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CHAPTER X

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE X.1

General provisions

1. Each Party affirms its rights and obligations under the Anti-dumping Agreement and the SCM Agreement.
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. Each Party shall conduct anti-dumping and countervailing duty investigations in a fair and transparent manner in accordance with the requirements in the Anti-dumping Agreement and the SCM Agreement.

2. Both parties shall ensure that meaningful disclosure is made at the imposition of provisional measures and before final determination is made. Parties shall ensure any disclosure:

- (a) at the provisional stage, includes at least sufficient explanations of the reasons in fact and law which have led to arguments being accepted or rejected;
- (b) at the final stage, is a full and meaningful disclosure of all essential facts and considerations, which form the basis for the decision to apply definitive measures;
- (c) is made in writing and allows interested parties sufficient time to make their comments.

Both parties reaffirm that non-confidential summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. This article is without prejudice to Article 6.5 of the Anti-dumping Agreement and Article 12.4 of the SCM Agreement.

3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party shall be granted the possibility to provide information orally in order to express their views during trade remedy investigations. The parties reaffirm their rights and obligations under Article 6.2 of the Anti-dumping Agreement relating to hearings and the right to provide information orally.

4. When making a final determination, the parties shall take into account the information duly provided by all interested parties considered as such, including the domestic industry, importers and their representative associations, representative users and representative consumer organisations pursuant to each Party's domestic legal framework.

ARTICLE X.3

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 and, subject to each Party's domestic legislation, be in principle less than that margin of dumping if such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE X.4

Dispute Settlement

This section shall not be subject to Chapter 24 (Dispute Settlement).

SECTION B

GLOBAL SAFEGUARD MEASURES

ARTICLE X.5

General provisions

1. Each Party affirms its rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.
2. Further to paragraph 1, each Party shall conduct global safeguard investigations in a fair and transparent manner in accordance with the relevant WTO requirements.

ARTICLE X.6

Transparency

1. Notwithstanding Article X.5 (General provisions – Global Safeguard Measures) at the request of the other Party, the Party initiating a safeguard investigation or intending to take safeguard measures shall immediately provide ad hoc written notification in electronic format 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 Safeguards Agreement.

2. To the extent permitted by the Safeguards Agreement, 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.

ARTICLE X.7

Dispute Settlement

This section shall not be subject to Chapter 24 (Dispute Settlement).

SECTION C

BILATERAL SAFEGUARD MEASURES

ARTICLE X.8

Definitions

For the purposes of this Chapter:

- (a) "bilateral safeguard measure" means a measure described in Article X.9(2) (Application of a bilateral safeguard measure);
- (b) "domestic industry" means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;
- (c) "serious injury" means a significant overall impairment in the position of a domestic industry;
- (d) "threat of serious injury" means injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent;
- (e) "transition period" means:
 - (i) seven years from the date of entry into force of this Agreement; or
 - (ii) for products subject to preferential tariff treatment set out in Appendix 2-A-1 in the form of a tariff rate quota, an additional period of five years commencing immediately after the completion of the staging period.

ARTICLE X.9

Application of a bilateral safeguard measure

1. Notwithstanding Section B (Global safeguard measures), if as a result of the reduction, or elimination of a customs duty or preferential treatment set out in Appendix 2-A-1 in the form of a tariff rate quota under this Agreement, a product originating in a Party and identified in a Party's tariff schedule to this Agreement 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 the domestic industry that produces like or directly

competitive goods, the importing Party may apply a bilateral safeguard measure 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 or of the preferential treatment set out in Appendix 2-A-1 in the form of a tariff rate quota on the product concerned provided for under this Agreement; or
- (b) increase in the rate of customs duty on the product concerned up to a level which does not exceed the lesser of¹:
 - (i) the most-favoured nation applied rate of customs duty on the product in effect at the time the measure is applied; 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.

3. Without prejudice to paragraph 2, for products subject to preferential treatment set out in Appendix 2-A-1 in the form of a tariff rate quota under this Agreement, the rate of customs duty shall be set at a level calculated by the importing Party and applicable, when possible, to the quantities necessary to prevent or remedy the situation described in Article X.9(1) and to facilitate adjustment.

ARTICLE X.10

Conditions and limitations

¹ For greater certainty, where the conditions are met to increase the rate of customs duty under this article, the rate may be set below the most-favoured nation applied rate in a) or b).

1. A bilateral safeguard measure may only be applied:
 - (a) to the extent, and for such time, as may be necessary to prevent or remedy the situation described in Articles X.9 (Application of a bilateral safeguard measure), or X.13 (Outermost regions) and to facilitate adjustment;
 - (b) for a period not exceeding two years. The period may be extended by another 1 year 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 paragraph (a) and to facilitate adjustment, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed 3 years; and
 - (c) during the transition period, except with the consent of the other Party.

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.

2bis. In order to facilitate adjustment, in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

3. No bilateral safeguard measure or provisional measure referred to in this Section shall be applied to the import of a product that has previously been subject to such a measure for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer. No bilateral safeguard measure may be applied more than twice on the same product.

5. 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, and
- (c) a special SFG under Article 5 of the Agreement on Agriculture.

ARTICLE X.11

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, pursuant to a preliminary determination that there is clear evidence that imports of a product originating in the other Party have increased as a result of the reduction or elimination of a customs duty under this Agreement, and that such imports have caused or are threatening to cause serious injury to the domestic industry that produces like or directly competitive goods and the situation[s] described in X.13 (Outermost regions).
2. The duration of such a provisional measure shall not exceed two hundred days, during which time the applying Party shall comply with the pertinent requirements of Article X.10 (Application of a bilateral safeguard measure), Article X.10 (Conditions and Limitations), Article X.11 (Provisional Measures), Article X.14 (Procedural rules for bilateral safeguard measures) and Article X.15 (Notification and consultations). The applying Party shall promptly refund any additional customs duties collected as a result of a provisional measure if the investigation described in Article X.17 does not result in a finding that the requirements of Article X.9 or Article X.13 (Outermost regions) have been met. The duration of any provisional measure shall be counted as part of the period described in point (b) of Article X.11(1). A Party shall notify the other Party before taking a provisional measure and initiate consultations immediately after the measure is taken.

ARTICLE X.12

Compensation and suspension of concessions

1. A Party proposing to apply or extend a bilateral safeguard measure shall provide the other Party with mutually agreed adequate means of trade compensation in the form of concessions of customs duties, which are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.
2. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations under paragraph 4 of Article X.15 (Notification and consultations), the Party to whose originating good the bilateral safeguard measure is applied may suspend the application of substantially equivalent concessions with respect to originating goods of the Party applying the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.
3. The right of suspension in paragraph 2 shall not be exercised for the first two years that the safeguard measure is in effect provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and that such a measure conforms to this Section. The limit on exercising the right of suspension shall not apply when a bilateral safeguard is applied for a second time to the same product.

ARTICLE X.13

Outermost regions

1. Notwithstanding Section B (Global safeguard measures) and Article X.9 (Application of a bilateral safeguard measure), the European Union may, in exceptional circumstances and after examining alternative solutions, apply a safeguard measure limited to the territory of an outermost region² if, as a result of the reduction or elimination of a customs duty under this Agreement, a

2 At the entry into force of this Agreement, the outermost regions of the EU are: Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, St. Martin, the Azores, Madeira and the Canary Islands. This Article shall also apply to a country or an overseas territory that changes

product originating in Australia and identified in the European Union's tariff schedule to this Agreement is being imported from Australia directly into the territory of an outermost region of the European Union 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 concerned that produces like or directly competitive goods.

2. A safeguard measure applied pursuant to this Article shall be applied in accordance with the procedures laid down in this Section. Any reference to "serious injury" in this Section shall be understood as "serious deterioration" for the purposes of 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
- (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.

ARTICLE X.14

Procedural rules for bilateral safeguard measures

its status to an outermost region by a decision of the European Council in accordance with the procedure set out in Article 355 (6) of the Treaty on the Functioning of the EU from the date of adoption of that decision. In the event that an outermost region of the EU changes its status as such by the same procedure, this Article shall cease to be applicable from the European Council's decision accordingly. The EU shall notify the other Parties of any change in the territories considered as outermost regions of the EU.

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and Article 4.2(c) of the Safeguards Agreement.
2. In the investigation referred to in paragraph 1, to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Section, the competent authorities of a Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.
3. The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in paragraph 1 demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than increased imports of the originating good of the other Party as a result of the elimination or reduction of a customs duty under this Agreement are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

ARTICLE X.15

Notification and consultations

1. The importing Party shall immediately notify the other Party in writing, upon:
 - (a) initiating an investigation under Article X.14 (Procedural rules for bilateral safeguard measures);

- (b) making a finding of serious injury or threat thereof caused by increased imports, as set out in Article X.9 (Application of a bilateral safeguard measure) and X.13 (Outermost regions);
- (c) taking a decision to apply, modify or extend a bilateral safeguard measure;
- (d) applying a provisional measure.

2. The importing Party notifying the other Party in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

- (a) in the written notice referred to in point (a) of paragraph 1, the reason for the initiation of the investigation, a precise description of the specified good subject to the investigation including its heading or subheading under the HS Code, the period of investigation and the date of initiation of the investigation; and
- (b) in the written notice referred to in points (b), (c) and (e) of paragraph 1, evidence of serious injury or threat thereof to the domestic industry that produces like or directly competitive goods caused by increased imports of the specified good as a result of the reduction or elimination of a customs duty pursuant to this Agreement, a precise description of the specified good subject to the proposed bilateral safeguard measure including its heading or subheading under the HS Code, the details of the proposed bilateral safeguard measure, and the proposed date of introduction, duration and timetable for progressive liberalisation of the measure, if such timetable is applicable.

3. In the case of an extension of a bilateral safeguard measure, the Party delivering the written notice referred to in paragraph 1 shall also provide the other Party with evidence that the domestic industry concerned is adjusting.

4. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information provided under paragraphs 2 and 3, exchanging views on the safeguard measure and reaching

understanding on compensation set forth in Article X.12 (Compensation and suspension of concessions).

5. The notification and information referred to in paragraphs 2 and 3, and invitation for consultations referred to in paragraph 4 shall be provided at least 30 days before definitive measures are expected to be applied or extended. No definitive measures shall be applied or extended in the absence of such notification, information, and adequate opportunity for consultations, in accordance with paragraph 4.

6. Upon request, the Party applying or extending a bilateral safeguard measure shall, to the extent possible, provide additional information as the other Party may consider necessary.