

This document is the European Union's (EU) proposal for a legal text on trade remedies in the EU-Indonesia FTA. It has been tabled for discussion with Indonesia. The actual text in the final agreement will be a result of negotiations between the EU and Indonesia.

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER [XX]

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING DUTIES

Article X.1

General Provisions

1. The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement.
2. For the purposes of this Section, origin shall be determined in accordance with Article 1 of the Agreement on Rules of Origin.

Article X.2

Transparency

1. The Parties, agree that anti-dumping and countervailing proceedings should be applied in full compliance with the relevant WTO requirements and should be based on a fair and transparent system.
2. Without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement, the Parties shall ensure, immediately after any imposition of provisional measures and in any case before final determination is made, full and meaningful disclosure to interested parties of all essential facts and considerations which form the basis for the decision to apply measures. Disclosures shall be made in writing and allow interested parties sufficient time to make their comments.
3. Provided it does not unnecessarily delay the conduct of the investigation, interested parties shall be granted the possibility to be heard in order to express their views during trade remedies investigations.

Article X.3

Consideration of Public Interest

A Party shall not impose anti-dumping or countervailing measures where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. In determining the public interest, the Party shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organisations, to the extent the relevant information provided to the investigating authorities.

Article X.4

Lesser Duty Rule

An anti-dumping or countervailing duty imposed by a Party shall not exceed the margin of dumping or countervailable subsidy, and the Party shall endeavour to ensure that the amount of this duty is less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

Article X.5

Exclusion from Dispute Settlement

The provisions of this Section shall not be subject to Chapter/Title [YY] (Dispute Settlement).

SECTION B

GLOBAL SAFEGUARD MEASURES

Article X.6

General Provisions

1. The Parties affirm their rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.
2. [A Party shall not apply with respect to the same good at the same time:
 - (a) a bilateral safeguard measure under Section C (Bilateral Safeguard Clause) of this Chapter; and
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.]

[the above paragraph, subject to the inclusion of a possible bilateral safeguard clause]

3. For the purposes of this Section, origin shall be determined in accordance with Article 1 of the Agreement on Rules of Origin.

Article X.7

Transparency

1. Notwithstanding Article X.6 (General Provisions), the Party initiating a global safeguard investigation or intending to impose global safeguard measures shall provide, at the request of the other Party and provided that it has a substantial interest, immediately *ad hoc* written notification of all pertinent information leading to the initiation of a global safeguard investigation and, as the case may be, the proposal to impose the global safeguard measures, including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the Safeguards Agreement.
2. When imposing global safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade.
3. For the purposes of paragraph 2, if a Party considers that the legal requirements for the imposition of definitive safeguard measures are met, it shall notify the other Party and give the possibility to hold bilateral consultations. If no satisfactory solution has been reached within 30 days of the notification, the Party may adopt the definitive global safeguard measures. The possibility to hold consultations should be offered to the other Party in order to exchange views on the information referred to in paragraph 1.

Article X.8

Exclusion from Dispute Settlement

The provisions of this Section referring to WTO rights and obligations shall not be subject to Title YY (Dispute Settlement).

[SECTION C

BILATERAL SAFEGUARD CLAUSE]

[An EU proposal for a bilateral safeguard clause may be submitted at a later stage]