

CHAPTER 2

TRADE IN GOODS

ARTICLE 7

Scope

1. This Chapter applies to the following products:
 - (a) products classified under Chapters 25 to 97 of the Harmonized Commodity Description and Coding System (HS), subject to Annex I;
 - (b) processed agricultural products specified in Annex II, with due regard to the arrangements provided for in that Annex; and
 - (c) fish and other marine products as provided for in Annex III.
2. Each EFTA State and Montenegro have concluded agreements concerning trade in agricultural products on a bilateral basis. These agreements form part of the instruments establishing a free trade area between the EFTA States and Montenegro.

ARTICLE 8

Rules of Origin and Administrative Cooperation

1. The rights and obligations of the Parties in respect of rules of origin and administrative cooperation between the customs authorities of the Parties shall be governed by the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin (hereinafter referred to as the “Convention”), except as provided for under paragraph 2 and without prejudice to Article 15.
2. For processed agricultural products referred to in Annex II, Article 3 of Appendix I to the Convention shall apply, *mutatis mutandis*, allowing only for bilateral cumulation between the Parties.
3. If a Party withdraws from the Convention, the Parties shall immediately enter into negotiations on new rules of origin applicable to this Agreement. Until such rules enter into force, the rules of origin contained in the Convention shall apply to this Agreement, *mutatis mutandis*, allowing only for cumulation between the Parties.

ARTICLE 9

Customs Duties

1. Upon entry into force of this Agreement, the Parties shall abolish all customs duties and charges having equivalent effect to customs duties on imports and exports of

products originating in an EFTA State or in Montenegro covered by subparagraph 1 (a) of Article 7. No new customs duties shall be introduced.

2. Customs duties and charges having equivalent effect to customs duties include any duty or charge of any kind imposed in connection with the importation or exportation of a product, including any form of surtax or surcharge, but does not include any charge imposed in conformity with Articles III and VIII of the GATT 1994.

ARTICLE 10

Quantitative Restrictions

With respect to the rights and obligations of the Parties concerning quantitative restrictions, Article XI of the GATT 1994 shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 11

Internal Taxation and Regulations

1. The Parties commit themselves to apply any internal taxes and other charges and regulations in accordance with Article III of the GATT 1994 and other relevant WTO Agreements.

2. Exporters may not benefit from repayment of internal taxes in excess of the amount of indirect taxation imposed on products exported to the territory of a Party.

ARTICLE 12

Sanitary and Phytosanitary Measures

1. The rights and obligations of the Parties in respect of sanitary and phytosanitary measures shall be governed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

2. The Parties shall exchange names and addresses of contact points with sanitary and phytosanitary expertise in order to facilitate communication and the exchange of information.

ARTICLE 13

Technical Regulations

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment shall be governed by the WTO Agreement on Technical Barriers to Trade.

2. The Parties shall strengthen their cooperation in the field of technical regulations, standards and conformity assessment, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

ARTICLE 14

Trade Facilitation

With the aim to facilitate trade between the EFTA States and Montenegro in accordance with the provisions set out in Annex IV, the Parties shall:

- (a) simplify, to the greatest extent possible, procedures for trade in goods and related services;
- (b) promote cooperation among them in order to enhance their participation in the development and implementation of international conventions and recommendations on trade facilitation; and
- (c) cooperate on trade facilitation within the framework of the Joint Committee.

ARTICLE 15

Sub-Committee on Rules of Origin, Customs Procedures and Trade Facilitation

1. With reference to Articles 8 and 14, a Sub-Committee of the Joint Committee on Rules of Origin, Customs Procedures and Trade Facilitation (hereinafter referred to as the “Sub-Committee”) is hereby established.

2. The mandate of the Sub-Committee is set out in Annex V.

ARTICLE 16

State Trading Enterprises

With respect to the rights and obligations of the Parties concerning state trading enterprises, Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994 shall apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 17

Rules of Competition Concerning Undertakings

1. The following are incompatible with the proper functioning of this Agreement in so far as they may affect trade between an EFTA State and Montenegro:

- (a) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition; and
- (b) abuse by one or more undertakings of a dominant position in the territory of a Party as a whole or in a substantial part thereof.

2. The provisions of paragraph 1 shall apply to the activities of public undertakings and undertakings for which a Party grants special or exclusive rights, in so far as the application of these provisions does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. The provisions of paragraphs 1 and 2 shall not be construed to create any direct obligations for undertakings.

4. If a Party considers that a given practice is incompatible with the provisions of paragraphs 1 and 2, it may request consultations in the Joint Committee. The Parties concerned shall give to the Joint Committee all the assistance required in order to examine the case and, where appropriate, eliminate the practice objected to. If the Party concerned fails to put an end to the practice objected to within the period set by the Joint Committee, or if the Joint Committee fails to reach an agreement after consultations, or after 30 days following referral for such consultations, the Party requesting consultations may adopt appropriate measures to deal with the difficulties resulting from the practice in question.

ARTICLE 18

Subsidies and Countervailing Measures

1. The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, except as provided for in paragraph 2.

2. Before an EFTA State or Montenegro, as the case may be, initiates an investigation to determine the existence, degree and effect of any alleged subsidy in an EFTA State or in Montenegro, as provided for in Article 11 of the WTO Agreement on Subsidies and Countervailing Measures, the Party considering initiating an investigation shall notify in writing the Party whose goods are subject to investigation and allow for a 45-day period with a view to finding a mutually acceptable solution. The consultations

shall take place in the Joint Committee if any Party so requests within 20 days from the date of receipt of the notification.

ARTICLE 19

Anti-dumping

A Party shall not apply anti-dumping measures as provided for under Article VI of the GATT 1994 and the WTO Agreement on Implementation of Article VI of the GATT 1994 in relation to products originating in another Party.

ARTICLE 20

Global Safeguard Measures

The rights and obligations of the Parties in respect of global safeguards shall be governed by Article XIX of the GATT 1994 and the WTO Agreement on Safeguards. In taking global safeguard measures, a Party shall exclude imports of an originating product from one or several Parties if such imports do not in and of themselves cause or threaten to cause serious injury. The Party taking the measure shall demonstrate that such exclusion is in accordance with WTO rules and practice.

ARTICLE 21

Bilateral Safeguard Measures

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to the provisions of paragraphs 2 to 10.

2. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures laid down in the WTO Agreement on Safeguards.

3. The Party intending to take a bilateral safeguard measure under this Article shall immediately, and in any case before taking a measure, make notification to the other Parties. The notification shall contain all pertinent information, including evidence of serious injury or threat thereof caused by increased imports, a precise description of the product concerned and the proposed measure, as well as the proposed date of introduction, expected duration and timetable for the progressive removal of the measure.

4. If the conditions set out in paragraph 1 are met, the importing Party may increase the rate of customs duty for the product to a level not exceeding the lesser of:

- (a) the MFN rate of duty applied at the time the action is taken; or
- (b) the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

5. Bilateral safeguard measures shall be taken for a period not exceeding one year. In very exceptional circumstances, after review by the Joint Committee, measures may be taken up to a total maximum period of three years. No bilateral safeguard measure shall be applied to the import of a product which has previously been subject to such a measure.

6. The Joint Committee shall, within 30 days from the date of notification referred to in paragraph 3, examine the information provided in order to facilitate a mutually acceptable resolution of the matter. In the absence of such resolution, the importing Party may adopt a measure pursuant to paragraph 4 to remedy the problem. The bilateral safeguard measure shall be immediately notified to the other Parties and shall be the subject of periodic consultations in the Joint Committee, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit. In the selection of the bilateral safeguard measure, priority must be given to the measure which least disturbs the functioning of this Agreement.

7. Upon termination of the bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

8. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to its domestic industry. The Party intending to take such a measure shall immediately notify in writing the other Parties. Within 30 days of the date of the notification, the procedures set out in paragraphs 2 to 6 shall be initiated.

9. Any provisional bilateral safeguard measures shall be terminated within 200 days at the latest. The period of application of any such provisional bilateral safeguard measure shall be counted as part of the duration of the bilateral safeguard measure set out in paragraph 5 and any extension thereof. Any tariff increases shall be promptly refunded if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

10. Five years after the date of entry into force of this Agreement, the Parties shall review in the Joint Committee whether there is need to maintain the possibility to take bilateral safeguard measures between them. If the Parties decide, after the first review, to maintain such possibility, they shall thereafter conduct biennial reviews of this matter in the Joint Committee.

ARTICLE 22

Exceptions

With respect to the rights and obligations of the Parties under this Chapter concerning general and security exceptions, Articles XX and XXI of the GATT 1994 shall apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.