

CHAPTER II TRADE IN GOODS

ARTICLE 6

Scope

1. This Chapter shall apply to:
 - (a) products falling within Chapters 25 to 98 of the Harmonized Commodity Description and Coding System (HS), except as provided for in Annex II;
 - (b) products specified in Annex III, with due regard to the arrangements provided for in that Annex; and
 - (c) fish and other marine products as provided for in Annex IV,originating in an EFTA State or in SACU in accordance with the rules of origin set out in Annex V.
2. SACU and each EFTA State have concluded agreements on trade in agricultural products on a bilateral basis. These agreements form part of the instruments establishing the free trade area between the EFTA States and SACU.

ARTICLE 7

Rules of Origin and Administrative Co-operation

1. The provisions on rules of origin are set out in Annex V.
2. The provisions on mutual administrative co-operation in customs matters are set out in Annex VI.

ARTICLE 8

Customs Duties

1. No new customs duties shall be introduced in trade between the EFTA States and SACU, covered by paragraph 1 of Article 6, except as provided for in this Agreement.
2. The EFTA States shall, on entry into force of this Agreement, abolish all customs duties on imports of originating products from SACU.

3. SACU shall progressively reduce its customs duties on imports of originating products from the EFTA States as provided for in Annexes IV and VII.
4. The Parties shall, on entry into force of this Agreement, eliminate all customs duties on exports to the other Parties, except as provided for in this Agreement.
5. A customs duty includes 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, VIII and XI of the GATT 1994.

ARTICLE 9

Basic Duties

1. For each product the basic duty, to which the successive reductions set out in Annexes IV and VII are to be applied, shall be the most-favoured-nation (hereinafter referred to as “MFN”) rate of duty applied on 1 July 2003.
2. If before, by or after 1 July 2003 any tariff reduction is applied on an *erga omnes* basis, in particular reductions in accordance with commitments resulting from multilateral negotiations under the WTO, such reduced duties shall replace the basic duties referred to in paragraph 1 as from the date when such reductions are applied, or from the entry into force of this Agreement if this is later.
3. The reduced duties calculated in accordance with Annexes IV and VII shall be applied rounded to the first decimal place or, in case of specific duties, to the second decimal place.
4. Paragraph 1 shall not apply to the products that are under investigation by the International Trade Administration Commission of South Africa as at 1 July 2003, as listed in Annex VIII, and the products listed in Tables 1 and 2 of Annex VII, categorized as Lists 5 and 6.
5. With the exception of the margin of preference categorized as “motors partial 1” and “motors partial 2” in paragraph 5 of Annex VII, paragraph 2 shall not apply to the products listed in Tables 1 and 2 of Annex VII, categorized as List 5 and 6.

ARTICLE 10

Import and Export Restrictions

The rights and obligations of the Parties in respect of export and import restrictions shall be governed by Article XI of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

ARTICLE 11

National Treatment

Except as otherwise provided for in this Agreement, the Parties shall apply national treatment in accordance with Article III of the GATT 1994, including its interpretative notes, which is hereby incorporated into and made part of this Agreement.

ARTICLE 12

State Trading Enterprises

The rights and obligations of the Parties in respect of state trading enterprises shall be governed by Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, which are hereby incorporated into and made part of this Agreement.

ARTICLE 13

Technical Regulations, Standards and Conformity Assessment

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 (hereinafter referred to as “the WTO TBT Agreement”) as well as the decisions and recommendations adopted by the WTO TBT Committee since 1 January 1995.

2. The Parties shall strengthen their co-operation in the field of technical regulations, standards and conformity assessment with a view to increasing the mutual understanding of their systems and facilitating access to their respective markets. To this end, the Parties shall, upon request, exchange information and consider expeditiously any request for co-operation. Co-operation may consist of:

- a) encouraging the application of the WTO TBT Agreement;
- b) enhancing regulatory and standard setting practices;
- c) promoting international harmonization of technical regulations;
- d) reinforcing the role of international standards as a basis for technical regulations including conformity assessment procedures;
- e) exchanging information on the variety of mechanisms to facilitate the acceptance of conformity assessment results;

- f) promoting the accreditation of conformity assessment bodies on the basis of relevant Standards and Guides of the International Standards Organisation (ISO)/International Electrotechnical Commission (IEC); and
- g) identifying and assessing possible instruments for trade facilitation, such as equivalence of technical regulations and mutual recognition of conformity assessment results.

3. Without prejudice to the rights and obligations of the Parties under the WTO TBT Agreement, the Parties agree to hold consultations in the framework of the Joint Committee to address any matter that may arise from the application of specific technical regulations, standards and conformity assessment procedures if such application has created or is likely to create an obstacle to trade between the Parties, with a view to finding an appropriate solution in conformity with the WTO TBT Agreement.

ARTICLE 14

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 (hereinafter referred to as “the WTO SPS Agreement”).
2. The Parties shall strengthen their co-operation in sanitary and phytosanitary matters with a view to increasing the mutual understanding of their systems and improving access to their markets. Such co-operation may include expert consultations.
3. If a Party considers that another Party has taken measures which are likely to affect, or have affected, access to its market, expert consultations shall be convened with a view to finding an appropriate solution in conformity with the WTO SPS Agreement. Such consultations can be held both within and outside the framework of the Joint Committee. 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.
4. Any agreement between the Parties shall be commensurate with the domestic legislation of the Parties and safeguard the SACU States’ individual and collective sanitary and phytosanitary status.
5. The Parties affirm their support of the standards set by the international bodies that the WTO SPS Agreement recognizes, taking into consideration that not all the SACU States are signatories to the International Plant Protection Convention.

ARTICLE 15

Competition

1. The Parties recognise that certain business practices, such as anti-competitive agreements or concerted practices and abuses of dominant positions, may restrict trade between the Parties and thereby hinder the fulfilment of the objectives of this Agreement.
2. A Party which considers that the operation of this Agreement is adversely affected by a practice referred to in paragraph 1 may request the Party or Parties in whose territory such practice originates to co-operate with a view to putting an end to the practice concerned or its adverse effects. Co-operation shall include, to the extent permitted by domestic law, the exchange of information that is available to the Parties in relation to the matter in question.
3. In the event that co-operation between the Parties directly involved according to paragraph 2 does not lead to a solution, the affected Party may request consultations in the Joint Committee with a view to reaching a mutually satisfactory solution.

ARTICLE 16

Subsidies

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 SACU initiates an investigation to determine the existence, degree and effect of any alleged subsidy in a SACU State, or in an EFTA State, as provided for in Article 11 of the Agreement on Subsidies and Countervailing Measures, the Party considering initiating an investigation shall notify in writing the Party whose goods are subject to investigation with a view to finding a mutually acceptable solution within 30 days. Consultations shall take place in the Joint Committee if a Party so requests within ten days from the date of receipt of the notification.

ARTICLE 17

Anti-Dumping

1. The rights and obligations of the Parties in respect of the application of anti-dumping measures shall be governed by Article VI of the GATT 1994 and the Agreement on Implementation of Article VI of the GATT 1994.

2. After an EFTA State or SACU receives a properly documented application and before initiation of an investigation under the provisions of the Agreement referred to in paragraph 1, that Party shall notify in writing the Party whose goods are allegedly being dumped and invite such Party to consultations with a view to finding a mutually acceptable solution within 30 days. The outcome of the consultations shall be communicated to the other Parties. Consultations shall take place in the Joint Committee if a Party so requests within ten days from the date of receipt of the notification.

ARTICLE 18

Global Safeguard Measures

The Parties confirm their rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

ARTICLE 19

Emergency Action on Imports of Particular Products

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in an EFTA State or in SACU is being imported into the territory of an EFTA State or SACU, in such increased quantities and under such conditions as to cause serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of that Party, such Party may take emergency measures under the conditions and in accordance with the procedures laid down in this Article.

2. An EFTA State or SACU intending to take emergency measures shall, as soon as possible and in any case before taking a measure, supply the Joint Committee with all relevant information, with a view to seeking a solution acceptable to all Parties concerned.

3. Emergency measures shall not exceed what is necessary to remedy the difficulties which have arisen and should normally consist of the suspension of the further reduction of any applicable rate of duty provided for under this Agreement for the product concerned or the increase of the rate of duty for that product.

4. Such measures shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest. Measures shall not be taken for a period exceeding one year. In very exceptional circumstances, measures may be taken up to a total maximum period of three years.

5. The Joint Committee shall, within 30 days from the date of notification, examine the information provided under paragraph 2 in order to facilitate a mutually acceptable resolution to the matter. In the absence of such resolution, the importing Party may

adopt a measure pursuant to paragraph 1 to remedy the problem. The emergency measure shall be immediately notified to the Joint Committee. In the selection of the emergency measure, priority must be given to the measure that least disturbs the functioning of this Agreement.

6. In critical circumstances where delay would cause damage which would be difficult to repair, the EFTA State concerned or SACU may take a provisional emergency measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused, or are threatening to cause, serious injury. The Party intending to take such a measure shall immediately inform the other Parties and the Joint Committee thereof and set into motion the procedure according to paragraph 2. The provisional measure shall be terminated within six months, at the latest.

ARTICLE 20

Agricultural Safeguard Measures

1. Safeguard measures on agricultural products shall be taken pursuant to the conditions laid down in paragraph 1 of Article 19.

2. A measure shall not be taken for a period exceeding one year and may consist in either of the following:

- (a) an increase of the import duty on the product in question to a level not higher than the MFN applied rate of duty on the product in effect at the time the measure is taken; or
- (b) the introduction of a tariff quota for preferential trade, based on historical trade volumes for the five preceding years, excluding the import surge volumes that necessitated the introduction of the safeguard measure.

3. Before taking a safeguard measure, a Party shall notify the other Parties in writing of the measure to be taken. Within 60 days after notification, the notifying Party shall provide all relevant information concerning the safeguard measure. On request, that Party shall consult with the affected Party or Parties with respect of the conditions of application of the measure.

ARTICLE 21

Exceptional Measures in Case of Structural Adjustment

1. Where any product originating in an EFTA State is being imported into the territory of a SACU State in such increased quantities and under such conditions as to cause or threaten to cause serious disturbances to a particular infant industry or any sector undergoing restructuring, SACU may take exceptional measures of limited duration in the form of an increase or reintroduction of customs duties.

2. Customs duties on imports applicable in SACU to products originating in the EFTA States introduced by these measures may not exceed the level of the applied MFN rates of duty and shall maintain an element of preference for products originating in the EFTA States. The total value of all imports of the products, which are subject to these measures, may not exceed 15 per cent of total imports from the EFTA States during the last year for which statistics are available.

3. Exceptional measures shall be applied for a period not exceeding four years. They shall cease to apply at the latest on the expiry of the maximum transitional period of nine years. These time limits may exceptionally be extended by decision of the Joint Committee.

4. No such measure can be introduced in respect of a product if more than three years have elapsed since the elimination of all duties and quantitative restrictions or charges or measures having an equivalent effect concerning that product.

5. SACU shall notify the Joint Committee of the exceptional measures it intends to take and, at the request of an EFTA State, consultations shall be held on such measures before they are applied in order to reach a satisfactory solution. The notification shall include an indicative schedule for the introduction and subsequent elimination of the customs duties to be imposed.

6. If no agreement on the proposed measures referred to above has been reached within 30 days of the notification, SACU may take appropriate measures to remedy the problem and shall provide the Joint Committee with the definite schedule for the elimination of the customs duties introduced under this Article. This schedule shall provide for a phasing out of these duties at equal annual rates starting at the latest one year after their introduction. The Joint Committee may decide on a different schedule.

ARTICLE 22

Balance of Payments Difficulties

1. The rights and obligations of the Parties with regard to restrictions to safeguard the balance of payments shall be governed by Article XII of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

2. The Party introducing a measure under this Article shall promptly notify the other Parties and the Joint Committee of such measure.

ARTICLE 23

General Exceptions

The rights and obligations of the Parties in respect of general exceptions shall be governed by Article XX of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

ARTICLE 24

Security Exceptions

The rights and obligations of the Parties in respect of security exceptions shall be governed by Article XXI of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

ARTICLE 25

Special Treatment for Botswana, Lesotho, Namibia and Swaziland

1. Botswana, Lesotho, Namibia and Swaziland may, in accordance with Article 26 of the SACU Agreement 2002, temporarily levy duties on imports to protect infant industries. Such duties shall be equally levied on goods originating in other SACU States and in countries outside SACU.
2. Botswana, Lesotho, Namibia and Swaziland may temporarily restrict the importation or exportation of goods for purposes of rural development, food security and poverty alleviation in a manner not inconsistent with the WTO Agreement. Such measures shall also be taken in respect of all other countries.
3. The Party intending to take a measure in accordance with paragraph 1 or 2 shall inform the Joint Committee, and shall be prepared, at the request of another Party, to discuss the matter in the Joint Committee.