

CHAPTER II TRADE IN GOODS

ARTICLE 4

Scope

1. This Chapter shall apply to the following products originating in an EFTA State or Tunisia:

- (a) all products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System (HS), excluding the products listed in Annex II;
- (b) processed agricultural products specified in Protocol A, with due regard to the arrangements provided for in that Protocol;
- (c) fish and other marine products as provided for in Annex III.

2. Tunisia and each individual EFTA State have concluded agreements on 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 Tunisia.

ARTICLE 5

Rules of origin and co-operation in customs administration

Protocol B lays down the rules of origin and methods of administrative co-operation.

ARTICLE 6

Customs duties on imports and charges having equivalent effect

1. No new customs duty on imports or charge having equivalent effect shall be introduced in trade between the EFTA States and Tunisia.

2. The EFTA States shall abolish on the date of entry into force of this Agreement all customs duties on imports and any charges having equivalent effect.

3. Tunisia shall gradually eliminate its customs duties on imports and any charges having equivalent effect in accordance with Annex IV.

ARTICLE 7

Basic duties

1. The applicable rates for imports between the Parties shall be the WTO bound rate, or if lower, the applied rate enforced as of 1 January 2004. If, by, before or after the entry into force of this Agreement, a tariff reduction is applied on an *erga omnes* basis, the reduced rate shall apply.
2. The Parties shall communicate to each other their respective rates applied on the date of the entry into force of this Agreement.

ARTICLE 8

Customs duties of a fiscal nature

The provisions of Article 6 shall also apply to customs duties of a fiscal nature.

ARTICLE 9

Customs duties and quantitative restrictions on exports

Without prejudice to the provisions of the GATT 1994, the EFTA States and Tunisia shall not apply to exports between themselves either customs duties or charges having equivalent effect, or quantitative restrictions or measures having equivalent effect.

ARTICLE 10

Quantitative restrictions on imports and measures having equivalent effect

1. Without prejudice to the provisions of the GATT 1994:
 - (a) no new quantitative restriction on imports or any other measures having equivalent effect shall be introduced in trade between the EFTA States and Tunisia;
 - (b) quantitative restrictions on imports and any other measures having equivalent effect in trade between the EFTA States and Tunisia shall be abolished from the entry into force of this Agreement.
2. The provisions of paragraph 1(b) shall not apply to products in category D appearing in Annex IV. The arrangements to be applied to such products shall be re-examined by the Joint Committee four years after the entry into force of the Agreement.

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 taxation in excess of the amount of direct or indirect taxation imposed on products exported to the territory of one of the Parties.

ARTICLE 12

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 co-operation 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, thereby preparing the ground for mutual recognition agreements. The Parties concerned shall consult each other in the Joint Committee in view of the implementation of the objective set out in paragraph 1.
3. Without prejudice to paragraph 1, the Parties agree to hold immediate consultations in the framework of the Joint Committee where Tunisia or an EFTA Party considers that one or more EFTA Parties or Tunisia have taken measures which are likely to create, or have created, an obstacle to trade, in order to find an appropriate solution in conformity with the WTO Agreement on Technical Barriers to Trade.

ARTICLE 13

Sanitary and phytosanitary measures

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.

ARTICLE 14

State monopolies

1. The EFTA States and Tunisia shall adjust, without affecting rights and obligations under the GATT 1994, any state monopolies of a commercial character so as

to ensure that, by the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the EFTA States and of Tunisia.

2. The provisions of this Article shall apply to any body through which the competent authorities of the Parties to this Agreement, in law or in fact, either directly or indirectly supervise, determine or appreciably influence imports or exports between the Parties to this Agreement. These provisions shall likewise apply to monopolies delegated by the State to other bodies.

ARTICLE 15

Subsidies

1. The rights and obligations of the Parties in respect of subsidies shall be governed by Articles VI and XVI of the GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Agriculture.

2. If a Party finds that subsidies are granted which affect trade with another Party, the Party concerned may take appropriate measures in accordance with the above mentioned Agreements and the relevant internal executive regulations.

3. Before an EFTA State or Tunisia, as the case may be, initiates an investigation to determine the existence, degree and effect of any alleged subsidy in Tunisia, 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 and allow for a 30 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 10 days from the receipt of the notification.

ARTICLE 16

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 Tunisia, as the case may be, 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 allow for consultations with a view to finding a mutually acceptable solution. The outcome of the consultations shall be communicated to the other Parties.

3. The Parties shall, upon request of any Party, meet in the Joint Committee to review the contents of this Article.

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 Tunisia:

- (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;
- (b) abuse by one or more undertakings of a dominant position in the territories of the Parties as a whole or in a substantial part thereof.

2. The provisions of paragraph 1 shall also apply to the activities of public undertakings, and undertakings for which the Parties grant 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 such as 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, 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 in question fails to put an end to the practice objected to within the period fixed by the Joint Committee or if the Joint Committee fails to reach an agreement after consultations, or after thirty days following referral for such consultations, the Party concerned may adopt appropriate measures to deal with the difficulties resulting from the practice in question. The application and removal of such measures shall be governed by Article 37.

ARTICLE 18

Emergency action on imports of particular products

1. Where any product originating in a Party, as a result of the application of this Agreement, is being imported into the territory of another Party in such increased quantities 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, or of serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region of the importing Party, the importing Party may take safeguard measures in accordance with Article XIX GATT 1994 and the WTO Agreement on Safeguards.

2. Before applying safeguard measures pursuant to the provisions of Article XIX GATT 1994 and the WTO Agreement on Safeguards, the Party intending to apply such measures shall supply the Joint Committee with all relevant information required for a

thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

3. In order to find such a solution, the Parties shall immediately hold consultations within the Joint Committee. If, as a result of the consultations, the Parties do not reach an agreement within thirty days of the initiation of the consultations on a solution to avoid the application of the safeguard measures, the Party intending to apply safeguard measures may do so in accordance with the provisions of Article XIX GATT 1994 and the WTO Agreement on Safeguards.

4. In the event of an EFTA State or Tunisia subjecting imports of products liable to give rise to the difficulties referred to in this Article to an administrative procedure having as its purpose the rapid supply of information on trade flow trends, it shall inform the other Party.

5. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

6. In the selection of safeguard measures pursuant to this Article, Parties shall give priority to those which cause least disturbance to the achievement of the objectives of this Agreement.

7. Safeguard measures shall be notified immediately to the Joint Committee and shall be the subject of periodic consultations within the Committee, particularly with a view to their abolition as soon as circumstances permit.

ARTICLE 19

Structural adjustment

1. Exceptional measures of limited duration in the form of increased customs duties which derogate from the provisions of Article 6 may be taken by Tunisia.

2. These measures may only concern infant industries, or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems.

3. Customs duties on imports applicable in Tunisia to products originating in the EFTA States introduced by these measures may, after the introduction of these measures, not exceed in total 25 per cent ad valorem and shall maintain an element of preference for products originating in the EFTA States. The total value of imports of the products which are subject to these measures may not exceed 15 per cent of total imports of industrial products from the EFTA States as defined in paragraph 1(a) of Article 4 during the last year for which statistics are available.

4. Tunisia shall inform the Joint Committee of any exceptional measures it intends to take and, at the request of the EFTA States, consultations shall be held in the Joint

Committee on such measures and the sectors to which they apply before they are implemented. When taking such measures Tunisia shall provide the Joint Committee with a 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 2 years after their introduction, unless the Joint Committee decides on a different schedule.

5. The application of exceptional measures specified in this Article shall not exceed five years. All exceptional measures regarding structural adjustment shall cease to apply three years after the end of the transitional period referred to in Annex IV. The Joint Committee may decide on different time periods than those referred to in this paragraph.

ARTICLE 20

Re-export and serious shortage

1. Where compliance with the provisions of Article 9 leads to:
 - (a) re-export to a third country against which the exporting Party maintains, for the product concerned, quantitative export restrictions, export duties or measures or charges having equivalent effect; or
 - (b) a serious shortage, or threat thereof, of a product essential to the exporting Party;

and where the situations referred to above give rise or are likely to give rise to major difficulties for the exporting Party, that Party may take appropriate measures.

2. The Party intending to take measures under this Article shall promptly notify the other Parties and the Joint Committee thereof. The Joint Committee shall examine the situation and may take any decisions needed to put an end to it. In the absence of such a decision within 30 days of the matter being referred to the Joint Committee, the Party concerned may adopt the appropriate measures to remedy the problem. The measures shall be immediately notified to the Joint Committee. In the selection of measures priority must be given to the action which least disturbs the functioning of this Agreement.

3. Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Party concerned may forthwith apply temporary measures necessary to deal with the situation and shall immediately inform the other Parties and the Joint Committee thereof.

4. The measures taken shall be the subject of periodic consultations within the Joint Committee with a view to their elimination as soon as circumstances permit.

ARTICLE 21

General exceptions

Nothing in this Agreement shall preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, of the protection of health and life of humans, animals or plants, of the protection of national treasures possessing artistic, historic or archaeological value, of the protection of intellectual property or of regulations concerning gold and silver or conservation of exhaustible natural resources. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or disguised restriction on trade between the parties.

ARTICLE 22

Security exceptions

Nothing in this Agreement shall prevent a Party from taking any measures which it considers necessary:

- (a) to prevent the disclosure of information contrary to its essential security interests;
- (b) for the protection of its essential security interests or for the implementation of international obligations or national policies
 - (i) relating to the traffic in arms, ammunition and implements of war, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes, and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment; or
 - (ii) relating to the non-proliferation of biological and chemical weapons, nuclear weapons or other nuclear explosive devices; or
 - (iii) taken in time of war or other serious international tension.

CHAPTER III PROTECTION OF INTELLECTUAL PROPERTY

ARTICLE 23

Protection of Intellectual Property

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, including measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with