II TRADE IN GOODS

ARTICLE 4 Coverage

1. This Agreement applies to:

(a) products falling within Chapters 25 through 98 of the Harmonized Commodity Description and Coding System (HS), except for products listed in Annex I of the WTO Agreement on Agriculture; and

(b) fish and other marine products as provided for in Annex III,

originating in an EFTA State or Mexico.

2. Mexico 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 Mexico.

ARTICLE 5 Rules of origin and administrative co-operation

The provisions on rules of origin and administrative co-operation are set out in Annex I.

ARTICLE 6 Customs duties

1. Upon entry into force of this Agreement, the EFTA States shall eliminate all customs duties on imports of products originating in Mexico, except as provided for in Annex III and Annex IV.

2. Mexico shall eliminate all customs duties on imports of products originating in the EFTA States in accordance with Annex III and Annex V.

3. No new customs duties shall be introduced nor shall those already applied be increased in the trade between the EFTA States and Mexico, as from the date of entry into force of this Agreement.

4. 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 in connection with such importation or exportation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article 8;

(b) anti-dumping or countervailing duty; or

(c) fee or other charge, provided that it is limited in amount to the approximate cost of services rendered and does not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes.

5. Upon entry into force of this Agreement, the Parties shall eliminate any fee or other charge referred to in paragraph 4(c) which is applied on originating products on an ad valorem basis.

ARTICLE 7 Import and export restrictions

1. All import or export prohibitions or restrictions in trade between the EFTA States and Mexico, other than customs duties and taxes, whether made effective through quotas, import or export licenses or other
measures, shall be eliminated upon the entry into force of this Agreement. No new such measures shall be introduced.

2. Paragraph 1 shall not apply to measures set out in Annex VI.

ARTICLE 8 National treatment on internal taxation and regulation

1. Products imported from another Party shall not be subject, either directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to domestic production.

2. Products imported from another Party shall be accorded treatment no less favourable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

3. The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

4. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement, which shall be subject exclusively to the provisions of Chapter V.

5. Paragraphs 1 and 2 shall not apply to the measures set out in Annex VII until the date mentioned in that Annex.

ARTICLE 9 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 10 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 procedures. In particular they shall endeavour to facilitate the mutual exchange of information and assistance in this field and co-operate during the development of standards, technical regulations or conformity assessment procedures.

3. Without prejudice to paragraph 1, at the request of any Party, the Joint Committee shall hold consultations where Mexico or an EFTA State considers that one or more EFTA States or Mexico, respectively, have taken measures which have created or are likely to create an unjustified obstacle to trade, with a view to finding a mutually acceptable solution in conformity with the WTO Agreement on Technical Barriers to Trade.

ARTICLE 11 Subsidies

1. The rights and obligations of the Parties in respect of 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.

2. The Parties shall ensure transparency of state aid measures by exchanging their most recent notifications to the WTO pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures.

3. After an EFTA State or Mexico, 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 subsidised and allow for a two-day period for consultations with a view to finding a mutually acceptable solution. The outcome of the consultations shall be communicated to the other Parties.

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.

ARTICLE 13 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 Mexico, 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 a two-day period for consultations with a view to finding a mutually acceptable solution. The outcome of the consultations shall be communicated to the other Parties.

ARTICLE 14 Safeguards

1. Where any product of a Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:

(a) serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party; or

(b) 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 appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. Safeguard 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.

3. 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. No safeguard measure shall be applied to the import of a product which has previously been subject to such a measure.
for a period of, at least, three years since the expiry of the measure.

4. The Party intending to take safeguard measures under this Article shall offer the other Party compensation in the form of substantially equivalent trade liberalisation in relation to the imports from the latter. The offer of liberalisation shall normally consist of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the safeguard measure.

5. The offer shall be made prior to the adoption of the safeguard measure and simultaneously with the supply of information and referral to the Joint Committee, as provided for in this Article. Should the offer not be considered satisfactory by the Party against whose product the safeguard measure is intended to be taken, both Parties may agree, in the consultations referred to in this Article, on other means of trade compensation.

6. If the Parties concerned are unable to agree on compensation, the Party against whose product the safeguard measure is taken may take compensatory tariff action having trade effects substantially equivalent to the safeguard measure taken under this Article. The Party taking compensatory tariff action shall apply it, as a maximum, for the period necessary to achieve equivalent trade effects.

7. In the cases specified in this Article, before taking the measures provided for herein or, in the cases to which paragraph 8(b) of this Article applies, as soon as possible, the EFTA State or Mexico, as the case may be, shall supply the Joint Committee with all relevant information, with a view to finding a solution mutually acceptable to the Parties.

8. For the implementation of the above paragraphs the following provisions shall apply:

(a) The Joint Committee shall examine the difficulties arising from the circumstances referred to in this Article and may take any decisions needed to put an end to such difficulties.

If the Joint Committee or the exporting Party has not taken a decision putting an end to the difficulties or no other satisfactory solution has been reached within 30 days of the matter being referred to the Joint Committee, the importing Party may adopt the appropriate measures to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the measure is taken may take compensatory tariff action in accordance with this Article. Such compensatory tariff action shall be immediately notified to the Joint Committee. In the selection of safeguard measures and compensatory tariff action, priority must be given to those which least disturb the functioning of the arrangements in this Agreement.

(b) Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Party concerned may, in the situations specified in this Article, apply forthwith precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

(c) The safeguard measures shall be notified immediately to the Joint Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their elimination as soon as circumstances permit.

9. In the event of an EFTA State or Mexico subjecting imports of products liable to give rise to the difficulties referred to in this Article to an administrative procedure for the purpose of the rapid provision of information on the trend of trade flows, it shall inform the other Party.

ARTICLE 15 Shortage clause

1. Where compliance with Article 6 or Article 7 leads to:
(a) a critical shortage, or threat thereof, of foodstuffs or other products essential to the exporting Party; or

(b) a shortage of essential quantities of domestic materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; or

(c) re-export to a third country of a product against which the exporting Party maintains export customs duties or export prohibitions or restrictions, 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 adopt export restrictions or export customs duties.

2. In the selection of measures, priority must be given to those which least disturb the functioning of the arrangements in this Agreement. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, or a disguised restriction on trade, and shall be eliminated when the conditions no longer justify their maintenance. In addition, the measures which may be adopted pursuant to paragraph 1(b) of this Article shall not operate to increase the exports of or the protection afforded to the domestic processing industry concerned, and shall not depart from the provisions of this Agreement relating to non-discrimination.

3. Before taking the measures provided for in paragraph 1 of this Article or, as soon as possible in cases to which paragraph 4 of this Article applies the EFTA State or Mexico, as the case may be, shall supply the Joint Committee with all relevant information, with a view to finding a solution mutually acceptable to the Parties. The Parties within the Joint Committee may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of the matter being referred to the Joint Committee, the exporting Party may apply measures under this Article on the exportation of the product concerned.

4. Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the EFTA State or Mexico, whichever is concerned, may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

5. Any measures applied pursuant to this Article shall be immediately notified to the Joint Committee and shall be the subject of periodic consultations therein, particularly with a view to establishing a timetable for their elimination as soon as circumstances permit.

ARTICLE 16 Balance of payments difficulties

1. The Parties shall endeavour to avoid the imposition of restrictive measures relating to imports for balance of payments purposes. In the event of their introduction, the Party having introduced them shall present to the other Party, as soon as possible, a timetable for their removal.

2. Where an EFTA State or Mexico is in serious balance of payments difficulties, or under imminent threat thereof, the EFTA State or Mexico, as the case may be, may, in accordance with the conditions established under the GATT 1994, adopt restrictive measures relating to imports, which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The EFTA State or Mexico, as the case may be, shall inform the other Party forthwith.

ARTICLE 17 General exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:
(a) necessary to protect public morals;
(b) necessary to protect human, animal or plant life or health;
(c) relating to the importations or exportations of gold and silver;
(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the protection of intellectual property rights, and the prevention of deceptive practices;
(e) relating to the products of prison labour;
(f) imposed for the protections of national treasures of artistic, historic or archaeologival value;
(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;
(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non discrimination;
(j) essential to the acquisition or distribution of products in general or local short supply. Provided that any such measures shall be consistent with the principle that all WTO members are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

ARTICLE 18 Security exceptions

Nothing in this Agreement shall be construed

(a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any action which it considers necessary for the protections of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.