Disclaimer: the negotiations between EU and Japan on Economic Partnership Agreement are not concluded yet, therefore the published texts should be considered provisional and not final. In particular, the provisions which appear in brackets are still under negotiations. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations. The texts are published for information purposes only and are without prejudice to the final outcome of the agreement between the EU and Japan. Any such texts become binding upon 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, and after the final texts are submitted and approved by the legislators.

Consolidated Text related to Trade Remedies (antidumping and safeguard measures)

[EU: SECTION A:] BILATERAL [JP:] SAFEGUARD MEASURES

Article X.1: DEFINITIONS

(a) "bilateral safeguard measure" means a bilateral safeguard measure provided for in Article [X11];

(b) "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(c) "transition period" means, in relation to a particular originating good, the period beginning on its date of entry into force of this Agreement and ending on the date that is 10 years after the date of completion of tariff reduction or elimination on that good in accordance with Annex (X) (Schedules of Elimination or Reduction of Customs Duties).

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

(e) "threat of serious injury" means serious injury that is clearly imminent. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;

[JP:]: APPLICATION OF [EU: SECTION A:]BILATERAL SAFEGUARD MEASURES

1. If, as a result of the elimination or reduction of a customs duty in accordance with Article 7[Trade in Goods], an originating good from one Party is being imported by [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 a domestic industry producing like or directly competitive goods, the importing Party may adopt measures provided for in paragraph 2 to the extent necessary to prevent or remedy the serious injury to the domestic industry of the importing Party and to facilitate its adjustment.

2. Bilateral safeguard measure may consist of:

(a) suspension of any further reduction of the rate of customs duty on the originating good provided for in this Chapter; or

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

(i) the most-favoured-nation applied rate of customs duty in effect on the day when the bilateral safeguard measure is applied; [JP:] [EU: or]

(ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Article [X.12]: CONDITIONS AND LIMITATIONS

1. No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such period of time shall not exceed a period of 2 years. However, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, shall not exceed 4 years.

2. Bilateral safeguard measure may only be applied during the transition period defined in the Article X1.

3. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalize the bilateral safeguard measure at regular intervals during the period of application.

4. No bilateral safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.

5. Upon the termination of a bilateral safeguard measure, the rate of customs duty for the originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

Article [X.13]: INVESTIGATION

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 subparagraph 2(c) of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Safeguards").

2. The investigation referred to in paragraph 1 shall in all cases be completed within one year following its date of initiation.

3. 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 the Party which 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 utilization, profits and losses, and employment.

4. 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 the causal link between increased imports of the originating good and serious injury or threat of serious injury. Factors other than the increased imports of the originating good which are also causing injury to the domestic industry at the same time shall be taken into consideration.

Article [X.14]: NOTIFICATION

1. A Party shall immediately make a written notice to the other Party upon:

(a) initiating an investigation referred to in paragraph 1 of Article[X13] relating to serious injury, or threat of serious injury, and the reasons for it; and
(b) making a finding of serious injury, or threat of serious injury, caused by increased imports; and
(c) taking a decision to apply or extend a bilateral safeguard measure.

2. The Party making the written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

(a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading under the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and

(b) in the written notice referred to in subparagraphs 1(b) and 1(c) evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading under the Harmonized System, a precise description of the proposed bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.

[Article [X.15]: CONSULTATIONS AND COMPENSATIONS]

1. 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 arising from the investigation referred to in paragraph 1 of Article [X13], exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in this Article.

2. A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose value is substantially equivalent to that of the additional customs duties expected to result from the bilateral safeguard measure.

3. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to paragraph 1, the Party to whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to 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.

4. The right of suspension referred to in paragraph 3 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.

ARTICLE [X.16]: PROVISIONAL BILATERAL SAFEGUARD MEASURES

1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2(a) or (b) of Article [X11], pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party have

caused or are threatening to cause serious injury to a domestic industry of the former Party.

2. A Party shall inform the other Party in writing not later than the application of a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied. The notice shall contain evidence of the existence of critical circumstances, evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed provisional bilateral safeguard measure and its subheading under the Harmonized System, and a precise description of the proposed provisional provisions bilateral safeguard measure.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Article [X13] shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 1 of Article [X12].

4. Paragraph 4 of Article [X12] shall apply, *mutatis mutandis*, to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 1 of Article [X13] does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

ARTICLE [X.18]: MISCELLANEOUS

A written notice referred to in paragraph 1 of Article [X.14] and paragraph 2 of Article [X16] and any other communication between the Parties under this Section shall be made in the English language.

[EU: SECTION B:] GLOBAL SAFEGUARD MEASURES

[ARTICLE B.1

SCOPE]

1. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards.

2. Neither Party shall have recourse to the dispute settlement under the Agreement for any matter arising under this [section].

[EU: Article B3]
Application of measures

Neither Party shall apply or maintain, with respect to the same good, at the same time:

- a bilateral safeguard measure in accordance with Section A;
- a measure under Article XIX of GATT 1994 and the Safeguards Agreement ; or
-a safeguard measure set out in [Appendix] XX to its [Schedule] to [Annex] XX.

[EU: SECTION C:] ANTI-DUMPING AND COUNTERVAILING MEASURES

[EU: Article C.1] Scope

1. Except as otherwise provided in this Chapter, the Parties maintain their rights and obligations under Article VI of the GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement") and the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement").

2. Neither Party may have recourse to the dispute settlement under the Agreement for any matter arising under this section.

3. Chapter XX (Rules of Origin) shall not apply to anti-dumping and countervailing measures under this Agreement.

ARTICLE [X.]: Transparency and disclosure of essential facts

1. Each Party shall conduct anti-dumping and countervailing investigations in a fair and transparent manner, and based on the Anti-Dumping Agreement and SCM Agreement.

2. The Parties shall ensure, before or immediately after any imposition of provisional measures referred to in Article 7 of the Agreement on Anti-Dumping and Article 17 of the SCM Agreement, and in any case before a final determination is made, full disclosure of essential facts under consideration which form the basis for the decision on whether to apply such measures. The full disclosure of essential facts is without prejudice to the requirements on confidentiality referred to in paragraph 5 of Article 6 of the Agreement on Anti-Dumping and Article 12.4 of the SCM Agreement. Such disclosure shall be made in writing, and should take place in sufficient time for the parties to defend their interests.

3. The disclosure of the essential facts, which is made in accordance with paragraph 1, shall contain in particular;

   a) In the case of an anti-dumping investigation, the margins of dumping established, sufficiently detailed explanation of the basis and methodology upon which normal values and export prices were established, and of the methodology used in the comparison of the export prices and normal values including any adjustments;

   b) In the case of a countervailing duty investigation, the determination of countervailable subsidization, including sufficient details on the calculation of the amount and methodology followed to determine existence of subsidization; and

   c) information relevant to the injury determination, including information concerning the volume and the effect of the dumped imports on prices in the domestic market for like goods, detailed methodology used in the calculations of price undercutting, the consequent impact of the dumped imports on the domestic industry, and the demonstration of a causal relationship including the examination of factors other than the dumped imports as referred to in paragraph 5 of Article 3 of the Agreement on Anti-Dumping.

4. (a)In case the investigating authority intends to make use of the provisions of paragraph 8 of Article 6 of the Agreement on Anti-Dumping, the investigating authority shall inform the interested party concerned of its intentions and give a clear indication of the reasons which may lead to the use of the facts available.

(b)If, after having been given the opportunity to provide further explanations within a reasonable time period, the explanations given by the party concerned are considered by the authorities as not being satisfactory, the disclosure of essential facts shall contain a clear indication of the facts available that the investigating authority has used instead.

Article [C3] Consideration of public interest

The investigating authority of the [importing Party] shall, in accordance with its laws and regulations, provide opportunities for producers of the like good in the importing Party, for importers of the good, for industrial users of the good under investigation, and for representative consumer organizations in cases where the good is commonly sold at the retail level, to submit their views in writing with regard to the anti-dumping and countervailing duty investigation, including concerning impact of a duty on their situation.

ARTICLE [C4] ANTI-DUMPING INVESTIGATION

When the authority of a Party competent for initiating investigation under Article 5 of the Agreement on Anti-Dumping received a written application by or on behalf of its domestic industry for the initiation of the investigation in respect of a good from the other Party, the former Party shall, at least 10 [calendar] days in advance of the initiation of such investigation, notify the other Party of such application.

[END]