WORLD TRADE ORGANIZATION

TN/RL/W/232
28 May 2008

(08-2501)

Negotiating Group on Rules

WORKING DOCUMENT FROM THE CHAIRMAN

In November 2007 I issued a first draft of comprehensive texts in the Rules area which I explained were technical papers that were bracketed in their entirety. Moreover, I indicated that they were not submitted for approval, whether in whole or in part. To the contrary, I stated that their intended role was to serve as a basis for intensive, technical and focussed discussion, and that they represented the first step in a new phase of negotiations in the Group. It was evident when they were circulated, and it remains evident today, that these texts were the beginning of the negotiating process, not its culmination.

Since November, the Group has held intensive discussions on the basis of the draft texts. We have now completed our first reading of all of the issues contained in the texts, and, at the request of various delegations, we have reverted to certain proposals advanced by delegations but not reflected in those texts.

There are sharply conflicting views on most of the issues reflected in the texts. On any given issue, some delegations consider that the text goes too far (or in the wrong direction altogether), others that it doesn't go far enough, others that the basic thrust is correct but that technical adjustments are required. In addition, some delegations are unhappy that issues they consider important are not addressed in these texts. In the area of fisheries subsidies, we are still wrestling with conceptual issues relating to the major building blocks of the disciplines and how they fit together. In short, many delegations consider, for different and sometimes contradictory reasons, that my draft texts do not reflect a satisfactory balance in the Rules negotiations.

Given this state of affairs, some delegations have requested that I issue revised texts at the earliest possible moment. Although it remains my firm intention to revise these texts, I do not yet have a sufficient basis to do so. While I appreciate the constructive dialogue that has taken place in the Group, I have received no hints on possible middle ground approaches nor suggestions for possible compromises or trade-offs. I have therefore chosen -as an interim step forward- to table this working document, which takes the form of three annexes relating to anti-dumping, horizontal subsidies and fisheries subsidies. While these three annexes differ somewhat in form, due to the particularities of the different areas of our negotiations, they all seek to convey in detail the full spectrum and intensity of the reactions to my first draft texts and, to the extent possible, to identify the many suggested changes put forward by delegations.

Annex A relates to anti-dumping. In the first column, and in response to repeated calls from some delegations to reflect *all* views and proposals, I consolidated *all* text-based proposals submitted to the Group up to the date of circulation of my texts, as well as one new proposal, on Article 15, which had not until recently been the subject of significant text-based proposals. This consolidation is lengthy because I did not consider that it would be appropriate for me to pick and choose among proposals in this context. The second column shows the Chairman's text itself. The third column summarizes delegations' reactions to the Chairman's text, including a detailed description of positions advanced by delegations, with specific references to any positions submitted in the form of texts.

Annex B relates to horizontal subsidies. Because in this area fewer proposals were tabled and therefore fewer changes proposed in the Chairman's text, I have not reproduced the entire SCM Agreement here, nor have I sought to produce a consolidation. Rather, the first column shows those portions of the Chairman's text where significant changes to the existing Agreement were proposed. The second column summarizes delegations' reactions to the Chairman's text, including a detailed description of any positions submitted in the form of texts. I have also referred specifically to any pre-Chairman's text proposals not reflected in the Chairman's text with respect to which delegations have sought further discussion and consideration.

Annex C relates to fisheries subsidies. As there is no existing WTO text on fisheries subsidies and therefore no agreed structure on the basis of which I could construct a consolidation, I have in the first column sought to identify the core issues in the negotiations and included under each issue the relevant language proposed by delegations, listed chronologically in the order submitted. Because new comprehensive proposals have been made since my text was circulated, and in order to ensure that the full range of views are reflected, I have included in the first column *all* proposals submitted to the Group, whether made before or after my text was circulated. The second column contains my text, and the third column summarizes delegations' reactions to the Chairman's text.

It should be clear to all from this working document that the first draft Chairman's texts do not prejudge the results of these negotiations. To the contrary, it is evident that *all proposals and issues remain on the table*, that there are very serious concerns on the part of many if not all delegations about the first drafts, and that their revision will be necessary. As we steadily move from these first draft Chairman's texts (which were intended to provoke discussion on the broad parameters of possible outcomes to the negotiations**)** to draft final texts (which by nature will have to describe a gradually emerging consensus) we will need to find compromises and balance. With that objective in mind I will continue our consultations.

ANNEX A – ANTI-DUMPING

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
Article 1 *Principles*	*Article 1* *Principles*	
1. An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated[1] and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations. [1]The term "initiated" as used in this Agreement means the procedural action by which a Member formally commences an investigation as provided in Article 5.	1. An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated[1] and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations. [1]The term "initiated" as used in this Agreement means the procedural action by which a Member formally commences an investigation as provided in Article 5.	
Article 2 *Determination of Dumping*	*Article 2* *Determination of Dumping*	
2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.	2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.	
2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country[2], such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. [2]Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the	2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country[2], such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. [2] Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the	

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normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.	normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.	
2.2.1 Sales of the like product [[under consideration for the determination of the normal value, either made]] in the domestic market of the exporting country or [[made]] [[~~sales~~]] to a third country [[~~at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs~~]] may[[, on a collective basis only.]] be treated as not being in the ordinary course of trade by reason of price and may[[, on that basis,]] be disregarded in determining normal value only if the authorities[3] determine that such sales are made within an extended period of time[4] [[at a weighted average selling price that is below weighted average per unit fixed and variable costs of production plus administrative, selling and general costs.]][[~~in substantial quantities~~]][[5]][[5]] [[~~and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.~~]]	2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities[3] determine that such sales are made within an extended period of time[4] in substantial quantities[5] and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.	
[3]When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level. [4]The extended period of time should normally be one year but shall in no case be less than six months.	[3] When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level. [4] The extended period of time should normally be one year but shall in no case be less than six months.	

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[5][[~~Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.~~]] [5] [[Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than [[30~~20~~]] per cent of the volume sold in transactions under consideration for the determination of the normal value.]]	[5] Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.	
2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation [[~~provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate~~	2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation, giving due regard to any cost ~~provided that such~~ allocations ~~have been~~ historically utilized by the exporter or producer, in particular in relation to	Some delegations welcomed proposed changes to Article 2.2.1.1 regarding **cost allocations**. Other delegations had varied views, with one delegation considering that the Chairman's text would weaken the obligation to use historically utilized allocations, and other delegations concerned that the text would limit the ability of the authorities to reject unreliable allocations.

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~~amortization and depreciation periods and allowances for capital expenditures and other development costs~~]]. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.[6] [6]The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.	establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations[6] [6] The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.	
2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:	2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:	
(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the	(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of	

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same general category of products;	the same general category of products;	
(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;	(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;	
(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.	(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.	
2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party[[[7]], the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.	2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.	

[7][[An affiliated party shall be any party which is considered to, directly or indirectly, have significant influence or be significantly influenced by another party, or which is under the common significant influence of a third party. For the

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purposes of this definition, significant influence is: (i) the power to govern the financial and operating policies of an enterprise by having: (a) more than one half of the voting power of an enterprise; (b) power over more than one half of the voting rights by virtue of an agreement with other investors; (c) such power under a statute or an agreement; (d) power to appoint or remove the majority of the members of the board of directors or equivalent governing body; (e) power to cast the majority of votes as meetings of the board of directors or equivalent governing body; or (ii) the power granted through share ownership, statute or agreement to a person or enterprise to participate in the financial and operating policy decisions of the another enterprise by having: (a) representation on the board of directors of such other enterprise; (b) common directors and/or officers with such other enterprise; (c) a contractual relationship (or any other biding obligation) enabling such person or enterprise to unilaterally impose pricing conditions on such other enterprise and resulting on an economic, financial and technological dependence of such other enterprise from such person or enterprise.]]		
2.4 A fair comparison shall be made between the export price and the normal value [[on the basis of differences between the export price and the normal value with regard to all comparable export transactions during a period of time which shall normally be one year as follows]]. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in	2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions	

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respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.[8] In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties. [8] It is understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.	and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.[7] In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties. [7]It is understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.	
2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[9] [[taken from a source of recognized authority[10]]], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates[[[11]]] shall be ignored and in an investigation the authorities shall allow exporters [[~~at least 60 days~~]][[not more than 80 days from the date of sale[12]]] to have adjusted their export prices to reflect sustained movements[[13]] in exchange rates during the period of investigation. [[The source of recognized authority normally	2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8] taken from a source of recognized authority[9], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation. [8]Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice,	Most delegations welcomed the general direction of the textual amendments relating to the disclosure of the sources of authority for **exchange rates** used in margin calculations. The main issue raised dealt with the necessity of having to disclose sources of exchange rate authority in legislation, as opposed to reflecting those sources in individual determinations.

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used, and the specific method normally followed by the authorities in applying subparagraph 4.1, shall be set forth in the laws, regulations or published administrative procedures of the Member concerned, and their application to each particular case shall be transparent and adequately explained. If, in a particular case, a Member does not use the source of recognized authority or specific method set forth in its laws, regulations or published administrative procedures, it shall explain in the relevant public notices under Article 12 why it did not use such source or method.]] [9] Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale. [10] [[Sources of recognized authority may include central banks, multilateral financial institutions, widely distributed financial journals, or other sources not created primarily for the purpose of conducting anti-dumping proceedings.]] [11] [["Fluctuations in exchange rates" shall mean minor deviations from the moving average of the daily exchange rates for the prior 60 days.]] [12] [[Exporters shall nonetheless comply with the deadline set for the submission of their questionnaire responses.]] [13] [["Sustained movements" shall be found where exchange rate significantly exceeds the moving average of the daily exchange rates for the prior 60 days.]]	whichever establishes the material terms of sale. [9]Sources of recognized authority may include central banks, multilateral financial institutions, widely distributed financial journals, or other sources not created primarily for the purpose of conducting anti-dumping proceedings. 2.4.1.1 The source of recognized authority normally used, and the specific method normally followed by the authorities in applying subparagraph 4.1, shall be set forth in the laws, regulations or published administrative procedures of the Member concerned, and their application to each particular case shall be transparent and adequately explained. 2.4.1.2 If, in a particular case, a Member does not use the source of recognized authority or specific method set forth in its laws, regulations or published administrative procedures, it shall explain in the relevant public notices under Article 12 why it did not use such source or method.	
2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping [[~~during the investigation phase~~]] shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average	2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping ~~during the~~in an investigation ~~phase~~ initiated pursuant to Article 5 shall normally be established on the basis of a comparison of a weighted average normal value	Numerous delegations expressed the view that **zeroing** is a biased and partial method for calculating the margin of dumping which inflates anti-dumping duties, and that its use could nullify the results of trade liberalization efforts (*see* TN/RL/W/214/Rev.3), and therefore considered that the Chairman's text on zeroing was unacceptable. Accordingly, twenty delegations co-sponsored a Working

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of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis.[[[14]] [[~~A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.~~]] [14] [[The establishment of margins of dumping by a comparison of normal value and export prices on a transaction-to-transaction basis may imply the selection of a limited number of comparable transactions. In cases where the authorities resort to a selection of transactions, such selection shall be made in a fair and objective manner. Export transactions not considered for the establishment of the margin of dumping shall not be deemed to be dumped.]]	with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.	Paper that proposed alternative language that would prohibit a Member from disregarding the amount by which the export price exceeds the normal value for any comparisons in all proceedings, including original investigations, proceedings under Articles 9.3 and 9.5 and reviews under Articles 11.2 and 11.3, and in respect of all methodologies (*see* TN/RL/W/215). They further proposed to make clear that Article 2.4.2 applies in all proceedings, to set a minimum time period on the basis of which a margin of dumping could be calculated, and to require consistency between the methodology used in an original investigation and a subsequent proceeding pursuant to Article 9.3. Other delegations had different views about the Chairman's text. Some of these delegations believed that while the draft text went too far, zeroing might be permitted in some contexts. In particular, a number of delegations expressed the view that zeroing should be permitted in the context of the weighted average-transaction comparison methodology ("targeted dumping"), while it was also suggested that the same methodology need not necessarily be applied in original investigations as in the context of duty collection. One delegation considered that the Chairman's text permitted zeroing in certain contexts but prohibited it in the most common comparison methodology in investigations, and insisted that a restoration of zeroing in all contexts was necessary to return to the status quo that emerged from the Uruguay Round. This delegation could not conceive of a result that did not address zeroing. Delegations on all sides of the issue emphasized how critical the issue was to their delegations.
2.4.3 [[When aggregating the results of comparisons of normal value and export price to determine any margin of dumping, whether in an investigation pursuant to paragraph 4.2 or for any other purpose (including determinations pursuant to Articles 9 or 11), authorities are not required to offset the results of	2.4.3 When the authorities aggregate the results of multiple comparisons in order to establish the existence or extent of a margin of dumping, the provisions of this paragraph shall apply:	

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any comparison in which the export price is greater than the normal value against the results of any comparison in which the normal value is greater than the export price.]]		
	(i) when, in an investigation initiated pursuant to Article 5, the authorities aggregate the results of multiple comparisons of a weighted average normal value with a weighted average of prices of all comparable export transactions, they shall take into account the amount by which the export price exceeds the normal value for any of the comparisons.	
	(ii) when, in an investigation initiated pursuant to Article 5, the authorities aggregate the results of multiple comparisons of normal value and export prices on a transaction-to-transaction basis or of multiple comparisons of individual export transactions to a weighted average normal value, they may disregard the amount by which the export price exceeds the normal value for any of the comparisons.	
	(iii) when, in a review pursuant to Articles 9 or 11, the authorities aggregate the results of multiple comparisons, they may disregard the amount by which the export price exceeds the normal value for any of the comparisons.	
2.4.4 [[If the authorities find a pattern of export prices, which differ significantly among different purchasers, regions, time periods or product types, the existence of margins of dumping may	2.4.4 When there are differences with respect to models, types, grades or quality within the product under consideration, the authorities shall provide exporters and foreign producers with timely	Most delegations welcomed the general direction of the textual amendments relating to exporter participation in the **model matching** process. The main issue raised dealt with the timing and effectiveness of an exporter's model matching participation rights, with some delegations

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be established on the basis of a comparison of a normal value established on a weighted average basis with prices of individual export transactions. In such circumstances, the authorities may limit their comparison to individual export transactions made to purchasers, regions or time periods or of product types found to be significantly different. Authorities should provide an explanation as to why the methodologies provided for in paragraph 4.2 of Article 2 were not appropriate to address dumping practices found to be targeting certain purchasers, regions time periods or product types.]]	opportunities to express their views regarding possible categorization and matching for purposes of comparison. This shall not prevent the authorities from proceeding expeditiously with the investigation.	suggesting that opportunities be provided sufficiently early as to allow exporters to express their views and investigating authorities to consider those views. One delegation queried whether the procedure might have an impact on the overall time period of the investigation under Article 5.10, while several delegations considered that "quality" was very subjective and questioned whether it was an appropriate consideration .
[[In a sale between affiliated parties, the transaction price shall be accepted whenever the exporter or producer involved demonstrates, that such price closely approximates[15] to one of the following during the period of investigation: (i) the transaction price in sales of identical or most similar products in commercially representative quantities to unaffiliated parties in the same country as the affiliated party;		
(ii) the price of identical or most similar products as determined on the basis of the price at which the goods are first resold in the greatest aggregate quantity to an independent buyer in the same country as the affiliated party, after making appropriate deductions for costs, duties and taxes incurred, or profits accrued, between sale to the affiliated party and resale to the first independent buyer;		

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(iii) the price of identical or most similar products as determined on the basis of the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits realized on domestic sales, in case of domestic transactions, or realized on export sales in case of export transactions.]] [15][[The investigating authority may determine on a case-by-case basis the appropriate percentage of variation that constitutes such close approximation in price. However, in no case shall the percentage be lower than [X] percent. The same percentage shall apply for variations both above and below the price being compared to in items (i), (ii) or (iii).]]		
2.5 In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.	2.5 In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.	
2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.	2.6 Throughout this Agreement: (a) The term "product under consideration" shall be interpreted to mean the imported product subject to investigation or review. The product under consideration shall be limited to imported products that share the same basic physical characteristics. The existence of differences with respect to factors such as models, types, grades and	On **product under consideration**, many delegations considered that inclusion of a provision on this issue was useful, and were prepared to consider the inclusion of some language in the text. However, one delegation was not convinced that the proposed changes were necessary, and was concerned that the text could create more problems than it purports to solve, while another delegation expressed concerns that the text could have "vertical" as well as "horizontal" implications (e.g., with respect to the inclusion of parts), as well as implications in

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	quality shall not prevent imported products from being part of the same product under consideration if they share the same basic physical characteristics. Whether such differences are so significant as to preclude inclusion of imported products within a single product under consideration shall be determined on the basis of relevant factors, which may include similarity in use, interchangeability, competition in the same market and distribution through the same channels. (b) The term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.	respect of subsequent proceedings. Regarding the specific text proposed, there were differences of view regarding how broadly the product under consideration should be defined and on the role of physical and market characteristics in determining the product under consideration. Some delegations believed that physical characteristics were objective in nature and should be given primacy, while other delegations believed that market characteristics should at least have equal status. There were also a variety of views and questions on when and how product under consideration should be determined, with some delegations noting that at the pre-initiation stage limited information was available. Issues were also raised on the desirability and nature of any amendments to the product under consideration during the course of the investigation, with some delegations seeking clarification that the product under consideration could only be narrowed, but not broadened, during an investigation, and on the implications of any such amendments on standing, etc. Queries were raised regarding the possible interaction of the "product under consideration" concept with that of the like product.
2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.	2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.	
Article 3 *Determination of Injury*[16] [16]Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article. [[A domestic industry shall be considered in establishment when it has made a substantial commitment to achieve reasonable commercially viable production or sustainable business operations.]] [[A determination of material injury shall be based upon determinations of (1) whether the domestic industry in the	*Article 3* *Determination of Injury*[10] [10] Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.	

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importing country is experiencing material injury, and (2) if the domestic industry is experiencing material injury, whether the dumped imports under investigation are causing material injury. The term 'material injury to a domestic industry' means the state of the domestic industry as demonstrated by an important and measurable deterioration in the operating performance of the domestic industry, based on an overall assessment of all relevant economic factors and indices having a bearing on the state of the domestic industry including those enumerated in Article 3.4.]]		
3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and *(b)* the consequent impact of these imports on [[the]] domestic [[industry, as defined in Article 4.1]] [[~~producers of such products~~]].[[[17]]] [17] [[Dumped imports shall not include imports from producers/ exporters: a) found not to have dumped; and b) for whom the investigating authorities have determined that the margin of dumping is de minimis.]]	3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the dumped imports[11] and the effect of the dumped imports on prices in the domestic market for like products, and *(b)* the consequent impact of these imports on domestic producers of such products. [11] For purposes of a determination of injury under this Article, imports attributable to any exporter or producer for which the authorities determine a margin of dumping of zero or *de minimis* shall not be considered to be "dumped imports".	Proposed footnote 11 on **dumped imports** received wide support. However, one delegation suggested that imports with *de minimis* dumping margins should be treated as dumped for purposes of an injury determination.
3.1.1 [[[[Authorities shall make every effort to obtain all relevant evidence concerning all domestic producers of the like product for the purpose of making an injury determination. In exceptional cases where it is not possible to obtain evidence which covers all domestic producers, authorities shall use all evidence obtained relating to domestic producers, provided that such evidence relates to as high a proportion of the producers as possible, but not less than those of them whose collective output of the products constitutes the major proportion (more than 50%) of the total domestic production of those products. In such a case, the authorities shall provide a reasoned explanation		

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demonstrating why it could not base the injury assessment on evidence covering domestic producers as a whole.]][[Authorities shall make every effort to obtain evidence relating to all domestic producers of the like product. In exceptional cases, where that is not possible, authorities shall examine those domestic producers whose collective output of the product constitutes the largest volume of production that can reasonably be examined in excess of the 50 per cent threshold referred to in Article 4.1. In such a case, the authorities shall provide a reasoned explanation demonstrating why it could not base the injury assessment on evidence covering all domestic producers, including a description of the efforts made by the authorities to obtain evidence covering all domestic producers. Such explanation shall be set forth in any disclosure pursuant to Article 6.9 and in the public notices referred to in Article 12.]]]]		
3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.	3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.	

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3.3 Where imports of a product from more than one country are [[~~simultaneously~~]]subject to [[the same]] anti-dumping investigation[[~~s~~]]~~,~~ the investigating authorities [[shall~~may~~]] cumulatively assess the effects of such imports[[~~ only if they determine that *(a)* the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.~~]][[, provided that imports from any investigation terminated under paragraph 8 of Article 5 are excluded from the cumulative assessment. If imports from more than one country are subject to different investigations for which the period of investigation is the same or largely overlapping, the investigating authorities may cumulatively assess the effects of such imports, provided that such cumulation is appropriate in the light of the conditions of competition between the products under consideration of each investigation and that imports from any investigation terminated under paragraph 8 of Article 5 are excluded from the cumulative assessment. The assessment of those conditions of competition shall be based upon an evaluation of the physical characteristics of the products, including technical specifications and quality, and their market characteristics, including end uses, substitutability, pricing levels and distribution channels. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance. Authorities shall not cumulate imports from more than one country subject to different investigations if the products under consideration of each investigation do not reach the same geographical market or do reach the same geographical markets at different periods of time.]]	3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.	
3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output,	3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output,	

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market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.	market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.	
3.4.1 [[The investigating authorities shall presume that there is no material injury if the domestic industry's operating profits have increased and the market share has been maintained or increased during the investigation period. In such circumstances, the investigating authorities shall not find material injury unless there is sufficient justification to overcome the presumption.]]		
3.5 It must be demonstrated that the dumped imports [[in and of themselves and apart from any other factors]] are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. [[If the authorities can find neither a strong correlation[18] between a significant increase in dumped imports and the injury to the domestic industry nor a strong correlation between a significant price undercutting by the dumped imports and the injury to the domestic industry, the authorities shall presume that there is no causal relationship between dumped imports and injury, unless the authorities clearly demonstrate, based on other evidence, that there nevertheless exists a causal relationship between dumped imports and injury.]] [[The investigating authorities shall presume that the dumped imports are not causing material injury to the domestic industry if: (i) the volume of increase in non-dumped imports of the product concerned	3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuri~~es~~ous effects of ~~caused by~~ these other factors must not be attributed to the dumped imports.[12] The examination required by this paragraph may be based on a qualitative analysis of evidence concerning, *inter alia*, the nature, extent, geographic concentration, and timing of such injurious effects. While the authorities should seek to separate and distinguish the injurious effects of such other factors from the injurious effects of dumped imports, they need not quantify the injurious effects attributable to dumped imports and to other factors, nor weigh the injurious effects of dumped imports against those of other factors.	On **causation**, there was substantial discussion regarding "separating and distinguishing" the effects of dumped imports and other factors. Some delegations believed that it should be mandatory to separate and distinguish such effects, while others considered that inclusion of such language did not help to clarify the causation standard. Delegations also disagreed regarding the extent to which authorities should be required to conduct a quantitative versus a qualitative analysis of non-attribution. While most delegations agreed that data of a quantitative nature would be used, many delegations considered that a precise quantification of the amount of injury that could be attributed to dumped imports and to other factors would be difficult, and in the view of some delegations, impossible. Some delegations concluded on this basis that a qualitative assessment of non-attribution should be sufficient. Other delegations considered that quantitative methods should nevertheless be given priority over qualitative methods, or at least treated equally. Delegations also disagreed regarding the extent to which authorities should be required to weigh the injurious

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has significantly exceeded the volume of increase in dumped imports during the investigation period; or (ii) prices of the dumped imports have been increasing while there has been no undercutting and the market share of the dumped imports has been declining during the investigation period. When either of these conditions are demonstrated, investigating authorities shall not find that material injury is caused by dumped imports unless there is sufficient justification to overcome the presumption.]] The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry[[;.As described in subparagraph 5.1, the authorities must not attribute to the dumped imports]] [[~~and the~~]]injuries caused by these other factors[[~~must not be attributed to the dumped imports~~]]. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry. [[In the presence of a strong correlation between a factor or factors other than the dumped imports and the injury to the domestic industry, authorities shall presume that there is no causal relationship between the dumped imports and injury, unless authorities clearly demonstrate, based on other evidence, that the dumped imports, in and of themselves and apart from any other factors, are causing injury. Authorities shall examine the possible impact that certain domestic producers of the like product have on the state of the domestic industry. In particular, authorities shall examine the impact of the sales volume and the prices of domestic producers of the like product to determine whether there is a significant price undercutting or depression caused by the price of one or more domestic producers of the like product, and shall not attribute injury caused by such price undercutting or depression to dumped imports. It is understood that the effects of either the dumped imports or the other known factors shall not be isolated or quantified, either individually or collectively. Also, it shall not be determined whether the	~~Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.~~ [12] Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.	effects of dumped imports against the effects of other factors. One delegation submitted a Working Paper, which was subsequently circulated at the request of six delegations in TN/RL/W/223,* that would, *inter alia*, require a Member to separate and distinguish the effects of dumped imports from those of other factors and would allow reliance on qualitative methods only where quantitative analysis is impractical. A number of delegations expressed the view that they would prefer the existing Article 3.5 of the ADA, while others believed the Group should continue to seek to clarify how causation and non-attribution can be done and how to improve Article 3.5 accordingly.

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effects of the dumped imports are more important than the effects of the other known factors, either individually or collectively.]] [18][[This does not prescribe any specific methodology that the authorities have to use in order to show "a strong correlation".]]		
3.5.1 [[To make an affirmative determination that dumped imports are causing injury, the authorities must determine that the effects of the dumped imports are injurious notwithstanding the effects of the other known factors. The authorities need not isolate or quantify the effects of either the dumped imports or the other known factors, either individually or collectively. They also need not evaluate whether the effects of the dumped imports are more important than the effects of the other known factors, either individually or collectively.]]		
3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.	3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.	
3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[19] In making a determination regarding the	3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[13] In making a determination regarding the	The proposed text of **threat of injury** attracted substantial support but also a variety of questions and comments. One frequent theme was whether the text should incorporate the causation standards of Article 3.5, with some delegations suggesting that including a reference to Article 3.4 but excluding a reference to Article 3.5 could

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existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as: [19]One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.	existence of a threat of material injury, the authorities shall consider the state of the domestic industry during the period of investigation, including an examination of the impact of dumped imports upon it in accordance with paragraph 4, in order to establish a background for the evaluation of threat of material injury. In addition, the authorities should consider, *inter alia*, such factors as: [13] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.	imply that the causation requirements are not applicable. While several delegations considered that the proposed language in Article 3.7 (ii), referring to "available evidence concerning" the availability of other export markets, inappropriately lessened the effort required of investigating authorities, another delegation welcomed this language because it recognized that investigating authorities might find such information hard to obtain. One delegation suggested that Article 3.7 might usefully refer to "actual or potential" dumped imports.
[[(a)]] [[any of the relevant factors listed in Article 3.4; and]]		
[[(b)]] (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation; (ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the [[known and established]] availability of other export markets to absorb any additional exports; (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and	(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation; (ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account available evidence concerning the availability of other export markets to absorb any additional exports; (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and (iv) inventories of the product being investigated.	

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(iv) inventories of the product being investigated.		
No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.	No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.	
3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.	3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.	

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3.9 [[A determination of material retardation shall be based on facts and not merely on allegation, conjecture or remote possibility. In making a determination regarding the existence of material retardation, the authorities may consider feasibility studies, investment plans or market studies to examine, *inter alia*, such factors as: (i) capacity utilisation; (ii) delays in the start of reasonable commercial production; and (iii) the amount of domestic production as compared to the size of the domestic market.]]	3.9 A determination of material retardation of the establishment of a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility. An industry may be considered to be in establishment where a genuine and substantial commitment of resources has been made to domestic production of a like product not previously produced in the territory of the importing Member, but production has not yet begun or has not yet been achieved in commercial volumes.[14] In making a determination whether an industry is in establishment, and in examining the impact of dumped imports on the establishment of that industry, the authorities may take into account evidence concerning, *inter alia*, installed capacity, investments made and financing obtained, and feasibility studies, investment plans or market studies.[15] [14] The authorities may however consider that an industry is in establishment notwithstanding the existence of established producers of the domestic like product, if those established producers are not able to satisfy domestic demand for the product in question to any substantial degree; provided that under no circumstances shall an industry be considered to be in establishment if the collective production capacity of established producers exceeds 10 per cent of domestic demand for the product in question. [15] Members recognize that an examination of possible material retardation relates to the impact of dumped imports on the efforts of the industry to become established, and that this type of impact may not be reflected in actual or potential declines in performance. Nonetheless, the authorities shall evaluate, to the extent that data exists, available information with respect to all economic factors and indices relevant to an examination of material retardation of the establishment of the domestic industry in question.	Although there was a broadly expressed view that the provisions of the ADA regarding **material retardation** would benefit from amplification and clarification, there were widely varying views regarding the specific elements of the Chair text. Much of the discussion focussed on the question of when a domestic industry can be considered to be "in establishment". Some delegations, particularly developing Members, welcomed that notion that an industry might still be in establishment even if there was some domestic production. These delegations were however concerned that the 10% limit on domestic production capacity might be too inflexible and exclude some real world situations. Other delegations considered that the 10% limit could become the norm rather than a limit, such that any domestic industry capable of meeting less than 10% of demand would be treated as "in establishment". More generally, some of these delegations considered that once there was *any* domestic production an industry was no longer "in establishment", and in such cases the proper analysis was one of current injury or threat. Various delegations expressed concern that the 10% limit might treat an industry in decline as being "in establishment". Various delegations sought further clarity about the criteria for determining whether an industry is "in establishment", including the meaning of the concepts of "genuine and substantial commitment of resources" and "commercial volumes". The issue of *ex officio* initiation where an industry is "in establishment", as reflected in proposed footnote 24, *infra*, also received significant attention. Some delegations were interested in the idea that *ex officio* initiation might be justified in cases of material retardation, or at least that standing need not be shown in such cases. Other delegations considered that applications should be required in material retardation as in other cases, noting that in any event there should be a potential investor prepared to make an application.
3.10 [[Authorities must provide an adequate and reasoned explanation for all determinations made pursuant		

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to Article 3, including an explanation of how each of the relevant factors have been evaluated and how the authorities reached its conclusion.]]		
Article 4 *Definition of Domestic Industry*	*Article 4* *Definition of Domestic Industry*	
4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or [[where permitted under Article 3.1.1 in exceptional cases provided for in this Agreement, to as high a proportion of the producers as possible, but not less than]] [[~~to~~]] those of them whose collective output of the products constitutes [[the]] major proportion [[(]] [[more than 50 per cent]] [[)]] [[~~a major proportion~~]] of the total domestic production of those products, except that:	4.1 For the purposes of this Agreement, and except to the extent otherwise provided in Article 5.4, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:	*See* comments regarding standing in the context of Article 5.4 of the Chairman's text.
[[(i)*new* the term "domestic industry" may be interpreted to refer to domestic producers whose collective output of the product constitutes a major proportion of the total domestic production of the like products, provided the authorities explain why examining domestic producers whose collective output constitutes less than 50 per cent of the total domestic production of the like products is appropriate;]] (i) [[~~when producers are related~~]][20] [[~~to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers~~]] [[for the purposes of Article 5.4, domestic producers may be excluded from the domestic industry where they are related to exporters or importers, or are themselves importers of the allegedly dumped product.]];[[21]]]	(i) when producers are related[16] to the exporters or importers or are themselves importers of the ~~allegedly dumped~~ product under consideration, the term "domestic industry" may be interpreted as referring to the rest of the producers[17,18];	Certain delegations expressed regret that the Chairman's text did not contain any provisions on **perishable, seasonal products**. Many delegations supported, or were at least interested in exploring, the idea that in appropriate cases an investigation could be limited to a domestic industry growing and marketing an unprocessed product during a portion of the year, with any duties also applied only during that portion of the year. It was observed that such an approach could be beneficial both for investigating authorities, who could define the industry and period of investigation narrowly, and for exporters, because any duty would apply only during that portion of the year, thus limiting duties to that necessary to address the injury and reducing the burden on trade. These delegations had a variety of comments on the specifics of the text, as identified below. Other delegations had doubts that the concept would be a helpful addition to the ADA. It was observed that the addition of product-specific rules in the ADA context was unprecedented, and that many other non-agricultural products, such as electronics and Christmas ornaments, also had short life-cycles or were seasonal in nature. Furthermore, some delegations noted that such rules were

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(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if *(a)* the producers within such market sell all or almost all of their production of the product in question in that market, and *(b)* the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.	(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if *(a)* the producers within such market sell all or almost all of their production of the product in question in that market, and *(b)* the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.	unnecessary given changing technologies that expanded growing seasons and extended the time that products could be stored. Some delegations indicated that the idea was very complex and might prove not to be feasible. It was suggested that agriculture would be the subject of increasing numbers of AD actions as special safeguards became unavailable. Many specific aspects of the proposal were discussed. Various delegations asked why the idea should be limited to a specified list of agricultural products, and whether it might not be more broadly applicable to other agricultural and horticultural products, including flowers. The view was expressed that the concepts of "major proportion" and "all or almost all" needed to be clarified and tightened, perhaps with quantitative thresholds. It was also suggested to clarify the definition of a seasonal, perishable product, with some delegations questioning the basis for limiting the proposal to products normally marketed within 8 weeks of harvesting. Various delegations queried whether there might be multiple domestic industries within a country with distinct marketing seasons, and if so what implications this might have for standing determinations. The sponsor acknowledged that clearer definitions might be required and was open to consider a broader product scope.
[20][[[[For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if *(a)* one of them directly or indirectly controls the other; or *(b)* both of them are directly or indirectly controlled by a third person; or *(c)* together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.]] [[For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if one enterprise executes control over another through having: (a) more than one half of the voting power of an enterprise;	[16] For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if *(a)* one of them directly or indirectly controls the other; or *(b)* both of them are directly or indirectly controlled by a third person; or *(c)* together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter. [17] In determining whether to exclude a producer from the domestic industry in cases where that producer is itself an importer of the product under consideration, the authorities shall consider, *inter alia*, the extent of that producer's imports of that	Footnotes 17 and 18 regarding **domestic producers that are themselves importers** of allegedly dumped goods was the subject of significant discussion. Some delegations welcomed the proposed footnotes, although they generally considered the criteria to be too vague, and sought greater precision, including numerical thresholds, as well as a more directive approach where the criteria were met. Other delegations questioned the specific criteria reflected in the footnote, especially in respect of the "range of models", with some delegations noting that a limited range of models might nevertheless represent a major share of imports. These delegations generally believed that the rules should not be too prescriptive as the assessment must be case by case. An illustrative list approach was suggested as an alternative. Various delegations expressed the concern that footnote 18 was

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(b) power over more than one half of the voting rights by virtue of an agreement with other investors; (c) such power under a statute or an agreement; (d) power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or (e) power to cast the majority of votes at meetings of the board of directors or equivalent governing body.]]]] [21][[A producer shall not be excluded from the definition of domestic industry where, e.g.: (i) the total import value of the product under consideration made by such producer during the period of investigation is relatively low (less than [X]% of its total sales of the like product into the domestic market); or (ii) the imports of the product under consideration made by the producer only relate to a few models of the like product or were made to fill gaps in its range of products. A producer may provide other justifications on why it should not be excluded. Such justifications shall be taken into account by the investigating authority.]]	product relative to its total sales of the domestic like product in the market of the importing country and the range of the allegedly dumped goods imported by that producer relative to the range of its domestic production and sales of the like product. Evidence that the producer's imports of the allegedly dumped product are small relative to its total sales of the domestic like product in the market of the importing country or that the goods imported by that producer represent a limited number of models relative to the range of models of the domestic like product produced and sold domestically by the producer would normally favour a conclusion that the producer should not be excluded from the domestic industry. [18] The reasons underlying any decision by the authorities to exclude from the domestic industry producers that are related to the exporters or importers or are themselves importers of the allegedly dumped product shall be set forth in the relevant public notices or separate reports required by Article 12.	unduly demanding and could require the disclosure of confidential information, while other delegations welcomed the proposed footnote as a useful contribution to transparency.
(iii) [[Investigating authorities may interpret the term "domestic industry" as referring to a seasonal domestic industry if the authorities find that the following circumstances exist: (a) the product under consideration and the like product meet the following criteria: (1) the products are fresh or chilled products falling under the following HS2002 tariff codes: 0701, 0702, 0703, 0704, 0705, 0706, 0707, 0708, 0709, 0803, 0804, 0805, 0806, 0807, 0808, 0809, 0810;		

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(2) the products are marketed in raw form for consumption without "further processing" ("further processing" refers to e.g. crushing, juicing, canning, or any other process that transforms the product from its raw form); and (3) the products normally are marketed within a discrete season ('the marketing season") that concludes no later than eight weeks after the end of the period in which the crops are harvested; and (b) a major proportion of all sales of the like product during the marketing season are made by producers that sell all or almost all of their production of the like product during that marketing season.]]		
(iv) [[When the investigating authorities find that the circumstances specified in paragraph (iii) exist, the seasonal domestic industry shall consist of those domestic producers that sell the perishable agricultural product during the marketing season.]]		
(a) [[When the investigating authorities determine that a seasonal domestic industry exists, the authorities may limit the period of investigation for determining dumping to a period corresponding to the relevant marketing season.]]		
(b) [[When the investigating authorities determine that a seasonal domestic industry exists, the authorities may make an affirmative injury determination only if the authorities find that the dumped imports are causing injury to the seasonal domestic industry.]]		

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(c) [[When the investigating authorities have found that dumped imports injure a seasonal domestic industry, the importing Member shall levy anti-dumping duties only on products imported during marketing seasons corresponding to the marketing season identified in the investigation.]]		
4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied[22] only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and *(b)* such duties cannot be levied only on products of specific producers which supply the area in question. [22]As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.	4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied[19] only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and *(b)* such duties cannot be levied only on products of specific producers which supply the area in question. [19] As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.	
4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.	4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.	
4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.	4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.	
Article 5 *Initiation and Subsequent Investigation*	*Article 5* *Initiation and Subsequent Investigation*	
5.1 Except as provided for in paragraph 6, an	5.1 Except as provided for in paragraph 6, an	

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investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.	investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.	
5.2 An application under paragraph 1 shall include evidence of *(a)* dumping, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and *(c)* a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain [[~~such information as is reasonably available to the applicant on~~]] the following [[information]]:[[[23]]] [23] [[In the case that the applicant claims that some of the information requirements listed in this paragraph is unavailable, a complete description of the efforts made by the applicant in order to obtain such information shall be provided.]]	5.2 An application under paragraph 1 shall include evidence of *(a)* dumping, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and *(c)* a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:	Regarding **the information to be contained in the application**, broad support was expressed for the changes proposed in the Chairman's text. Some delegations however considered that producer associations must list all members supporting and opposing the application, while other delegations considered that might not be possible in the case of fragmented industries composed of numerous producers. As a technical matter, it was suggested that the language "to the extent possible" as it appeared in respect of certain information requirements was not only unnecessary in light of the "reasonably available" criterion in the chapeau, but might through its selective use even suggest that no such caveat existed with respect to other information requirements in this Article.
[[(i) the identity of the applicant[[, ~~and~~]]a description of the volume and value of the domestic production of the like product by the applicant[[, and a list of all known domestic producers of the like product:~~,~~]] (ii)*new* Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product)[[, indicating individual producers who are known to support the application,]] and[[~~,to the extent possible,~~]] a description of the volume and value of domestic production of the like product accounted for by such producers[[[24]];]]	(i) (a) the identity of the applicant and the domestic industry by or on behalf of which the application is made and, where the applicant is itself a producer, a description of the volume and value of the domestic production of the like product by the applicant;~~.~~ ~~Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product)~~ (b) the identity of those producers (or, to the extent this is not practicable in the case of fragmented industries, associations of domestic producers of the like product) supporting the application, and, to the extent possible, a description of the volume and value of domestic production of the like product accounted	

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[[(i) the identity of the applicant[[, ~~and~~]] a description of the volume and value of the domestic production of the like product by the applicant[[, ~~. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by~~]]a list of all known domestic producers of the like product (or[[, in the case of fragmented industries,]] associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;]]	for by those ~~such~~ producers or associations of producers; and (c) the identity of all known domestic producers of the like product (or, to the extent this is not practicable in the case of a fragmented industry, associations of domestic producers of the like product) and, to the extent possible, a description of the total volume and value of domestic production of the like product;	
(ii) a complete description[[[25]]] of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;	(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;	
(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member[[[26]]];	(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member[20];	

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(iv) information [[and a reasoned explanation]] on the evolution of the volume of the allegedly dumped imports, [[in absolute terms and relative to consumption and production in the importing country;]] the effect of these imports on prices of the like product in the domestic market[[, including those indicated in paragraph 2 of Article 3;]] and the consequent impact of the [[allegedly dumped]] imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, [[including all~~such as~~]] those listed in paragraphs 2 and 4 of Article 3.	(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3. [20] Including the sources of the information provided and, where relevant, the method used to derive prices from that information.	
(v) [[When the applicant alleges a threat of material injury, the application shall contain all elements stated in paragraph 7 of Article 3.]]		
[24] [[In the case of associations of domestic producers, application shall list those producers who expressly support the petition and the volume and value of the like product by each of them.]] [25] [[The description must refer to the physical characteristics of the product. It must also indicate the HS Code corresponding to the import product and is this HS Code covers another type of product.]] [26] [[The information must indicate, for each case, the sources consulted and the methodology used to calculate the prices.]]		
5.3 The authorities shall examine the accuracy and adequacy of the evidence[[[27]]] provided in the application to determine whether there is sufficient evidence[[[28]]] [[of dumping, injury and [[[[causality]] [[a causal link]]]]] to justify the initiation of an investigation. [[The authorities shall promptly reject the application and terminate all proceedings when they find there is not sufficient evidence in the application. In particular, the authorities	5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application[21] to determine whether there is sufficient evidence to justify the initiation of an investigation. [21] The authorities shall, in addition, consult sources readily available to them, such as trade associations, publications and public records, with a view to identifying any exporters or	Regarding the **identification of interested parties** in proposed footnote 21, there was wide support for the thrust of the proposal, although some developing Members were concerned that the proposal might be unduly burdensome. However, a number of delegations considered that the requirements of footnote 21 might more properly apply after initiation of the investigation, particularly where exporters and

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shall inquire (such as by consulting sources reasonably available to them including trade associations or publications) whether there are any domestic producers of the like product (or, in the case of fragmented industries, associations of domestic producers of the like product) not named in the application.]] [27] [[For this purpose, authorities shall check evidence contained in the application with reliable and independent information from public records, intra-governmental records and other available sources.]] [28] [[Authorities shall, *inter alia*, check the evidence in the application against information from other independent public sources. Normal value shall not be based on third country export price or constructed normal value, unless home market sales prices are unavailable, and authorities are satisfied that the third country export price or constructed normal value is a prima facie fair substitute for home market sales prices, having regard to the assumptions and methodologies used.]]	foreign producers of the allegedly dumped product, and any domestic producers of the like product, not identified in the application.	foreign producers are concerned.
5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[29] by domestic producers of the like product [[or associations of domestic producers of the like product)]], that the application has been made by or on behalf of the domestic industry.[[[30]]] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose [[(or associations of domestic producers of the like product)]] collective output[[[31]]] [[constitutes more than 50 per cent of the total production of the like product.]] [[constitutes more than 50 per cent of the total production of the like product produced by [[~~that portion of~~]] the domestic industry[[, as defined in Article 4.1.]]]] [[constitutes [[not]] less than [[~~25~~50]] per cent of total production of the like product produced by the domestic industry.]] [[constitutes more than 50 per cent of the [[average]] total [[annual]] production [[in the last three years[32]]] of the like product produced by that portion of the domestic industry expressing either support for or opposition to the	5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[22] by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.[23] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry. For the purpose of this paragraph, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like product, subject to the application of Article 4.1(i) and 4.1(ii).	With respect to **standing**, there was broad support for the changes proposed in the Chairman's text regarding the meaning of the term "domestic industry". However, certain delegations regretted the absence of further provisions in the Chairman's text regarding standing. Certain delegations urged that standing must be based upon the express support of producers whose collective output constitutes more than 50% of total production of the like product. These delegations would require that the authorities look behind industry associations to identify those producers that expressly support the application. They would limit the exclusion of producers related to exporters or producers of the product under consideration to standing determinations (and not injury determinations) and tighten the concept of control (a working paper reflecting this approach was subsequently circulated as TN/RL/W/230). Some delegations supported the proposed 50% rule, while others strongly opposed it, noting both issues of fragmentation and of pressures on domestic producers not to support applications. With respect to the treatment of

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application.]] [[[33]] However, no investigation shall be initiated when domestic producers [[(or associations of domestic producers of the like product)]] expressly supporting the application account for less than 25 per cent of total production of the like product produced by [[[[all~~the~~]] domestic [[producers~~industry~~]] [[the domestic industry]]]].[[In the case of an application made or supported by a trade association, only the production of those member producers who support the application shall count towards the standing threshold. For the purpose of this paragraph, the collective output and total production of the like product shall be based on sum of individual amounts in the accounting and/or production records of the domestic producers of the like product and audited severally by certified auditors of the importing member.]] [29]In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques. [30] [[~~Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.~~]] [31] [[The representation of producer associations or groups shall be determined only in terms of individual support of their members.]] [32] [[For the purpose of paragraph 4, the output and/or production shall be those in the most recent 3 years/36 months before filing to the authority of the written application by the applicant, or the longest possible period when the output data are available. Total sales of the same period shall not be used as a substitute for the output and production.]] [33] [[If the existence of threat of material retardation is alleged, the level of support of domestic producers shall be determined on the basis of established or projected production capacity.]]	[22] In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques. [23] Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.	industry associations, some delegations supported looking behind the association's support while others urged a contrasting rule that the entire production of association members should be treated as supporting the application. Intermediate positions would take into account association members that came forward as not supporting an application or in any event consider the decision-making rules of the association in question. Varying views were also expressed on proposals to limit the exclusion of producers related to exporters or producers of the product under consideration to standing determinations (and not injury determinations).
5.4bis [[An investigation can be initiated and subsequently conducted only with a proper definition of the scope of the product under consideration which can encompass only products that are under the same conditions of competition. The assessment of those conditions of competition shall be based upon an		

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evaluation of the physical characteristics of the products, including technical specifications and quality, and their market characteristics, including end uses, substitutability, pricing levels and distribution channels. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance. Products that do not reach the same geographical market or that do reach the same geographical markets at clearly distinct periods of time are not to be considered the same product under consideration.]] [[An investigation can only be initiated and subsequently conducted with a proper determination of the scope of the product under consideration. Where, on the basis of the evidence available at initiation, authorities determine that there is more than one distinct product under consideration, they shall initiate a separate investigation for each such distinct product. Subsequent to the initiation of an investigation, if the further evidence obtained indicates to authorities that the investigation is with respect to more than one distinct product under consideration, an anti-dumping duty shall not be imposed on any distinct product unless a separate determination of dumping and a separate determination of injury are made with respect to that product.]] [[An investigation can only be initiated and subsequently conducted with a proper determination of the scope of the product under consideration. Only goods which, on the basis of the evidence available at initiation, authorities determine to be alike in all respects or have closely resembling physical and market characteristics, may be included in the definition of product under consideration, and be subject to the same investigation. Subsequent to the initiation of an investigation, if the further evidence obtained indicates to authorities that the investigation is with respect to two or more distinct products (i.e. goods that do not have closely resembling physical and market characteristics), an anti-dumping duty shall not be imposed on any distinct product unless separate determinations of standing,[34] dumping and injury are made with respect to that product.]]		
[34] [[Authorities shall terminate the investigation in		

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respect of a distinct product forthwith if they find that the standing criteria under Article 5 would not have been met at the time of initiation had that product been treated as a distinct product at the time of the initiation.]]		
5.4bis.1 [[A determination of whether there is more than one distinct product under consideration shall be based on an objective examination of the physical characteristics of the imports, including technical specifications and quality, and their market characteristics, including end uses, substitutability, pricing levels and distribution channels. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.]] [[A determination of whether two goods have closely resembling physical and market characteristics shall be based on an objective examination of the physical characteristics of the imports, including technical specifications and quality, and their market characteristics, including end uses, substitutability, pricing levels, distribution channels, and whether they compete in the same geographical market in the same period. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.]]		
5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, [[within [7] days]] [[promptly]] after receipt of a properly documented application[[~~and before proceeding to initiate an investigation~~]], the authorities shall notify [[[[and provide the full text of such application received under paragraph 1 to]] [[and send a non-confidential version of the application to]]]] [[and provide the full text (due regard to be paid to the	5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after an ~~receipt of a properly documented~~ application has been filed and no later than 15 days before initiating ~~before proceeding to initiate~~ an investigation, the authorities shall notify the government of the exporting Member concerned and shall provide it with the full text of the written application, paying due regard to the requirement for the protection of confidential	Proposed Article 5.5 of the Chairman's text regarding **pre-initiation notification** of the exporting Member provoked significant discussion in the Group. Some delegations supported the text as useful to help avoid unwarranted initiations. Other delegations either questioned the utility of the proposed text, or considered that it could require a mini-investigation before initiation and could delay initiation. Yet other delegations believed that the text did not go far enough, as it did not require the investigating authorities to take due account of any comments made.

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requirement for the protection of confidential information, as provided for in paragraph 5 of Article 6) of the application to]]]] the government of the exporting Member concerned[[, which may make it available to the exporters and foreign producers and relevant trade associations known to the government of the exporting Member concerned.[35]]] [[as well as each known exporter and foreign producer.]] [[and, where practicable, to the exporters and foreign producers identified in the application.[36]]] [[Due regard shall be provided to the requirement for the protection of confidential information, as provided for in paragraph 5 of Article 6. The government of the exporting Member and the exporters and foreign producers concerned shall have at least 15 days to comment on the standing of the applicant and the evidence justifying the initiation before the initiation. Authorities shall address those comments before the initiation. If this is not practicable, they shall address those comments within 60 days after the initiation.[37]]] [35] [[This shall not preclude the authorities from providing the full text of such application directly to the known exporters and foreign producers and relevant trade associations, in addition to providing it to the government of the exporting Member.]] [36] [[It being understood that, where the number of exporters involved is particularly high, the full text of the written application may instead be provided to the relevant trade association.]] [37] [[It being understood that comments concerning complex data may not be easily verifiable within the 60-day period, and authorities may not be able to address those comments within that period.]]	information as provided for in paragraph 5 of Article 6.	Concerns were also expressed that it could require the early notification of applications that ultimately were rejected, with potential trade-chilling effects. There were varying views about the 15-day period, with some delegations considering it to be too short and others too long.
5.5*bis* [[As soon as possible after an application is accepted, and in any event before the initiation of any investigation, interested parties shall be invited to provide comments on the standing of the application and the accuracy of the information submitted.]]		
5.5*ter* [[Without prejudice to the obligation to afford reasonable opportunity for consultation, the provision		

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stated in paragraph 6 is not intended to prevent the authorities or a Member from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.]]		
5.5.1 [[Authorities shall also provide the exporters and foreign producers concerned adequate opportunity to comment and make proposals on model matching, including model classification, for the purpose of determining the identical and most closely resembling models, as well as to comment on those proposed by the petitioners and the authorities.]]	[*See* Article 2.4.4 of the Chairman's text.]	
5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if [[all the provisions stipulated in this Article are fulfilled]][[~~they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation~~]] [[the conditions under paragraph 11 are satisfied, and]] they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation[[, and have provided opportunity to comment as referred to in paragraph 5 above]].	5.6 If, in special circumstances,[24] the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation. [24]Such special circumstances may exist, *inter alia*, where the domestic industry is still in establishment or where one or more new producers are still in a start-up situation.	*See* comments regarding material retardation in the context of Article 3.9 of the Chairman's text.
	5.6*bis* An investigation under this Article shall be initiated and conducted, and a determination of the existence of dumping, injury and causal link shall be made, only with respect to a single product under consideration, the scope of which shall be determined in accordance with Article 2.6(a). If during the course of an investigation authorities find, in light of the evidence	*See* comments regarding product under consideration in the context of Article 2.6 of the Chairman's text.

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	obtained, that the investigation includes imported products that are not properly included within the scope of the product under consideration, they shall amend the product scope of the investigation and shall only impose an anti-dumping duty on imports of any distinct product under consideration if they make determinations of the existence of dumping, injury and causal link with respect to that product.	
5.7 The evidence of both dumping and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation, and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.	5.7 The evidence of both dumping and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation, and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.	
5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that [[the standing requirement under paragraph 4 has not been met at the time of initiation (in case of investigation initiated on the basis of an application) or that]] there is not sufficient evidence of [[~~either~~]]dumping[[,~~or of~~]]injury [[or causal link between them]] to justify proceeding with the case.[[[38]]] There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume [[or the estimated market share]] of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than [[X]][[5]][[~~2~~]] per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country [[during the period of investigation]] is found to account for less than [[~~3~~]][[X]] [[1]] per cent of [[imports of the like product in the importing Member [[or if the market share of dumped imports is less than Y per cent]]]] [[[[the total market[39] for]] [[the total domestic consumption of]] [[the domestic consumption of]] the like product in the importing Member [[[40]]] [[[41]]]] [[~~unless countries which~~	5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.	Some delegations regretted that the Chairman's text did not contain any changes regarding ***de minimis* margins** or **negligible import volumes**. On *de minimis* margins, some delegations considered that the current 2% rate of *de minimis* should be raised to at least 5%, and that *de minimis* rules should be applied in reviews pursuant to Articles 9 and 11 (a working paper reflecting this approach was subsequently circulated as TN/RL/W/221). Other delegations could support an increase in *de minimis* margins but opposed their application in reviews, except perhaps new shipper reviews. Yet other delegations objected to raising the *de minimis*, as a 2% margin could already be quite significant, with one delegation suggesting that the concept should be removed altogether. It was also suggested the *de minimis* could be raised but exclusively in the case of developing country exporters. With respect to negligible import volumes, certain delegations urged that the test be changed from 3% of imports to 3% of domestic consumption, that the calculation be based on the dumping POI, and that the cumulation provision be deleted (a working paper reflecting this approach was subsequently circulated as TN/RL/W/227). Other delegations were satisfied with the current rules and opposed any changes, noting that data on

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~~individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member~~]]. [38] [[Where an interested party alleges that there is insufficient standing or evidence justifying initiation, and supports its allegations with public data such as official statistics, or otherwise alerts the authorities as to the inconsistencies in the application, the authorities shall promptly look into the complaint and provide a full reply to the party and other interested parties within [90] days thereof, or, if the investigation is expected to conclude within [six] months of initiation, no later than at the time of the final determination.]] [39] [[It is understood that where the market is divided into two or more competitive markets under paragraph 1(ii) of Article 4, the "total market" will relate only to the total competitive market under review.]] [40] [[In the event that countries which individually account for less than 3 per cent of the domestic consumption of the like product in the importing Member collectively account for more than 7 per cent of domestic consumption of the like product in the importing Member, the volume of dumped imports regarded as negligible shall refer only to those from countries which collectively, by adding their volume of dumped imports in ascending order, account for less than 7 per cent of domestic consumption of the like product in the importing Member.]] [41] [[Negligibility shall be measured considering the entire period of dumping investigation, that is not less than 12 months.]]		domestic consumption would be difficult to obtain on a timely basis and that small suppliers could collectively be important. Certain delegations were prepared to consider a change in the denominator to domestic consumption but considered that this would necessitate lowering the percentage in the numerator. Several delegations supported raising the threshold, but exclusively in the context of developing country exporters.
5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.	5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.	
5.10 [[Investigations shall[[~~, except in special circumstances,~~]] be concluded within one year[[~~, and in no case more than 18 months,~~ after their initiation.]]]] [[Investigations shall, except in special circumstances, be concluded within one year[[. An investigation shall~~,and~~]] in no case [[last for]] more than [18] months, after their initiation.]] [[Prior to an extension of the investigation, the authorities shall issue a public notice and shall notify known interested parties in writing, explaining the special	5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.	

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circumstances giving rise to the need for an extension of the investigation, and giving details of the extension.]]		
	5.10*bis* Except where circumstances have changed, the authorities shall not initiate an investigation where a previous investigation of the same product from the same Member initiated pursuant to this Article resulted in a negative final determination within one year prior to the filing of the application. If an investigation is initiated in such a case, the authorities shall explain the changed circumstances which warrant initiation in the notice of initiation or separate report provided for in Article 12.1.	Some delegations welcomed the proposed text of Article 5.10*bis*, which they considered to give appropriate effect to the decision taken by Ministers at Doha. Others considered that the text went in the right direction but that there should be an absolute bar on initiations during a one-year period or longer, particularly given the ambiguity of the concept of "changed circumstances". Other delegations expressed concerns that the proposed text could undermine the right to initiate an investigation where sufficient evidence existed, and indicated that there could be situations where initiation was warranted even without changed circumstances. One delegation suggested that the proposal was too narrow as it applied only in the case of negative final determinations.
5.11 [[The authorities shall in the public notice on the initiation of an investigation give the interested parties a period of 20 days after the date of initiation to notify the latter's intention to participate in the proceeding, provide the relevant information[42] and comment on the information contained in the notice of initiation, such as the representativeness of the applicant, the scope of the product under consideration and the evidence given to justify the initiation of the investigation. The authorities shall take due account of such comments. Questionnaires shall be sent to the interested parties within 10 days after the date of expiry of the above responding and comment period.]] [42] [[Information may include but not be limited to name, address, legal representative, contact details and contact person of the interested parties, total volume and value of the product under investigation exported to the investigating Member during the investigation period, and the official seal of the interested parties or signature of the legal representative.]]		

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5.12 [[A new investigation can not be initiated for the same product before 12 months have passed since the publication of a negative final determination notice of non-application or revocation, referred to the previous investigation.]] [[Where an investigation is terminated without the imposition of a definitive anti-dumping measure, the authorities shall not initiate a new investigation into the same product or like product from the same exporting Member until after a period of 12 months has elapsed from the date of the termination of the investigation.]]	[*See* Article 5.10*bis* of the Chairman's text.]	
Article 6 *Evidence*	*Article 6* *Evidence*	
	6.1*New* The authorities may request interested parties to supply such information as the authorities reasonably consider may be necessary for the conduct of the investigation, including information in the possession of parties that are affiliated to those interested parties.	See comments in the context of Article 6.8.1 of the Chairman's text.

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6.1 [[Authorities shall actively and in an objective and unbiased manner seek the evidence necessary for the investigation.]] All interested parties in an anti-dumping investigation shall be given notice[[[43]]] of the information which the authorities require and ample opportunity to present in writing all evidence which the[[~~y~~ interested parties]] consider relevant in respect of the investigation in question. [[To permit such participation the authorities shall inquire (such as by consulting sources reasonably available to them including trade associations, trade publications, or import records) whether there are any foreign producers, exporters or importers of the product under consideration not named in the application. Reliance on a notice of appearance procedure and notification of the government of the exporting member shall not alone be sufficient.]] [43] [[Authorities shall make best efforts to identify the exporters and/or producers concerned, including through, *inter alia*, checking customs declarations, through requests to industry associations in the exporting Member, through industry publications in the exporting Member and any other means reasonably available to them.]]	6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.1.1 [[The authorities shall send to all known e~~E~~]]xporters or foreign producers [[~~receiving~~]] questionnaires used in an anti-dumping investigation [[and they]] shall be given at least [[~~30~~45]] days for reply.[44] Due consideration should be given to any request for an extension of the [[~~30~~45]]-day period and, upon cause shown, such an extension should be granted whenever practicable. [[The authorities shall inform an interested party in writing if the information submitted by that party in reply to a questionnaire is incomplete or requires clarification. The interested party shall be afforded not less than 7 days to provide additional information or clarification.]] [44] As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or [[received by~~transmitted to~~]] the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.	6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply.[25,26] Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable. [25] It is desirable that the authorities not require certification of translations by official translators. Where such certification is required, exporters or foreign producers shall be given an additional seven days for reply. [26] As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.	
	6.1.1*bis* Within a reasonable period of time after the receipt of the response to a questionnaire, the authorities shall make a preliminary analysis of that response and shall notify the interested party concerned in writing of any requests for clarification or additional information.	

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6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.	6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.	
6.1.3 As soon as an investigation has been initiated, the authorities shall [[(if they have not already done so before initiation)]] provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters[[,]][45] [[~~and to the authorities of the exporting Member~~]]and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.	6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters[27] ~~and to the authorities of the exporting Member~~ and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.	
[45] It being understood that, where the number of exporters [[and foreign producers]] involved is particularly high, the full text of the written application [[may~~should~~]] instead be provided only to the [[~~authorities of the exporting Member or to the~~]]relevant trade association [[or the authorities may notify to the government of the exporting Member that the full text of the written application cannot be provided to the exporters and foreign producers because of such high number]].	[27] It being understood that, where the number of exporters involved is particularly high, the full text of the written application ~~should~~ may instead be provided only ~~to the authorities of the exporting Member or~~ to the relevant trade association, if any. In such cases, the authorities shall so inform the government of the exporting Member.	
6.1.4 [[The authorities may require exporters or foreign producers to provide necessary information held by other parties if such other parties directly or indirectly control, or are controlled by, the exporter or foreign producer; or if the exporter or foreign producer and the other parties are under the common control of a third party.		

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Even when such other parties do not control, or are not controlled by, the exporter or foreign producer; or if the exporter or foreign producer and the other parties are not under the common control of a third party, the authorities may nevertheless require the exporters or foreign producers to make reasonable efforts to provide necessary information held by other parties, provided that the authorities demonstrate that requiring such efforts is not disproportionate in the light of the balance between the importance of such information to the conduct of the investigation and the difficulty of the exporters or foreign producers to provide such information.		
In any case, the authorities may not require the exporters or foreign producers to make such efforts if the following conditions are met: (i) neither of them holds, directly or indirectly, 20 per cent or more of the voting power of the other or is the largest shareholder of the other; and (ii) no third party holds, directly or indirectly, 20 per cent or more of the voting power of both of them or is the largest shareholder of both of them.]]		
6.1.4.1 [[For the purposes of sub-paragraph 1.4, "control" is the power to govern the financial and operating policies of an enterprise by having:		

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(a) more than one half of the voting power of an enterprise; (b) power over more than one half of the voting rights by virtue of an agreement with other investors; (c) such power under a statute or an agreement; (d) power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or (e) power to cast the majority of votes at meetings of the board of directors or equivalent governing body.]]		
6.1.5 [[Where information submitted must be translated, authorities shall accept unofficial translations, and shall not require certification by official translators.]]		
6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.	6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.	

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6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.	6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.4 The authorities shall [[~~whenever practicable~~]] [[promptly] provide [[[[prompt opportunities]] [[~~timely opportunities~~]]]] for all interested parties [[that so request opportunities]] to see all information [[[[~~that is relevant to the presentation of their cases, that is not confidential~~]] [[that is not confidential]]]] [[contained in the administrative record[46], including information that is confidential]] as defined in paragraph 5, [[[[with the exception of restricted information[47],]] [[~~and that is used by the authorities in an anti-dumping investigation, and~~]] [[in order]] [[and that is [[~~used by~~before]] the authorities in an anti-dumping investigation [[regardless of whether the authorities use or intend to use a particular piece of information]]]] and to prepare presentations on the basis of this information. [[Authorities shall make available to all interested parties an updated list of all such information contained in the file or the record of an anti-dumping investigation, including a list of all information withheld because of confidentiality. The list shall be updated throughout the investigation. Authorities shall maintain a location where information will be placed promptly after its receipt or creation, and where free access shall be given to all interested parties to review or copy the information.]]	6.4 The authorities shall ~~whenever practicable~~ provide ~~timely~~ opportunities for all interested parties to see promptly all ~~information that is relevant to the presentation of their cases, that is~~ non-t confidential information ~~as defined in paragraph 5, and~~ that is ~~used by~~ before the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.	Broad support was expressed for the proposal on **general participation** rights. However, some developing Member delegations believed that the requirement of "prompt" access to information was excessive and should be replaced with the concept of "reasonable" access. Others believed that the proposed language was appropriate given the importance of the provision's objective, which is to secure interested parties' rights of participation.

[46] [[The administrative record shall contain all such information of a documentary or other nature as may be submitted to, or obtained by, the investigating authority in the course of an anti-dumping investigation or review proceedings, including government communications classified as public or confidential, transcripts or minutes of meetings and hearings, resolutions, and notices published in the Official Journal of the importing Member.]]

[47] [[Restricted information is information so sensitive that disclosure thereof can result in substantial and irreversible material or financial injury to the owner of such information, for example, secret formulas or processes with commercial value that are unpatented and are known only to a limited group of persons who use it in the production of a commercial product.]]

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	6.4*bis* The authorities shall maintain a file containing all non-confidential documents submitted to or obtained by the authorities in an anti-dumping proceeding, including non-confidential summaries of confidential documents and any explanations provided pursuant to Article 6.5.1 as to why summarization is not possible, and shall allow any person to review and copy the documents in that file upon request. Access to this file shall be provided promptly, and in any case within two working days of a request. The non-confidential file shall be kept in an organized manner, and a complete index of all documents in the possession of the authorities, including confidential documents, shall be included therein. Each file shall include all public notices related to that proceeding issued pursuant to Article 12, as well as separate reports issued pursuant to footnote 60 to that Article. Each file shall be maintained for at least five years beyond the date that the proceeding is completed. The authorities shall provide for the copying of documents in the non-confidential file at the reasonable expense of the person so requesting, or shall allow, subject to reasonable safeguards, that person to remove the documents for copying elsewhere.[28] [28] The requirements of this paragraph may be met by making such non-confidential documents and indices available via the internet.	On the proposed text requiring the maintenance of a publicly accessible **non-confidential file**, some delegations welcomed the Chairman's text and could support it in its entirety. Other delegations, however, raised the burden that the proposed system could place on resources, particularly for developing countries. For instance, some delegations considered that a two-day standard for access was too short, with one delegation suggesting a requirement for "timely" access and another suggesting a 7 working-day standard "wherever practicable". Other delegations suggested that maintaining a non-confidential file was not unduly burdensome. Delegations also disagreed as to whether the file should be accessible to all persons or only to interested parties.

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6.5 Any information which is by nature confidential [[~~(for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information)~~]], or which is provided on a confidential basis by [[interested]] parties [[in~~to~~]] an investigation shall, upon good cause shown, be treated as such by the authorities. [[~~Such information shall not be disclosed without specific permission of the party submitting it.~~]][48] [48] ~~Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.~~	6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.[29] [29] Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.5.1 [[The authorities shall require interested parties providing confidential information to furnish [[~~non-confidential summaries thereof~~]] [[a public version of the document containing the confidential information. The public version of the document shall be identical to the version containing the confidential information except that the confidential information shall be redacted and replaced by a non-confidential summary. Upon cause shown, where that is not possible, a non-confidential summary may replace the confidential document.]] These summaries shall be ~~in~~ sufficient[[ly]] detail[[ed]] to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, [[~~such~~]] parties may indicate that such information is not susceptible to summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided [[to all interested parties.]]]] [[The authorities [[may only use confidential information provided by interested parties if such information is accompanied by]] [[~~shall require interested parties providing confidential information to furnish non-confidential summaries thereof~~]] [[a public version of the document containing confidential information]]. [[The public version shall be identical to the version containing the confidential	6.5.1 The authorities shall require interested parties providing confidential information to furnish non-confidential versions of the document containing the confidential information within two working days of submitting the original document.~~summaries thereof~~. The non-confidential version shall be identical to the version containing the confidential information, except that the confidential information shall be removed and replaced by a summary of that information ~~These summaries shall be~~ in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, ~~such~~ parties providing confidential information may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.	Regarding **non-confidential summaries,** many delegations, some delegations supported the Chairman's text in its present form. Other delegations considered however that a two-day requirement might be two short. Some delegations queried whether the failure to submit such summaries on time could give rise to the rejection of the underlying document and thus result in the use of facts available.

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information, except that the confidential information shall be removed and replaced with a non-confidential summary.]] These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.]] 6.5.1*bis*[[For the purposes of an anti-dumping investigation, the information indicated below shall be treated as confidential, if it is presented as such by interested parties, because revealing or disseminating it to the public would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon the interested party supplying the information or upon a person from whom the interested party acquired the information: (a) Production processes for the goods at issue; (b) production costs and specifications of the components; (c) distribution costs;		

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(d) terms and conditions of sale, except for those offered to the public; (e) price of sale per transaction and per product, except for components of prices such as dates of sale and distribution of the product; (f) description of the kind of individual clients, distributors or suppliers; (g) where applicable, the exact amount of margin of dumping in individual sales; (h) the names of natural or legal persons from whom the interested party obtained relevant information shall be available exclusively to the authority; (i) amounts of the adjustments for terms and conditions of sale, volume or quantity, variable costs and taxes proposed by the interested party; and		

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(j) any other specific information from the enterprise in question, or such information as it provides from related enterprises, subsidiaries, suppliers, clients or distributors.]]		
6.5.2 If the authorities find that a request for confidentiality is not warranted and if the [[interested party that supplied]] [[~~supplier of~~]] the information is either unwilling to make the information public or to authorize its disclosure in [[~~generalized or~~]] summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[49] [49] Members agree that requests for confidentiality should not be arbitrarily rejected.	6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[30] [30] Members agree that requests for confidentiality should not be arbitrarily rejected.	
6.5.3 [[The authorities shall make available to interested parties an index of the administrative record, including a list of documents that have not been disclosed for reasons of confidentiality. The authorities shall decide on a location in which information shall be deposited immediately upon receipt and to which all interested parties shall have freedom of access in order to consult or photocopy non-confidential information.]]		

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6.5.~~4~~ [[The authorities shall establish a mechanism allowing timely access, for the representatives of interested parties, to confidential information contained in the administrative record, provided that the requirements of domestic legislation are met.[50] To that end, the representatives shall be held to an undertaking of confidentiality strictly prohibiting the use of information for personal benefit and dissemination among individuals who are not authorized to access such information. The authorities shall lay down specific penalties for breach of undertakings by the representatives of interested parties.]] [50] [[Each Member shall take all necessary steps, of a general and/or particular character, to ensure that, not later than the date of entry into force of the amendments to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the requirements and procedures guaranteeing timely access to confidential information contained in the record are established in its laws, regulations and administrative procedures.]]		
6.6 [[~~Except in circumstances provided for in paragraph 8, t ,]]~~ The authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information [[~~supplied by interested parties~~]] upon which their findings are based. [[Within a reasonable period after receipt of responses to the questionnaires, the authorities shall set out in writing any requests for clarifications or additional requirements for information from the interested party concerned. If evidence or information is not accepted, the supplying party shall be informed promptly of the reasons therefore, and shall have the opportunity to provide further evidence or information or explanations within a reasonable period.]]	6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.6*bis* [[Not later than [X] months after initiation of an investigation, the authorities shall make preliminary determinations of dumping and injury containing the information specified in Article 12.2.1. Preliminary determinations of dumping shall not be made prior to the deadline for receipt of replies to questionnaires under Article 6.1.1, and the preliminary determinations of injury. Prior to making a final determination, authorities shall give interested parties a reasonable time after the issuance of a public notice of a preliminary determination to provide additional factual information and legal argumentation.]]		Certain delegations regretted the absence in the Chairman's text of a requirement **for mandatory preliminary determinations**. Many delegations considered that preliminary determinations should be mandatory in all cases, as this would advance transparency, and Article 6.9 disclosures were not a satisfactory alternative. Other delegations considered that mandatory preliminary determinations would be burdensome, particularly for developing countries, and that the solution was adequate disclosure under Article 6.9, with some delegations advocating toughening of those disclosure requirements. Some delegations indicated that preliminary determinations were not possible within the short time-frames in their systems, and another delegation recognized that really rapid investigations might be analogous to preliminary determinations. Some delegations considered that proposed time-frames were too short and should be extended or removed.
6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available [[to all interested parties before a preliminary or final determination is made. Such disclosure shall take place in sufficient time for the parties to defend their interests.]] [[~~, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.~~]]	6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. ~~Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.~~	On **verification**, there was broad support for the thrust of the Chairman's text. However, there were differences of view regarding the appropriate number of days of advance notice of the intended date of verification. Some delegations indicated that a 21-day period was too long. Other delegations suggested that a 21-day period was a minimum, but that it should be clear that that the intended date was indicative, not firm. Similarly, some delegations considered that requiring a verification outline 10 days in advance was unrealistic, while others considered it too short. Likewise, differences were also apparent in respect of the proposed obligation to make a verification report available to all interested parties.

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or [[~~significantly impedes the investigation~~]] [[unreasonably refuses verification of such information, and after the authorities have made reasonable efforts to acquire such information from the interested party in question]], preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available [[to the extent necessary to substitute missing or rejected information]]. The provisions of Annex II shall be observed in the application of this paragraph.	6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
	6.8.1 Where an interested party substantiates that it does not control[31] an affiliated party and that, despite its best efforts, it has been unable to obtain requested information from that affiliated party, the authorities shall consider whether to maintain, modify or withdraw the request, taking into account the importance of the information to the investigation. In the event the authorities decide to maintain the request, whether in the same form or as modified, they shall take such reasonable steps as are available to them to support the interested party's efforts to obtain the information. Where despite the interested party's best efforts, necessary information in the possession of an affiliated party is not supplied, the authorities may base their determinations on the facts available. They shall not, however, deem the interested party to have been non-cooperative.	Some delegations welcomed the proposed Chairman's text on **information requests to affiliates**, which they considered went some way towards the objective of ensuring that interested parties were not treated as non-cooperative if they failed to provide information from affiliates that they did not control. These delegations however generally considered that further improvements were required in order for the text to fully achieve this objective. In particular, these delegations generally considered that the concepts of affiliation and control should be defined more precisely and narrowly, and made various suggestions in this respect. Some delegations urged replacing the concept of affiliated party" with "related party", and using the definitions in Article 4.1 of "related party" and "control" found in that provision. One delegation that was generally supportive nevertheless cautioned that the concept of "non-cooperative" improperly suggested the existence of two different categories of facts available. Another delegation suggested creation of a procedure so that questionnaires were sent directly to the affiliated party. Other delegations had concerns about the Chairman's text on this issue. While these delegations generally welcomed the confirmation that investigating authorities might need to seek information from parties affiliated to interested parties, these delegations considered that the text introduced mandatory requirements that were subjective in nature and could constrain investigating authorities and provoke dispute settlement. Reference was made for example to the assessment whether an interested party had made "best efforts" to obtain information. Concern was raised that the obligation of investigating authorities to support interested parties' efforts to obtain information were not clear, and that it could place a heavy obligation on investigating authorities, particularly in developing Members. It was also observed that the proposed text could encourage non-cooperation. The concerned delegations generally considered that the concept of control should go beyond strict legal control, and did not support efforts to narrow the concept of control.

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
	[31] For purposes of this paragraph, one party shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction, or to exercise significant influence, over the latter. When considering whether control exists, the authorities may take into account, *inter alia*, direct or indirect shareholdings and any contractual, legal or family relationship between the parties.	
6.9 The authorities shall, before a [[preliminary or]]final determination is made, inform all interested parties of the essential facts under consideration[[, including how the authorities will assess these facts]] which form the basis for [[a~~the~~]] decision whether to apply [[provisional or]] definitive measures.[[[51]] [[Such disclosure [[shall~~should~~]] take place in sufficient time for the parties to defend their interests.[[[52]]]] [[[[~~Such disclosure should take place in sufficient time for the parties to defend their interests.~~]] [[Such disclosure shall, due regard being paid to the requirement for the protection of confidential information, contain in particular: [51] [[The disclosure of essential facts requires the specific identification by the authorities of all facts in the record of the investigation that tend to support or cast doubt upon the determinations of dumping, injury and causation that will form the basis for a decision.]] [52] [[The interested parties shall have full opportunity to defend their interests in accordance with Article 6.2, and shall be allowed no less than [20] days to comment.]]	6.9 The authorities shall, before a final determination is made, ~~inform~~ provide all interested parties with a written report of the essential facts under consideration which they intend will form the basis for the decision whether to apply definitive measures. Interested parties shall have 20 days to respond to this report and the authorities shall address any responses in their final determination.[32] ~~Such disclosure should take place in sufficient time for the parties to defend their interests.~~ [32] This disclosure shall be made within sufficient time to allow an exporter to offer an undertaking in response.	The objective underlying the proposed text on the disclosure of the **essential facts under consideration** was generally well received. However, some delegations were concerned that the text should go further and require disclosure of essential facts *and* considerations. Other delegations expressed concerns about the implications of the proposal, in its present form, for their systems of anti-dumping administration. Some delegations focused on the timing of any such disclosure and the need to find a balance between giving exporters sufficient time to defend their interests and avoiding undue delays to the investigative process.

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
(i) the names of the suppliers, or when this is impracticable, the supplying countries involved; (ii) a description of the product which is sufficient for customs purposes; (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2; (iv) considerations relevant to injury and causation as set out in Article 3. The parties shall be allowed 15 days to comment.]]]]		
	6.9*bis* The authorities shall, normally within seven days after giving public notice of a final determination under Article 12.2, disclose to each exporter or producer for whom an individual rate of duty has been determined the calculations used to determine the margin of dumping for that exporter or producer.[33] The authorities shall provide to the exporter or producer the calculations, either in electronic format (such as a computer programme or spreadsheet) or in another appropriate medium, a detailed explanation of the information used, the sources of that information and any adjustments made to the information prior to its use in the calculations. The disclosure and explanation shall be in sufficient detail to permit the interested party to reproduce the calculations without undue difficulty. [33] This requirement is satisfied where the authorities make such a disclosure pursuant to Article 6.9 before the final determination is made.	There was broad support for the proposal that authorities **disclose the calculations** used to determine the margin of dumping for each exporter or producer. However, some delegations would prefer that such detailed disclosure occur prior to the final determination pursuant to Article 6.9. It was suggested that such disclosures should also be required in respect of preliminary determinations.

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, [[and]] importers [[who reply to the questionnaire]] or types of products involved is so large [[[53]]] as to make such a determination impracticable,[[[54]]] the authorities may[[, on an exceptional basis,]] limit their examination[[[55]]] either to a reasonable number of interested parties[[[56]]] or products by using samples which are statistically valid[[[57]]] on the basis of information available to the authorities at the time of the selection, or to [[~~the largest percentage of the volume of the exports from the country in question which can reasonably be investigated~~]] [[a representative sample including the largest possible proportion of the exporters or producers representing, normally, no less than those whose collective exports constitute two thirds of total imports from the exporting country under investigation.[58] Samples relating to importers or to types of products shall equally be representative]].	6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under ~~investigation~~ consideration. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.	

[53] [[It shall be understood that the number of exporters is "so large" when more than 15 exporters or producers in an investigation involving a single country reply to the questionnaire. In the case of investigations involving products of several origins, the authorities shall consider an individual dumping margin for at least five exporters for each country.]]

[54] [[The authorities shall give a reasoned explanation why it is "impracticable" to calculate an individual margin for all the exporters involved interested in taking part in the investigation. If the number of exporters replying to the questionnaire is so large, the authorities shall select exporters representing at least 60 per cent of total exports, when this percentage is composed of several exporters, otherwise the percentage should be higher, in order to guarantee the right of defence to exporters who do not account for a substantial share of total exports.]]

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
[55] [[Authorities shall provide a reasoned and adequate explanation of the particular administrative difficulties that prevented it from complying with the general rule, in Article 6.10, to provide an individual margin of dumping for each exporter or producer. This explanation shall be set forth in any disclosure under Article 6.9 and also in the public notices referred to in paragraph 2 of Article 12.]] [56] [[Under no circumstances may "a reasonable number of interested parties" be less than five exporters, although in the case of investigations into imports originating in several countries, the examination should include at least 15 exporters from all the origins.]] [57] [[Authorities shall provide a reasoned and adequate explanation demonstrating how their selection is statistically valid in cases where this option is used. Such explanation shall be set forth in any disclosure under Article 6.9 and also in the public notices referred to in paragraph 2 of Article 12.]] [58] [[Authorities may select, in descending order, the largest exporters or producers, until the threshold has been reached. In an examination .involving serious difficulties in including the necessary number of exporters or producers in order to satisfy the two thirds threshold, the authorities may base their examination on a lower share of imports. In such a case the authorities shall provide a reasoned and adequate explanation demonstrating why the authorities would have serious difficulties in satisfying the threshold and how their selection nevertheless is demonstrated to be representative. This explanation shall be set forth in any disclosure under Article 6.9 and also in the public notices referred to in paragraph 2 of Article 12.]]		

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.10*bis* [[The authorities shall, normally within seven days after giving public notice of a preliminary or final determination under Article 12.2, disclose to each interested party for whom an individual rate of duty has been determined, the calculations used to determine the rate of dumping and, if different, the rate of duty to be applied to that interested party. The authorities shall provide to the interested party the calculations, whether in electronic format (such as a computer programme or spreadsheet) or in any other medium, a detailed explanation of the information used, the sources of that information and any adjustments made to the information when used in the calculations. The disclosure and explanation shall be in sufficient detail to permit the interested party to reproduce the calculations without undue difficulty.]]		
6.10.1 [[Any selection of exporters, producers, importers or types of products made under this paragraph shall [[~~preferably~~]]be chosen in consultation with and [[preferably]] with the consent of the exporters, producers or importers concerned.[[[59]]]] [[Any selection of exporters, producers, importers or types of products made under this paragraph shall [[be made known to interested parties, giving them a time-limit in which to express their opinion on the said selection]] [[~~preferably be chosen in consultation with and with the consent of, the exporters, producers or importers concerned~~]].]] [59] [[Authorities shall provide a reasoned and adequate explanation for any failure to select the sample with the consent of the interested parties concerned. Such explanation shall be set forth in any disclosure under Article 6.9 and also in the public notices referred to in paragraph 2 of Article 12.]]	6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall ~~preferably~~ be chosen in consultation with, and preferably with the consent of, the exporters, producers or importers concerned.	With respect to **limited examination** under Article 6.10, some delegations supported the idea that consultations with exporters be made mandatory. Other delegations were, however, concerned that such consultations might be impractical, especially where there were large numbers of exporters, and could delay the investigation. More generally, a number of delegations regretted that other proposals regarding limited examination, including most notably thresholds for the percentage of the volume of exports that should be investigated, were not reflected in the Chairman's text.

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. [[[60]] [[The authorities shall consider v~~V~~]]oluntary responses [[~~shall not be discouraged~~]] [[submitted by exporters and shall calculate an individual margin for them, unless the number of exporters is so large that it is impracticable to do so]].	6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.	

[60] [[The authorities shall provide a reasoned and adequate explanation of why the number of requested individual determinations was so large that their acceptance would be unduly burdensome and prevent the timely completion of the investigation. Such explanation shall be set forth in any disclosure under Article 6.9 and also in the public notices referred to in paragraph 2 of Article 12. Authorities shall, in any case, where they have not determined an individual dumping margin, accept, as a minimum, no less than ten such requests from respondents from each country under investigation.]]

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.10.3 [[When determining dumping margins, the authorities may only establish: (i) individual margins for the known exporters or producers examined individually or as part of a sample; and (ii) a single margin for all other exporters or producers not examined, whether known or unknown.]]	6.10.3 Where the authorities limit their examination pursuant to this paragraph, they shall explain, in their public notices pursuant to Article 12, the basis for their conclusion that it was impracticable to determine an individual margin of dumping for each known exporter or producer, the reasons for the specific selection made and the reasons why an individual margin was not determined for any exporter or producer not initially selected who submitted the necessary information in time for that information to be considered during the course of the investigation.	Regarding the proposed requirement for explanations concerning **limited examination** in public reports, some delegations supported the idea, while others considered that it would be costly and could lead to litigation. Several delegations observed that such explanations could be in a separate report as well as in the public notices themselves.
6.11 For the purposes of this Agreement, "interested parties" shall include:	6.11 For the purposes of this Agreement, "interested parties" shall include:	
(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; (ii) the government of the exporting Member; and (iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.	(i) an exporter or foreign producer or the importer of a product ~~subject to investigation,~~ under consideration or a trade or business association a majority of the members of which are producers, exporters or importers of such product; (ii) the government of the exporting Member; and (iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.	
This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.	This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.	6.12 The authorities shall provide opportunities for industrial users of the product under ~~investigation~~consideration, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.	
6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies [[[SMEs]]], in supplying information requested, and shall provide any assistance practicable. [[In particular the authorities shall respond in a timely manner to questions for clarifications of the questionnaire, and provide assistance in identifying the information that is needed.]]	6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable, including by responding in a timely manner to requests for clarification of questionnaires.	
6.14 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.	6.14 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6.15 [[Members shall maintain a facility, open for a specified, reasonable period during normal working hours, where any person can, without charge or appointment, review all non-confidential documents submitted to or obtained by the authority in an anti-dumping proceeding. Such documents shall be organized in a manner easily accessible to any person visiting such facility, and a complete index of documents in the possession of the authority shall be available to that person to facilitate the identification and location of particular documents in the file. It is desirable that such documents and indices also be available over the Internet. Members shall also make available in this facility a file of all public notices, in chronological order, issued pursuant to Article 12, as well as copies of any documents submitted to the Committee on Anti-Dumping Practices pursuant to Article 16.4 of this Agreement. Members shall permit any non-confidential document in the facility to be copied at the reasonable expense of the person accessing it. Members shall notify the Committee on Anti-Dumping Practices of the location, opening hours, and the name and contact information of a person responsible for facilitating access to the facility.]]	[*See* Article 5.4*bis* of the Chairman's text.]	
6.16 [[The authorities shall keep a public file containing all non-confidential information submitted to or obtained by the authority. The public file shall also contain an index of all the documents included in the public file and documents not included in the public file because of the confidential nature of the document. The authorities shall decide on a procedure to make the public file available to interested parties.]]		

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
[[Article 6bis *Group of Independent Experts]]*		
6*bis*.1 [[The Committee on Anti-dumping Practices shall establish a group of experts composed of five investigating authorities' officials from different Members, highly qualified in anti-dumping matters. These experts shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions, nor seek to influence them as individuals with regard to matters before the group of experts. The composition of the group shall be established following a proposal of the Secretariat. The Secretariat shall act as the secretariat to the group of independent experts.]]		
6 *bis*.2 [[If a Member considers that the evidence on the basis of which an investigation has been initiated against its exports does not fulfil the requirements of paragraphs 1 and 2 of Article 5, or that the investigating authorities have not acted in accordance with paragraphs 3, 4, 6 and 8 of the same Article, such Member may request the opinion of the group of independent experts. The request shall be made in writing and shall clearly identify the specific issues and alleged violations.]]		
6 *bis*.3 [[The authorities of the Member which initiated such investigation, and those of the exporting Member, shall co-operate to the best of their ability with the work of such group.]]		
6 *bis*.4 [[Any information which is confidential, within the meaning of paragraph 5 of Article 6, shall be treated as such by the group of independent experts and shall not be disclosed, even after the group or any of its elements is discharged of its functions.]]		

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
6 *bis*.5 [[The group of independent experts shall hold one hearing with the parties and issue its opinion within a specified deadline [or within Z days/months]. Such opinion may be presented before a panel established according to Article 17 of the ADA, although the panel may arrive at a different assessment.]]		
Article 7 [[*Preliminary Determinations and*]] *Provisional Measures*	*Article 7* *Provisional Measures*	
7.1 Provisional measures may be applied only if:	7.1 Provisional measures may be applied only if:	
(i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments; (ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and (iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.	(i) an investigation has been initiated in accordance with the provisions of Article 5 and~~,~~ a public notice has been given to that effect; ~~and~~ (ii) interested parties have been given adequate opportunities to submit information, including responses to questionnaires sent in accordance with Article 6.1.1, and make comments; (iii) a detailed preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry taking into account any responses to questionnaires and any other relevant information submitted by interested parties; and (~~iiii~~v) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.	7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.	
7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.	7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.	
7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.	7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding ~~four~~six months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding ~~six~~nine months. ~~When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.~~	*See* comments on **lesser** duty in the context of Article 9.1 of the Chairman's text.
7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.	7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
7.6 [[Investigating authorities shall make preliminary determinations of dumping and consequent injury to a domestic industry in all investigations, regardless provisional measures are applied or not. Preliminary determinations shall be made no sooner than 60 days and no later than 240 days from the date of initiation of the investigation. Any extension of the 30-day period given to exporters or foreign producers to answer to the questionnaires shall be equally reflected in both limits of the above-mentioned period. The investigating authorities shall, before a final determination is made, give interested parties a reasonable period of time after the issuance of the public notice provided for in Article 12.2 to submit any comments or complementary information. The preliminary determination shall take place at least 60 days before the disclosure provided for in paragraph 9 of Article 6.]]		
Article 8 *Price Undertakings*	*Article 8* *Price Undertakings*	
8.1 Proceedings may[61] be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases[[62]] under such undertakings shall not be higher than necessary to eliminate the margin of dumping [[determined for the said exporter]]. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry. [61] The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4. [62] [[Authorities may require that the price of each import transactions made pursuant to an undertaking be equal to or above the agreed undertaking price.]]	8.1 Proceedings may[34] be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. ~~It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.~~ [34] The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.	See comments on **lesser duty** in the context of Article 9.1 of the Chairman's text.

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping [[, or, if no affirmative preliminary determination is made, and the investigation is not otherwise terminated, unless the authorities have made the final disclosure pursuant to paragraph 9 of Article 6. The authorities shall inform the exporters of their right to offer price undertakings, as well as of the applicable rules and procedures, including relevant time limits, and give them adequate opportunity (at least [X] days after the affirmative preliminary determination or, in the absence of an affirmative preliminary determination, at least [X] days after the disclosure pursuant to paragraph 9 of Article 6) to make a price undertaking offer.]]	8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping or, if no affirmative preliminary determination is made, until the authorities have made disclosure pursuant to paragraph 9 of Article 6. The authorities shall inform exporters of their right to offer undertakings and shall allow them an adequate opportunity to do so.	Some delegations supported the idea that where no preliminary determination was made, **price undertakings** could be offered after disclosure had been made under Article 6.9. Other delegations, however, considered that disclosure came too late in the proceedings and preferred mandatory preliminary determinations.
8.3 [[Acceptance or rejection of a price undertaking shall be based on its own merits. Authorities shall publish and inform exporters of the standard terms and conditions of the price undertakings, and the general factors normally used to assess the merits of a price undertaking offer. Moreover, the authorities may not require as a condition for acceptance of a price undertaking that price undertakings be offered by or accepted from some or all other exporters. Likewise, they may not reject an ~~U~~u]]ndertaking[[~~s~~]] offered [[on grounds]] [[~~need not be accepted if the authorities consider their acceptance impractical, for example, if~~]] [[that]] the number of actual or potential exporters is too great, [[~~or for other reasons, including reasons of general policy~~]] [[unless the importing Member concerned operates a prospective duty assessment system whereby anti-dumping duty is assessed at entry by reference to a prospective normal value]]. [[~~Should the case arise and where practicable, t~~T]]he authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall[[~~, to the extent possible,~~]] give the exporter an opportunity to make comments thereon [[and to reformulate its proposal]].	8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. ~~Should the case arise and where practicable, t~~The authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall~~, to the extent possible,~~ give the exporter an opportunity to make comments thereon.	While most delegations welcomed a mandatory explanation and opportunity to comment when **price undertakings** were rejected, one delegation considered that no such opportunity should be required where undertakings are rejected as a matter of general policy.

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8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.	8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.	
8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.	8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.	

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8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking. [[However, the authorities shall exercise their decision to revoke a price undertaking with special care. Prior to revocation of a price undertaking, the authorities of the importing Member shall provide the exporter concerned an opportunity to comment. A price undertaking may not be revoked on grounds of inadvertent errors, non-compliance for reasons outside the control of the exporter, or for minor inconsistencies.]]	8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of material violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available.[35] In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking. [35] Without prejudice to the right to take expeditious actions, the authorities shall inform the exporter if they consider that there has been a material violation of the undertaking, and shall provide the exporter an opportunity to comment.	Regarding the proposal that authorities could take expeditious action only in the case of **a *material* violation of an undertaking**, some delegations were supportive. However, other delegations were concerned that the term "material" was not clearly defined, with one delegation observing that undertakings should be strictly enforced as a series of minor breaches could be major.
8.7 [[An exporter subject to a price undertaking shall have the right to request an adjustment of the minimum price stated in the undertaking if there are changed circumstances.]]		
Article 9 *Imposition and Collection of Anti-Dumping Duties*	*Article 9* *Imposition and Collection of Anti-Dumping Duties*	
9.1 [[(a)]] The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, [[~~and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less,~~]][[is~~are~~ a]] decision[[~~s~~]] to be made by the authorities of the importing Member.[[63]] [[[[While]] it is desirable the imposition be permissive in the territory of all Members[[, any duty imposed shall be less than the margin of dumping to the extent that such lesser duty is	9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. ~~It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.~~ Each Member whose national	Participants were sharply divided on the desirability of a possible procedure for taking due account of the **representations of domestic interested parties** when deciding whether to impose a duty and if so whether to impose that duty at the full margin of dumping or less. Some considered that the proposed procedure would impinge on Members' sovereignty, would be costly and time-consuming, and must be removed. Others welcomed such a procedure and sought language to further clarify and strengthen the procedure. In this regard, a Working

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
adequate to remove the injury to the domestic industry. The provisions of Annex V shall be followed in determining the level of the lesser duty adequate to remove the injury to the domestic industry.]] [[~~It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.~~]][[However, the amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2 or the injury margin, whichever is lower. For purposes of this Agreement, the term "injury margin" shall be interpreted to mean the margin calculated in accordance with the principles set out in Annex IV to this Agreement.]]]] [[It is desirable that the imposition be permissive in the territory of all Members[[. Where importers and exporters have cooperated with the authority in its investigation,]] [[~~, and that~~]]the duty [[shall]] be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.]] [[[[While ~~I~~i]]t is desirable that the imposition be permissive in the territory of all Members, [[any]][[~~and that the~~]] duty [[imposed shall]] be less than the margin [[of dumping]] if such lesser duty [[is]] [[~~would be~~]] adequate to remove the injury [[caused by the dumped imports]] to the domestic industry[[, but in no event the duty may exceed the full margin of dumping. The provisions of Annex III shall be observed in determining the level of the lesser duty adequate to remove the injury to the domestic industry]].]] [[It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry[[, and that a measure not be imposed if it is not in the interest of the importing Member to do so.]]]] [63] [[In cases where margins of dumping are established by comparing selected normal values and export prices on a transaction-to-transaction basis, the margins of dumping so obtained shall only be used to establish the anti-dumping duty applicable to those selected types of the product under consideration.]]	legislation contains provisions on anti-dumping measures shall establish procedures in its laws or regulations[36] to enable its authorities, in making such decisions in an investigation initiated pursuant to Article 5, to take due account of representations made by domestic interested parties[37] whose interests might be affected by the imposition of an anti-dumping duty.[38] The application of these procedures, and decisions made pursuant to them, shall not be subject to dispute settlement pursuant to the DSU, Article 17 of this Agreement or any other provision of the WTO Agreement. [36] Each such Member shall publish those procedures and shall notify them to the Committee pursuant to Article 18.5. [37] For the purpose of this paragraph, the term "domestic interested parties" shall include industrial users of the imported product under consideration and of the domestic like product, suppliers of inputs to the domestic industry and, where the product is commonly sold at the retail level, representative consumer organizations. [38] Decisions taken pursuant to these procedures are not subject to the judicial review requirements of Article 13.	Paper was submitted,* which proposed, *inter alia*, to require authorities to apply the procedures in individual proceedings, to clarify that the requirement for such a procedure would apply to reviews pursuant to Article 11, to broaden the scope of the "domestic interested parties entitled to participate, and to delete the language exempting decisions under the procedures from the judicial review requirements under Article 13. Delegations discussed the issue of the extent to which dispute settlement should apply in the context of this procedure, and whether clarity on what was and was not subject to dispute settlement was possible. Some delegations remarked that under their national legal systems it was not possible to exclude judicial review, while others pointed out that the Chairman's text merely allowed, but would not require, Members to exclude judicial review. On **lesser duty**, many delegations reiterated their strong desire that a mandatory lesser duty rule be included. One delegation submitting a Working Paper, which was subsequently circulated as TN/RL/W/224 at the request of thirteen delegations, providing that imposition of an anti-dumping duty "shall be permissive" and that the duty "shall be less than the margin of dumping if such lesser duty would be adequate to remove the injury...." Other delegations welcomed the non-inclusion of such a rule in the draft text, with one delegation noting that it was not practically possible to calculate an injury margin. Many delegations also objected to the removal of language regarding the desirability of applying a lesser duty, noting that no Member had requested the removal of this language. Various delegations emphasized the view that public interest and lesser duty are distinct concepts and should not be traded off against each other. * A submission building on this paper was subsequently circulated as TN/RL/W/222 at the request of nine delegations.

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(b) [[Each Member shall establish procedures in its domestic law to allow its authorities to take due account of representations made by domestic interested parties[64] whose interests might be adversely affected by the imposition of an anti-dumping duty.[65]]] [64] [[For the purpose of this paragraph, the term "domestic interested parties" shall include consumers and industrial users of the imported product subject to investigation.]] [65] [[The determination of whether or not the initiation of these procedures is warranted in the circumstances of a particular case is to be made by the authorities of the importing Member.]]		
9.1 *bis* [[Each Member shall establish appropriate procedures in its law to allow its authorities to inquire into whether the imposition of an anti-dumping duty or the imposition of such a duty in the full amount would not be in the public interest. These procedures shall require the authorities to take due account of representations made by any domestic party whose interests may be affected by the imposition of the anti-dumping duty, including, but not limited to, industrial users of the product under consideration, representative consumer organizations, and the domestic competition law authorities of the Member. In conducting such an inquiry, the authority concerned should consider all relevant information, including those factors set out in Annex III to this Agreement. As a result of any such inquiry, the authorities may decide to eliminate or reduce the level of duties that would otherwise be applied. For greater clarity, public interest decisions cannot give rise to claims of violation under the DSU.]]		
9.1.1 [[In this regard, the importing Member shall take into consideration representations by relevant persons[66] on how they may be affected economically by an anti-dumping measure[67]. Relevant persons shall be given no less than [20] days to make written representations[68].		

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Paragraphs 1 (except 1.1 and 1.3), 2 to 5, 9 and 13 of Article 6 apply to the process under Article 9.1.1 mutatis mutandis, and "relevant persons" shall also be regarded as "interested parties" for this purpose. Before a definitive anti-dumping measure is imposed[69] or continued, as the case may be, the importing Member shall give public notice, in sufficient detail, of the representations received and any analysis or conclusion associated with them. This Article 9.1.1 applies to the original imposition of an anti-dumping measure, and to a review of the measure under Article 11 where the review involves an examination of injury.]]		

[66] [["Relevant persons" shall mean the traders and industrial users of the product under consideration in the importing Member, trade associations thereof and, where the product is commonly sold at the retail level, representative consumer organizations in the importing Member.]]

[67] [[Relevant persons may comment on, *inter alia*, possible effects of the anti-dumping measure on the following:

(i) costs for the industrial users, consumers, importers, wholesalers and retailers of the product under consideration;

(ii) competition in the market of the product under consideration in the importing Member;

(iii) choice or availability of like products at competitive prices for industrial users and consumers;

(iv) profitability and competitiveness of industrial users, importers, wholesalers and retailers of the product under consideration.]]

[68] [[The importing member shall issue a public notice and separately notify known relevant persons of this right. Moreover, for the purpose of this provision, the rights of interested parties under Article 6 apply to relevant persons.]]

[69] [[Nothing in this sentence shall prevent a Member from imposing a definitive anti-dumping measure before completing the process in Article 9.1.1 provided that the measure is suspended until completion of the process.]]

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.	9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.	
9.3 The amount of the anti-dumping duty shall not exceed [[[[the lesser of the injury margin as established under Annex V or]] the margin of dumping as established under Article 2]] [[[[the lesser of]] the margin of dumping as established under Article 2 or the injury margin as established under Annex III]].]] [[For the purpose of this paragraph, de minimis margins of dumping as defined in paragraph 8 of Article 5 shall be treated as zero margins of dumping. Upon request, the authorities shall establish the margin of dumping based upon normal values contemporaneous with the export transaction(s). In cases where the number of exporters, producers, importers, or transactions involved is so large as to make such a determination impracticable, the authorities may limit their examination in accordance with paragraph 10 of Article 6. For purposes of this provision, in determining whether the amount of the anti-dumping duty exceeds the margin of dumping, the authorities may calculate the margin of dumping on the basis of an individual export transaction or multiple export transactions. The authorities are not required to offset the results of a comparison for any transaction for which the export price is greater than the normal value against the results of a comparison for any transaction for which the export price is less than the normal value.[70]]]	9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2. In this regard, each Member shall establish procedures[39] to ensure a prompt refund, upon request, where the duty or security collected exceeds the actual margin of dumping.[40] In this respect, the following subparagraphs shall apply. [39] These procedures shall be set forth in the Member's laws, regulations or published administrative procedures and shall be notified to the Committee pursuant to Article 18.5. [40] The actual dumping margin determined by the authorities shall be based on the relevant updated normal value and export price.	Many delegations supported strengthened obligations regarding **duty assessment**, including the explicit obligation to establish duty assessment procedures, to publish such procedures, to allow exporter requests on behalf of importers, and to subject such proceedings to the requirements of Article 12. Some delegations would go further and apply Article 6 rules on evidence to such proceedings. It was also suggested that the results of such proceedings should form the basis for new duty rates, and that the rules regarding limited examination should apply to duty assessment proceedings. Finally, a few delegations considered that establishment of a duty assessment system would be burdensome and should not be required at all. Concerns were also raised about the reference to "**security**", which in the view of some delegations would improperly recast duties collected pursuant to definitive measures as security, thus exempting those duties from the requirements of Articles 9.1, 9,2 and 9.3 chapeau that the duties collected not exceed the margin of dumping established pursuant to Article 2. A proposal by three delegations to delete the reference to security was subsequently circulated in TN/RL/GEN/157/Rev.1.

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[70] [[The rules on evidence and procedure in Article 6 and the public notice and explanation requirements in Article 12 shall be applied *mutatis mutandis* in the context of proceedings pursuant to Article 9.3 and its sub-paragraphs.]]		
	9.3.1*New* A determination of final liability for payment of anti-dumping duties, or of whether a duty in excess of the margin of dumping has been paid, may be made on the basis of (i) individual import transactions, (ii) all import transactions by an importer from an exporter or producer, or (iii) all import transactions from an exporter or producer. In determining the existence or amount of liability for any duty, or the entitlement to any refund, the authorities may disregard the amount by which the export price exceeds the normal value for any comparisons.	See comments on **zeroing** in the context of Article 2.4.2 of the Chairman's text.
9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made.[71] Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested. [[The results of any refund proceeding pursuant to this provision shall provide the basis for the	9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made.[41] Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested. [41] It is understood that the observance of the	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
anti-dumping duty rate imposed on imports following the completion of such proceeding.]] [71] It is understood that the observance of the time-limits mentioned in this subparagraph and in subparagraph 3.2 may not be possible where the product in question is subject to judicial review proceedings.	time-limits mentioned in this subparagraph and in subparagraph 3.2 may not be possible where the product in question is subject to judicial review proceedings.	
9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund [[~~, upon request,~~]] of any duty paid in excess of the margin of dumping [[determined in accordance with Article 9.3]]. A refund of any such duty paid in excess of the[[~~actual~~]] margin of dumping [[determined in accordance with Article 9.3]] shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request [[~~for a refund, duly supported by evidence,~~]][[pursuant to this provision]] has been made[[~~by an importer of the product subject to the anti-dumping duty~~]]. The refund authorized should normally be made within 90 days of the above-noted decision. [[The results of any refund proceeding pursuant to this provision shall provide the basis for the anti-dumping duty rate imposed on imports following the completion of such proceeding.]]	9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty, or by an exporter on behalf of, and in association with, one or more importers. The refund authorized should normally be made within 90 days of the above-noted decision.	With respect to **refund** requests, concerns were raised by some delegations about the possibility of requests being submitted by exporters on behalf of importers.
9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between	9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.	importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.	
9.3.4 [[In determining the final liability for payment of anti-dumping duties or whether and to what extent a reimbursement should be made, the authorities may rely on the margin of dumping calculated on the basis of the export transactions relating to the importer concerned.]]	9.3.4 In the event that monies paid or deposited are refunded pursuant to this paragraph, the authorities shall pay a reasonable amount of interest on the monies refunded.	Numerous delegations objected to the proposed requirement to pay **interest**, with several noting that agencies other than the investigating authorities would be implicated. Other delegations considered it appropriate that interest be paid where the authorities refunded monies paid or deposited.
9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, [[they may apply]] an[[~~y~~]] anti-dumping duty[[, at a single all others rate,]][[~~applied~~]] to [[all other]] imports from exporters or producers [[from the country under investigation and]] not included in the examination. [[That rate]] shall not exceed:	9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:	
(i) [[the lesser of the weighted average injury margin as established under Annex V or]] the weighted average [[of the]] margin[[s]] of dumping [[or margins of injury]] established [[and applied to determine the level of anti-dumping duty]] with respect to the selected exporters or producers or, (ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between[[: ~~the weighted average normal value of the selected~~	(i) the weighted average margin of dumping established with respect to the selected exporters or producers or, (ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined,	

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~~exporters or producers and the export prices of exporters or producers not individually examined,~~]] [[(a) weighted average of the lesser of the normal value of the selected exporters or producers or the NIP as established under Annex III, and (b) the export prices (import price as the case may be) in relation to the exporters or producers that were not individually examined,]]		
provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.	provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.	
9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product[[, and that they have exported the product in commercially representative quantities, depending on the type of product or market concerned. The investigating authority's assessment of whether the quantities exported are commercially representative shall take into account: (a) whether the volumes can be considered as ordinary for the product	9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that (a) they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product, and (b) they have engaged in *bona fide* sales in commercial quantities into the importing Member (as evidenced by shipments of the product or by a contract for sale pursuant to which such shipments will occur within six months of the date upon which the contract was concluded).	Delegations generally were open to discuss the issue of **new shipper reviews** on the basis of the Chairman's text, but had questions about various of the concepts in the text. Many delegations supported the requirement that there be "*bona fide* sales in commercial quantities", with one delegation advocating the possibility to sanction abuse of new shipper reviews. Some delegations however were of the view that this requirement needed required further clarification. One delegation noted that the important thing was the volume of sales, and not the number of transactions, and proposed in a non-paper to specify that sales were in "commercial quantities" if they were in a quantity that formed the basis for the determination of export price or normal value in the original investigation. Other delegations did not consider that a "commercial

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concerned and for the importer's market; (b) whether the exports are subject to cyclical variations or seasonality; (c) whether the number of units corresponds to ordinary sales through normal marketing channels, and not samples; (d) whether such volumes are marketed normally in international markets]]. [[Such a review [[may not extend over more than [XX months] following the date of the request from the exporter concerned. In this connection, and in conformity with the provisions of Article 6.7 and Annex I, the investigating authorities may carry out on-the-spot investigations in the territory of the country of the applicant for the review.]]]] [[Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member[[, and shall be completed within no more than 12 months]] [[shall in no case exceed nine months]] [[shall be completed within 9 months of the request for the review. An extension of up to 3 months may be granted upon the request of the exporters or producers]].]] [[Within [X] months after the initiation of such a review, the authority shall make a threshold determination whether the exporter or producer has shown that it is not related to any of the exporters or producers in the exporting country who are subject to the anti- dumping duties on the product, and has shown that it has engaged in bona fide commercial sales to the importing Member (examining such factors as normal commercial quantities, channels and methods of distribution, and the timing, pricing, terms and process of sales). If the authority determines that the exporters or producers have so shown, n~~N~~]]o anti-dumping duties shall be levied on imports from such exporters or producers [[for the remainder of the review]][[~~while the review is being carried out~~]]. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review. [[Similarly, if the anti-dumping duty resulting from the review of the exporter is less than the duty paid by the exporter prior to the date of initiation of the review, the importing Member shall		quantities" requirement was necessary at all. With respect to time-frames and process, some delegations were concerned that the total nine months for the review might be too short, especially as there might be a need to align new shipper reviews with other proceedings, as was the three-month period for the initiation decision. A period of one year was suggested. Others considered that the time-frames, and in particular the three-month period for initiation, might be too long, with one delegation proposing in a non-paper a period of 60 days. Other delegations questioned the necessity for a two-phase system, which was inconsistent with the need for an accelerated review. A number of delegations advocated that new shipper reviews also be made available to exporters or producers that did not benefit from individual margins as a result of the operation of Article 6.10.

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reimburse the difference to the exporter. In the contrary case, the importing Member may not charge the difference to the exporter. The provision of paragraph 8 of Article 5 regarding de minimis margins of dumping shall apply to reviews carried out under this paragraph.]]		
	9.5.1 A decision whether or not to initiate a review under this paragraph shall be taken within three months of receipt of a duly substantiated request, during which period the authorities may take such steps as they deem appropriate to verify the accuracy and adequacy of the information contained in the request. The applicant and the domestic industry shall be advised of the initiation of any review and a public notice of the initiation shall also be made. The ~~Such a~~ review shall be ~~initiated and~~ carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member, and shall in any event be concluded within nine months of receipt of a duly substantiated request.	
	9.5.2 No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review. Upon collection of any such duties due, the authority shall promptly release any guarantee or bond.	

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9.6 [[The provisions of Article 2 shall apply to all determinations pursuant to paragraphs 3 and 5 of this Article. The authorities shall normally use the same methodologies consistently in determining a margin of dumping in an investigation initiated pursuant to Article 5, and in subsequent determinations pursuant to paragraph 3. If the authorities use a different methodology in subsequent determinations pursuant to paragraph 3, the parties concerned shall be provided with an opportunity to make comments, and a full explanation shall be given why such different methodology was used.]]		
9.7 [[Notwithstanding any other provision of this Agreement or of Article VI of the GATT 1994, the authorities may impose an anti-dumping duty with respect to a product that was not within the product under consideration in an investigation that resulted in imposition of a duty, if the authorities determine, pursuant to a review carried out in accordance with this paragraph, that subsequent to the initiation of the investigation, imports of the product under consideration have been supplanted, in whole or in part,	[*See* Article 9*bis* of the Chairman's text.]	
(a) by imports from the country subject to the duty of another product that has the same general characteristics and uses as the product under consideration,		
(b) by imports of parts or unfinished forms of the product under consideration produced in the country subject to the duty, where only a minor or insignificant process of completion or assembly is necessary to convert the parts or unfinished forms into the product under consideration, and the cost of the parts or unfinished forms makes up a significant portion of the total cost of production of the completed product, or		
(c) by imports of the product under consideration from a third country that have been completed or assembled from parts or unfinished forms produced in the country subject to the duty if		

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only a minor or insignificant process of completion or assembly is necessary to convert the parts or unfinished forms into the product under consideration, and the cost of the parts or unfinished forms makes up a significant portion of the total cost of production of the completed product.		
The provisions of Article 6 of the ADA regarding evidence and procedure shall apply to any review carried out under this paragraph.]]		
9.7.1 [[Factors pertinent to a consideration of whether imports of the product under consideration have been supplanted by imports of another product, by imports of parts or unfinished forms, or by imports of the product completed or assembled in a third country for purposes of this paragraph may include the pattern of trade, the timing of any changes in such patterns, and any association or compensatory arrangement between the exporter and the importer or a third party. No one or several of these factors can necessarily give decisive guidance.]]		
9.7.2 [[Factors pertinent to a consideration of whether a product has the same general characteristics and uses as the product under consideration for purposes of this paragraph may include general physical characteristics, purchaser expectations, end uses, channels of trade, the interchangeability of the products, the processes, facilities and employees used in production of the products, and the manner in which the products are advertised and displayed. No one or several of these factors can necessarily give decisive guidance.]]		

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9.7.3 [[Factors pertinent to a consideration of whether a process of completion or assembly is minor or insignificant for purposes of this paragraph may include the level of investment, research and development related to the completion or assembly, the nature and cost of the production process and the extent of the facilities used for completion or assembly. No one or several of these factors can necessarily give decisive guidance.]]		
9.8 [[The provisions of Article 2 shall apply to all determinations pursuant to paragraphs 3 and 5 of this Article. The authorities shall normally use the same methodologies consistently in determining a margin of dumping in an investigation initiated pursuant to Article 5 and in subsequent determinations pursuant to paragraph 3. If the authorities use a different methodology, the parties concerned shall be provided with opportunities to make comments, and a full explanation shall be given why such different methodology was used.]]		
9.9 [[The provisions of Article 6 shall apply to all determinations pursuant to paragraphs 3 and 5 of this Article.]]		
Article 9bis *Public Interest*	*Article 9bis* *Circumvention*	
9*bis*.1 [[Before applying a definitive anti-dumping measure, authorities shall provide full opportunity for persons who may be affected by the measure to comment on the matter. To this end, authorities shall give public notice and separate notifications[72] to known relevant persons[73], and shall give relevant persons at least [ ] days to comment[74] as referred to in paragraph 2 below.]] [72] [[Including by electronic means.]] [73] [[For the purpose of this Article, the term "relevant	9*bis*.1 The authorities may extend the scope of application of an existing definitive anti-dumping duty to imports of a product that is not within the product under consideration from the country subject to that duty if the authorities determine that such imports take place in circumstances that constitute circumvention of the existing anti-dumping duty.[42] [42] Throughout this Article anti-dumping duty will be understood as duty or undertaking.	On **anti-circumvention**, the Group was sharply divided on whether or not specific rules on anti-circumvention should be included in the text, and on the adequacy of the proposed rules contained in the Chairman's text. Some delegations considered that no rules on anti-circumvention should be included, as anti-circumvention was in their view contrary to the spirit and idea of the current anti-dumping rules and would have a negative effect on trade and investment.* These delegations believed that the only

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persons" refers to interested parties, wholesalers, retailers, industrial users and, where the product is commonly sold at the retail level, representative consumer organizations. Where the number of traders/producers involved is particularly high, separate notification may instead be provided only to the relevant trade associations or to the authorities of the exporting Member (in the case of exporters).]] [74] [[Including providing information and views.]]		appropriate reaction to perceived circumvention was to seek initiation of a new investigation. Other delegations considered that anti-circumvention was a reality, and that rules on anti-circumvention were necessary to achieve some degree of harmonisation among the procedures used by different Members. With respect to the specific rules proposed in the Chairman's text, some delegations considered that the proposed text allowed too much **discretion** to investigating authorities or reached too broadly. In this respect, some delegations considered that findings of dumping, injury and causation should be required. It was also suggested that anti-circumvention measures should be **company-specific** rather than country-wide, and that the provisions regarding slightly modified product were too loose. Others considered that the type of rules in the Chairman's text were a good basis for further work. Yet other delegations considered that while anti-circumvention rules were needed, the proposed rules were so restrictive as to be non-operational. In this respect, reference was made, *inter alia*, to dumping, causation and standing requirements. It was suggested that the quantitative safe havens provided a roadmap for circumvention. * A statement by several delegations to this effect was circulated in TN/RL/W/216.
9*bis*.2 [[Relevant persons may comment on, *inter alia*, possible effects of the anti-dumping measure on the following: (i) costs for the industrial users, consumers, importers, wholesalers and retailers of the product under consideration; (ii) competition in the market of the product under consideration in the importing member; (iii) choice or availability of like products at competitive prices for industrial users and consumers;	9*bis*.2 Authorities may only find circumvention within the meaning of paragraph 1 if they demonstrate that: (i) Subsequent to the initiation of the investigation that resulted in the imposition of the existing definitive anti-dumping duty, imports of the product under consideration from the country subject to that duty have been supplanted, in whole or in part[43]: - by imports from the country subject to the anti-dumping duty of parts or unfinished forms of a product for assembly or completion into a product	

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(iv) profitability and competitiveness of industrial users, importers, wholesalers and retailers of the product under consideration.]]	that is the same as the product under consideration; - by imports of a product that is the same as the product under consideration and that has been assembled or completed in a third country from parts or unfinished forms of a product imported from the country subject to the existing anti-dumping duty; or - by imports of a slightly modified product[44] from the country subject to the existing anti-dumping duty;	
	[43] Factors pertinent to a consideration of whether imports of the product under consideration have been supplanted include whether there has been a change in the pattern of trade of the exporters subject to the anti-dumping duty, the timing of such change, and any association or compensatory arrangement between the exporter and the importer or a third party. No one or several of these factors can necessarily give decisive guidance. [44] A slightly modified product is a product that is not within the product under consideration but that has the same general characteristics as the product under consideration. Factors pertinent to a consideration of whether a product is a slightly modified product include general physical characteristics, purchaser expectations, end uses, channels of trade, the interchangeability of the products, the processes, facilities and employees used in production of the products, differences in the costs of production, the manner in which the products are advertised and displayed, and the costs to transform the slightly modified product into the product under consideration. No one or several of these factors can necessarily give decisive guidance.	
	(ii) The principal cause of the change described in subparagraph 2(i) is the existence of the anti-dumping duty on the product under consideration from the country subject to the duty rather than economic or commercial factors unrelated to that duty;[45] and	

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	(iii) The imports that have supplanted the imports of the product under consideration from the country subject to the existing anti-dumping duty undermine the remedial effect of that duty.[46] [45] Factors pertinent to a consideration of the possible role of economic or commercial factors unrelated to the duty include technological developments, changes in customers' preferences and changes in relative costs. No one or several of these factors can necessarily give decisive guidance. [46] Factors pertinent to a consideration of whether the remedial effect of an existing anti-dumping duty is undermined include the evolution of the prices and quantities of the product assembled or completed in the importing country or in a third country or of the slightly modified product and whether those products are sold to the same customers and for the same uses as the product subject to the existing definitive anti-dumping duty. No one or several of these factors can necessarily give decisive guidance.	
9*bis*.3 [[Opportunity to comment under paragraph 1 shall be provided at the earliest opportunity when relevant persons are able to provide meaningful comments. Where opportunity to comment is provided before the details of the proposed definitive anti-dumping measure (including the reasons for the dumping and injury determinations) are known, then relevant persons shall be given [ ] days to supplement the comments originally provided after such details are known.]]	9*bis*.3 With respect to imports referred to in 9*bis*.2 of parts or unfinished forms of a product and imports referred to in 9*bis*.2 of a product assembled or completed in a third country, the authorities shall only find circumvention if they establish that (i) the process of assembly or completion is minor or insignificant[47] and (ii) the cost of the parts or unfinished forms makes up a significant proportion of the total cost of the assembled or completed product. The authorities shall in no case find that circumvention exists unless they determine that the value of the parts or unfinished forms is 60 per cent of the total value of the parts or unfinished forms of the assembled or completed product or more, and that the value added to the parts or unfinished forms during the assembly or completion process is 25 per cent of the total cost of manufacture or less. [47] Factors pertinent to a consideration of whether a process of completion or assembly is minor or insignificant include the level of investment, research and development related to the completion or assembly, the nature and cost of the	

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	production process and the extent of the facilities used for completion or assembly. No one or several of these factors can necessarily give decisive guidance.	
9*bis*.4 [[For the purposes of this Article, relevant persons who are not already interested parties shall also enjoy the rights of interested parties under paragraph 1 (except 1.1 and 1.3), paragraphs 2 to 5[75] and paragraphs 9 and 13 of Article 6.]] [75] [[Access to information under Article 6.4 shall not be limited to information obtained pursuant to this Article.]]	9*bis*.4 The authorities may extend the scope of application of an existing definitive anti-dumping duty to imports of parts or unfinished forms of the product under consideration assembled or completed in a third country only if they find that such imports are dumped pursuant to Article 2.	
9*bis*.5 [[Comments received pursuant to this Article shall be taken into due consideration by the authorities in an objective and unbiased evaluation. Where no information is received or information received is considered incomplete, authorities shall take into account best information available from public sources if such information is already in their possession or is reasonably obtainable by them. If thereafter the importing Member concludes that it is not in its economic interest to impose the definitive anti-dumping measure, the measure shall not be imposed.]]	9*bis*.5 A determination of the existence of circumvention within the meaning of this Article shall be based on a formal review initiated pursuant to a duly substantiated request. Except in special circumstances, such a review shall not be initiated unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the request expressed by domestic producers of the like product that the request has been made by or on behalf of the domestic industry within the meaning of Article 5.4.	
	9*bis*.6 The provisions regarding evidence and procedure in Article 6 shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.	
	9*bis*.7 If the authorities have determined in accordance with this Article that circumvention exists, they may apply the anti-dumping duty to the imported products found to be circumventing the existing definitive anti-dumping duty[48], including retroactively to imports entered after the date of the initiation of the review. [48] If a review under this Article has been initiated on a country-wide basis, the authorities shall exempt imports from	

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	particular exporters from the scope of any extended anti-dumping duty if they find that those imports take place in circumstances that do not constitute circumvention of an existing anti-dumping duty.	
Article 10 *Retroactivity*	*Article 10* *Retroactivity*	
10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.	10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.	
10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.	10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.	
10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.	10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.	
10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.	10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.	

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10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.	10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.	
10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:	10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:	
(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and (ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.	(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and (ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.	
10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.	10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.	
10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.	10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.	

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	10.8*bis* In the event that monies paid or deposited are refunded pursuant to paragraphs 3 or 5 of this Article, the authorities shall pay a reasonable amount of interest on the monies refunded.	
Article 11 *Duration and Review of Anti-Dumping Duties and Price Undertakings*	*Article 11* *Duration and Review of Anti-Dumping Duties and Price Undertakings*	
11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.	11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.	
[[11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.[76] Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately. [[Where the authorities determine in a review conducted under this paragraph that the level of duty that is necessary to offset dumping is *de minimis* as defined in paragraph 8 of Article 5, the duty to be imposed shall be zero.]] [76] A determination of final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9, does not by itself constitute a review within the meaning of this Article.	11.2 The authorities shall review the need for the continued imposition of the duty, or for a modification of the level of the duty[49], where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.[50] Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. Interested parties may also request a modification in the level of a duty. If, as a result of the review under this paragraph, the authorities determine that there has been a change in circumstances of a lasting nature[51] since the original investigation or the last review under Article 11.2 or 11.3, such that the anti-dumping duty is no longer warranted or the level of the duty applicable to one or more exporters is no longer appropriate, the duty, ~~it~~ shall be terminated immediately or its level modified. [49] Or in the case of a retrospective system, of the level of any security collected. Where the anti-dumping duty imposed takes the form of a prospective normal value, this requirement relates to the modification of the prospective normal value. [50] A determination of final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9,	With respect to so-called **"interim" reviews**, there was general support for the principle that Article 11.2 could be clarified to specify its application to the modification of the level of the duty. There was, however, substantial debate regarding the introduction of the concept of a "change in circumstances of a lasting nature". Some delegations considered that this element was unnecessary and should be deleted. In this respect, it was suggested that the results of a duty assessment proceeding under Article 9.3 should determine the level of the measure under Article 11.2, or in any event that duty assessment proceedings should trigger an Article 11.2 review. Other delegations considered that the principle should in any event be clarified, perhaps with a list of illustrative criteria. Yet other delegations considered that the concept of "change in circumstances of a lasting nature" was important and should be retained, and that the proposed text adequately addressed the issue. More generally, several delegations suggested that the Chairman's text sought to address too many situations under a single provision. It was noted in this respect that reviews regarding possible revocation of a measure should be addressed separately to reviews relating to modifications in the level of a measure, and that the distinction between Article 9.3 and Article 11.2 proceedings were unclear. Finally, a number of

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	does not by itself constitute a review within the meaning of this Article. However, a determination made pursuant to that paragraph is relevant evidence which may be considered when deciding whether the initiation of a review to examine the possible modification of the level of a duty under this Article is warranted. [51] In determining whether there has been a change of circumstances of a lasting nature, the authorities may take into account, *inter alia*, the impact of the existing duty and the possible effects if that duty were terminated or modified.	delegations requested the inclusion of additional elements regarding Article 11.2 reviews, including time-frames for the initiation and completion of reviews, reinforced public notice provisions and the application of *de minimis* standards in such reviews. Some delegations considered that the reference to "**security**" in footnote 49 would improperly recast duties collected pursuant to definitive measures as security, thus exempting those duties from the requirements of Articles 9.1, 9,2 and 9.3 chapeau that the duties collected not exceed the margin of dumping established pursuant to Article 2 A proposal to delete footnote 49 was subsequently circulated at the request of three delegations in document TN/RL/GEN/157/Rev.1.
11.2.1 [[The authorities shall make an examination in accordance with the second sentence of this paragraph regarding whether the continued imposition of the duty is necessary to offset dumping and/or whether injury is likely to continue or recur if the duty were removed or varied, taking account of the effect of the measures in force.]]		
11.2.2 [[Where the review involves an examination of whether the continued imposition of the duty is necessary to offset dumping, the authorities shall base their examination on all relevant economic factors concerning the operation of producers and exporters in the exporting country during the period of review, and all economic factors relevant to whether the continued imposition of the duty is necessary to offset dumping. These factors include, but are not limited to, prices, costs, inventories, production capacity, capacity utilization, sales in the exporting country and exports to the importing country and to third		

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countries.]]		
11.2.2.1 [[In making an examination of whether the continued imposition of the duty is necessary to offset dumping under subparagraph 2.2, the authorities shall make a determination of dumping for the period of review in accordance with Article 2.[77, 78]]] [77] [[This does not indicate that the authorities must calculate the margin of dumping for the period of review where there are no, isolated or sporadic export transactions during that period. In a review conducted by the authorities in such circumstances, such review shall be conducted in accordance with subparagraph 2.2.]] [78] [[Where the authorities make a determination of dumping for the period of review, and the review does not result in termination of the duty, the authorities shall, as a result of the review, adjust the anti-dumping duty to the dumping margin that was determined for the period of the review unless the authorities determine that continued imposition of the duty at the previously determined rate is necessary to offset dumping, based on the examination in accordance with subparagraph 2.2.]]		
11.2.3 [[Where the review involves an examination of whether the injury would be likely to continue or recur if the duty were removed or varied, the authorities shall base their examination on the factors listed above, as well as on all relevant economic factors concerning the domestic industry during the period of review and all economic factors relevant to whether injury would be likely to continue or recur. These factors include, but are not limited to, those factors listed in paragraph 4 of Article 3.]]		
11.2.3.1 [[In making an examination of whether the injury would be likely to continue or recur if the duty were removed or varied		

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under subparagraph 2.3, the authorities shall also examine whether the dumped imports in and of themselves, through the effects of dumping, are likely to cause injury if the duties were terminated or varied. This examination shall be based on all relevant evidence before the authorities.]]		
11.2.4 [[The authorities shall make an examination in accordance with the second sentence of this paragraph based on positive evidence and not merely on allegation, conjecture or remote possibility.]]		
11.2.5 [[In making an examination in accordance with subparagraphs 2.2 and 2.3, the authorities may not presume that the continued imposition of the duty is necessary to offset dumping, or that the injury would be likely to continue or recur if the duty were removed or varied, solely based on any one or any combination of the following:		
(i) Dumping continued at above *de minimis* margins of dumping as defined in paragraph 8 of Article 5 after the imposition of the duty; (ii) Imports of the products under investigation ceased after the imposition of the duty; (iii) Dumping was eliminated after the imposition of the duty and import volumes for the products under investigation declined significantly;		

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(iv) The fact that dumping and injury were found in the investigation initiated pursuant to Article 5.]]		
11.2.6 [[The anti-dumping duty shall be deemed to be no longer warranted and shall be terminated immediately when:		
(i) There are zero or de minimis margins of dumping as defined in paragraph 8 of Article 5 for two consecutive determinations under subparagraph 3.1 of Article 9, excluding situations where there are no, isolated or sporadic export transactions during that period; or (ii) The domestic producers whose collective output of the products constitutes the major proportion (more than 50 percent) of the total domestic production of the like products request the termination of the existing measure.]]		
11.2.7 [[It shall be rebuttably presumed that the anti-dumping duty is no longer warranted, if either of the following conditions is met:		
(i) The exporter does not have sufficient excess capacity to significantly increase exports to the importing country, is not likely to increase its capacity in the near future, and exports a substantial portion of its exports to one or more third country markets at price levels		

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which are likely to make exports to the importing country commercially unattractive, where there are zero or *de minimis* margins of dumping as defined in paragraph 8 of Article 5 by the exporter for the period of review, excluding situations where there are no, isolated or sporadic export transactions during that period;		
(ii) The foreign producers sell their products not below per unit costs in the domestic market of the exporting country and sell them at prices significantly less than the prices of the like products in the domestic market of the importing country, where there are zero or de minimis margins of dumping as defined in paragraph 8 of Article 5 by the exporter for the period of review, excluding situations where there are no, isolated or sporadic export transactions during that period; or		
(iii) There are significant supply shortages in the domestic market of the importing country that are likely to continue if the anti-dumping duty is not terminated, where there are zero or de minimis margins of dumping as defined in paragraph 8 of Article 5 by the exporter for the period of review, excluding situations		

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where there are no, isolated or sporadic export transactions during that period.]]]]		
[[11.2 [[~~The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.~~[79] ~~Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted it shall be terminated immediately~~]] [[Upon request of any interested party which submits positive evidence substantiating a claim that the circumstances for the imposition of the duty in force have changed or on their own initiative, investigating authorities shall, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, carry out a review[80] under this paragraph to examine: a) whether the duty is to be varied in order to offset dumping or the duty is to be removed; b) whether the injury would be likely to continue or recur if the duty were removed or varied; or c) both. Reviews under this paragraph shall not extend the maximum period that a duty can remain in force set out in Article 11.3.]] [79] ~~A determination of final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9, does not by itself constitute a review within the meaning of this Article.~~ [80] [[A determination of final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9, does not by itself constitute a review within the meaning of this Article.]]		
11.2.1 [[Where the review involves an examination of whether the duty is to be		

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varied in order to offset dumping or removed, the following provisions shall apply:		
In a prospective assessment of duties 11.2.1.1 Whenever there are transactions in commercial quantities during the period of review, the calculation of a dumping margin for the period of review shall be made in accordance with Article 2 (without zeroing). The level of the anti-dumping duty to be imposed shall not exceed the lesser of the dumping margin for the period of review or the most recent injury margin determined by the investigating authorities. Where the investigating authorities determine that the dumping margin for the period of review is de minimis as defined in paragraph 8 of Article 5, or that there was no dumping for the period of review, the duty to be imposed shall be zero, unless investigating authorities have reasons to believe that the future level of the export price is not likely to be de minimis or above the normal value[81].]] [81] [[In this case, investigating authorities shall disclose positive evidence which have led them to such determination and shall provide the exporter or producer an opportunity to make comments thereon.]]		
11.2.1.2 [[Whenever there are sporadic or no transactions during the period of review, investigating authorities shall allow exporters or producers to submit the expected price at which the product would be exported if there was no anti-dumping duty in force (referred to as		

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the "expected export price"). The expected export price shall be substantiated by relevant information relating to the exporter or producer past performance[82], provided that: a) the difference between the expected export price and the normal value for the period of review is lower than the dumping margin of the original investigation; or b) the expected export price is above the normal value for the period of review.]] [82] [[For example, the export price of the like product to third countries.]]		
11.2.1.2.1 [[If investigating authorities have no reasons to believe that the level of the export price after the suspension of the anti-dumping duty is not likely to be at or above the level of the expected export price[81], the imposition of the anti-dumping duty shall be suspended for 12 months. If the anti-dumping duty in force is suspended, investigating authorities may establish a reference price and duties may be definitively collected based on this basis. The reference price shall be the lesser of the normal value or the non-injurious price.]] [81] [[In this case, investigating authorities shall disclose positive evidence which have led them to such determination and shall provide the exporter or producer an opportunity to make comments thereon.]]		
11.2.1.2.2 [[Based on the export prices of the period of suspension of the anti-dumping duty, investigating authorities may determine a new anti-dumping		

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duty, calculated in accordance with Article 2 (without zeroing). Investigating authorities may conduct on-the-spot investigations, so as to verify the data concerned to the expected export price and/or the actual export price for the period of suspension. The level of the anti-dumping duty to be imposed shall not exceed the lesser of the newly calculated dumping margin or the injury margin. If the weighted average actual export price for that period is above the normal value for the period of review or is de minimis as defined in paragraph 8 of Article 5, the duty to be imposed shall be zero, unless investigating authorities have reasons to believe that the future level of the export price is not likely to be de minimis or above the normal value[81]. Except for the period of suspension and pending the result of the review, the level of the anti-dumping duty to be imposed shall not exceed the lesser of the dumping margin of the original investigation or the injury margin.]] [81] [[In this case, investigating authorities shall disclose positive evidence which have led them to such determination and shall provide the exporter or producer an opportunity to make comments thereon.]]		
[[In a prospective normal value assessment of duties]] 11.2.1.3 [[Notwithstanding paragraphs 11.2.1.1 and 11.2.1.2, investigating authorities shall calculate a normal value for the exporter or producer for the period of review, in accordance with Article 2. The level of the anti-dumping duty to be imposed shall be based on the lesser of		

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the normal value or the non-injurious price.]]		
[[In a retrospective assessment of duties]] 11.2.1.4 [[Investigating authorities shall calculate a dumping margin for the exporter or producer for the period of review if there has been no review carried out under Article 9.3.1 for a period of two years. Investigating authorities are not required to carry out reviews under this paragraph if, as a result of reviews carried out under Article 9.3.1, new dumping margins, calculated in accordance with Article 2 (without zeroing) have been determined for the purpose of calculating cash deposits.]]		
11.2.1.4.1 [[Whenever there are transactions in commercial quantities during the period of review, the calculation of a dumping margin for the period of review shall be made in accordance with Article 2 (without zeroing). The level of the anti-dumping duty to be imposed shall not exceed the lesser of the dumping margin for the period of review or the most recent injury margin determined by the investigating authorities. Where the investigating authorities determine that the dumping margin for the period of review is de minimis as defined in paragraph 8 of Article 5, or that there was no dumping for the period of review, the duty to be imposed shall be zero[83].]]		

[83] [[This provision does not prevent investigating

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authorities from determining the final liability for payment of anti-dumping duties, as provided for in Article 9.3.1.]]		
11.2.1.4.2 [[Whenever there are sporadic or no transactions during the period of review, investigating authorities shall allow exporters or producers to submit the expected price at which the product would be exported if there was no anti-dumping duty in force (referred to as the "expected export price"). The expected export price shall be substantiated by relevant information relating to the exporter or producer past performance[82], provided that: a) the difference between the expected export price and the normal value for the period of review is lower than the dumping margin of the original investigation; or b) the expected export price is above the normal value for the period of review.]] [82] [[For example, the export price of the like product to third countries.]]		
11.2.1.4.2.1 [[If investigating authorities have no reasons to believe that the level of the export price after the suspension of the anti-dumping duty is not likely to be at or above the level of the expected export price[81], the imposition of the anti-dumping duty in force shall be suspended for 12 months. If the anti-dumping duty is suspended, investigating authorities may establish a reference price and duties may be definitively collected based on this basis. The reference price shall be the lesser of the normal value or the non-injurious price.]]		

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[81] [[In this case, investigating authorities shall disclose positive evidence which have led them to such determination and shall provide the exporter or producer an opportunity to make comments thereon.]]		
11.2.1.4.2.2 [[Based on the export prices of the period of suspension of the anti-dumping duty, investigating authorities may determine a new anti-dumping duty, calculated in accordance with Article 2 (without zeroing). Investigating authorities may conduct on-the-spot investigations, so as to verify the data concerned to the expected export price and/or the actual export price for the period of suspension. The level of the anti-dumping duty to be imposed shall not exceed the lesser of the newly calculated dumping margin or the injury margin. If the weighted average actual export price for that period is above the normal value for the period of review or is de minimis as defined in paragraph 8 of Article 5, the duty to be imposed shall be zero. Except for the period of suspension and pending the result of the review, the level of the anti-dumping duty to be imposed shall not exceed the lesser of the dumping margin of the original investigation or the most recent injury margin determined by the investigating authorities.]]		
11.2.2 [[Where the review involves an examination of whether the injury would be likely to continue or recur if the duty were removed or varied, investigating authorities shall evaluate all relevant		

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factors, including the following:		
(a) the likely volume of the likely dumped imports, and, in particular, whether there is likely to be a significant increase in the volume of these imports, either in absolute terms or relative to the production or consumption of the like product in the importing Member;		
(b) the likely prices of the likely dumped imports, and likely effect of such prices on the prices of the domestic like product, in particular, whether these imports are likely to significantly undercut the prices of the domestic like product, or lead to price depression or price suppression;		
(c) the likely impact of the likely dumped imports on the domestic industry, having regard to all relevant economic factors and indices, including any potential decline in output, sales, market share, profits, productivity, return on investments or utilization of production capacity, and any potential negative effects on cash flow, inventories, employment, wages, growth, including efforts to produce a derivative or more advanced version of the like product, or the ability to raise capital or		

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investments;		
(d) changes in market conditions in the exporting country, in the importing Member and in third countries, including changes in the supply of and demand for the like product[84], as well as any changes in trends and in sources of the like product in the importing Member; and [84] [[This may include evidence of the imposition of anti-dumping or countervailing duties by other Members in respect of the like product, and evidence that such duties are likely to cause a diversion of imports into the Member.]]		
(e) likely effects of known factors other than the likely dumped imports to the injury to the domestic industry, including, inter alia, the likely volumes and prices of imports of the like product other than those from exporters or producers likely to dump, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and of products other than the like product, and the export performance and productivity of the domestic industry.]]		
11.2.2.1 [[In making an examination of whether the injury would be likely to continue or recur if the duty were removed or varied, investigating authorities shall also examine whether		

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the likely dumped imports in and of themselves, through the effects of dumping, are likely to cause injury if the duties were terminated or varied. This examination shall be based on all relevant evidence before the authorities.]]		
11.2.3 [[Investigating authorities shall examine the accuracy and adequacy of the evidence provided in the request to determine whether there is sufficient evidence to justify the initiation of a review under this paragraph. The decision to initiate, or not, a review under this paragraph shall be taken without undue delay. In case investigating authorities decide not to initiate a review, they shall provide reasoned explanations to the interested parties.]]]]		
11.3 [[Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping [[measure]][[~~duty~~]] shall be terminated on a date not later than five years from its imposition[[~~.(or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.~~[85] ~~The duty may remain in force pending the outcome of such a review~~]]]] [[Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury[[~~, or under this paragraph~~), unless the authorities determine, [[in a review initiated [[~~before that~~	11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the effective date of the most recent review of the duty under this paragraph, or under paragraph 2 if that review has covered both dumping and injury, ~~or under this paragraph),~~ unless the authorities determine, in a review ~~initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date,~~ that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.[52] The duty may remain in force pending the outcome of such a review. [52] When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.	A key element in the discussion of **sunset** was the 10-year automatic termination suggested in the text. Some delegations welcomed the text's suggestion of automatic termination, but suggested shortening it to eight years, and including detailed criteria governing the five-year sunset review.* Other delegations believed that an absolute five-year automatic termination with no sunset reviews at all was the proper approach. Delegations favouring automatic termination generally considered that Article 11.3.6 on expedited action undermined the value of the automatic termination, and that the transition rule in Article 18.3.1*bis* should be modified or eliminated. Other delegations rejected the principle of **automatic termination** altogether. The view was expressed that anti-dumping measures should continue as long as necessary, and that 10-year automatic sunset could result in a perfunctory 5-year examination. Some of these delegations believed that a better approach would be to further develop the standards and criteria governing sunset

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~~date on their own initiative or~~]] upon a duly substantiated request made by or on behalf of the domestic industry [[at least seven months]] [[~~within a reasonable period of time~~]] prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.[86] The duty [[~~may remain in force~~]] [[shall be suspended or imposed provisionally pursuant to Articles 7 and 10, where appropriate, from the date of expiry]] pending the outcome of such a review.]] [[in a review [[~~initiated~~]] [[completed]] before that date[[87]] [[and initiated]] [[~~on their own initiative or~~]] upon a duly substantiated request made by or on behalf of the domestic industry [[as defined under]] [[as required by]] [[Article 5.4,]] [[~~within a reasonable period of time prior to that date,~~]] that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.[88] [[~~The duty may remain in force pending the outcome of such a review.~~]] [[The duty [[shall in no event]][[~~may~~]] remain in force [[after [X] years from the imposition of the duty]] [[~~pending the outcome of such a review~~.]] [[,and may be amended thereafter, due account being taken of the provisions of paragraph 1.]] [[If the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury, such duty may remain in place for three years after the completion of the review, at which time the duty shall expire. The authorities may not conduct multiple expiry reviews.]] [[In no event, shall such a review be initiated more than one time and any definitive anti-dumping duty be applied for a period longer than 10 years from the date of its imposition.]]]]		determinations, including clearer requirements to gather information, in order to ensure that sunset reviews involve a full investigation. Other delegations cautioned against adopting overly complicated standards, especially for developing Members. Some delegations cautioned that if there were to be some form of automatic termination, then a provision allowing for expeditious action was necessary. *One delegation submitted a Working Paper suggesting elements along these lines, which paper was subsequently circulated as TN/RL/W/220.

[85] [[~~When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty~~.]]

[86] When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

[87] [[When the authorities suspend the imposition of the

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definite anti-dumping duty pursuant to subparagraph 3.5.1, such suspension shall be made before that date and the review shall be completed within [Y] months from that date.]] [88] When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.		
11.3.1 [[[[In determining whether the expiry of the anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury, the authorities shall make a determination based on positive evidence involving an objective examination of all relevant factors. The authorities may not presume that dumping or injury is likely to continue or recur on the basis of one or more factors without evaluating all relevant factors.]]]]	11.3.1 Except in special circumstances, a review under this paragraph shall be initiated upon a written application by or on behalf of the domestic industry. Such an application shall contain information reasonably available to the applicant and shall explain why, in the view of the applicant, dumping and injury are likely to continue or recur should the duty expire. The application shall in particular contain information on the development of the condition of the domestic industry since the imposition of the anti-dumping duty, the present condition of the domestic industry and the potential impact that any continuation or recurrence of dumping could have thereon if the duty were terminated. The authorities shall determine whether there is sufficient evidence[53] to warrant a review. In any case, a review shall not be initiated unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[54] by domestic producers of the like product, that the application has been made "by or on behalf" of the domestic industry within the meaning of Article 5.4. [53] The terms "sufficient evidence" and "positive evidence" as used in connection with the initiation and conduct of a review under paragraph 3 shall be interpreted in light of the	There were varied views about the desirability of certain proposed provisions relating to the **initiation of sunset reviews**, such as the limitation on *ex officio* reviews, and proposed standing and evidentiary thresholds for initiation. Some delegations welcomed the approach to *ex officio* reviews in the Chairman's text, while others considered that the possibility for self-initiation in special circumstances was subjective and unnecessary and should be eliminated, or in any case more clearly defined. While many delegations supported a standing requirement, one delegation suggested that any such requirement should differ from that applicable in original investigations.

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	prospective nature of the analysis required by such a review and of the possible effects of the existence of the anti-dumping duty on the state of the domestic industry and on the behaviour of exporters with respect to margins of dumping and volume of exports. In this regard, existing conditions will not necessarily be determinative in considering compliance with the "sufficient evidence" and "positive evidence" standards of sub-paragraphs 3.1, 3.2 and 3.4. [54] In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.	
11.3.2 [[[[In determining whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping, the authorities shall make a determination based on positive evidence with respect to an objective examination of all relevant factors, including:]] [[(a) whether there has been dumping while the duty was in place and, if applicable, the period during which the dumping occurred, the volume and prices of the dumped and non-dumped imports, the margin of dumping, and for non-dumped imports, the amount by which the export price exceeded the normal value; (b) the past and likely future performance of the exporters, foreign producers, brokers and traders including in respect of production, capacity utilization, the potential to extend production to facilities currently used to produce other	11.3.2 If in special circumstances, authorities initiate a review under paragraph 3 in the absence of a written application by or on behalf of the domestic industry, they shall proceed only if they have sufficient evidence to warrant an examination as to whether dumping and injury are likely to continue or recur should the duty expire. The authorities shall set forth in the relevant public notices pursuant to Article 12 the special circumstances underlying the decision to initiate a review in the absence of a written application by or on behalf of the domestic industry.	

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products, costs, sales volumes, prices, inventories, market share, exports, and profits; (c) changes in market conditions in the economy of the Member and internationally, including changes in the supply of and demand for the imports, in sources of imports into the Member, and in prices, market share and inventories; and (d) evidence of the imposition of anti-dumping or countervailing duties by other Members in respect of like or similar products, and evidence that such duties are likely to cause a diversion of imports into the Member.]]]]		
11.3.3 [[[[In determining whether the expiry of the duty would be likely to lead to continuation or recurrence of injury, the authorities shall make a determination based on positive evidence with respect to an objective examination of all relevant factors, including:]] [[(a) the likely volume of dumped imports if the duty is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of the dumped imports, either in absolute terms or relative to the production or consumption of the like product; (b) the likely prices of the dumped	11.3.3 A review under paragraph 3 shall be initiated not later than six months prior to the end of the five year period following the imposition of the duty or of the five year period following the most recent review of the anti-dumping duty. The review shall preferably be completed before the end of that five-year period and shall in no case be completed later than six months thereafter. Irrespective of whether a review under paragraph 3 is completed after the end of that five-year period, the result of the review shall be effective as of that date. In the event that the review results in the termination of the duty, the importing Member shall refund any monies collected in respect of imports occurring after the effective date of the termination and shall pay a reasonable	Some delegations welcomed the **timeframes** for completion of investigations in the Chairman's text, while another delegation indicated that the changes were acceptable even if they required changes to its current system. One delegation continued to support completion of the review with the five-year period. A number of delegations considered that while refunds might appropriately be made, there was no need to provide for the payment of **interest.**

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imports if the measure is allowed to expire and their effect on the prices of the like product, and, in particular, whether the dumped imports are likely to significantly undercut the prices of the like product, or lead to price depression or price suppression; (c) the likely performance of the domestic industry and of the foreign industry, taking into consideration their recent performances, including trends in production, capacity utilization, the potential for foreign producers to extend production to facilities currently used to produce other products, the employment levels, prices, sales, inventories, market share, exports and profits; (d) the likely impact of the dumped imports on the domestic industry if the measure is allowed to expire, having regard to all relevant economic factors and indices, including any potential decline in output, sales, market share, profits, productivity, return on investments or utilization of production capacity, and any potential negative effects on cash flow, inventories, employment, wages, growth, including efforts to produce a derivative or more advanced	amount of interest on such monies.	

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version of the like product, or the ability to raise capital; (e) changes in market conditions in the economy of the Member and internationally, including changes in the supply of and demand for the imports, as well as any changes in trends and in sources of imports into the Member; and (f) evidence of the imposition of anti-dumping or countervailing duties by other Members in respect of like or similar products, and evidence that such duties are likely to cause a diversion of imports into the Member.]]		
11.3.4 [[The determination whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping shall be made on an exporter or producer specific basis. The authorities shall terminate the anti-dumping duty for any exporter or producer for which the authorities have not found that the expiry of the duty would be likely to lead to continuation or recurrence of dumping.]] 11.3.4.1 [[The authorities shall evaluate all relevant factors, including the following factors, in determining whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping:	11.3.4 A determination whether the expiry of an anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury shall be based on positive evidence and involve an objective examination of all relevant factors. The weight to be accorded to particular factors will depend upon the facts of each review, and no one or several factors can necessarily give decisive guidance.[55] [55] Thus, the authorities shall not rely on presumptions that assign decisive weight to particular factors. They may, however, draw reasonable inferences about the future from evidence on current facts if such inferences are supported by an analysis of the evidence as a whole.	
(a) the normal value in the most recent one year period and any changes in the export		

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transaction prices and volume thereof to the importing Member from the imposition of the anti-dumping duty up to the time of this review;[89] [89] [[If the authorities calculate the margin of dumping, such margin of dumping shall be calculated in accordance with the provisions of Article 2.]]		
(b) the past and likely future performance of the exporter and producer, including in respect of production, capacity utilization, costs, sales, prices, inventories, market share, exports to third countries, and profits; and		
(c) changes in market conditions in the exporting country, in the importing Member and in third countries, including changes in the supply of and demand for the like product[90], in sources of the like product in the importing Member, and in prices, market share and inventories thereof.]] [90] [[This may include evidence of the imposition of anti-dumping or countervailing duties by other Members in respect of the like product, and evidence that such duties are likely to cause a diversion of imports into the Member.]]		
11.3.5 [[The authorities shall determine whether the expiry of the duty would be likely to lead to continuation or recurrence of injury to the domestic industry through the effects of imports from exporters or producers likely to dump if the duty expires (referred in this	11.3.5 Any anti-dumping duty extended beyond the end of the initial five year period following a review in accordance with paragraph 3 shall be terminated on a date not later than ten years after the date of the imposition of the anti-dumping duty.	

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paragraph as "likely dumped imports"). The authorities may find that the likelihood to lead to recurrence of injury exists only where the recurrence of injury to the domestic industry is clearly foreseen and imminent.]] 11.3.5.1 [[The authorities shall evaluate all relevant factors, including the following in determining whether the expiry of the duty would be likely to lead to continuation or recurrence of injury to the domestic industry:		
(a) the likely volume of the likely dumped imports, and, in particular, whether there is likely to be a significant increase in the volume of these imports, either in absolute terms or relative to the production or consumption of the like product in the importing Member;		
(b) the likely prices of the likely dumped imports, and likely effect of such prices on the prices of the domestic like product, in particular, whether these imports are likely to significantly undercut the prices of the domestic like product, or lead to price depression or price suppression;		
(c) the likely impact of the likely dumped imports on the domestic industry, having regard to all relevant economic factors and indices,		

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including any potential decline in output, sales, market share, profits, productivity, return on investments or utilization of production capacity, and any potential negative effects on cash flow, inventories, employment, wages, growth, including efforts to produce a derivative or more advanced version of the like product, or the ability to raise capital or investments;		
(d) changes in market conditions in the exporting country, in the importing Member and in third countries, including changes in the supply of and demand for the like product[91], as well as any changes in trends and in sources of the like product in the importing Member; and [91] [[This may include evidence of the imposition of anti-dumping or countervailing duties by other Members in respect of the like product, and evidence that such duties are likely to cause a diversion of imports into the Member.]]		
(e) likely effects of known factors other than the likely dumped imports to the injury to the domestic industry, including, inter alia, the likely volumes and prices of imports of the like product other than those from exporters or producers likely to dump, contraction in demand or changes in the patterns of		

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consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and of products other than the like product, and the export performance and productivity of the domestic industry.]]		
11.3.5.2 [[For purposes of determinations under this paragraph, authorities may not cumulatively assess the likely effects of likely dumped imports from more than one country when determining the likelihood of recurrence of injury to the domestic industry, unless these imports are simultaneously subject to the review under this paragraph and the authorities determine that (a) the likely volume of likely dumped imports from each country is not negligible, and (b) a cumulative assessment of the likely effects of the likely dumped imports is appropriate in light of the conditions of competition between these imports and the conditions of competition between these imports and the like domestic product.]]		
11.3.6 [[A request from the domestic industry to initiate a review under this paragraph shall include evidence of likelihood to lead to continuation or recurrence of dumping and injury if the anti-dumping duty expires. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The request shall contain such information as is reasonably available to the applicant on the following:	11.3.6 If during a period not longer than two years from the date of termination of an anti-dumping duty pursuant to sub-paragraph 3.5, the authorities initiate an investigation pursuant to Article 5 on the basis of an application containing sufficient evidence of dumping, injury and causal link pursuant to Article 5.3, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may	

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	constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the date of termination of the anti-dumping duty.	
(i) information demonstrating that the request is made on behalf of the domestic industry as defined under paragraph 4 of Article 5 at the time of the request;		
(ii) the identity of each known exporter or foreign producer, which has been covered by the measure under review;		
(iii) information on the current normal value of the product in question, and the current export prices thereof, or, where appropriate, the current constructed export price thereof, and information, where the export price is not available, on the prices at which the product is sold from the country or countries of origin or export to a third country or countries and the prices in the country of origin or export;		
(iv) information on the likely trend of normal value, and likely trend of export price, or where		

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appropriate of the likely constructed export price thereof, if the duty expires; and		
(v) information on the likely impact of the likely dumped imports on the domestic industry, as demonstrated by relevant factors and indices, such as those listed in subparagraph 3.5.1.]]		
11.3.6.1 [[The authorities shall examine the accuracy and adequacy of the evidence provided in the request to determine whether there is sufficient evidence to justify the initiation of a review under this paragraph.]]		
11.3.7 [[Notwithstanding the provisions of subparagraph 3.4.1, the authorities shall allow exporters or producers subject to a review under this paragraph to submit the expected price at which the product would be exported by the exporter or producer to the importing Member if the definitive anti-dumping duty in force were to be terminated (referred in this paragraph as "expected export price"), substantiated by relevant information relating to its past performance[92], provided that such expected export price is not less than the normal value in the most recent one year period (or the normal value found in the most recent proceeding, including a review under Article 9, a review under paragraph 2 of this Article if that review has covered dumping, or the original investigation, whichever is most recent).[93]]]		

[92] [[One example of such relevant information would

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be the export price of the like product by the exporter or producer to a third country.]] [93] [[This shall not be interpreted that the exporter or producer must provide the necessary evidence regarding normal value in cases where the authorities have already obtained such evidence from previous proceedings.]]		
11.3.7.1 [[In cases where the exporter or producer submit the expected export price, the imposition of the definitive anti-dumping duty shall be suspended for [Y] months unless the authorities determine, based on relevant information relating to the past performance of the exporter or producer, that the actual level of the export price after the suspension of the anti-dumping duty is not likely to be at or above the level of the expected export price,[94] or the authorities determine, based on an evaluation of the factors in subparagraph 3.4.1, that the expiry of the duty would not be likely to lead to continuation or recurrence of dumping (in which case the anti-dumping measure shall be terminated pursuant to subparagraph 3.3).]] [94] [[If the authorities determine that the actual level of the export price after the suspension of the anti-dumping duty is not likely to be at or above the level of the expected export price, the authorities shall disclose positive evidence which have led them to such determination and shall provide the exporter or producer an ample opportunity to make comments thereon.]]		
11.3.7.2 [[When the imposition of the definitive anti-dumping duty has been suspended pursuant to subparagraph 3.7.1, the authorities may require the exporter or producer to provide information relevant		

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to the actual export price for a period of [Z] months after the suspension. The authorities may determine that the expiry of the duty is likely to lead to continuation or recurrence of dumping only if the weighted average actual export price for that period is less than the expected export price, in which case anti-dumping duties may be levied retroactively for the period of the suspension of the anti-dumping measure, provided that the authorities determine, pursuant to subparagraph 3.5, that the expiry of the duty would be likely to lead to continuation or recurrence of injury to the domestic industry.]]]]		
11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall [[~~normally~~]] be concluded within 12 months of the date of initiation of the review [[,but in no case longer than 18 months]].	11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.	
11.5 The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8.	11.5 The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8.	
11.6 [[If the authorities calculate the margin of dumping in any review under this Article, such margin of dumping shall be calculated in accordance with the provisions of Article 2.]]		

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Article 12 *Public Notice and Explanation of Determinations*	*Article 12* *Public Notice and Explanation of Determinations*	
12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties [[identified by~~known to~~]] the investigating authorities [[~~to have an interest therein~~]]shall be notified and a public notice shall be given.	12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.	
12.1.1 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report[95], adequate information on the following: [95] Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.	12.1.1 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report[56], adequate information on the following:	
[[[[~~(i) the name of the exporting country or countries and the product involved;~~ ~~(ii) the date of initiation of the investigation;~~ ~~(iii) the basis on which dumping is alleged in the application;~~ ~~(iv) a summary of the factors on which the allegation of injury is based;~~ ~~(v) the address to which representations by interested parties should be directed;~~ ~~(vi) the time limits allowed to~~		

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~~interested parties for making their views known.~~]]		
[[(i) a description of the product under investigation to which the initiation applies, including its tariff classification for Customs purposes, the name of the exporting country or countries, and the names of the known exporters and foreign producers of the product under investigation;	(i) a description of the product under consideration, including its tariff classification for customs purposes, the name of the exporting country or countries, and the names of the known exporters and foreign producers of the product~~product involved~~;	
(ii) information concerning the domestic like product and domestic industry, including the names of the domestic producers of the like product submitting and supporting the application, the names of other domestic producers of the like product insofar as they are known to the investigating authorities and, if relevant, information regarding any exclusion of producers for the purposes of defining the domestic industry;	(ii) the domestic like product and the domestic industry, including whether any domestic producers were excluded from the domestic industry, and the names of the applicant and of the domestic producers of the like product (or, if relevant, associations of producers) supporting the application and of other domestic producers of the like product insofar as they are known to the investigating authorities;	
(iii) information concerning the procedural background of the investigation, including the date on which the application was received, the date on which the application was found to be in compliance with the requirements of Article 5 as to the allegations of dumping and injury and the determination of industry support, and the date of	(iii) the procedural background of the investigation, including the date on which the application was received and the date of initiation of the investigation;	

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initiation of the investigation;		
(iv) the basis on which dumping is alleged in the application;	(iv~~ii~~) the basis on which dumping is alleged in the application;	
(v) a summary of the factors on which the allegation of injury is based, and;	(~~i~~v) a summary of the factors on which the allegation of injury is based;	
(vi) information relevant to the continuation of the investigation, including next steps in the process, and related time frames, and information concerning a contact to whom representations by interested parties should be directed.]]]]	(vi) whether the authorities may consider limiting their examination in accordance with paragraph 10 of Article 6 and any procedures in that respect; and	
	(vii) next steps in the process, related time frames, periods of data collection and a contact to whom ~~the address to which~~ representations by interested parties should be directed;	
	~~(vi) the time limits allowed to interested parties for making their views known~~. [56] Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.	
[[[[(i) a description of the product under investigation to which the initiation applies, including its tariff classification for customs purposes,]] the name of the exporting country or countries involved[[, and the		

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names of the known exporters and foreign producers of the product under investigation;]]		
(ii) the date of initiation of the investigation;		
(iii) [[the names of all individual domestic producers of the like product who support the application, and the volume and value of each such producer's domestic production of the like product;]]		
(iv) the basis on which dumping is alleged in the application; (v) a summary of the factors on which the allegation of injury [[and the existence of causal link]] is based;		
(vi) the address to which representations by interested parties should be directed;		
(vii) the time-limits allowed to interested parties for making their views known [[, and any other information relevant to the continuation of the investigation including next steps and related time-frames;]]		
(viii) [[whether the authorities may consider limiting their examination in accordance with paragraph 10 of Article 6,		

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and any procedures in that respect.]]]]		
12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. [[The authorities shall provide a reasoned and adequate explanation for all findings and conclusions made, including an explanation of how each relevant factor has been evaluated.]] All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.	12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.	
12.2.1 [[In the~~A~~]] public notice of [[~~the imposition of provisional measures~~]][[preliminary determination the authorities]] shall set forth, or otherwise [[within seven days of the public notice]] make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury [[~~and shall refer to the matters of fact and law which have led to arguments being accepted or rejected~~]]. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:	12.2.1 A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations of the analysis underlying ~~for~~ the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:	
[[[[~~(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;~~	~~(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;~~ (i~~i~~) a description of the product under	

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	consideration, including its tariff classification ~~which is sufficient~~ for customs purposes, the name of the exporting country or countries, and the names of the known exporters and foreign producers of the product under consideration;	
~~(ii) a description of the product which is sufficient for customs purposes;~~	(ii) information concerning the domestic like product and the domestic industry, including the names of all known domestic producers of the like product;	
~~(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;~~	(iii) the periods of data collection for both the preliminary dumping and preliminary injury analysis, and the basis for the selection of such periods;	
~~(iv) considerations relevant to the injury determination as set out in Article 3;~~	(iv~~ii~~) the margins of dumping established and information concerning the calculation of the margins of dumping, including an~~a full~~ explanation of the basis upon which normal values were established (sales in the home market, sales to a third market or constructed normal value), the basis upon which export prices were established (including, if appropriate, the adjustments related to the construction of export price), and ~~reasons for~~ the methodology used in the ~~establishment and~~ comparison of normal values and ~~the~~ export prices (including any adjustments made to reflect differences affecting price comparability)~~and the normal value under Article 2~~;	
~~(v) the main reasons leading to the determination.~~]]	(~~i~~v) ~~considerations~~ information relevant to the injury determination as set out in Article 3, including information	

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	concerning the domestic market for the subject imports and the like product, the volume and the price effects of the subject imports, the consequent impact of the subject imports on the domestic industry and, if relevant, the factors leading to a conclusion of threat of material injury or material retardation of the establishment of a domestic industry;	
	(vi) information concerning any use of full or partial facts available, including, where applicable, the reasons why information submitted by a party was rejected;	
	(vii) information concerning the on-the-spot verification of information used by the authorities, if undertaken;	
	(viii) information on any provisional measures being imposed, including the form, level, and duration of such measures; and	
	(ix) information concerning next steps in the process, and related time frames, and information concerning a contact to whom representations by interested parties should be directed~~(v) the main reasons leading to the determination~~.	
[[(i) Name of the applicant;		
(ii) A full description of the product under investigation including the name of the exporting country or countries involved and the names of the known exporters and foreign producers of the product under investigation;		

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(iii) Date and number of the public notice to initiate;		
(iv) Information concerning the domestic like product and the domestic industry;		
(v) Information concerning verification of information used by the authorities;		
(vi) Margins of dumping and methodology used to determine the margin of dumping;		
(vii) Injury factors considered;		
(viii) Causality factors considered; and		
(ix) Information on provisional measures, if any, being imposed.]]		
[[(i) a description of the product under investigation, including its tariff classification for Customs purposes, the name of the exporting country or countries, and the names of the known exporters and foreign producers of the product under investigation;		
(ii) the periods of data collection for both the preliminary dumping and preliminary injury analysis, and an explanation of the rationale for the selection of such periods;		

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(iii) the margins of dumping established and information concerning the calculation of the dumping margin, including information regarding: normal values, including whether normal values were based on sales in the home market, sales to a third market or constructed normal value; export prices, including, if appropriate, the adjustments related to the construction of export price; the methodology of comparisons including adjustments, and, if appropriate, information on any application of sampling;		
(iv) information concerning any situation where the determination of dumping was made on the basis of full or partial facts available, including information as to why resort was had to facts available, and what information the authorities used to determine the dumping margin. The information provided should include, if applicable, the reasons why information submitted by a party was rejected in favour of recourse to facts available;		
(v) information concerning the domestic like product and domestic industry, including		

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the names of all known domestic producers of the like product and, if relevant, information regarding any exclusion of producers for the purposes of defining the domestic industry;		
(vi) information, as is reasonably available, relevant to the injury determination as set out in Article 3, including information concerning the domestic market for the subject imports and the like product, the volume and the price effects of the subject imports, the consequent impact of the subject imports on the domestic industry and, if relevant, the factors leading to a conclusion of threat of material injury;		
(vii) information concerning the verification of information used by the authorities, if undertaken;		
(viii) information on the provisional measures being imposed, including the form, level, and duration of such measures;		
(ix) information relevant to the continuation of the investigation, including next steps in the process, and related time frames, and information concerning a contact to whom representations by interested parties should be directed; and		

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(x) information concerning the possibility for exporters to offer price undertakings.]]		
[[(i) [[~~the names of the suppliers, or when this is impracticable, the supplying countries involved~~]] [[the name of the exporting country or countries involved, and the names of the known exporters and foreign producers of the product under investigation]];		
(ii) a description of the product [[under investigation, including its tariff classification]] [[~~which is sufficient~~]] for customs purposes;		
(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2[[, including information regarding normal values (including whether normal values were based on sales in the home market, sales to a third market or constructed normal value), export prices, and - if appropriate - any adjustments made]];		
(iv) [[~~considerations relevant to~~]] the injury determination as set out in Article 3[[, and the facts upon which it is based]];		

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(v) the main reasons leading to the determination[[-;]]		
(vi) [[the periods for data collection for the dumping and injury analysis, and an explanation of the rationale for the selection of such periods;]		
(vii) [[the names of all known domestic producers of the like product, and the volume and value of each such producer's domestic production of the like product, identifying which producers support the application to initiate an investigation , and, if relevant, information regarding any exclusion of producers for the purposes of defining the total domestic production;]]		
(viii) [[the right of exporters to offer price undertakings as well as information regarding the applicable rules and procedures to be followed in requesting consideration of price undertakings, including any procedural deadlines;]]		
(ix) [[the considerations which led to the use of a limited examination according to paragraph 10 of Article 6, the procedure used to select the producers or exporters included , and an explanation of		

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the choice of companies or products;]]		
(x) [[information concerning the verification of information used by the authorities, if undertaken; and]]		
(xi) [[information relevant to the continuation of the investigation, including next steps in the process, and related time frames, and information concerning contact to whom representations by interested parties should be directed.]]]]		
12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in subparagraph 2.1, as well as the reasons for the acceptance or	12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in subparagraph 2.1, to the extent applicable, as well as the reasons	

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rejection of relevant arguments or claims made by the exporters[[, the producers of the exporting Member and importers.]][[~~, and the basis for any decision made under subparagraph 10.2 of Article 6.~~]]	for the acceptance or rejection of relevant arguments or claims made by the exporters, foreign producers and importers~~, and the basis for any decision made under subparagraph 10.2 of Article 6.~~	
12.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.	12.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.	
12.3*New*[[Public notice shall be given, in sufficient detail, of the procedures referred to in subparagraph 9.1(b), and of any determinations, including supporting reasons, associated with such procedures.]]		
12.3 The provisions of [[paragraphs 1 and 2 of]] this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.	12.3 The provisions of this Article shall apply *mutatis mutandis* to proceedings conducted pursuant to Articles 9.1, 9.3 and 9.5, to decisions under Article 10 to apply duties retroactively and to the initiation and completion of reviews pursuant to Articles 9*bis* and 11 ~~and to decisions under Article 10 to apply duties retroactively~~.	Several delegations believed that the obligation to **publish** duty assessment determinations pursuant to Article 12 would be unduly burdensome, particularly in light of the large number of determinations.
[[12.4 The authorities shall maintain a public register of all definitive anti-dumping measures currently in force in that Member. The register shall contain the following information in respect of each of the anti-dumping measures in question:		
(i) the subject product (including its tariff classification for customs purposes);		
(ii) the exporting country or countries concerned;		
(iii) the date(s) of imposition of the anti-		

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dumping measure and subsequent review(s)[96];		
(iv) in respect of each exporting country concerned, the range (i.e. the highest and lowest) of individual anti-dumping duty rate currently in force, the applicable duty for "all other" exporters under paragraph 4 of Article 9 and the lesser duty rate[97];		
(v) the size[98] of the domestic industry;		
(vi) the total volume or value of import of the subject product from each exporting country concerned, and the share of the domestic consumption of the like product (including the product under consideration) in the importing Member, for the most recent calendar or financial year[99], unless information has to be withheld to protect confidential business information of producers/exporters;		
(vii) the total amount of anti-dumping duty collected[100] on the subject product imported during the most recent calendar or financial year from each exporting country.]]		
[96] [[Where the measure is subject to ongoing review, the type of review and the date of initiation; if the measure is terminated during the reporting period, the date of termination.]] [97] [[For Members operating a prospective normal value system, information on the range of anti-dumping duty rate and all others rate to be provided refers to the relevant dumping margins established at the time of the original investigation. Where duty is suspended, the date and duration of suspension should be given.]] [98] [[i.e. the actual or estimated number of producers		

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and employees at the time of initiation, or more recent figures if available. Information should be based on identified official or other independent sources. If such sources are not available, information may be based on best estimates.]] [99] [[Where actual figures cannot be obtained despite best endeavours, the figures may be based on best estimates.]] [100] [[In the case of a retrospective duty assessment system, this includes the cash deposits paid in respect of entries made during the reference period.]]		
Article 13 *Judicial Review*	*Article 13* *Judicial Review*	
Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.	Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.	
Article 14 *Anti-Dumping Action on Behalf of a Third Country*	*Article 14* *Anti-Dumping Action on Behalf of a Third Country*	
14.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.	14.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.	
14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.	14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.	
14.3 In considering such an application, the authorities of the importing country shall consider the	14.3 In considering such an application, the authorities of the importing country shall consider the	

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effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports. [[The decision whether or not to proceed with a case shall rest with the importing country.]]	effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.	
~~14.4~~ [[~~The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country.~~]]	14.4 Notwithstanding the provisions of Article VI:6(b) of GATT 1994, ~~T~~the decision whether or not to proceed with a case shall rest solely with the importing country; provided, that ~~If~~ the importing country ~~decides that it is prepared to take action, the initiation of the approach to~~ shall notify the Council for Trade in Goods of its decision to initiate such an investigation~~seeking its approval for such action shall rest with the importing country~~.	Some delegations welcomed the Chair text on the issue of **third country** dumping, as in their view the current rules in this area are unworkable, although it was emphasized that many other issues would have to be addressed if this provision were to be operationalised. Other delegations expressed concern that the proposed text might make such actions too easy and that there was a risk of politicization of such actions. While it was noted that Members might be unlikely to take such actions in favour of third countries, one delegation noted that today, when trans-national corporations could supply their home market exclusively from offshore production bases, the use of such a provision might be more likely. Other delegations questioned whether it was desirable to operationalise this provision at all, with one delegation preferring that the provision be deleted entirely.
Article 15 *Developing Country Members*	*Article 15* *Developing Country Members*	
15. It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. [[~~Possibilities of c~~C]]onstructive remedies [[~~provided for by this Agreement~~]] shall be explored before applying anti-dumping [[measures]][[~~duties where they would affect the essential interests of developing country Members~~]]. [[In this regard, developed country Members shall invite consultations, within a reasonable period of time, before the initiation of an investigation against goods originating in or exported from a developing country Member. Such consultations shall explore constructive remedies, with a view to arriving at a	It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.	After the Chairman's text was released, two groups of developing Members submitted a proposal relating to **special and differential treatment and technical assistance in trade remedies** (TN/RL/GEN/154), building on a non-textual proposal previously submitted to the Group. The proposal relates to three broad areas: the exploration of constructive remedies in the case of developing Member exporters; the role of the government in assisting domestic industries in respect of the initiation of investigations; and technical assistance to enhance developing Members' ability to use AD measures. With respect to **constructive remedies**, the proponents advocate that developed Members be required to invite developing Members to pre-initiation consultations before

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mutually agreed upon solution short of investigation or imposition of measures by the developed country against the developing country Member.]]		initiating an investigation against goods originating in or exported from the developing Member, in order to explore constructive remedies short of investigation or imposition of measures. Constructive remedies identified include application of a lesser duty, price undertakings, and longer timeframes for responses to questionnaires. Some delegations were generally supportive of the proposals. Other delegations had doubts about the utility of inter-governmental consultations, given that dumping is private action outside government's control. Certain delegations cautioned that consultations would cause delays, or would come too early in the process, and should not be mandatory. Various delegations suggested that consultations should be required irrespective of whether the importing Member was a developed or developing country. Regarding the constructive remedies identified, some delegations supported or were willing to consider such remedies, while one delegation registered its strong opposition to the lesser duty rule. With respect to the **role of governments in assisting domestic industries**, the proposal indicated that "special circumstances" exist in developing Members to justify *ex officio* initiations, and identified actions developing Members could take to help domestic industries gather information to initiate an investigation, including through information requirements associated with automatic import licensing and pre-shipment inspection. Various delegations expressed concerns about these proposals. It was suggested that licensing could represent a trade barrier, that the proposal could require governments to reveal confidential information, and that there was a potential conflict of interest if a government was both preparing the application and judging the investigation. Some delegations were particularly concerned about requiring importers to provide information about prices in the exporting country. Regarding **technical assistance** to enhance developing Members' ability to use AD measures, some delegations were supportive and considered the question of capability

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		to be the key to this issue. Other delegations supported technical assistance generally, but could not accept mandatory technical assistance on demand. Some delegations suggested that the focus should be on technical assistance for developing exporters.
[[Initiation of Investigation 15.1 Members further recognise that "special circumstances" referred to in Article 5.6, which permit authorities to initiate investigations without having received a written application by or on behalf of the domestic industry for the initiation of such investigation, exist in developing countries.		
15.1.1 Due to these "special circumstances" prevailing in developing countries, the Governments of these countries may play an active role in:		
• Assisting the domestic industry which is alleging that increased dumped imports are causing injury, in collecting information, *inter alia*, on volume of imports and on prices, both export prices and prices prevailing on the domestic market of the exporter for the like product;		
• Assisting such industries in collecting evidence required by Article 5.4 on the degree of support or opposition to the application expressed by domestic producers in order to establish that the application has been made by or on behalf of the industry;		
• Requesting the investigating authorities to initiate investigations where there are		

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reasonable grounds to believe, on the basis of the information collected, that there is sufficient evidence to suggest that increased imports are causing injury to the domestic industry and the industry has no technical capacity to apply for investigations.		
15.1.2 In the collection of evidence referred to in 15.1.1 above, the governments could exercise surveillance of trends in imports and the prices of products that are alleged to be injured by dumped products. Such surveillance could be exercised by:		
• Requiring the customs administration to provide on transaction-by transaction basis, data on volume of imports and the prices of products put under surveillance;		
• Adopting systems of automatic licensing of imports of such products.		
15.1.3 Where a licensing system is adopted for the surveillance of the imports, the importers shall be required to submit in their application for licences, information on quantities to be imported, the import price and the price at which the like product is being sold in the domestic market of the exporting country.		
15.1.4 Such licences shall be issued automatically and shall not be used for		

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restrictive purposes. The provisions of the WTO Agreement on licensing procedures, which require that automatic licences should be issued within a period of 10 days, shall apply to such licensing systems.		
15.1.5 The information collected under the surveillance mechanism shall be published and could be used as evidence in support of applications to the investigating authorities for initiation of investigations:		
• By the affected domestic industry; or		
• By governments, where application for initiation of investigations is made by them.		
15.1.6 The governments of countries which use the services of Preshipment Inspection Companies may use the services of these companies to obtain information on prices, of the products put under surveillance in the domestic market of the exporting country.]] [[Application of Anti-dumping Measures 15.2 Constructive remedies shall be explored. Such constructive remedies shall take the form of, *inter alia*,:		
• Application of lesser anti-dumping duty than the margin of dumping, if such lesser duty would be adequate to remove the injury to the domestic industry; • Non-application, including suspension or termination, of provisional measures/or anti-dumping duties where any exporter from a developing country		

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Member undertakes to review its prices or to cease exports to the area in question at dumped prices; • Acceptance of price undertakings from any exporter from a developing country Member provided that the undertaking is sufficient to eliminate the margin of injury; • Longer timeframes for receiving answers to questionnaires from exporters and producers of developing country Members.]]		
[[Technical Assistance 15.3 Technical Assistance to developing country Members shall be provided on request by Members, and by the WTO Secretariat within its competence to enhance the capacities of these Member countries in the application of anti-dumping measures in accordance with the rules of the Agreement. The areas in which such assistance would be needed include among others;		
• Establishment and strengthening of national legal and institutional frameworks for the application of anti-dumping measures to countries which have not been able to establish such framework and for training of personnel in undertaking investigations according to the procedures prescribed by the Agreement;		
• Establishment and strengthening of regional investigating authority for investigations of complaints on dumping in countries belonging to a regional economic grouping;		
• Building and enhancing the technical		

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capacities of the officials of the investigating authorities for undertaking investigations;		
• Establishment of mechanisms for surveillance of imports of products that are alleged to be causing injury to domestic industry with a view to assisting them in collecting relevant information on trends in imports and their prices;		
• Training of lawyers, accountants and other professionals in the application of anti-dumping measures.]]		
[[*Review of the Operation of Article 15* 15.4 The provisions of Article 15 shall be reviewed by the Committee on Anti-dumping Practices after three years with a view to examining whether any modifications and improvements would be necessary to make it responsive to the needs of developing countries.]]		
15.5 [[Developed country Members shall have special regard to: (a) the use of facts available in the absence of a detailed and full response by an exporter in a developing country; (b) the automatic increase in the *de minimis* margin of dumping; (c) the automatic increase in the negligible volume of imports; and (d) the automatic lapse of anti-dumping duties after 5 years.]]		

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
PART II *Article 16* *Committee on Anti-Dumping Practices*	PART II *Article 16* *Committee on Anti-Dumping Practices*	
16.1 There is hereby established a Committee on Anti-Dumping Practices (referred to in this Agreement as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.	16.1 There is hereby established a Committee on Anti-Dumping Practices (referred to in this Agreement as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.	
16.2 The Committee may set up subsidiary bodies as appropriate.	16.2 The Committee may set up subsidiary bodies as appropriate.	
16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.	16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.	
16.4 Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form. [[Once a year, Members shall also submit to the Committee an updated copy the public register maintained pursuant to paragraph 4 of Article 12, to be included in the relevant semi-annual report.]]	16.4 Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months, and a list of definitive measures in force as of the end of that period. The semi-annual reports shall be submitted on an agreed standard form.	

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16.5 Each Member shall notify the Committee *(a)* which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and *(b)* its domestic procedures governing the initiation and conduct of such investigations.	16.5 Each Member shall notify the Committee *(a)* which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and *(b)* its domestic procedures governing the initiation and conduct of such investigations.	
16.6 [[The Committee shall review each Member's anti-dumping practices as laid down in Annex VI.]]		
16.7 [[Members shall provide the Committee on Anti-Dumping Practices with notice setting forth, in sufficient detail, the procedures referred to in subparagraph 9.1(b).]]		
Article 17 *Consultation and Dispute Settlement*	*Article 17* *Consultation and Dispute Settlement*	
17.1 Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.	17.1 Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.	
17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.	17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.	
17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.	17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.	
17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive	17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive	

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anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.	anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.	
17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon: (i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and (ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.	17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon: (i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and (ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.	
17.6 In examining the matter referred to in paragraph 5: (i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned; (ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of	17.6 In examining the matter referred to in paragraph 5: (i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned; (ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.	interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.	
17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.	17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.	
17.8 [[Subject to paragraph 9, upon a ruling by the DSB that the application of an antidumping measure is inconsistent with Article VI of GATT 1994 and the terms of this Agreement, the Member concerned shall immediately suspend the application of that inconsistent measure.]]		Certain delegations expressed regret that the Chairman's text did not contain any provisions relating to a previously submitted proposal on **compliance**. Some delegations were supportive of the idea that there should be immediate suspension of measure found to be inconsistent with the ADA or ASCM pending application of a compliant measure. Many of these delegations, however, believed that there should be a proper balance between the nature of the violation and the consequences. It was suggested in this respect that there should be a distinction between substantive violations, which should trigger immediate suspension, and procedural violations, which should not. While most of these delegations welcomed that the proposal did not envision retroactive remedies, one delegation wanted to go further and make the suspension retroactive to the imposition of the inconsistent measure. Other delegations considered that the issue of compliance was of a horizontal nature. These delegations either considered that, as a matter of principle, there should not be dispute settlement rules specific to trade remedies where the logic of the rules was equally applicable in other contexts, or were in any event cautious about

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		developing trade-remedy specific rules. Several delegations observed that similar issues were being addressed in the DSU Review, including proposals to shorten the reasonable period of time for compliance. One delegation observed that the distinction between procedural and substantive violations was not so clear, and indicated that if trade remedy-specific rules were considered here then they would have to consider such rules on other issues as well. A variety of questions and comments were made on specific aspects of the proposal. Several delegations observed that the concept and details of a bonding requirement during the period of suspension of the measure should be set out more clearly in the draft text of the proposal. Several delegations questioned whether the 30-day proposed administrative period might be too short, and asked what recourse would be available in the event that a Member did not suspend the inconsistent measure as required. One delegation suggested that application of such a proposal might be complex in the context of retrospective systems, while another delegation indicated it might be difficult in prospective systems.
17.9 [[Where the immediate suspension of application of the inconsistent measure is impractical, the Member concerned may avail itself of an administrative period, which shall not exceed 30 days from the date of the DSB ruling referred to in paragraph 8, to effect the suspension of application of the inconsistent measure.]]		
17.10 [[Prompt compliance with the recommendations or rulings of the DSB, within the meaning of Article 21 of the DSU shall, unless otherwise agreed to by the disputing parties, be deemed to have occurred:		
(i) after a period of 60 days from either: (a) a declaration of compliance made by the Member concerned to the DSB; or		

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(b) the expiration of the reasonable period of time referred to in Article 21.3 of the DSU; provided that a party to the dispute has not initiated compliance proceedings under Article 21.5 of the DSU before the expiration of such period.		
- or - (ii) upon adoption by the DSB of the report of a panel, and of the Appellate Body on appeal, concerning the existence and consistency with a covered agreement of measures taken to comply with the recommendations and rulings of the DSB, within the meaning of Article 21.5 of the DSU.]]		
17.11 [[A Member may apply an antidumping measure that is deemed to be compliant under paragraph 10, to all importations of the product made subsequent to the DSB ruling referred to in paragraph 8.]]		
17.12 [[Antidumping duty amounts collected during the administrative period referred to in paragraph 9 that are in excess of the amount of antidumping duty payable under a measure that is deemed to be compliant under paragraph 10, shall be refunded.]]		
17.13 [[Where the amount of the antidumping duty payable under a measure that is deemed to be compliant under paragraph 10 is higher than the amount actually collected during the administrative period referred to in paragraph 9, the difference shall not be collected.]]		

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PART III *Article 18* *Final Provisions*	PART III *Article 18* *Final Provisions*	
18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.[101] [101] This is not intended to preclude action under other relevant provisions of GATT 1994, as appropriate.	18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.[57] [57] This is not intended to preclude action under other relevant provisions of GATT 1994, as appropriate.	
18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.	18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.	
18.3 Subject to subparagraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.	18.3 Subject to subparagraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.	
18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 9, the rules used in the most recent determination or review of dumping shall apply.	18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 9, the rules used in the most recent determination or review of dumping shall apply.	
18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph.	18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph.	

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	18.3*bis* Subject to subparagraph 3.1*bis*, the results of the DDA shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force of those results or, where an investigation or review is initiated by the authorities without those authorities having received an application, the investigation or review was initiated on or after the date of entry into force of those results.	
	18.3.1*bis* For the purpose of Article 11.3.5, anti-dumping measures in existence as of the date of entry into force of the results of the DDA shall be deemed to be imposed on that date.	Members discussed the **transition rule for automatic sunset** contained in Article 18.3.1*bis*, which had already been discussed in some detail during sunset discussions. Some delegations argued that the ten-year period foreseen in Article 11.3.5 should run as of the date of the imposition of the measure, whether or not that measure was imposed before the date of entry into force of the results of the DDA (a working paper reflecting this approach was subsequently circulated as TN/RL/W/229). One delegation recalled its prior suggestion on this issue but indicated it could accept this more ambitous approach, while yet another delegation suggested that the precise nature of the transition provisions could depend on the nature of the automatic sunset itself. Other delegations noted that the idea of automatic sunset was itself unacceptable, and that the issue of transition provisions in this respect was therefore not relevant. More generally, several delegations noted the absence of a provision governing transition in respect of refund proceedings.
18.4 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.	18.4 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.	
18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.	18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.	
18.6 The Committee shall review annually the	18.6 The Committee shall review annually the	Some delegations welcomed the proposal for a **Procedure**

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.	implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews. In addition, the Committee shall review the anti-dumping policy and practices of individual Members according to the schedule and procedures set forth in Annex III.	**to Review Members' AD Policy and Practices**. These delegations considered that transparency and peer review were important and could enhance AD policy and practice. Recommendations by these delegations to improve the proposed Procedure included a mechanism to allow for written questions and answers, and a possibility for the Member being reviewed to comment on a draft of the Secretariat's factual report. Many other delegations, however, either expressed serious concerns or strong opposition to the proposed Procedure. The view was expressed that the Procedures would place a heavy burden on the Member being reviewed, as well as on the Secretariat, and that resource limitations would prevent other Members, especially from developing Members, from benefiting from the review of others. Concern was also expressed that the Procedure would unnecessarily duplicate work in the Trade Policy Review or the ADP Committee, and it was suggested that beefing up one or the other of these two mechanisms would be preferable to the proposed Procedure. One delegation suggested that an early first cycle of reviews might conflict with the review of Members' implementing legislations.
18.7 The Annexes to this Agreement constitute an integral part thereof.	18.7 The Annexes to this Agreement constitute an integral part thereof.	
ANNEX I PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6	ANNEX I PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6	See comments regarding verifications in the context of Article 6.7 of the Chairman's text.
1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.	1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned ~~should~~ shall be informed of the intention to carry out on-the-spot investigations.	
2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such non-governmental	2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member shall~~should~~ be so informed. Such	

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
experts should be subject to effective sanctions for breach of confidentiality requirements.	non-governmental experts shall~~should~~ be subject to effective sanctions for breach of confidentiality requirements.	
3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.	3. It shall ~~should~~ be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.	
4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.	4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities shall~~should~~ notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.	
5. Sufficient advance notice should be given to the firms in question before the visit is made.	5. Sufficient advance notice shall~~should~~ be given to the firms in question before the visit is made. To afford the firms adequate opportunity to prepare for on-the-spot investigations, the investigating authorities shall provide each firm at least 21 days advance notice of the dates on which the authorities intend to conduct any on-the-spot investigation of the information provided by that firm.[58] [58] This does not prevent the authorities from adjusting the date, where necessary in light of developments in the investigation, and after consultation with the firm concerned.	
6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if *(a)* the authorities of the importing Member notify the representatives of the Member in question and *(b)* the latter do not object to the visit.	6. Visits to explain the questionnaire shall~~should~~ only be made at the request of an exporting firm. Such a visit may only be made if *(a)* the authorities of the importing Member notify the representatives of the Member in question and *(b)* the latter do not object to the visit.	
7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the	7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it shall ~~should~~ be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it.	

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firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.		
	7*bis* No less than 10 days prior to each on-the-spot investigation, the investigating authorities shall provide to the firm a document that sets forth the topics the firm should be prepared to address during the on-the-spot investigation, and describes the types of supporting documentation that shall be made available for review. ~~; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though t~~This shall~~should~~ not preclude requests to be made on the spot for further details to be provided in the light of information obtained.	
8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.	8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation shall~~should~~, whenever possible, be answered before the visit is made.	
9. [[To afford the firms adequate opportunity to prepare for on-the-spot investigations, the investigating authorities shall provide each firm at least 30 days advance notice of the dates on which the authorities intend to conduct any on-the spot investigation of the information provided by that firm. Further, 10 days prior to each on-the-spot investigation, the investigating authorities shall provide to the firm a document that sets forth the topics the firm should be prepared to address during the on-the-spot investigation, and describes the types of supporting documentation that shall be made available for review.]]	9. The investigating authorities shall disclose in the form of a written report their factual findings resulting from the on-the-spot investigation. In addition to the factual findings, the report shall describe the methods and procedures followed in carrying out the on-the-spot investigation. The report shall be made available to all interested parties in sufficient time for the parties to defend their interests, subject to the requirement to protect confidential information.	
10. [[Subject to the requirement to protect confidential information, the investigating authorities shall disclose in the form of a written report their factual findings resulting from the on-the-spot investigation. In addition to the factual findings, the report shall describe		

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the methods and procedures followed in carrying out the on-the-spot investigation. The report shall be made available to all interested parties in sufficient time for the parties to defend their interests, subject to the requirement to protect confidential information.]]		
ANNEX II BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6	ANNEX II BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6	
1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities [[~~will be free to~~may]] make determinations on the basis of the facts available, including those contained in the [[submission by other interested parties]][[~~application for the initiation of the investigation by the domestic industry~~]]. [[Authorities shall not require the submission of information which is not reasonably needed for the purposes of the investigation.[102]]] [102] [[This does not prevent interested parties from voluntarily submitting information additional to that requested by authorities.]]	1. As soon as possible after the initiation of the investigation, the investigating authorities ~~should~~ shall specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities shall ~~should~~ also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities ~~will be free to~~ may make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.	With respect to "**facts available**", some delegations welcomed the change of "should" to "shall" throughout Annex II. Other delegations considered that such a change was dangerous, with one delegation noting that many of the provisions were highly subjective, and other delegations noting that the term "should" ought to be retained for specific provisions, such as paragraph 3 or 5.
2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as	2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities shall~~should~~ consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and shall ~~should~~ not request the party to use for its response a computer system other than that used by the party. The authorit~~y~~ies ~~should~~ shall not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if	

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requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.	presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The authorities ~~should~~ shall not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.	
3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties,[[[103]] [[104]] which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. [[It is recognized that the failure by an interested party to provide certain information necessary for the determination, or the submission by an interested party of such information that cannot be verified or is unusable, may cause an investigating authority to conclude that it is unduly difficult to use other information that is submitted by that party, and to disregard such submitted information, either entirely or in part.]] [[105]] If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be [[a reason for rejecting the information]] [[~~considered to significantly impede the investigation~~.]] [103] [[Undue difficulties may, for instance, exist where an interested party submits information that must be complemented with other information in order to be used by authorities or is not directly pertinent. It is understood that the question of whether information submitted can be used in the investigation without undue difficulties is a highly fact-specific issue.]] [104] [[The question of whether information submitted can be used in the investigation without undue difficulties is a highly fact-specific issue.]]	3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties[59], which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, ~~should~~ shall be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language ~~should~~ shall not be considered to significantly impede the investigation. [59] Submitted information cannot be used without undue difficulties if, *inter alia*, an assessment of the accuracy or relevance of that information is dependent upon other information that has not been supplied or cannot be verified.	

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[105] [[Information which has been verified as accurate and which is germane to the investigation must be used when determinations are made. Authorities may only reject information which they did not verify based on results of sampling verification of the same type of information submitted by the party concerned, if the results of the sampling verification indicate that the unverified information is highly likely to be inaccurate (minor inaccuracies excepted).]]		
4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.	4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information ~~should~~ shall be supplied in the form of written material or any other form acceptable to the authorities.	
5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability,[[due regard to be given to the difficulties faced by respondents, particularly small companies, in providing information to authorities due to their limited ability and resources]].	5. Even though the information provided may not be ideal in all respects, this ~~should~~ shall not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.	
6. If [[any requested information is missing, or if any]] evidence or information is [[considered deficient~~not accepted~~]], [[authorities shall not automatically reject the information or directly apply facts available. In such cases,]] the supplying party sh[[all~~ould~~]] be informed forthwith of the [[details~~reasons~~]] there[[o]]f[[~~or~~]], and sh[[all~~ould~~]] have an opportunity to provide [[the missing information and]] further explanations within a reasonable period, [[such period to be determined in light of]] [[~~due account being taken of~~]] [[the nature and amount of information in question, the party's ability to provide the information and]] the time-limits of the investigation. If the [[additional information and]] explanations are considered by the authorities as not being satisfactory, [[they shall give a reasoned and adequate explanation of]] the reasons for the rejection of such evidence or information[[, and shall disclose (subject to the requirement to protect confidential information under paragraph 5 of Article 6) the information which they use	6. If evidence or information is not accepted, the supplying party ~~should~~ shall be informed forthwith of the reasons therefor, and ~~should~~ shall have an opportunity to submit further evidence or information, or to provide further explanations, within a reasonable period, due account being taken of the time-limits of the investigation[60]. If the further evidence or information submitted, or the explanations provided, are considered by the authorities as not being satisfactory, the authorities shall inform the interested party concerned of the reasons for the rejection of ~~such~~ the evidence or information and ~~should~~ shall set forth such reasons ~~be given~~ in any published determinations. [60] Provided that the authorities need not consider any further evidence or information that is not submitted in time such that it can be verified during any on-site investigation conducted pursuant to Article 6.7.	There were differing views on proposed footnote 60 **regarding information submitted after verification**. Some delegations expressed concern that the footnote would allow an authority to refuse any new information post-verification, while other delegations considered that a

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
to substitute the rejected information or any missing information in the disclosure pursuant to paragraph 9 of Article 6, and]] [[~~should be given in~~]]any published determinations [[pursuant to Article 12]].		cut-off date for new information was essential. Some delegations noted that they did not perform on-site verifications at all.
7. If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection[[, and shall]][[~~. In such cases, the authorities should, where practicable,~~]] check the information from other independent sources[[[106]]] at their disposal [[or which are reasonably accessible by them]], such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate. [[In any case, the authorities shall, wherever possible, choose the information that most closely represents the prevailing state of the relevant industry and market to which the missing or rejected information relates, based on an objective examination of all information obtained by them in the course of the investigation.]] _____ [106] [[The independent sources shall be identified in the disclosure pursuant to paragraph 9 of Article 6, and in any published determinations pursuant to Article 12.]]	7. If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they ~~should~~ shall do so with special circumspection. In such cases, the authorities ~~should~~ shall, where practicable, check the information from other independent sources at their disposal or reasonably available to them, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation[61]. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate. _____ [61] The sources consulted shall be identified in the disclosure conducted pursuant to Article 6.9.	
	ANNEX III PROCEDURES FOR THE REVIEW OF MEMBERS' ANTI-DUMPING POLICY AND PRACTICES PURSUANT TO ARTICLE 18.5	*See* comments in the context of Article 18.6 of the Chairman's text.
	1. The anti-dumping policy and practices of Members shall be subject to periodic review by the Committee.	

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	A. Objectives 2. The purpose of the review is to contribute to the transparency and understanding of Members' policies and practices in respect of anti-dumping. The review is not intended to serve as the basis for enforcement of specific obligations under this Agreement or for dispute settlement procedures, or to impose new policy commitments on Members.	
	B. Procedures for Review 3. The review shall be conducted on the basis of the following documentation: (a) a factual report, to be drawn up by the Secretariat on its own responsibility; and (b) if the Member under review so wishes, a report supplied by that Member.	
	4. The factual report by the Secretariat shall be based on the information available to it and that provided by the Member under review. The Secretariat should seek clarification from such Member regarding its anti-dumping policies and practices making use of the indicative checklist identified in paragraph 8 of this Annex. The Member under review shall provide the information requested for the preparation of the report.	
	5. The first cycle of reviews shall begin one year after the date of entry into force of the results of the Doha Development Agenda. During the ensuing five years, the Committee shall review the anti-dumping policies and practices of the 20 Members with the most anti-dumping measures in force as of the date of entry into force.[62] [62] Least-developed country Members shall be subject to review pursuant to this Annex on a voluntary basis only.	
	6. The list of the Members to be reviewed during	

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	each subsequent five-year review period shall be established on the basis of the number of original investigations initiated during the most recent five-year period for which information is available. The list shall include the 20 Members that initiated the most investigations pursuant to Article 5 during that period, as well as any additional Members that have initiated five or more original investigations during that period; provided, that the Committee may adjust the list of Members to be reviewed and/or the cycle for review in light of subsequent developments and experience.	
	7. The Committee shall agree on the order of, and schedule for, the conduct of these reviews, taking into account the resource constraints of the Secretariat and of developing country Members.[63] _____ [63] In the event that the Committee fails to agree, the Director-General shall decide on the order of, and schedule for, the reviews.	
	8. The factual report of the Secretariat shall describe in detail the anti-dumping policy and practices of the Member under review including, where relevant and applicable, with respect to the following matters:	
	• institutional organization of the investigating authorities • statistics on proceedings carried-out • pre-initiation procedures and practices • determination of export price and normal value (and adjustments thereto) • details of comparison methods • calculation of dumping margin • details and methodology of analysis and determination of injury and causal link • application of a lesser duty	
	• application of public interest considerations • level of co-operation obtained • use of facts available • procedural requirements	

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	• treatment of confidential information • practice with regard to on-the-spot verifications • duty collection and assessment system • acceptance of undertakings • review investigations (under Articles 9 and 11) • anti-circumvention procedures • judicial/administrative review	
	9. The report by the Secretariat and any report by the Member subject to review shall be circulated to the Members on an unrestricted basis, and shall be considered at a special meeting of the Committee convened for that purpose.	
	10. Members recognize the need to minimize the burden for governments that might arise from unnecessary duplication of work pursuant to this procedure and the Trade Policy Review Mechanism.	
	C. Developing Country Members 11. The Secretariat shall make technical assistance available, on request of a developing country Member, to facilitate that Member's effective participation in the review. The Secretariat shall also consult with the developing country Member subject to review and shall, where appropriate, include in its report to the Committee an assessment of that Member's broader technical assistance and resource needs with respect to anti-dumping.	
	D. Appraisal of the Mechanism 12. The Committee shall undertake an appraisal of the operation of these procedures upon completion of the first cycle of reviews. The Committee should seek to identify any changes which would enhance the operation of these procedures, and may, if appropriate, recommend that the Council for Trade in Goods submit to the	

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	Ministerial Conference any proposals for the amendment of these procedures necessary to effectuate such changes.	
[[[[ANNEX III PROCEDURES AND SUBSTANTIVE RULES FOR APPLICATION OF THE LESSER DUTY RULE PROVIDED FOR IN PARAGRAPH 1 OF ARTICLE 9		
1. The amount of the lesser duty that is adequate to remove the injury caused by the dumped imports to the domestic industry in accordance with paragraph 1 of Article 9 shall be determined by comparison between the margin of dumping as established under Article 2 and the margin of injury as established under this Annex.		
2. For the purpose of this Agreement, the injury margin is defined as the difference between the import prices of the dumped product exported from the exporting Member to the importing Member ("the import price") and the non-injurious price ("the NIP").		
3. The authorities shall use one of the following methodologies[107] to calculate the NIP:[108] (a) the current price[109] of the like products produced by domestic producers ("domestic like products"); or (b) the price of the domestic like product during a period prior to being affected by dumping;[110] or (c) the price of non-dumped imports of the product under investigation or the like products, provided that such price is representative and the volume of the non-dumped imports is not insignificant; or (d) the constructed price based on per unit cost of production plus a reasonable amount for selling, general and		

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administrative costs and for profits of the domestic producers of the domestic like product. [107] [[The authorities shall collect relevant data to establish the NIP for a sufficient period of time comparable to the period of investigation for the dumping determination (normally twelve months).]] [108] [[Members may indicate one or more of these as preferred alternative(s) that they intend to use in all investigations, with the option to resort to others among these alternatives only in the event that the said preferred alternative is not considered to be appropriate, for reasons to be disclosed in writing pursuant to paragraph 6 of this Annex.]] [109] [[For the purpose of paragraph 3, the term "price" shall be interpreted as meaning import prices at any level of trade such as cost, insurance and freight (CIF), or ex customs area, or resale price to the importers, or the delivered price to the customers, provided that the comparison for the purpose of arriving at the injury margin, are made at only the same level of trade.]] [110] [[The authorities shall choose a period that is comparable to the period of investigation.]]		
4. A fair comparison shall be made between the NIP and the import price. The comparison shall be made at the same level of trade. Due allowance shall be made in each case, on its merits, for differences which affect price comparability so far as the evidence shows such differences.		
5. In calculating the injury margin based on multiple types of dumped imports, injury margin resulted from individual type, both positive and negative, must be aggregated.		
6. Before the final determination, the authorities shall disclose the methodology, calculation and evidence supporting the calculation they use to determine the injury margin and provide interested parties the opportunity to comment thereon, due regard being paid to the requirement for the protection of confidential		

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information.]]		
[[ANNEX III For the purposes of Article 9:1*bis*, factors that should be considered include:		
(a) whether products like the product under consideration are readily available from sources to which the measure does not apply; (b) whether imposition of an anti-dumping duty in the full amount		
(i) has eliminated or substantially lessened or is likely to eliminate or substantially lessen competition in the domestic market in respect of products, (ii) has caused or is likely to cause significant damage to domestic producers that use the products as inputs in the production of other products and in the provision of services, (iii) has significantly impaired or is likely to significantly impair competitiveness by		
(A) limiting access to products that are used as inputs in the production of other products and in the provision of services, or (B) limiting access to technology, or		
(iv) has significantly restricted or is		

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likely to significantly restrict the choice or availability of products at competitive prices for consumers or has otherwise caused or is otherwise likely to cause them significant harm; (c) whether non-imposition of an anti-dumping duty or the non-imposition of such a duty in the full amount is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic manufacture or production of like products; and (d) any other factors that are relevant in the circumstances.]]]] [[ANNEX IV PRINCIPLES FOR DETERMINATION OF THE INJURY MARGIN 1. For the purpose of implementing the provisions of Article 9.1 of this Agreement, the "injury margin" shall be determined as: 1.1. the difference between the price of the like product produced by the domestic industry and the price of the dumped imports[111], for each exporter or producer under investigation; or,		

[111] [[For the purpose of this annex, the term "price of the dumped imports" shall be interpreted as meaning import prices at any level such as cost, insurance and freight, or ex-customs area, or resale price to the importer, or delivered price to the customer, provided that the comparisons with the price of the like product under sub-paragraph 1.1, or with the target price under sub-paragraph 1.2, for the purpose of arriving at the injury margin, are made only at a comparable level.]]

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1.2. the difference between the target price[112] for the domestic industry and the price of the dumped imports for each exporter or producer under investigation. The target price for the purpose of this sub-paragraph shall mean:		
(a) the price of the domestically produced like product prior to being affected by dumping; or,		
(b) the price[113] of the product concerned, when exported by those exporters or producers who are found not to have dumped the product concerned during the investigation period; or,		
(c) the price[113] of the like product, when exported during the investigation period from appropriate third countries other than the countries under investigation; or,		
(d) the cost of production of the like product of the domestic industry, administrative, selling and general costs, and a reasonable profit margin. For the purpose of this sub-paragraph, a reasonable profit margin may be determined on the basis of:		
(i) the profit margin normally earned by the domestic industry on representative domestic sales of the like product when the price of such product was not affected by dumping keeping in view the principles set out in sub-paragraphs 2.1 and 2.2 of this Annex; or,		

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(ii) the actual profit margin earned by the domestic industry in respect of sales made in the domestic market in the same general category of products during the investigation period; or,		
(iii) when profit margin cannot be determined under (i) and (ii) above, or when either method is not considered to be appropriate, profit margin may be determined by any other reasonable method, including a reasonable return on investment, provided that an explanation is given as to why the methods available in (i) and (ii) above are not appropriate. [112] [[The target price determined under sub-paragraph 1.2(d) shall never be higher than the weighted average for the domestic industry. It may be less, for example, if there are substantial discrepancies in costs of the producers constituting the domestic industry.]] [113] [[For the purpose of this annex, the term "price" referred to in 1.2 (b) and 1.2 (c) shall be interpreted as meaning import prices at any level such as cost, insurance and freight (CIF), or ex-customs area, or resale price to the importers, or the delivered price to the customers, provided that the comparisons with the price of the dumped imports, for the purpose of arriving at the injury margin, are made only at comparable level.]]		
2. The authorities of the importing Member shall ensure that the determination of the injury margin under subparagraphs 1.1 and 1.2 of this Annex conform to the following rules:		
2.1. A fair comparison shall be made between the price of the domestically produced like product, or the designated target price, as the case may be, and the price of the dumped imports. This		

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comparison shall be made at the same level of trade, and in respect of sales made at as nearly as possible the same time. Due adjustments shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability;		
2.2. For the purpose of sub-paragraph 1.2(a), the authorities shall also ensure that such target price pertains to a period that is comparable to the investigation period. The authorities shall also ensure that the duration of the two periods is comparable and as close to each other as possible.		
2.3. For the purpose of sub-paragraphs 1.2(b) and 1.2(c), the authorities shall also ensure that the volume of imports taken into account for arriving at the target price constitute a significant proportion of total imports of the product concerned from the countries under investigation, and that this price is representative.		
2.4. For the purpose of sub-paragraph 1.2(d), the costs shall be calculated on the basis of records kept by the domestic industry, provided that such records are in accordance with the generally accepted accounting principles of the importing Member and reflect the costs associated with the production and sale of the product under consideration only. Such costs shall, to the extent possible, pertain to the period of investigation only.		

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Authorities shall ensure proper allocation of costs and that such allocations have been historically utilized by the domestic industry, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations. The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.		
2.5 It is desirable to make comparisons for the purpose of this Annex as close to the point of consumption as is reasonably possible.		
3. Subject to the provisions governing fair comparison in paragraph 2, the existence of injury margins shall normally be established on the basis of a comparison on a weighted average basis of all comparable transactions or by a comparison on a transaction-to-transaction basis. For the purposes of paragraph 2 and this paragraph, the Authorities shall also ensure that all negative values are taken into account.]]		

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[[ANNEX V PROCEDURES AND SUBSTANTIVE RULES FOR APPLICATION OF THE LESSER DUTY RULE PROVIDED FOR IN PARAGRAPH 1 OF ARTICLE 9		
1. The injury margin is defined as the difference between the price of the dumped imports ("the import price") and the non-injurious price ("the NIP") of the domestic products like the products under investigation ("domestic like products").		
2. The authorities shall choose one of the methodologies listed below to calculate the NIP that is appropriate with regard to the specific situations of the case:		
(a) The NIP is calculated as the current price of the domestic like product.		
(b) The NIP is calculated as the price of the domestic like product during a period prior to being affected by dumping, provided that such period is, except for the absence of the effect of dumping, comparable to the dumping investigation period taking into account relevant market factors.		
(c) The NIP is calculated as the price of non-dumped imports of the product under investigation or the like products, provided that such price is representative and the volume of the non-dumped imports is not negligible for the importing market. The non-dumped imports shall be selected from all sources including like products imported from foreign producers in a country or countries not subject to antidumping investigations or measures or products		

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under investigation which have been found not to be dumped.		
(d) The NIP is calculated as per unit cost of production plus a reasonable amount for selling, general and administrative costs and for profits of the domestic producers of the domestic like product.		
3. A fair comparison shall be made between the NIP and the import price. The comparison shall be made at the same level of trade. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.		
4. Before the final determination in any investigation, the authorities shall indicate which methodology they are intending to use to determine the injury margin and provide interested parties the opportunity to comment on whether such methodology is appropriate. Authorities shall provide a reasoned explanation supporting their use of an appropriate methodology and the evidence in support of their choice.		
5. The disciplines of evidence under Article 6 apply *mutatis mutandis* to the determination of the injury margin. For the sake of the accuracy of the NIP, the authorities shall collect relevant data to establish the NIP for a sufficient period of time comparable to the period of investigation for the dumping determination (normally twelve months).		
6. The lesser duty rule shall be applied to reviews under Articles 9 and 11.]]		

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
[[ANNEX VI Review of Anti-Dumping Activity		
Objectives The purpose of the Review of Anti-Dumping Activity is to contribute to the transparency of the Members' actual practices in applying the rules under the Anti-dumping Agreement. Such review enables the regular monitoring of individual Members' anti-dumping policies and practices.		
Procedures (i) The Committee on Anti-Dumping Practices (referred to herein as the "ADC") is responsible for the carrying out of the anti-dumping review.		
(ii) The anti-dumping policies and practices of all Members shall be subject to a periodic review. The number of investigations initiated by a Member as compared to the total number of investigations initiated by all Members, in a recent representative period, will be the determining factor in deciding on the order and frequency of reviews. The first [*number to be specified* (e.g. 6)] investigating authorities so identified shall be subject to a review every [*number to be specified* (e.g. 3)] years. The next [*number to be specified* (e.g. 8)] shall be reviewed every [*number to be specified* (e.g. 6)] years. Other Members shall be reviewed every [*number to be specified* (e.g. 8)] years, except that a longer period may be fixed for least-developed country Members. (iii) The ADC will carry-out the review on the basis of the following documentation: (a) a factual report supplied by the Member under review; (b) a factual report, to be drawn up by the Secretariat		

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
on its own responsibility, based on the information available to it and that provided by the Member under review. The Secretariat should seek clarification from such Member regarding its anti-dumping policies and practices on the basis of a checklist reflecting the issues listed under (v).		
(iv) The report by the Member under review and by the Secretariat, together with the minutes of the respective meeting of the ADC, shall be circulated to Members.		
(v) The review should cover, as appropriate, a detailed examination of the Member's practices covering *inter alia* issues such as: • statistics on proceedings carried-out; • determination of export price and normal value (e.g. use of third country sales vs constructed normal value) • details of comparison methods (adjustments) • calculation of dumping margin (methodologies under Article 2.4.2) • details and methodology of injury calculations (price undercutting, underselling, depression or suppression) • application of a lesser duty • application of public interest considerations • level of co-operation • use of facts available • procedural requirements • treatment of confidential information • practice with regard to on-spot verifications • duty collection system (prospective vs retrospective) • acceptance of undertakings • review investigations (under Articles 9 and 11) • anti-circumvention procedures		
Reporting The reports shall describe the anti-dumping policies and practices pursued by the Member under review, based on an agreed format to be decided upon by		

Consolidated Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
the ADC, and including the items referred to under (v) above. The Secretariat shall make available technical assistance on request to developing country Members, and in particular to the least-developed country Members. Information contained in reports should, to the greatest extent possible, be coordinated with notifications made under paragraphs 4 and 5 of Article 16 of the Anti-Dumping Agreement.]]		

ANNEX B – SUBSIDIES AND COUNTERVAILING MEASURES

Chairman's Text	Delegations' Comments on Chairman's Text
Benefit	
[2] A benefit is conferred when the terms of the financial contribution are more favourable than those otherwise commercially available to the recipient in the market, including, where applicable, as provided for in the guidelines in Article 14.1.	Concerning footnote 2 to the Chairman's text, delegations generally supported inclusion of a footnote clarifying the concept of **"benefit"** and referring to the relevant provisions of Article 14. However, questions were raised whether the reference should be a strict requirement to follow the provisions of that Article, or more in the nature of guidelines or relevant context. Some delegations considered that the drafting of the footnote could be improved, including by replacing the term "commercially available on the market", which in their view constituted a two-part test, with language referring to a "market-determined" price. Questions were raised as to the consistency of terminology in the footnote with terminology elsewhere in the Agreement as to where to look for a benchmark – in the country of provision, in the territory of the Member, on the market, and similar phrases, and whether it would be useful to harmonize these references as much as possible. Questions were also raised as to whether the reference to "terms" of a financial contribution could be applied to all types of subsidies, as a market comparator might not exist for certain financial contributions.
Regulated Prices & Benchmark Estimation	
2.1 In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply: (c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.[4] In the case of subsidies conferred through the provision of goods or services at regulated prices, factors that may be considered include the exclusion of firms within the country in question from access to the goods or services at the regulated prices. In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation. 14.1 For the purpose of Part V, the ~~any~~ methods used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and ~~its~~their application to each particular case	The sponsor of the original proposal on dual pricing firmly supported the need for a provision on **regulated prices** along the lines of the Chairman's text. This delegation indicated that some of its industries risked going out of business if the problem was not addressed, and that if regulated prices conferred a benefit the countervailing remedy should be available. A number of other delegations also generally favoured provisions along the lines of those found in the Chairman's text. These delegations indicated that regulated prices could give rise to subsidies and that they supported the general thrust of the proposed amendments on this point. Other delegations considered that the proposed amendments gave rise to concerns regarding developing Members' policy space. It was observed that developing Members had a legitimate interest in regulating prices for various objectives, including in the context of public utilities, and that this did not necessarily give rise to subsidies. It was noted that the proposals could force convergence between domestic and export prices and deny developing Members the comparative advantage arising from resource endowments. One delegation observed that it had been subject to repeated countervailing actions relating to regulated prices, as well as below-cost financing and external benchmarks, and that the Chairman's text and non-papers on these issues were specifically targeted at practices addressed in these cases. This delegation considered that it was premature and unacceptable to include provisions on these issues in the SCM Agreement. Delegations also raised a number of more technical points. On Article 2.1(c), some delegations considered that the proposed amendments could treat a subsidy as specific if only one or a few companies were excluded from access to goods or services at a regulated price. On Article 14.1(d), some delegations suggested that unregulated prices

Chairman's Text	Delegations' Comments on Chairman's Text
shall be transparent and adequately explained. Furthermore, ~~any~~ such method<u>s</u> shall be consistent with the following guidelines: (d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale). <u>Where the price level of goods or services provided by a government is regulated, the adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or services in the country of provision when sold at unregulated prices, adjusting for quality, availability, marketability, transportation and other conditions of sale; provided that, when there is no unregulated price, or such unregulated price is distorted because of the predominant role of the government in the market as a provider of the same or similar goods or services, the adequacy of remuneration may be determined by reference to the export price for these goods or services, or to a market-determined price outside the country of provision, adjusting for quality, availability, marketability, transportation, and other conditions of sale.</u> [4] In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.	might be distorted for reasons other than those identified in the text, and suggested a less specific formulation that could cover these situations. Other delegations noted that while the reference to external benchmarks reflected an Appellate Body ruling to some extent, the text allowed Members to jump directly to external benchmarks, and neglected the requirement that such benchmarks relate to prevailing market conditions in the country in question. In response to this concern, several delegations submitted alternative non-papers containing language intended to more accurately reflect the jurisprudence. While some delegations considered the proposed new language in one of the new papers to be a step in the right direction, one delegation considered that the new language actually deviated from and weakened existing jurisprudence. Various issues were also raised regarding the other new non-paper. Numerous technical issues were raised regarding the meaning and implications of the Chairman^\'s texts. With respect to **benchmark estimation**, one delegation expressed disappointment that its proposal (TN/RL/GEN/101/Rev.1) was not reflected in the Chairman's text. This delegation submitted a non-paper that identified a number of possible change to its proposal. A number of delegations indicated that they were interested in further work on this proposal as they supported the basic concepts. Regarding proposed footnote y, concerning the identification of benchmarks where a long-term capital market does not exist in a developing country, some delegations suggested that this footnote should be applicable to all Members, not just developing Members. Some questions were raised as to benchmarks based on the "international market", including how to avoid arbitrariness in identifying such benchmarks, and how to ensure that any benchmark reflected the situation of the recipient. Regarding proposed footnote z, some delegations considered that a mandatory list of factors for determining whether loans were comparable was too prescriptive. The view was also expressed that the criterion that the loans to be compared be granted in the territory of the same Member was inappropriate.
Role of Illustrative List & De facto Export Subsidies	
3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited: (a) subsidies contingent, in law or in fact[5], whether solely or as one of several other conditions, upon export performance~~, including those illustrated in Annex I~~[6]; [5]This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy	With respect to note 6 on the **role of the Illustrative List**, some delegations supported the Chairman's text as a useful codification of certain adopted panel decisions that an *a contrario* reading of the Illustrative List was not permitted, while other delegations questioned the value of the proposed clarification and pointed out that the issue had not yet been pronounced on by the Appellate Body. Concern was expressed by one Member that this footnote would increase the scope of the prohibited subsidy category. Issues were also raised about specific aspects of the drafting of the footnote. One delegation expressed disappointment that its proposal on **de facto export subsidies** (TN/RL/GEN/Rev.1) was not reflected in the Chairman's text. This delegation explained that the elements of its proposal were that export propensity is relevant to, but should not be the sole reason for, a determination of de facto export

Chairman's Text	Delegations' Comments on Chairman's Text
within the meaning of this provision. [6]The ~~M~~measures referred to in Annex I as export subsidies shall be deemed to fall within paragraph (a). The legal status of any measure not referred to in Annex I as an export subsidy shall be determined on the basis of paragraph (a), and Annex I shall not be used to establish by negative implication that a measure does not constitute an export subsidy within the meaning of that paragraph; provided, however, that measures explicitly referred to in Annex I as not constituting prohibited export subsidies shall not be prohibited under this or any other provision of this Agreement. This footnote is without prejudice to the operation of footnote 1.	contingency, and that panels should take a case-by-case approach to this issue, taking into account the totality of the evidence. A number of delegations expressed concern over the proposed language "regardless of the level of export", either as being unnecessary or as implying that the level of exports was irrelevant. One delegation supported that language. Questions were raised as to how the totality of the evidence would be defined, how different factors in that evidence would be weighted, and whether an illustrative list of factors would be necessary if the proposed reference to "all relevant factors" were maintained. The question also was raised as to what was added by the requirement to base determinations on an examination of all of the evidence, as the DSU already requires that determinations be made on a case-by-case basis, taking into account the relevant evidence.
Withdrawal of a Prohibited Subsidy	
4.7 If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn.	One delegation expressed disappointment that its proposal on **withdrawal of a subsidy** (TN/RL/GEN/115/Rev.1) was not reflected in the Chairman's text. This delegation stated that its goal was to ensure that dispute settlement panels should give guidance on what constitutes "withdrawal", taking into account the nature of the subsidy involved, and that it was not proposing retrospective, punitive remedies. A number of delegations indicated that it would be useful to introduce clarification of the concept of withdrawal, and that they were willing to work further on the issue, but remained concerned over any provision that would require repayment of subsidies. Some questioned the link with subsidy allocation in this context.
Below Cost Financing	
_____ [46]Notwithstanding the above, a loan or loan guarantee by a government shall be deemed to confer a benefit where the provider institution incurs long-term operating losses on its provision of such financing as a whole. The existence of such a benefit shall be rebuttable by a demonstration that the particular financing at issue does not confer a benefit pursuant to paragraph (b) or (c), as applicable.	With respect to the issue of "**below-cost financing**" as addressed in footnote 46 of the Chairman's text, while certain delegations welcomed in principle the inclusion in the text of language addressing this issue, various delegations observed that the proposed footnote inappropriately focused on the cost to financial providers rather than on the benefit to the recipient. Several delegations considered that the fact that a lender was incurring long-term losses did not necessarily mean that the recipient of loans was receiving a benefit. Other delegations noted that the focus of work should be on practices that increase long-term losses due to policy decisions by governments. The proponent noted that discussion in the Group had evolved toward a focus on the borrower rather than the lender. Two delegations submitted a non-paper containing concrete suggestions on alternatives to the footnote, focusing on the existence of benefit in situations where there is long term government support of government financial institutions not independently operating on a commercial basis, and the institutions provide loans or loan guarantees or swap debt for equity in unequityworthy or uncreditworthy state enterprises. These delegations emphasized the high thresholds and focused nature of the suggested disciplines. A number of delegations welcomed the new ideas, with several delegations preferring them to the current provision in the Chairman's text. Other delegations had concerns or questions. One delegation recalled its earlier position that these proposals were specifically directed against it (*see* comments under "regulated prices", above),

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	discriminated against state-owned enterprises, and had no merit. Several delegations sought clarity about the meaning and significance of financial institutions operating "independently", whether support included regulatory or only financial support, and the implications of the absence of long-term financing in a developing country as a result of market failure. More generally, certain delegations questioned whether the proposed new language would be better placed in Article 3 or Article 6, with one of the sponsors of the non-paper preferring that the practices be subject to the Article 3 prohibition, but willing to accept an Article 6 "dark amber" approach. Other delegations preferred that any such provision be placed in Article 6 or 14.
Pass-Through	
14.2 For the purpose of Part V, where a subsidy is granted in respect of an input used to produce the product under consideration, and the producer of the product under consideration is unrelated to the producer of the input, no benefit from the subsidy in respect of the input shall be attributed to the product under consideration unless a determination has been made that the producer of the product under consideration obtained the input on terms more favourable than otherwise would have been commercially available to that producer in the market.[47] [47]Where, however, it has been established that the effect of the subsidy is so substantial that other relevant prices available to the producer of the product under consideration are distorted and do not reasonably reflect commercial prices that would prevail in the absence of the subsidization, other sources, such as world market prices, can be used as the basis for the determination in question.	On Article 14.2 of the Chairman's text, there was a broadly-held view that the inclusion in the ASCM of provisions on **pass-through** could be useful. There were however disagreements about whether such provisions should be placed in Article 14 (and hence relate to Part V only) or in Article 1. One delegation considered that the limitation in the Chairman's text to the context of input subsidies was too narrow, as the concept of pass-through applied wherever the direct recipient is not the exporter. Similar to the discussion of Article 14.1(c), some delegations raised concerns that proposed footnote 47 provided inadequate guidance regarding resort to alternative benchmarks and should be clarified, with one delegation indicating that the footnote should be deleted altogether. Another delegation considered that footnote 47 should be retained. Concerns were also raised regarding the meaning and desirable scope of the concept of "unrelated" parties, as well as whether the concept of "arms-length" should also be reflected.
Allocation of Benefit	
14.3 For the purpose of Part V, the methods used by the investigating authority to attribute subsidy benefits to particular time periods shall be consistent with the following guidelines:[48] (a) With the exception of benefits from loan subsidies and similar subsidized debt instruments, subsidy benefits shall either be expensed in full in the year of receipt ("expensed") or allocated over a period of years ("allocated"). Expensed subsidies shall be deemed to benefit the recipient by the full amount of the benefit in the year in which they are expensed, whereas allocated subsidies shall be deemed to benefit the recipient throughout the allocation period. Loan subsidies, and similar subsidized debt instruments, shall be deemed to benefit the recipient throughout the period in which the loan or debt instrument remains outstanding. (b) Benefits from subsidies arising from the following types of	A number of delegations considered that it was useful to have specific guidance in the SCM Agreement concerning the **allocation of benefit** in the context of countervailing measures, and supported the approach in the Chairman's text, which in their view broadly reflected the current practice of most Members using countervailing measures. Some delegations considered that these provisions should be applicable not only in respect of countervailing measures but also in respect of prohibited and actionable subsidy rules. Other delegations disagreed, indicating that the provisions should be limited to countervailing measures. A number of delegations raised questions concerning the concepts of recurring and non-recurring subsidies, including whether it was clear that all subsidies would fall into one of these categories. Some also questioned whether the provisions contain sufficient flexibility to permit authorities to determine on a case-by-case basis whether to expense subsidy benefits in the year of receipt or to allocate them over time. Regarding the allocation period, some sought clarification as to whether the average useful life of assets referred to would be for the firm or industry in the exporting

Chairman's Text	Delegations' Comments on Chairman's Text
measures normally shall be expensed: direct tax exemptions and deductions; exemptions from and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; and wage subsidies. (c) Benefits from subsidies arising from the following types of measures shall be allocated: equity infusions; grants; plant closure assistance; debt forgiveness; coverage for an operating loss; debt-to-equity conversions; provision of non-general infrastructure; and provision of plant and equipment. (d) In determining whether a subsidy listed in paragraph 2(b) is more appropriately allocated, or whether a subsidy listed in paragraph 2(c) is more appropriately expensed, and in determining whether a subsidy of a type not listed in either paragraph 2(b) or 2(c) should be allocated or expensed, the following non-exhaustive list of factors shall be considered: (i) whether the subsidy is non-recurring (e.g., one-time, exceptional, requiring express government approval) or recurring[49] (ii) the purpose of the subsidy[50]; and (iii) the size of the subsidy.[51] (e) The allocation period for allocated subsidies normally should correspond to the average useful life of the depreciable, physical assets of the relevant industry or firm. (f) Any method for measuring the amount of allocated subsidy benefits at a particular point in the allocation period may reflect a reasonable measure of the time value of money. (g) Any public notice issued pursuant to paragraph 3 of Article 22 shall include a full description and adequate explanation of the allocation and expensing methodologies used. [48] The reference in this paragraph to particular measures does not mean that those measures will necessarily constitute specific subsidies; rather, a determination regarding the	country or the importing country. Concerning the introduction of the time value of money in the calculation of subsidy benefits allocated over time, a number of delegations indicated that this was appropriate, as it reflects economic reality. Some other delegations considered that this aspect needs further discussion.

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existence of a specific subsidy shall be made pursuant to Part I of the Agreement in the light of the facts of a particular case. [49] The fact that a subsidy is non-recurring normally will be indicative of allocation. The fact that a subsidy is recurring normally will be indicative of expensing. [50] For example, the fact that a subsidy is tied to the capital assets or structure of the recipient normally will be indicative of allocation. The fact that a subsidy is tied to a firm's regular, ongoing production and sales activities (e.g., wages) normally will be indicative of expensing. [51] The fact that a subsidy is large normally will be indicative of allocation. The fact that a subsidy is small normally will be indicative of expensing.	
Export Competitiveness	
27.5 A developing country Member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years. 27.6 Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either *(a)* on the basis of notification by the developing country Member having reached export competitiveness, or *(b)* on the basis of a computation undertaken by the Secretariat at the request of any Member. For the purpose of this paragraph, a product is defined as a section heading of the Harmonized System Nomenclature. The Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement.	One delegation recalled an earlier proposal submitted by four delegations concerning the determination of **export competitiveness** (TN/RL/GEN/136), which included basing calculations on a five-year moving average for two consecutive years, "stopping the clock" for export subsidy phase-out if a developing Member lost export competitiveness during the phase-out period, and allowing a developing Member to reintroduce export subsidies if export competitiveness is lost after the end of the phase-out period. While some delegations supported the thrust of the proposal, others had doubts, with one delegation qualifying the proposal as maximalist while another observing that the current provisions were logical, and that it was reluctant to change these rules relating to distortive export subsidies. A number of delegations suggested that a more serious issue for the operationalisation of this provision was to clarify the definition of "product", as it was unclear whether it referred to HTS Sections or headings. With regard to specific elements. on the moving averages proposal, some delegations agreed that there was a problem of volatility that could be addressed by this approach. Other delegations doubted that there was a volatility problem or considered that the moving averages idea was in any event too complicated. It was suggested that the proposal would in fact require 7 years of export competitiveness, and that a simpler approach might be simply to refer to three or perhaps four consecutive years. Various delegations questioned whether the five-year moving average would apply to losing export competitiveness as well as achieving it. While one delegation supported allowing developing Members to re-introduce export subsidies if they lost export competitiveness, other delegations had serious concerns, with one delegation noting that this went beyond "stop-the-clock" proposals previously considered in the SCM Committee.
Verification system for duty rebate schemes / definition of inputs consumed	
ANNEX I ~~ILLUSTRATIVE LIST OF~~ CERTAIN EXPORT SUBSIDIES	Shortly before the issuance of the Chairman's text, a delegation submitted a proposal, later revised, concerning the **verification system** for duty and tax rebate schemes as provided for in items (g), (h) and (i) of Annex I of the SCM Agreement, and Annexes

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. . . . (g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes[5865] in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption. (h) The exemption, remission or deferral of prior-stage cumulative indirect taxes[5865] on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).[67] This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II. (i) The remission or drawback of import charges[5865] in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.	II and III (TN/RL/GEN/153 and Rev. 1). The proposal also suggested modifying the definition of "inputs consumed in the production process" in this context. Concerning duty rebate schemes, the proponent indicated that the principle underlying its proposal was that in a countervailing duty context, only the excess amount of rebate could be countervailed, rather than the whole scheme, and that in this regard, the Agreement should be clarified to indicate that certain averaging schemes based on standard input-output or similar norms should be presumed to be sufficient for purposes of verifying the use of imported inputs in the production of goods for export. In the same context, the proponent proposed expanding the definition of inputs consumed, to cover capital goods and consumables. A number of delegations supported the principle that only the excess amount of any rebate could be treated as a countervailable subsidy, and expressed a willingness to work on the issues raised in the proposal, but raised questions as to whether the existing language in the Agreement already could accommodate the situations referred to in the proposal. Some also questioned certain practical aspects of the calculations that would be involved. In addition, some delegations questioned the basis for the proposed presumption that an averaging system generated accurate results, including because of changes to production technology over time, whether any such presumption would be rebuttable and if so, on what basis, and how to implement such averaging schemes where taxes being rebated are prior-stage cumulative indirect taxes. Concerning the expansion of the definition of inputs consumed to include capital goods and consumables, some delegations raised questions of principle, noting that under international taxation norms, taxes on goods are to be imposed in the country where they are consumed, which in the case of capital goods would be the country of production of the exported goods. Delegations also raised practical questions concerning how any accounting for the use of capital goods in the production of exported products could be verified, and concerning the definition of "consumables". One delegation noted that the current SCM rules on taxes favoured indirect tax systems, and disadvantaged direct taxes, and that the proposed change to the definition of inputs consumed would further this imbalance.

[56] For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is

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no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production; "Remission" of taxes includes the refund or rebate of taxes; "Remission or drawback" includes the full or partial exemption or deferral of import charges. [67]Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g). ANNEX II GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS[69] I 1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). 2. The Illustrative List of Export Subsidies in Annex I of this Agreement makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (i) also provides for substitution, where appropriate. [69]Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product. II	

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In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis: 1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the investigating authorities should first determine whether the government of the exporting Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied. 2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting Member based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 1. 3. Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The Members note that an input need not be present in the final product in the same form in which it entered the production process. 4. In determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer. 5. The investigating authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The investigating authority should bear in mind that an	

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important question is whether the authorities in the exporting Member have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission. ANNEX III GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES I Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies in Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed. II In examining any substitution drawback system as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis: 1. Paragraph (i) of the Illustrative List stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting Member to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question. 2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting Member has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that	

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the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied. 3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting Member based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 2. 4. The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy. 5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.	

Chairman's Text	Delegations' Comments on Chairman's Text
Export Credit Practices	
(j) The provision by governments (or special institutions controlled by and/or acting under the authority of governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes. (k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those available to the recipient on international capital markets (absent any government guarantee or support), for funds of the same maturity and other credit terms and denominated in the same currency as the export credit. ~~at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.~~ Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members)[68], or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement. [68] The parties to such undertaking in effect as of the date of entry into force of the results of the DDA shall notify that undertaking to the Committee not later than 30 days after that date. Upon request by a Member, the Committee shall examine the notified undertaking. Thereafter, any further successor undertaking shall be notified by the parties thereto to the Committee, and Members shall have a period of 30 days from the date of such notification to request examination by the Committee of the notified successor undertaking. Where no such request is made, the provisions of the second paragraph of item (k) shall apply to the notified successor undertaking as from the end of the 30-day period. Where such a request is made, the Committee shall examine the notified successor undertaking within 60 days following the receipt of the request, taking into account the need to maintain effective multilateral disciplines on export credit practices and to preserve a balance of rights and obligations among Members. The provisions of the second paragraph of item (k) shall not apply in respect of the notified successor undertaking until the requested examination has been completed.	In general terms, the proponent of changes in the area of **export credit practices** emphasized that a cost-to-government approach to export credits represented an inherent disadvantage for developing Members whose costs of borrowing are higher due to higher risk. While this delegation generally welcomed the changes proposed in the Chairman's text, it considered that additional adjustments to items (j) and (k) were also required. Specifically, it sought the inclusion of a second test under item (j) for export credit guarantees at premium rates below those available to the recipient on international capital markets for export credit guarantees or insurance of similar terms and denominated in the same currency. It also sought restoration of language in item (k) of the SCM Agreement relating to the payment of costs incurred by exporters or financial institutions in obtaining export credits. Some other delegations had very serious concerns. They considered that the proposed changes in the Chairman's text would disadvantage developing Member borrowers by raising the cost of export credit financing, that they could reduce predictability for export credit agencies, and that they could make export credit agencies irrelevant, and that this would be aggravated by the additional changes being sought by the proponent. These delegations generally considered that a cost-to-government approach was appropriate in this area and that the proposed changes could render items (j) and (k) meaningless. With respect to note 68, the proponent noted that under the so-called "evolutionary" interpretation, a small group of Members can negotiate changes to the OECD Export Credit Arrangement among themselves and that these changes would then apply under the safe haven in item (k) second paragraph without having been agreed by all WTO Members. Thus, the proponent considered that note 68 was desirable, especially in insuring transparency, but that it was not sufficiently clear about the need for the WTO to adopt any changes to the Arrangement. This delegation proposed alternative language under which the provisions of the second paragraph would apply on condition that they be notified to the SCM Committee and that no Member objects within 30 days. While certain delegations supported this language, other delegations were seriously concerned. They were of the view that note 68 would make it difficult if not impossible to effectuate changes to the OECD Arrangement, as the note in the Chairman's text could be taken to require de facto approval, and the proponent's language would in fact make clear all Members had an effective veto. Several delegations noted that the OECD Arrangement had become more transparent and inclusive, such as in the aircraft sector. One delegation noted that it had instructions at the highest level that it could not agree to such language.

ANNEX C – FISHERIES SUBSIDIES

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
PROHIBITION AND SCOPE/COVERAGE		
[[3*bis*1. Except as provided for in Article 27 *bis* and Annex VIII of this Agreement, subsidies[1] within the meaning of Article 1 of this Agreement that confer a benefit[2] directly or indirectly on any natural or legal person engaged in the harvesting, processing, transport, marketing or sale of the fish and fisheries products listed in Annex IX of this Agreement ("fisheries subsidies") shall be prohibited. ANNEX IX: PRODUCT COVERAGE FOR FISHERIES SUBSIDIES 1. The fish and fisheries products referred to in Article 3 *bis* and related Articles refer to: HS Chapters/Code/Headings HS 0509(sponges) HS 0511.91 (fish unfit for human consumption) HS 03 (fish and fish products) HS 1504.10 (fishoil) HS 1504.20 (fishoil) ex HS 1603 (juices and extracts of meat and fish) HS 1604(prepared or preserved fish) HS 1605(prepared or preserved crustaceans and molluscs) HS 2301.20 (fishmeal) [1]We note that Article 1.2 of the ASCM provides that a subsidy shall be subject to the provisions of Part II only if such a subsidy is specific in accordance with the provisions of Article 2. [We] continue[] to be concerned that some generally available (non-specific) subsidies could directly contribute to overcapacity and overfishing, for example a generally available fuel subsidy. We look forward to discussing textual options for addressing this concern. [2]The term benefit is used here in the sense of Article 1.1(b) of	**AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES** 3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited: [...] (c) subsidies referred to in Article I of Annex VIII. [...] [9]This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited. It is recognized that in a case of violation of the prohibition in Article 3.1(c) and Article I of Annex VIII, countermeasures may take the form of suspension of access of fishing or service vessels to port facilities for landing, transhipping or processing fish. [10]This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited. It is recognized that in a case of violation of the prohibition in Article 3.1(c) and Article I of Annex VIII, countermeasures may take the form of suspension of access of fishing or service vessels to port facilities for landing, transhipping or processing fish. [...] ANNEX VIII I.1 Except as provided for in Articles II and III, or in the exceptional case of natural disaster relief[77], the	With regard to the **scope of the prohibition in general**, some delegations consider that the Chairman's text is far too ambitious, while for other delegations the text falls considerably short of their expectations. **Certain delegations view the list of proposed prohibitions as far too broad**. In their view, it encompasses certain types of subsidies that do not directly contribute to overcapacity and overfishing, in particular where the subsidising Member has sound fisheries management measures in place. Concerns expressed in this regard include that in the view of some delegations even certain environmentally-beneficial subsidies that either help to reduce, or have no impact on, capacity would be covered by the prohibition. Some delegations consider that even subsidies to vessel construction and repair can be allowed under certain conditions that would prevent the development of overcapacity. **Other delegations continue to prefer a top-down (broad ban) approach**, rather than the bottom-up approach in the draft text, but have indicated that they can accept the latter approach so long as the ultimate scope of the prohibition is sufficiently broad. In this regard, **some of these delegations consider that the scope of the proposed prohibition is too narrow.** They advocate extending it to cover additional subsidies, especially to activities further downstream. These delegations also view some of the drafting in the proposed list of prohibited subsidies as too loose, considering that it leaves open potential loopholes that need to be closed in any final text. **Another group of delegations view the proposed list of prohibited subsidies as generally reflecting an appropriately high level of discipline**. In their view, the text respects the mandate from Ministers by striking the right balance in proposing for prohibition the

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
this Agreement.]] [[1.1 The Annex covers any fisheries subsidy, i.e. subsidies as defined in Article 1.1 of the SCM Agreement that are granted to enterprises engaged in marine wild capture fisheries. 1.2. Fisheries subsidies shall encompass any subsidy programme and/or the disbursements made under such programme as well as ad hoc subsidies. 2.1 The following subsidies shall be prohibited : (a) Subsidies for the construction of new fishing vessels, (b) Subsidies for the renovation of existing vessels, and (c) Subsidies for the permanent transfer of fishing vessels to other countries including through the creation of joint ventures with partners of those countries.]] [[1. The following subsidies which confer a benefit[5] and which are specific, as set out in Articles 1 and 2 of the ASCM, shall be prohibited: 1.1. Any subsidy granted for the acquisition, building, maintenance, repair or up-grading of fishing vessels[6] exceeding 15 metres overall length, including any technical or electronic equipment[7] onboard the vessel.	following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, shall be prohibited: (a) Subsidies the benefits of which are conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels[78] or service vessels[79], including subsidies to boat building or shipbuilding facilities for these purposes. (b) Subsidies the benefits of which are conferred on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners. (c) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities. (d) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities). (e) Income support for natural or legal persons engaged in marine wild	subsidies that they consider to be most closely linked to overcapacity and overfishing. **Regarding specific types of subsidies** included in the various subparagraphs of the list, subparagraph (c), covering **subsidies to operating costs**, and subparagraph (d), covering **subsidies to port infrastructure**, including in- or near-port processing facilities have attracted the most attention. **Concerning subsidies to operating costs**, including for fuel, bait and ice, opinions vary widely. **A number of delegations – including certain developed and developing Members – do not consider that such subsidies contribute to overcapacity**. Of particular concern to many delegations in this regard is the proposed prohibition of **fuel subsidies**. In their view, prohibiting fuel subsidies would be unacceptable, as it would effectively deprive their fishers of their livelihood by making it impossible for them to continue fishing. In this context, developing country delegations emphasize in particular the importance to the achievement of their development goals of fuel subsidies in the fisheries sector. Similarly, certain developed country delegations also emphasize the importance to their coastal fishing communities of fuel subsidies. All of these delegations take the view that, in well-managed fisheries, fuel subsidies will have no impact on overfishing. **Other delegations, however, consider that any prohibition that omits fuel subsidies would be unacceptable.** In their view, a prohibition that did not cover fuel subsidies would be ineffective in disciplining subsidies that contribute to overcapacity and overfishing, and thus would be inconsistent with the mandate from Ministers. They consider fuel subsidies to be at the very heart of the problem of overfishing, as they allow boats to stay on the water longer, without regard for the true costs and benefits involved, than would be possible without the subsidies. **With respect to subsidies to port infrastructure**,

[5]The provisions set out in Article 14 of the ASCM shall apply whenever an assessment of whether a subsidy confers a benefit.

[6]For the purpose of this Annex, fishing vessels means any vessel intended for use for the purpose of commercial exploitation of fishing resources, including fish processing vessels and vessels engaged

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in transshipment. [7]This comprises, *inter alia*, engines, fishing gear, fish-processing machinery or any other equipment onboard the vessel. The prohibition does not cover the installation of equipment for safety or for control and enforcement purposes. Neither does the prohibition cover equipment fitted for the purpose of reducing environmentally harmful emissions.]] [[1.1 This Annex provides for specific provisions regarding fisheries subsidies and it is an integral part of the Agreement on Subsidies and Countervailing Measures (ASCM). 1.2 This Annex shall not apply to inland fisheries[1] and to aquaculture.[2] 1.3 This Annex covers any subsidy ─ as defined in Article 1 of the ASCM ─ given to or on behalf of any company and/or person linked in fact or in law, directly or indirectly[3], to harvesting activities of capture fisheries ("fishery subsidy"). Fisheries subsidies shall encompass any subsidy programme and/or the disbursement made under such programme. 1.3.1 In case of a government-to-government payment for access by foreign vessels to fishing resources of a developing country's maritime jurisdiction[4] or to quotas or any other rights established by any regional fishery management organization or arrangement ("access rights"), a fishery subsidy shall be deemed to exist if a benefit is conferred in the onward transfer of those access rights from the paying government. 1.3.2 "Public services of fisheries resource management" shall not be considered a fishery subsidy.[5] 2.1 A Member shall neither grant nor maintain any fishery subsidy. [1]"Inland fisheries" are fisheries which are carried out in freshwater or estuaries of a Member and whose target species are those	capture fishing. (f) Price support for products of marine wild capture fishing. (g) Subsidies arising from the further transfer, by a payer Member government, of access rights that it has acquired from another Member government to fisheries within the jurisdiction of such other Member.[80] (h) Subsidies the benefits of which are conferred on any vessel engaged in illegal, unreported or unregulated fishing.[81] I.2 In addition to the prohibitions listed in paragraph 1, any subsidy referred to in paragraphs 1 and 2 of Article 1 the benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are in an unequivocally overfished condition shall be prohibited. [77] Subsidies referred to in this provision shall not be prohibited when limited to the relief of a particular natural disaster, provided that the subsidies are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery, and/or the affected fleet to its pre-disaster state, up to a sustainable level of fishing capacity as established through a science-based assessment of the post-disaster status of the fishery. Any such subsidies are subject to the provisions of Article VI. [78] For the purposes of this Agreement, the term "fishing vessels" refers to vessels used for marine wild capture fishing and/or on-board processing of the products thereof. [79]For the purposes of this Agreement, the term "service vessels" refers to vessels used to tranship the products of marine wild capture fishing from fishing vessels to on-shore facilities; and vessels used for at-sea refuelling, provisioning and other servicing of fishing vessels.	**some delegations** – including certain developed and developing Members – **consider that all subsidies to port infrastructure should fall outside of the prohibition**. Many of these delegations **question whether there is any link between infrastructure subsidies and overcapacity or overfishing**, and thus consider that this proposed prohibition goes beyond the mandate from Ministers. Some of these delegations also point to the difficulty of distinguishing the provision of "general infrastructure", which is not a subsidy covered by the SCM Agreement, from subsidies for infrastructure "exclusively or predominantly for activities related to marine wild capture fishing", which are proposed for prohibition, particularly where the subsidised infrastructure serves activities in addition to marine wild capture fishing. In their view, this uncertainty is a further reason why such subsidies should not be prohibited. A number of developing country delegations have indicated that subsidies to port infrastructure, including in- or near-port processing facilities, are essential to their economic development. They emphasize the economic linkages of fish processing activities, including job creation and increases in the level of technology in the sector. Certain delegations (including some developed country delegations) also consider that subsidies to fishing port infrastructure are necessary to support communities and provide employment in remote areas, where the populations tend to be economically and socially disadvantaged. **Other delegations, however, strongly believe that the infrastructure subsidies referred to in the Chairman's text should be prohibited as proposed.** In their view, the prohibition is drafted sufficiently narrowly to capture only infrastructure subsidies directly targeted to fishing activities, such that the question of their specificity would not be in doubt. Furthermore, they consider that such a prohibition is necessary, as infrastructure subsidies account for a very high percentage of all subsidies to the fisheries sector, and relieve the fishing industry of a substantial cost that otherwise it would need to bear. They thus **consider**

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
that spend all of their life-cycle therein. [2]"Aquaculture" is the farming of aquatic organisms, including fish, molluscs and crustaceans, provided that no capture fisheries is used to feed raised fish or is farmed. [3]The term "directly or indirectly" is used in this Annex in the same sense as it is used in paragraph 1 of Article XVI of GATT 1994. [4]"Maritime jurisdiction" encompasses the Territorial Sea and the Exclusive Economic Zone, which are defined in the United Nations Convention of the Law of the Sea (UNCLOS). [5]"Public services" are all services supplied in the exercise of governmental authority, which is carried out neither on a commercial basis nor in competition with other services suppliers. "Public services of fisheries resource management" are any governmental public service supplied with the objective of improving the management of fisheries resources.]] [[1. Except as otherwise provided in this Annex, a subsidy[1] that confers a benefit on enterprises engaged in the harvesting of marine wild capture fisheries shall be prohibited.[2] [1]"Subsidy" as used in this Annex is a subsidy within the meaning of paragraph 1 of Article 1 of the Agreement on Subsidies and Countervailing Measures (ASCM). A subsidy subject to this Annex must be specific within the meaning of Article 2 of the ASCM. [2]"Harvesting" includes the on-vessel processing of fish and transport of fish from one vessel to another or from a vessel to shore.]] [[1. The following subsidies[12], granted for enterprises engaged in harvesting of marine[13] wild fish, shall be prohibited, except as otherwise provided in this Annex: (a) subsidies for the acquisition, and construction of fishing vessels, unless: (i) they are granted for the replacement of fishing capacity following a natural and environmental disaster where	[80]Government-to-government payments for access to marine fisheries shall not be deemed to be subsidies within the meaning of this Agreement. [81] The terms "illegal fishing", "unreported fishing" and "unregulated fishing" shall have the same meaning as in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization.	**that these subsidies contribute directly to overfishing**, and that to leave them out of the prohibition would be contrary to the mandate. Concerning the provision allowing **subsidies to restore a fishery following a natural disaster**, some delegations have **suggested broadening this so as to allow subsidies following other kinds of disasters, for example man-made and environmental disasters, and economic crises**. Other delegations, however, consider that the **drafting should be tightened to prevent the creation of overcapacity using subsidies**. Another provision commented upon by certain delegations was the proposed prohibition of **subsidies in the form of income and price support**. Some delegations consider that these forms of subsidies do not contribute to overcapacity, and they regard them as **essential components of their social welfare/safety net** programmes. Other delegations agree that **such subsidies should be prohibited**, but seek a clarification of the relationship of that proposed prohibition with the horizontal disciplines of the SCM Agreement. With respect to the **prohibition of subsidies in respect of "unequivocally overfished" fisheries**, **some delegations consider this provision to be too wide-ranging, and to impose an unclear obligation**. They question both the meaning of the term "unequivocally overfished", and by whom such a determination in respect of a given fishery would be made. They further consider that in any case, this provision is not necessary given that the horizontal disciplines of the SCM Agreement would apply, and given the general discipline in Article IV of the Chairman's text. **Other delegations consider that this provision is a crucial element of the proposed disciplines**. In their view, prohibiting subsidies in respect of overfished fisheries is necessary given that the proposed prohibition takes the form of a positive list. They consider that all Members can agree that no subsidies

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fleet capacity has been reduced so that a capacity is restored to the proper level not exceeding its pre-disaster state; or (ii) they are granted as incentives[14] for reducing existing fishing capacity, where the gross tonnage of the new vessel is reduced by at least 50 per cent of the sum of the gross tonnage of the withdrawn vessels in the same fishery category[15]; and there are in place fisheries management control measures, including enforcement mechanisms, designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups. (b) subsidies for the vessel modification, unless: (i) there is no increase in gross tonnage, volume of fish hold, and engine power of the fishing vessel; or (ii) the modification is undertaken for the improvement of crew safety or on-board accommodation to comply with national or international standards, without increasing volume of fish hold and engine power of the fishing vessel. (c) subsidies granted for shipbuilding yards contingent upon the construction of fishing vessels; (d) subsidies for promoting a permanent transfer of fishing vessels to non-participants[16] of regional fisheries management organizations[17] as an attempt to avoid international rules and		should be allowed where a fishery already is overfished, and that the standard set by the draft text ("unequivocally overfished") is high – although some of them view it as too high. A number of delegations on all sides of the issue consider that the term "unequivocally overfished" should be clarified. In this regard, a proposal from three delegations (*see*, TN/RL/GEN/155/Rev.1) suggests amending this language in the Chairman's text to refer to fisheries **"declared" to be overfished**, in particular to take account of the situation in tropical waters.

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
regulations of fishery operations; and (e) subsidies granted for a vessel engaged in illegal, unreported and unregulated fishing.[18] [12]A subsidy subject to this Annex must be specific within the meaning of Article 2 of this Agreement. [13]The term "marine" includes both anadromous (e.g., salmon) and catadromous (e.g., eels) species that spend a significant part of their life cycle in saltwater. [14]Governmental support for vessel replacement, including construction or purchase of new vessels, is assumed as a form of such incentives. [15]The term "same fishery category" means a group of fishing operations targeting for the same species. [16]The term "non-participants" means the countries who are neither contracting parties nor cooperating non-contracting parties, entities or fishing entities. [17]The term "regional fisheries management organizations" mean regional or sub-regional fisheries management organizations or arrangements. [18]The term "illegal, unreported and unregulated fishing" shall be interpreted in accordance with the definition set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization (FAO).]]		
[[1.1 This Annex provides for specific provisions regarding fisheries subsidies and it is an integral part of the Agreement on Subsidies and Countervailing Measures (ASCM). 1.2 A subsidy as used in this Annex is a subsidy within the meaning of paragraph 1 of Article 1 of the Agreement on Subsidies and Countervailing Measures (ASCM). A subsidy subject to this Annex must be specific, pursuant to Article 2 of the ASCM. 1.3 This Annex shall not apply to inland fisheries[1] or to aquaculture.[2] 1.4 This Annex covers any subsidy that confers a benefit to		

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
or on behalf of any company and/or person linked in fact or in law, directly or indirectly[3], to enterprises engaged in the harvesting of marine wild capture fisheries. Fisheries subsidies shall encompass any subsidy programme and/or the disbursement made under such programme. 1.5 Harvesting includes the on-vessel processing of fish and transport of fish from one vessel to another or from a vessel to shore, but it does not include inland or on-shore processing or other post-harvest handling or activity. 1.6 This Annex does not cover government-to-government payments to obtain access for a Member's distant water fishing fleet to fisheries resources within the territorial sea or exclusive economic zone of a developing country, or to quotas or other rights established by any regional fishery management organization (RFMO) or arrangement. The further transfer of such rights to the Member's fishing fleet is covered by this Annex but is not actionable under Article 3, provided that: (a) a benefit is not conferred by the onward transfer of such rights to the Member's fishing fleet, in that the Member's fleet pays compensation comparable to the value of the access of the resource; (b) the access arrangements provide for compliance with applicable fishery management plans and for a science-based assessment and monitoring of the status of the fishery resources covered by the access arrangements; and (c) such payments are notified pursuant to Article 6 herein. 2.1 Except as provided in this Annex, and without prejudice to Article 3 of the ASCM, the following subsidies, within the meaning of Article 1 of the ASCM and this Annex, shall be prohibited within the meaning of Article 3 of the ASCM:		

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
(a) subsidies granted, in law or in fact, whether solely or as one of several other conditions, for the purpose of vessel construction of any fishing vessel[4];		
(b) subsidies granted, in law or in fact, whether solely or as one of several other conditions, for the purpose of modernization, renovation, repair or upgrading of existing fishing vessels, including engine or gear acquisition, any technical or electronic equipment[5] onboard the vessel, and any other significant capital inputs to fishing;		
(c) subsidies granted, in law or in fact, whether solely or as one of several other conditions, for the purpose of fixed or variable operational costs of fishing vessels and fishing activities, including on-board processing;		
(d) subsidies granted, in law or in fact, whether solely or as one of several other conditions, for shipbuilding yards contingent upon the construction of fishing vessels;		
(e) subsidies granted, in law or in fact, whether solely or as one of several other conditions, relating to illegal, unreported and unregulated fishing,[6] as well as to any fishing vessels flying "flags of convenience"; and		
(f) subsidies granted, in law or in fact, whether solely or as one of several other conditions, upon the transfer of fishing vessels to foreign owners, including through the creation of joint ventures with those countries.		
2.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1.		
2.3 Whenever a Member has reason to believe that a prohibited subsidy is being granted or maintained by another Member as defined in Article 2.1 of this Annex and without		

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
prejudice to Article 3 of the ASCM, such Member may seek remedies in accordance with Article 4 of the ASCM. _____ [1] "Inland fisheries" are fisheries which are carried out in freshwater or estuaries of a Member and whose target species are those that spend all of their life-cycle therein. [2] "Aquaculture" is the farming of aquatic organisms, including fish, molluscs and crustaceans, provided that no capture fisheries is used to feed raised fish or is farmed. [3] The term "directly or indirectly" is used in this Annex in the same sense as it is used in paragraph 1 of Article XVI of GATT 1994. [4] For the purpose of this Annex, fishing vessel means any vessel intended for use for the purpose of commercial exploitation of fishing resources, including fish processing vessels and vessels engaged in transshipment. [5] This comprises, inter alia, engines, fishing gear, fish-processing machinery, fish-finding technology, refrigerators, machines for sorting or cleaning fish, or any other equipment onboard the fishing vessel. The prohibition does not cover the installation of equipment for safety or for control and enforcement purposes. Neither does the prohibition cover equipment fitted for the purpose of reducing environmentally harmful emissions. [6] The term "illegal, unreported and unregulated fishing" shall be interpreted in accordance with the definition set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization (FAO).]]		
[[I.1 Except as provided for in Articles II and III, or in the exceptional case of natural disaster relief[7], the following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, shall be prohibited: (a) Subsidies the benefits of which are conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels[8] or service vessels[9], including subsidies to boat building or shipbuilding facilities for these		

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
purposes. (b) Subsidies the benefits of which are conferred on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners. (c) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities. (d) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities). (e) Income support for natural or legal persons engaged in marine wild capture fishing. (f) Price support for products of marine wild capture fishing. (g) Subsidies arising from the further transfer, by a payer Member government, of access rights that it has acquired from another Member government to fisheries within the jurisdiction of such other Member.[10] (h) Subsidies the benefits of which are conferred on any vessel engaged in illegal, unreported or unregulated fishing.[11] I.2 In addition to the prohibitions listed in paragraph 1, any subsidy referred to in paragraphs 1 and 2 of Article 1 the		

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text
benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are declared to be in an over fished condition shall be prohibited. [7]Subsidies referred to in this provision shall not be prohibited when limited to the relief of a particular natural disaster, provided that the subsidies are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery, and/or the affected fleet to its pre-disaster state, up to a sustainable level of fishing capacity as established through a science-based assessment of the post-disaster status of the fishery. Any such subsidies are subject to the provisions of Article VI. [8]For the purposes of this Agreement, the term "fishing vessels" refers to vessels used for marine wild capture fishing and/or on-board processing of the products thereof. [9]For the purposes of this Agreement, the term "service vessels" refers to vessels used to tranship the products of marine wild capture fishing from fishing vessels to on-shore facilities; and vessels used for at-sea refuelling, provisioning and other servicing of fishing vessels. [10] Government-to-government payments for access to marine fisheries shall not be deemed to be subsidies within the meaning of this Agreement. [11]The terms "illegal fishing", "unreported fishing" and "unregulated fishing" shall have the same meaning as in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization.]]		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
GENERAL EXCEPTIONS		
[[3.1. The following subsidies are permitted: (a) Subsidies contingent upon a reduction in fishing capacity or that are provided for the specific purpose of mitigating the negative social and economic consequences of reductions in capacity; (b) Subject to a non increase in capacity, subsidies that are granted in the context of conservation measures, for product development, for modernisation of vessels including improved working conditions and safety on board, and subsidies that promote more environmentally friendly fishing operations. 3.2. Subsidies covered by paragraph 1 of this Article shall not be subject to Article 2 of this Annex and Parts III and V of the SCM Agreement.]] [[Provided that they are notified in accordance with Article 25, nothing in Article 3 *bis* shall prevent the adoption of: (a) subsidies to aquaculture[1] activities, provided that there are no capture fisheries involved; (b) subsidies for vessel decommissioning programmes, provided that: (i) the vessels subject to such programmes are scrapped or	II. Notwithstanding the provisions of Article I, and subject to the provision of Article V: (a) For the purposes of Article I.1(a), subsidies exclusively for improving fishing or service vessel and crew safety shall not be prohibited, provided that: (1) such subsidies do not involve new vessel construction or vessel acquisition; (2) such subsidies do not give rise to any increase in marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn; and (3) the improvements are undertaken to comply with safety standards. (b) For the purposes of Articles I.1(a) and I.1(c) the following subsidies shall not be prohibited: subsidies exclusively for: (1) the adoption of gear for selective fishing techniques; (2) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing; (3) compliance with fisheries management regimes aimed at	**Concerning the general exceptions**, **some delegations consider that many of the exceptions proposed are too narrowly defined and the conditions attached to them too restrictive.** Some of these delegations consider that the fact that **non-prohibited fisheries subsidies would remain actionable under the horizontal subsidy rules of the SCM Agreement would mitigate any negative effects** that such subsidies might cause, such that the list of exceptions should be expanded and the conditionalities relaxed (or, some suggest, removed altogether). Other Members consider that the **management conditionalities associated with the general exceptions alleviate the need for tailoring the exceptions narrowly.** In their view, provided that properly-functioning fisheries management systems are in place, fisheries subsidies will make little contribution to overcapacity and overfishing. Other delegations seeking broader general exceptions **suggest that all of the management requirements may not be necessary in respect of each exception,** as in their view some of the subsidies covered by general exceptions have no possibility to contribute to overcapacity and overfishing. A number of **other delegations, however, consider that for the disciplines to be effective any general exceptions must be limited in number and scope, and subject to strict conditionalities.** While recognizing the need for certain general exceptions, including for capacity reduction programmes, environmental improvements, and transitional assistance for displaced fishworkers, these delegations consider that all subsidies to the fisheries sector, regardless of their expressed purpose, have the potential to circumvent the prohibition and contribute to overcapacity and overfishing. They thus consider that the approach to general exceptions in the Chairman's text is appropriate, and that if anything the drafting should be tightened. In this regard, some delegations made detailed drafting suggestions to close perceived potential loopholes, for example to tighten what they consider to be the overly-

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
otherwise permanently and effectively prevented from being used for fishing anywhere in the world; (ii) the fish harvesting rights associated with such vessels are permanently revoked and may not be reassigned; (iii) the owners of such vessels are required to relinquish any claim associated with such vessels that could qualify such owners for any present or future harvesting rights in any fishery; and (iv) there are in place fisheries management control measures designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups. (c) subsidies for research to inform fisheries management decision makers, including data collection, surveys, data analysis, and stock monitoring, sampling and assessment; (d) subsidies for fisheries stock enhancement, marine conservation, and marine protection, including marine environment restoration, hatcheries for breeding, artificial reefs and by-catch mitigation devices; (e) subsidies for access to the fisheries resources of developing countries;	sustainable use and conservation (e.g., devices for Vessel Monitoring Systems); provided that the subsidies do not give rise to any increase in the marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn. (c) For the purposes of Article I.1(c), subsidies to cover personnel costs shall not be interpreted as including: (1) subsidies exclusively for re-education, retraining or redeployment of fishworkers[82] into occupations unrelated to marine wild capture fishing or directly associated activities; and (2) subsidies exclusively for early retirement or permanent cessation of employment of fishworkers as a result of government policies to reduce marine wild capture fishing capacity or effort. (d) Nothing in Article I shall prevent subsidies for vessel decommissioning or capacity reduction programmes, provided that: (1) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;	broad language of the exception covering subsidies for the adoption of techniques aimed at reducing the environmental impact of fishing. In connection with the condition in a number of the general exceptions that the subsidies in question not give rise to any increase in capacity, a number of delegations have questioned whether the physical vessel parameters in the Chairman's text are adequate. Suggestions in this regard include referring to "fishing effort" instead. In terms of **individual proposed general exceptions**, delegations wishing to broaden these exceptions have noted **particular concerns with the items covering subsidies for retraining and redeployment of fishworkers, and for retirement or permanent cessation of marine wild capture fishing** in the context of government capacity reduction programmes. These delegations consider that there are a number of other "social safety net" programmes that also should benefit from a general exception, including payments to fishworkers during closed seasons, or for other temporary cessations of fishing activity, and for training of fishworkers who remain in the fishing sector, including subsidies for reeducation or retraining of fishworkers to switch to sustainable fishing operations. **Other delegations, however, disagree that any of these types of payments should be excepted** from the prohibition. In their view, such payments contribute to the problem of overcapacity by maintaining an active fisheries workforce that is too large for the fish supply. A number of delegations seeking broader drafting for certain items listed in the Chairman's text also are **calling for an expanded list of general exceptions**. Most frequently suggested in this context are general exceptions for **subsidies to "small scale" fisheries, for fuel, and for research and development**. Advocates of a general exception for subsidies to small-scale fisheries emphasize that developed as well as developing Members have fishing communities in remote areas that are socially and economically marginalized, and that all Members thus should have the possibility to provide fisheries subsidies in

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
(f) subsidies to the construction and maintenance of infrastructure for: (i) fishing communities, such as the provision of housing, transport infrastructure, water and sanitary waste systems; (ii) wharves and port facilities for vessel moorage, loading, unloading, cleaning, sanitation and repair; and (iii) transport infrastructure, water and sanitary waste systems serving processing facilities for fisheries products. (g) subsidies for unemployment relief, early retirement, worker retraining or re-education, and alternative employment assistance for fishermen; (h) subsidies for the replacement of fishing capacity following a natural disaster where fleet capacity has been reduced, provided that capacity is not restored beyond its pre-disaster state; (i) subsidies to artisanal fishing[2]; and (j) subsidies aimed solely at improving vessel and crew safety[3], provided that: (i) there is no increase to the volume of fish hold or engine power of a vessel subject to such programmes; and (ii) the improvement is undertaken to comply with international or domestic standards.	(2) the fish harvesting rights associated with such vessels, whether they are permits, licences, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned; (3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and (4) the fisheries management system in place includes management control measures and enforcement mechanisms designed to prevent overfishing in the targeted fishery. Such fishery-specific measures may include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, such as individual transferable quotas. (e) Nothing in Article I shall prevent governments from making user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes. [82] For the purpose of this Agreement, the term "fishworker" shall refer to an individual employed in marine wild capture fishing and/or directly associated activities.	these communities. One Member presented a proposal to modify the list in the Chairman's text to include an exception for *de minimis* subsidies i.e., based on "small programmes", available to all Members, to address this issue (*See*, TN/RL/GEN/156). Other delegations, including numerous developing country delegations, disagree. Some consider that the only exception for small-scale fisheries should be in the form of S&D treatment for developing Members. Others consider that a general exception for small-scale fisheries would open a substantial loophole in, and thus undermine, the disciplines. **Delegations seeking exceptions for subsidies for fuel, and for research and development, argue that such subsidies should be permitted as they do not contribute to overcapacity. Other delegations consider that fuel subsidies are a major contributor to overfishing** and thus should be prohibited. Concerning subsidies for "research and development", some delegations consider that certain subsidies for R&D already are covered by the general exceptions and that an expansion of this category thus is not necessary. Others would accept an exception for research subsidies provided to research institutions but oppose any exception allowing the provision of such subsidies to private entities.

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2. Governmental activity directly associated with the creation and implementation of fisheries management systems[4], and the enforcement of fisheries management rules shall not be treated as fisheries subsidies. _____ [1]Aquaculture is the farming of aquatic organisms, involving intervention in the rearing process to enhance production. [2]Artisanal fishing is a traditional fishing activity related to the subsistence of fishermen and their families. Artisanal fishing is performed on an in-shore basis with non-automated gear-retrieval devices. [3]Programmes or activities aimed primarily at vessel modernisation or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph. [4]This comprises the establishment and administration of management systems (including allocating and monitoring fishing licences, permits, quota, vessel numbers and catch returns); adjusting management settings within an existing management system; and developing amendments or additions to the existing management system.]]		
[[Footnote 7 – [...] The prohibition does not cover the installation of equipment for safety or for control and enforcement purposes. Neither does the prohibition cover equipment fitted fro the purpose of reducing environmentally harmful emissions.]] *See* also, Prohibition section.		
[[3.1 The following fisheries subsidies, provided the conditions set out in this paragraph are properly fulfilled, shall not fall under the prohibition set out in Article 2: (a) subsidies providing a social safety net for fishermen:		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
(i) early retirement schemes; (ii) re-education, training or alternative employment assistance; (iii) social programmes; (iv) life insurance; and/or (v) livelihood income support to compensate for unemployment or for the suspension of capture fishery activities; (b) subsidies for fisheries research, including data collection, surveys, data analysis, and stock monitoring, sampling and assessment; (c) subsidies related to fisheries stock enhancement, including marine conservation and protection, marine environment restoration, artificial reefs and by-catch mitigation devices; (d) subsidies aimed solely at improving vessel and crew safety[6], provided that the improvement is undertaken to comply with international or domestic standards; (e) subsidies for vessel capacity reduction programmes, provided that the: (i) vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world; (ii) fish harvesting rights associated with such vessels, whether they are permits, licenses, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned; and		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
(iii) owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; (f) other fisheries subsidies that are indirectly linked to harvesting activities of capture fisheries, such as fishing port facilities and inland processing facilities for fisheries products. 3.2 In case of natural or environmental disasters, the prohibition of Article 2 shall temporarily not apply, so as to enable governments to provide short-term emergency relief and to implement recovery adjustment programmes. [6]Programmes or activities aimed primarily at vessel modernisation or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph.]] [[2.1 Nothing in Article 1 of this Annex shall prevent government assistance for: (a) vessel decommissioning programmes, provided that: (i) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
(ii) the fish harvesting rights associated with such vessels are permanently revoked and may not be reassigned; (iii) the owners of such vessels are required to relinquish any claim associated with such vessels that could qualify such owners for any present or future harvesting rights in any fishery; and (iv) there are in place fisheries management control measures designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups. (b) assistance and user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes; (c) research to inform fisheries management decision makers, including data collection, surveys, data analysis and stock monitoring, sampling and assessment; (d) measures that enhance marine resources rather than capacity to harvest those resources, such as fisheries stock enhancement, marine conservation and marine protection, including marine environment restoration, hatcheries for breeding, artificial reefs and by-catch mitigation devices;		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
(e) the construction and maintenance of infrastructure for fishing communities, such as the provision of housing, roadways and water and sanitary waste systems; (f) unemployment relief, early retirement, worker retraining or re-education, life insurance, support for the temporary suspension of fishing activities and alternative employment assistance for fishermen; (g) the replacement of fishing capacity following a natural disaster where fleet capacity has been reduced, provided that capacity is not restored beyond its pre-disaster state; and (h) the improvement of vessel and crew safety[3], provided that: (i) there is no increase to fishing capacity, such as the volume of fish hold or engine power of a vessel subject to such programme; and (ii) the improvement is undertaken to comply with international or domestic standards. 2.2 This Annex does not cover government-to-government payments to obtain access for a Member's distant water fishing fleet to fisheries resources within the exclusive economic zone of another country. The further transfer of those access rights to the Member's fishing fleet is covered by this Annex but is not prohibited under Article 1, provided that: (i) the Member's fishing fleet pays compensation comparable to the cost the		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
fleet would otherwise have to pay for access to the fisheries resources; (ii) the terms and conditions of access, including the compensation paid by the fishing fleet, are published; and (iii) the access arrangement provides for a science-based assessment and monitoring of the status of the fisheries resources in question and for compliance with applicable fishery management systems. 2.3 Government funding of services directly related to fisheries management, including data collection and analysis for fisheries science, management and enforcement, the protection and restoration of marine habitats, the development and implementation of fisheries management measures, and the monitoring and enforcement of fishery regulations are not covered by this Annex.[4] [3]Programme or activities aimed primarily at vessel modernization or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph. [4]Fisheries management includes the establishment and administration of management systems (including allocating and monitoring fishing licences, permits, quota, vessel numbers and catch returns); adjusting management settings within an existing management system; and developing amendments or additions to the existing management system.]] [[2. Notwithstanding the provisions of Article 1 of this Annex and Parts III and V of this Agreement, the following subsidies shall be understood as having no, or at most minimal, trade distorting effects or negative effects on fisheries resources management, and thus considered non-actionable:		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
(a) government-to-government payments to obtain access for a Member's distant water fishing fleet to fisheries resources within the exclusive economic zone of another country under the following conditions: (i) the terms and conditions of access, including the compensation paid by the fishing fleet, are published; and (ii) the access arrangement provides for a science-based assessment and monitoring of the status of the fisheries resources in question and for compliance with applicable fishery management systems; (b) subsidies for vessel decommissioning programmes under the following conditions: (i) the vessels subject to such decommissions are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world; (ii) the fish harvesting rights, or their sub-allocations, associated with such decommissioned vessels are permanently revoked and shall not be reassigned; and (iii) there are in place fisheries management control measures, including enforcement mechanisms, designed to prevent over-fishing in the targeted fishery, such as limited		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups. (c) subsidies for small-scale fisheries, if such fisheries meet the following conditions: (i) the size of fishing vessels is less than (XX) meters in length or (YY) gross tons; (ii) the area of the authorized fishing operation is within the territorial waters and/or the exclusive economic zones; (iii) there exist registration systems of fishing vessel; and (iv) there are in place fisheries management control measures, designed to prevent over-fishing in the targeted fishery, which include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups; (d) government expenditures for the construction and maintenance of general infrastructure for fishing communities, such as the provision of housing, roadways, water and sanitary waste systems, and fishing port facilities; (e) government expenditures for social safety net for fishermen, including unemployment relief, early retirement, worker training or education, fishery insurance covering life and injury for		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
workers and damage for boats and gears, payment for relief from natural disaster or similar environmental/economic changes, support for the temporary suspension of fishing activities, and alternative employment assistance for fishermen; (f) government expenditures for research on fisheries management, including data collection, surveys, data analysis, stock monitoring, sampling and assessment; and (g) government expenditures for measures that enhance marine resources rather than capacity to harvest those resources, such as fisheries stock enhancement, marine conservation and marine protection, including marine environment restoration, hatcheries for breeding, artificial reefs and by-catch mitigation devices.]] [[3.2 Except as provided in this Annex, and without prejudice to Parts III and V of the ASCM and Articles 2 and 3.1 herein, the following subsidies, within the meaning of Article 1 of the ASCM and this Annex, shall be considered as actionable within the meaning of Article 5 of the ASCM: (a) Vessel decommissioning programmes, unless: (i) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
being used for fishing anywhere in the world;[7] and (ii) the fish harvesting rights associated with such vessels, whether they are permits, licenses, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned; and (iii) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and (iv) there are in place fisheries management plan designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, provided that special flexibility should be given to developing countries, including any technical assistance requested by any such developing country as provided in Article 5 below. (b) subsidies granted, in law or in fact, whether solely or as one of several other conditions, where there is an increase in the subsidizing Member's capacity to		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
produce a fishery product due to the subsidy. (c) subsidies granted, in law or in fact, whether solely or as one of several other conditions, where there is an increase in the subsidizing Member's relative share of production of a fishery product, as compared to non-subsidized production, over a representative period sufficient to demonstrate clear trends in production. 3.3 The list of actionable subsidies in section 3.2 above is merely illustrative, and does not limit the general rule expressed in section 3.1 above. 4.1 Notwithstanding Articles 2 and 3 of this Annex, the following subsidies are not actionable: (a) Provision of a social safety net for fishermen, including early retirement schemes, re-education, training or alternative employment assistance, unemployment relief, life insurance, support for the temporary suspension of fishing activities; (b) Fisheries research, including data collection, surveys, data analysis, and stock monitoring, sampling and assessment;[8] (c) Fisheries stock enhancement, including marine conservation and protection, marine environment restoration, protection and development of a Member's own archipelagic waters[9], artificial reefs, hatcheries for breeding and by-catch mitigation devices;[10] (d) Improving vessel and crew safety[11], provided that the improvement is undertaken to comply with international		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
or domestic standards; and there is no increase in fishing capacity[12], such as the volume of fish hold or engine power of a vessel subject to such programme; (e) Construction and maintenance of general infrastructure for fishing activities, such as wharves and fishing ports and related facilities, roadways, water and sanitary waste systems, the provision of housing and other forms of community development infrastructure;[13] (f) Short-term emergency relief, recovery adjustment programmes and replacement of fishing capacity following natural or environmental disasters, provided that fishing fleet capacity is not restored beyond its pre-disaster state[14], except that special flexibility shall be given to developing countries pursuant to Article 5 of this Annex; (g) Assistance and user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes, and other expenses related to administration and operation of fishery management programmes, including allocation and monitoring of licences, permits, quotas, vessel numbers and catch returns.		

[7]Vessels decommissioned for legitimate research and training purposes, with no commercial functions, need not comply with the conditions of this exception.

[8]This is limited to fisheries research that does not result in commercial sale of the fish harvested.

[9]Archipelago is as defined in Article 46 of UNCLOS 1982, and calculation of the archipelagic baselines is defined in Article 47 thereof.

[10]This provision is aimed at measures that enhance marine resources rather than capacity to harvest those resources.

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
[11]Programmes or activities aimed primarily at vessel modernisation or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph. [12]Fishing capacity is understood here to mean the ability of a vessel or fleet of vessels to catch fish. [13]General infrastructure for fishing communities shall also not be considered to be regionally specific under the ASCM. [14]Restoration to pre-disaster state is not intended to restore a pre-disaster state of over-capacity.]] [[II. Notwithstanding the provisions of Article I, and subject to the provision of Article V: (a) … (f) Nothing in Article I shall prevent a Member from providing subsidies referred to in Article I that do not otherwise fall under the provisions of this Article or Article III, provided that (1) the subsidies are exclusively in support of fisheries conducted within waters subject to its jurisdiction, and (2) the annual amount of such subsidies per Member provided under this exception does not exceed X% of the average landed value of fish harvested in these waters for the three preceding years for which data is available.]]		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
[[II. Notwithstanding the provisions of Article I, and subject to the provision of Article V: (a) For the purposes of Article I.1(a), subsidies exclusively for improving fishing or service vessel and crew safety shall not be prohibited, provided that: (1) such subsidies do not involve new vessel construction or vessel acquisition; (2) such subsidies do not give rise to any increase in marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn; and (3) the improvements are undertaken to comply with safety standards. (b) For the purposes of Articles I.1(a) and I.1(c) the following subsidies shall not be prohibited: subsidies exclusively for: (1) the adoption of gear for selective fishing techniques; (2) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing; (3) compliance with fisheries management regimes aimed at sustainable use and conservation (e.g., devices for Vessel Monitoring Systems); provided that the subsidies do not give		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
rise to any increase in the marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn. (c) For the purposes of Article I.1(c), subsidies to cover personnel costs shall not be interpreted as including: (1) subsidies exclusively for re-education, retraining or redeployment of fishworkers[12] into occupations unrelated to marine wild capture fishing or directly associated activities; and (2) subsidies exclusively for early retirement or permanent cessation of employment of fishworkers as a result of government policies to reduce marine wild capture fishing capacity or effort. (d) Nothing in Article I shall prevent subsidies for vessel decommissioning or capacity reduction programmes, provided that: (1) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world; (2) the fish harvesting rights associated with such vessels,		

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whether they are permits, licences, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned; (3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and (4) the fisheries management system in place includes management control measures and enforcement mechanisms designed to prevent overfishing in the targeted fishery. Such fishery-specific measures may include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, such as individual transferable quotas. (e) Nothing in Article I shall prevent governments from making user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes. [12]For the purpose of this Agreement, the term "fishworker" shall refer to an individual engaged in marine wild capture fishing and/or directly associated activities.]]		

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SPECIAL AND DIFFERENTIAL TREATMENT		
[[27*bis*.1The prohibition of Article 3 *bis* shall not apply to fisheries subsidies provided by a developing country Member where such subsidies do not exceed the *de minimis* level for that Member. [To be elaborated, including the possibility of further flexibilities for LDCs.]]] [[6.1 Except where provided otherwise, the provisions of this Annex do not apply to a developing country Member for as long as such Member does not, as from the entry into force of this Annex, increase its fishing capacity, to an extent that it is an impediment to the sustainable exploitation of fishery resources worldwide. 6.2 Any Member can refer the matter whether such an impediment is taking place or is imminent, as the case may be, to the Permanent Group of Experts established under Article 24.3 of the SCM Agreement.]] [[2. Notwithstanding the provisions of paragraph 1 of this Annex, developing country Members may grant subsidies as set out under paragraph 1.1 to fishing vessels with an overall length of 20 metres or less and whose main area of operation is within that Member's area of fisheries jurisdiction extending up to 12 nautical miles from the baselines. Members shall, through their domestic law, ensure that this requirement is enforced after the subsidy is granted. 3. A developing country Member may nevertheless grant such subsidies as are listed in paragraph 1.1 to fishing vessels with an overall length of 28 metres or less,	III.1 The prohibition of Article 3.1(c) and Article I shall not apply to least-developed country ("LDC") Members. III.2 For developing country Members other than LDC Members: (a) Subsidies referred to in Article I.1 shall not be prohibited where they relate exclusively to marine wild capture fishing performed on an inshore basis (i.e., within the territorial waters of the Member) with non-mechanized net-retrieval, provided that (1) the activities are carried out on their own behalf by fishworkers, on an individual basis which may include family members, or organized in associations; (2) the catch is consumed principally by the fishworkers and their families and the activities do not go beyond a small profit trade; and (3) there is no major employer-employee relationship in the activities carried out. Fisheries management measures aimed at ensuring sustainability, such as the measures referred to in Article V, should be implemented in respect of the fisheries in question, adapted as necessary to the particular situation, including by making use of indigenous fisheries management institutions and measures. (b) In addition, subject to the provisions of Article V: (1) Subsidies referred to in Articles I.1(d), I.1(e) and I.1(f) shall not be prohibited. (2) Subsidies referred to in Article I.1(a) and I.1(c) shall not	**There is general agreement among delegations that new fisheries subsidies disciplines must include provisions for substantial special and differential treatment** for developing Members. There are different views, however, over the nature and extent of such provisions, as discussed below. Concerning **least-developed country ("LDC") Members, most if not all delegations consider appropriate the proposed blanket exception** for subsidies granted by LDCs. **Concerning developing Members other than LDCs,** delegations generally agree that the S&D **provisions should not amount to a "blank check"**, i.e., an unlimited and unconditional right to provide fisheries subsidies. **Views differ considerably, however, as to which types of otherwise prohibited subsidies should be permitted, as well as the respective conditionalities** that should be attached thereto. In this regard, **a large number of delegations, especially developing country delegations, consider the draft provisions to be too narrow, and subject to too many conditionalities**, to be usable in practical terms. Some of these delegations take the view that developing countries did not cause the current situation of global overfishing, and also argue that there are underexploited fisheries resources in their waters, for which reasons *inter alia* developing Members should be allowed to provide fisheries subsidies in the context of their development policies, given the importance in their economies of fishing and fisheries products in terms of food, employment and income. **Other delegations take the view that the difficulties identified in the S&D text stem from the excessive breadth of the prohibition**, and that a major part of the solution would be in appropriately narrowing the prohibition. **Another group of delegations, however, considers that the draft text strikes an appropriate**

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for the purpose of exploiting underutilised fish stocks within its area of fisheries jurisdiction, provided that any build-up of fishing capacity is consistent with a comprehensive resource management plan based on scientific advice for the sustainable management and exploitation of such fish stocks. The management and exploitation plan shall have been approved by an internationally recognised competent management or scientific body and the approved plan shall be notified in accordance with paragraphs 5, 6 and 7 of this Annex.]] [[4.1 Notwithstanding the provisions set out in Articles 2 and 3, developing country Members shall be allowed to grant or maintain fisheries subsidies to: (a) fishing activities related to the subsistence and livelihood of the fishermen and their families[7], including the provision of goods and services by a government under the form of infrastructure, other than general infrastructure, benefiting those fishermen and their families; (b) fishing vessel construction, repair or vessel modernization or gear acquisition or improvement, provided that the purpose is to exploit: (i) fisheries in the Member's maritime jurisdiction; (ii) or high seas fishing quotas or any other rights established by a regional fisheries management organization (RFMO) or a regional fisheries management arrangement.	be prohibited provided that they are used exclusively for marine wild capture fishing employing decked vessels not greater than 10 meters or 34 feet in length overall, or undecked vessels of any length. (3) For fishing and service vessels of such Members other than the vessels referred to in paragraph (b)(2), subsidies referred to in Article I.1(a) shall not be prohibited provided that (i) the vessels are used exclusively for marine wild capture fishing activities of such Members in respect of particular, identified target stocks within their Exclusive Economic Zones ("EEZ"); (ii) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level; and (iii) that assessment has been subject to peer review in the relevant body of the United Nations Food and Agriculture Organization ("FAO")[83]. III.3 Subsidies referred to in Article I.1(g) shall not be prohibited where the fishery in question is within the EEZ of a developing country Member, provided that the agreement pursuant to which the rights have been acquired is made public, and contains provisions designed to prevent overfishing in the area covered by the agreement based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at	**balance** between substantial flexibility for developing Members to provide subsidies in keeping with their development needs, and necessary conditionalities to ensure that the subsidized activities are sustainable. Certain delegations emphasize that all Members should accept a meaningful level of disciplines, as all would benefit from doing so given that the problems of overcapacity and overfishing are global, threatening the long-term livelihoods of fishers in all countries. Regarding the exception **for subsidies to subsistence-oriented fisheries** (Article III.2(a)), **some developing country delegations consider that this category is drafted too narrowly and in overly-restrictive terms**. They consider that it should be broadened beyond subsistence-oriented fisheries, to **cover all artisanal fisheries and small-scale commercial fisheries**. To this end, some suggest removing the references to the employer-employee and family relationships, consumption of the catch, small profit trade, and lack of mechanization. Other suggestions in this regard are that management conditionalities remain indicative but that the references to international management instruments be replaced by references to indigenous institutions. **Other delegations oppose any broadening of this exception**. They indicate that they can accept what they consider to be an almost unconditional carve-out for this category of fisheries subsidies only because the category itself is very narrowly defined. For these delegations, any **expansion of this category would need to be accompanied by stronger management conditionalities**. Concerning the other **exceptions proposed for non-LDC developing Members** (Article III.2(b)(1)-(3)), here as well **many developing country delegations object to the limitations contained in the draft text**. In particular, many consider that drawing a distinction on the basis of vessel length as to the kinds of subsidies that would be permitted and the conditionalities that would be attached is inappropriate. Some suggest instead criteria based on the characteristics of the fishing activities. Some consider that **if boat length is to be used, it should be expanded** from

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(c) fuel, bait and/or ice supplied for fishing activities. [7]Those activities are performed at an in-shore basis with non-automatic net-retriever devices, provided that (a) the activities are carried out by fishermen, on an individual basis or organized in associations, including, but not necessarily, the family members; (b) the basic scope of the activities encompasses both family livelihood and a small profit trade; and (c) there is no major employer-employee relationship on the activities carried out.]] [[5. For purposes of this Annex, in addition to the provisions of Articles 27 of this Agreement and paragraph 4 of Article 3 and paragraph 3 of Article 4 of this Annex, developing country Members may employ the following treatment: 5.1 The vessel reduction requirement in paragraph (a)(ii) of Article 1, which provide that "the gross tonnage of the new vessel is reduced by at least 50 per cent of the sum of the gross tonnage of the withdrawn vessels in the same fishery category" shall not apply to developing country Members if such a developing country Member possesses monitoring, controlling, and surveillance measures to ensure that the areas of fishing operations of such vessel, newly acquired or constructed under the subsidy program, are within its territorial waters or exclusive economic zones. 5.2 The requirements for fisheries management control measures for small-scale fisheries, provided in paragraph (c)(iv) of Article 2, shall not apply to developing country Members during the period of (_) years after the date of entry into force of this Annex. [Provisions for a developing country Member, which possesses export	ensuring the sustainable use and conservation of marine species, such as, *inter alia*, the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* ("*Fish Stocks Agreement*"), the *Code of Conduct on Responsible Fisheries of the Food and Agriculture Organization* ("*Code of Conduct*"), the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* ("*Compliance Agreement*"), and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. These provisions shall include requirements and support for science-based stock assessment before fishing is undertaken pursuant to the agreement and for regular assessments thereafter, for management and control measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the host Member and to relevant international organizations, and for such other measures as may be appropriate. III.4 Members shall give due regard to the needs of developing country Members in complying with the requirements of this Annex, including the conditions and criteria set forth in this Article and in Article V, and shall establish mechanisms for, and facilitate, the provision of technical assistance in this regard, bilaterally and/or through the appropriate international organizations. [83] If the Member in question is not a member of the FAO, the peer review shall take place in another recognized and competent international organization.	the 10 meters in the draft text **to 24-25 meters**, such that subsidies could be provided to operate as well as to construct or modify such longer vessels. Concerning the area of operations within which subsidization would be permitted, some developing country delegations consider that the **proposed limitation to within the Member's exclusive economic zone ("EEZ") is inappropriate,** *inter alia* because this term has no legal status for certain WTO Members, because of the existence of bilateral fishing agreements between neighbouring Members, and because this parameter is artificial where straddling and highly migratory fish stocks are concerned. In this context, **certain delegations have proposed that developing Members also be permitted to subsidize both vessel construction and operating costs for high seas fishing operations** under quotas of regional fisheries management organizations, and for fishing under access arrangements. Some developing country Members have indicated support for this proposed allowance of subsidies for fishing outside of a Member's EEZ, but only in cases where the targeted stock is highly migratory or straddling, and is managed in accordance with international fisheries instruments and for which specific quotas or limits have been allocated. Among the delegations seeking various relaxations of the definitions and restrictions on the different categories of S&D treatment in the draft text, **some have stressed that the proposed general discipline in Article IV and the proposed management conditionalities in V would impose sufficient checks and balances**, and thus would justify the reduction of restrictions that they seek. **Other delegations consider that the multi-tiered approach and the overall level of disciplines in the S&D provisions in the Chairman's text are appropriate.** A number of questions and suggestions for clarification have been raised, however. These include questions as to the usefulness of boat length as a parameter for calibrating subsidy disciplines, because of difficulty of enforcement and ease of circumvention, and concerns over whether the conditions and criteria as drafted are sufficient to ensure that any new capacity built with subsidies not go beyond a

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competitiveness defined in Article 27.6 of the ASCM, relating to products originated from marine capture fisheries, will be further developed.]]] [[5.1 Notwithstanding the provisions of the ASCM and Articles 2, 3, and 4 of this Annex, a developing country Member shall be allowed to grant or maintain fisheries subsidies to its artisanal fisheries activities[15], defined herein as those which: (a) Operate within its territorial waters and mostly close to shore; (b) Use vessels of [proportional ratio between gross tonnage and engine power] and which utilize primarily manual gear; and (c) Are operated by individual fishermen or family members for the purpose of subsistence or local trade. Such subsidies are not actionable. 5.2 Notwithstanding the provisions of the ASCM and Articles 2, 3, and 4 of this Annex, a developing country Member shall be allowed to grant or maintain subsidies to its small-scale fisheries for the purpose of fishing vessel construction, repair, or modernization, or gear acquisition or improvement, or fuel, or bait, or ice. For the purposes of this section, small-scale fisheries shall be defined as those that: (a) Are below 20 meters dimension; and (b) Operate within the Member's 12 nautical mile limit or the Member's own archipelagic waters.		sustainable level in relation to the targeted fish stocks. **Many of these delegations see a clear distinction between allowing developing Members to provide subsidies to build up their own fleets to exploit their own fish stocks on the one hand, and allowing them to subsidize operating costs for those fleets, on the other hand**. A number of these Members **also reject the idea that any Member, developing or developed, be allowed to provide subsidies for fishing on the high seas**, and thus consider the treatment of this issue in the Chairman's text to be appropriate. **Concerning the conditioning of most S&D provisions in the Chairman's text on the management requirements in Article V, many developing country delegations consider that the management requirements are so strict that the S&D provisions could become difficult if not impossible to use in practice.** In this regard, a number of developing country delegations have proposed changes to these requirements to make them more flexible and less prescriptive. One such suggestion is **a "tiered" approach to fisheries management by developing Members**, with indicative management for subsistence fisheries, limited management requirements for "small-scale commercial" fisheries, and full management requirements only for larger-scale commercial fisheries. It also has been suggested that the management conditionalities pertaining to subsidies for port infrastructure, income and price support and subsidies to processing activities should be voluntary, rather than mandatory. Certain **other delegations have proposed** (*see*, TN/RL/GEN/155/Rev.1) **removing from the text altogether the links between S&D provisions and management conditionalities based on internationally-recognized best practices, and replacing them with references to indigenous management institutions.** Several delegations have concerns over the requirements relating to "prior scientific status assessment" of stocks, and peer review thereof, in relation to subsidies for the acquisition, construction, modernization, etc. of larger vessels. Some note that in multi-species tropical fisheries, the concept of "identified target stocks" often is not relevant or applicable. Others indicate that for systemic

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Provided that they meet the contingencies of Article 5.5 of this Annex, such subsidies are not actionable. 5.3 Notwithstanding the provisions of the ASCM and Articles 2, 3, and 4 of this Annex, a developing country Member shall be allowed to grant or maintain subsidies for the purpose of fishing vessel construction, repair, or modernization, or gear acquisition or improvement, or fuel, or bait, or ice, provided that the purpose is to exploit: (a) fisheries in the Member's own Exclusive Economic Zone; or (b) rights held by the Member in high seas fishing quotas or any other rights established by a regional fisheries management organization (RFMO) or a regional fisheries management arrangement. Provided that they meet the contingencies of Article 5.6, of this Annex such subsidies are not actionable. 5.4 Upon the request of developing country Members, and with reference to guidance provided by the UN Fish Stocks Agreement, developed country Members shall provide technical assistance on mutually agreed terms and conditions to developing country Members to allow them to participate fully in any RFMO adjacent to their exclusive economic zone or archipelagic waters. 5.5 Fishing subsidies meet the definition of Article 5.2 of this Annex contingent on a showing that: (a) The Member has a fishery management plan in place that is effectively monitored and adequately enforced; (b) The fishery does not adversely affect resources governed by the fishery management plan; and		reasons, they cannot agree to reviews of Members' stock assessments being conducted by an outside organization, the FAO. (*See* also comments in Fisheries Management section.) **Some other delegations, including certain developing country delegations**, while recognizing that the conditionalities are demanding, particularly for low-income developing Members, consider that **strong management requirements must be the basis for any exceptions**, whether general exceptions or S&D, but consider that the provisions as drafted could be streamlined and clarified. Yet **others are of the view that the management provisions as drafted build in sufficient flexibility to accommodate the needs and realities of all Members, developing as well as developed.** **For many developing country delegations, government-to-government payments for access are important and they applaud the exemption in the Chairman's text of subsidies arising from the onward transfer of such access rights**. Some delegations have suggested that the text in this area should refer not only to EEZs, but also to multilaterally-managed fisheries. A proposal from three delegations (*see*, TN/RL/GEN/155/Rev.1) suggests amending the Chairman's text to explicitly indicate that developing countries have the right to access the waters of other developing countries. **Regarding technical assistance, many delegations have indicated that this is a critical need, and have welcomed the inclusion in the draft text** of a provision addressing it. Many stressed the importance of obtaining technical and financial assistance specifically for establishing and operating fisheries management systems. **A number of developing country delegations have indicated that the draft provision should be strengthened**, and a group of delegations submitted a proposal (*see*, TN/RL/GEN/158) to redraft the provision in the Chairman's text so as to, *inter alia*, require the provision of technical assistance to assist developing Member to implement their obligations under new disciplines. Some delegations are concerned,

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(c) The small-scale fishing activities will not adversely affect fishery resources of other Members or the resources governed by relevant RFMO's. 5.6 Fishing subsidies meet the definition of Article 5.3 of this Annex contingent on a showing that the developing country Member has: (a) underexploited resources in its EEZ; or (b) a right to high seas fishing quotas or extra quota in a RFMO. 5.7 Upon the request of developing country Members, developed country Members shall provide technical assistance to developing country Members on mutually agreed terms and conditions to develop the capacity to initiate, implement and enforce compliance with a fishery management plan in keeping with the FAO Code of Conduct on Responsible Fisheries and adequate to provide the showing required by Articles 5.3, 5.4 and 5.5 of this Annex. [15]Artisanal fisheries activities shall include on-board handling (including but not limited to provision of cool boxes, fish holds and other measures to encourage hygiene and sanitation and to preserve fish quality) and post-harvest handling.]] [[X.1 Notwithstanding Article Y [prohibition] and subject to the conditions set forth in this Article, developing country Members shall be allowed to maintain or grant the following fisheries subsidies: (a) for fishing vessel construction,		however, over the prospect that provision of technical assistance to implement the management conditionalities for providing subsidies would constitute, in effect, technical assistance for subsidizing. Other delegations, while **recognizing the legitimate needs of developing Members for technical assistance, wish to ensure that any provisions in the new disciplines take full account of existing mechanisms and institutions**. Some delegations consider that the draft text strikes the right balance.

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acquisition, repair, modification or modernization, including gear acquisition or improvement; or (b) to support the operation of fishing fleets (such as supply of fuel, bait or ice); or (c) to fishing activities related to the subsistence and livelihood of the fishermen and their families.[1] X.2 The subsidies referred to X.1 (a) and (b) above may be only maintained or granted when the Member specifically determines that its domestic fishing capacity[2] is reasonably lower than necessary to harvest a sustainable allowable catch[3] of: (a) non-overexploited stocks[4] located exclusively in the Member's maritime areas;[5] or (b) fishing quotas[6] or any other rights[7] agreed within the framework of a regional fisheries management organization or arrangement, which operates under a fisheries management system that is based on relevant international standards and practices, provided that the Member is a coastal State in the managed region. X.3 A Member that grants or maintains subsidy programmes pursuant to X.1 (a) or (b) shall ensure that, even if fully utilized, the resulting fishing capacity[8] is below than necessary to harvest a sustainable allowable catch of the exploited stock and results in no more than moderate exploitation so that limited potential for further non-subsidized expansion of production remains.		

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X.4 The fisheries subsidies referred to in paragraph X.1 (a) or (b) shall be subject to compliance with the provisions on notification and transparency in Article XXX.[9]		

[1] Those activities are performed exclusively within the Territorial Sea, with non-automatic gear-retriever devices, provided that (a) the activities are carried out by fishermen, on an individual basis or organized in associations, including, but not necessarily, the family members; (b) the basic scope of the activities encompasses both family livelihood and a small profit trade; and (c) there is no major employer-employee relationship on the activities carried out.

[2] "Domestic fishing capacity" means the capacity of fishing vessels flagged by a Member, owned by companies constituted under the domestic law of that Member, and operated by crews the members of which are in the majority nationals of that Member.

[3] "Sustainable allowable catch" means a total allowable catch below levels which are capable of producing a long term maximum sustainable yield, based on the best scientific evidence available.

[4] "Overexploited stocks" shall mean all fish stocks except those target stocks that are being exploited below levels which are capable of producing a long term maximum sustainable yield (including the ones with no or almost no fishing activities), based on the best scientific evidence available.

[5] "Maritime areas" encompasses the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf, as defined in the United Nations Convention of the Law of the Sea (UNCLOS).

[6] The term "quotas" means enforceable quantitative limits, established through scientific assessment, applicable on fish volumes for specified period.

[7] The term "any other rights" means the Member's rights to fish stocks (including those with no or almost no fishing activities), that are being exploited below levels which are capable of producing a long term maximum sustainable yield and for which no specific quota has been established but are within constant monitoring by the relevant regional fisheries organizations or arrangements.

[8] "Resulting fishing capacity" means the total capacity authorized by the Member for the fishing of a stocks or group of stocks in its maritime areas, namely the domestic fishing capacity

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plus the capacity of other vessels authorized by the Member to fish in its maritime areas. [9] Additional flexibilities should be provided for in the case of subsidies granted by least developed countries, such as longer implementation periods under "Transitional Provisions". Provisions should also be made for technical assistance to developing countries that need it in order to comply with the provisions on notification.]] [[III.1 The prohibition of Article 3.1(c) and Article I shall not apply to least-developed country ("LDC") Members. III.2 For developing country Members other than LDC Members: (a) Subsidies referred to in Article I.1 shall not be prohibited where they relate exclusively to marine wild capture fishing performed within the territorial waters of the Member without deploying any of the internationally recognized destructive fishing methods, provided that the activities are carried out by fish workers, on an individual basis or organized in associations or on employment basis. It is desirable that adequate measures for ensuring sustainability and to prevent environment degradation are adapted as necessary to the particular situation, by making use of indigenous fisheries management institutions and measures. (b) In addition,: (1) Subsidies referred to in Articles I.1(d), I.1(e) and I.1(f) shall not be prohibited.		

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(2) Subsidies referred to in Article I.1(a) and I.1 (c), shall not be prohibited provided that: (i) they are used exclusively for marine wild capture fishing employing decked vessels not greater than 24 meters or 82 feet in length overall, or undecked vessels of any length; and (ii) adequate measures for ensuring sustainability and to prevent environment degradation are adapted as necessary to the particular situation, by making use of indigenous fisheries management institutions and measures. (3) For fishing and service vessels of such Members other than the vessels referred to in paragraph (b) (2), subsidies referred to in Article I.1(a) and Article I.1(c) shall not be prohibited provided that (i) the vessels are used for marine wild capture fishing activities of such Members in respect of particular, identified target stocks within their Exclusive Economic Zones ("EEZ"); (ii) the vessels with fishing quotas or any other rights established by a regional fisheries management organization (RFMO) or a regional fisheries management arrangement; (iii) the vessels for fishing activities in		

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accordance with access arrangements; (iv) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level. III.3 Subsidies referred to in Article I.1(g) shall not be prohibited where the fishery in question is within the EEZ of a developing country Member, provided that (i) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level; (ii) that assessment has been subject to peer review in the SCM Committee; (iii) the agreement pursuant to which the rights have been acquired is made public and (iv) contains provisions designed to prevent overfishing in the area covered by the agreement based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species, such as, *inter alia*, the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* ("*Fish Stocks Agreement*"), the *Code of Conduct on Responsible Fisheries of the Food and Agriculture Organization* ("*Code of Conduct*"), the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* ("*Compliance Agreement*"), and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. These provisions shall include requirements and support for science-based stock assessment before fishing is undertaken pursuant to the agreement and for regular assessments thereafter, for management and control		

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measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the host Member and to relevant international organizations, and for such other measures as may be appropriate. III.4 Members shall give due regard to the needs of developing country Members in complying with the requirements of this Annex, including the conditions and criteria set forth in this Article and in Article V, and shall establish mechanisms for, and facilitate, the provision of technical assistance in this regard, bilaterally and/or through the appropriate international organizations.]] [[III.4.1 Members recognize that developing country Members, especially least-developed countries and small, vulnerable economies, will face serious challenges in complying with the requirements of this Annex, in particular as regards the conditions and criteria set forth in this Article and in Articles V ("Fisheries Management") and VI ("Notifications and Surveillance"). III.4.2 Members recognize that the ability of developing country Members, especially least-developed countries and small, vulnerable economies, to adopt, implement and sustain measures necessary for complying with the requirements of this Annex may depend on the effective and timely provision of technical assistance by Members to developing country Members in accordance with their demands and needs. Members recognize that developing country Members will have different implementation needs and capacities and to this end, developing countries which indicate a need for technical assistance shall be provided with such assistance through bilateral processes, through new and/or existing WTO technical assistance and support mechanisms and through other mechanisms of relevant international and regional organisations. III.4.3 The Committee on Subsidies and Countervailing Measures shall establish a Sub-Committee dealing		

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exclusively with issues related to technical assistance and support programs under this Annex, specifically as regards fisheries management systems and measures related thereto. The Sub-Committee shall coordinate the requests from developing country Members for technical assistance and support programs and shall review the effectiveness of the technical assistance provided to developing country Members.[2] The Sub-Committee shall periodically report its findings to the Committee on Subsidies and Countervailing Measures and the Committee on Trade and Development.[3] _____ [2]The Sub-Committee, in consultation with the developing Member concerned, shall identify any additional needs of that Member for technical assistance and every effort shall be made to ensure that appropriate technical assistance is provided to that Member. The role of the Sub-Committee shall not be to determine the validity of a developing country's request for technical assistance. [3]Future discussion would be required on the procedures to be followed if a developing country member does not receive the requested technical assistance.]]		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
	OTHER DISCIPLINES	
[[[Contextual heading: Special provisions] 4. Members shall through their domestic law ensure that: 4.1 Any fishing vessel subject to a decommissioning programme is scrapped or otherwise permanently and effectively prevented from being used for fishing purposes anywhere in the world; and 4.2 any funds or disbursements to a recipient benefiting from any such decommissioning programme are not reinvested in fishing vessels by the recipient.]] [[Fishery Adverse Effects 5.1 No Member should cause, through the use of any fishery subsidy referred to in Article 3 and Article 4.1 (b) and (c), fishery adverse effects to the interest of other Members. 5.2 For the purpose of this Annex, a fishery adverse effect shall be deemed to exist if: (a) the Member does not have a national fisheries management system in place, which may include, *inter alia*: conservation and management measures based on the best scientific evidence available; fisheries management control measures (fisheries monitoring, surveillance, control and enforcement mechanisms); mechanisms established	General Discipline on the Use of Subsidies IV.1 No Member shall cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, depletion of or harm to, or creation of overcapacity in respect of, (a) straddling or highly migratory fish stocks whose range extends into the EEZ of another Member; or (b) stocks in which another Member has identifiable fishing interests, including through user-specific quota allocations to individuals and groups under limited access privileges and other exclusive quota programmes. The existence of such situations shall be determined taking into account available pertinent information, including from other relevant international organizations. Such information shall include the status of the subsidizing Member's implementation of internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at the sustainable use and conservation of marine species, such as, *inter alia*, the *Fish Stocks Agreement*, the C*ode of Conduct*, the *Compliance Agreement*, and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. IV.2 Any subsidy referred to in this Annex shall be attributable to the Member conferring it, regardless of the flag(s) of the vessel(s) involved or the application of rules of origin to the fish involved.	**Most delegations support the basic purpose of this Article, i.e., providing for recourse where a Member's subsidies cause harm to another Member's fishing interests.** Some see this as a key provision of the proposed disciplines. **Many participants consider, however, that the provision should be clarified in a variety of ways**, including by defining the concepts of "harm to" and "identifiable fishing interests", as well as the concepts of capacity and overcapacity, with some suggesting incorporating physical measurements such as gross tonnage, or other concepts such as production capacity of the fleet or vessel. Some participants also suggest broadening this provision to take account of effects on transboundary fish stocks, discrete high seas fish stocks, or possibly all fish stocks. Some participants suggest deleting overcapacity as a form of adverse effects, on the basis that overcapacity only relates to *potential* negative effects of subsidies, and further that as long as the subsidising Member operates sound management, any overcapacity resulting from subsidization would not lead to negative effects on fish stocks. Others consider that under various WTO agreements potential harm can be the basis for action, and that in the area of fisheries overcapacity itself is a present rather than a potential negative effect. Other issues identified were who would determine the existence of situations of overcapacity, depletion or harm to the concerned fish stocks, and the implications of the provision in respect to harm to the fishing interests of non-WTO Members. Some delegations queried whether this provision was intended to define fisheries adverse effects or actionable subsidies in the fisheries context, and if so what relationship if any this provision had to the provisions on actionable subsidies in the SCM Agreement. In this context, some pointed to their own prior proposals in these areas.

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to identify and quantify fishing capacity; vessel registration and licensing system; limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels; and timely and reliable statistics available on catch and fishing effort in sufficient detail to allow sound statistical analysis[8]; or (b) the volume of the total catch by a Member of any "endangered specie"[9] and the number of vessels used in those fishing operations are not decreasing, as compared to the total catch volume and number of vessels it had during the previous year. [...] <u>Prevention of circumvention</u> 8.1 Members shall not have recourse to rules of origin (preferential or non-preferential), the flag of a vessel and access rights, among others, as a means to undermine the objectives set out in the preamble and to circumvent their obligations under this Annex. [8] Where relevant international standards and practices exist, Members shall use them, or the relevant parts of them, as a basis for their national fisheries management systems. [9] For the purposes of this Annex, "endangered specie" shall mean all species except those that are (a) in a very healthy situation, with no or almost no fishing activities, or that are being exploited below or at a calculated sustainable allowable catch, based on the best scientific information available; or (b) under the administration of a RFMO or a regional fisheries management arrangement, which operate under a fisheries management system that is based on relevant international standards and practices.]]		

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[[Serious Prejudice 3. In addition to the circumstances provided for in Article 6.3 of the ASCM, serious prejudice may arise in the case of subsidies that qualify for the exceptions in Article 2.1 [and Article 4] of this Annex, where the effect of the subsidy is: (a) an increase in the subsidizing Member's capacity to produce the like product; or (b) an increase in the subsidizing Member's relative share of production of the like product, as compared to non-subsidized production over a representative period sufficient to demonstrate clear trends in production. [...] Anti-circumvention 6. For purposes of this Annex, a prohibited subsidy is attributable to the Member conferring the subsidy, regardless of the flag of the vessel harvesting the fish or the application of rules of origin to such fish.]] [[Fisheries subsidies actionable 3.1 No Member shall cause, through the use of any fishery subsidy included in paragraphs 1 and 2 of ASCM Article 1, adverse effects to the interests of other Members as defined in ASCM Article 5 or adverse effects to fishery resources as defined in Article 7.1 to this Annex, except as otherwise provided in this Annex. [...] Actionable Subsidies: Adverse Effects		

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7.1 For purposes of ASCM Part III, no Member should cause, through the use of any fishery subsidy referred to in Article 3 of this Annex, adverse effects to the interests of other Members, which in addition to adverse effects as defined in Article 5 of the ASCM, shall also include adverse effects to a fishery resource[16], *i.e.*: (a) injury to the fishery resource of another Member;[17] (b) nullification or impairment of benefits accruing directly or indirectly to other Members under GATT 1994, in particular the benefits of concessions bound under Article II of GATT 1994, as a result of an effect on a fishery resource; (c) serious prejudice to a fishery resource of another Member. 7.2. The examination of the adverse effects to a fishery resource from fishery activity shall include an evaluation of all relevant fishery resource factors, including: (a) the total catch or production or trading (in volume terms) by the Member of target species, with breakdown by fishery, and the number of vessels used in those catching or production operations, with breakdown by operated location areas;[18] (b) the criteria and scientific information used to set the status of the fishery; (c) whether the fishery in question is under management of a regional fisheries management organization or arrangement and which are the nature of the monitoring and the quantitative limits applicable to the Member; (d) national fisheries management plans in place, with sufficient information to enable Members to evaluate and to understand their framework and		

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operation; and (e) government-to-government payment for access by foreign vessels to fishing resources of a developing country's maritime jurisdiction or to quotas or any other rights established by any regional fishery management organization or arrangement ("access rights"), with breakdown by recipient country, total amounts paid, amounts received on the onward transfer of the access rights, fisheries data (in accordance with items (a) and (b) of this paragraph) and other relevant information. (f) information on the biological status of relevant marine ecosystems. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.[19] 7.3 Without prejudice of Article 6 of the ASCM, serious prejudice to a fishery resource in the sense of paragraph (c) of Article 7.1 of this Annex shall be presumed to arise when: (a) there is an increase in the subsidizing Member's capacity to produce a fishery product due to the subsidy; or (b) an increase in the subsidizing Member's relative share of production of a fishery product, as compared to non-subsidized production, over a representative period sufficient to demonstrate clear trends in production. 7.4 For purposes of assessment of adverse effects pursuant to Articles 7 and 8 of this Annex, the period of data collection normally should be at least three years, and should include the entirety of the period of data collection for the subsidy investigation. <u>Countervailing Measures: Determination of Injury to a</u>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
Fishery Resource 8.1. Members taking any countervailing duty measures under Part V of the ASCM shall do so only in accordance with the provisions thereof, except that where they avail themselves of the injury test in this Article of this Annex, they shall utilize any provisions specified in this Article of this Annex.[20] In particular, the following provisions shall apply to any investigations involving allegations of injury to a fishery resource: (a) With reference to Article 11.1, 11.4 and 11.6 of the ASCM, Members shall grant recognized consumer, industry and advocacy groups standing to submit a written application, and the authorities may decide to initiate an investigation without having received a written application by or on behalf of a domestic industry without needing to show that special circumstances exist for taking such action, it being recognized that injury to that Member's fishery resource may or may not be drawn to the attention of the Member by a domestic industry; (b) With reference to Article 11.2 of the ASCM, an application may refer the criteria in Article 11.2(iv) of the ASCM or the injury factors referred to in this Article of the Annex relating to injury to a fishery resource; (c) [Consider whether the definition of "interested parties" under Article 12.9 of the ASCM needs to broaden the parties included, and in particular to grant standing to recognized consumer, industry and advocacy groups as interested parties as well as applicants, with a possible amendment to Article 16 of the ASCM]; (d) With reference to calculation of the amount of a subsidy in terms of benefit to the recipient, in addition to the guidelines of Article 14 of the ASCM, Members may use a method consistent with the following:		

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….		
(e) With reference to determination of the amount of any countervailing duty pursuant to Article 19.4 of the ASCM, subsidization per unit of the subsidized and exported product, the amount of the subsidy may include all subsidies found to exist in relation to the harvesting and production of such a product, including subsidies to any vessels used in such harvesting … [give any other necessary examples].		
(f) …. [identify any other provisions that should be specific to a countervailing duty investigation involving allegations of injury to a fishery resource.]		
8.2 A determination of injury to a fishery resource in the sense of paragraph (a) of Article 7.1 of this Annex in a countervailing duty investigation shall be based on positive evidence and involve an objective examination of the volume of the fishery activity and its effect on the Member's fishery stocks, and the effect of the fishery activity on the fishery resource.[21]		
8.3 The examination of the injury to a fishery resource from fishery activity shall include an evaluation of the volume of the fishery activity, in particular whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or catch related to the product in the Member's waters. With regard to the effect on Member's fishery stocks, the investigatory authorities shall consider whether there has been a significant decrease in their fish stocks, or whether the effect of the fishery activity is to reduce stocks of migratory fisheries, reduce traditional hatching in the Member's fishing territories, or otherwise impair production or catch in the Member's waters. No one or several of these factors can necessarily give decisive guidance.[22]		
8.4. The examination of the injury to a fishery		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
resource from fishery activity shall include an evaluation of the effect of the fishery activity on all relevant fishery resource factors, including: (a) the total catch (in volume terms) by the Member of target species and by-catch, with breakdown by fishery, and the number of vessels used in those catching operations, with breakdown by operated location areas;[23] (b) the criteria and scientific information used to set the status of the fishery; (c) whether the fishery in question is under management of a regional fisheries management organization or arrangement and which are the nature of the monitoring and the quantitative limits applicable to the Member; (d) national fisheries management plans in place, with sufficient information to enable Members to evaluate and to understand their framework and operation; and (e) government-to-government payment for access by foreign vessels to fishing resources of a developing country's maritime jurisdiction or to quotas or any other rights established by any regional fishery management organization or arrangement ("access rights"), with breakdown by recipient country, total amounts paid, amounts received on the onward transfer of the access rights, fisheries data (in accordance with items (a) and (b) of this paragraph) and other relevant information. (f) information on the biological status of relevant marine ecosystems. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.[24] 8.5 Where fishery activities of more than one country		

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are simultaneously subject to a proceeding, the effects of such activities shall be cumulated only if they determine that the amount of subsidization established in relation to the imports from each country is more than *de minimis* as defined in paragraph 9 of ASCM Article 11 and the volume of imports from the fishery activity of each country is not negligible.[25] 8.6 It must be demonstrated that the fishery activity is, through the effects of subsidies, causing injury within the meaning of this section. The demonstration of a causal relationship between the fishery activity and injury to the fishery resource shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the subsidized fishery activity which at the same time are injuring the fishery resource, and the injuries caused by these other factors must not be attributed to the subsidized fishery activity.[26] 8.7 The effect of the subsidized fishery activity for a particular product covered by this Annex shall be assessed in relation to any fisheries resource covered by this Annex.[27] 8.8 For purposes of a countervailing duty proceeding under ASCM Part V, injury shall include the provisions of Articles 7 and 8 of this Annex, except that the fishery resource examined shall be exclusively within the Exclusive Economic Zone or archipelagic waters of the Member investigating injury to its fisheries resource. Injury for the purposes of a countervailing duty proceeding under ASCM Part V may also be determined according to the standards of Article 15 ASCM, even if it is a fishery subsidy covered by this Annex.[28] <u>Prevention of circumvention</u> 9. Members shall not have recourse to rules of origin (preferential or non-preferential), the flag of a vessel and access rights, among others, as a means to undermine the objectives set out in the preamble and to circumvent their		

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obligations under this Annex. _____ [16] Nothing in the concept of adverse effects to a fishery resource shall prejudice the ability of a panel to find adverse effects as otherwise defined in Article 5 of the ASCM for products covered by Articles 2 and 3 of this Annex. An adverse effect to the fishery resource is an alternative additional means of meeting the ASCM adverse effects standard. [17] The term "injury to the fisheries resource" has the same meaning in ASCM Part III and ASCM Part V, except as specified by paragraph 7.8 of this Annex. [18] For evaluation of stocks involving multi-species, for example in tropical waters, Members shall use the available scientific data to identify trends. [19] This provision parallels ASCM Article 15.4, using the factors contained in [our] 2 July 2007 Proposal. [20] This provision parallels ASCM Article 10. [21] This provision parallels ASCM Article 15.1. [22] This provision parallels ASCM Article 15.2. [23] For evaluation of stocks involving multi-species, for example in tropical waters, Members shall use the available scientific data to identify trends. [24] This provision parallels ASCM Article 15.4, using the factors contained in [our] 2 July 2007 Proposal. [25] This provision parallels ASCM Article 15.3 on the issue of multiple countries being investigated in a countervailing duty proceeding. [26] This provision parallels ASCM Article 15.5 on the need for proof of causation. [27] This provision parallels ASCM Article 15.6 on "like product". However, for purposes of the adverse effects to fisheries resource test, the "like product" determination would not be the same as in a standard injury test that measures trade effects to a like product. For example, a fishing activity for bluefin tuna that "injures" the dolphin resource of another Member could be covered by these provisions, despite the fact that the bluefin tuna fishing might not be "injuring" the bluefin tuna catch. [28] Nothing in the concept of adverse effects to fisheries resources or injury to a fishery resources shall prejudice the ability of a panel or investigating authority to find adverse effects or injury as otherwise defined in Article 5 and Part V of the ASCM. An adverse effect to a fisheries resource or injury to a fisheries resource is an alternative additional means of meeting the traditional adverse effects or injury standard of Part III and Part V of the ASCM.]]		

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[[Fishery adverse effects XX.1 No Member should cause, through the use of any fishery subsidy referred to in Article Z [exceptions] and Article X.1 (a) and (b), fishery adverse effects. XX.2 For the purpose of this Annex, a fishery adverse effect shall be deemed to exist if: (a) the Member does not have an effective national fisheries management system[10] in place; or (b) the subsidy targets overexploited stocks. [10]National fisheries management system may include, *inter alia*, conservation and management measures based on the best scientific evidence available; fisheries management control measures; mechanisms established to identify and quantify fishing capacity; vessel registration and licensing system; limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels; and timely and reliable statistics available on catch and fishing effort in sufficient detail to allow sound statistical analysis. Where relevant international standards and practices exist, such as the FAO Code of Conduct for Responsible Fisheries of 1995, Members shall use them, or the relevant parts of them, as a basis for their national fisheries management systems.]]		
[[IV.1 No Member shall cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, depletion of or harm to, or creation of overcapacity in respect of, (a) straddling or highly migratory fish stocks whose range extends into the EEZ of another Member. The existence of such situations shall be determined taking into account available pertinent information, including from other relevant international organizations. IV.2 Any subsidy referred to in this Annex shall be attributable to the Member conferring it, regardless of the		

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flag(s) of the vessel(s) involved or the application of rules of origin to the fish involved.]]		

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FISHERIES MANAGEMENT		
[[2. Governmental activity directly associated with the creation and implementation of fisheries management systems[4], and the enforcement of fisheries management rules shall not be treated as fisheries subsidies. [4]This comprises the establishment and administration of management systems (including allocating and monitoring fishing licences, permits, quota, vessel numbers and catch returns); adjusting management settings within an existing management system; and developing amendments or additions to the existing management system.]] -- *See also*, General exceptions section. [[3. A developing country Member may nevertheless grant such subsidies as are listed in paragraph 1.1 to fishing vessels with an overall length of 28 metres or less, for the purpose of exploiting underutilised fish stocks within its area of fisheries jurisdiction, provided that any build-up of fishing capacity is consistent with a comprehensive resource management plan based on scientific advice for the sustainable management and exploitation of such fish stocks. The management and exploitation plan shall have been approved by an internationally recognised competent management or scientific body and the approved plan shall be notified in accordance with paragraphs 5, 6 and 7 of this Annex.]] -- *See also*, Special and differential treatment section. [[2.3 Government funding of services directly related to fisheries management, including data collection and	V.1 Any Member granting or maintaining any subsidy as referred to in Article II or Article III.2(b) shall operate a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent overfishing. Such management system shall be based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species, such as, *inter alia*, the *Fish Stocks Agreement*, the *Code of Conduct*, the *Compliance Agreement*, technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. The system shall include regular science-based stock assessment, as well as capacity and effort management measures, including harvesting licences or fees; vessel registries; establishment and allocation of fishing rights, or allocation of exclusive quotas to vessels, individuals and/or groups, and related enforcement mechanisms; species-specific quotas, seasons and other stock management measures; vessel monitoring which could include electronic tracking and on-board observers; systems for reporting in a timely and reliable manner to the competent national authorities and relevant international organizations data on effort, catch and discards in sufficient detail to allow sound analysis; and research and other measures related to conservation and stock maintenance and replenishment. To this end, the Member shall adopt and implement pertinent domestic legislation and administrative or judicial enforcement mechanisms. It is desirable that such fisheries management systems be based on limited access privileges[85]. Information as to the nature and operation of these systems, including the results of the stock assessments performed, shall be notified to the relevant body of the FAO, where it shall be subject to peer review prior to the granting of the subsidy[86]. References for such legislation and mechanism, including for any modifications thereto, shall be notified to the Committee on Subsidies and Countervailing Measures ("the	There is strong support among delegations for the inclusion of **sustainability conditionalities – in particular for fisheries management** -- for the provision of subsidies under general exceptions or S&D provisions. That said there are widely **differing views as to the strength of such management requirements.** Some consider that **all Members wishing to make use of exceptions should implement science-based management reflecting international best practices**, while others, particularly **certain developing country delegations, consider that management requirements should be best-efforts based, making use of indigenous institutions and mechanisms**. Some delegations consider that the fisheries management requirement is the most important element of the proposed disciplines. That said, some of these delegations believe that **if effective fisheries management is in place, there is little need for fisheries subsidies disciplines**. **Others, however, consider that the only basis on which subsidies to the fisheries sector can be envisaged is where effective management is in place** to prevent the subsidies from contributing to overcapacity or overfishing. Views also differ as to the content and prescriptiveness of the management conditionalities, as to whether different conditionalities should apply to developed and developing Members, and as to whether all conditionalities should apply to each individual exception under the general exceptions and S&D provisions. **Concerning content, a number of delegations are of the view that the requirements as contained in the Chairman's text are too complex and detailed, and/or that additional flexibility is required for developing country Members.** In this context it has been suggested that the management conditionalities be streamlined in various ways. Some delegations call for the **identification of core elements** -- including stocks assessments, management control measures, and compliance and enforcement mechanisms -- that all Members' systems would need to include, **accompanied by management tools** that Members could

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analysis for fisheries science, management and enforcement, the protection and restoration of marine habitats, the development and implementation of fisheries management measures, and the monitoring and enforcement of fishery regulations are not covered by this Annex.[4] [4]Fisheries management includes the establishment and administration of management systems (including allocating and monitoring fishing licences, permits, quota, vessel numbers and catch returns); adjusting management settings within an existing management system; and developing amendments or additions to the existing management system.]] *See also*, General exceptions section. [[1. The following subsidies[ ] granted for enterprises engaged in harvesting of marine[ ] wild fish, shall be prohibited, except as otherwise provided in this Annex: (a) subsidies for the acquisition, and construction of fishing vessels, unless: ..... (ii) they are granted as incentives[14] for reducing existing fishing capacity, where the gross tonnage of the new vessel is reduced by at least 50 per cent of the sum of the gross tonnage of the withdrawn vessels in the same fishery category[15]; and there are in place fisheries management control measures, including enforcement mechanisms, designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of	Committee") pursuant to the provisions of Article VI.4. V.2 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and from interested parties in other Members concerning its fisheries management system, including measures in place to address fishing capacity and fishing effort, and the biological status of the fisheries in question. Each Member shall notify to the Committee contact information for this enquiry point. [84] Developing country Members shall be free to implement and operate these management requirements on a regional rather than a national basis provided that all of the requirements are fulfilled in respect of and by each Member in the region. [85] Limited access privileges could include, as appropriate to a given fishery, community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quotas. [86] If the Member in question is not a member of the FAO, the notification for peer review shall be to another relevant international organization. The specific information to be notified shall be determined by the relevant body of the FAO or such other organization.	apply as appropriate in implementing the core elements. One delegation (*see*, TN/RL/W/231) proposed a redrafted provision on management **separating the elements into required components of an overall management system, along with a requirement that any subsidies be contingent upon the implementation of fisheries- or stock-specific management plans for the targeted fisheries or stocks**, which plans would include capacity and effort management and prevention of overfishing, and would be approved by a competent body. Some also suggest that **management efforts undertaken in the context of regional fisheries management organizations** be recognized in the rules. Concerning the **management conditionalities that would apply to developing Members**, a number of delegations point to the difficulties that such Members have in implementing fisheries management. Their suggestions include **replacing references in the Chairman's text to internationally-recognized best practices based on relevant international instruments with references to indigenous institutions and systems**, simplified and streamlined requirements, and longer transition periods to implement the new disciplines (*see, e.g.*, TN/RL/GEN/155/Rev.1). Some of these delegations also are concerned that the **text does not sufficiently take into consideration the challenges of fisheries management – in respect of stock assessments and species-specific quotas – in the context of tropical, multi-species fisheries.** Some also identify systemic concerns with what they see as binding requirements to implement international instruments, many of which are voluntary, and whose signatories do not include all WTO Members. **Other delegations consider, however, that while some streamlining of the management provisions may be necessary, the basic elements as referred to in the Chairman's text, including internationally-recognized best practices based on relevant international instruments, can and should be implemented by all Members**. In their view, the Chairman's text would not as such make these instruments binding on all WTO Members. Rather, they consider that the text draws on these instruments for substantive guidance as to what are

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exclusive quotas to vessels, individuals and/or groups. [[(a) government-to-government payments to obtain access for a Member's distant water fishing fleet to fisheries resources within the exclusive economic zone of another country under the following conditions: ..... (ii) the access arrangement provides for a science-based assessment and monitoring of the status of the fisheries resources in question and for compliance with applicable fishery management systems; (b) subsidies for vessel decommissioning programmes under the following conditions: ..... (iii) there are in place fisheries management control measures, including enforcement mechanisms, designed to		internationally-recognized best practices, and note in this regard their inbuilt flexibilities for developing countries. In respect of the provisions of the Chairman's text concerning **peer review**, a number of delegations **question the proposed nature and timing of, and the forum for, such reviews. In their view, the text implies that another international organization (the FAO) would pass judgement on the adequacy of WTO Members' fisheries management systems and efforts, a prospect over which they have systemic concerns.** Some delegations would have no concern over submitting relevant fisheries related information to the FAO but would require that information to be reviewed and discussed at the WTO, with expert input as necessary from the FAO and other appropriate sources, and/or through the establishment of a fisheries expert group under the auspices of the WTO. Some other delegations **consider that the peer review provisions should be substantially strengthened**. In particular, they take the view that the **reviews should reach conclusions, and that these conclusions should be able to form the basis for dispute settlement.** Yet other delegations see **no systemic problems with the review mechanism proposed in the Chairman's text.** In their view, the text envisages a **multilateral review, conducted in the relevant international body by representatives of Members with the relevant expertise to be able to conduct an adequate substantive review of the information**. For these delegations, the goal of the review would be transparency, akin to what takes place in WTO Committees, or in the TPR process. Concerning timing, a number of delegations consider that the proposed requirements for **prior review** of stock assessments where capacity-increasing subsidies would be provided (under a developing Member exception), or for prior review of management systems before granting of other permitted subsidies, would be **difficult to implement**. **Others favour prior reviews**, but recognize that this may not be possible in all circumstances. Some **other delegations see the crucial element to be the regularity** of reviews, particular because situations in fisheries can evolve relatively quickly.

[14]Governmental support for vessel replacement, including construction or purchase of new vessels, is assumed as a form of such incentives.

[15]The term "same fishery category" means a group of fishing operations targeting for the same species.]] -- *See also*, Prohibition section

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prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups. (c) subsidies for small-scale fisheries, if such fisheries meet the following conditions: ..... (iv) there are in place fisheries management control measures, designed to prevent over-fishing in the targeted fishery, which include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups; ..... (f) government expenditures for research on fisheries management, including data collection, surveys, data analysis, stock monitoring, sampling and assessment; and (g) government expenditures for measures that enhance marine resources rather than capacity to harvest those resources, such as fisheries stock enhancement, marine conservation and marine protection, including marine environment restoration, hatcheries for breeding, artificial reefs and by-catch mitigation devices.]] -- *See also*, General Exceptions section. [[5.2 For the purpose of this Annex, a fishery adverse		

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effect shall be deemed to exist if: (a) the Member does not have a national fisheries management system in place, which may include, *inter alia*: conservation and management measures based on the best scientific evidence available; fisheries management control measures (fisheries monitoring, surveillance, control and enforcement mechanisms); mechanisms established to identify and quantify fishing capacity; vessel registration and licensing system; limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels; and timely and reliable statistics available on catch and fishing effort in sufficient detail to allow sound statistical analysis[8]; or (b) the volume of the total catch by a Member of any "endangered specie"[9] and the number of vessels used in those fishing operations are not decreasing, as compared to the total catch volume and number of vessels it had during the previous year. [8] Where relevant international standards and practices exist, Members shall use them, or the relevant parts of them, as a basis for their national fisheries management systems. [9] For the purposes of this Annex, "endangered specie" shall mean all species except those that are (a) in a very healthy situation, with no or almost no fishing activities, or that are being exploited below or at a calculated sustainable allowable catch, based on the best scientific information available; or (b) under the administration of a RFMO or a regional fisheries management arrangement, which operate under a fisheries management system that is based on relevant international standards and practices.]] -- *See also,* Other Disciplines section. [[Article 1.6(b) (Definitions and coverage): the access		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
arrangements provide for compliance with applicable fishery management plans and for a science-based assessment and monitoring of the status of the fishery resources covered by the access arrangements; Article 3.2(a)(iv) (Fisheries subsidies actionable): there are in place fisheries management plan designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, provided that special flexibility should be given to developing countries, including any technical assistance requested by any such developing country as provided in Article 5 below. Article 4.1(g) (Exceptions to actionable subsidies): Assistance and user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes, and other expenses related to administration and operation of fishery management programmes, including allocation and monitoring of licences, permits, quotas, vessel numbers and catch returns. Article 5.5(a) (Special and differential treatment): The Member has a fishery management plan in place that is effectively monitored and adequately enforced. Article 5.7 (Special and differential treatment): Upon the request of developing country Members, developed country Members shall provide technical assistance to developing country Members on mutually agreed terms and conditions to develop the capacity to initiate, implement and enforce compliance with a fishery management plan in keeping with the FAO Code of Conduct on Responsible Fisheries and adequate to provide the showing required by Articles 5.3, 5.4 and 5.5 of this Annex.]] [[Fisheries Management[11]		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
V.1 Any Member granting or maintaining any subsidy as referred to in Article II or Article III.2(b) shall operate a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent overfishing and that ensures the long-term conservation and sustainable use of fisheries resources.[12] 1.1 The fisheries management system shall be based on internationally-recognized best practices for fisheries management as reflected in the relevant provisions of international instruments for the long-term conservation and sustainable use of fisheries resources, such as, *inter alia*, i. the *United Nations Convention on the Law of the Seas* ii. the *UN Fish Stocks Agreement*, iii. the *FAO Code of Conduct for responsible fisheries*, iv. the *1993 FAO Compliance Agreement*, and v. technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. 1.2 The fisheries management system shall, as appropriate, include: i. a system comprising authorization to fish (*inter alia* fishing permits, fishing licenses and vessel registries); ii. allocation of fishing possibilities, or allocation of quotas to vessels, individuals and/or groups; iii. single- or multi-species		

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regulations and/or quotas; iv. restrictions on the use of fishing gear, closed seasons and/or areas and other stock management measures; v. vessel monitoring and catch control systems, which could include electronic tracking and on-board observers; vi. systems for reporting in a timely and reliable manner to the competent national authorities and relevant international organizations data on effort, catch and discards in sufficient detail to allow sound analysis; and vii. research and other measures related to conservation and stock maintenance and replenishment. V.2 Any Member granting or maintaining any subsidy as referred to in Article II or Article III.2(b) shall, for each fishery and/or fish stock for which the subsidy is directed, implement a fisheries management plan designed to prevent overfishing of that particular fish stock. 2.1 The fisheries management plan shall be based on a regularly updated science-based stock assessment including precautionary reference points for that stock or best biological information available. 2.2 The fisheries management plans that include science-based stock assessment, shall include the establishment of fishing mortality rates that will ensure that the fishing will be kept within the relevant precautionary reference points for that stock.		

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2.3 The scientific basis for the management plan shall have been approved by an internationally recognised, competent management or scientific body.[13] 2.4 The fisheries management plan shall include capacity and effort management measures that constrain harvesting within safe biological limits, either through the allocation of quotas within a Total Allowable Catch (TAC) determined for each year or through the application of other similarly effective stock management measures. 2.5 Each Member shall ensure that non-stock-specific subsidies do not result in overfishing. Where a subsidy relates to more than one fishery or fish stock, a management plan is required for each fish stock affected by the subsidy. 2.6 Subsidies referred to in Article II(c) shall only be subject to paragraph 1 of this Article. V.3 To ensure compliance with the provisions set out above, each Member shall adopt and implement necessary domestic legislation and administrative or judicial enforcement mechanisms. [11]Chair's footnote 84: Developing country Members shall be free to implement and operate these management requirements on a regional rather than a national basis provided that all of the requirements are fulfilled in respect of and by each Member in the region. [12]Explanatory footnote: The additional language mirrors more closely the FAO Code of Conduct. The importance of this addition is that the system should not only be *designed* to prevent overfishing, but should also *be implemented and enforced* so that overfishing is effectively avoided on a long –term basis [13]Proposed new footnote: Such bodies include the		

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scientific/biological bodies of a number of Regional Fisheries Management Organisations, and the Advisory Committee for Fisheries Management (ACFM) of the International Council for the Exploration of the Seas (ICES), and national research institutes..]]		
[[Fisheries Management[15] V.1 Any Member granting or maintaining any subsidy as referred to in Article II shall operate a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent overfishing. Such management system could be based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species. The system shall include regular science-based stock assessment, as well as capacity and effort management measures, including harvesting licences or fees; vessel registries; establishment and allocation of fishing rights, or allocation of exclusive quotas and other stock management measures; systems for reporting in a timely and reliable manner to the competent national authorities data on effort, catch and discards in sufficient detail to allow sound analysis; and research and other measures related to conservation and stock maintenance and replenishment. To this end, the Member shall adopt and implement pertinent domestic legislation and administrative or judicial enforcement mechanisms. It is desirable that such fisheries management systems be based on limited access privileges[16]. References for such legislation and mechanism, including for any modifications thereto, shall be notified to the Committee on Subsidies and Countervailing Measures ("the Committee") pursuant to the provisions of Article VI.4. V.2 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and from interested parties in other Members concerning its		

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fisheries management system, including measures in place to address fishing capacity and fishing effort, and the biological status of the fisheries in question. Each Member shall notify to the Committee contact information for this enquiry point. [15] Developing country Members shall be free to implement and operate these management requirements on a regional rather than a national basis provided that all of the requirements are fulfilled in respect of and by each Member in the region. [16] Limited access privileges could include, as appropriate to a given fishery, community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quotas.]]		

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NOTIFICATIONS AND SURVEILLANCE		
[[25*bis*.1 Enhanced notification requirements for fisheries subsidies [Procedures for notification requirements for non-prohibited (Annex VIII) fisheries subsidies will be developed.]]] [[5.1 Subsidies for which Article 3 is being invoked shall be notified prior to the adoption of the programme or, in case of an ad hoc grant, prior to the commitment. 5.2 All other subsidies shall be notified no later than upon the date of adoption of the programme, or in case of an ad hoc grant, the date of commitment. 5.3 Members shall, upon request by any Member, provide translations in an official language of the WTO of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents. 5.4 Subparagraphs 1 to 3 of this Article shall not apply to a Member that has notified to the WTO that it has transposed the provisions of this Article into its domestic legal system. Without prejudice to Article 30 of the SCM Agreement, the Permanent Group of Experts established under Article 24.3 of the SCM Agreement shall examine within 9 months from the date of notification whether the transposition and enforcement are adequate. The examination shall be conducted on the basis of a notification by the Member concerned of its domestic legislation and relevant administrative procedures as well as any amendments thereof having regard to the following criteria:	VI.1 Each Member shall notify to the Committee in advance of its implementation any measure for which that Member invokes the provisions of Article II or Article III.2; except that any subsidy for natural disaster relief[87] shall be notified to the Committee without delay[88]. In addition to the information notified pursuant to Article 25, any such notification shall contain sufficiently precise information to enable other Members to evaluate whether or not the conditions and criteria in the applicable provisions of Article II or Article III.2 are met. VI.2 Each Member that is party to an agreement pursuant to which fishing rights are acquired by a Member government ("payer Member") from another Member government to fisheries within the jurisdiction of such other Member shall publish that agreement, and shall notify to the Committee the publication references for it. VI.3 The terms on which a payer Member transfers fishing rights it has obtained pursuant to an agreement as referred to in paragraph 2 shall be notified to the Committee by the payer Member in respect of each such agreement. VI.4 Each Member shall include in its notifications to the Committee the references for its applicable domestic legislation and for its notifications made to other organizations, as well as for the documents related to the reviews conducted by those organizations, as referred to in Article V.1. VI.5 Other Members shall have the right to request information about the notified subsidies, including about individual cases of subsidization, about notified agreements pursuant to which fishing rights are acquired, and about the stock assessments and management systems notified to other organizations pursuant to Article V.1. Each Member so requested shall provide such information in accordance with the provisions of Article 25.9.	**Most delegations support the transparency objective reflected in this Article.** That said, some delegations have **reservations about the requirement in the draft that subsidies be notified before they are granted**. They note in this regard that such a requirement would be more stringent than Article 25 of the SCM Agreement, and consider that fisheries subsidies should not be treated differently in this respect from subsidies to other sectors. Some also find that such a requirement would be too burdensome on small economies. **Other delegations support the idea of prior notification**, and note that other WTO Agreements (for example the SPS and TBT Agreements) require ex ante notification of measures, and that the proposal in the Chairman's text thus would not be novel. In this regard, some delegations noted that what the text calls for is not prior approval but prior notification, which they view as very important for the effective functioning of the disciplines. **Certain delegations consider that the notification requirements should be strengthened**, including for example by introducing a mechanism to verify the accuracy of notified information. A further suggestion is to expand the provision referring to information about apparent IUU fishing to refer also to other types of activities. Some delegations consider that the **requirement to provide "sufficiently precise information" should be clarified**, and suggest that the text specify in more precise terms the information to be submitted. Some delegations have provided a proposal (*see*, TN/RL/GEN/155/Rev.1) to amend the Chairman's text concerning information to be notified, whereby every Member deploying vessels in international waters would be required to notify certain information about the vessels and fishing operations thereof.

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a) the implementation of a rigorous and timely reporting system for subsidies to the fisheries sector given by all levels of government to the relevant body within the WTO Member; b) the existence of an ex-post monitoring mechanism of the subsidies that are granted to the fisheries sector, including the publication of periodic ex-post reports; 5.5 The Secretariat shall make publicly available any notifications in accordance with the provisions of this Agreement, upon receipt thereof. 5.6 A breach in notification procedures renders the subsidy concerned prohibited and any amounts already disbursed shall be recovered. 5.7 The procedural provisions of this Article will also apply to developing country Members. The PGE will assess within one year from the entry into force of this Article which transitional arrangements are required in this respect, taking particular account of the institutional and financial resource constraints of and the need for flexibility for LDCs/small and vulnerable economies.]] [[5. Any fisheries subsidy set out in paragraph 1.1: (a) granted to fishing vessels of 15 metres overall length or less; (b) granted under the exceptions set out in paragraphs 2 or 3 of this Annex; (c) where the provisions of paragraph 4 of this Annex apply; or (d) granted during the transitional periods as specified under the provisions set out in paragraphs 8 or 9 of this Annex;	VI.6 Any Member shall be free to bring to the attention of the Committee information from pertinent outside sources (including intergovernmental organizations with fisheries management-related activities, regional fisheries management organizations and similar sources) as to any apparent illegal, unreported and unregulated fishing activities. VI.7 Measures notified pursuant to this Article shall be subject to review by the Committee as provided for in Article 26. [87] As provided for in Article I.1 and footnote 77. [88] For the purposes of this provision, "without delay" shall mean not later than the date of entry into force of the programme, or in the case of an ad hoc subsidy, the date of commitment of the subsidy.	

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shall be notified to the WTO and to the Committee set out in Article 24 of the ASCM in advance of its implementation. Any such notification shall be made, *mutatis mutandis*, in accordance with the provisions of Article 25 of the ASCM. 6. For any other fisheries subsidies, the notification requirements of the ASCM apply in their entirety. 7. Any subsidy granted under the provisions of this Annex which is not notified to the WTO shall be considered to be prohibited for that Member. Members who do not grant any subsidies subject to the notification requirements of paragraphs 5 and 6 of this Annex shall notify that no such subsidies have been granted.]]		
[[6.1 A fishery subsidy for which the provisions of Articles 3 and 4 are invoked shall be notified to the Committee of Subsidies and Countervailing Measures. On a yearly basis, any such notification shall be made, *mutatis mutandis*, in accordance with the provisions of Article 25 of the ASCM. 6.2 In addition, for fisheries subsidies of Article 3 and 4.1 (b) and (c) the notification shall contain the following information: (a) the total catch (in volume terms) by the Member of endangered species, with breakdown by fishery, and the number of vessels used in those catching operations, with breakdown by operated location areas; (b) the total catch (in volume terms) by the Member of not-endangered species, with breakdown by fishery, and the number of vessels used in those catching operations, with breakdown by operated location		

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areas; (c) the criteria and scientific information used to set the status of the fishery; (d) whether the fishery in question is under management of a regional fisheries management organization or arrangement and which are the nature of the monitoring and the quantitative limits applicable to the Member; (e) national fisheries management systems in place, with sufficient information to enable Members to evaluate and to understand their framework and operation; and (f) government-to-government payment for access by foreign vessels to fishing resources of a developing country's maritime jurisdiction or to quotas or any other rights established by any regional fishery management organization or arrangement ("access rights"), with breakdown by recipient country, total amounts paid, amounts received on the onward transfer of the access rights, fisheries data (in accordance with items (a) and (b) of this paragraph) and other relevant information. 6.3 Any fishery subsidy which is not notified shall be deemed to cause a fishery adverse effect. 7.1 Upon request of a Member, at any time, the Secretariat shall review a notification made pursuant to Article 6, and where necessary may require additional information from the subsidizing Member concerning the notified fishery subsidy under review. The Secretariat shall report its findings to the Committee. The Committee shall promptly review the findings of the Secretariat with a view to determining whether the conditions and criteria set out in Articles 3, 4 and 5 have been met. The procedure		

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provided for in this paragraph shall be completed at the latest at the first regular meeting of the Committee following the request for review, provided that such a request is made at least 2 (two) months before the regular meeting of the Committee. 7.2 Upon the request of a Member, the determination by the Committee referred to in paragraph 1, or the failure of the Committee to make such a determination, shall be submitted to binding arbitration. The arbitration body shall present its conclusions to the Members within 120 days from the date when the matter was referred to the arbitration body. The DSU shall apply to arbitrations conducted under this paragraph.]]		
[[7.1 Members asserting that a subsidy covered by this Annex qualifies for an exception pursuant to Articles 2.1-2.2 [,4 and 5] shall include in its notification under Article 25 of the ASCM information concerning the fisheries benefiting from the subsidy, including whether the subsidy is widely available to many fisheries or targeted to specific fisheries, allowing for an assessment of how any conditions set forth in Articles 2.1-2.2 [,4 and 5] for that exception have been or are expected to be fulfilled. 7.2 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and interested parties in other Members concerning its fisheries management system, including measures in place to address fishing capacity and fishing effort and the biological status of managed stocks.]]		
[[3.1 Members shall notify the following information. Such information will be made publicly available[19] by the Secretariat:		

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(a) information on the vessels which have been improved, constructed, purchased, or withdrawn under the subsidy programs listed in Article 1, and paragraphs (a), (b) and (c) of Article 2 of this Annex, such as: (i) the name of the vessel; (ii) flag state; (iii) gross tonnage; (iv) length; (v) construction year; (vi) name of vessel owner; (vii) main fishing areas, fishery methods, main target species; and, (viii) in the case of vessel improvement, vessel's gross tonnage before and after it, as well as the year of the vessel improvement. (b) an assessment of how any conditions set forth in Article 1, paragraphs (a), (b) and (c) of Article 2 of this Annex have been fulfilled; and (c) the total vessel capacity (i.e., the number of vessels by the vessel size) registered in the Member, and export and import of vessels, and annual volume of fishery catch[20] by the Member with a breakdown of fish species. 3.2 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and interested parties in other Members concerning its subsidy programs and fisheries management systems, including measures in place to address fishing capacity and fishing effort, the biological status of managed stocks, and a status of its MCS (monitoring, control and surveillance) measures in the water where subsidized vessels potentially operate.		

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3.3 Upon request by all Members, the Committee on Subsidies and Countervailing Measures shall set up an ad hoc group of experts on fishery, provided in paragraph 2 of Article 24 of this Agreement, to peer-review the notifications and reports from the enquiry points as provided in paragraph 2. Such peer-review shall be conducted together with all participating Members under the Committee, upon request by any Member. The ad hoc group of experts on fishery shall be composed of three to five independent persons, highly qualified in the fields of fishery management and fishery economics. The experts will be elected by the Committee. Any report of the ad hoc expert group, along with the opinions of Members concerned on the report, if any, will be made publicly available by the Secretariat. 3.4 Upon request, the ad-hoc group of experts, if established, may provide technical assistance to developing country Members so that such Members may fulfil the notification requirements under paragraphs 1 and 2 of this Article. _____ [19]The purpose of the information disclosure is to inform RFMOs or other relevant fishery management authorities with the data on vessels which have received subsidies, so that these fishery management bodies can take proper actions based on such information, if necessary. Information may be disclosed using the website of the WTO. [20]The term "fishery catch" exclude the production from fisheries or aquaculture which is not covered by this Annex.]]		
[[6.1 A Member asserting that a subsidy covered by this Annex qualifies for an exception pursuant to Articles 4 and 5 of this Annex , with the exception of artisanal fisheries under Article 5.1 of this Annex, shall include in its annual notification, *mutatis mutandis*, under Article 25 of the ASCM, information fully describing the fisheries benefiting from the subsidy and describing how the		

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subsidy conforms to the conditions set forth in the exception. Information shall include, where relevant, measures to address fishing capacity and effort, the biological status of managed stocks and other fishery resources. 6.2 The Committee on the ASCM will annually review such notifications and report to Members on the extent to which Members are availing themselves of such exceptions. Reports will be published annually in a form available to the public. 6.3 In reviewing notifications, the Committee is encouraged to consult with and seek information from fishery experts, as authorized by Article 24.5 of the ASCM. 6.4 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and interested parties in other Members concerning its fisheries management plan, including measures in place to address fishing capacity and fishing effort and the biological status of managed stocks. Special flexibility shall be given to developing countries with respect to instituting enquiry points, including flexibility to develop such enquiry points with the help of technical assistance. Upon the request of developing country Members, developed country Members shall provide technical assistance to develop the capacity to initiate and implement compliance with this Section.]] [[V.4 Information relating to the obligations set out in V.1 and V.2 shall be notified to the relevant body of the FAO[15]. Each individual subsidy or subsidy programme, as well as the relevant fisheries management plans, shall be notified to the Committee on Subsidies and Countervailing Measures ("the Committee") pursuant to the provisions of Article VI.4. V.5 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and		

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from interested parties in other Members concerning its fisheries management system, including measures in place to address fishing capacity and fishing effort, and the biological status of the fisheries in question. Each Member shall notify to the Committee contact information for this enquiry point. [15] Chair's footnote 86: If the Member in question is not a member of the FAO, the notification ~~for peer review~~ shall be to another relevant international organization. The specific information to be notified shall be determined by the relevant body of the FAO or such other organization.]]		
[[VI.1 Each Member shall, and developing country Members shall, to the extent possible, notify to the Committee prior to invoking any of the provisions of Article II or Article III.2; except that any subsidy for natural disaster relief[19] shall be notified to the Committee without delay[20]. In addition to the information notified pursuant to Article 25, any such notification shall contain sufficiently precise information to enable other Members to comment upon whether or not the conditions and criteria in the applicable provisions of Article II or Article III.2 are met. VI.2 Each Member that is party to an agreement pursuant to which fishing rights are acquired by a Member government ("payer Member") from another Member government to fisheries within the jurisdiction of such other Member shall publish that agreement, and shall notify to the Committee the publication references for it. VI.3 Every Member deploying fishing vessels in the international waters shall notify to the Committee the type and dimensions of the fishing vessels or service vessels being deployed, the quantity of catch removed and the measures adopted to ensure that the removal of fish from areas adjoining the EEZ boundary of any member shall not		

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adversely impact the fishery within the adjoining EEZ of the other member(s). VI.4 The terms on which a payer Member transfers fishing rights it has obtained pursuant to an agreement as referred to in paragraph 2 shall be notified to the Committee by the payer Member in respect of each such agreement. VI.5 Each Member shall include in its notifications to the Committee the references for its applicable domestic legislation and for its notifications made to other organizations, as well as for the documents related to the reviews conducted by those organizations, as referred to in Article V.1. VI.6 Other Members shall have the right to request information about the notified subsidies, about notified agreements pursuant to which fishing rights are acquired, and about the stock assessments and management systems notified pursuant to Article V.1. Each Member so requested shall provide such information in accordance with the provisions of Article 25.9. VI.7 Any Member shall be free to bring to the attention of the Committee information on any apparent illegal, unreported and unregulated fishing activities. VI.8 Measures notified pursuant to this Article shall be subject to review by the Committee as provided for in Article 26. _____ [19] As provided for in Article I.1 and footnote 77. [20]For the purposes of this provision, "without delay" shall mean not later than the date of entry into force of the programme, or in the case of an ad hoc subsidy, the date of commitment of the subsidy.]]		

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TRANSITIONAL PROVISIONS		
[[28*bis*.1 Fisheries subsidies which have been established within the territory of any Member before the date on which Article 3 *bis* comes into force and which are inconsistent with that Article shall be: (a) notified to the Committee no later than one year after the date that Article 3 *bis* comes into force; and (b) brought into conformity with Article 3 *bis* within three years of the date that Article 3 *bis* comes into force and until then shall not be subject to Part II.]]	VII.1 Any subsidy programme which has been established within the territory of any Member before the date of entry into force of the results of the DDA and which is inconsistent with Article 3.1(c) and Article I shall be notified to the Committee not later than 90 days, or in the case of a developing country Member 180 days, after the date of entry into force of the results of the DDA. VII.2 Provided that a programme has been notified pursuant to paragraph 1, a Member shall have two years, or in the case of a developing country Member four years, from the date of entry into force of the results of the DDA to bring that programme into conformity with Article 3.1(c) and Article I, during which period the programme shall not be subject to those provisions. VII.3 No Member shall extend the scope of any programme, nor shall a programme be renewed upon its expiry.	Most delegations **support the general approach** in the transition provisions in the draft text. **Views differ, however, as to the time periods** referred to. In particular, a number of developing country delegations suggest that the transition period to be applied to developing Members be lengthened. Some delegations suggest harmonizing these transition periods with those ultimately agreed in the Agriculture negotiations, and some delegations consider that developing Members should have 10 years in which to implement their new obligations. Other delegations consider that transition periods can only meaningfully be considered when the overall level of disciplines applicable to the different groups of Members has been established. In their view, if the level of disciplines is low, only short transition periods could be justified. Similarly, some delegations suggest that if the transition periods are extended, a staged phasing out of inconsistent subsidies should be required.
[[8. The provisions set out in this Annex shall apply after a transitional period of three years, except for developing country Members and for least-developed country Members, for which the provisions apply after a transitional period of five years and ten years respectively from the entry into force of this Annex. The applicable transitional period shall be used to bring subsidy programmes in conformity with this Annex. 9. If a least-developed country Member deems it necessary to apply subsidies prohibited under this Annex beyond the ten-year transitional period, it shall not later than one year before the expiry of this period enter into consultation with the Committee on Subsidies and Countervailing Measures, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the least-developed country Member in question. If the Committee determines that the extension is justified, the least-developed country Member concerned shall hold		

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annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the least-developed country Member shall phase out those fisheries subsidies within three years from the expiry of the last authorised period.]] [[10.1 Any fisheries subsidy which has been established within the territory of a Member before the date of the entry into force of this Annex shall be notified to the Committee in no later than 90 days after that date. 10.2 From the entry into force of this Annex, there shall be a period of three years for developed country Members and a period of five years for developing country Members to gradually phase out and eliminate fisheries subsidies that are inconsistent with the provisions of this Annex. The starting point of the reduction shall be the 2003-2005 average of the fisheries subsides prohibited under Article 2. Members shall not be allowed to adopt new prohibited fisheries subsidies or to extend the scope of any existing prohibited fisheries subsidy. 10.3 Any least-developed country Member shall phase out its fisheries subsidies within an eight-year period, preferably in a progressive manner, from the date of entry into force of this Annex. If such least-developed country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the Member in question. If the Committee determines that the extension is justified, the Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the least-		

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developed country Member shall phase out those fisheries subsidies within 3 (three) years from the end of the last authorized period.]] [[1. Subsidy programmes that have been established within the territory of any Member before the date of entry into force of this Annex and that are inconsistent with the provisions of this Annex shall be: (a) notified to the Committee not later than __ days after the date of entry into force of this Annex; and (b) brought into conformity with the provisions of this Annex within __ years of the date of entry into force of this Annex. 2. No Member shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiry.]] [[11.1 Any fisheries subsidy which has been established within the territory of a Member before the date of the entry into force of this Annex shall be notified to the Committee in no later than 90 days after that date. 11.2 From the entry into force of this Annex, there shall be a period of three years for developed country Members and a period of five years for developing country Members to gradually phase out and eliminate fisheries subsidies that are inconsistent with the provisions of this Annex. The starting point of the reduction shall be the 2003-2005 average of the fisheries subsidies prohibited under Article 2. Members shall not be allowed to adopt		

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new prohibited fisheries subsidies or to extend the scope of any existing prohibited fisheries subsidy. 11.3 Any least-developed country Member shall phase out its fisheries subsidies within an eight-year period, preferably in a progressive manner, from the date of entry into force of this Annex. If such least-developed country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the Member in question. If the Committee determines that the extension is justified, the Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the least-developed country Member shall phase out those fisheries subsidies within 3 (three) years from the end of the last authorized period.]]		
[[VII.1 Any subsidy programme which has been established within the territory of any Member before the date of entry into force of the results of the DDA and which is inconsistent with Article 3.1(c) and Article I shall be notified to the Committee not later than 90 days, or in the case of a developing country Member 180 days, after the date of entry into force of the results of the DDA. VII.2 Provided that a programme has been notified pursuant to paragraph 1, a Member shall have two years, or in the case of a developing country Member ten years**,** from the date of entry into force of the results of the DDA to bring that programme into conformity with Article 3.1(c) and Article I, during which period the programme shall not be subject to those provisions. VII.3 No Member shall extend the scope of any		

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programme, nor shall a programme be renewed upon its expiry.]]		

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	DISPUTE SETTLEMENT	
[[10. In a dispute under this Annex involving scientific or technical questions related to fisheries, a panel should seek advice from fisheries experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical fisheries experts group, or seek the assistance of the United Nations Food and Agriculture Organization or other relevant international organization in identifying appropriate fisheries experts, at the request of either party to the dispute or on its own initiative.]] [[4.1 In a dispute under this Annex involving scientific or technical questions related to fisheries, a panel may seek advice from fisheries experts chosen by the panel, in consultation with the parties to the dispute, in accordance with the procedures set forth in Article 13 of the DSU. 4.2 To this end, the panel may, when it deems appropriate, establish a technical advisory group of fisheries experts, or seek the assistance of the United Nations Food and Agriculture Organization or other relevant inter-governmental organizations in identifying appropriate fisheries experts, at the request of either party to the dispute or on its own initiative. 4.3 In the case of dispute relating to the small-scale fisheries in developing country Members, representative(s) from local stakeholder groups, such as community fishery management groups, may be invited as member(s) of the group referred to in paragraph 2 of this Article, in consultation with the parties to the dispute, in accordance with the procedures set forth in Article 13 of the DSU.]]	VIII.1 Where a measure is the subject of dispute settlement claims pursuant to Article 3.1(c) and Article I, the relevant provisions of Article 4 and of this Article shall apply. Article 30 and the relevant provisions of this Article shall apply to disputes arising under other provisions of this Annex. VIII.2 Where a subsidy that has not been notified as required by Article VI.1 is the subject of dispute settlement pursuant to the DSU and Article 4, such subsidy shall be presumed to be prohibited pursuant to Article 3.1(c) and Article I. It shall be for the subsidizing Member to demonstrate that the subsidy in question is not prohibited. VIII.3 Where a further transfer of access rights as referred to in Article I.1(g) is the subject of a dispute arising under this Annex, and the terms of that transfer have not been notified as required by Article VI.3, the transfer shall be presumed to give rise to a subsidy. It shall be for the payer Member to demonstrate that no such subsidy has arisen. VIII.4 Where a dispute arising under this Annex raises scientific or technical questions related to fisheries, the panel should seek advice from fisheries experts chosen by the panel in consultation with the parties. To this end, the panel may, when it deems it appropriate, establish an advisory technical fisheries expert group, or consult recognized and competent international organizations, at the request of either party to the dispute or on its own initiative. VIII.5 Nothing in this Annex shall impair the rights of Members to resort to the good offices or dispute settlement mechanisms of other international organizations or under other international agreements.	The main focus of the discussions on the draft dispute settlement provisions has been on the **proposed rebuttable presumption that any non-notified fisheries subsidy is prohibited.** A number of delegations consider this proposal to be too **drastic and unfair**. In their view, there can be many reasons other than wilful non-compliance for a failure to notify a particular measure, including resource constraints, administrative errors, and genuine doubts about whether a particular measure would be subject to the notification requirements. Others object to establishing substantive consequences to a procedural failure. Some consider that the **provisions are largely unnecessary**, *inter alia* because in their view they simply restate provisions found elsewhere in the WTO Agreement, and because a presumption of prohibition would not relieve the complaining party of its burden in presenting a complaint concerning a non-notified measure. Other delegations **support the proposed reversal of the burden of proof, which they view as an effective mechanism to create incentives** for Members to notify. In their view, this is particularly necessary given Members' poor record of compliance with the notification requirements of Article 25 of the SCM Agreement. Concerning the **use of experts in dispute settlement**, some delegations consider that it is unnecessary to mention this possibility, given that it already is provided for under the DSU. Others however support having an explicit provision in this regard, and some consider that it should be more mandatory ("shall" rather than "should" rather than "can").

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[[3.4 Whenever a Member has reason to believe that an actionable subsidy being granted or maintained by another Member, results in any adverse effects to the interests of other Members as defined in ASCM Article 5 or adverse effects to fishery resources as defined in Article 7.1 to this Annex, except as otherwise provided in this Annex, such Member may seek remedies in accordance with Article 7 of the ASCM.]]		
[[VIII.1 Where a measure is the subject of dispute settlement claims pursuant to Article 3.1(c) and Article I, the relevant provisions of Article 4 and of this Article shall apply. Article 30 and the relevant provisions of this Article shall apply to disputes arising under other provisions of this Annex. VIII.2 Where a further transfer of access rights as referred to in Article I.1(g) is the subject of a dispute arising under this Annex, and the terms of that transfer have not been notified as required by Article VI.3, the transfer shall be presumed to give rise to a subsidy. It shall be for the payer Member to demonstrate that no such subsidy has arisen. VIII.3 Where a dispute arising under this Annex raises scientific or technical questions related to fisheries, the panel should seek advice from fisheries experts chosen by the panel in consultation with the parties. To this end, the panel may, when it deems it appropriate, establish an advisory technical fisheries expert group, or consult recognized and competent international organizations, at the request of either party to the dispute or on its own initiative. VIII.4 Nothing in this Annex shall impair the rights of Members to resort to the good offices or dispute settlement mechanisms of other international organizations or under other international agreements.]]		

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OTHER PROVISIONS		
[[Review 4.1 Articles 2 and 3 shall be reviewed after five years beginning with the date of the entry into force of this Agreement and thereafter every five years. 4.2 The Permanent Group of Experts established under Article 24.3 of the SCM Agreement shall periodically review the subsidisation practices of Members to which this Annex applies and produce a comprehensive report thereon on a biannual basis. The report of the PGE shall be published forthwith. Upon request by any Member, the subsidisation practices of a developing country Member shall also be subject to a review.]] [[10. The provisions of this Annex shall be reviewed by the Committee on Subsidies and Countervailing Measures after a period of five years from its entry into force with a view to making any necessary modification to this Annex.]] [[Preamble Members, *Recalling* the commitment at Doha to enhance the mutual supportiveness of trade and environment; *Noting* the necessity to strengthen disciplines on subsidies in the fisheries sector; *Conscious* of the negative effects of overcapacity and overfishing on the fisheries resources; *Reaffirming* that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements;		

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Determined to strengthen ASCM provisions with a view to making them more precise, effective and operational; *Considering* the social and economic importance of the fisheries sector to developing country Members; Hereby *agree* as follows: [...] <u>Review</u> 9.1 The provisions of this Annex shall be reviewed by the Committee after a period of 8 (eight) years from the date of its entry into force, with a view to determining whether any modification is necessary.]] [[<u>Review</u> 8. The Committee on Subsidies and Countervailing Measures shall review the implementation and operation of this Annex every __ years, taking into account the objectives thereof. In this regard, the Committee shall, as appropriate, request information from persons and organizations with expertise in fisheries management, conservation and stock assessment, such as the United Nations Food and Agriculture Organization and regional fisheries management organizations.]] [[<u>Miscellaneous provisions</u> 6. Nothing in this Annex shall be construed to prevent a Member from adopting a trade measure, consistent with the relevant provisions of the GATT 1994, where appropriate.]]		

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[[Preamble Members, *Recalling* the commitment at Doha to clarify and improve WTO disciplines on fishery subsidies. *Noting* the current state of world fishery stocks and the desire of Members to address subsidies that have a harmful effect on them; *Conscious* of the negative effects of overcapacity and overfishing on these fisheries resources; *Reaffirming* that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements; *Determined* to strengthen ASCM provisions with a view to making them more precise, effective and operational in relation to fisheries; *Considering* the social and economic importance of the fisheries sector to developing country Members; Hereby *agree* as follows: [...] Review 10. The provisions of this Annex shall be reviewed by the Committee after a period of 8 (eight) years from the date of its entry into force, with a view to determining whether any modification is necessary.]]		