

EFTA-MERCOSUR FREE TRADE AGREEMENT

CONCLUSION IN SUBSTANCE OF THE EFTA-MERCOSUR FREE TRADE NEGOTIATIONS

*Note by the EFTA Secretariat intended for publication following the expected
conclusion of the FTA negotiations*

On 23 August 2019, Member States of the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland) and of Mercosur (Argentina, Brazil, Paraguay and Uruguay) concluded in substance the negotiations on a comprehensive Free Trade Agreement.

Summary

As a comprehensive and broad-based Free Trade Agreement, the EFTA-Mercosur Agreement covers trade in goods, trade in services, investment, intellectual property rights, government procurement, competition, trade and sustainable development, legal and horizontal issues including dispute settlement.

Mercosur is an important trading partner for EFTA and will allow EFTA companies to benefit from privileged access to a market of over 260 million consumers. Current EFTA bilateral trade in goods with Mercosur totalled €5,8 billion in 2018, with EFTA exports worth €3,7 billion and Mercosur imports for €2,1 billion. Thus, the new Free Trade Agreement will allow EFTA exporters to gain from progressive tariff cuts and ensure a level playing field with its main competitors in this important market.

Negotiations towards the comprehensive Free Trade Agreement were preceded by a Joint Declaration on Cooperation, signed in December 2000, under which an exploratory dialogue with a view to possible future trade negotiations was initiated in March 2015 and concluded in January 2017. This was followed by the launch of negotiations with a first round in June 2017 in Buenos Aires, Argentina. Since then, 9 rounds of negotiations were held.

Content of the Free Trade Agreement

The Agreement covers the following main subjects:

- Preamble
- Trade in Goods
- Rules of Origin
- Trade Facilitation
- Trade Remedies
- Sanitary and Phytosanitary Measures (SPS)
- Technical Barriers to Trade (TBT)
- Trade in Services
- Investment/Establishment
- Protection of Intellectual Property (IPR)
- Government Procurement
- Trade and Sustainable Development
- Competition
- Institutional Provisions
- Dispute Settlement

Preamble

The Preamble of the EFTA-Mercosur FTA sets out the framework for the trade relations between the EFTA States and the Mercosur States by reflecting common principles, such as their commitment to democracy, the rule of law, human rights and fundamental freedoms, environmental protection, combat corruption, good corporate governance and corporate social responsibility.

Trade in Goods

Industrial Goods including Fish and other marine products

With the entry into force of the Agreement, the EFTA States abolish all customs duties on imports of industrial products, including fish and other marine products, originating in Mercosur. Mercosur will gradually eliminate or reduce customs duties on the large majority of industrial products, including fish and other marine products, originating in an EFTA State.

The Agreement will, over a period of up to 15 years, remove or reduce duties on the majority of goods currently exported to Mercosur by EFTA companies. For example, Mercosur countries will eliminate high duties on industrial products, such as:

- Pharmaceuticals (taxed at up to 14%)
- Machinery (taxed at 14 to 20%)
- Chemicals (taxed at up to 18%)
- Fish (taxed at up to 10%)
- Textiles (taxed at up to 35%)
- Car parts (taxed at 14 to 18%)

Agricultural products

The Agreement provides for meaningful tariff concessions on both basic and processed agricultural products.

Among the EFTA States agricultural exports that will benefit from the Agreement, through the gradual elimination of duties, through tariff preferences or through tariff rate quotas (TRQs) on products such as, cheese, coffee, chocolate, lamb meat, spirits, sweets, waters, energy drinks and wines.

In return, EFTA States offer concessions for agricultural imports of high importance to Mercosur. For more information please refer to individual EFTA States national factsheets.

Rules of Origin

The Agreement provides for liberal rules of origin, based on the European model. The provisions allow for extended accumulation under certain conditions as well as for the possibility of self-declaration of origin. The agreement preserves the traditional list of insufficient operations which do not confer origin, accounting segregation may apply to fungible materials, and the non-alteration provisions stipulates activities that may be undertaken for originating products in third countries.

The product-specific rules are modern with a value-added criterion as an optional rule provided for in most chapters, and the main chemical processes are covered.

Trade Facilitation

The Agreement contains detailed provisions on trade facilitation, including some “WTO plus” provisions. This includes simplification of customs procedures, and safeguarding predictability and legal rights for the business environment. The provisions *inter alia* open for advance rulings and limit the possibility of introducing new fees and charges.

Trade Remedies

In the Chapter WTO Trade Defense and Global Safeguards, the Parties reaffirm their rights and obligations under the relevant WTO Agreements in the area of anti-dumping, subsidies and countervailing duties as well as global safeguard measures. The Chapter also establishes transparency requirements, notifications and consultations. In addition, a Chapter Bilateral Safeguard Measures provides for a mechanism to remedy economic injury caused by increases in preferential imports of agricultural or industrial goods as a consequence of liberalising trade under the Agreement. The Annex to the Chapter contains detailed rules on the investigation procedures.

SPS

The Chapter reaffirms the WTO obligations of the contracting parties. The Chapter contains provisions with regard to import checks, certificates, the approval of products and establishments and ensures low threshold consultation mechanisms. Furthermore, the Chapter:

- Reinforces transparency requirements and information exchange to ensure the import and export of safe products only.
- Provides for faster, detailed and predictable procedures.

The Chapter also foresees the possibility to review the chapter in the future with a view of extending to the other Parties treatment granted to the EU.

TBT

The WTO Agreement on Technical Barriers to Trade is incorporated into the EFTA-Mercosur Agreement. It includes principles for the elaboration of technical regulations, standards and conformity assessment procedures, marking and labelling and provides for a consultation mechanism between the Parties so as to avoid unnecessary obstacles to trade. The Chapter also strengthens technical cooperation and transparency commitments between the parties.

The Chapter foresees additional sector-specific trade facilitating initiatives in the future. The provision also foresees that, should the Parties agree to such trade facilitating initiatives regarding technical regulations, standards and conformity assessments with the EU, such arrangement may be extended to each other.

Dialogues

The dialogues Chapter strengthens bilateral and international cooperation in matters related to animal welfare, maximum residues limits (MRLs), biotechnology and the fight against antimicrobial resistance (AMR)

Trade in Services

The chapter on trade in services closely follows the approach of the WTO General Agreement on Trade in Services (GATS). It covers trade in all services sectors under all four modes of supply, but services supplied in the exercise of governmental authority are exempted from the scope of the chapter. Separate annexes on movement of natural persons supplying services, telecommunication services and financial services complement the chapter with additional disciplines specific to those sectors. The Parties have listed the sectors in which they undertake specific commitments, as well as the exemptions from most-favoured-nation (MFN) treatment in further annexes. Those lists shall be reviewed periodically with the aim to further liberalise trade in services between both sides. The Mercosur States have undertaken market access commitments in a number of sectors such as energy related services, maritime transport, telecommunications and financial services.

Investment

The aim of the chapter on investment is to improve the legal framework conditions for investors from the EFTA States and the Mercosur States investing in each other's markets. This is achieved by granting non-discriminatory rights of establishment ("commercial presence") in economic sectors not covered by the chapter on trade in services. The Parties have listed sectors where they are willing to undertake these obligations in schedules of specific commitments. In certain of these economic areas,

the Parties have included reservations to national treatment based on restrictions in their national legislations. The chapter also reaffirms the Parties' right to regulate to achieve legitimate public policy objectives. The chapter foresees that investors can submit inquiries to a focal point. The chapter also includes a provision which refers to the corporate social responsibility of enterprises. The chapter is subject to periodic review regarding the possibility to further developing the Parties' commitments.

Intellectual Property Rights (IPR)

The Agreement includes a Chapter on IPR, where the Parties included the principles of national treatment and MFN. The provisions on IPR contained in an Annex cover, *inter alia*, copyrights, trademarks, patents, industrial designs, geographical indications, indications of source, cooperation and enforcement of IPR, including border measures.

Under the agreement substantive obligations in key international IPR instruments are referenced, notably the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The Parties further undertake to make best efforts to ratify or accede to other specified key IPR agreements.

Under Copyright and Related Rights the provisions address the authors of works, performers of works, producers of phonograms and broadcasting organisations in relation to their works, performances, phonograms, and broadcasts.

In terms of Trademarks the Parties undertake to use best efforts to accede to or comply with certain key trademark related agreements. The Trademark section further addresses the protection of Well-Known Marks.

Industrial Designs are provided with a minimum term of protection of 25 years in the EFTA States and Brazil and 15 years in Argentina, Paraguay and Uruguay.

On Patents some important TRIPS principles were confirmed, including import being recognised as working the patent, and a number of paragraphs addressing procedural and transparency matters could be included.

The section on enforcement of Intellectual Property Rights ensures that intellectual property rights can be adequately enforced, including by the application of provisional and precautionary measures, as well as through civil and criminal remedies.

Liechtenstein and Switzerland and the Mercosur States have agreed to include lists of Geographical Indications to be protected under the Agreement. These lists are still to be finalised.

Government Procurement

The Agreement will open markets on both sides and will provide, in the area of goods and services (including construction services with ARG, BRA and URU), secure reciprocal legal access to government procurement markets where public procurement contracts are above specified thresholds. Covered government entities as well as goods and services are listed in the Agreement. Entities covered by Mercosur at federal and central level are central government ministries and other governmental and federal agencies.

The Mercosur countries also committed to work with their sub-central entities (entities at state, province or municipal level) to allow EFTA stakeholders to tender for contracts at those levels.

EFTA in turn has granted reciprocal access at the central level and will open its procurement market at a sub-central level to the same level as will be granted by Mercosur.

The Chapter deals with the procedures to be followed by an entity when procuring, including provisions on national treatment and transparency, and contains a review clause. The Chapter is largely based on the revised WTO Government Procurement Agreement but has been adapted in some areas to reflect the Parties' specific interests.

Transitional measures give Mercosur countries some time to comply with the rules of the chapter and to adapt to EFTA thresholds.

Trade and Sustainable Development

The chapter on trade and sustainable development is based on the EFTA standard used in previous agreements but also includes additional elements that have never before been included in EFTA FTAs.

The Parties recognise that economic development, social development and environmental protection are interdependent. In the chapter on trade and sustainable development, they reaffirm their commitment to multilateral agreements and principles regarding environmental and labour standards and reaffirm their obligation to effectively implement their respective international obligations in their national laws and regulations. They also commit to uphold levels of protection while recognising the right of each Party to establish its own level of environmental and labour protection.

The Chapter contains commitments to promote the Decent Work Agenda and, in this respect, to develop and enhance measures for decent working conditions, occupational safety and health, labour inspection and non-discrimination.

The chapter also contains commitments regarding the sustainable management of forests, including regarding the fight against illegal logging, the promotion of certification schemes and of measures for forest restoration.

In the article on trade and climate change, the Parties commit to effectively implement the UNFCCC and the Paris Agreement and recognise the importance of trade to contribute to the fight against climate change.

For the first time, EFTA has included an article on trade and sustainable agriculture and food systems, where the Parties agree to promote sustainable agriculture and associated trade and conduct a dialogue to address related issues.

The chapter furthermore contains thematic articles regarding trade and biological diversity and trade and sustainable management of fisheries and aquaculture and lists a number of potential areas for cooperation between the Parties on trade and sustainable development.

Competition

In the Competition Chapter, the Parties recognise that anti-competitive business practices, i.e. agreements and concerted practices between undertakings as well as abuses of a dominant market position, in so far as they may affect trade between the Parties, have the potential to undermine the benefits of liberalisation arising from the Agreement. The Chapter also contains consultation and cooperation mechanisms.

Institutional provisions and dispute settlement

Under Chapter Institutional Provisions a Joint Committee is established, comprising representatives of each Party, to supervise and administer the Agreement and to oversee its further development. The Joint Committee normally meets every two years. It may modify the Annexes and Appendices of the Agreement or consider and propose amendments, as provided for in the Agreement.

Chapter Dispute Settlement sets out the rules and procedures applying with respect to the avoidance or settlement of any disputes that may arise between Parties concerning the interpretation or application of the Agreement. It is complemented by an Annex on Rules of Procedure for the Arbitration Panel, which will be further detailed by the Joint Committee. If a dispute may not be solved by amicable resolution under the consultations mechanisms, the complaining party may request the establishment of an arbitration panel composed of three arbitrators. A Party to the Agreement, which is not a party to the dispute, may participate in the consultations and/or arbitration procedure. Hearings are open to the public and the arbitral award shall be published, unless the parties to the dispute decide otherwise. At any stage of the consultation or arbitration procedure, the parties to the dispute may have recourse to conciliation, goods offices or mediation in order to find an amicable solution of the dispute.

Regarding the entry into force the Agreement, it is subject to national ratification procedures. It will enter into force on a bilateral basis between the Parties after their notification of ratification.