

13. ANDEAN AND U.S. ANTIDUMPING LAW AND PRACTICE

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Antidumping measures are "contingent" protection measures. That is, unlike a bound, published WTO tariff rate, the imposition, level and duration of antidumping measures are determined on a case-by-case basis by national authorities, which in every country are at least partially under the control of a cabinet minister. Because of their unpredictable nature, antidumping measures pose special challenges for businesses. Businesses are able to factor bound tariff rates rather precisely into their investment decisions, since the tariff cannot increase and, in fact, it may decrease. For example, if a business knows that the tariff on its products is 10 percent, and knows that if it builds a new factory its costs would drop 11 percent, it make sense to built a factory big enough to sell in both countries. By contrast, if a business is contemplating exporting to countries that rely on antidumping laws, it must factor in the possibility of prohibitively high antidumping duties being imposed with only a few months warning (the simple average antidumping margin in a U.S. antidumping investigation in 1995 was over 40 percent).

So far, Andean Community countries have not been frequent users of antidumping law. The most frequent user in the Americas has been the United States, with 107 measures in effect against other Western Hemisphere countries in 1996 followed by Mexico with 47, Canada with 39, Argentina with 33 and Brazil with nine.¹ By contrast, in the Andean Community, Colombia had two measures in effect in 1996, Venezuela and Peru each had one, and Ecuador and Bolivia have none.² Developing countries did not use antidumping laws much until the late 1980s, led by Mexico. With the completion of the Uruguay Round, binding a large number of tariffs in developing countries, antidumping laws became more interesting in those countries. Consequently, governments and businesses throughout the region now have to examine more carefully the laws and practices in the counties in which their goods are sold.

ANTIDUMPING RULES OF THE ANDEAN COMMUNITY

Legal Structure

Under the Andean Community rules, member countries may request that the administering authority of the Andean Community regulations conduct an antidumping investigation and apply definitive measures in the following instances:

- a. where the practices originating in the territory of another member country cause or threaten to cause injury to the domestic industry of the complaining member country;
- b. where the practices originating in a member country cause or threaten to cause injury to the domestic production for export to another member state;
- c. where the practices originating in a country outside the region cause or threaten to cause injury to the domestic production for export to another member country; or
- d. where the practices originating in a country outside the region cause or threaten to cause injury to the domestic industry of the region. This provision applies to products subject to the Common External Tariff of the Community, and the antidumping duties must be applied in more than one member country.³

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¹ Inventory of Antidumping and Countervailing Duty Measures in Force in the Western Hemisphere. OAS.TU/S-AD-CVD/001, Rev. 1 (February 26, 1996).

² Id. It should be noted that, according to their notifications to the World Trade Organization in 1996, Colombia had four antidumping measures in effect against Western Hemisphere countries (all against the United States) and Peru had two (both against Mexico). See Colombia's Semi-Annual Report to the WTO Committee on Antidumping Practices, G/ADPN/16/COL (31 July 1997); Peru's Semi-Annual Report to the WTO Committee on Antidumping Practices, G/ADP/N/16/PER (29 Jan. 1997).

³ Andean Community Decision 283 Ch. I, Art. 2., adopted in March 1991.

In all other circumstances, the domestic laws and regulations of the individual member country are applicable.

Under the Andean Community regulations, antidumping investigations are conducted by a three-member Board (la Junta del Acuerdo de Cartagena).⁴ The Junta, which is based in Lima, Peru, is the technical body. The Junta acts by consensus and has the authority to initiate investigations, determine whether there are dumped imports, determine whether there is injury or threat of injury to the domestic industry of a Community member, impose provisional and definitive duties, etc. All decisions made by the Junta must be published in the Official Gazette of the Cartagena Agreement.

Andean Community and WTO Rules

The WTO Agreement and the Andean Community set forth similar definitions of when a product is considered dumped. Under Article 2.1 of the WTO Agreement, a product is deemed dumped "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." It is comparable to Andean Community Decision 283, Art. 3. The two agreements differ, however, in their methodology for calculating the dumping margin. In the situation where the like product is not sold in the ordinary course of trade in the domestic market of the exporting country or where because of the specific market situation or the low volume of sales in the domestic market of the exporting country, such sales do not allow a proper comparison, the WTO Agreement states that "the margin of dumping shall be determined by comparison with 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."⁵

In contrast, the Andean Community provides first that the normal value be determined by considering the *highest* export price of a like product exported to a third country, so long as it is representative. By taking into account the highest export price, the margin of dumping will be larger under the Andean Community. Otherwise, the Andean Community provisions on calculating normal value appear to be consistent with the WTO Agreement.

The WTO Agreement requires that a "fair comparison" be made between the export price and the normal price when determining the margin of dumping.⁶ This fair comparison requirement is not explicit in the Andean Community, which states merely that the export price and the normal value be analyzed simply on a "comparable basis."⁷ While on its face this is not inconsistent with the WTO Agreement, how the Andean authorities apply the standards within the WTO Agreement would establish whether such practices are contrary to it.

Regarding injury analysis/causal link, under the WTO rules, an injury determination must be based on positive evidence and involve an objective analysis of both (a) the volume of dumped imports and their effect on prices in the domestic market for the like products, and (b) the consequent impact of these imports on domestic producers of the like products.⁸ The WTO Agreement also provides that it must be shown that the dumped imports are causing injury through the effects of dumping.⁹ Unlike the WTO Agreement, the Andean Community does not set forth strict guidelines for determining injury and the causal link between the dumped imports and the injury to the domestic industry, though the Andean Community provides optional considerations which mirror those in the WTO Agreement.¹⁰ Additionally, there is no explicit causal requirement in the Andean Community. However, there is an implied causal requirement in Article 2 of Andean Community Decision 283, which sets forth the situations when a member country or companies with a legitimate interest can bring a complaint. All four situations include instances when the practices of another country "threaten to cause or cause significant prejudice to the national production." This suggests that a causal

⁴ As of August 1997, the Board was replaced by a General Secretariat headed by an Executive Secretary thus referencing in this chapter to the Board should be understood as referring to the Andean Community General Secretariat.

⁵ WTO Antidumping Agreement, Art. 2.2.

⁶ WTO Antidumping Agreement, Art. 2.4.

⁷ Andean Community Decision 283, Art. 7.

⁸ WTO Antidumping Agreement, Art. 3.1.

⁹ WTO Antidumping Agreement, Art. 3.5.

¹⁰ Andean Community Decision 283, Art. 17.

link is required before the authorities will pursue a complaint. Again, the practices of the Board would determine whether the implementation of the Andean Community is consistent with the WTO Agreement.

Regarding industry support for petition, according to the WTO rules, an application must be made "by or on behalf of the domestic industry" before the authorities can initiate an investigation.¹¹ There is an affirmative obligation on the part of the authorities to examine industry support prior to initiating an investigation. The industry support requirement is considered satisfied when the application is supported by those domestic producers whose collective output comprises more than 50 percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. The WTO rules prohibit the initiation of an investigation absent the express support of domestic producers accounting for at least 25 percent of domestic production.

The Andean Community does not contain a requirement that the petition have industry support. In fact, the Andean Community provides only that any member country or "companies with a legitimate interest" can submit a petition for antidumping measures.¹² Nowhere in the Andean Community is "companies with a legitimate interest" defined.

With respect to *de Minimis* dumping margins and negligible imports, the WTO Agreement provides for immediate termination of cases where the authorities determine that the dumping margin is *de minimis*, defined as less than 2 percent, or the volume of dumped imports is negligible, normally defined as less than three percent of total imports.¹³ The Andean Community contains no such provisions for immediate dismissal of cases.

The WTO Agreement requires that before making a final determination, the authorities inform all interested parties of essential facts being considered which constitute the basis for the decision whether to implement definitive measures.¹⁴ The Andean Community does not contain such a requirement.

The WTO Agreement allows the authorities to suspend or terminate proceedings without the imposition of provisional measures or anti-dumping duties "upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or cease exports . . . at dumped prices."¹⁵ Before accepting such an undertaking, the authorities must be satisfied that the injurious effect of dumping is removed. The Andean Community does not expressly endorse voluntary undertakings. However, Article 14 of the Andean Community provides that "any agreements and results" reached at meetings convened "for the purpose of seeking a direct solution" are to be recorded in the minutes thereof. The "agreements and results" referred to in Article 14 may include undertakings of the kind discussed in the WTO Agreement.

Both the WTO Agreement and the Andean Community prohibit the application of antidumping duties in an amount that exceeds the margin of dumping.¹⁶ The WTO Agreement also expresses a preference for imposing a duty less than the margin of dumping when a lower level of duty would be adequate to eliminate the injury to the domestic industry.¹⁷ The Andean Community also permits the imposition of a lesser duty, though it does not assert a preference for it.¹⁸

Under the WTO rules, definitive antidumping measures normally must be terminated no later than five years from their imposition.¹⁹ The Andean Community contains no limitations on how long an antidumping duty can be imposed.

Both the WTO Agreement and the Andean Community provisions provide an opportunity for industrial users to have input into the investigation.²⁰ Specifically, the WTO Agreement requires that industrial users and consumer organizations be allowed to furnish information relevant to the investigation regarding dumping, injury and the causal link between the dumped imports and the injury to the domestic industry. The Andean Community permits consensus with a "legitimate interest in the case to provide information, the type of information which they can provide apparently is not as limited as permitted by the WTO.

¹¹ WTO Antidumping Agreement, Art. 5.4.

¹² Andean Community Decision 283, Art. 2.

¹³ WTO Antidumping Agreement, Art. 5.8.

¹⁴ WTO Antidumping Agreement, Art. 6.9.

¹⁵ WTO Agreement, Art. 8.

¹⁶ WTO Antidumping Agreement, Art. 9.3; Andean Community, Art. 20.

¹⁷ WTO Antidumping Agreement, Art. 9.1.

¹⁸ Andean Community Decision 283, Art. 20.

¹⁹ WTO Antidumping Agreement, Art. 11.3.

²⁰ WTO Antidumping Agreement, Art. 6.12; Andean Community, Art. 12.

The WTO Agreement requires members "to maintain judicial, arbitral or administrative tribunals or procedures" to promptly review administrative actions relating to final determinations.²¹ The Andean Community does not include any provision relating to judicial review of a decision made by the Junta.

Procedural Provisions and Issues

The WTO Agreement sets forth in detail the information required in an application.²² First, an application must contain evidence of dumping, injury, and a causal link between the dumped imports and the alleged injury. An application must also include, inter alia, detailed information on the identity of the applicant, the allegedly dumped product, the prices at which the product at issue is sold when destined for consumption in the domestic markets of the country or countries of origin or export, the evolution of the volume of the allegedly dumped imports, and the impact of the imports on prices of the like product in the domestic market.

The Andean Community also contains application requirements, but on a much more general level. The Andean Community requires that a complaint must contain information on the nature and duration of the alleged unfair trade practice, a description of the products that are the subject of the complaint, the companies involved, evidence of a threat of injury or threat of injury, and the levels of dumping duties requested.²³ No further information is necessary.

Under the WTO Agreement, upon submission of the application, the authorities are required to review the accuracy and adequacy of the evidence provided to determine whether it is sufficient to warrant the initiation of an investigation.²⁴ The Andean Community, in contrast, states only that the Junta shall not initiate an investigation unless the complaint is complete, without specifying the criteria for determining when a complaint is complete.²⁵

Under the WTO rules, an investigation normally must be concluded within one year after initiation, except in extraordinary circumstances, and in no case may an investigation exceed 18 months.²⁶ Under the Andean Community rules, the Junta has only four months to undertake and complete the investigation.²⁷ In special circumstances, this period can be extended by two months.

The WTO Agreement provides that the investigating authorities may conduct investigations in the exporting country in order to verify the accuracy of the data submitted during the course of the investigation and to obtain additional information.²⁸ The Andean Community does not contain provisions concerning the verification of data submitted.

Under the WTO rules, the authorities are not permitted to apply provisional measures sooner than 60 days from the date investigation is initiated.²⁹ The Andean Community stands in potential conflict with the WTO Agreement because it allows an applicant to request immediate corrective measures, including antidumping or compensatory duties, when injury or threat of injury is evident.³⁰ As far as a time frame is concerned, the Andean Community states only that the Junta has 20 days from the date of the filing of the complaint to decide whether to impose antidumping duties. No 60 day waiting period is required under the Andean Community.

Under the WTO Agreement, antidumping duties shall normally be terminated not later than 5 years from their imposition. However, where the authorities find that the expiry of the duty is likely to lead to the continuation or recurrence of dumping and injury.³¹ The Andean Community contains no similar time limit on the application of antidumping duties, which could be inconsistent with the WTO Agreement depending on how long duties are imposed under the Andean Community.

Under the WTO rules, the authorities must provide public notice of 1) a decision that the evidence is sufficient to warrant initiating an antidumping investigation; 2) any preliminary or final determination; 3) any

²¹ WTO Antidumping Agreement, Art. 13.

²² WTO Antidumping Agreement, Art. 5.2.

²³ Andean Community, Art. 10.

²⁴ WTO Antidumping Agreement, Art. 5.3.

²⁵ Andean Community Decision 283, Art. 11.

²⁶ WTO Antidumping Agreement, Art. 5.10.

²⁷ Andean Community Decision 283, Art. 15.

²⁸ WTO Antidumping Agreement, Art. 6.7.

²⁹ WTO Antidumping Agreement, Art. 7.3.

³⁰ Andean Community Decision 283, Art. 23.

³¹ WTO Antidumping Agreement, Art. 11.3.

decision to accept or terminate an undertaking; and 4) the termination of a definitive antidumping duty.³² The specific details of what such public notices must include are outlined in detail in Articles 12.1 and 12.2. Analogous public notice requirements, though far less detailed, are included in the Andean Community.³³ The Junta is required to issue a reasoned decision once it finds the complaint is sufficient to initiate an investigation. The initiation decision need only be communicated to the Claimant Company or companies. The Junta is also required to issue a reasoned decision within 20 working days following the conclusion of the investigation.

Both the WTO Agreement and the Andean Community provide for treatment of confidential information. Pursuant to both agreements, information, which by nature is confidential or is furnished on a confidential basis is treated as confidential to the extent that the submitter requests such treatment.³⁴ Additionally, when a party requests that evidence be treated as confidential, it must submit non-confidential summaries or in exceptional circumstances why summary is not possible.

Antidumping Actions

The Junta has authorized the imposition of antidumping duties under the Andean Community rules in only two instances. As a result of an action initiated at the request of the Government of Ecuador, in 1990, the Junta required that Venezuela impose antidumping duties on imports of sorbitol from France.³⁵ The Junta found that exports of sorbitol originating in France for consumption in Venezuela were dumped in Venezuela and were causing injury to Ecuador's exports of sorbitol to Venezuela. Thus, under the provisions of the Cartagena Agreement, Venezuela was required to impose an antidumping duty equivalent to \$195 per ton on imports of sorbitol from France.³⁶

In a more recent action, in May 1997, the Junta authorized the imposition of antidumping duties on metal corks produced by two Colombian companies and exported to Ecuador. The investigation was initiated based on a complaint from an Ecuadorean company alleging that dumped imports of crown corks from Colombia were causing injury to the Ecuadorean industry. Dumping duties were imposed in the amount of \$0.27 or \$0.42 per thousand, depending on the producer.

The Junta currently has one antidumping investigation pending. In May 1997, the Junta initiated an investigation at the request of Venezuelan producers of wooden panels alleging that dumped imports from Colombia were causing injury to the Venezuelan industry. In June, the Junta decided against the imposition of provisional measures.

ANTIDUMPING LAWS OF ANDEAN COMMUNITY COUNTRIES

Bolivia

In March 1995, the Government of Bolivia notified its antidumping law and regulations to the WTO Committee on Anti-Dumping Practices. Included in this notification were the following: (1) Supreme Decree 23308 of October 22, 1992 establishing special rules to prevent unfair trade practices; (2) Bi-Ministerial Decision No. 25191-9 of February 4, 1993, which regulates Supreme Decree 23308 by establishing procedures for the treatment of complaints and conducting investigations; and (3) Ministerial Decision 412 of September 23, 1994 authorizing the Ministry of Industry and Trade to initiate and conduct antidumping investigations.

The basic guiding principles of the Bolivian law and regulations are: (a) to ensure that domestic producers are treated equitably when the trade practices of foreign competitors, through either subsidies or dumping, lead to unfair competition; (b) not to protect inefficient production or other situations which prevent healthy competition among market competitors, as this would be contrary to the interests of local consumers and the rational allocation of resources in Bolivia; (c) to establish simple and flexible procedures that permit rapid action against unfairly traded imports; (d) to establish the principles for the technical evaluation of injury (or threat of

³² WTO Antidumping Agreement, Arts. 12.1 and 12.2.

³³ Andean Community Decision 283, Arts. 11 and 18.

³⁴ WTO Antidumping Agreement, Art. 6.5; Andean Community, Art. 13.

³⁵ Resolución 296 de la Junta del Acuerdo de Cartagena, *Gazeta Oficial*, No. 68 (28 June 1990).

³⁶ The duty was later suspended when Venezuela joined the GATT, pursuant to Article VI:6(b) of the GATT.

injury) and the causal link with the dumped imports; and (e) to adopt measures to permit the unfair trade practices to be corrected.

The Ministry of Exports and Economic Competition ("MECE") is the competent authority to initiate and conduct antidumping investigations in Bolivia. MECE relies on a Technical Secretariat to carry out the investigation. The Secretariat is comprised of representatives from : (1) the Technical Department of MECE; (2) the Ministry of Finance and the Central Bank; and (3) the Bolivian Confederation of Private Industry, representing the associations concerned. The Technical Department of MECE is responsible for coordinating and administering the Technical Secretariat. It is responsible for issuing the questionnaires, deciding which documents are confidential, verifying information submitted during the course of the investigation, and other such activities.

MECE is ultimately responsible for receiving antidumping complaints and supervising the investigations carried out by the Technical Secretariat. MECE also makes recommendations to the Executive as to whether to impose antidumping duties and at what level.

Any interested party who considers that it has been affected by dumped imports that are causing (or threatening to cause) injury may submit a petition to MECE. The petition must indicate the level of duties being sought by the interested party. In making a formal complaint, the interested party is required to provide evidence of the existence of injury or threat of injury to the domestic industry and a causal link between the allegedly dumped imports and the injury.

MECE typically initiates antidumping investigations upon receipt of a complaint from domestic producers or by any party accounting for a major proportion of the domestic industry (for example, trade associations) who consider themselves injured by reason of dumped imports of like products occurring during the 6 months preceding the filing of the complaint or occurring currently. In exceptional circumstances, MECE may self-initiate an investigation when there is adequate evidence to presume the existence injury caused by dumped imports, provided that it has the support of the domestic industry.

A complaint (or petition) must be submitted in writing to MECE and, at a minimum, it must include the following elements:

- (a) the name and domicile of the complainant and, if applicable, his legal representative;
- (b) the percentage of domestic production accounted for by the complainant;
- (c) a description of the imported goods;
- (d) export prices and normal value of the product subject to the complaint;
- (e) the volume of the subject product imported or to be imported;
- (f) name and domicile of known importers and exporters of the product;
- (g) the country of origin and/or export;
- (h) information on injury or threat of injury to the domestic industry, such as output, sales, utilization of installed capacity and profit trends during the prior three years; and
- (i) an agreement to submit the relevant documents to the investigating authority for verification of the information provided.

When MECE determines that the information submitted by the domestic industry is sufficient, it will so inform the complainant within 10 business days from the date of receipt of the complaint. If MECE determines that the complaint lacks adequate support or information in any way, within 10 business days from the date of receipt of the complaint, MECE will inform the complainant of the need to provide additional information within 20 working days. If the additional information is not provided within specified period, MECE will consider the complaint to have been withdrawn.

The Technical Secretariat has 20 working days from the date that MECE notifies the complainant of the adequacy of the petition to determine whether there are sufficient grounds to initiate an antidumping investigation. Sufficient grounds include (1) confirmation that the complaint is made on behalf of a major proportion of the domestic industry (i.e., more than 25 percent), and (2) adequate evidence of dumping and consequent injury. The decision of the Technical Secretariat whether or not to initiate an investigation will be published in the Official Gazette.

Within five calendar days from the initiation decision, the Technical Secretariat will issue questionnaires to the exporters, domestic producers and diplomatic representatives requesting information relevant to the

investigation. Parties have a maximum period of 20 working days to respond. This violates the WTO rules, which provide that parties must be granted at least 30 days to reply.³⁷

Within 45 working days of the date of issuance of the questionnaires, the Technical Secretariat will make a preliminary determination as to the existence of dumping, injury and the causal link. If the required elements are found to exist, provisional duties may be imposed, where necessary.

The Technical Secretariat has a maximum of seven months from the date of publication of the ministerial decision ordering the initiation of the investigation in which to conduct and complete the investigation. In exceptional circumstances, MECE may authorize an extension of this period. The Technical Secretariat is required to verify the information submitted during the course of the investigation by the foreign producers and exporters, as well as the petitioners and importers.

After interested parties have been given an opportunity to present their arguments, the Technical Secretariat will conclude the investigation and will convene a meeting, within 10 working days of the conclusion of the investigation, of the Committee on the Evaluation of Unfair Trade Practices in order to evaluate the findings of the investigation and make a recommendation to CONEPLAN as to whether definitive antidumping measures should be imposed. CONEPLAN is required to meet within five working days following the meeting of the Committee to make a final determination based on the information and recommendations presented.

In making a determination as to whether a domestic industry is injured or threatened with injury, MECE considers, among other factors, the volume of dumped goods imported or to be imported, the prices included in the complaint, and the effects on domestic producers of the like products. MECE may also collect evidence and information from producers whose products are subject to investigation and from the authorities in the exporting country.

Under Bolivia's regulations, imports are considered to be negligible if they constitute less than one percent of total domestic consumption. Imports from countries whose volume of imports is less than one percent of domestic consumption may be cumulatively assessed if total imports from all such countries together account for more than 2.5 percent of total domestic consumption. Bolivia's negligibility standard differs from, but does not necessarily conflict with, the WTO's negligibility standard, which is based on imports rather than domestic consumption.³⁸

The legislation provides for the imposition of duties in an amount equal to the margin of dumping found or less, if such lesser amount is sufficient to remove the threat of injury or actual injury to the domestic industry. Under Bolivian law, antidumping duties may remain in force for two years. This period may be extended for an additional two years if the causes which gave rise to the antidumping duty persist and the domestic industry submits an application to MECE for the continued imposition of the duty. Depending on the findings of this new investigation, the amount of the antidumping duty may be modified. Such an investigation will be carried out again, upon request, after an additional two years. After five years, an investigation of dumping and consequent injury is again carried out. If interested parties fail to request such a review, the definitive duties automatically lapse. The provision in Bolivia's regulations is considerably more liberal than the parallel WTO provision which provides for a maximum duration of five years for definitive antidumping measures, unless the authorities determine that dumping and injury are likely to continue or recur, in which case the duties can remain in effect for an additional five-year period.

The Bolivian regulations also provide for modification of definitive antidumping measures by the administering authorities at any time, provided there are valid reasons for doing so, or at the request of an interested party one year after the duties were first imposed or last modified.

Bolivia has not reported to the GATT or the WTO any antidumping actions against imports from the United States or any other country.

³⁷ WTO Antidumping Agreement, Art. 6.1.1.

³⁸ Art. 5.8 of the WTO Antidumping Agreement provides that the volume of dumped imports will normally be considered negligible if the volume of dumped imports from a particular country accounts for less than 3 percent of total imports, unless countries individually accounting for less than 3 percent of imports collectively account for more than 7 percent of imports.

Colombia

Colombia instituted its first antidumping law in 1990 at the same time that the Colombian government decided to adopt a policy of a more open economy. The law has been amended several times since 1990. Most recently, in December 1994, Colombia implemented the Uruguay Round Agreement, which includes the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 (i.e., the Antidumping Agreement) and its annexes, by incorporating them in its national legislation. In February 1995, Colombia issued Decree 299 which regulates the application of antidumping and countervailing duty legislation.

Colombia's antidumping law is not applied to imports from other Andean Community countries (i.e., Venezuela, Ecuador, Peru and Colombia). In a case of dumping between the Andean Community nations, there is a super-national antidumping law (Decision 283 of 1991) that applies, and the administering authority is the Board of the Cartagena Agreement. There are two situations in which the Board of the Cartagena Agreement decides on dumping cases involving countries outside the Andean Community. The first is when the antidumping measures must be imposed in more than one member country. The second is when a foreign producer is causing material injury to the exports from one Andean Community member to another.

The Institute of Foreign Trade (Instituto de Comercio Exterior or "INCOMEX") is the government body charged with administering the Colombian antidumping law. INCOMEX is responsible for determining the existence of dumping, material injury, or the threat of material injury and the causal link between the dumped imports and the resulting material injury. Provisional duties may be imposed if the Director of INCOMEX deems it appropriate.

Final determinations are adopted by the Ministry of Foreign Trade based on a report prepared by the Foreign Practices Committee. INCOMEX first makes recommendations to the Foreign Practices Committee based on the findings of its investigation. The Foreign Practices Committee, in turn, recommends a final decision to the Ministry of Foreign Trade, which is responsible for adopting the final decisions. INCOMEX is required by law to take into account the views of the Superintendent of Industry and Commerce concerning the effect on conditions of competition in Colombia of the final decision to impose definitive antidumping duties.

Investigations are normally initiated by means of a petition filed by a majority of the domestic producers of the like or similar product.³⁹ The petition must meet the following minimal requirements in order to be considered adequate:

- identity of the petitioning firm(s)
- a description of the product to be investigated
- country or origin or export
- names and addresses of the foreign producers and exporters as well as importers
- export prices and normal value in the country of origin or export
- information relevant to injury or threat of injury
- a demonstration of the causal link between the allegedly dumped imports and the resulting material injury or threat of injury.

Upon examination of the petition, if INCOMEX finds that it meets the requirements, it will notify the petitioner within five working days. If INCOMEX finds it necessary to request additional information, it will ask that the petitioner provide such information. Until that information is received, the process is suspended. INCOMEX has five working days from the date on which the additional information is received to notify the petitioner of the adequacy of its petition and to issue a formal notice of receipt of the petition.

Following the issuance of the receipt of the petition, INCOMEX has 20 days to evaluate the substance of the petition and determine whether to initiate an investigation. The grounds for initiating an investigation depend on (1) confirmation that the petition is filed on behalf of a major proportion of the domestic industry, and (2) adequate evidence of the existence of dumping and injury, and the causal relationship between these two elements.

³⁹ INCOMEX has the authority to self-initiate antidumping investigations, provided that it has adequate evidence to presume the existence of injury caused by dumped imports. Decree 299, Ch. VII, Art. 30.

INCOMEX issues questionnaires within 7 days of the date of initiation of the investigation. Interested parties are allowed 40 days to respond to these questionnaires, with the possibility of an additional 10 days where warranted. Based upon the information received and other information obtained during the course of the investigation, INCOMEX must decide within 65 days whether to impose provisional measures. (This deadline may be extended for an additional 30 days, in exceptional circumstances.) Consistent with the WTO rules, the Colombian regulations prohibit the imposition of provisional measures sooner than 60 days after the date of initiation of an investigation. However, Colombian regulations permit the imposition of provisional measures at the time of initiation for investigations involving imports from non-WTO member countries (or countries with which Colombia has not entered into an international commitments on the application of antidumping duties).⁴⁰

INCOMEX then has an additional three months from the date of the publication of the preliminary determination to convene a meeting with the Trade Practices Committee to report on the investigation findings, so that the Committee may form an opinion. (In exceptional circumstances, this period may be extended by up to one month.) Once the Committee's opinion or recommendation has been given, the Ministry of Foreign Trade has one month to adopt a reasoned resolution and inform the interested parties of its decision whether or not to impose definitive antidumping duties. In total, an investigation may last up to a maximum of 8 months from start to finish. The Ministry of Foreign Trade then has an additional month to adopt the recommendation of the Committee of Foreign Practices.

Assuming all the necessary requirements are satisfied for the imposition of a definitive antidumping duty, the imposition of such a duty is permissive rather than mandatory in Colombia. The Ministry of Foreign Trade is charged with adopting the decision most appropriate to the interests of the country and therefore may impose an antidumping duty in an amount less than the actual margin of dumping, if such lesser duty is adequate to remove the injury to the domestic industry. With respect to the investigations involving imports from the United States discussed in the following section, INCOMEX has never applied a lesser duty rule.

With respect to the duration of antidumping measures, Colombian law contains a five-year sunset provision, whereby an antidumping measure remains in force for a maximum of five years unless the causes that lead to the imposition of the duties (i.e., dumping and injury) persist.⁴¹

Colombia has had more antidumping cases against imports from the United States than from any other country. To date, there have been a total of four cases against U.S. exports: ethyl acetate, homopolymer polypropylene, chromed sheets, and orthophosphoric acid. In all four of these cases, INCOMEX found dumping and consequent injury and imposed definitive antidumping duties. All of these investigations were conducted pursuant to Colombia's pre-WTO antidumping statute. Colombia has not initiated any antidumping cases against imports from the United States under its new statute and regulations implementing the WTO rules.

In August 1991, INCOMEX initiated an antidumping investigation against imports from the United States and Belgium of orthophosphoric acid. In April 1992, INCOMEX imposed provisional duties. Because none of the U.S. producers or exporters responded to INCOMEX's requests for information, the decision to impose definitive antidumping duties was based on "best information available," which was information provided by the petitioning industry. In August 1992, INCOMEX imposed definitive duties on imports from the United States of 77.75 percent.⁴² The volume of trade involved was 583 tons, which constituted about 11.5 percent of total domestic consumption in Colombia.⁴³

In June 1993, INCOMEX initiated an antidumping investigation against homopolymer polypropylene imports from the United States. After making a preliminary finding of both dumping and consequent injury, INCOMEX imposed provisional duties in November 1993. Definitive antidumping duties of 29.55 percent were imposed in March 1994.⁴⁴ The volume of trade involved was 4,763 tons, which constituted about 16.5 percent of total domestic consumption in Colombia.

In October 1993, INCOMEX initiated an antidumping investigation against imports of ethyl acetate from the United States, but declined to initiate an investigation of imports of the same product from Brazil and Mexico. Upon making a preliminary finding of dumping and consequent injury in March 1994, INCOMEX

⁴⁰ Decree 299, Ch. VII, Art. 37.

⁴¹ This provision was also contained in Colombia's antidumping law pre-dating the WTO requirement.

⁴² *Gazeta del Ministerio de Comercio Exterior*, Resolucion Numero 0663, 14 August 1992.

⁴³ See Colombia's Semi-Annual Report Under Article 16.4 of the Agreement to the Committee on Anti-Dumping Practices, G/ADP/N/16/COL (31 July 1996).

⁴⁴ *Gazeta del Ministerio de Comercio Exterior*, Resolucion Numero 0332, 18 March 1994.

imposed provisional duties. Because the U.S. producers and exporters failed to respond to INCOMEX's requests for information, the final determination was based on "best information available," in this case, information provided by the petitioning industry. Thus, in July 1994, INCOMEX imposed a definitive antidumping of 77.08 percent on all imports of ethyl acetate from the United States.

In 1994, INCOMEX initiated an investigation against imports of chrome sheets from the United States. INCOMEX declined to initiate an investigation on imports of tin sheet for lack of evidence of injury or threat of injury to the Colombian industry resulting from the allegedly dumped imports of tin sheet from the United States. At the preliminary phase of the investigation, INCOMEX declined to impose provisional antidumping duties, but decided to continue the investigation to examine further the question of whether the domestic industry was injured or threatened with material injury by reason of the dumped imports of chrome sheets. In May 1995, INCOMEX issued its final determination which establishes a duty of 116.24 percent.⁴⁵ The volume of imports of sheets from the United States was 1,577 tons, which constituted about 18.5 percent of total domestic consumption in Colombia.

Ecuador

Article 41 of the Ecuadorean Tariff Law authorizes the application of antidumping measures. In August 1995, at the time when it only had observer status in the WTO, the Government of Ecuador notified its antidumping regulations to the WTO Committee on Antidumping Practices.⁴⁶ These regulations date from September 30, 1991 and have not been amended to reflect the requirements of the WTO Antidumping Agreement.

The National Directorate of the Foreign Trade of the Ministry of Industry, Trade, Integration and Fisheries (the "National Directorate") is responsible for conducting antidumping investigations. The Minister of Finance and Credit is responsible for establishing measures to prevent or remedy dumping. Prior to exercising this authority, the Minister shall seek the opinion of the Special Commission of the Tariff Committee⁴⁷ or the Tariff Committee itself. By contrast, for investigations conducted pursuant to the Cartagena Agreement, the Minister shall not seek the opinion of the Special Commission in order to establish provisional or preventive antidumping measures. For investigations not under the Cartagena Agreement, the Special Commission is responsible for making recommendations on draft decisions of the Minister of Finance and Public Credit concerning the establishment of measures to prevent or remedy dumping.

Under Ecuador's regulations, an interested party that considers it has been affected by dumped imports may request that the National Directorate carry out an antidumping investigation. The regulations do not clearly indicate how such a "request" must be made, nor do the regulations explicitly state that interested parties are required to submit a written petition setting forth their allegations.⁴⁸ The National Directorate may also conduct an investigation upon receipt of a written request of a member of the Tariff Commission who provides sufficient information concerning the existence of injury or threat of injury to a specific domestic industry.

The 1991 provisions concerning petitions and initiation requirements in Ecuador's regulations may be inconsistent with the WTO antidumping rules. In the first instance, when an interested party seeks the initiation of an antidumping investigation, it appears that the interested party is only required to allege the existence of dumping, not injury or threat of injury. In the second instance, when a member of the Tariff Commission seeks the initiation of an investigation, it appears that the member is only required to provide information relating to the existence of injury, without any requirement to provide information on the existence of dumped imports. The WTO Antidumping Agreement requires sufficient evidence of dumping, injury (or threat of injury), and a causal link before an investigation may be initiated.

⁴⁵ *Gazeta del Ministerio de Comercio Exterior*, Resolucion Numero 0338, 3 May 1995.

⁴⁶ See G/ADP/N/1/ECU/1 (8 Nov. 1995).

⁴⁷ The Special Commission is composed of the following:

- (a) the Minister for Finance and Credit or his delegate, who shall chair the Commission;
- (b) the Minister for Industry, Trade, Integration and Fisheries, or his delegate; and
- (c) the Minister responsible for the sector producing the good affected by the unfair trade practice or his delegate.

⁴⁸ See Regulations to Prevent or Remedy Dumping or Subsidy Practices, Ch. V., Art. 14, Registro Oficial No. 780 of the Government of Ecuador, 30 September 1991, No. 2772-A.

Article 15 of Ecuador's regulations sets forth the petition requirements, from which one may infer that interested parties are required to submit written applications. The petition requirements include:

- (a) the nature of the practice and its duration;
- (b) the characteristics of the products subject to the practice and their tariff classification;
- (c) the enterprises involved and their domicile;
- (d) the characteristics of the measure benefiting the producer or exporter of the dumped product; and
- (e) the level of the duties proposed.

Contrary to the WTO rules, there is no requirement in Ecuador's regulations that the petition contain information on injury (or threat of injury) to the domestic industry. Nor is there an explicit burden on the authorities to examine the adequacy and accuracy of the evidence provided prior to initiating an investigation. In addition, there does not appear to be a requirement on the part of the administering authorities to examine the degree of support for or opposition to the petition and to ensure that the petition is filed by or on behalf of the domestic industry in Ecuador.

Within five days from receipt of the petition, the National Directorate is required to inform the importer, the representative or national distributor, or the embassy in the country of origin of the product of the petition. Through these parties, the National Directorate also requests information needed to investigate the foreign producer(s) or exporter(s). The National Directorate also requests relevant information from domestic enterprises that might be affected by the allegedly dumped imports.

During the course of the investigation, the National Directorate is directed to hold meetings among the parties, with a view to reaching a resolution of the issues, for example, through an undertaking by the foreign producer or exporter to cease dumping. If no resolution is reached, the National Directorate has four months from the date of receipt of the petition to complete its investigation. This period may be extended for an additional two months at the discretion of the Special Commission of the Tariff Committee. In such cases, the Special Commission may recommend the imposition of provisional measures until the Minister of Finance and Public Credit makes a final decision as to whether or not to impose definitive measures.

In cases in which the injury or threat of injury is sufficiently serious as to require the imposition of provisional or preventive measures, Ecuadorean law provides that a preliminary investigation will be carried out on the basis of available information within a period not exceeding 20 days from the date the petition was filed. In addition, the Special Commission must be convened within the following five working days in order to make a recommendation on the adoption of remedial measures. These provisions appear to violate the WTO requirement which provides that provisional measures may not be imposed sooner than 60 days after the date of initiation of the investigation.⁴⁹

Final decisions concerning the existence of dumping and consequent injury are published in the Registro Oficial. In cases of dumping, the legislation provides for the imposition of duties in an amount equal to the margin of dumping found or less, if such lesser amount is sufficient to remove the threat of injury or actual injury to the domestic industry.

Under Ecuadorean law, antidumping duties may remain in effect for a period not to exceed two years. The domestic industry may seek the application of the duty for a longer period only through the submission of another petition to the National Directorate in sufficient time to permit the investigation to be undertaken. This is considerably more liberal than the WTO provision which provides for a maximum duration of five years, unless the authorities determine that dumping and injury are likely to continue or recur, in which case the duties can remain in effect for an additional five year period.

Ecuador has never notified to the GATT or the WTO that it has applied antidumping measures on imports from any country. In fact, in a November 1995 official submission to WTO Committee on Antidumping Practices, Ecuador stated that it has not yet applied any countervailing or antidumping duties.⁵⁰

⁴⁹ See WTO Antidumping Agreement, Art. 7.3.

⁵⁰ See Ecuador's Notification of Laws and Regulations Under Articles 18.5 and 32.6 of the [Antidumping and Subsidies and Countervailing Measures] Agreements to the WTO Committee on Antidumping Practices and WTO Committee on Subsidies and Countervailing Measures, G/ADP/N/1/ECU/1, 8 November 1995.

Peru

At the end of 1990, the Peruvian government adopted a formal policy of opening the Peruvian economy to international competition, which led to the gradual reduction of import tariffs. With this new open market policy came the need for mechanisms to address unfair trade practices, such as dumping and government subsidization. Thus, in 1991, Peru adopted antidumping and countervailing duty regulations, which established the Commission for the Control of Dumping and Subsidies as the administering authority. Since Peru was not a signatory to the 1979 Anti-Dumping Code, it was not required to notify its antidumping actions to the GATT Anti-Dumping Code Committee. On January 1, 1995 the WTO Antidumping Agreement became national law through the adoption of Legislative Resolution No. 26407. Peru announced its intention to issue regulations implementing the WTO Antidumping Agreement.⁵¹ This section is based on the 1991 regulations.

With the adoption of the WTO Antidumping Agreement as national law, the former Commission for the Control of Dumping and Subsidies has been absorbed by a new administering authority: the Institute for the Defense of Free Competition and Industrial Property ("INDECOPI"). INDECOPI is comprised of four full members and two substitute members, all of whom are appointed by the Directorship of INDECOPI. The Directorship is itself comprised of three members, two of whom are appointed by the Ministry of Industry, Commerce Tourism and Integration and the Ministry of International Trade, and the third is appointed by the Ministry of Economy and Finance. Under Peruvian law, the authority to conduct antidumping investigations rests with the Commission on Antidumping and Subsidies of INDECOPI (the "Commission"). Such investigations are carried out by the Technical Secretary of the Commission. The Commission is the only authority with the power to impose antidumping duties.

In cases of dumped imports originating in another Andean Community member country, the Peruvian industry affected by the allegedly dumped imports has the option to request an investigation by the Junta of the Andean Community or by the Commission of INDECOPI. Once the forum is selected, the Peruvian industry cannot initiate another proceeding in the alternative forum.

Antidumping cases are generally initiated upon receipt of a written request by the domestic producers of the like product. In exceptional circumstances, the Committee may self-initiate an investigation if it has sufficient evidence of dumping and injury and it determines that the case is in the national interest.

Peruvian producers, trade associations or unions that consider themselves injured (or threatened with injury) by dumped imports may file a complaint, provided the complaint is filed by or on behalf of a major proportion of the domestic industry. Consistent with the WTO Antidumping Agreement, the Commission will consider that the complaint is filed by or on behalf of the domestic industry if it is supported by domestic producers whose collective output constitutes more than 50 percent of the total domestic production of the like product. However, the Commission will not initiate an investigation if the domestic producers expressly supporting the petition account for less than 25 percent of the total domestic production of the like product.

The complaint must also provide sufficient evidence of dumping and consequent injury, including historical data on domestic output, current capacity of the affected firm or industry, total value of sales in the Peruvian market, inventory, employment, profits, etc. The Technical Secretary of the Commission may also request information it deems relevant from domestic producers, distributors or traders of the like product, as well as from customs officers, agents, or other representatives receiving the imported goods.

Once the formal requirements of the petition are satisfied and the Technical Secretary of the Commission has verified the information provided by the petitioner, it has 30 days to decide whether to initiate a formal investigation. The Commission is required to publish in the Official Gazette the Commission Resolution announcing the initiation of the investigation.

The Technical Secretary of the Commission issues questionnaires to the known foreign producers and exporters of the merchandise in question and allows them 30 days to provide a response. An extension of the 30-day response deadline may be granted, where warranted.

The foreign producers and exporters, importers, and the domestic industry may present to the Technical Secretariat any information they consider useful throughout the investigative process to support their case. All such information must be translated into Spanish.

⁵¹ Notification of Laws and Regulations under Article 18.5 of the Agreement, G/ADP/N/I/PER/1, 29 March 1995.

Investigations normally must be concluded within nine months of the publication of the Commission Resolution commencing the investigation. However, if the Commission determines that an extension is justified, it may extend the deadline for up to three months. The period examined typically covers at least six months prior to the initiation of the investigation.

Upon completion of the investigation, the Technical Secretary prepares a report of its findings with recommendations for the Commission. The decision concerning the imposition of definitive antidumping duties is made by a majority vote of the members of the Commission. The Commission may apply the lesser duty rule and impose a definitive duty in an amount less than the actual margin of dumping if such lesser duty is sufficient to eliminate the injury to the domestic industry.

The Commission's final resolution is published in the Official Gazette and includes the margin of dumping, a description of the methodology employed to calculate the dumping margin, and the basis for its determination that injury is caused or likely to be caused by the dumped imports. The final resolution also orders Customs to begin collecting the antidumping duties. Consistent with the WTO rules, antidumping duties may remain in place as long as they are necessary to eliminate the injury caused by the dumped imports but a period not to exceed five years, unless the Commission finds that the dumping and injury are likely to continue or recur if the duties are lifted.

The Commission's final determination may be appealed to the Tribunal for the Defense of the Competition and Intellectual Property Rights of INDECOPI. The tribunal is an independent reviewing body which has the authority to change the decision taken by the Commission. The final resolution of the tribunal may ultimately be appealed to the Peruvian Supreme Court.

Peru apparently has never had any antidumping cases against imports from the United States. Since the WTO Antidumping Agreement was adopted as national law, Peru has initiated six antidumping investigations. These involve imports from Brazil, Chile, Mexico, China (two cases), and Korea.⁵²

Venezuela

In the early 1990s, Venezuela embarked upon a market opening strategy whereby tariffs and other trade barriers were reduced and the foreign exchange control system, which served to discourage imports, was eliminated. By 1992, in response to increased import competition, Venezuela passed the Unfair Foreign Trade Practices Act, which adopted many of the provisions from the 1979 GATT Antidumping and Subsidies Code (even though Venezuela was not a signatory to these Codes).⁵³ In December 1994, the Venezuelan Congress passed a law approving the Marrakesh Agreement, which gives the WTO Antidumping Agreement force of law in Venezuela.⁵⁴ Consequently, with respect to any antidumping investigation involving imports from a WTO member country, the provisions of the WTO Agreement prevail over any contrary or conflicting provision which may exist in prior laws, such as the Unfair Foreign Trade Practices Act of 1992.

The Andean Community regulations on antidumping predated the passage of Venezuela's national law. Unlike Peru, where the petitioning domestic industry can choose whether to bring its complaint under national law or under the Cartagena Agreement (also referred to as Decision 283), in Venezuela, the Cartagena Agreement preempts national law in cases involving trade among the Andean countries.⁵⁵ The Cartagena Agreement also applies in cases involving imports from third countries when, for example, such third-country imports injure the domestic industry in one Andean Community member country by adversely affecting the ability of that domestic industry to export to the Community member importing the product from a third country. This was the situation in the case involving imports of sorbital from France, discussed *supra*, which were imported into Venezuela but injuring the domestic industry in Ecuador. The Cartagena Agreement also applies when third-country imports are subject to the Andean Common External Tariff and the antidumping measures must be applied in more than one member country to prevent injury.

⁵² See G/ADP/N/22/PER, Peru's Semi-Annual Report to the WTO Committee on Antidumping Practices Under Article 16.4 of the Agreement (29 January 1997) and G/ADP/N/16/PER, Peru's Semi-Annual Report to the WTO Committee on Antidumping Practices Under Article 16.4 of the Agreement (9 August 1996).

⁵³ Law on Unfair Foreign Trade Practices, Official Gazette of the Republic of Venezuela, Special Edition No. 4,441, 18 June 1992.

⁵⁴ Official Gazette of the Republic of Venezuela, Special Edition No. 4,829, 29 December 1994.

⁵⁵ See Unfair Trade Practices Act, Art. 1; Decision 283, Art. 2.

The Commission on Antidumping and Subsidies (Comisión Antidumping y Sobre Subsidios, "CASS"), a decentralized body under the Ministry of Development, is responsible for initiating, conducting, suspending and terminating antidumping investigations in Venezuela. In that context, CASS is also responsible for determining whether there are dumped imports and whether the dumped imports are causing or threatening to cause injury to the domestic industry. CASS is composed of a chairman and four members, all of which have alternates. All decisions of the Commission are taken by an absolute majority of its voting members. CASS also has a Technical Secretariat which is responsible for verifying and implementing the Commission's decisions. The Technical Secretariat receives petitions for antidumping investigations, carries out the investigative procedures concerning dumping and injury, coordinates the investigations, prepares and presents relevant technical studies to the Commission, etc. The chairman of CASS oversees the activities and responsibilities of the Technical Secretariat.⁵⁶

In order for CASS to initiate an antidumping investigation, the Venezuelan producers of like products to those allegedly being dumped must submit a request in writing to the Technical Secretariat. The complaint must contain a detailed description of the allegedly dumped product, evidence of dumping and injury to the domestic industry and identification of all known exporters and importers of the product subject to the complaint. Under special circumstances, CASS may initiate an antidumping investigation *ex officio*, provided it has sufficient evidence of dumping and consequent injury to the domestic industry. To date, CASS has never relied on its authority to self-initiate an antidumping investigation.

Once the petition for the initiation of an investigation has been received, the Technical Secretariat has five working days to determine whether the petition meets the statutory requirements. If the petition does not meet the requirements, it is returned to the applicant, who is given 15 working days to clarify information contained in the petition or to provide additional information, as appropriate. Once the petition is determined to satisfy the statutory requirements for initiation, it is transmitted to CASS, which then has ten working days to decide whether to go forward with a formal investigation. Prior to initiation, CASS is required to verify that the petition is supported by domestic producers accounting for at least 25 percent of total domestic production. As is the case with all decisions made by the Commission, the decision to initiate an investigation must be notified to all interested parties and published in the Official Gazette.

Interested parties then have 60 days from the date of the formal initiation of the investigation to present evidence and arguments, both to prove their cases and to challenge the opposing party's case. The period investigated by the Technical Secretariat covers at least six months prior to the initiation of the investigation and typically covers at least one year.

The Technical Secretariat must conclude the investigation within one year from the date of the initiation, and send a report of its findings to CASS. The Commission, in turn, must make its final decision concerning the imposition of duties within 30 working days after the conclusion of the investigation.

During the course of the investigation, CASS may impose provisional antidumping duties, provided that at least 60 working days have elapsed since the initiation of the investigation, that a preliminary finding of dumping and injury have been made, and that the CASS considers such measures necessary to prevent injury to the domestic industry during the duration of the investigation. Consistent with WTO rules, provisional measures may remain in force for a maximum period of four months.

CASS has the authority to terminate or suspend an antidumping investigation before making a final determination when undertakings are offered by the foreign producers and exporters with regard to a revision of prices to reduce or eliminate dumping and injurious effects or the cessation of all exports of the product in question to Venezuela.

CASS may decide to impose definitive antidumping duties only if it makes an affirmative finding of dumping, injury and causation.⁵⁷ The antidumping duty imposed cannot exceed the dumping margin found during the investigation. CASS has the authority to apply the lesser duty rule if it determines that such lesser duty is sufficient to eliminate the injury to the domestic industry.

⁵⁶ Supplement to Venezuela's Notification of Laws and Regulations Under Articles 18.5 and 32.6 of the Agreements, G/ADP/N/1/VEN/1/Suppl. 2, 4 July 1996.

⁵⁷ Venezuelan law contains a reciprocity clause, whereby Venezuela will apply the injury test only to imports originating in countries that grant the injury test to Venezuelan exports. This means that Venezuela grants an injury test to imports from all WTO member countries.

Definitive antidumping measures are to be imposed only for as long as they are necessary to offset or prevent injury to the domestic industry. Venezuelan law includes a five-year sunset provision, whereby duties automatically expire after five years unless a new investigation results in the extension of the duties. Duties may only be extended once for a period of not more than five years. Interested parties have an opportunity to request a review of the measures each year.

All decisions by CASS are subject to appeal to the First Administrative Court in Venezuela. Venezuela has not initiated any antidumping investigations under the WTO antidumping rules that involve imports from the United States. In fact, Venezuela has had only one antidumping investigation involving imports from the United States. In 1994, Venezuela imposed definitive antidumping duties of 9 percent on imports of crystal and high-impact polystyrene from the United States.⁵⁸ In the preliminary decision, CASS found a dumping margin of 25 percent. However, in the final decision, CASS applied the lesser duty rule and determined that a 9 percent duty was sufficient to eliminate the injury to the Venezuelan industry.

THE ANTIDUMPING REGULATIONS OF THE UNITED STATES

This section compares the WTO Antidumping Agreement with U.S. antidumping legislation, namely, the Tariff Act of 1930 (hereinafter "the Tariff Act").⁵⁹ The Uruguay Round Agreements Act, effective January 1, 1995, amended the Tariff Act to implement the requirements of the WTO Antidumping Agreement that were negotiated during the Uruguay Round. While the Uruguay Round Agreements Act significantly changed the U.S. statute, inconsistencies remain between the WTO Antidumping Agreement and U.S. legislation.

Unlike the Andean Community countries, the United States has a bifurcated system whereby the U.S. Department of Commerce is responsible for investigating and determining whether imports are dumped in the U.S. market, while the U.S. International Trade Commission ("ITC") investigates and determines whether the dumped imports cause or threaten to cause material injury to a U.S. industry. The dumping determination is ultimately made by the Secretary of Commerce. The injury determination, in contrast, is made by a six-member commission which votes on the ultimate determination. Under U.S. law, a tie vote by the commission results in a vote in favor of the U.S. industry seeking the imposition of antidumping duties. Both an affirmative finding of dumping by the Commerce Department and of injury (or threat of injury) by the ITC is required before antidumping duties may be imposed.

Article 2.1 of the WTO Antidumping Agreement considers a product to be dumped "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."⁶⁰ The Tariff Act's definition of dumping is far less specific. Under §771(34), "dumping" refers to "the sale or likely sale of goods at less than fair value."⁶¹

As previously mentioned, pursuant to Article 2.2, the WTO Antidumping Agreement sets forth a methodology for calculating the dumping margin in the case where the like product is not sold in the ordinary course of trade in the domestic market of the exporting country or where, due to the particular market situation or the low volume of sales in the domestic market of the exporting country, such sales do not allow a proper comparison. In these instances, according to Article 2.2, "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."⁶²

The Tariff Act does not specifically contemplate a determination of dumping margin under these circumstances. The Act simply defines the "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise."⁶³ Then, in §§ 772 and 773, the U.S.

⁵⁸ Official Gazette of the Republic of Venezuela No. 4,715, Special Edition, 12 April 1994.

⁵⁹ Tariff Act of 1930, 19 U.S.C. §1671 [hereinafter the Tariff Act], amended by H.R. 5110, 103d Cong., 2d Sess. 224 (1994) [hereinafter Uruguay Round Agreements Act].

⁶⁰ WTO Antidumping Agreement, Art. 2.1.

⁶¹ Tariff Act, §771(34).

⁶² WTO Antidumping Agreement, Art. 2.2.

⁶³ Tariff Act, § 771(35)(A).

legislation provides a statutory methodology for calculating export price or constructed export price and normal value.

Article 2.4 of the WTO Antidumping Agreement requires that a "fair comparison" be made between the export price and the normal value when determining the margin of dumping.⁶⁴ Section 773(a) of the Tariff Act states that in determining "whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed price and normal value."⁶⁵ Furthermore, § 773(a) provides a statutory methodology for computing "normal value."⁶⁶

The U.S. legislation is potentially inconsistent with the fair comparison requirement of Article 2.4 because it includes a statutory methodology which may not provide a "fair comparison." Article 2.6 of the 1979 GATT Antidumping Agreement, which provided for a calculation of normal value "in order to effect a fair comparison," was specifically rewritten in the Uruguay Round negotiations to establish an overarching fair comparison requirement separate from, and not defined by, the calculation of normal value. While the Tariff Act incorporates a stand-alone fair comparison requirement, it also includes language that tracks the 1979 Antidumping Agreement, increasing the potential for "fair comparison" to be defined by whatever methodology is used by the Commerce Department.

Article 3.1 of the WTO Antidumping Agreement requires that a determination of injury be based on "positive evidence" and involve an objective analysis of both (a) the volume of dumped imports and their effect on prices in the domestic market for the like products, and (b) the consequential impact of these imports on domestic producers of such products. The Tariff Act empowers the U.S. International Trade Commission (hereinafter, the "Commission") to make a final determination of whether a U.S. industry is materially injured, or is threatened with material injury, or the establishment of an industry in the U.S. is materially retarded, "by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise."⁶⁷ The U.S. statute establishes standards similar to those of the WTO Antidumping Agreement for analysis of what constitutes material injury or threat of material injury.⁶⁸ Article 3.4 of the Antidumping Agreement also states that examination of the impact of the dumped imports should include an evaluation of "all relevant economic factors and indices having a bearing on the state of the industry."⁶⁹ Similarly, the Tariff Act includes a "catch-all" provision, allowing consideration of "other economic factors as are relevant to the determination regarding whether there is material injury by reasons of imports."⁷⁰

With respect to the issue of causation, pursuant to Article 3.5 of the WTO Antidumping Agreement, it "must be demonstrated that the dumped imports are, through the effects of dumping, . . . causing injury within the meaning of this Agreement."⁷¹ Furthermore, the provision bars the authorities from attributing to the dumped imports injuries caused by factors other than the dumped imports which simultaneously are injuring the domestic industry.⁷² The Statement of Administrative Action (SAA) accompanying the Tariff Act states that existing U.S. law and legislative history fully implement the causation standard of the 1979 Codes, which "Article 3.5 of the Antidumping Agreement... [did] not change."⁷³

Notwithstanding the Administration's assertion in the SAA, Article 3.5 does change the causation standard by explicitly requiring that the authorities examine factors causing injury other than dumped imports, and not attribute injury caused by these factors to the dumped imports. Moreover, case law from the U.S. Court of International Trade suggests that injury caused by other factors is regarded as contributing to injury by imports from dumped sources.⁷⁴ Thus, there is an potential inconsistency between the WTO standard and U.S. laws.

⁶⁴ WTO Antidumping Agreement, Art. 2.4.

⁶⁵ Tariff Act, § 773(a).

⁶⁶ See Tariff Act, § 773(a).

⁶⁷ Tariff Act, § 735(b)(1).

⁶⁸ Tariff Act, § 771(7)(B).

⁶⁹ WTO Antidumping Agreement, Art. 3.4.

⁷⁰ Tariff Act, § 771(7)(B)(ii).

⁷¹ WTO Antidumping Agreement, Art. 3.5.

⁷² WTO Antidumping Agreement, Art. 3.5.

⁷³ Statement of Administrative Action [hereinafter, SAA], p.181.

⁷⁴ See *British Steel Corp. v. United States*, 593 F. Supp. 405 (Ct. Int'l Trade 1984) (imports need only be one of several factors collectively causing material injury). See also *Hyundai Electronics Indus. Co., Ltd. v. United States*, 1997 Ct. Intl. Trade LEXIS 51, *13 (May 2, 1997) ("the Commission can find material injury, regardless of other factors that also may have contributed to lower domestic prices"); *Gerald Metals, Inc. v. United States*, 937 F.Supp. 930, 938 n.46 (Ct. Int'l Trade 1996) (noting that prerequisite of causation satisfied if imports contribute even minimally to injury); *Mitsubishi Materials Corp. v. United States*, 918 F.Supp. 422, 425 (Ct. Int'l Trade 1996).

The failure of the U.S. law to conform to the requirements of Art. 3.5 would likely be challenged as a violation of the WTO Antidumping Agreement.

Article 5.3 states that the authorities should examine "the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation."⁷⁵ The Tariff Act does not contain a parallel provision. Article 5.4 of the WTO Antidumping Agreement requires that an application be made "by or on behalf of the domestic industry" before the authorities can initiate an investigation.⁷⁶ The authorities must make this determination "on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product."⁷⁷ The requirement that the application be made "by or on behalf of the domestic industry" is satisfied when the application is supported by those domestic producers whose collective output "constitutes more than 50 percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application."⁷⁸ However, the domestic producers expressly supporting the application cannot account for less than 25 percent of total production of the like product produced by the domestic industry.⁷⁹

Under the Tariff Act, the "by or on behalf of the industry" requirement is met if (i) domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and (ii) these producers or workers account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.⁸⁰ If the petition fails to establish on its face support in excess of 50 percent of the total production of the domestic like product, the administering authority must poll the industry or "rely on other information" in order to determine if there is the requisite support.⁸¹ For an industry with a large number of producers, the Commerce Department can use any statistically valid sampling method to poll the industry.⁸² The U.S. legislation also includes a special rule for petitions that allege the industry in question is a regional industry. In that event, the administering authority must determine the percentage requirements described above on the basis of production in the region.

Unlike Articles 5.3 and 5.4 of the WTO Antidumping Agreement, which places an affirmative obligation on the relevant authorities to ensure that sufficient industry support exists prior to initiating an investigation, the Tariff Act permits the Commerce Department to accept assertions of support without verifying them or otherwise polling the industry to determine that the minimum industry support exists to initiate an investigation. In addition, the U.S. legislation is probably inconsistent with Article 5.4 since the Commerce Department must analyze industry support on a regional basis if there are mere allegations in the petition that the industry is regional. Finally, the provision allowing Commerce to "rely on other information" to determine industry support would violate Articles 5.3 and 5.4 if Commerce failed to examine the accuracy and adequacy of such information.

The WTO Antidumping Agreement provides for immediate termination in cases where the authorities determine that the dumping margin is *de minimis*, defined as less than 2 percent, or that the volume of dumped imports, or the injury, is negligible.⁸³ Under the WTO Antidumping Agreement, the volume of dumped imports from a country are "normally" regarded as negligible if it is less than 3 percent of total imports of the like product. Section 771(24) of the Tariff Act also defines negligible imports as imports which account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period.⁸⁴ However, the U.S. legislation limits the Commission's discretion by treating the 3 percent as a ceiling (and a floor.) As a result, imports from countries with insignificant U.S. market shares might not be found negligible precisely because overall imports are also low, thereby increasing the individual country's import share above 3 percent.

⁷⁵ WTO Antidumping Agreement, Art. 5.3.

⁷⁶ WTO Antidumping Agreement, Art. 5.4.

⁷⁷ WTO Antidumping Agreement, Art. 5.4.

⁷⁸ WTO Antidumping Agreement, Art. 5.4.

⁷⁹ See Antidumping Agreement, Art. 5.4.

⁸⁰ See Tariff Act, §732(c)(4)(A).

⁸¹ Tariff Act, § 732(c)(4)(D)(i).

⁸² See Tariff Act, § 732(c)(4)(D)(i).

⁸³ WTO Antidumping Agreement, Art. 5.8.

⁸⁴ Tariff Act, § 771(24)(A).

Like the WTO Agreement, the Tariff Act instructs the administering authority to disregard any weighted average dumping margin that is *de minimis*, i.e., less than 2 percent *ad valorem* or the equivalent specific rate for the subject merchandise. However, the application of the *de minimis* margin rules differ in that the U.S. legislation disregards the 2 percent definition in administrative reviews, applying the requirement only to investigations, while the WTO Agreement applies the definition to both investigations and reviews.⁸⁵

Article 6.9 of the WTO Antidumping Agreement requires that before making a final determination, the authorities inform all interested parties of the essential facts being considered which constitute the basis for the decision whether to implement definitive measures.⁸⁶ The Tariff Act contains a similar notice requirement in § 734(f), requiring the administering authority making a preliminary determination "to notify the petitioner, and other parties to the investigation, . . . of its determination."⁸⁷ Under the statute, the notification must include the facts and conclusions on which its preliminary determination is based. The statute does not guarantee advance disclosure if new approaches are used in the final determination.

Under Article 8.1 of the WTO Antidumping Agreement, the authorities may suspend or terminate proceedings without the imposition of provisional measures or antidumping duties "upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or cease exports . . . at dumped prices."⁸⁸ Similarly, § 734(b) provides that the administering authority may suspend an investigation if the exporters of the subject merchandise agree (1) to cease exports of the merchandise to the U.S. within 6 months after the date of the suspension of the investigation; or (2) to revise their prices to eliminate completely any amount by which the normal value of the merchandise exceeds the export price.⁸⁹

In the face of extraordinary circumstances, i.e., where the benefits of suspending a complex investigation outweigh the costs, the administering authority may suspend an investigation upon the exporters' acceptance of an agreement to revise prices to eliminate completely the injurious effect of exports.⁹⁰ It is important to note that the administering authority can only accept an agreement, either under 734(a) or (b), from an exporter if "(1) it is satisfied that suspension of the investigation is in the public interest, and (2) effective monitoring of the agreement by the United States is practicable."⁹¹

The WTO Antidumping Agreement provides that antidumping duties shall not exceed the margin of dumping.⁹² The WTO Antidumping Agreement expresses a preference for imposing a duty less than the margin of dumping when "such lesser duty would be adequate to remove the injury . . ."⁹³ In contrast, the Tariff Act requires the assessment of "an antidumping duty equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise."⁹⁴ There is no ability under U.S. laws to apply a dumping duty in an amount less than the actual margin of dumping.

Under Art. 11.3 of the WTO Antidumping Agreement, any definitive antidumping duty must be terminated on a date no later than five years from its imposition.⁹⁵ However, where the termination of the duty is likely to lead to continuation or recurrence of dumping and injury, it may remain in force pending review.⁹⁶ The Tariff Act also contains a sunset provision, requiring review after 5 years to determine if revocation of the antidumping duty would be likely to lead to continuation or recurrence of dumping and of material injury.⁹⁷ However, the Tariff Act may be challenged as violating the WTO Antidumping Agreement because the Act permits the Commerce Department to assess duties on imports entered after the five-year anniversary of the order and

⁸⁵ See SAA, p. 174 (This requirement applies only to investigations). Cf. WTO Antidumping Agreement, Art. 18.3 (the provisions of this agreement shall apply to investigations and reviews). The U.S. points out that Art. 5 only refers to investigations, yet will apply cumulation in investigations and reviews, even though Art. 3.3 refers only to investigations.

⁸⁶ See WTO Antidumping Agreement, Art. 6.9.

⁸⁷ Tariff Act, § 734(f).

⁸⁸ WTO Antidumping Agreement, Art. 8.1.

⁸⁹ See Tariff Act, § 734(b).

⁹⁰ See Tariff Act, § 734(c)(1). In addition, to apply this provision, the suppression or undercutting of price levels of domestic products must be prevented, and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price cannot exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price for all less-than-fair-value entries of the exporter. See *id.* at § 734(c)(1)(A)--(B).

⁹¹ See Tariff Act, § 734(d).

⁹² WTO Antidumping Agreement, Art. 9.3.

⁹³ WTO Antidumping Agreement, Art. 9.1.

⁹⁴ Tariff Act, § 736(a)(1).

⁹⁵ See WTO Agreement, Art. 11.3.

⁹⁶ WTO Antidumping Agreement, Art. 11.3.

⁹⁷ Tariff Act, § 751(c)(1).

before the sunset determination, even if Commerce or the Commission fail to conclude that dumping and injury are likely to continue or recur.⁹⁸

The WTO Antidumping Agreement provides an opportunity for consumers and industrial users to have input into the investigation.⁹⁹ The Tariff Act, in § 777(h), allows consumers and industrial users "to submit relevant information to the administering authority concerning dumping ... and to the Commission concerning material injury by reason of dumped or subsidized imports."¹⁰⁰ It is important to note that § 777(h) does not per se confer interested party status on industrial users and consumer organizations unless they otherwise qualify as interested parties under § 771(9).¹⁰¹

The WTO Antidumping Agreement requires members "to maintain judicial, arbitral or administrative tribunals or procedures" to promptly review, inter alia, administrative actions relating to final determinations.¹⁰² The parallel provision in U.S. law is 19 U.S.C. § 516A.

As previously mentioned, Article 5.2 of the WTO Antidumping Agreement details the information required in a petition application.¹⁰³ The application must contain evidence of dumping, injury, and a causal link between the dumped imports and the alleged injury.¹⁰⁴ It must also include, inter alia, detailed information on the identity of the applicant, the allegedly dumped product, the prices at which the product at issue is sold when destined for consumption in the domestic markets of the country or countries of origin or export, the evolution of the volume of the allegedly dumped imports, and the impact of the imports on prices of the like product in the domestic market.¹⁰⁵

The evidentiary requirements of the U.S. legislation are far less demanding. Pursuant to § 732(b)(1) of the Tariff Act, an interested party must file a petition on behalf of the industry which "alleges" the elements necessary for the imposition of the duty, and "which is accompanied by information reasonably available to the petitioner supporting those allegations."¹⁰⁶ While the WTO Antidumping Agreement also allows reliance on "reasonably available" information, the WTO provision bars consideration of "[s]imple assertion, unsubstantiated by relevant evidence."¹⁰⁷ Thus, allegations, though sufficient under U.S. laws, would not pass muster under the WTO Antidumping Agreement.

Both the WTO Antidumping Agreement and the Tariff Act allow the administering authority to initiate an investigation on its own accord. Article 5.6 permits the relevant authorities to initiate an investigation "if they have sufficient evidence of dumping, injury, and a causal link, ... to justify the initiation of an investigation."¹⁰⁸ Similarly, the Tariff Act allows the administering authority itself to initiate if it determines, "from information available to it, that a formal investigation is warranted into the question whether the elements necessary for the imposition of a duty under section 731 exist."¹⁰⁹

In particular, the Tariff Act allows the administering authority to monitor imports from a country in which no antidumping investigation is pending for a period no longer than one year if: (1) more than one antidumping order is in effect with respect to that class or kind of merchandise; (2) in the authority's judgment there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping; and (3) in the authority's judgment this pattern of dumping is causing a serious commercial problem for the domestic industry.

Both agreements also provide for initiation by petition. Under the WTO and the U.S. legislation, the application must have been made "by or on behalf of the domestic industry."¹¹⁰ The WTO Antidumping Agreement instructs the authorities, upon receipt of a petition application, to review the "accuracy and adequacy

⁹⁸ Under § 751(c)(2), the administering authority can submit a notice of initiation of review 30 days prior to the five-year anniversary. Pursuant to § 751(c)(5), the authority must make its final determination within 240 days of that notice of initiation. Thus, it is possible for duties to be assessed up to 210 days after the sunset date even if Commerce ultimately decides dumping and injury are unlikely to continue.

⁹⁹ See WTO Antidumping Agreement, Art. 6.12.

¹⁰⁰ Tariff Act, § 777(h).

¹⁰¹ See SAA, p.201.

¹⁰² See WTO Antidumping Agreement, Art. 13.

¹⁰³ See WTO Antidumping Agreement, Art. 5.2.

¹⁰⁴ WTO Antidumping Agreement, Art. 5.2.

¹⁰⁵ WTO Antidumping Agreement, Art. 5.2.

¹⁰⁶ Tariff Act, § 732(b)(1).

¹⁰⁷ WTO Antidumping Agreement, Art. 5.2.

¹⁰⁸ WTO Antidumping Agreement, Art. 5.6.

¹⁰⁹ Tariff Act, § 732(a)(1).

¹¹⁰ WTO Antidumping Agreement, Art. 5.4; Tariff Act, § 732(c)(4)(A).

of the evidence" to determine whether the evidence is sufficient to warrant initiation of an investigation.¹¹¹ Under Articles 5.2 of the WTO Antidumping Agreement, the authorities need to examine the accuracy and adequacy of evidence of dumping, injury, and causation. In contrast, under the Tariff Act, the petition need only "allege[]" the elements necessary for the imposition of the duty based on information reasonably available to the petitioner.¹¹² As one case interpreting this provision held, "the underlying merits of these allegations may be reached in the course of the investigations, not in the determination of the sufficiency of the petition."¹¹³

Article 5.10 of the WTO Antidumping Agreement provides that investigations shall normally be concluded within one year after their initiation, except in extraordinary circumstances.¹¹⁴ In no case shall an investigation exceed 18 months.¹¹⁵ The U.S. law is in compliance with the WTO. Under the Tariff Act, the administering authority is generally given 140 days after the date of initiating an investigation, but not before the Commission makes a determination of a reasonable indication of injury, to make a preliminary determination whether there is a reasonable basis to believe or suspect that the product in question is being sold, or is likely to be sold at less than fair value.¹¹⁶ However, this period for issuing a preliminary determination can be extended at the discretion of the administering authority or upon timely request by petitioner, but not to exceed 190 days after the date of the investigation's initiation.¹¹⁷ After the date of its preliminary determination, the administering authority then has 75 days to make its final determination.¹¹⁸ Any postponement of this period of determination cannot exceed 135 days from the date on which the administering authority published notice of its preliminary determination.¹¹⁹

Art. 6.7 of the WTO Antidumping Agreement provides that the authorities may conduct investigations in the territories of other Members, as required, in order to authenticate information provided or to procure further details.¹²⁰ The Tariff Act's analogous provision is § 783(i), which states that, upon request by an interested party or if no verification was made during the two immediately preceding administrative reviews, the administering authority should verify all information relied upon in making final determinations, revocations, and final review determination.¹²¹

Under Article 7.3 of the WTO Antidumping Agreement, the authorities cannot apply provisional measures sooner than 60 days from the date the investigation is initiated.¹²² The Tariff Act allows the administering authority to implement provisional corrective measures after the date of its preliminary determination, which can take up to 140 days.¹²³ U.S. law also permits retroactive application if critical circumstances exist, but only 90 days prior to the preliminary determination. Ultimately, U.S. law does not violate the WTO 60 day rule.

The WTO Antidumping Agreement provides for the imposition of definitive antidumping duties in critical circumstances, but not more than 90 days prior to the date of applying provisional measures.¹²⁴ Under the WTO Antidumping Agreement, before such duties can be imposed the authorities must establish that: 1) there is a history of dumping which caused the injury or the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and 2) the injury is caused by massive dumped imports in a short time which in view of the timing and volume of the dumped imports and other circumstances is likely to gravely undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have had an opportunity to comment.¹²⁵

¹¹¹ WTO Antidumping Agreement, Art. 5.3.

¹¹² See Tariff Act, § 732(c)(1)(A)(i).

¹¹³ Republic Steel Corp. v. United States, 544 F.Supp. 901, 908 (1982).

¹¹⁴ WTO Antidumping Agreement, Art. 5.10.

¹¹⁵ WTO Antidumping Agreement, Art. 5.10.

¹¹⁶ Tariff Act, § 733(b)(1)(A).

¹¹⁷ Tariff Act, § 733(c)(1).

¹¹⁸ Tariff Act, § 735(a)(1).

¹¹⁹ Tariff Act, § 735(a)(2).

¹²⁰ WTO Antidumping Agreement, Art. 6.7.

¹²¹ Tariff Act, § 782(i).

¹²² WTO Antidumping Agreement, Art. 7.3.

¹²³ Tariff Act, § 733(d)(1). Under this subsection, the statute allows the administering authority to order the posting of a cash deposit, bond, or other security for each of the subject merchandise in an amount based on the estimated weighted average dumping margin for each exporter and producer individually investigated.

¹²⁴ See WTO Antidumping Agreement, Art. 10.6 (stating that definitive antidumping duties be levied not more than 90 days prior to the date of application of provisional measures).

¹²⁵ WTO Antidumping Agreement, Art. 10.6.

Under the Tariff Act, if the administering authority, in its preliminary determination, finds that there is reason to suspect that (a) there is a history of dumping and material injury by reason of the dumped imports, or the importer knew or should have known that the exporter was selling the product at less than its fair value at such sales would cause material injury; and (b) there have been massive imports of the merchandise over a relatively short period,¹²⁶ then it may suspend liquidation of all entries of merchandise on or after the later of the date which is 90 days before the date on which the suspension of liquidation was first ordered. While the Tariff Act allows the retroactive suspension of liquidation, such action can result in the ultimate application of duties to those entries.

Under the WTO Antidumping Agreement, information which by nature is confidential or is furnished on a confidential basis shall be treated as confidential to the extent that the informant so requests.¹²⁷ Several provisions of the Tariff Act also provide for nondisclosure of certain information.¹²⁸

While the U.S. has approved the WTO Antidumping Agreement as part of its laws, many provisions of the Tariff Act are open to challenge as possible violations of the WTO Agreement. In addition to the provisions above, inconsistencies remain in issues such as cost recovery, cumulation, captive production, the deadline for liquidation, the all-others rate, and anticircumvention. In light of these differences, many legal issues remain unanswered by the legislation, which need to be resolved over the years as these revisions are implemented and applied.

U.S. Antidumping Actions Against Andean Community Countries

The United States has not conducted any antidumping investigations that are governed by the requirements of the WTO Antidumping Agreement of imports from any member of the Andean Community. The United States has conducted many antidumping investigations and imposed definitive duties against imports from several Andean Community member countries, but all of these cases were initiated and decided before the WTO Antidumping Agreement went into effect on January 1, 1995. In reviewing the U.S. cases since 1980, more cases has been brought against exports from Venezuela than from any other Andean Community member. There have been no U.S. antidumping actions against Bolivian exports.

Since 1980, four antidumping claims have been brought against Colombian exports--three involving flowers and one involving portland hydraulic cement and clinker. Only one case, *Certain Fresh Cut Flowers from Colombia*,¹²⁹ resulted in an affirmative final determination of dumping and material injury.¹³⁰ In *Flowers from Colombia* Commerce found the overall weighted average dumping margin on all sales compared to be 3.53 percent.¹³¹ Over 11 Colombian companies were involved in the investigation and estimated weighted averaged antidumping duty margins ranged from 0.57 to 83.14 percent.¹³² Commerce used the best information available for four of the companies involved either because they submitted incomplete responses or their responses could not be verified.¹³³ In the ITC decision, Vice Chairman Anne E. Brunsdale submitted a dissenting view of the Commission's determination of material injury, arguing that since Colombia already exported the bulk of its flowers to the U.S., significant increases in the near future were unlikely.¹³⁴ Moreover, according to Brunsdale, the "only direct evidence on this subject suggest[ed] that substantial expansion of Colombia's production in the near future [was] also unlikely."¹³⁵ The specific flowers at issue were standard carnations, miniature (spray) carnations, standard chrysanthemums, and pompon chrysanthemums.¹³⁶

¹²⁶ Tariff Act, § 733(e)(2).

¹²⁷ See WTO Antidumping Agreement, Art 6.5.

¹²⁸ See e.g., Tariff Act, 732(b)(3)(C) (barring disclosure of draft petition submitted for review and comment); § 732(d)(2) (requiring procedures to prevent disclosure of any information to which confidential treatment has been given when preliminary determination made); § 735(c)(1)(a)(same) (final determination stage).

¹²⁹ 52 Fed. Reg. 6,842 (Dep't Comm. 1987)(final determ.)[hereinafter *Flowers from Colombia*].

¹³⁰ *Flowers from Colombia*, 52 Fed. Reg. 8,492 (Dep't Comm. 1987)(amendment to final determ. and antidumping duty order).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Flowers from Colombia*, 52 Fed. Reg. at 6,842.

¹³⁴ See *Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands*, United States Int'l Trade Comm'n Publication 1956, March 1987, at 100.

¹³⁵ *Id.* at 101.

¹³⁶ *Id.*

In 1983, Colombia exported 541,926,000 stems of standard carnations worth \$40.49 million, 104,480,000 stems of miniature carnations (\$3.21 million), 29,176,000 stems of standard chrysanthemums (\$6.07 million), and 319,521,000 stems of pompon chrysanthemums (\$22.03 million) to the U.S. By 1985, these trade volume numbers had increased to 691,657,000 stems (\$43.46 million), 220,181,000 stems (\$5.58 million), 49,660,000 stems (\$7.34 million), and 519,273,000 stems (\$25.79 million), respectively. Finally, for the first 7 months of 1986, Colombian exports of these flowers were at 498,788,000 stems (\$28.29 million), 100,109,000 stems (\$3.84 million), 47,036,000 stems (\$4.86 million), and 364,567,000 stems (\$16.91 million), respectively.¹³⁷ While Commerce found dumping in the two other cases dealing with flowers from Colombia,¹³⁸ the ITC found no material injury or threat of material injury and terminated the proceedings.¹³⁹ In the first fresh cut roses case, U.S. imports of Colombian roses increased from 52.9 million blooms (\$11.08 million) in 1981 to 98.7 million blooms (\$26 million) in 1983.¹⁴⁰ In the second case, U.S. imports increased from 340,474,000 stems (\$84.61 million) in 1991 to 454,337,000 stems (\$93.8 million) in 1993.¹⁴¹ Comparing the first 8 months of 1993 and 1994, imports were at 353,844,000 stems (\$74.7 million) and 391,317,000 stems (\$87.1 million), respectively.¹⁴² Additionally, the ITC dismissed the claim against portland hydraulic cement exports, finding no reasonable indication of material injury in its preliminary determination.¹⁴³ However, Commissioner Eckes opposed the ITC's decision, arguing that the Commission did "not seem to have diligently searched out and processed data and information available to it" although existing case law requires a "thorough investigation."¹⁴⁴ In 1985, the U.S. imported 453,000 short tons of hydraulic cement valued at \$14.45 million from Colombia, a rise from imports of 74,000 short tons (\$2.78 million) in 1983.¹⁴⁵

Two antidumping claims have been brought against Ecuadorean exports, both involving flowers. In one case Commerce found dumping in its final determination,¹⁴⁶ but the ITC came out negative on the issue of material injury.¹⁴⁷ Accordingly the proceedings were terminated. U.S. imports of Ecuadorean roses increased from 39,944,000 stems (\$8.04 million) in 1991 to 80,436,000 stems (\$15.40 million) in 1993.¹⁴⁸ Commerce did, however, issue an antidumping duty order in *Certain Fresh Cut Flowers from Ecuador*,¹⁴⁹ after both dumping and material injury were respectively established by Commerce and the ITC.¹⁵⁰ In this case the estimated weighted averaged antidumping duty margins ranged from 2.56 to 19.00 percent for the six companies involved.¹⁵¹ Commerce excluded one company, Florisol, from its final determination, finding its margin of .46 to be de minimis.¹⁵² The trade volume numbers, i.e., the quantity of U.S. imports from Ecuador subject to antidumping investigations, ranged from 4,429,000 stems (\$343,000) in 1983 to 16,681,000 stems (\$836,000) in 1985.¹⁵³

In the one case brought against Peruvian exports, *Certain Fresh Cut Flowers from Peru*,¹⁵⁴ Commerce issued a negative final determination of dumping.¹⁵⁵ The U.S. imported 21,118,000 stems (\$2.48 million) in 1983 and

¹³⁷ See *Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands*, United States Int'l Trade Comm'n Publication 1956, March 1987, at A-92.

¹³⁸ See *Fresh Cut Roses from Colombia II*, 60 Fed. Reg. 6,980 (Dep't Comm. 1995)(final determ.)[hereinafter *Roses from Colombia II*]; *Fresh Cut Roses from Colombia I*, 49 Fed. Reg. 30,765 (Dep't Comm. 1984)(final determ.)[hereinafter *Roses from Colombia I*].

¹³⁹ *Roses from Colombia II*, 60 Fed. Reg. 14,448 (ITC 1995)(final determ.); *Roses from Colombia I*, 49 Fed. Reg. 36,712 (ITC 1984)(final determ.).

¹⁴⁰ See *Fresh Cut Roses from Colombia*, United States Int'l Trade Comm'n Publication 1575, Sept. 1984, at A-30. In his dissent, Commissioner Alfred E. Eckes found threat of material injury on three grounds: (1) the increasing rate in the volume and market share of imports; (2) the recent expansion of Colombian production capacity; and (3) the condition of the domestic industry which showed signs of strain. See id. at 13.

¹⁴¹ See *Fresh Cut Roses from Colombia and Ecuador*, United States Int'l Trade Comm'n Publication 2862, March 1995, at II-36.

¹⁴² See id. Vice Chairman Janet A. Nuzum and Commissioner David B. Rohr argued in dissent that the domestic industry was materially injured in light of significant increasing volumes of subject imports, their adverse price effects, and their adverse impact on the domestic industry's financial condition and market share. See id. at I-37.

¹⁴³ *Portland Hydraulic Cement and Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela*, 51 Fed. Reg. 46,945 (ITC 1986)(prelim. determ.).

¹⁴⁴ *Portland Hydraulic Cement and Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela*, United States Int'l Trade Comm'n Publication 1925, Dec. 1986, at 57.

¹⁴⁵ See id. at A-37.

¹⁴⁶ *Fresh Cut Roses from Ecuador*, 60 Fed. Reg. 7,019 (Dep't Comm. 1995)(final determ.)[hereinafter *Roses from Ecuador*].

¹⁴⁷ *Roses from Ecuador*, 60 Fed. Reg. 14,448 (ITC 1995)(final determ.).

¹⁴⁸ See *Fresh Cut Roses from Colombia and Ecuador*, United States Int'l Trade Comm'n Publication 2862, March 1995, at II-36.

¹⁴⁹ 52 Fed. Reg. 8,494 (Dep't Comm. 1987)(antidumping duty order)[hereinafter *Flowers from Ecuador*].

¹⁵⁰ See id.

¹⁵¹ Id.

¹⁵² *Flowers from Ecuador*, 52 Fed. Reg. 2,128 (Dep't Comm. 1987)(final determ.).

¹⁵³ See *Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands*, United States Int'l Trade Comm'n Publication 1956, March 1987, at A-102, A-106.

¹⁵⁴ 52 Fed. Reg. 7000 (Dep't of Comm. 1987)(final determ.).

¹⁵⁵ Id.

37,944,000 stems (\$3.08 million) in 1985.¹⁵⁶ The case was thereupon terminated.¹⁵⁷ In the ITC decision, two Commissioners submitted a joint dissenting view, finding threat of material injury due to the vulnerability of the domestic market and the recent increase in both the volume and market penetration of Peruvian imports.¹⁵⁸

There have been sixteen cases against Venezuelan exports. Commerce issued antidumping duty orders in four of these cases after it and the ITC made affirmative final determinations of dumping and material injury, respectively. These cases are discussed briefly below.

Commerce ordered significant antidumping duties in *Aluminum Sulfate from Venezuela*,¹⁵⁹ finding the antidumping margin percentage to be 259.17 percent.¹⁶⁰ Sulfatos de Orinoco, C.A, the only company involved in the investigation, refused to adequately respond to Commerce's questionnaire, leading Commerce to base all of its determinations on "the best information available."¹⁶¹

In *Circular Welded Non-Alloy Steel Pipe from Venezuela*,¹⁶² Commerce calculated a weighted average dumping margin of 52.51 percent, ordering antidumping duties accordingly.¹⁶³ U.S. imports of circular, welded, non-alloy steel pipes and tubes from Venezuela ranged from 7,990 short tons (\$3.89 million) in 1989 to 16,353 short tons (\$8.1 million) in 1991.¹⁶⁴ Commerce based its entire findings on the best information available because the respondent involved, C.A. Conduven, chose not to participate in the investigation and did not allow verification.¹⁶⁵

The third case resulting in an affirmative final determination of both dumping and material injury dealt with Venezuelan aluminum redraw rod. In *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela*,¹⁶⁶ Commerce established a weighted average dumping margin of 5.80 percent for Suramerica de Aleaciones Laminadas, C.A and ordered antidumping duties to that effect.¹⁶⁷ With respect to trade volume amounts, the U.S. imported 27,524 tons (\$43.18 million) of aluminum rod from Venezuela in 1984 and 40,415 tons (\$57.6 million) in 1987.¹⁶⁸

Finally, in *Ferrosilicon from Venezuela*,¹⁶⁹ Commerce found the weighted average dumping margin for the ferrosilicon exported by CVG-Venezolana de Ferrosilicio C.A. to equal 9.55 percent.¹⁷⁰ U.S. imports of Venezuelan ferrosilicon increased from 29,533 gross ST (\$20.49 million) in 1989 and 46,000 gross ST (\$21.57 million) in 1991.¹⁷¹

Of the twelve remaining cases brought against Venezuelan exports, five petitions were withdrawn and investigations thereupon terminated (in all of the five cases as part of voluntary export restraint agreements).¹⁷²

¹⁵⁶ See *Certain Fresh Cut Flowers from Peru, Kenya, and Mexico*, United States Int'l Trade Comm'n Publication 1968, April 1987, at A-15, A-18.

¹⁵⁷ *Flowers from Peru*, 52 Fed. Reg. 9,553 (ITC 1987)(final determ.).

¹⁵⁸ See *id.* at 15.

¹⁵⁹ 54 Fed. Reg. 51,422 (Dep't Comm. 1989)(antidumping order).

¹⁶⁰ *Aluminum Sulfate from Venezuela*, 54 Fed. Reg. 43,438 (Dep't Comm. 1989)(final determ.).

¹⁶¹ *Id.* The trade volume amounts for imports of aluminum sulfate from Venezuela are unavailable in the International Trade Commission Reports.

¹⁶² 57 Fed. Reg. 42,962 (Dep't Comm. 1992)(final determ.)[hereinafter *Pipe from Venezuela*].

¹⁶³ *Pipe from Venezuela*, 57 Fed. Reg. 49,453 (Dep't Comm. 1992)(antidumping duty order).

¹⁶⁴ See *Certain Circular Welded, Non-alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela*, United States Int'l Trade Comm'n Publication 2564, Oct. 1992, at I-19, I-20.

¹⁶⁵ *Pipe from Venezuela*, 57 Fed. Reg. at 42,962.

¹⁶⁶ 53 Fed. Reg. 24,755 (Dep't Comm. 1988)(final determ.)[hereinafter *Electrical Rod from Venezuela*].

¹⁶⁷ *Electrical Rod from Venezuela*, 53 Fed. Reg. 31,903 (Dep't Comm. 1988)(antidumping duty order). See *Suramerica de Aleaciones Laminadas v. United States*, 14 C.I.T. 560, 746 F. Supp. 139 (1990). rev'd, remanded, 966 F. 2d 660 (Fed. Cir. 1992). See *Electrical Rod from Venezuela*, 55 Fed. Reg. 38, 718 (Dep't Comm. 1990) (ct. decision and suspension of liquidation). In her dissent to the ITC decision, acting Chairman Brunsdale found neither material injury nor threat of material injury. On the contrary, she contended that the industry was dynamic with a recent history of retrenchment as a result of economic conditions having nothing to do with imports. See *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela*, United States Int'l Trade Comm'n Publication 2103, Aug. 1988, at 35. See also *id.* at 59 (dissenting views of Commissioner Susan W. Liebler finding no material injury).

¹⁶⁸ See *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela*, United States Int'l Trade Comm'n Publication 2103, Aug. 1988, at A-52.

¹⁶⁹ 58 Fed. Reg. 27,522 (Dep't Comm. 1993)(final determ.). See also *Ferrosilicon from Venezuela and the Russian Federation*, 58 Fed. Reg. 34,243 (Dep't Comm. 1993)(antidumping duty order).

¹⁷⁰ *Ferrosilicon from Venezuela*, 58 Fed. Reg. at 27,522.

¹⁷¹ See *Ferrosilicon from Argentina, Kazakhstan, The Republic of China, Russia, Ukraine, and Venezuela*, United States Int'l Trade Comm'n Publication 2535, July 1992, at I-41.

¹⁷² *Carbon Steel Wire Rod From Venezuela*, 50 Fed. Reg. 35,283 (Dep't Comm. 1985)(investigation terminated based on petitioners withdrawal of antidumping petition); *Certain Carbon Steel Products from Venezuela*, 50 Fed. Reg. 29,460 (Dep't Comm. 1985)(investigation terminated based on U.S. Steel Corp. withdrawal of antidumping petition); *Oil Country Tubular Goods from Venezuela*, 50 Fed. Reg. 33,369 (Dep't Comm. 1985)(investigation terminated due to U.S. Steel Corp. withdrawal of antidumping petition); *Certain Circular Welded Carbon Steel Line Pipe from Venezuela*, 50 Fed. Ref. 48,827 (Dep't Comm. 1985)(investigation terminated based on withdrawal of antidumping petition by line pipe subcommittee of the Committee on Pipe and Tube Imports and individual manufacturers of line pipe); *Certain Welded Circular Carbon Steel Pipes and Tubes from Venezuela*, 50 Fed. Reg. 42,979 (Dep't Comm. 1985)(investigation terminated based on withdrawal of antidumping petition by Subcommittee of the Committee on Pipe and Tube Import and member companies producing standard pipe).

In another case, *Gray Portland Cement and Clinker from Venezuela*,¹⁷³ Commerce suspended the antidumping investigation after the Venezuelan producers/exporter agreed to revise prices in order to eliminate sales in the United States at dumped prices.¹⁷⁴ U.S. imports of Venezuelan portland cement increased dramatically from 627,000 short tons (\$14.46 million) in 1988 to 1,226,000 short tons (\$42.14 million) in 1990.¹⁷⁵ In four other cases Commerce issued affirmative final determinations of dumping,¹⁷⁶ but the investigations in these cases were thereafter terminated due to the absence of material injury.¹⁷⁷ In the carbon steel butt-weld pipe fittings case, the U.S. imported 1,092,000 pounds (\$572,000) in 1991 and 673,000 pounds (\$345,000) in 1993.¹⁷⁸ Trade volume amounts for Venezuelan phthalic anhydride are unavailable. With respect to Venezuelan silicomanganese, the U.S. imported 2,756 short tons in 1991 (\$1.37 million), which increased to 15,418 short tons (\$5.79 million) in 1993.¹⁷⁹ Finally, the U.S. imported 4,461 short tons (\$1.45 million) of Venezuelan carbon steel wire rod in 1980 and substantially increased imports to 25,443 short tons (\$7.99 million) the following year.¹⁸⁰

Lastly, in two cases the ITC determined in the preliminary stages of the investigation that there was no reasonable indication of material injury.¹⁸¹ The investigations were thereafter terminated. Comparing U.S. imports of Venezuelan welded steel wire fabric for the first 8 months of 1984 and 1985, the U.S. imported 341 tons (\$104,000) and 3,705 tons (\$1.01 million), respectively.¹⁸² The trade volume amounts for Venezuelan hydraulic cement ranged from 60,000 short tons (\$2.14 million) in 1983 to 1,269,000 short tons (\$42.67 million) in 1985.¹⁸³

¹⁷³ 57 Fed. Reg. 6,706 (Dep't Comm. 1992)(notice of suspension).

¹⁷⁴ Id. Another suspension agreement is seen in *Carbon Steel Wire Rod from Venezuela*, 47 Fed. Reg. 44,362 (Dep't Comm. 1982)(notice of suspension), where the producer/exporter CVG-Siderurgica del Orinoco, C.A. agreed to cease exports to the United States altogether. CVG subsequently requested that the investigation be continued, resulting in an affirmative final determination of dumping. 47 Fed. Reg. 58,328 (Dep't of Comm. 1982)(final determ.). The ITC, however, found no material injury, nullifying the suspension agreement and terminating the investigation. 48 Fed. Reg. 7,821 (ITC 1983)(final determ.).

¹⁷⁵ See *Gray Portland Cement and Clinker from Venezuela*, United States Int'l Trade Comm'n Publication 2400, July 1991, at A-49.

¹⁷⁶ *Certain Carbon Steel Butt-Weld Pipe Fittings from Venezuela*, 60 Fed. Reg. 10,562 (Dep't Comm. 1995)(final determ.); *Phthalic Anhydride from Venezuela*, 59 Fed. Reg. 40,867 (Dep't Comm. 1994)(final determ.); *Silicomanganese from Venezuela*, 59 Fed. Reg. 55,436 (Dep't Comm. 1994)(final determ.); *Carbon Steel Wire Rod From Venezuela*, 47 Fed. Reg. 58,328 (Dep't Comm. 1982)(final determ.).

¹⁷⁷ *Certain Carbon Steel Butt-Weld Pipe Fittings from Venezuela*, 60 Fed. Reg. 18,611 (ITC 1995)(final determ.); *Phthalic Anhydride from Venezuela*, 59 Fed. Reg. 49,711 (ITC 1994)(final determ.); *Silicomanganese from Venezuela*, 59 Fed. Reg. 65,788 (ITC 1994)(final determ.); *Carbon Steel Wire Rod From Venezuela*, 48 Fed. Reg. 7,821 (ITC 1983)(final determ.).

¹⁷⁸ See *Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, The Republic of Korea, Thailand, The United Kingdom, and Venezuela*, United States Int'l Trade Comm'n Publication 2870, April 1995, at A-3.

¹⁷⁹ See *Silicomanganese from Brazil, The People's Republic of China, Ukraine, and Venezuela*, United States Int'l Trade Comm'n Publication 2836, Dec. 1994, at F-5.

¹⁸⁰ See *Carbon Steel Wire Rod from Venezuela*, United States Int'l Trade Comm'n Publication 1338, Feb. 1983, at 1983 ITC Lexis 1834, *65.

¹⁸¹ *Welded Steel Wire Fabric for Concrete Reinforcement from Italy, Mexico, and Venezuela*, 51 Fed. Reg. 1,863 (ITC 1986)(prelim. determ.); *Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela*, 51 Fed. Reg. 46,945 (ITC 1986)(prelim. determ.).

¹⁸² See *Welded Steel Wire Fabric for Concrete Reinforcement from Italy, Mexico, and Venezuela*, United States Int'l Trade Comm'n Publication 1795, Jan. 1986, at A-16.

¹⁸³ See *Portland Hydraulic Cement and Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela*, United States Int'l Trade Comm'n Publication 1925, Dec. 1986, at A-37.

CONCLUSIONS

Antidumping actions have not been the subject of major controversy or commercial warfare between Andean Community countries and the United States, with the exception of the U.S. antidumping assault on the flower industries of Colombia, Ecuador, and Peru. In contrast, antidumping disputes have become very high profile issues between the United States and Argentina, Brazil, and Chile in the past year. In order to avoid such contentious trade disputes, the United States and the Andean Community countries should take whatever steps possible to ensure that protectionism is not creeping its way into the administration of national antidumping laws.

The antidumping laws of the U.S. and the Andean Community countries all exhibit potential inconsistencies with the WTO Agreement. Thus, an initial priority should be to ensure full compliance with the letter and spirit of the WTO agreement. While the WTO dispute resolution system represents one avenue for ensuring such compliance, it is not useful for a business which faces the loss of an export market for two to three years while a case is litigated at the national and WTO levels. Governments should be working to eliminate the commercial uncertainty for business that results from antidumping actions by moving actively and positively to ensure compliance with the WTO rules.

Attention should also be given to the possibility for progress through the Free Trade Area of the Americas (FTAA) negotiations. Options ranging from technical changes in national laws and practices to the complete elimination of antidumping measures (as adopted in the Canada-Chile trade agreement) have been discussed elsewhere¹⁸⁴ and are likely to be given serious consideration. The U.S. switched position at some point after 1966¹⁸⁵ from seeking reform of antidumping rules to opposing such reform, but the U.S. has many other goals that it wishes to achieve in the FTAA. The question is likely to be whether other Western Hemisphere countries that currently complain about antidumping actions instead become enthusiastic about them and side with the U.S. to block any changes.

¹⁸⁴ Horlick, G. and Shea, E., "Alternatives to National Antidumping and Countervailing Duty Laws: Are They Feasible or Appropriate in the Context of NAFTA," in Leycegui, B., Robson, W., and Stein, S.D., eds., *Trading Punches: Trade Remedy Law and Disputes Under NAFTA* (National Planning Association, Washington, 1995) at 206-229.

¹⁸⁵ [GATT] Group on Antidumping Policies, Notes on Meeting on 26-27 January 1966, TN.64/NTB/W/6, 3 March 1966.