



New alternative approach regarding trade in services and investment in EFTA free trade agreements

Fact sheet

Background

1. At their meeting in Bern on 27 June 2016, EFTA Ministers agreed to aim to formulate alternative approaches regarding trade in services and investment in EFTA free trade agreements based on latest developments in international trade policy.
2. A working group was established to pursue this mandate. The final report of the working group was presented to and discussed among EFTA Ministers at their meeting on 24 November 2017.

New alternative approach

3. The working group has developed a new alternative approach which takes into account and draws inspiration from recent developments in international trade policy, for instance the EU's recent agreements, including the Canada-EU Trade Agreement (CETA), and the Trans-Pacific Partnership (TPP), while catering to the EFTA States' specific interests, sensitivities and constraints.
4. The working group has developed a chapter consisting of an investment-integrated section covering investments in both services and non-services sectors, a section on cross-border trade in services, a section on temporary entry and stay of natural persons for business purposes (applying both to services and non-services), a section on investment protection and investor-state dispute settlement (ISDS), and sections containing general definitions and rules applying to the sections of the chapter. The working group has furthermore agreed that specific rules for certain sectors such as financial services or telecommunications should be placed in annexes to the chapter.
5. The alternative approach accommodates the EFTA States' particular sensitivities and constraints. The sections on natural persons, investment protection and ISDS are drafted in a way to allow the different EFTA States to apply them only as far as they can take on commitments in these areas.
6. For investment and cross-border trade in services, the alternative approach contains mechanisms to capture future liberalisation: A forward looking most-favoured-nation commitment captures further-reaching commitments granted by a party to a third country. The so-called "ratchet" mechanism captures ongoing or future liberalisation of

measures inconsistent with the national treatment obligation, be they on an autonomous or a contractual basis.

7. As in the current approach, the EFTA States can decide which sectors they commit and which reservations apply, including with regard to the mechanisms referred to in paragraph 6. The working group has agreed to foresee negative listing of measures inconsistent with the national treatment obligation and positive listing of commitments regarding market access and temporary entry and stay of natural persons for business purposes. Other listing approaches are not excluded and depend, as the number of lists, on the circumstances of the particular negotiations.
