

## CHAPTER VI      INSTITUTIONAL AND PROCEDURAL PROVISIONS

### ARTICLE 33

#### *The Joint Committee*

1. The implementation of this Agreement shall be supervised and administered by a Joint Committee. Each Party shall be represented in the Joint Committee. The Joint Committee shall be jointly chaired by a representative of an EFTA State and a representative of a SACU State.
2. For the purpose of the proper implementation of this Agreement, the Parties shall exchange information and, at the request of a Party, shall hold consultations within the Joint Committee on any matter concerning the interpretation or application of this Agreement. The Joint Committee may review the possibility of further removing obstacles to trade between the Parties.
3. The Joint Committee may take decisions in the cases provided for in this Agreement. On other matters, the Joint Committee may make recommendations to the Parties.

### ARTICLE 34

#### *Procedures of the Joint Committee*

1. The first meeting of the Joint Committee shall be held not later than one year after the entry into force of this Agreement. For the proper implementation of this Agreement, the Joint Committee shall, upon request of a Party, thereafter meet whenever necessary, but at least once every two years.
2. The Joint Committee shall act by consensus.
3. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfillment of constitutional requirements, the decision shall enter into force, if no later date is contained therein, on the date of receipt of the notification of the fulfillment of the necessary constitutional requirements.
4. For the purpose of this Agreement, the Joint Committee shall adopt its rules of procedure which shall, *inter alia*, contain provisions for convening meetings and for the designation of the Joint Chairpersons and their term of office.
5. The Joint Committee may decide to set up such sub-committees and working parties as it considers necessary to assist it in accomplishing its tasks.

## ARTICLE 35

### *Consultations*

1. The Parties shall take all necessary measures to ensure the fulfillment of their obligations under this Agreement. Should any divergence with respect to the interpretation and application of this Agreement arise, the Parties shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory resolution.
2. A Party may request in writing consultations with another Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing thereof and supply all relevant information.
3. The consultations shall take place in the Joint Committee, if a Party so requests, within 20 days from the receipt of the notification referred to in paragraph 2, with a view to finding a mutually satisfactory solution.

## ARTICLE 36

### *Provisional Measures*

If a Party considers that another Party has failed to fulfil an obligation under this Agreement and the Joint Committee has failed to arrive at a mutually satisfactory solution within 90 days from the date of receipt of the request for consultations in the Joint Committee, the Party concerned may take such provisional rebalancing measures as are appropriate and strictly necessary to remedy the imbalance. Priority shall be given to such measures that will least disturb the functioning of this Agreement. The measures taken shall be notified immediately to the other Parties and to the Joint Committee, which shall hold regular consultations with a view to their abolition. The measures shall be abolished when conditions no longer justify their maintenance, or, if the dispute is submitted to arbitration, when an arbitral award has been rendered and complied with.

## ARTICLE 37

### *Arbitration*

1. Disputes between Parties, relating to the interpretation of rights and obligations of the Parties under this Agreement, which have not been settled, pursuant to Article 35, through direct consultations or in the Joint Committee within 90 days from the date of the receipt of the written request for consultations, may be referred to arbitration by one or more parties to the dispute by means of a written notification addressed to the Party complained against. A copy of this notification shall be communicated to all Parties.

2. Disputes on the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party or Parties, that Party shall notify all other Parties of its intention to do so.
3. The arbitral tribunal shall comprise three members. Each party to the dispute shall, within 30 days from the date of receipt of notification, nominate an arbitrator and the two arbitrators shall, within 30 days from the date of the last nomination, appoint a third arbitrator who will be the Chairperson of the arbitral tribunal. The Chairperson shall not be a national of either party to the dispute, nor permanently reside in the territory of either party to the dispute. If more than one EFTA State or more than one SACU State are parties to a dispute, these parties shall jointly nominate one arbitrator.
4. In case either party to the dispute fails to nominate its arbitrator or the nominated arbitrators fail to agree on a third member within the period specified in paragraph 3, each party to the dispute may request the President of the International Court of Justice to make the necessary appointment.
5. The arbitral tribunal shall settle the dispute in accordance with the provisions of this Agreement and the customary rules of interpretation of public international law.
6. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration, effective 20 October 1992, shall apply.
7. A Party that is not a party to the dispute, on delivery of a written notice to the disputing parties, shall be entitled to receive written submissions of the disputing parties and attend all hearings as observer.
8. The arbitral tribunal shall take its decisions by majority vote.
9. The expenses of the arbitral tribunal, including the remuneration of its members, shall normally be borne by the parties to the dispute in equal shares. The arbitral tribunal may, however, at its discretion decide that a higher proportion of the expenses be paid by one of the parties to the dispute, taking into account, *inter alia*, the financial situations of the Parties involved.
10. This Article shall not apply to Article 15 and Chapters III and IV.