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CHAPTER [XX]

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING DUTIES

Article X.1

General provisions

1. Each Party¹ retains its rights and obligations arising from the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and from the WTO Agreement on Subsidies and Countervailing Measures.
2. For the purpose of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

Article X.2

Transparency

1. Both Parties agree that trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system.
2. Both Parties shall ensure, immediately after any imposition of provisional measures and in any case before final determination is made, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures. This is without prejudice to Article 6.5 of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.4 of the WTO Agreement on Subsidies and Countervailing Measures. Disclosures shall be made in writing, and allow interested parties sufficient time to make their comments.

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3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party shall be granted the possibility to be heard in order to express their views during trade remedy investigations.

Article X.3

Consideration of public interest

Anti-dumping or countervailing measures may not be applied by a Party where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. Public interest shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organizations, to the extent they have provided relevant information to the investigating authorities.

Article X.4

Lesser duty rule

Should a Party decide to impose an anti-dumping duty, the amount of such duty shall not exceed the margin of dumping, but it may be less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

Article X.5

Exclusion from bilateral dispute settlement mechanism

The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement.

Article X.6

Agricultural products

1. The Parties recognise that domestic support measures within the meaning of Annex 2 of the WTO Agreement on Agriculture ("green box" payments) have no price-distorting effects and are not specific to an enterprise or industry or group of enterprises or industries.

2. The Parties agree that such domestic support measures shall neither be countervailed in anti-subsidy investigations nor be subjected to price or cost adjustments in anti-dumping investigations.

SECTION B

GLOBAL SAFEGUARD MEASURES

Article X.7

General provisions

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.
2. For the purpose of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

Article X.8

Transparency

1. Notwithstanding Article X.7, at the request of the other Party and provided the latter has a substantial interest, the Party initiating a safeguard investigation or intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information leading to the initiation of a safeguard investigation or the imposition of global safeguard measures including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the WTO Agreement on Safeguards.
2. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade.
3. For the purpose of paragraph 2, if one Party considers that the legal requirements are met for the imposition of definitive safeguard measures, the Party intending to apply such measures shall notify the other Party and give the possibility to hold bi-lateral consultations. If no satisfactory solution has been reached within 30 days of the notification, the importing Party may adopt the appropriate measures to remedy the problem.
4. For the purposes of this Article, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the imported product during the most recent three-year period of time, measured in terms of either absolute volume or value.

Article X.9

Exclusion from bilateral dispute settlement mechanism

The provisions of this Section referring to WTO rights and obligations shall not be subject to the Dispute Settlement provisions of this Agreement.

SECTION C

BILATERAL SAFEGUARD MEASURES

Article X.10

Application of a bilateral safeguard measure

1. Notwithstanding Section 2 (Global Safeguard Measures), if as a result of the reduction or elimination of a customs duty under this Agreement, a product originating in a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products, the importing Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Section.
2. If the conditions in paragraph 1 are met, the safeguard measures of the importing Party may only consist of one of the following:
 - (a) suspension of the further reduction of the rate of customs duty on the product concerned provided for under this Agreement; or
 - (b) increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:
 - (i) the most-favoured nation applied rate of customs duty on the product in effect at the time the measure is taken; or
 - (ii) the most-favoured nation applied rate of customs duty on the product in effect on the day immediately preceding the date of entry into force of this Agreement.

Article X.11

Conditions and limitations

1. A bilateral safeguard measure may not be applied:
 - (a) except to the extent, and for such time, as may be necessary to prevent or remedy the situation described in Articles X.10 X.14 or X.16;
 - (b) for a period exceeding [two] years. The period may be extended by another [two] years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Sub-Section, that the measure continues to be necessary to prevent or remedy the situations described in Article X.10 or X.15, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed [four] years; or

(c) beyond the expiration of the transition period, except with the consent of the other Party and except for the agricultural safeguard mentioned in Article X.14. “Transition period” means [ten] years from the date of entry into force of this Agreement. For any product for which the Schedule in Annex I (Elimination of Customs Duties) of the Party applying the measure provides for tariff elimination of ten or more years, transition period means the tariff elimination period for the products set out in that Schedule, plus [three] years.

2. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the product, according to the Schedule of that Party.

Article X.12

Provisional measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis, without complying with the requirements of Article X.23, paragraph 1 of this Chapter, pursuant to a preliminary determination that there is clear evidence that imports of a product originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the situations described in Articles X.10, X.14 or X.16.

2. The duration of any provisional measure shall not exceed two hundred days, during which time the Party shall comply with the relevant procedural rules laid down in Sub-Section XX (Procedural Rules Applicable to Bilateral Safeguard Measures). The Party shall promptly refund any tariff increases if the investigation described in Sub-Section XX does not result in a finding that the requirements of Article X.10 are met. The duration of any provisional measure shall be counted as part of the period described in Article X.11, paragraph 1 (b). The importing Party concerned shall inform the other Party concerned upon taking such provisional measures and it shall immediately refer the matter to the Association Committee for examination if the other Party so requests.

Article X.13

Compensation and suspension of concessions

1. A Party applying a bilateral safeguard measure shall consult with the Party whose products are subject to the measure in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect. The Party shall provide an opportunity for such consultations no later than thirty days after the application of the bilateral safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within thirty days, the Party whose products are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

Article X.14

Agricultural safeguards

1. The Parties may, in exceptional circumstances, apply bilateral safeguard measures if, as a result of the concessions under this Agreement, imports of an agricultural product under preferential terms have increased in such quantities, absolute or relative to domestic production or consumption of the importing Party, and under such conditions as to cause or threaten to serious disturbances in the agricultural market of the importing Party.
2. Without prejudice to the provisions of paragraph 1 and Article X.11.1 (c), other rules laid down in Section 3 are also applicable to any safeguard adopted under this Article
3. The determination of a serious disturbance or a threat thereof in the market of agricultural products shall be based on objective factors, including the following elements:
 - (a) the increase in the volume of imports in absolute or relative terms to domestic production and to imports from other sources; and
 - (b) the effect of such imports on the situation of the relevant market concerned, including inter alia on the levels of sales, production and prices.

Article X.15

Time lapse in between two measures

1. No safeguard measure referred to in this Sub-Section shall be applied to the import of a product that has previously been subject to such a measure, unless a period of time equal to half of that during which the safeguard measure was applied for the immediately preceding period has elapsed.
2. Neither Party shall apply, with respect to the same product and during the same period:
 - a) A bilateral safeguard measure or a provisional safeguard measure provided in this Agreement; and
 - b) A safeguard measure under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

Article X.16

Outermost regions

1. Where any product originating in New Zealand is being imported into the territory of one or several outermost regions of the EU in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost region(s) concerned of the EU Party, the EU Party, after having

examined alternative solutions, may exceptionally take safeguard measures limited to the territory of the region(s) concerned.

2. Without prejudice to the provisions of paragraph 1, other rules laid down in this Sub-Section applicable to bilateral safeguards are also applicable to any safeguard adopted under this Article.

3. For the purpose of paragraph 1, serious deterioration shall mean major difficulties in a sector of the economy producing like or directly competitive products. The determination of deterioration shall be based on objective factors, including the following elements:

- (a) the increase in the volume of imports in absolute or relative terms to domestic production and to imports from other sources; and
- (b) the effect of such imports on the situation of the relevant industry or the economic sector concerned, including inter alia on the levels of sales, production, financial situation and employment.

SUB-SECTION XX

PROCEDURAL RULES APPLICABLE TO BILATERAL SAFEGUARD MEASURES

Article X.17

Applicable law

For the application of bilateral safeguard measures, the competent investigating authority shall comply with the provisions of this Sub-Section and in cases not covered by this Sub-Section, the competent investigating authority shall apply the rules established under its domestic legislation.

Article X.18

Initiation of a proceeding

1. Pursuant to each Party's domestic legislation, a safeguard proceeding may be initiated by the competent investigating authority on its own initiative, upon receipt of information from one or more Member States of the European Union, or upon a written application by entities specified in domestic legislation. In the cases when the proceeding is initiated on the basis of a written application, the entity filing the application shall demonstrate that it is representative of the domestic industry producing a product like or directly competitive with the imported product.

2. Once the investigation has been initiated, the written application shall be made available for public inspections, except for the confidential information contained.

3. Upon initiation of a safeguard proceeding, the competent investigating authority shall publish a notice of initiation of the proceeding in the official journal of the Party. The notice shall identify the entity which filed the written application, if applicable, the imported product that is the subject of the proceeding and its subheading and the tariff item number under which it is classified, the nature and timing of the determination to be made, the time and place of the public hearing or the period within which interested parties may apply to be heard orally by the investigating authority, the period within which interested parties may make known their views in writing and submit information, the place at which the written application and any other non-confidential documents filed in the course of the proceeding may be inspected and the name, address and telephone number of the office to be contacted for more information.

4. With respect to a safeguard proceeding initiated on the basis of a written application filed by an entity asserting that it is representative of the domestic industry, the competent investigating authority shall not publish the notice required by paragraph 3 without first assessing carefully that the written application meets the requirements of its domestic legislation.

Article X.19

Investigation

1. A Party may apply a safeguard measure only following an investigation by the competent investigating authority of that Party pursuant to procedures laid down in this Sub-Section. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties can present evidence and their views, including the opportunity to respond to the presentations of other parties.

2. Each Party shall ensure that its competent investigating authority completes any such investigation within twelve months of its date of initiation.

Article X.20

Evidence of injury and causal link

1. In conducting its proceeding, the competent investigating authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular the rate and amount of the increase in imports of the product concerned in absolute terms or relative to domestic production, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

2. The determination whether increased imports have caused or are threatening to cause the situations described in Articles X.10, X.14 or X.16, shall not be made, unless the investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the product concerned and the situations described in Articles X.10, X.14 or X.16. Where factors other than increased imports are,

at the same time, causing the situations described in Article X.10 or X.15, such injury or serious deterioration in the economic situation shall not be attributed to increased imports.

Article X.21

Hearings

In the course of each proceeding, the competent investigating authority shall:

(a) hold a public hearing, after providing reasonable notice, to allow all interested parties and any representative consumer association, to appear in person or by counsel, to present evidence and to be heard on serious injury or threat of serious injury/deterioration, and the appropriate remedy; or

(b) provide an opportunity to all interested parties to be heard where they have made a written application within the period laid down in the notice of initiation showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

Article X.22

Confidential information

Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent investigating authority. Such information shall not be disclosed without permission of the Party submitting it. Parties providing confidential information are requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent investigating authority finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authority may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article X.23

Notifications and publications

1. Where a Party takes the view that one of the circumstances set out in Articles X.10, X.14 or X.16 exists, it shall immediately refer the matter to the Association Committee for examination. The Association Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Association Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within thirty days of the matter being referred to

the Association Committee, the importing Party may adopt the appropriate measures to remedy the circumstances in accordance with this Sub-Section.

2. The competent investigating authority shall provide the exporting Party with all pertinent information, which shall include evidence of injury or serious deterioration in the economic situation, caused by increased imports, precise description of the product involved and the proposed measures, proposed date of imposition and expected duration.

3. The competent investigating authority shall also publish its findings and reasoned conclusions reached on all pertinent issues of fact and law in the official journal of the Party, including the description of the imported product and the situation which has given rise to the imposition of measures in accordance with Articles X.10, X.14 or X.16, the causal link between such situation and the increased imports, and the form, level and duration of the measures.

4. The competent investigating authority shall not disclose any information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.