15th Intersessional Meeting of PACER Plus Officials

**XXXXXX, YYYYYYY**

**XX to YY May/June 2016**

### Draft Chapter on Trade in Goods

**Working Document incorporating outcomes of the 14thIntersessional Meeting**

**NOTE:**

This Document contains clean copy draft text incorporating outcomes of the 14th Intersessional Meeting of PACER Plus Officials.

Text that is not agreed is in square brackets and attributed as follows:

* “**AU:**” for text tabled by Australia;
* “**FIC:**” for text tabled by OCTA/FICs; and
* “**NZ:**” for text tabled by New Zealand.

Text in square brackets is bolded and coded as follows:

* **blue** for text tabled by Australia;
* **red** for text tabled by OCTA/FICs; and
* **olive green** for text tabled by New Zealand.

**CHAPTER 2**

**TRADE IN GOODS**

**Article 1**

**Objectives**

The objectives of this Chapter are, with respect to measures affecting goods traded between the Parties, to avoid unnecessary barriers to trade, facilitate and liberalise trade and thereby promote integration between the economies of the Parties.

**Article 2**

# Scope

This Chapter shall apply to all goods traded between the Parties.

# Article 3

**Commitments on Tariffs**

1. Each Party shall not apply to originating goods:

(a) ordinary customs duties that are not specified, or are in excess of levels set forth, in Part I (Commitments on Ordinary Customs Duties) of its Schedule at Annex 1 (Schedules of Commitments on Tariffs); or

(b) duties or charges on or in connection with their importation (other than ordinary customs duties applied in conformity with Subparagraph 1(a) and other than internal taxes or other charges, anti-dumping or countervailing duties and fees or other charges for services rendered applied in conformity with Articles 6, 7 and 8 of this Chapter respectively) that are not specified in, or are not in conformity with, Part II (Commitments on Other Duties or Charges) of its Schedule at Annex 1.

2. With respect to the levels of all duties and charges referred to in Paragraph 1 of this Article, any advantage granted **[NZ/FIC: after the entry into force of this Agreement]** to any good of a non-Negotiating Party shall be accorded immediately and unconditionally to all like goods originating in the territories of all other Parties except where:

(a) (i)the advantage granted to the goods of the Non-Negotiating Party is accorded pursuant to Decision 36 of Annex F of the WTO Hong Kong Ministerial Declaration of 2005 on Measures in Favour of Least-Developed Countries and related WTO Decisions on duty-free and quota-free access for products originating in Least-Developed Countries; and

(ii) the treatment of such goods pursuant to the Decisions referred to in Subparagraph 2(a)(i) of this Article is in conformity with those Decisions; or

**[AU: (b) the advantage granted to the goods of the Non-Negotiating Party is in respect of a preference in force pursuant to a regional trade agreement to which:**

**(i) at least one Negotiating Party is a party;**

**(ii) one or more of the countries or customs territories listed at Appendix A to this Chapter is a party, subject to each such country or customs territory being, at the time of its initial participation in the negotiations towards the regional trade agreement:**

**(A) classified by the United Nations as a Least-Developed Country; *or***

**(B) classified as neither a High-Income Economy nor an Upper Middle-Income Economy in the most recent *United Nations World Economic Situation and Prospects Report* (or successor publication applying the same or equivalent classification); *or***

**(C) not classified to any grouping in the most recent *United Nations World Economic Situation and Prospects Report* (or successor publication) on the basis of its level of per capita gross national income; and**

**(iii) no other country or customs territory is a party.]**

**[NZ/FIC:**

**(b) the advantage is granted pursuant to the granting Party’s international trade obligations to goods of other Pacific Island Countries and territories[[1]](#footnote-2)1 that are not parties to this Agreement; or**

**(c) the advantage is granted by any Forum Island Country to the goods of any developing country or regional grouping of composed exclusively of developing countries upon the entering into of a regional trade agreement, except where the developing country trading partner accounts for more than one percent of world merchandise exports or [FICs: a party to the regional grouping accounts for more than one per cent of world merchandise exports and the Parties collectively account for more than four per cent of world merchandise exports], measured as of the date of the entry into force of the regional trade agreement.[[2]](#footnote-3)2]**

**[FIC 3. Notwithstanding paragraph 2, where any developing country Party becomes a party to a regional trade agreement with a third party[[3]](#footnote-4) and such an agreement provides for more favourable treatment to such third party than that granted by the developing country Party to PACER Plus Parties, the relevant Parties shall enter into consultations with a view to achieving a mutually agreed outcome, which shall be notified to the Joint Committee. Where they are unable to achieve a mutually agreed outcome, either party may refer the matter to the Joint Committee which may decide whether the concerned developing country Party may deny the more favourable treatment contained in the regional trade agreement to other PACER Plus Parties as a result of being offered more tariff preferences and other advantages by the third party. The Joint Committee may adopt any necessary measures to adjust the provisions of this Agreement.]**

***[Once PACER Plus scheduled tariff commitments that acceptably eliminate existing discrimination are negotiated, Australia could agree to an appropriately worded grandfather clause as follows:***

3.The provisions of Paragraph 2 shall not require such advantage to be accorded in respect of a preference **[AU: by Fiji][AU: by Papua New Guinea]** in force or scheduled for future implementation pursuant to the Interim Partnership Agreement Between the European Community, of the One Part, and the Pacific States, of the Other Part (*Official Journal of the European Union*, L272, 16.10.2009), as provisionally applied as at 1 January 2017**.*]***

4. Nothing in this Agreement shall preclude all Parties from negotiating and entering into arrangements for the acceleration and/or improvement of commitments in their Schedules. Agreements among all Parties for such acceleration and/or improvement of commitments shall be incorporated into this Agreement in accordance with Article 7 (Amendments) of Chapter **[..]** (Final Provisions). Such accelerated and/or improved commitments shall be implemented by those Parties and be extended to all Parties.

5. Two or more Parties may consult with a view to reaching an agreement on the acceleration and/or improvement of commitments in their Schedules. Agreements between Parties for such acceleration and/or improvement of their commitments shall be incorporated into this Agreement in accordance with Article 7 (Amendments) of Chapter **[..]** (Final Provisions). Such accelerated and/or improved commitments shall be implemented by those Parties and be extended to all Parties.

6. A Party may, at any time, unilaterally accelerate the implementation of commitments in its Schedule. A Party intending to do so shall inform the other Parties in accordance with Subparagraph 2(a) of Article 14 (Information Exchange in Relation to, and Publication of, Specified Measures). Such accelerated implementation of commitments shall be extended to all Parties.

7. Where a developing country Party faces unforeseen difficulties in implementing its tariff commitments:

(a) That Party may, with the agreement of all other interested Parties, modify or withdraw a concession contained in its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

(b) In order to seek to reach such agreement, the relevant Party shall engage in negotiations with any interested Parties. In such negotiations, the Party proposing to modify or withdraw its concessions shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other interested Parties than that provided for in this Agreement prior to such negotiations.

(c) A negotiated outcome may include compensatory adjustments with respect to other goods or, where the available scope for compensatory adjustments on goods is insufficient with respect to services and/or investment**.**

(d) The mutually agreed outcome of the negotiations, including any compensatory adjustments, shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 7 (Amendments) of Chapter X (Final Provisions).

8. Where a mutually agreed outcomeunder Paragraph 7 cannot be reached within 60 days of the request being made:

**[FIC: (a) The developing country Party may proceed with the modification or withdrawal of its tariff concessions. Upon that occurrence, any Party with a substantial interest may request the Joint Committee to establish a Panel of Experts.**

**[AU/NZ:**

**(a) The Party proposing to modify or withdraw the concession or any Party with a substantial interest may request that a Panel be established pursuant to Chapter [..] (Consultation and Dispute Settlement) to conduct an expedited process called a Compensation Adjudication. Such request shall be made to the Party proposing to modify or withdraw the concession or, if that Party is the requesting Party, to all Parties.]**

(b) A copy of all such requests shall be provided simultaneously to all Parties. **[AU/NZ: Where the Party proposing to modify or withdraw the concession is not the requesting Party, it]**

**[FIC: The Party that had modified or withdrawn its concessions]**

shall immediately acknowledge receipt of the request by way of notification to all Parties indicating the date on which the request was received.

(c) A Panel **[FIC: of Experts]** established pursuant to Subparagraph (a) shall conduct a Compensation Adjudication to determine the compensatory adjustments to the schedule (or schedules) of the Party proposing to modify or withdraw the concession that are necessary to maintain a level of reciprocal and mutually advantageous concessions no less favourable for the trade of all other interested Parties than that provided for under this Agreement prior to the negotiations under Paragraph 7.

(d) The requesting Party may present its own proposals for compensatory adjustments and its reasons and supporting evidence therefor as part of its request. Other Parties with a substantial interest (including the Party **[AU/NZ: proposing to modify or withdraw the concession where it is not the requesting Party][FIC: that has modified or withdrawn its tariff concessions]**) may also present proposals of the same kind to the Panel **[FIC: of Experts]**. In making its determination, the Panel **[FIC: of Experts]** shall take all such proposals, reasons and evidence into account.

(e) The compensatory adjustment or adjustments the Panel considers necessary with respect to one Party with a substantial interest shall not be diminished by compensation accepted voluntarily by, or awarded by the Panel with respect to, another Party with a substantial interest.

(f) The findings of the Panel **[FIC: of Experts]** on any compensatory adjustments **[FIC: , which shall be made within 60 days of its establishment,]** shall be final and binding. **[AU/NZ**: **The requesting Party shall be free to modify or withdraw the concession when the Panel presents its interim report to the Parties.]**

(g) The compensatory adjustments shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 7 (Amendments) of Chapter **[…]** (Final Provisions).

**[AU**/NZ: **9. When undertaking the process provided for in Paragraph 8, the provisions of Chapter [..] (Consultation and Dispute Settlement) relating to the conduct of a Panel shall apply *mutatis mutandis*. In the event of a conflict, the relevant provisions of this Article shall prevail4.]**

**[NZ/AU: 4** **For greater certainty, establishment of a Panel pursuant to Article 8 shall not constitute commencement of dispute settlement Proceedings between the Parties.]**

**Article 4**

**Goods Re-entered after Repair and Alteration**

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in its own territory.

2. Notwithstanding Paragraph 1, a developing country Party may, in accordance with its relevant legislation, impose a customs duty on the cost of repair or alteration of the product, provided that the duty imposed does not exceed the customs duty which would be payable if the product were imported for the first time***.* [AU: Such imposition of a customs duty on the cost of repair or alteration of the product, regardless of the product’s origin, shall be discontinued from the date that the final commitment on the ordinary customs duty for the like product in the Party’s Schedule at Annex 1 (Schedule of Commitments on Tariffs) becomes effective where the like product concerned is exempt from ordinary customs duty under the final commitment.]**

3. No Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

4. For the purposes of this Article, repair and alteration does not include an operation or process that:

(a) destroys a good’s essential characteristics or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

5. Nothing in Paragraph 3shall be construed to prevent a Party specifying in its laws or regulations a limit on the duration of temporary entry beyond which the goods concerned become dutiable.

**Article 5**

**Duty-Free Entry of Commercial Samples of Negligible Value and Printed**

**Advertising Material**

1. With the exception of tobacco products, the Parties shall grant customs duty-free entry to commercial samples of negligible value and to printed advertising materials imported from the territory of another Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or

(b) such advertising materials are imported in packets that each contain no more than one copy of each material and that neither such materials nor packets form part of a larger consignment.

2. Nothing in this Article shall be construed to prevent a Party requiring under its laws and regulations that a bond be paid on the temporary import of commercial samples that are not of negligible value and that such bond be released upon re-exportation of the commercial sampleswithin a time limit provided for under its legislation.

# Article 6

**Internal Taxation and Regulation**

In respect of internal taxes, other internal charges and laws, regulations and requirements affecting matters within the scope of Article III of GATT 1994, each Party shall accord to the goods of other Parties most-favoured nation treatment and national treatment in accordance with Articles I and III, including the Interpretative Notes to Article III, of GATT 1994. To these ends, Articles I and III, including the Interpretative Notes to Article III, of GATT 1994 are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

**Article 7**

**Trade Remedies**

*Anti-Dumping and Countervailing Measures*

1. Nothing in this Agreement shall affect the rights and obligations of WTO Member Parties under Articles VI and XVI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures.

2. When applying anti-dumping or countervailing measures, non-WTO Member Parties shall comply with the provisions of Articles VI and XVI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures.

3. Special regard shall be given by developed country Parties to the special situation of developing country Parties when considering and before making a decision on the application of anti-dumping measures under this Article. A developed country Party considering the application of an anti-dumping duty to a product of a developing country Party shall explore possibilities of constructive remedies before applying such anti-dumping duty where it would affect the essential interests of the developing country Party concerned.

4. Upon entry into force of this Agreement, each Party with legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points:

(a) its laws, regulations and administrative procedures relating to anti-dumping or countervailing measures including *inter alia* procedures governing the initiation and conduct of investigations by its competent authorities;

(b) which of its authorities are competent to initiate and conduct its anti-dumping and countervailing investigations; and

(c) its domestic procedures governing the initiation and conduct of such investigations.

5. Upon entry into force of this Agreement, each Party without legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points that it does not have anti-dumping or countervailing legislation. Thereafter, where any such Party adopts legislation containing provisions on anti-dumping or countervailing measures, upon adoption of such legislation it shall notify to the other Parties through Contact Points the information required to be notified in Subparagraphs 4(a), 4(b) and 4(c). The information shall be notified prior to such Party initiating an anti-dumping or countervailing investigation with respect to another Party or Parties.

6. Thereafter, each Party with legislation containing provisions on anti-dumping or countervailing measures shall notify to the other Parties through Contact Points:

(a) any changes in its anti-dumping and countervailing duty laws and regulations and in the administration of such laws and regulations; and

(b) where anti-dumping or countervailing action concerning the products of any Party has been initiated:

(i) any preliminary or final anti-dumping or countervailing determinations;

(ii) any acceptance of undertakings;

(iii) any terminations of duties or investigations; and

(iv) the explanations, findings and conclusions reached thereon of any actions taken.

7. All information notifiable by a Party under Paragraphs 5 and 6 shall be published in accordance with Article 13 (Publication and Administration of Trade Regulations).

*Global Safeguard Measures*

8. Nothing in this Agreement shall affect the rights and obligations of WTO Member Parties under Article XIX of GATT 1994 and the Agreement on Safeguards.

9. When applying a global safeguards measure, non-WTO Member Parties shall comply with the provisions of Article XIX of GATT 1994 and the Agreement on Safeguards.

10. Upon entry into force of this Agreement, each Party with legislation containing provisions on global safeguards shall notify to the other Parties through Contact Points:

(a) its laws, regulations and administrative procedures relating to safeguards measures (including *inter alia* procedures governing the initiation and conduct of investigations by its competent authorities); and

(b) its competent authorities;

and shall thereafter notify to the other Parties through Contact Points any modifications made to information notified under Subparagraphs 10(a) and 10(b).

11. Upon entry into force of this Agreement, each Party without legislation containing provisions on global safeguards shall notify to the other Parties through Contact Points that it does not have global safeguards legislation. Thereafter, where any such Party adopts or subsequently modifies legislation containing provisions on global safeguards, upon adoption or modification of such legislation it shall promptly notify to the other Parties through Contact Points the information required to be notified in Paragraph 10.

12. Thereafter, each Party with legislation containing provisions on global safeguards shall immediately notify the other Parties through Contact Points upon:

(a) initiating any investigatory process relating to serious injury or threat thereof, and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

13. Where a decision has been taken to apply a provisional safeguard measure, a notification shall be made to the other Parties through Contact Points before that measure is applied.

14. Competent authorities shall publish promptly a report setting forth their findings and reasoned conclusions reached on all pertinent issues fact and law.

15. All information notifiable by a Party under Paragraphs 10 to 13 shall be published in accordance with Article 13 (Publication and Administration of Trade Regulations).

16. To the extent possible, the developed country Parties shall consider exempting products from the developing country Parties from the application of a safeguard measure under this Article. A Party shall not apply a safeguard measure against a product originating in a developing country that is a WTO Member or a Non-WTO Member Party as long as its share of imports of the product concerned in the importing Party does not exceed three (3) per cent, provided that the developing countries that are a WTO Member or a Non-WTO Member Party with less than three (3) per cent import share collectively account for not more than nine (9) per cent of total imports of the product concerned.

**Article 8  
Transitional Safeguard Measures**

*Definitions*

1. For the purposes of this Article:

(a) Agreement on Safeguards or Safeguards Agreement means the Agreement on Safeguards, in Annex 1A to the WTO Agreement;

(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) transitional safeguard measure means a measure described in Paragraphs 2 to 4 (*Imposition of a Transitional Safeguard Measure*) of this Article;

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

(e) 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; and

**[AU/NZ:**

**(f) transition period means, in relation to a particular good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.**

**[FIC: (f) transition period in relation to a particular good, means the period from the entry into force of this Agreement until two years after the date on which the customs duty on that product is to be eliminated in accordance with Annex 1 (Schedules of Tariff Concessions).]**

*Imposition of a Transitional Safeguard Measure*

2. A developing country Party may apply a transitional safeguard measure described in Paragraph 3, during the transition period only, if as a result of the staged elimination of a customs duty pursuant to this Agreement:

(a) an originating good of another Party, individually, is being imported into the Party’s territory 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 a like or directly competitive good; or

(b) an originating good of two or more Parties, collectively, is being imported into the Party’s territory 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 a like or directly competitive good, provided that the Party applying the transitional safeguard measure demonstrates, with respect to the imports from each such Party against which the transitional safeguard measure is applied, that imports of the originating good from each of those Parties have increased, in absolute terms or relative to domestic production, since the date of entry into force of this Agreement for those Parties.

3. If the conditions in Paragraph 2 are met, the Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment:

(a) suspend the further reduction of any rate of customs duty provided for under this Agreement on the good; or

**[FIC: (b) increase the rate of customs duty on the good to a level not to exceed in the case of a WTO Member Party, the most-favoured-nation applied rate of customs duty; or in the case of a Party that is not a WTO Member, the general non-preferential applied rate of customs duty at the time the measure is applied.]**

**[AU/NZ;**

**(b) increase the rate of customs duty on the good to a level not to exceed the lesser of:**

**(i) (A) in the case of a WTO Member Party, the most-favoured-nation applied rate of customs duty; or**

**(B) in the case of a Party that is not a WTO Member, the general non-preferential applied rate of customs duty;**

**at the time the measure is applied; and**

**(ii) (A) in the case of a WTO Member Party, the most-favoured-nation applied rate of customs duty; or**

**(B) in the case of a Party that is not a WTO Member, the general non-preferential applied rate of customs duty;**

**in effect on the day immediately preceding the date of entry into force of this Agreement for that Party.]**

4. No Party shall apply a **[AU: tariff rate quota]** or a quantitative restriction as a form of transitional safeguard measure.

*Standards for a Transitional Safeguard Measure*

5. A Party shall maintain a transitional safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

6. That period shall not exceed two years, except that the period may be extended by up to two years or, in the case of a Least-Developed Country Party, **[FIC: and a Small Island State Party]** by up to three years, if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Paragraphs 12 and 13 (*Investigation Procedures and Transparency Requirements*), that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.

7. No Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.

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

9. On the termination of a transitional safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in its Schedule of Commitments on Tariffs at Annex 1 as if that Party had never applied the transitional safeguard measure.

10. **[AU/NZ: No Party shall apply a transitional safeguard measure more than once on the same good.][FIC: A Party shall not apply a safeguard or provisional measure again on the same originating product for a period of time equal to the duration of the previous safeguard measure or two years, whichever is longer.]**

11. No Party shall apply or maintain at the same time, with respect to the same good, a transitional safeguard measure under this Article and a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement.

*Investigation Procedures and Transparency Requirements*

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

13. In the investigation described in Paragraph 12, the Party shall comply with the requirements of Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement; to this end, Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

**[FIC: *Provisional Measures***

**14. In critical circumstances where delay would cause damage which would be difficult to repair, a developing country Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious damage to a relevant domestic industry. The duration of such a provisional measure shall not exceed 200 days, during which period the pertinent requirements of this Article shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in paragraph 6. Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in paragraph 12 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious damage to a domestic industry. In such a case, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex […] as if the provisional ~~transitional~~ bilateral measure had never applied.]**

*Notification and Consultation*

**[AU/NZ: 14.][FIC: 15.]** A Party shall promptly notify the other Parties through Contact Points, in writing, if it:

(a) initiates a transitional safeguard investigation under this Article;

(b) makes a finding of serious injury, or threat of serious injury, caused by increased imports, as set out in Paragraph 2;

(c) takes a decision to apply or extend a transitional safeguard measure;

(d) takes a decision to modify a transitional safeguard measure previously undertaken.

**[AU/NZ: 16.][FIC: 17.]** A Party shall provide to the other Parties through Contact Points a copy of the public version of the report of its competent authorities that is required under Paragraph 12.

**[AU/NZ: 17.][FIC: 18.]** When a Party makes a notification pursuant to Subparagraph **[AU/NZ: 14(c)] [FIC: 15(c)]** that it is applying or extending a transitional safeguard measure, that Party shall include in that notification:

(a) evidence of serious injury, or threat of serious injury, caused by increased imports of an originating good of another Party or Parties as a result of the staged elimination of a customs duty pursuant to this Agreement;

(b) a precise description of the originating good subject to the transitional safeguard measure including its Heading or Subheading under the HS Code, on which the commitments in respect of the duty contained in its Schedule of Commitments on Tariffs at Annex 1 are based;

(c) a precise description of the transitional safeguard measure;

(d) the date of the transitional 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 transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

**[AU/NZ: 18.][FIC: 19.]** On request of a Party whose good is subject to a transitional safeguard proceeding under this Chapter, the Party that conducts that proceeding shall enter into consultations with the requesting Party to review a notification under Paragraph 14 or any public notice or report that the competent investigating authority issued in connection with the proceeding.

*Compensation*

**[AU/NZ: 18.][FIC: 19.]** A Party **[AU/NZ: applying][FIC: 19. extending]** a transitional safeguard measure **[FIC: beyond the initial period]** shall, after consultations with each Party against whose good the transitional safeguard measure is applied, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

**[AU/NZ: 19.][FIC: 20.]** If the consultations under Paragraph **[AU/NZ: 18][FIC: 19]** do not result in an agreement on trade liberalising compensation within 30 days, any Party against whose good the transitional safeguard measure is applied may seek a determination on the level of compensation under the procedures of Paragraphs 8 and 9 of Article 3 (Commitments on Tariffs), which shall apply *mutatis mutandis*.

**[AU/NZ: 20.][FIC: 21.]** The obligation to provide compensation under Paragraph **[AU/NZ: 18][FIC: 19]** or Paragraph **[AU/NZ: 19][FIC: 20]** terminates on the termination of the transitional safeguard measure.

**Article 9**

**Industry Development**

**[1. A developing country Party may temporarily suspend the reduction in the rate of customs duty or raise the rate of customs duty on a product being imported into its territory in such increased quantities and under such conditions as to pose a threat to an infant industry producing like or directly competitive products or to the establishment of an infant industry following a reduction in the rate of customs duty.[[4]](#footnote-5)**

**2.Safeguard measures under this Article may be applied for an initial period of up to seven years by a developing country Party, which may be extended for an additional three years by the Joint Committee. In the case of a least-developed country or a small island state Party, the initial duration of the measure may be up to twelve years, which may be extended for an additional three years by the Joint Committee.**

**3. A developing country Party wishing to have recourse to this Article shall provide interested Parties and the Joint Committee with all relevant information required for a thorough examination of the situation and enter into negotiations with the aim of reaching a mutually agreed outcome. The Parties shall notify any mutually agreed outcome, including any compensatory adjustments to the Joint Committee. Where the Parties are unable to achieve a mutually agreed outcome within 60 days of the request to modify or withdraw a tariff concession, the provisions of Article 3.8 of this Agreement shall apply *mutatis mutandis* under this Article, except that compensatory adjustments would have to be implemented only after three years of the findings of the Panel of Experts.**

**4. A product which is subject to a measure under Article 3.7 of this Agreement or a multilateral or bilateral safeguard measure cannot be subjected at the same time to a measure taken pursuant to this Article.**

**[AU/NZ: 1. Subject to the requirements that such action is not undertaken in a manner that is inconsistent with, and is not otherwise in contravention of, any provision of this Agreement, a developing country Party may:**

**(a) in the case of a WTO Member:**

**(i) modify or withdraw a tariff concession contained in its WTO Schedule of Concessions and Commitments on Goods under Section A of Article XVIII of GATT 1994;**

**(ii) apply most-favoured-nation rates of duty at its discretion where the duty is unbound in its WTO Schedule of Concessions and Commitments on Goods;**

**(b) in the case of a non-WTO Member, apply general non-preferential rates of duty at its discretion;**

**in furtherance of industry development objectives referred to in Article XVIII of GATT 1994 and the Interpretative Notes to that Article.**

**2. A developing country Party’s rights under Paragraphs 7 to 9 of Article 3 shall not be limited by any action taken by it at any time under Paragraph 1 of this Article.**

**3. The rights of another Party in seeking a compensatory adjustment under Paragraphs 7 to 9 of Article 3 shall not be limited by any compensatory adjustment sought, offered to it, granted to it or determined under, or by any retaliatory measure taken in response to, action referred to in Paragraph 1 of this Article.**

**4. The purpose of the action taken under Paragraph 1 of this Article shall not otherwise affect the operation of Paragraphs 7 to 9 of Article 3. In particular, a developing country Party seeking to modify or withdraw a concession under Paragraphs 7 to 9 of Article 3 shall not be required to furnish a statement or an explanation of, or any other information on, an industry development objective referred to in Article XVIII of GATT 1994 and the Interpretative Notes to that Article.]**

**Article 10**

**Fees and Charges Connected with Importation and Exportation**

1. Each Party shall ensure that all fees and charges of whatever character(other than import and export duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994 and anti-dumping and countervailing duties applied pursuant to Articles VI and XVI of GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures) on or in connection with importation or exportation:

(a) are limited in amount to the approximate cost of services rendered;

(b) do not represent an indirect protection to domestic products or a taxation on imports or exports for fiscal purposes; and

(c) are otherwise in conformity with the WTO Agreement, including *inter alia* Articles I and VIII of GATT 1994.

2. In respect of such measures, Articles I and VIII of GATT 1994 are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

# Article 11

**Import Licensing**

1. In respect of import licensing procedures, the Parties, taking into account the particular trade, development and financial needs of developing country Parties:

(a) recognise the usefulness of automatic import licensing for certain purposes, and shall ensure that such licensing is not used to restrict trade between them and is otherwise in accordance with Articles 1 and 2 of the Agreement on Import Licensing Procedures;

(b) recognise that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of GATT 1994, and shall ensure that import licensing procedures employed therefor are not utilised in a manner contrary to the principles and obligations of GATT 1994 and are otherwise in accordance with Articles 1 and 3 of the Agreement on Import Licensing Procedures and other WTO provisions; and

(c) recognise that trade could be impeded by the inappropriate use of import licensing procedures and, with a view to avoiding their inappropriate use, shall ensure that:

(i) import licensing, particularly non-automatic import licensing, is implemented in a transparent and predictable manner;

(ii) non-automatic licensing procedures are no more administratively burdensome than absolutely necessary to administer the relevant measure; and

(iii) administrative procedures and practices used in international trade are transparent, are as simple as possible and are applied and administered fairly and equitably.

2. To these ends, in respect of import licensing procedures, Articles 1 to 3of the Agreement on Import Licensing Procedures are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. Information related to import licensing procedures under Article 1.4(a) of the Agreement on Import Licensing Procedures shall be published in such a manner as to enable governments and traders to become acquainted with it and be so published not later than the effective date of the requirement concerned. Each Party shall notify the Contact Points of other Parties where such information is found.

4. Information exchanged between the Parties on import licensing procedures shall be otherwise notified, published and kept up-to-date in accordance with Article 14 (Information Exchange in Relation to, and Publication of, Specified Measures) and be supplied in the format set out at Appendix **[FIC/NZ: A][AU: B]**.

**Article 12**

**Other Non-Tariff Measures**

1. Each Party shall not:

(a) apply any prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, on importation or exportation that are allowable under the WTO Agreement or this Agreement inconsistently with GATT 1994 or other relevant provisions of the WTO Agreement or of this Agreement; or

(b) apply to traffic in transit any measure prohibited under, or any allowable measure inconsistently with, Article V of GATT 1994 or other relevant provisions of the WTO Agreement; or

(c) apply any measure prohibited under Article 4.2 of the Agreement on Agriculture or Article 11.1(b) of the Agreement on Safeguards; or

(d) apply any prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, on importation or exportation that are otherwise prohibited under GATT 1994 or other provisions of the WTO Agreement.

2. To these ends, in respect of the aforementioned measures, GATT 1994 (including relevant Interpretative Notes of GATT 1994), the Agreement on Import Licensing Procedures, Articles 4.2 and 12 of the Agreement on Agriculture and Article 11.1(b) of the Agreement on Safeguards are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. Each Party shall not require consular transactions, including related fees, charges, formalities and requirements, in connection with the importation of a good from another Party.

**Article 13**

# Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any Party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.

2. Agreements affecting international trade policy which are in force between the government or a governmental agency of any Party and the government or governmental agency of any other country shall also be published.

3. The provisions of Paragraphs 1 and 2 shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

4. No measure of general application taken by any Party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

5. Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in Paragraph 1 of this Article.

6. To these ends, Article X of GATT 1994 and other provisions of the WTO Agreement relating to the publication and administration of trade regulations are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

7. In accordance with its domestic laws and regulations, each Party shall, to the extent of its capacity, make laws, regulations, decisions and rulings in relation to matters within the purview of Paragraphs 1, 2 and 4 available on the internet.

8. Each Party shall thereafter, to the extent of its capacity, ensure that all items of information that are publically available pursuant to Paragraphs 1, 2, 4 and 7are kept up-to-date in accordance with those Paragraphs.

**Article 14**

**Information Exchange in Relation to, and Publication of, Specified Measures**

1. Upon entry into force, each Party shall provide to the other Parties through Contact Points:

(a) the existing schedules of non-preferential and preferential applied rates of customs duty that it maintains;

(b) a list of all existing fees and charges that it imposes on or in connection with importation or exportation; and

(c) information on its new or modified import licensing procedures in the form of a completed response to the questionnaire at Appendix **[FIC/NZ: A][AU: B]** to this Chapter.

2. Thereafter, each Party shall ensure that all items of information provided under Paragraph 1 are kept up-to-date by transmitting to the other Parties through Contact Points any modifications or additions thereto:

(a) in the case of items under Subparagraphs 1(a) and 1(b), no later than the date on which they take effect;

(b) in the case of information on modified or new import licensing procedures provided through completed responses to the questionnaire at Appendix A to this Chapter, to the extent possible 60 days before the modified or new procedure takes effect, but in any case no later than within 60 days of publication.

3. A WTO Member Party shall be deemed to be compliance with Subparagraphs 1(c) and 2(b) upon fulfilment of its obligations under paragraphs 5.1 to 5.3 of the Agreement on Import Licensing Procedures and upon transmitting to the other Parties through Contact Points the relevant notifications made to the WTO.

4. Each Party shall to the extent of its capacity publish the information that it provides to other Parties under Paragraphs 1, 2 and 3 on internet websites with a view to public availability and ensure that the information available on such websites is kept up-to-date.

5. A Party may fulfil its obligations under Paragraphs 1, 2 and 3 by providing to the other Parties through Contact Points the details of such websites where the requisite information is posted and readily accessible to any person.

6. This Article shall not apply to measures covered by the SPS Agreement or the TBT Agreement or to import licensing regimes governing the administration of tariff rate quotas with respect to tariff rate quotas established in the WTO Schedules of Concessions and Commitments on Goods of WTO Member Parties.

**Article 15**

**Contact Points and Technical Discussions**

1. Each Party shall provide each other Party with a Contact Point to facilitate distribution of requests and notifications made in accordance with this Chapter.

2. Each Party shall ensure the information provided under Paragraph 1 is kept up-to-date.

3. Where a Party considers that any proposed or actual measure of another Party or Parties may materially affect trade in goods between the Parties, that Party may, through Contact Points, request detailed information relating to that measure and, if necessary, request technical discussions with a view to resolving any concerns about the measure. The other Party or Parties shall respond promptly to such requests for information and technical discussions.

4. Technical discussions held under this Article do not constitute an intention to seek formal consultations under Chapter **[..]** (Consultations and Dispute Settlement) and are without prejudice to the rights and obligations of the Parties under that Chapter, the WTO Agreement, or any other agreement to which both Parties are party.

**Article 16**

**Meetings on Trade in Goods Matters**

1. The Parties shall, through the Joint Committee or a relevant subsidiary body, consult regularly to consider the implementation of their commitments under this Chapter.

2. The Parties, through the Joint Committee or a relevant subsidiary body, shall commence a review of this Chapter within three years of entry into force of this Agreement and submit a final report to the Joint Committee, including any recommendations, within four years of entry into force of this Agreement.

**Article 17**

##### Amendments to the Harmonized Commodity Description and Coding System

1. When a periodic amendment to the Harmonized Commodity Description and Coding System (HS) is published, the Parties shall prepare technical revisions to Annex 1 (Schedules of Tariff Commitments) to implement that version of the HS, and shall do so in accordance with this Article and the relevant procedures for technical revisions to Annex 1 as adopted by the Joint Committee under Chapter **[..]** (Institutional Provisions).

2. The Parties shall mutually decide whether any other technical revisions to Annex 1 are necessary.

3. The Parties shall ensure that technical revisions to Annex 1 are carried out on a neutral basis and that market access conditions are not impaired by the process or the outcomes of technical revision to the Annex.

4. The Parties, through the Joint Committee or a relevant subsidiary body established by it, shall endorse and promptly publish the technical revisions that are prepared pursuant to Paragraphs 1 and 2.

**Article 18**

# Non-Application of Articles 15 and 16 to Matters within the Scope of Other Chapters

Articles 15 and 16 shall not apply to matters within the scope of Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures), Chapter 5 (Technical Regulations, Standards and Conformity Assessment Procedures) or Chapter 6 (Sanitary and Phytosanitary Measures).

**[AU: Appendix A**

| **Countries and/or customs territories referred to in Subparagraph 2(b) of  Article 3 (Commitments on Tariffs) (a)** |
| --- |
| **1. Afghanistan** |
| **2. Algeria** |
| **3. American Samoa (b)** |
| **4. Angola** |
| **5. Anguilla (b)** |
| **6. Antigua and Barbuda** |
| **7. Aruba (b)** |
| **8. Bahamas, The** |
| **9. Barbados** |
| **10. Belize** |
| **11. Benin** |
| **12. Bermuda (b)** |
| **13. Bhutan** |
| **14. Bolivia** |
| **15. Botswana** |
| **16. British Virgin Islands (b)** |
| **17. Burkina Faso** |
| **18. Burundi** |
| **19. Cabo Verde (Cape Verde)** |
| **20. Cameroon** |
| **21. Cayman Islands (b)** |
| **22. Central African Republic** |
| **23. Chad** |
| **24. Comoros** |
| **25. Congo, the Republic of the (Congo (Brazzaville))** |
| **26. Côte d’Ivoire** |
| **27. Cuba** |
| **28. Curaçao (b)** |
| **29. Democratic Republic of Congo (Congo (Kinshasa))** |
| **30. Djibouti** |
| **31. Dominica** |
| **32. Dominican Republic** |
| **33. Ecuador** |
| **34. El Salvador** |
| **35. Equatorial Guinea** |
| **36. Eritrea** |
| **37. Ethiopia** |
| **38. Falkland Islands (b)** |
| **39. French Guiana (b)** |
| **40. French Polynesia (b)** |
| **41. Gabon** |
| **42. Gambia, The** |
| **43. Ghana** |
| **44. Grenada** |
| **45. Guadeloupe (b)** |
| **46. Guam (b)** |
| **47. Guatemala** |
| **48. Guinea** |
| **49. Guinea-Bissau** |
| **50. Guyana** |
| **51. Haiti** |
| **52. Honduras** |
| **53. Iraq** |
| **54. Jamaica** |
| **55. Kazakhstan** |
| **56. Kenya** |
| **57. Kyrgyz Republic, The (Kyrgyzstan)** |
| **58. Lebanon** |
| **59. Lesotho** |
| **60. Liberia** |
| **61. Libya** |
| **62. Madagascar** |
| **63. Malawi** |
| **64. Maldives** |
| **65. Mali** |
| **66. Martinique (b)** |
| **67. Mauritania** |
| **68. Mauritius** |
| **69. Mayotte (b)** |
| **70. Mongolia** |
| **71. Montserrat (b)** |
| **72. Morocco** |
| **73. Mozambique** |
| **74. Namibia** |
| **75. Nepal** |
| **76. Netherlands Antilles (b)** |
| **77. New Caledonia (b)** |
| **78. Nicaragua** |
| **79. Niger** |
| **80. Nigeria** |
| **81. Northern Marianas Islands (b)** |
| **82. Pitcairn Islands (b)** |
| **83. Réunion (b)** |
| **84. Rwanda** |
| **85. Saint Barthelemy (b)** |
| **86. Saint Helena, Ascension and Tristan da Cunha (b)** |
| **87. Saint Kitts and Nevis** |
| **88. Saint Lucia** |
| **89. Saint Martin (b)** |
| **90. Saint Pierre and Miquelon (b)** |
| **91. Saint Vincent and the Grenadines** |
| **92. Sao Tomé and Principe** |
| **93. Senegal** |
| **94. Seychelles** |
| **95. Sierra Leone** |
| **96. Sint Maarten (b)** |
| **97. Somalia** |
| **98. South Sudan** |
| **99. Sri Lanka** |
| **100. Sudan** |
| **101. Suriname** |
| **102. Swaziland** |
| **103. Syrian Arab Republic** |
| **104. Tajikistan** |
| **105. Tanzania** |
| **106. Territories administered by the Palestinian National Authority (b)** |
| **107. Timor-Leste (East Timor)** |
| **108. Togo** |
| **109. Tokelau (b)** |
| **110. Trinidad and Tobago** |
| **111. Tunisia** |
| **112. Turkmenistan** |
| **113. Turks and Caicos Islands (b)** |
| **114. Uganda** |
| **115. Uzbekistan** |
| **116. Venezuela** |
| **117. Virgin Islands of the United States (b)** |
| **118. Wallis and Futuna (b)** |
| **119. Zambia** |
| **120. Zimbabwe** |
| **121. Single customs territories within the meaning of Article XXIV:8(a) of GATT 1994 composed exclusively of constituent countries or customs territories listed in this Appendix and/or of Negotiating Parties** |
| **Endnotes to Appendix A**  **(a) Subparagraph 2(b) of Article 3 does not apply where a country or customs territory listed in this Appendix:**  **(i) becomes, through participation in the formation of a customs union or accession to an existing customs union, a constituent customs territory of a single customs territory composed also of any country or customs territory that is not listed in this Appendix; or**  **(ii) is otherwise incorporated into any single country or customs territory also incorporating, in part or in whole, any country or customs territory that is not listed in this Appendix.**  **(b) Subparagraph 2(b) of Article 3:**  **(i) applies to such territory only where it possesses sufficient autonomy in the conduct of its external commercial relations for it to enter into and fulfil all obligations of the same kinds under the regional trade agreement that are entered into and fulfilled by any other party to such agreement; and**  **(ii) subject to endnote (a), continues to apply where such territory undergoes a change of political status.]** |

# Appendix [FIC/NZ: A][AU: B]

|  |  |
| --- | --- |
| **Notification of Modified or New Import Licensing Procedures Pursuant to Subparagraphs 1(c) and 2(b) of Article 14** | |
| **A. Notifying Party:** |  |
| **B. Date of notification:** |  |
| **C. Date of the notification replaced by this notification (if relevant):** |  |
| **D. Product or products subject to licensing procedures:** |  |
| **E. Contact point for information on eligibility:** |  |
| **F. Administrative body (bodies) for submission of applications:** |  |
| **G. Date and name of publication where licensing procedures are published:** |  |
| **H. Indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3 of the Agreement on Import Licensing Procedures:** |  |
| **I. In the case of automatic licensing procedures, their administrative purpose:** |  |
| **J. In the case of non-automatic licensing procedures, indication of the measure being implemented through the licensing procedure:** |  |
| **K. Expected duration of the licensing procedure, if this can be estimated with some probability, and if not, reason why this information cannot be provided:** |  |

**Annex 1**

**Schedules of Commitments on Tariffs**

***[To be completed.]***

**Annex 2**

**Product Specific Rules of Origin Schedule**

***[To be completed in the context of discussions on Chapter 3 (Rules of Origin).]***

1. **1 American Samoa, French Polynesia, Guam, New Caledonia, Northern Mariana Islands, Pitcairn Islands, Tokelau, Wallis and Futuna.**  [↑](#footnote-ref-2)
2. **2 For greater certainty, the MFN obligation will apply in cases where a Forum Island Country enters into a regional trade agreement with a developed country or group of developed countries regardless of their share in world merchandise exports after the entry into force of this Agreement.]**  [↑](#footnote-ref-3)
3. **3For greater certainty, third party refers to countries other than those covered under sub-paragraphs 2(a) and 2(b).** [↑](#footnote-ref-4)
4. For greater certainty, an infant industry means the establishment of particular industries or a new industry. It shall include the establishment of a new branch of production in an existing industry or the substantial transformation or expansion of an existing industry supplying a relatively small proportion of the domestic demand. It shall also cover the reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters. [↑](#footnote-ref-5)