CHAPTER 2

TRADE IN GOODS

ARTICLE 2.1

Scope

1. This Chapter applies to trade between the Parties relating to:

   (a) products classified under Chapters 25 to 97 of the Harmonized Commodity Description and Coding System (HS), excluding products listed in 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. Hong Kong, China and each 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 Hong Kong, China.

ARTICLE 2.2

Rules of Origin

The rules of origin and methods of administrative co-operation are set out in Annex IV.

ARTICLE 2.3

Elimination of Customs Duties

1. Upon entry into force of this Agreement, the Parties shall abolish all customs duties on imports and exports of products originating in an EFTA State or in Hong Kong, China as set out in paragraph 1 of Article 2.1. No new customs duties shall be introduced.

2. 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 covered by Articles III and VIII of the GATT 1994.

ARTICLE 2.4

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, *mutatis mutandis*.

ARTICLE 2.5

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.

2. Exporters may not benefit from repayment of indirect taxes in excess of the amount of indirect taxes levied on products exported to one of the Parties.

ARTICLE 2.6

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 "SPS Agreement").

2. The Parties shall strengthen their co-operation in the field of sanitary and phytosanitary measures, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

3. Without prejudice to paragraph 1, the Parties agree to hold *ad hoc* consultations where a Party considers that another Party has 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 SPS Agreement. Such consultations may be conducted in person or via videoconference, teleconference, or any other agreed method. The Joint Committee established pursuant to Article 9.1 (hereinafter referred to as the "Joint Committee") shall be informed of the commencement and results of such consultations.[3]

4. The Parties shall exchange names and addresses of designated contact points for matters relating to sanitary and phytosanitary measures in order to facilitate communication and the exchange of information.

[3] It is understood that consultations held pursuant to paragraph 3 shall be without prejudice to the rights and obligations of the Parties under Chapter 10 or under the WTO Dispute Settlement Understanding.

ARTICLE 2.7

Technical Regulations

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment procedures shall be governed by the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the "TBT Agreement").

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

3. Without prejudice to paragraph 1, the Parties agree to hold *ad hoc* consultations where a Party considers that another Party has 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 TBT Agreement. Such consultations may be conducted in person or via videoconference, teleconference, or any other agreed method. The Joint Committee shall be informed of the commencement and results of such consultations.[4]

4. The Parties shall exchange names and addresses of designated contact points for matters relating to technical barriers to trade in order to facilitate communication and the exchange of information.

ARTICLE 2.8

Trade Facilitation

The Parties shall facilitate trade in accordance with the provisions set out in Annex V.

ARTICLE 2.9

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

1. 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 VI.

[4] It is understood that consultations held pursuant to paragraph 3 shall be without prejudice to the rights and obligations of the Parties under Chapter 10 or under the WTO Dispute Settlement Understanding.

Article 2.10

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, *mutatis mutandis*.

ARTICLE 2.11

Subsidies and Countervailing Measures

1. Hong Kong, China and Norway shall not apply countervailing measures as provided for under Article VI of the GATT 1994 and Part V of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as the "SCM Agreement") in relation to products originating in a Party referred to in this paragraph.

2. Subject to paragraph 1, the rights and obligations between Hong Kong, China and Norway in respect of subsidies shall be governed by Article XVI of the GATT 1994 and the SCM Agreement.

3. The rights and obligations of Hong Kong, China, Switzerland, Liechtenstein and Iceland relating to subsidies and countervailing measures in respect of products originating in a Party referred to in this paragraph shall be governed by Articles VI and XVI of the GATT 1994 and the SCM Agreement, except as provided for in paragraphs 4 and 5.

4. Before any investigation is initiated by a Party referred to in paragraph 3 to determine the existence, degree and effect of any alleged subsidy in another Party, as provided for in Article 11 of the SCM Agreement, the Party considering initiating an investigation shall notify in writing the Party whose products are subject to an investigation and allow for 45 days, or a longer period if agreed by the Parties, for consultations with that Party with a view to finding a mutually acceptable solution.[5]

5. An investigation referred to in paragraph 4 shall only be initiated when domestic producers expressly supporting an application pursuant to Article 11 of the SCM Agreement account for at least 50 per cent of the total production of the like products produced by the domestic industry.

[5] It is understood that consultations held pursuant to paragraph 4 shall be without prejudice to the rights and obligations of the Parties under Chapter 10 or under the WTO Dispute Settlement Understanding.

Article 2.12

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 2.13

Global Safeguard Measures

1. Hong Kong, China and Norway shall not initiate or take safeguard measures as provided for under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards (hereinafter referred to as the "Safeguards Agreement") in relation to products originating in a Party referred to in this paragraph.

2. The rights and obligations of Hong Kong, China, Switzerland, Liechtenstein and Iceland in respect of global safeguards shall be governed by Article XIX of the GATT 1994 and the Safeguards Agreement in relation to products originating in a Party referred to in this paragraph. In taking global safeguard measures, a Party shall, consistent with its obligations under the WTO Agreements, exclude imports of originating products from another Party referred to in this paragraph, in particular if such imports do not in and of themselves cause or threaten to cause serious injury.

ARTICLE 2.14

Bilateral Safeguard Measures

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in Hong Kong, China or in Switzerland or in Iceland is being imported into another Party referred to in this paragraph 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 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 Safeguards Agreement.

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 referred to in paragraph 1. The notification shall contain all pertinent information, which shall include 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. A Party that may be affected by the measure shall be simultaneously offered compensation in the form of substantially equivalent trade liberalisation in relation to the imports from any such Party.

4. If the conditions set out in paragraph 1 are met, the importing Party may take measures consisting in an increase of 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 Parties referred to in paragraph 1, measures may be taken up to a total maximum period of three years. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is more than one year, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application. No measures shall be applied to the import of a product, which has previously been subject to such a measure.

6. The Parties concerned shall, within 30 days from the date of notification referred to in paragraph 3, examine the information provided under paragraph 3 in order to facilitate a mutually acceptable resolution of the matter. In the absence of such resolution, the importing Party may adopt a bilateral safeguard measure pursuant to paragraph 4 to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the bilateral safeguard measure is taken may take compensatory action. The safeguard measure and the compensatory action shall be immediately notified to the other Parties referred to in paragraph 1. In the selection of the safeguard measure and the compensatory action, priority must be given to the action which least disturbs the functioning of this Agreement. The compensatory action shall normally consist of a suspension of concessions, having substantially equivalent trade effects or being substantially equivalent to the value of the additional duties expected to result from the bilateral safeguard measure, under any part of this Agreement. The Party taking compensatory action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and, in any event, only while the measure under paragraph 4 is being applied.

7. Upon termination of the 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 referred to in paragraph 1 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 the other Parties referred to in paragraph 1. Within 30 days of the date of the notification, the pertinent procedures set out in paragraphs 2 to 6, including those for compensatory action, shall be initiated. Any compensation shall be based on the total

period of application of the provisional bilateral safeguard measure and of the bilateral safeguard measure.

9. Any provisional bilateral safeguard measure 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, and any extension thereof, under paragraph 5, of the measure set out in paragraph 4. 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 referred to in paragraph 1 shall review whether there is a need to maintain the possibility to take bilateral safeguard measures between them. Following the review, these Parties, by consensus, may notify to the Joint Committee that this Article ceases to apply. This Article will be of no application as of the date set out in the notification.

11. A Party shall not simultaneously apply this Article and Article 2.13 to the import of the same product.

ARTICLE 2.15

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, *mutatis mutandis*.

ARTICLE 2.16

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, *mutatis mutandis*.

ARTICLE 2.17

Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance of payments purposes.

2. A Party in serious balance of payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under the GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt trade restrictive measures, which shall be of limited duration and non-

discriminatory, and shall not go beyond what is necessary to remedy the balance of payments situation.

3. The Party introducing a measure under this Article shall notify the other Parties thereof within 14 days after such a measure is taken.