measure found to be inconsistent with this Agreement.

##### **TOPIC N° 6: DETERMINATION OF COMPLIANCE**

Art. 28.143 Where there is disagreement between the complaining Party and the Party complained against as to the existence or consistency with this Agreement of measures

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taken to comply with the recommendations or rulings of a neutral panel and/or the Appellate Body, such disagreement shall be resolved through recourse to the original neutral panel, where it is available.

Art. 28.XXX Where the Party complained against is a developing country Member, the compliance panel shall take into account the provisions on differential treatment in Article 5 of this Chapter.

### TOPIC N° 7: COMPENSATION AND SUSPENSION OF BENEFITS

Arts. 35.178/189 In the event there is a failure of a Party to comply with the rulings and recommendations of a neutral panel and/or the Appellate Body, the Parties to the dispute shall enter into negotiations relating to compensation.

If such negotiations are not successful, the complaining Party may suspend concessions and benefits of equivalent effect until such time as the non-complying Party complies with the rulings and recommendations of the neutral panel and/or the Appellate Body.

### TOPIC N° 8: TRANSPARENCY

Art. 39.210 Members of the public shall have access to all documents submitted in connection with proceedings of the neutral panels and of the Appellate Body as well as to the final decisions of the panels and the Appellate Body, except to the extent such documents contain business confidential information as defined in this Chapter.

Art. 39.210 Hearings of a neutral panel and of the Appellate Body shall be open to the public, except to the extent necessary to prevent the disclosure of business confidential information as defined in this Chapter.

Art. 39.XXX A neutral panel or the Appellate Body may permit members of the public to submit written briefs upon the invitation of the neutral panel or the Appellate Body, or by agreement of the Parties to the dispute.

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: GOVERNMENT PROCUREMENT

#### **WORKSHOP AUTHORITIES**

**CHAIR**: Marco Vinicio Ruiz (COSTA RICA)

**VICE CHAIR**: Yolanda Pereira (PARAGUAY)

**RAPPORTEUR**: Devang Desai (US)

**VICE RAPPORTEUR**: Fernando Margarit (US)

#### **AGENDA**

**Treaty Section / Topic:** Article II, III / Non-discriminatory Treatment

##### **General Recommendations:**

Parties implementing legislation should use available international models.

Open and competitive procurement process in all FTAA Member countries that allows participation by all entities, domestic and non-domestic.

Creation of an article within the government procurement chapter dealing with transparency issues, including opportunities for public comments.

Creation of an article within the government procurement chapter dealing with bribery, corruption issues and criminal penalties for same.

##### **Consensus Recommendations:**

Art. II.2 (a): Laws, regulations, procedures and practices relating to government procurement should be transparent.

##### **Non-Agreed Issues:**

Art. III.1: Should chapter's coverage include goods, services and public works? (ITI – public concessions should be included) (CEB – public services should not be included)

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**Treaty Section / Topic:** Art. IV / Prohibition of Offsets

##### **Non-Agreed Issues:**

Art. IV: Should under-developed and/or smaller companies be permitted to use setoffs? (CEB indicated that wording was too broad on AACCLA setoff language)

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**Treaty Section / Topic:** Art. VII / Scope of Application

##### **Consensus Recommendations:**

## VIII ABF FINAL RECOMMENDATIONS

*Creation of new Art.VII.6:* License renewal should be presumed without qualifying them when dealing with large infrastructure projects.

Art. VII.1: The agreement should cover all products and services.

### **Non-Agreed Issues:**

Art. VII.1: Certain parties are concerned about the ability of their federal governments to require lower level governments to become obligated by the provisions of the FTAA.

Art. VII.1: In view of the existence of different national frameworks, it is recommended that a reasonable transition period be instituted to allow all levels of governments to be entirely committed to the terms of the FTAA.

Art. VII.3: Concessions or licenses for public services should not be included within the scope of the chapter. (CEB)

Art. VII.3: Should exclusions be incorporated through negative or positive lists?

---

**Treaty Section / Topic:** Art. VIII / Thresholds

### **General Recommendations:**

Transparent competition is preferred for all types of countries.

Addition of Art. VIII.1 (e) should state that the floor for contracts that fall within the scope of the chapter should be adapted for small and medium sized businesses.

### **Non-Agreed Issues:**

VIII.1: How should threshold levelTw (I Tj ad/de terj ads?) Tj3337 0 TD 0 Tc -0.21 Tw ( ) Tj

## VIII ABF FINAL RECOMMENDATIONS

Art. IX.1.B: Among the areas excepted from the agreement: government procurement agreements should not apply to technological development efforts. (CEB)

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**Treaty Section / Topic:** Art. X / Dissemination of Laws and Regulations

**Consensus Recommendations:**

Art. X.1 (b): There should be broad dissemination including through electronic systems and media.

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**Treaty Section / Topic:** Art. XII / General Principles Governing Procurement Procedures

**Consensus Recommendations:**

Art. XII.2: Replace “the aim of which is to limit or exclude competition” with “the aim **or effect** of which is to limit or exclude competition...”

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**Treaty Section / Topic:** Art. XIV / Limited Tendering

**Consensus Recommendations:**

Art. XIV.1: Conditions of payment should be similar regardless of country of origin of bidder.

---

**Treaty Section / Topic:** Art. XV / Publication of Invitation to Tender

**Consensus Recommendations:**

Art. XV.1: At least a minimum of 60 days notice is required prior to the closing of the bid for an opportunity to submit bids.

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**Treaty Section / Topic:** Art. XVI / Content of Invitation to Tender

**General Recommendations:**

## VIII ABF FINAL RECOMMENDATIONS

Procurement should be considered based on performance and value. The product or service that best meets the objective criteria the government is trying to achieve should be awarded the contract.

Bidding documents should specify the relevant factors, in addition to price, which are to be considered in the bid evaluation and the formula by which they will be applied.

### **Consensus Recommendations:**

Art.XVI.1: Objective factors such as value for money and performance of product should be considered.

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**Treaty Section / Topic:** Art. XVII / Time Periods for Responses

### **General Recommendations:**

There should be a timely and adequate notice to bid.

### **Consensus Recommendations:**

Art.XVII.1: The time period to respond to a bid solicitation should be a minimum of 60 days and no maximum period should be specified.

---

**Treaty Section / Topic:** Art. XIX / Basis of Tender Documentation

### **General Recommendations:**

The tender documents should be made publicly available and all bids should be opened in public, in the presence of all available bidders. In addition, all awards of bids should be published.

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**Treaty Section / Topic:** Art. XX / Registries, Qualifications, and other Conditions for Participation of Suppliers

### **General Recommendations:**

Maximum transparency is best.

All information should also be available over the Internet.

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## VIII ABF FINAL RECOMMENDATIONS

**Treaty Section / Topic:** Art. XXI / Application of Technological Specifications

### **Consensus Recommendations:**

Art. XXI: Neutral internationally recognized standards should be adopted. Performance standards should be used to ensure that equivalent products are treated equally. Bidders' rights to their technical data and their patents must be protected in the procurement process. Inappropriate transfer of proprietary technical information should be sanctionable. Software should be procured on its merits and not simply on the model of its development.

Art. XXI.1: Technological specifications should not be used as barriers for trade.

### **Non-Agreed Issues:**

Art. XXI: The WTO Government Procurement Agreement should not serve as a floor for the procurement chapter. (CEB)

---

**Treaty Section / Topic:** Art. XXIV / Evaluation of Tenders and Awarding of Contracts

### **General Recommendations:**

Provide a definition of value, although Art. VIII.1.B provides some guidance as to what value is.

Objective criteria should be utilized.

### **Consensus Recommendations:**

Art. XXIV.5: Contracts should be awarded to the lowest compliant bidder or to the bid offering the best overall value (as specified in advance in the tender documentation) on the basis of objective criteria.

---

**Treaty Section / Topic:** Art. XXV / Dissemination and Publication of the Awarding of the Contract

### **Consensus Recommendations:**

Art. XXV: Awards should be widely published in either paper or electronic formats.

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## VIII ABF FINAL RECOMMENDATIONS

**Treaty Section / Topic:** Art. XXVIII / Dispute Settlement

### **General Recommendations:**

The NGGP agreed to defer the analysis of the article on dispute settlement to see the discussion on the issue in the NGDS. (Footnote 6 of Art. XXVIII)

Transparency is necessary to provide breaching parties with a proper recourse.

There should be timely, transparent, effective and impartial challenge procedures, use of which would not prejudice participation in on-going or future procurement activities.

### **Consensus Recommendations:**

Art. XXVIII: It should consider a mechanism for the parties to promote and assess compliance and to offer technical assistance.

### **Non-Agreed Issues:**

Art. XXVIII: Should there be a separate set of rules that apply to government procurement or should the general dispute resolution chapter of the FTAA apply?

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**Treaty Section / Topic:** Art. XXIX / Requirements for Technical Assistance

### **General Recommendations:**

There should be mandated professional standards, training and pay for government procurements officials.

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**Treaty Section / Topic:** Art. XXX / Treatment of the Different Level of Development and the Size of the Economies.

### **General Recommendations:**

The parties support technical assistance to smaller developing countries in order to assist them to meet their obligations under the government procurement chapter.

Retain provisions for special and differential treatment for smaller developing countries within the provisions of the FTAA.

### **Non-Agreed Issues:**

## VIII ABF FINAL RECOMMENDATIONS

Art. XXX: Developing countries should not be treated differently in terms of the government procurement chapter. (CANIFARMA-Mexico)

Art. XXX: Provide definitions for breaking points for the various types of treatments for each country. (CEB)

Art XXX: How can you differentiate among the size of companies? In order to bid, there are pre-qualifications in order for one to submit a bid in the first place. (Ecuador Chamber of Commerce)

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: INSTITUTIONAL ISSUES

#### WORKSHOP AUTHORITIES

**CHAIR:** PEDRO REUS (CHILE)

**RAPPORTEUR:** LUCIA MADURO (BRAZIL)

**VICE RAPPORTEUR:** MARIA CURRIER (US)

#### GENERAL STATEMENTS

The establishment of this workshop in the ABF is a response to the need of the private sector for an opportunity to discuss the principal aspects of the institutional framework of the FTAA.

The workshop focused on issues of transparency, the importance of formalizing the Business community's participation in the FTAA and to provide an organized forum for the participation of Civil Society. The workshop participants believe that in order for the FTAA to be successful, the institutional framework must recognize the aspects mentioned above.

The workshop participants appreciated the visit from Mr. Mario Matus, President of the Official Institutional Issues Negotiating Group. Mr. Matus shared with the participants the actual status of various aspects of the negotiations for Institutional Issues. A dialogue between the participants and Mr. Matus ensued which was very informative, useful and productive for the workshop attendees.

The Chair opened the workshop session by providing a summary of the procedures and presented a revised agenda, which was approved by the participants.

#### AGENDA

#### CONSENSUS RECOMMENDATIONS

##### **TOPIC No. 1: ATTENDANCE OF THE OFFICIAL NEGOTIATORS AT THE ABF**

The visit of the Official Negotiators responsible for the specific sections of the FTAA agreement being discussed at the workshops should be institutionalized.

##### **TOPIC No. 2: SHOULD THERE BE VOTING OR RULE BY CONSENSUS?**

Article 17.2 Decisions shall be made by consensus among the Parties.

##### **TOPIC No. 3: SHOULD TRANSPARENCY BE ADDRESSED IN THE FTAA?**

## VIII ABF FINAL RECOMMENDATIONS

Preamble Transparency and access to information are essential to permit equal and fair participation in the FTAA

### **TOPIC No. 4: ASSISTING SMALLER ECONOMIES IN COMPLYING WITH TRANSPARENCY**

Article 6. In order to implement transparency, smaller economies will need special assistance.

### **TOPIC No. 5: CHARACTERISTICS OF THE SECRETARIAT**

Article 18. The Secretariat must have the technical competence and independence, with the appropriate resources to provide technical support to ensure effective implementation of the FTAA agreement.

### **TOPIC No. 6: WHAT SHOULD BE THE ROLE OF CIVIL SOCIETY IN THE FTAA?**

The ongoing participation of the Business Organizations should be institutionalized in the FTAA.

The ongoing participation of the Committee for Civil Society must be maintained in the FTAA to provide a forum to address economic and trade issues related to the agreement and their impact on society.

### **TOPIC No. 7: ADDRESS THE RELATIONSHIP BETWEEN FTAA AND OTHER TRADE AGREEMENTS**

FTAA shall not impede the advancements or affect the institutional frameworks of existing subregional trade agreements to the extent they exceed the scope of the FTAA.

### **NON AGREED RECOMMENDATIONS**

#### **TOPIC No. 1: WHETHER LABOR AND ENVIRONMENT SHOULD BE ADDRESSED IN FTAA**

Labor and environment should not be included in the FTAA (CEB-Brazil; CICYP; FEDECAMARAS-Venezuela; Fundación Pro-ALCA-Panama; US-Panama Business Council-Panama; UIA –Argentina)

Labor and environment should be addressed in the FTAA (Corporación Para el Desarrollo de las Exportaciones de Puerto Rico-US)

## VIII ABF FINAL RECOMMENDATIONS

### **TOPIC No. 2: SHOULD TRANSPARENCY BE ADDRESSED IN THE FTAA?**

The concept of transparency should be incorporated throughout the text rather than in a separate chapter (CAIC-CARICOM; CEB-Brazil; CICYP; UIA-Argentina)

A separate chapter on general transparency rules and specific transparency provisions as applicable to the various articles of the FTAA should be considered (FEDECAMARAS-Venezuela)

### **TOPIC No. 3: SHOULD THE SECRETARIAT HAVE TRADE POLICY REVIEW FUNCTIONS?**

FTAA should include a general trade policy review mechanism (FEDECAMARAS-Venezuela)

Based on the current state of negotiations, a determination of a trade policy review mechanism is premature. (CEB-Brazil; UIA-Argentina)

FTAA should include a trade policy review mechanism but only to the extent not covered by the WTO. (Fundación Pro-ALCA-Panama)

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: INTELLECTUAL PROPERTY RIGHTS

#### WORKSHOP AUTHORITIES

**CHAIR:** Zaida Lugo Lovaton (DOMINICAN REPUBLIC)

**VICE CHAIR:** Francisco Allende (VENEZUELA)

**RAPPORTEUR:** Mark Smith (US)

**VICE RAPPORTEUR:** Corinne Young (US) – Michael Buchenhorner (US)

#### AGENDA

**Topic 1: Should there be a chapter on IPR and if so what should be the nature and scope to other IP Agreements?**

#### **GENERAL STATEMENTS**

#### **CONSENSUS RECOMMENDATIONS**

If there is to be an IPR chapter in the FTAA, TRIPS should serve as its legal basis.

#### **NON-AGREED RECOMMENDATIONS**

No consensus regarding the inclusion of a chapter on IPR in the FTAA Agreement.

In favor of having a IPR chapter: CLADEC, INTERFARMA, INTA, CROPLIFE Latin America, CAEME, FIFARMA, ARGENTINA INTERNATIONAL COMPETITION ROUNDTABLE, ITI, SIA, CropLife America, ALETI, IFPI, PhRMA, IIPA

Against having an IPR Chapter: ALIFAR, CILFA, ADIFAN (PERU), INFADOMI, ALAFAR, CIAFA

Of those in favor of having an IPR CHAPTER IN FTAA, the following are in favor of having it reflect only WTO/TRIPS commitments: CEB,

Of those in favor of having an IPR CHAPTER IN FTAA, the following are in favor of having it reflect WTO/TRIPS PLUS commitments: CLADEC, INTERFARMA, INTA, CROPLIFE Latin America, ARGENTINA INTERNATIONAL, Latin-American IT Industry Association (ALETI), COMPETITION ROUNDTABLE, PhRMA, FIFARMA, CropLife America

The following are against having an IPR Chapter in the FTAA but in the scenario that a chapter will be included, support having it reflect only WTO/TRIPS commitments: ALIFAR, INFADOMI, CILFA, ADIFAN, ALAFAR, CIAFA.

## VIII ABF FINAL RECOMMENDATIONS

**Note:** FIFARMA represents AMIIF(Mexico), AFIDRO(Colombia), CAVEME(Venezuela), ALAFARPE(Peru), CAEME(Argentina), ASOPROFAR(Ecuador), FEDEFARMAS(Central America) and CIF

**Note:** ALIFAR represents ALAFAR, INFADOMI, CILFA, ADIFAM, ASINFAR, ANAFAM, ASILFA

**Topic 2: What shall constitute an act of unfair competition?**

### CONSENSUS RECOMMENDATIONS

Paris Convention and TRIPS language should be reflected on FTAA'S definition of unfair competition.

### NON-AGREED RECOMMENDATIONS

**Topic 3: Technology transfer promoted under what conditions?**

### CONSENSUS RECOMMENDATIONS

Support of Trips Article 7: "The protection and enforcement of Intellectual Property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare, and to a balance of rights and obligations" adding "on a commercial basis".

Suggestions:

CAEME...

-Multilateral, regional and domestic financial institutions should provide assistance for companies looking to improve their research and development capacity in order to receive technology transfers.

- Technology transfer should be included but not mandated.

**Topic 4: Exhaustion of Rights**

### NON-AGREED RECOMMENDATIONS

- Support a national basis system: INTA, PHRMA, INTERFARMA, FIFARMA, ABPI,
- ASINFAR: against exhaustion of rights as it is a step back from Doha.
- INTA, ITI object to article 4 of trademark chapter.
- ABIFAR supports article 4 of trademark chapter.
- No consensus on article 6 of patent chapter and PHRMA, INTERFARMA, FIFARMA, ABPI, expressed similar positions to support a national basis system.

## VIII ABF FINAL RECOMMENDATIONS

- CEB : System could be changed to international exhaustion of rights in the case of abuse and national emergency.

### **Topic 5: Protection of Public Health**

Consensus Recommendations

Support the WTO Doha Declaration on Public Health

NON-AGREED RECOMMENDATIONS

No consensus on Art. 1 paragraph 4 : "No provision of this chapter prevents, and should not prevent, any party from adopting measures to protect public health, and it should be interpreted and implemented in a manner that takes into account each parties' right to protect public health and, in particular, to promote access to existing medicines and to the research and development of new medicines".

### **Topic 6: Distinctive Signs: Protection of Service Marks and Geographical Indications.**

Consensus Recommendations

1. Same treatment of service marks as provided to trademarks throughout the FTAA
2. Removing the visual perception requirement for trademarks

NON-AGREED RECOMMENDATIONS

Against protection of G.I.: Council of the Americas

For G.I.: DISCUS supports Art. 4.1 paragraph; article 7.1 of G.I. Chapter. Against articles 5.1; and articles 2.1 and 2.2. as definitions and supports adopting the TRIPS definition of G.I.

INTA: Objects to the provisions in the draft FTAA that go beyond the protections afforded in TRIPS. INTA supports the principle of "first in right, first in time" system. FIFARMA/Comision Alca Peru: Supports Arts. 1.1, 3, 4, 5

### **Topic 7: Undisclosed Information: Should greater protection be afforded for undisclosed information against its use by non authorized third parties?**

NON-AGREED RECOMMENDATIONS

No agreement on Art. 1.2 regarding protection of undisclosed information.

GphA: . Opposes 1.2 and 1.4. Recommends substitute text "Each country should decide whether there should be a time frame for the protection of

## VIII ABF FINAL RECOMMENDATIONS

undisclosed information. If they do decide there should be a time frame it should not exceed U.S. standard.”

Croplife Latin America, CropLife America, FIFARMA: Increase 1.2 and 1.4 protection to 10 years for agrochemicals.

CAEME, FIFARMA support Art. 1.2

PHRMA suggests that the protection of sec. 1.1 is not sufficient and that the protection of 1.2, 1.4, and 1.5 is necessary

ALIFAR, CIAFA suggests elimination of 1.2, 1.3, 1.4, and 1.5

PHRMA, INTERFARMA, CAEME: Use USA and European Union as a model for protection.

CIAFA: Add letter c) to Art. 1 of Section 10: “this protection does not imply the granting of rights to the exclusive use of data, nor does it prevent the use of confidential information for registration for determining equivalency.”

### **Topic 8: Copyrights. Scope and harmonization of term of protection. Recognition of the legitimacy of collective administration societies.**

#### Consensus Recommendations

Support wording of Chapter on Copyrights with exceptions noted below.

**Support version No. 2 of Art. 4.1:** Each Party shall provide that authors, performers and producers of phonograms and their successors in interest have the right to authorize or prohibit all reproductions, in any manner or form, permanent or temporary (including temporary storage in electronic form).

-FLA: Article 18 should specify phonograms term of protection to be 95 years from end of year of publication

-ABPI: supports life of author plus 70 years

- ALETI: Replace the word “software” with the words “computer programs” all throughout the treaty.

- Regarding Enforcement:

Provide deterrent levels of criminal penalties and remedies (including as CR infringement as “serious” offenses and predicate offenses under organized crime provisions”

Provide deterrent levels of civil fines and damages for CR infringemente, including pre established “statutory” damages

Ensure ex officio actions in criminal cases

Ensure ex officio authorities for custom officials

Execute civil ex parte search orders in an expeditious manner and without unnecessary costs

## VIII ABF FINAL RECOMMENDATIONS

Extend civil and criminal remedies to cover violations of the technological protection measures and rights management information obligations  
Award fees/costs and require information  
Provide presumptions of authorship and subsistence  
Provide domain name registrant contact data

- Regarding Copyright:
  - o Adopt second option of Art. 8.2
  - o Adopt second option or Art. 10.1
  - o Adopt First option of Art. 16. 1 a) and introduce the definition of Art. 4.1 (second version)
  - o Art. 16.1 e) Erase first version and second paragraph
  - o Art. 16.1 f) Include exclusive right of communication as written in Arts. 8.1 and 8.2
  - o Eliminate Art. 16.2
  - o Adopt 3<sup>rd</sup> version of Art. 20.1
  - o Adopt 2<sup>nd</sup> version of Art. 21.1

### NON-AGREED RECOMMENDATIONS

-Wording of Art. 23

**Topic 9: Patents. Patentable subject matter. Rights conferred by patents. Extension of term of protection. Compulsory licenses.**

### CONSENSUS RECOMMENDATIONS

Art. 27 through 31 of TRIPS should be implemented.

### NON-AGREED RECOMMENDATIONS

All issues listed on the topic reached no consensus.

**Topic 10. Enforcement. To what degree should the FTAA mandate procedures for the resolution of IP disputes among the parties? Potential arbitration mechanism.**

### NON-AGREED RECOMMENDATIONS

TBIBC: Part III of the agreement is vague and insufficient and therefore suggests the creation of an arbitration body and adjudication venue for the purpose of resolving disputes on a hemisphere basis among private parties.

ALIFAR: IP dispute resolutions should be dealt with in a general dispute resolution body created by FTAA and not separately. If no general dispute resolution body is created by FTAA, IP dispute resolutions should be dealt

## VIII ABF FINAL RECOMMENDATIONS

with within OMC and not in the IPR chapter of FTAA. Agrees that Enforcement should be dealt with in the FTAA IPR chapter.

CLADEC: Suggest at minimum the WTO/TRIPS enforcement mechanism. Under the FTAA umbrella provide compensation in the event of a violation as well as the ability to seek injunctive relief.

INTERFARMA, FIFARMA: Arbitration should be dealt with within an FTAA general dispute resolution body while enforcement should be the subject of a special IP chapter.

INTERFARMA, FIFARMA, CEB: Technical assistance and financial assistance should be provided for enforcement in the hemisphere.

ALIFAR: Objects to forcing member countries to provide obligatory financial assistance.

INTA: Generally supports the 1. Implementing enforcement provisions of PART III of TRIPS; 2. WIPO Model Anti – Counterfeiting and Anti – Piracy laws; 3. WCO Model legislation and recommends that the FTAA adhere to these guidelines in most respects.

### Topic 11. International Treaties

#### CONSENSUS RECOMMENDATIONS

Enforce Art. 5.2 paragraphs a (Berne Convention), b (Paris Convention), d (Rome Convention), j (Copyright Law Treaty) and i WPPT articles 1-23

#### NON-AGREED RECOMMENDATIONS

Adoption of Madrid Protocol and Hague Agreement relative to international filing of industrial designs

Adoption of the Trademark Law Treaty, Patent Law Treaty, PCT

### Topic 12. Linkage

#### NON-AGREED RECOMMENDATIONS

No agreement on linkage

For linkage: PHARMA, FIFARMA, INTERFARMA

Against Linkage: ABIFINA, ALIFAR

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: INVESTMENT

#### **WORKSHOP AUTHORITIES**

**CHAIR**: Eduardo Vallarino (PANAMA)

**VICE CHAIR**: Gabriel Pasos (NICARAGUA)

**RAPPORTEUR**: Jeanne Broad (US)

**VICE RAPPORTEUR**: David Wernick (US)

#### **AGENDA**

#### **TOPIC N° 1: DISPUTE SETTLEMENT**

#### **GENERAL RECOMMENDATIONS**

*Articles 13- 15:*

1. The parties agree that all investment, whether national or foreign, should be undertaken within a framework providing for transparency, respect for the rule of law, and the timely and impartial resolution of disputes.
2. FTAA should be an opportunity to enhance the legal systems and institutions of all the parties so that the same protections and access to dispute resolution mechanisms are given to both foreign and national investors.
3. The scope of protections and mechanisms for resolution of investor issues includes currently available remedies such as state-to-state, investor-to-state (for those countries that have adopted this principle), and internationally recognized institutions.
4. Once a dispute resolution mechanism is undertaken, this mechanism should constitute the exclusive means of resolving this dispute and the resolution should be final.

#### **NON-AGREED ISSUES**

*Article 15.7:*

Some participants (including the Council of the Americas, National Association of Manufacturers, the US Council for International Business, the Coalition of Service Industries, CLADDEC/ACCA and AACCLA) believe foreign investors should have access to international arbitration as a means of settling disputes. This could include submission of disputes to the ICSID. Other participants, including CEB, presented reservations about the use of investor-to-state dispute mechanisms.

## VIII ABF FINAL RECOMMENDATIONS

### **TOPIC N° 2: NATIONAL TREATMENT**

#### **GENERAL RECOMMENDATIONS**

Foreign investors should be accorded national treatment. National treatment should apply to the full range of activities related to investment, including the establishment of investment.

#### **CONSENSUS RECOMMENDATIONS**

*Article 2.1:* Parties should accord investors of another Party treatment no less favorable than it accords to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of the investment.

### **TOPIC N° 3: PRUDENTIAL MEASURES**

#### **CONSENSUS RECOMMENDATIONS**

*Article 2.3:* Prudential measures should be applied equally to domestic and foreign entities. However, smaller economies should be accorded appropriate transition periods to conform to the application of the requirement for equal treatment.

### **TOPIC N° 4: PERFORMANCE REQUIREMENTS**

#### **GENERAL RECOMMENDATIONS**

*Article 7:* The FTAA should be constructed to encourage investment and make it attractive. That is the basic principle.

#### **CONSENSUS RECOMMENDATIONS**

*Article 7.1:* All FTAA countries shall adopt and fully implement disciplines on performance requirements at a minimum in accordance with the World Trade Organization (WTO) Agreement on Trade-Related Investment Measures (TRIM's) upon entry into force of FTAA.

*Article 7.7:* This article does not preclude the enforcement of contractual commitments between private parties where the agreement is demonstrably free from government influence.

## VIII ABF FINAL RECOMMENDATIONS

### **TOPIC N° 5: MFN TREATMENT FOR FOREIGN INVESTMENTS**

#### **CONSENSUS RECOMMENDATIONS**

Article 3.1: Subject to any applicable reservations for current bilateral or subregional agreements, foreign investors should be accorded MFN treatment. Hence, each party shall accord to investors of another Party treatment no less favorable than that it accords to investors of any other Party or any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

### **TOPIC N° 6: MOVEMENT OF PERSONNEL**

#### **CONSENSUS RECOMMENDATIONS**

*Article 8.1:* Investors have the right to hire their top managerial or other key personnel irrespective of nationality and bring them into the country where the investment is located.

*Article 8.4:* FTAA Parties should allow an “FTAA visa” where existing visa categories are insufficient to allow free movement of the persons required to support an investment. This “FTAA visa” should allow investor personnel to travel freely to conduct their business, promote their services, make business contacts, explore business opportunities or meet contractual obligations.

### **TOPIC N° 8: LABOR AND ENVIRONMENTAL ISSUES**

#### **GENERAL RECOMMENDATIONS**

We wish to reaffirm the recommendations made in Quito that labor topics should be addressed exclusively in the ILO and that environmental topics should be dealt with in specialized fora.

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: MARKET ACCESS

#### WORKSHOP AUTHORITIES

**CHAIR:** Jorge Ramirez-Ocampo (COLOMBIA)

**VICE CHAIR:** Campos De Moya (DOMINICAN REPUBLIC)

**RAPPOREUR:** Jorge Luis Bardier (URUGUAY)

**VICE RAPPOREUR:** Lenny Feldman (US)

#### AGENDA

##### GENERAL STATEMENTS

*The Market Access delegates wish to express their sincere appreciation to Dr. Felipe Jaramillo, Chairman of the MANG, for explaining the current status of the negotiations. We recommend that this practice be maintained in future meetings.*

*All recommendations should be forwarded to the TNC to ensure that the Negotiating Groups take them into account.*

*Delegates propose that another ABF meeting should be organized to coincide with the next FTAA Ministerial. Its objective would be to analyze the results that have been achieved and to provide a further opportunity for the Hemispheric business community to exchange ideas and address common concerns.*

##### TOPIC NO. 1: TARIFFS AND NON-TARIFFS MEASURES

##### CONSENSUS RECOMMENDATIONS

Art. 2.1, 2.2 Application of national treatment, no less favorable than treatment to any other like goods.

*The application of national treatment to the sale, offering for sale, purchase, transportation, distribution and use of goods as well as its application to digital products should be considered by the Services Negotiating Group (as opposed to Market Access Negotiating Group).*

Art. 4, 4.4 Process to implement Tariff Elimination Program.

*Utilize four phase-out buckets (e.g., immediate, 5 years, 10 years and longer). As agreed in Quito, the Parties should have sectoral agreements proposed by specific sectors to facilitate the process of integration and tariff reduction. The Government and private industry should work together to identify these sectors.*

*Any tariff elimination regarding digital products should be covered in the Services Negotiating Group.*

## VIII ABF FINAL RECOMMENDATIONS

Art. 4.2 Basis for tariff elimination process.

*Base should be applied rates under the WTO.*

Art. 4.3 Prohibition to increase or adopt any new duties on originating goods higher than that committed to by Party.

*In the case of products first produced in a Party where such imported products would have a tariff lower than 3.5%, such products could carry the same rate as other similar products classified in the Harmonized Tariff Schedule. The rate for the product will be aligned with the tariff reduction schedule.*

Art. 4.9A and B Applying preference when a party increases or decreases duty rates.

*If a Party increases duty rates, apply preference on base tariff. If a Party reduces duty rates, automatically apply preference on new duty.*

Art. 4.12 Extending accelerated tariff concessions to (bracketed) "the rest of the Parties" or "only to those Parties that agreed to the acceleration."

*The accelerated tariff concession should apply to all Parties if consistent with the TEP.*

Art. 5, 5.1 Special regimes including refunds/ drawback, duty deferral and temporary admission.

5.1.1A Preserving such rights in accordance with legislation and WTO commitment.

5.1.1B Limiting refunds, exemptions or reduction of duties when an imported good is used in the production of an exported good.

*Provide for such special regimes, but ensure they do not, in effect, become subsidies that would be prohibited under the WTO.*

Art. 5.4 Applying tariffs to reimported goods temporarily exported for repair or alteration.

*Apply tariffs only to the value added by repair or alteration.*

Art. 7 Relevance of GATT Valuation Decision 4.1 for valuation of digital products based only on the carrier or physical media.

*Base value on the carrier or physical media only.*

Art. 7.7 Utilizing estimated prices only as a reference and not as a base price for determining duties or taxes.

*Consistent with WTO customs valuation methods, estimated prices may only be used as a reference and not as a base price for determining duties or taxes. However, delegates*

## VIII ABF FINAL RECOMMENDATIONS

*agreed that such prices could be used as a basis for establishing the value for bonds/guarantees.*

Art. 8.1, 8.2 Limiting or prohibiting restrictions on imports or exports, including quantitative restrictions, minimum prices, import price requirements, import licensing conditioned on a performance requirement, and voluntary export restraints inconsistent with Article XI of the GATT 1994.

*Agreement with current text, but to also allow price requirements in connection with ADD/CVD matters.*

Art. 10.1,10.2 Eliminating Customs processing fees (bracketed) “no later than 10 years” after entry of the Agreement.

Art. 10.3 Eliminate consular transactions and related fees.

*The delegates agreed that Parties should be encouraged to eliminate such fees as soon as possible, but did not wish to specify a particular time period. Additionally, while such fees exist, they should be limited to the cost of the services provided.*

Art. 11.1 Adopt export taxes uniformly, e.g., if maintained on exports to all other Parties.

*Eliminate export taxes, but maintain them if needed to avoid CVD.*

### NON-AGREED RECOMMENDATIONS

Art. 4.7 Applying the Tariff Elimination Program to used goods.

*Some delegates stated that the Tariff Elimination Program (TEP) should apply to all used goods.*

*Others said that the TEP should not apply to imports of any used goods. Some delegates agreed to apply the TEP to the import of used goods, but not used capital goods.*

Art. 5.3 Tariff Elimination Program benefit to goods shipped from FTZ's.

*Some delegations believed merchandise produced in an FTZ meeting origin requirements should qualify, but others did not believe it should qualify.*

*It was suggested such merchandise should enjoy preferential tariff treatment if consistent with WTO standards.*

Art. 9.1 Avoiding prohibitions, restrictions or less favorable treatment on the importation of any remanufactured good.

*Disagreement as to treatment of remanufactured goods, but a delegation provided a definition:*

*Remanufactured good means a good that—*

- a. is entirely or partially comprised of recovered goods;*

## VIII ABF FINAL RECOMMENDATIONS

- b. *has a similar life expectancy and meets the same performance standards as a new good; and*
- c. *enjoys a factory warranty similar to such a new good.*

*After the delegates considered the definition, the disagreement remained.*

### TOPIC NO. 2 SAFEGUARD MEASURES

#### GENERAL STATEMENTS

*The delegates expressed disagreement on the question of safeguards. Clarification on the definition was requested from the Chairman of the MANG who explained that the safeguards that were referred to in the FTAA were those specifically arising from the application of the Tariff Elimination Program.*

#### CONSENSUS RECOMMENDATIONS

Art. 7.1 Permitting provisional safeguards when a delay would cause damage that would be difficult to repair.

*Do not apply measures to the developing countries, unless serious damage substantially comes from these countries imports.*

#### NON-AGREED RECOMMENDATIONS

*Some delegates recognized that countries have particular needs and concerns based on their level of economic development and a "one size fits all approach" is not possible. They encourage the MANG to take account of these considerations. Others considered that due to the meaning of safeguards in the FTAA, safeguards should be applied only to damage resulting from the TEP.*

### TOPIC NO. 3 ORIGIN REGIME

#### CONSENSUS RECOMMENDATIONS

Art. 1.3 Conferring origin for goods produced from original and non-original materials.

*Reaffirm Quito recommendations (e.g., main criterion is substantial transformation, supported by change of tariff classification; include option of regional value content criteria; specific requirements will be fixed when they are indispensable; rules of origin must recognize sub-regional integration schemes), but recommend consulting with private industry in developing rules.*

Art. 1.4 Determining regional value content.

## VIII ABF FINAL RECOMMENDATIONS

*Reaffirm Quito recommendation that in establishing RVC for automotive industry, while too specific for discussion in the Workshop, that an industry table should be created to analyze issues of interest to this sector.*

Art. 5.1 Certain operations or processes do not confer origin.

*When certain operations, including cutting or packaging merchandise, does not substantially modify the product, such operations should not confer origin.*

Art. 8A (New Article) Technical assistance to small and medium business.

*Business should receive assistance in applying rules of origin through a centralized web site, web-based learning and national outreach seminars.*

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## VIII ABF FINAL RECOMMENDATIONS

*Some delegations agreed that a certificate should cover multiple imports of identical goods. Others believed that if producers were to issue the certificates, each one should cover every single export. However, if authorized entities issued the certificates, they could cover multiple imports.*

### TOPIC NO. 5 CUSTOMS PROCEDURES

#### CONSENSUS RECOMMENDATIONS

General. Business facilitation procedures.

*All business facilitation measures should be incorporated directly into the Agreement.*

Art. 3 Simplified Customs procedures to facilitate customs administration.

*Parties should develop consistent and uniform entry, documentation and data requirements for release, e.g., common entry form, Certificate of Origin, etc. and HTS Codes should reference all relevant other government agency norms at the subheading level.*

*Parties should endeavor to standardize times for release, liquidation, post import verification or audits, etc.*

Art. 5.1, 5.2, 5.5 Automation in customs procedures, electronic data interchange systems, and uniform set of data elements.

*Utilize strongest text requiring automation (e.g., "shall" as opposed to "should").*

*Allow electronic transmission of all documentation.*

*Encourage e-commerce (e.g., maintain data privacy; recognize electronic records, signatures, authentication; and legal validity to electronic evidence/records).*

Art.8 Sanctioning fraud and other illicit activities.

*Differentiate between a.) clerical error, inadvertence and reasonable care; b.) simple negligence; and c.) fraud.*

Art. 14 Release, clearance and security of merchandise.

Art. 14.2 Allow (bracketed) "release" or "clearance" of goods within "24" or "48" hours from "arrival" or "presentation" to Customs.

Art. 14.8-14.10 Discharge/cancellation of security once obligations are fulfilled.

*Permit modification of entry/release documents after export and, if reasonable, during or after entry including administrative post-entry adjustment procedures.*

## VIII ABF FINAL RECOMMENDATIONS

*Allow release of misshipped cargo if shown to be legitimate.*

*Eliminate tax stamps or ribbons as proof of payment.*

*Publish conditions leading to bond default/collection (if possible, establish common hemispheric bond).*

*Parties should endeavor to release goods within 24 hours of arrival and to provide written explanation within 5 days of arrival for holding goods.*

Art. 16 Customs enforcement through risk analysis prior to arrival of goods.

*Designate importers/exporters as low risk once audited by Customs and/or participating in security programs, e.g., BASC or CTPAT.*

*Use advance electronically submitted data for purposes of risk assessment.*

Art. 21 Expedited clearance procedures for express shipments.

*The delegates expressed general consensus to support more expedited treatment for express goods and in addition specific language was provided:*

*Cada Parte adoptara e implementara medidas separadas para envíos expresos y conservara la facultad de ejercer las actividades pertinentes al control e inspeccion fisica de las mercancías. Los procedimientos y medidas a que se refiere este artículo incluirán los necesarios:*

- a) Para lograr que un envío expreso se libere dentro de la hora habil siguiente a aquel momento en que se presente a la autoridad aduanera la información necesaria para realizar el tramite de despacho y su liberación;*
- b) Para implementar tecnología de evaluación del riesgos que utilice metodología científica, a fin de tiene como objetivo enfocar correctamente los recursos de control e inspección fisica de las mercancías, hacia la apropiada recaudación de las tarifas los impuestos aplicables y de cualquier otra medida de control;*
- c) Para que los proveedores de servicio de envios expresos sean responsables unicamente de proporcionar y transmitir a la autoridad aduanera la informacion concerniente a los envios expresos de manera fiel y correcta, sin perjuicio de la facultad de las Partes para fijar las sanciones correspondientes a importadores, consignatarios, exportadores, remitentes, y agentes aduanales, en su caso, cuando la informacion manifestada al momento del despacho aduanero no corresponda fielmente a la mercancia transportada, y*
- d) Para permitir que los proveedores de envios expresos transmitan a la autoridad aduanera de las Partes, toda la informacion requerida sobre multiples envios en un solo manifiesto que consolide tal informacion, preferentemente por medios electronicos.*

## VIII ABF FINAL RECOMMENDATIONS

### TOPIC NO. 6 STANDARDS AND TECHNICAL BARRIERS TO TRADE

#### GENERAL COMMENTS

*Parties should have the ability to protect the health, safety and welfare of its citizens. However, in pursuing these objectives, Parties are encouraged to enact measures that do not constitute technical barriers to trade.*

#### **CONSENSUS RECOMMENDATIONS**

Art. 1.1, 1.3 Scope and coverage of standards, including government's role.

*Use voluntary standards over mandatory government regulations.*

*Adopt language providing application to "standards-related activities" meaning "standards, technical regulations and conformity assessment procedures including accreditation and authorization procedures and metrology...[and measures] that could directly or indirectly affect trade among the parties."*

Art. 2.6 Identifying and eliminating unnecessary technical barriers.

*Delegates agreed to identify and eliminate unnecessary technical barriers throughout all industry sectors.*

*The Parties should eliminate legislation that constitutes TBT, pertaining to particular circumstances or sectors that remain although such circumstances have disappeared.*

Art. 3A (New Article) Additional clarification in harmonizing standards and technical regulations.

*Adopt language to: intensify joint work, facilitate access to each others' markets and cooperate on regulatory issues (e.g., convergence of standards, alignment with international standards, supplier's declaration of conformity, accrediting conformity assessment bodies and mutual recognition).*

Art. 4.4 Equivalence in accepting a technical regulation when exporting Party's requirements fulfills the importing Party's objectives.

*Recognize equivalence in accepting a technical regulation as provided in Agreement, but consider other principles when this mechanism cannot apply (e.g., prior regulatory and procedural harmonization, mutual recognition, etc.) consistent with "once tested accepted everywhere."*

Art. 5.8 Establishing and promoting Mutual/Multilateral Recognition Agreements (MRA's) under the IAAC and at the international level.

Art. 5.9 Cooperation between testing laboratories, certification bodies, inspection bodies and (bracketed) "accreditation bodies."

Art. 5.12 Acceptance of suppliers' declarations of conformity.

## VIII ABF FINAL RECOMMENDATIONS

*Establish consensual agreements for mutual recognition in stages and include cooperation with accreditation bodies.*

*Delegates agreed not to mention any particular entities in connection with MRA's and cooperation between various testing and certification bodies.*

Art. 7 Transparency in implementing the TBT Chapter and its provisions.

Art. 7.1 Exchange of information on standards including (bracketed) "related activities" "measures" "technical regulations, conformity assessment procedures" "accreditation and metrology measures".

*Publish regulations and explanations of the certification process on the Internet to track the certification process.*

*Allow public comment, presentations and/or consultations and 60 day notification of measures, prior to their taking effect.*

*Parties shall take measures to adopt principles in standards development of: transparency, openness, impartiality and consensus.*

Art. 9.4, 9.5 Special and differential treatment for smaller economies; assistance regarding standards.

*Do not grant any exception to the actual standards to which the Parties should adhere.*

### **NON AGREED recommendations**

Art. 6.1 Guidance for metrological activities by the Metric Convention and International System of Units as well as (bracketed) "International Bureau of Weights and Measures and International Organization of Legal Metrology."

*Some delegates support adoption of the referenced standard setting bodies.*

*Other delegates stated that while the Agreement should provide guidance for metrology, it should not specifically identify any standard setting bodies.*

Art. 7 Transparency in implementing the TBT Chapter and its provisions.

Art. 7.1 Exchange of information on standards including (bracketed) "related activities" "measures" "technical regulations, conformity assessment procedures" "accreditation and metrology measures".

*Some delegations stated that where a Party allows non-governmental persons in its territory to be present during the process of development of standards-related measures, it shall also allow non-Governmental persons from the territories of the other Parties to be present.*

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Art. 9.4, 9.5 Special and differential treatment for smaller economies; assistance regarding standards.

*Some delegations stated that the Parties should account for problems and constraints due to development and size of economy and implement special cooperation and assistance regarding standards, accreditation, metrology and technological development through Government and private hemispheric organizations.*

Art. 12 Definition of "international standard."

*Some delegates favored adopting definition of international standard in accordance with the WTO TBT Agreement; others favored restricting the definition to IEC, ISO, ITU standards.*

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: SERVICES

#### **WORKSHOP AUTHORITIES**

**CHAIR**: Carol Ayoung (CARICOM)

**VICE CHAIR**: Mauricio Pinto (ECUADOR)

**RAPPORTEUR**: Jaime A. Niño (COLOMBIA)

**VICE RAPPORTEUR**: Maria Fernanda Gonzalez (US)

#### **AGENDA**

##### **GENERAL STATEMENTS**

The services workshop highlighted the importance that the FTAA encompass the liberalization of services and address the specific issues of particular service industries.

The workshop also would like to impress upon government authorities that there should be more private sector involvement in the services negotiations.

The services workshop also recommends that all non-trade issues be dealt with in the appropriate arenas and not within the FTAA negotiations.

The services workshop was pleased to have in attendance the Chair of the negotiating group on services, Mr. Hiliary Deveaux, who updated participants on the status of the services negotiations.

The Services Workshop recognizes the importance of special differential treatment for small and developing economies.

##### **TOPIC No. 1: Architecture of the Agreement and Negotiating Modality**

Pg 1, 2,3,16

##### **Consensus Recommendations**

The Services Workshop reached Consensus as to having sector specific negotiations for different services sectors such as Express Delivery Services, professional services, Telecommunication Services and financial services.

##### **Non-agreed Issues**

The workshop did not reach consensus on whether to include those specific provisions in annexes within the services chapter or in separate chapters.

The services workshop did not reach consensus as to the negotiating modality of the agreement. Some participants proposed that FTAA countries negotiate the liberalization of services with a negative list approach, in order

## VIII ABF FINAL RECOMMENDATIONS

to capture within the services chapter all services, including new services. Other participants proposed that FTAA countries negotiate with a positive list approach to provide flexibility to include new services.

### **TOPIC No. 2: Scope of Coverage**

Pg 3,4,5,17,18,19

#### **Consensus Recommendations**

The services workshop reached consensus that the FTAA agreement should ensure coverage of all services and sub-services sectors.

The services workshop reached consensus that the FTAA agreement achieves maximum liberalization of trade in all modes of supply, covering each of the four modes (cross-border, consumption abroad, commercial presence, and temporary entry of natural persons).

Cross-border delivery of services should be negotiated on a sector-by-sector basis and exemption should not discriminate in terms of technology. Should a government make commitments on the cross border liberalization of services, these commitments will apply to all delivery technologies.

Governments may list exemptions for financial services for prudential reasons.

The services chapter should not include subjects related to labor and environmental matters, and should also exclude general disciplines on subsidies and safeguards.

The services chapter should include provisions regarding acquired rights. In other words, all rights acquired in a country at the time of the agreement should be respected, and no preexisting condition should be made more restrictive than they exist as of the date of the enactment of the FTAA agreement.

There was consensus on incorporating the concept of technology neutrality into the FTAA services chapter. Technology neutrality ensures that governments do not mandate or require the use of a particular technology in connection with the supply of services. Services providers should have the flexibility to determine which technology products to use without government interference.

The services workshop agreed that governments should not maintain or adopt trade barriers that discriminate in terms of technology.

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### **TOPIC No. 3: National Treatment and Most Favored Nation Provisions in the Context of Domestic Regulation**

#### **Consensus Recommendations**

Workshop participants agreed that:

The agreement should accord National Treatment to foreign services suppliers in all service sectors and to subsidies.

Participants agreed that the services chapter should provide Most Favored Nation treatment. Parties may make exemptions for existing regional trade agreements.

The Services Workshop reached consensus that the FTAA agreement should promote ambitious liberalization while respecting the need for appropriate and least trade restrictive regulation. With respect to domestic regulation of services, the workshop agreed that disciplines apply to the national and sub-national level, including local legislation and that it be administered in a reasonable, objective, and impartial manner, and shall not create any discrimination against foreign suppliers.

#### **Non-agreed Issues**

There was no consensus as to the situations that give rise to the exceptions. Some participants suggested that exemptions should be the fewest possible number and apply only in special circumstances where there is a demonstrated need for small and less developed economies.

Other participants suggested that other developing countries should also be allowed to list exemptions to National Treatment principles.

### **TOPIC No. 4: Market Access and Substantial Business Activity**

#### **Consensus Recommendations**

FTAA Parties should: 1) remove barriers to all modes of supply of services; 2) remove quantitative restrictions on the provision of services to those services sectors or methods of provision of services for which the parties have entered into liberalization commitments; 3) guarantee non-discriminatory access to transportation and distribution systems, and use to publicly-provided telecommunications networks; 4) remove restrictions to foreign direct investment that are in compliance with national laws and regulations.

Services providers that originate from small and less developed economies should have accelerated access to FTAA markets, especially with regards to mode 4.

## VIII ABF FINAL RECOMMENDATIONS

### **TOPIC No. 5: Professional Licenses and Movement of People**

#### **Consensus Recommendations**

FTAA countries should encourage Mutual Recognition Agreements of Professional Services by the authorities that regulate the different professions. These agreements should address the equivalency of licensing and qualification requirements for professions.

Existing mutual recognition agreements should be extended to FTAA participants.

FTAA Parties should abolish existing visa requirements that act as an effective restraint on trade and allow an "FTAA visa" that covers all providers of all the service sectors where Parties have made commitments. This "FTAA visa" should allow service providers to travel freely to promote their services, make business contacts, explore business opportunities or meet contractual obligations.

### **TOPIC No. 6: Special and Differential Treatment for Developing Countries**

#### **Consensus Recommendations**

The services workshop agreed to adopt the statement of the 7<sup>th</sup> Americas Business Forum regarding special and differential treatment.

Special and Differential Treatment should be accorded to Small and Less Developed Economies. The Services Workshop did not provide a definition of Small and Less Developed Economies but decided to leave this task to the Workshop on Smaller Economies.

#### **Non-agreed Issues**

Some participants suggested that a better way to address the special needs of developing countries is to help them tailor the scope of their commitments and phase-in provisions to their sectoral needs.

### **TOPIC No. 7: Cross Border Services**

#### **Consensus Recommendations**

The Services Workshop agreed not to provide definitions for the modes of supply (Cross Border Services).

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### **TOPIC No. 8: Denial of Benefits and Substantial Business Activity**

#### **Consensus Recommendations**

Non-Party service suppliers operating in or supplying services to the Parties should not have the same rights under the FTAA as services and services suppliers of the Parties. Therefore, “substantial business activities” should be defined for the purposes of denying of benefits to non-Party services and services suppliers under Article 4. The language relating to Denial of Benefits should be harmonized with parallel provisions in the Chapter on Investment.

### **TOPIC No. 9: Government Owned Enterprises and Subsidies**

#### **Consensus Recommendations**

If a party wishes to provide government grants and subsidies to its service suppliers, the Party should schedule the appropriate national treatment limitations.

The services workshop agreed that an indicative list of sectors that parties supply under government authority creates uncertainties as to which sectors are at issue. There should be a positive and detailed list of services provided under government authority.

### **TOPIC No. 10: Transparency**

#### **Consensus Recommendations**

The services workshop reaffirms the statement set out in the 7<sup>th</sup> Americas Business Forum in Quito and further endorses the negotiation of disciplines that ensure transparency at all levels of government authority.

### **ANNEX 1**

#### **Telecommunications**

The following non-exhaustive list of principles should be incorporated in the telecommunications annex or chapter:

Recognizing that the following provisions are referred to in the competition policy chapter of the FTAA, the parties should maintain measures to prevent anticompetitive practices by major suppliers.

The parties should maintain measures to prevent anticompetitive practices by state-owned companies, so that there is a level playing field between state-owned companies and private operators.

## VIII ABF FINAL RECOMMENDATIONS

Each party shall administer any universal service obligation that it maintains or adopts in a transparent, non-discriminatory and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Each party shall ensure that existing licenses are honored and renewal of a license is presumed, unless there has been a breach of national law or any of the criteria of a license.

### **Express Delivery Services**

Reiterating the consensus of the Buenos Aires and Quito ABF's, there should be negotiations specific to express delivery services (EDS). Negotiations should proceed on the basis of the definition of EDS unanimously established by the sector, i.e. "Express Delivery Services include the expedited collection, transport and delivery of documents, printed matter, parcels and/or other goods, while tracking the location of and maintaining control over such items throughout the supply of the service."

Conditions of operation of EDS operators should be no worse than they were upon entry into force of the Agreement.

Recognizing that government-owned and –controlled entities enjoy benefits and exemptions that can affect competition with private operators, any regulations or agreements affecting EDS should provide for market conditions which eliminate the market distortions such benefits and exemptions provide.

### **Professional Services**

FTAA countries should reduce to the fullest extent possible discriminatory measures to the supply of professional services in its territories, at all levels.

FTAA countries should eliminate to the fullest extent possible all nationality and permanent residency requirements to obtain a professional license, subject to local laws and regulations.

### **Financial Services**

#### **Consensus Recommendations**

Scope of the Agreement. The Financial Services negotiations must be the subject of specific disciplines that have universal scope and include all modes of supply with the exception of those service activities pertaining to the public sector.

## VIII ABF FINAL RECOMMENDATIONS

Negotiation Base. The starting point of the negotiation must be the level of commitments consolidated at the WTO and not necessarily the existing level of access allowed by virtue of national legislations.

Treatment for developing countries: The differences in size between the different financial sectors of the FTAA countries also mean differences in the potential to profit from hemispheric market opportunities. In this regard, financial services disciplines should include special rules and criteria for small and developing countries.

The agreement must have its own specific mechanism for solving controversies through a panel of specialists. The FTAA must guarantee equal access to this mechanism.

The FTAA must insure transparency of barriers of entrance in the provision of financial services, especially with regard to legislations, procedures and regulations at any government level.

### **Non-agreed Recommendations**

1. The services Workshop participants did not agree as to the form of inclusion of specific financial services disciplines in the FTAA agreement.

Some participants recommended that the financial services disciplines be in a separate self-contained chapter.

b. Other participants recommended that financial services disciplines be in an annex to the services chapter.

2. The services Workshop participants did not agree as to where to include disciplines governing the delivery of financial services through commercial presence.

Some participants recommended that disciplines on commercial presence be included in a separate investment chapter.

Other participants recommended that disciplines be dealt with in a separate financial services chapter.

Finally, other participants recommended that the services chapter cover commercial presence disciplines for financial services.

3. Some participants recommended that the FTAA legislations, procedures, and regulations ensure that the access envisaged therein is not undermined by state or provincial, and local rules.

## VIII ABF FINAL RECOMMENDATIONS

### WORKSHOP: SMALLER ECONOMIES

#### **WORKSHOP AUTHORITIES**

**CHAIR**: EVA GARCIA FABRE (ECUADOR)

**VICE CHAIR**: ANTHONY AUGUSTO GOMES (CARICOM)

**RAPPORTEUR**: ERCILIA NOFAL (ARGENTINA)

**VICE RAPPORTEUR**: JOHN H. CURRY (US)

#### **CONSENSUS RECOMMENDATIONS**

##### **AGENDA**

#### **TOPIC N° 1: Recognition of smaller economies status within the FTAA Agreement.**

We ratify the Quito declaration on the treatment of smaller economies. It is necessary to define Smaller Economies, hence we remind the Tripartite Committee of the importance to finish the study on socio-economic indicators in order to objectively classify smaller economies.

#### **TOPIC N° 2: What countries should be considered smaller economies.**

Building on the Quito declaration consider:

- A) That the definition should include the analysis of such indices, among others: surface area, population, GDP per capita, export of manufactured goods, the ratio of total debt to GDP, pc's per 1,000 persons, gross capital formation as percentage of GDP, competitiveness indices, human development index (HDI) and poverty. The study should be framed emphasizing three areas: economic development, human development and competitiveness indices.
- B) Once again this workshop emphatically recommends to the Ministers of Trade that this study should be completed by the Tripartite Technical Committee in the shortest possible time.

#### **TOPIC N° 3: Time period for the application of the special and differential treatment.**

The application of SDT means granting extended time periods, according to development needs, to meet obligations stipulated in the agreement, but SDT does not allow exceptions to compliance with obligations.

#### **TOPIC N° 4: How should tariff adjustment be applied?**

Maintaining the consensus of the Quito declaration on tariffs, keep the terms established but consider an additional five years for sensitive products.

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### **TOPIC Nº 5: Are there other measures to include in the special and differential treatment?**

Smaller Economies, to be defined by the tripartite committee, should be exempt from retaliatory actions by the larger, developed countries as a consequence of the application of trade remedies.

Smaller Economies should be allowed to retain subsidies in order to ensure food security policy as long as the developed countries maintain export subsidies and trade distorting domestic supports.

A regional integration fund for trade and development should be established to assist smaller economies to adjust to the integration process.

### **TOPIC Nº 6: The Hemispheric Cooperation Program.**

The HCP should be efficiently executed and implemented so as to support the SME's with technologies and training geared to adopting the agreement provisions. The HCP has to rely on the active participation of the tripartite committee. The program of adjustment must include technical and financial cooperation.

The Small Economies workshop recommends to the presidency of FTAA to set up a special advisory committee on small and medium enterprises, approved at the ABF in Quito. This committee should work within the institutional arrangements set up for the HCP.

### **TOPIC Nº 7: Business facilitation policy**

That the eight business facilitation measures agreed to in annex 2 of the Toronto Ministerial Declaration be implemented no later than the middle of 2004.

### **TOPIC Nº 8: Smaller Economies and sustained economic growth.**

SDT should take into account the objective of attaining a level of socio-economic development, commensurate with obligations, that enables them to beneficially and equitably participate in the FTAA.

### **NON AGREED RECOMMENDATIONS**

Smaller Economies should enjoy extended time, according to their development needs, to meet intellectual property and services obligations (ALACEL-Regional).

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### WORKSHOP: SUBSIDIES, ANTIDUMPING AND COUNTERVAILING DUTIES

#### WORKSHOP AUTHORITIES

**CHAIR**: Carlos de la Vega (ARGENTINA)

**VICE CHAIR**: Peter Clark (CANADA)

**RAPPORTEUR**: Silvia Pinheiro (BRAZIL)

**VICE RAPPORTEUR**: Richard Burke (US)

#### AGENDA

##### GENERAL STATEMENTS

- A. The workshop members agreed on a voluntary basis to hold follow-up meetings after the conclusion of the Miami ABF to exchange views and continue analyzing the issues relevant to this workshop. The purpose of such meetings will be to attempt to reach consensus where possible and monitor the progress of the negotiations on this topic.
- B. The workshop members appreciated the visit by Lic. Adrian Macuk, Chairman of the anti-dumping and countervailing duty negotiating group for the FTAA, in particular the opportunity to learn about the status of the negotiation, ask questions, and exchange views. The members recommend that this practice be continued in future ABF meetings.

##### DISSENTING OPINIONS

- A. Representatives of U.S. beef cattle and semiconductor industries and the NAFTA steel industries, who did not attend the Quito ABF working group, did not accept:
  - (1) That there is a need for a separate AD/CVD chapter in the FTAA Agreements; and
  - (2) The finality of the Quito consensus issues noted above, including Topics Number One, Nine, Eighteen, and Twenty-Two.
- B. Many other participants strongly rejected any suggestion that the conduct of these workshops was or has been in any way closed or non-transparent.

##### OBSERVATIONS BY WORKSHOP AUTHORITIES

## **VIII ABF FINAL RECOMMENDATIONS**

The Workshop Authorities regret the decision to require all participants to work with the English language text only. A number of participants have expressed discomfort with not being able to work in their mother tongue and the authorities of this workshop share these concerns. It is essential in our view that in the future all documents be available in each official language.

### **TOPIC N° 1: WHETHER ANTIDUMPING COUNTERVAILING ISSUES SHOULD BE INCLUDED IN THE FTAA.**

#### **GENERAL STATEMENT**

In Quito it was decided by consensus that a chapter on antidumping and countervailing duties should be included in the Treaty. Consequently, the issue was not discussed.

### **TOPIC N° 2: WHETHER TRADE REMEDY LAWS SHOULD BE STRENGTHENED OR WEAKENED**

#### **GENERAL STATEMENT**

After extensive discussion it was agreed that topic two was exceedingly broad and therefore that no specific recommendation for topic two was warranted.

### **TOPIC N° 3: WHETHER AD/CVD PROVISIONS OF FTAA SHOULD BE WTO CONSISTENT**

#### **CONSENSUS RECOMMENDATION**

On topic three there was consensus that the FTAA AD/CVD provisions should be consistent with the WTO provisions on the topic, while also allowing measures to clarify and add transparency.

### **TOPIC N° 4: ARTICLE 2 WHETHER THERE SHOULD BE BILATERAL CONSULTATION PROCEDURES PRIOR TO INITIATION OF AD CASES.**

#### **NON-AGREED ISSUE**

With one exception, all parties who expressed a view were opposed to this proposal. It was noted that at the Quito ABF working group, this was a non-agreed issue.

### **TOPIC N° 5: ARTICLE 2.1 WHETHER BELOW COST SALES JUSTIFY GOING TO CONSTRUCTED VALUE TO CALCULATE NORMAL VALUE.**

#### **CONSENSUS RECOMMENDATION**

## VIII ABF FINAL RECOMMENDATIONS

All the participants are of the view that the use of constructed value should be reserved only for those instances when no comparable home market or third country sales meeting WTO criteria are available. Consequently, the parties agreed that the proposal to not use constructed value in the event of below cost sales was inconsistent with the WTO.

### **TOPIC N° 6: ARTICLE 2.3 WHETHER IT REQUIRES AT LEAST 40 PERCENT OF HOME MARKET SALES BELOW COST TO EXCLUDE THESE BELOW MARKET SALES.**

#### **CONSENSUS RECOMMENDATION**

The consensus was that the FTAA should retain the 20 percent criterion specified in the WTO Anti-dumping Agreement.

### **TOPIC N° 7: ARTICLE 2.4 WHETHER PROFIT SHOULD BE EXCLUDED FROM THE CONSTRUCTED VALUE CALCULATION**

#### **CONSENSUS RECOMMENDATION**

The parties agree that an amount for profit should be included in the constructed value calculation.

### **TOPIC N° 8: ARTICLE 2.6 WHETHER RELATED PARTY SALES SHOULD BE PRESUMED ACCEPTABLE FOR THE ANTIDUMPING CALCULATION.**

#### **CONSENSUS RECOMMENDATION**

The parties agree that there should not be a rebuttable presumption that related party sales should be considered.

### **TOPIC N° 9: ARTICLE 2.8 WHETHER ZEROING SHOULD BE PROHIBITED.**

#### **GENERAL STATEMENT**

Because at the Quito working group it was decided to prohibit zeroing, this prohibition must be deemed to have been decided.

### **TOPIC N° 10: ARTICLE 3.3. WHETHER CUMULATION OF IMPORTS FROM SMALL ECONOMIES SHOULD BE PERMITTED FOR INJURY PURPOSES.**

#### **NON-AGREED RECOMMENDATION**

With exception of one delegation, all parties agreed that cumulation of imports from small economies should be permitted.

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### TOPIC N° 11: ARTICLE 3.5 WHETHER PROOF OF ACTUAL FINANCIAL

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### **CONSENSUS RECOMMENDATION**

All the parties were in opposition to a mandatory requirement of 50 percent industry support as a prerequisite to initiating a case. The parties noted that the existing WTO provision on this point is adequate.

### **TOPIC N° 17: ARTICLE 5.3. WHETHER CERTAIN SPECIFIC SUBSIDIES SHOULD BE DEEMED NOT ACTIONABLE WITH RESPECT TO SMALL ECONOMIES**

#### **NON-AGREED RECOMMENDATION**

With one exception, all parties agreed that such subsidies should be actionable.

### **TOPIC N° 18: ARTICLE 5.5. WHAT ARE THE APPROPRIATE DE MINIMIS AND NEGLIGIBILITY LEVELS**

#### **GENERAL STATEMENT**

The five percent de minimis rule was the subject of consensus in Quito.

#### **NON-AGREED RECOMMENDATION**

On the remainder of the proposal to modify de minimis and negligibility levels there was no consensus.

### **TOPIC N° 19: ARTICLE 7.1 WHETHER THERE SHOULD BE A BALANCING OF INTERESTS AS A PREREQUISITE TO IMPOSING AD/CVD PROVISIONAL MEASURES**

#### **CONSENSUS RECOMMENDATION**

All parties agreed there should be no such balancing of interests.

### **TOPIC N° 20: ARTICLE 9.1. WHETHER THE LESSER DUTY RULE SHOULD BE ADOPTED**

#### **NON-AGREED RECOMMENDATION**

There was no consensus on whether the lesser duty rule should be adopted.

### **TOPIC N° 21: ARTICLE 9.2 WHETHER ZERO AND DE MINIMIS MARGINS SHOULD BE EXCLUDED FROM THE "ALL OTHERS" RATE**

#### **CONSENSUS RECOMMENDATION**

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All the parties agreed that zero and de minimis margins for cooperating respondents should be excluded from the calculation of the “all others rate”.

### **TOPIC N° 22: ARTICLE 10.2 WHETHER MEASURES SHOULD EXPIRE AFTER FIVE YEARS**

#### **GENERAL RECOMMENDATION**

Point 10 of the Quito ABF consensus was that AD/CVD measures should be terminated after five years.

### **TOPIC N° 23: ARTICLE 10.1 WHETHER A DE MINIMIS FINDING IN AN ADMINISTRATIVE REVIEW SUFFICES TO REVOKE AN ORDER.**

#### **NON-AGREED RECOMMENDATION**

The parties did not agree on whether a de minimis finding in a single review suffices to terminate an order.

### **TOPIC N° 24: ARTICLE 12. WHETHER DEVELOPING COUNTRIES SHOULD RECEIVE DIFFERENTIAL TREATMENT**

#### **NON-AGREED RECOMMENDATION**

There was no consensus among the parties on this point.

### **TOPIC N° 25: ARTICLE 14. WHETHER THERE SHOULD BE SEPARATE DISPUTE SETTLEMENT FOR AD/CVD IN THE FTAA**

#### **NON-AGREED RECOMMENDATION**

There was no consensus.

### **TOPIC N° 26: ARTICLE 15. WHETHER PUBLIC INTEREST FACTORS SHOULD BE TAKEN INTO CONSIDERATION**

#### **NON-AGREED RECOMMENDATION**

There was no consensus.

### **TOPIC N° 27: WHETHER EXPORT CREDIT PROVISIONS IN THE FTAA AD/CVD AGREEMENT SHOULD BE THE RESULT OF NEGOTIATION AMONG ALL THE FTAA COUNTRY MEMBERS**

#### **NON-AGREED RECOMMENDATION**

There was no consensus on this point.

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**TOPIC N° 28: ARTICLE 5.1 WHETHER WITH RESPECT TO SUBSIDIES, THERE SHOULD BE INCLUDED IN THE FTA AD/CVD CHAPTER A MECHANISM THAT PROVIDES FOR COUNTERVAILING DUTIES ON BEHALF OF A THIRD COUNTRY IN THE SAME WAY THAT ARTICLE 14 OF THE WTO DUMPING AGREEMENT PROVIDES.**

### **NON-AGREED RECOMENDATION**

There was no consensus on this point.

**TOPIC N° 29: ARTICLE 9.1 WHETHER THE AD/CVD CHAPTER SHOULD INCLUDE SPECIFIC AND EFFICIENT RULES WITH RESPECT TO CIRCUMVENTION OF AD/CVD MEASURES**

### **NON-AGREED RECOMMENDATION**

There was no consensus on this point.

**TOPIC N° 30: ARTICLE 2.6 WHETHER IN CASES WHEN THE EXPORT PRICE IS CONSTRUCTED IN ACCORDANCE WITH ARTICLE 2.3 OF THE WTO ANTIDUMPING AGREEMENT, THE ADJUSTMENT FOR INDIRECT SELLING EXPENSES TO BOTH NORMAL VALUE AND EXPORT PRICE SHOULD BE CARRIED OUT WITHOUT LIMITATION IN ORDER TO ENSURE A FAIR COMPARISON.**

### **NON-AGREED RECOMMENDATION**

There was no consensus on this point.