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The texts are published in view of the public interest in the negotiations for information purposes only and they may undergo further modifications, including as a result of the process of legal revision. These texts are without prejudice to the final outcome of the Agreement between the EU and New Zealand.

The texts will be final upon signature. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

CHAPTER [XX]

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE X.1

General provisions

1. Each Party 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, the preferential rules of origin under chapter (XX) of this Agreement shall not apply.

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.

Both Parties shall ensure, as soon as possible after any imposition of provisional measures, and also before a 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.

2. 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 on the goods of the other Party where, on the basis of the information made available during the investigation, pursuant to the requirements set out in each Party's domestic legal framework, it can be concluded that it is not in the public interest to apply such measures. When making a final determination on the imposition of duties, the parties should, consistent with their domestic legal framework, take into account information provided by relevant interested parties, which may include the domestic industry, importers and their representative associations, representative users and representative consumer organisations.

ARTICLE X.4

Lesser duty rule

Should a Party decide to impose an anti-dumping duty on the goods of the other Party, the amount of such duty shall not exceed the margin of dumping, but it should be less than that margin if such lesser

duty would be adequate to remove the injury to the domestic industry, according to each Party's domestic legislation.

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.

SECTION B

GLOBAL SAFEGUARD MEASURES

ARTICLE X.6

General provisions

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the WTO Agreement on Safeguards.
2. For the purpose of this Section, the preferential rules of origin under chapter (XX) of this Agreement shall not apply.

ARTICLE X.7

Transparency

1. Notwithstanding Article X.6, at the request of the other Party, 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 shall endeavour to provide adequate opportunity for prior consultations with that party, with a view to reviewing the information provided under paragraph 1 and exchanging views on the proposed measures before a final decision is made.

ARTICLE X.8

Exclusion from bilateral dispute settlement mechanism

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

SECTION C

BILATERAL SAFEGUARD MEASURES

ARTICLE XX

Definitions

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;

serious injury means a significant overall impairment in the position of a domestic industry;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent;

Except with the consent of the other Party “Transition period” means seven years from the date of entry into force of this Agreement.

bilateral safeguard measure means a measure described in Article XX

ARTICLE X.9

Application of a bilateral safeguard measure

1. Without prejudice to the rights and obligations under Section B of this Chapter, 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 apply a bilateral safeguard measure, during the transition period only 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.10

Standards for a Bilateral Safeguard Measure

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.9 or X.12;
 - (b) for a period exceeding two years. The period may be extended by one 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 Article X.9 or X.12, provided that there is evidence that the industry is adjusting and the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed three years; or
 - (c) beyond the expiration of the transition period.
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.
3. No safeguard measure referred to in this 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.
4. Neither Party shall apply, with respect to the same product and during the same period:
 - (a) A bilateral safeguard measure, a provisional safeguard measure, or an Outermost Regions 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.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 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.9 or X.12.

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.9 or X.15 are met. The duration of any provisional measure shall be counted as part of the period described in Article X.10, paragraph 1 (b). The importing Party concerned shall inform the other Party concerned upon taking such provisional measures. After applying the provisional bilateral safeguard measure and at the request of the other Party, consultations shall be initiated immediately.

ARTICLE X.12

Outermost regions

1. Where any product originating in New Zealand is being directly imported into the territory of one or several outermost regions¹ of the EU in such increased quantities and under such conditions

¹ 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

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 Section (Bilateral Safeguard Measures applicable to bilateral safeguards are also applicable to any safeguard adopted under this Article.

3. A bilateral safeguard measure limited to the outermost regions shall apply only to goods subject to preferential treatment under this agreement.

4. For the purpose of paragraph 1,

(a) 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:

(i) the increase in the volume of imports in absolute or relative terms to domestic production and to imports from other sources; and

(ii) 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.

(b) threat of serious deterioration shall mean serious deterioration that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

Islands. This Article shall also apply to a country or an overseas territory that changes 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 New Zealand of any change in the territories considered as outermost regions of the EU.

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 30 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 30 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.
3. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminates on the termination of the Bilateral Safeguard Measure.
4. Notwithstanding paragraph 3, the right of suspension referred to in that paragraph shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such a safeguard measure conforms to the provisions of this Agreement.

SUB-SECTION XX

PROCEDURAL RULES APPLICABLE TO BILATERAL SAFEGUARD MEASURES

ARTICLE X.14

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 provided that those rules are in conformity with the provisions of this Section.

ARTICLE X.15

Investigation Procedures

1. A Party shall apply a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with Article 3 and Article 4.2 (a) and 4.2. (c) of the Safeguards Agreement; to this end, Article 3 and Article 4.2 (a) and 4.2. (c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Investigation shall demonstrate on the basis of objective evidence, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof. Known factors other than the increased imports shall also be examined to ensure that the injury caused by these other factors is not attributed to the increased imports.

The importing Party concerned shall inform the other Party concerned upon taking such provisional measures and shall immediately refer the matter to the Committee on Trade in Goods for examination if the other Party so requests.

3. The investigation shall in all cases be completed within one year following its date of initiation.

ARTICLE X.16

Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, if it:

(a) initiates a bilateral safeguard investigation under this Chapter;

(b) makes a finding of serious injury, or threat of serious injury, the situations described in X.9

and X.12 caused by an increase of preferential imports, as set out in Article X (Application of a Bilateral Safeguard Measure); X.9 and X.12;

- (c) takes a decision to apply a provisional safeguard measure, to apply or extend a bilateral safeguard measure; and
- (d) takes a decision to modify a bilateral safeguard measure previously undertaken.

2. A Party shall provide to the other Party a copy of the public version of the complaint and the report of its competent authorities that is required under Article 3 of the Safeguards Agreement, incorporated in Article X.15 (Investigation Procedures).

3. When a Party makes a notification pursuant to paragraph 1(c) that it is applying or extending a bilateral safeguard measure that Party shall include in that notification all pertinent information such as

- (a) evidence of situations described in X.9 and X.12, caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement;
- (b) a precise description of the originating good subject to the bilateral safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex XX are based;
- (c) a precise description of the bilateral safeguard measure;
- (d) the date of the bilateral safeguard measure's introduction, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and
- (e) in the case of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of the Party whose good is subject to a bilateral safeguard proceeding under this Chapter, the Party that conducts that proceeding shall provide adequate opportunity for prior

consultations with the requesting Party before a final decision to apply safeguard measures is taken, with a view to reviewing a notification provided under paragraph 1 or any public notice or report that the competent investigating authority issued in connection with the proceeding, and exchanging views on the proposed measure and reaching an understanding on compensations set forth in Article X.13.