



EUROPEAN FREE TRADE ASSOCIATION

DESCRIPTION OF EFTA INITIAL TEXT PROPOSALS TO THE REPUBLIC OF MOLDOVA

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I. Introduction

1. EFTA's initial text proposals to the Republic of Moldova are described below for all trade fields under negotiation. The proposals reflect the latest developments in EFTA's positions and priorities considering the specific context where appropriate. EFTA's objectives in the negotiations with Moldova are outlined [here](#).

II. Preamble

2. The Preamble sets out the framework and the general objectives between the Parties. The Parties reaffirm their commitment to democracy, the rule of law, human rights, and fundamental freedoms in accordance with their obligations under international law, in particular as set out in the United Nations Charter and the Universal Declaration of Human Rights.

3. The Preamble reflects the Parties' commitment to pursue the objective of sustainable development and to implement the EFTA-Moldova FTA in line with the objectives to preserve and protect the environment through sound environmental management. To this end, the Parties reaffirm their rights and obligations under multilateral environmental agreements, and the respect for the fundamental principles and rights at work, including the principles set out in the relevant International Labour Organisation (ILO) Conventions to which they are a party.

4. The Parties further recall their commitment to prevent and combat corruption in international trade and investment and to promote the principles of transparency, good public governance, good corporate governance and corporate social responsibility as set out in internationally recognised guidelines and principles, such as the OECD Guidelines for Multinational Enterprises, the OECD Principles of Corporate Governance and the UN Global Compact.

5. Finally, the Preamble reflects the liberalisation of trade and promotion of commercial and economic cooperation between the Parties in line with the WTO Agreement and the other agreements negotiated thereunder and their common determination to further strengthen the multilateral trading system.

III. General Provisions

6. Article Objectives reflects the goals of the EFTA-Moldova FTA, namely to liberalise trade in goods and services in conformity with the Parties' obligations under WTO law, enhance investment opportunities, prevent, eliminate or reduce unnecessary technical barriers to trade and unnecessary sanitary and phytosanitary measures, promote competition in the Parties' economies, achieve further liberalisation of the government procurement markets of the Parties, ensure adequate and effective protection of intellectual property rights, and to develop international trade in such a way as to contribute to the objective of sustainable development.

7. Article Geographical Scope sets out that the FTA applies to the territories of the EFTA States and Moldova in accordance with international law and that the geographical scope

covers the exclusive economic zone and the continental shelf of a Party. It further reflects that the Agreement does not apply to the Norwegian territory of Svalbard with the exception of trade in goods.

8. Article Trade and Economic Relations governed by this Agreement foresees that the FTA only applies between the EFTA States and Moldova and not to the trade relations between individual EFTA States.

9. In article Relations to other International Agreements, the EFTA States and Moldova confirm their rights and obligations under the WTO Agreement and the other agreements negotiated thereunder as well as any other international agreement to which they are a party. Furthermore, a Party may request consultations if it considers that the maintenance or establishment of another preferential agreement by another Party (e.g. customs unions, free trade areas etc.) affects the implementation of the trade regime under the EFTA-Moldova FTA.

10. In article Fulfilment of Obligations, the EFTA States and Moldova commit to ensure the fulfilment of their FTA obligations at all levels of government (central, regional and local) and by non-governmental bodies in the exercise of governmental powers delegated to them.

11. Article Transparency obliges the Parties to make publicly available their laws, regulations, judicial decisions, administrative rulings of general application as well as their respective international agreements, that may affect the operation of the EFTA-Moldova FTA. It further stipulates a general obligation of the Parties to respond to specific questions and, upon request, provide information on matters related to the implementation of the FTA. However, no Party is required to disclose confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of any economic operator.

IV. Chapter on Trade in Goods

12. Reflecting EFTA's commitment to an open and rules-based international trade regime, EFTA's proposal for a chapter on trade in goods builds on the World Trade Organization (WTO) framework and incorporates key provisions of its General Agreement on Tariffs and Trade (GATT) 1994. The proposal further anchors the annexes pertaining to rules of origin and trade facilitation. The proposal contains the following articles:

13. Article Scope concerns the application of the chapter and limits it to trade in physical goods between the Parties to the Agreement.

14. Article Import Duties regulates the preferential tariff regime established between the Parties with respect to customs import duties. It foresees that import duties shall apply to goods originating in another Party and be laid out in the form of annexes called "Schedules on Tariff Commitments on Goods". These tariff schedules, which will be negotiated between the Parties during the negotiation process, will prescribe the preferential tariff treatment to be applied for each product subject to concessions under the Agreement (i.e. either full or partial tariff dismantling, fixed reductions on the applied duty rate, price compensation measures). The article further ensures that no Party introduces new import duties or increases those

already applied on goods originating in another Party in accordance with its Schedule on Tariff Commitments on Goods, unless provided for in the Agreement or in the tariff schedules. Import duties are defined as any duty, tax or charge imposed in connection with the importation of goods except those imposed in conformity with article III of the GATT 1994, as well as with the articles of the Agreement pertaining to subsidies and countervailing measures, anti-dumping and global and bilateral safeguard measures.

15. Article Export Duties aims to prohibit customs duties on exports. It obligates the Parties to not adopt or maintain any duties, taxes or charges in connection with the exportation of goods to another Party. The one exemption pertains to internal charges applied in conformity with the article National Treatment on Internal Taxation and Regulations (see description below).

16. Article Rules of Origin and Administrative Cooperation governs the rules of origin that goods must meet in order to benefit from the preferential tariff treatment provided for in the Agreement. The detailed provisions are set out in an Annex. In particular, they establish which goods qualify as originating, what proof of origin is required to qualify for preferential tariff treatment, and how cooperation between the Parties' custom authorities is to take place.

17. Article Customs Valuation incorporates article VII of the GATT 1994 and Part I of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade 1994, mutatis mutandis. These articles define standards to determine the customs value of imported goods (i.e. the price of goods which is decisive for the customs procedure).

18. Article Quantitative Restrictions incorporates article XI of the GATT 1994, that generally prohibits quantitative restrictions (e.g. limit or quota on the quantity) on the importation or the exportation of any product. The article further ensures that any Party introducing such a measure in accordance with paragraph 2 of article XI of the GATT, which defines certain exceptions to this principle, promptly notifies the Joint Committee of the Agreement. A notification made under the mentioned GATT provision is deemed equivalent to one under the Agreement. Lastly, the article foresees that any measure applied in accordance with the article shall be of limited duration, non-discriminatory, transparent and may not go beyond what is necessary to remedy circumstances described in paragraph 2 of article XI of the GATT 1994. Such measures may not create unnecessary obstacles to trade between the Parties.

19. Article Fees and Formalities incorporates article VIII of the GATT 1994, subject to article Fees and Charges in the Annex on Trade Facilitation. The article ensures that fees and charges (other than import and export duties) imposed in connection with importation or exportation are limited in amount to the approximate cost of services rendered. Such fees and charges shall not represent an indirect protection to domestic products or a taxation of imports, and the parties recognise the need for reducing the number and diversity of fees and charges as well as simplifying the formalities and documentation requirements.

20. Article National Treatment on Internal Taxation and Regulations incorporates article III of the GATT 1994, often referred to as the national treatment principle and a cornerstone of the GATT/WTO regime. The article generally prohibits discrimination between imported goods and domestically produced goods with regard to internal taxation or regulation, thus

constituting one of the components of the principle of non-discrimination along with the Most-Favoured Nation Treatment, or “MFN.”

21. Article Trade Facilitation governs the provisions on trade facilitation, with more detailed provisions set out in an annex. These provisions aim at simplifying customs procedures and ease the movement of goods that are to be imported or exported, thereby reducing costs for the business community.

22. In article WTO Agreement on Agriculture the Parties confirm their rights and obligations under the WTO Agreement on Agriculture, unless the Agreement specifies otherwise. The Agreement on Agriculture establishes generally applicable rules about trade in agricultural products to reduce the alterations caused by protectionism, and particularly in the areas of market access, domestic agricultural support and export subsidies.

23. Article State Trading Enterprises incorporates article XVII of the GATT 1994 and the Understanding on the Interpretation of article XVII. The provision provides the basic idea of what a State Trading Enterprise (STEs) is in the WTO understanding. The aim of these rules includes ensuring that STEs operate in a non-discriminatory manner and do not nullify negotiated tariff concessions. Further, STEs should not serve to implement other WTO-inconsistent measures such as subsidies and should be notified to the WTO on a regular basis.

24. In Article General Exceptions, article XX of the GATT 1994 and its interpretative notes is incorporated for the purposes of this chapter and the chapters on Technical Barriers to Trade and Sanitary and Phytosanitary Measures. This provision exempts measures from being considered WTO violations based on various domestic policy goals, including protection of public morals and human, animal or plant life or health; importations relating to gold or silver and products of prison labour; protection of national treasures of historic value and relating to conservation of exhaustible natural resources. In addition, the provisions address measures on restrictions on exports of domestic materials necessary as part of a governmental stabilization plan and measures essential to the acquisition or distribution of products in general or local short supply under certain circumstances.

25. Article Security Exceptions incorporates article XXI of the GATT 1994 including its interpretative notes for this chapter and the chapters on Technical Barriers to Trade and Sanitary and Phytosanitary Measures. The article ensures that the Agreement does not require a Party to disclose information it considers contrary to its essential security interests or prevents a Party from taking any action in certain areas which it considers necessary for the protection of its essential security interests. The provision further provides exceptions relating to measures taken in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security.

26. Article Balance-of-Payments sets out that a Party that is in serious balance of payments difficulties, or under imminent threat thereof, may adopt trade restrictive measures in accordance with the conditions established under the GATT 1994 and the WTO Understanding on the Balance of Payments Provisions of the General Agreement on Tariffs and Trade 1994. The provision stipulates that such measures shall be of limited duration and non-discriminatory and may not go beyond what is necessary to remedy the balance of payments

situation. A Party introducing measures under this provision shall promptly notify the Joint Committee thereof.

27. Article Preference Utilisation allows the Parties to efficiently monitor the functioning of the Agreement by exchanging import statistics and applied MFN tariffs. To monitor the use of preferential tariffs, separate statistics shall be exchanged for imports benefitting from preferential treatment under the Agreement, for imports benefitting from other preferential treatment as well as those that did not receive preferential treatment.

28. Article Sub-Committee on Trade in Goods establishes the committee that deals with trade in goods and customs issues of a technical nature. The Article further anchors the mandate of the Sub-Committee in a separate annex. The Sub-Committee may make recommendations to the Joint Committee.

V. Annex on Rules of Origin

29. EFTA's approach on rules of origin toward partners who are Contracting Parties to the pan-Euro-Med (PEM) Convention, such as Moldova, is to apply the rules of the PEM Convention. The PEM Convention brings together in a single legal instrument¹ the rules of origin applicable to free trade agreements concluded between the parties to the Convention².

30. Having common rules of origin in the PEM zone aims at simplifying and harmonising origin requirements as much as possible for exporters. It allows for diagonal cumulation within the PEM zone. The PEM Convention has recently undergone a revision process but the revised rules have not been adopted by consensus by the Contracting Parties yet, but they will be applied for a transitional period on a bilateral basis as an alternative to the current rules of the Convention, and are therefore called the transitional rules of origin³.

31. In EFTA's proposal to Moldova, exporters may as such choose between the current PEM rules and the transitional, more trade-friendly, rules. Improvements in the transitional rules include abolishment of the "EUR-MED" proof of origin while regional cumulation of origin is made more flexible (introduction of "full" cumulation for most products).

32. Further, the possibility of duty-drawback applies to most products while the product-specific rules are simpler and more flexible, for instance elimination of cumulative requirements, lower thresholds of local value added, new double transformation for textiles

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2013.054.01.0003.01.ENG&to c=OJ%3AL%3A2013%3A054%3ATOC#L_2_013054EN.01000401

² EU, EFTA, Faroe Islands, participants in the Barcelona Process (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia and Turkey), participants in the Stabilisation and Association Process (Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia and Kosovo), Moldova, Georgia and Ukraine.

³ Both the current and the transitional rules of origin of the PEM Convention are published in the Official Journal of the European Union. The status between EFTA and its PEM partners regarding the possibility of applying the transitional rules is published on the [EFTA website](#).

(more finishing operations confer origin), multiple choice rule for chemicals (chemical reactions confer origin)

33. The general tolerance (thresholds of non-originating materials) increased, from 10% to 15%, while the “direct transport” rule is replaced with a “non-manipulation” rule. Similarly, the rules pertaining to accounting segregation are relaxed.

34. In addition to this, EFTA’s proposal allows for the use of electronic movement certificates and the possibility of full cumulation for textiles with the Parties to the Central European Free Trade Agreement (CEFTA).

VI. Sanitary and Phytosanitary measures (SPS) and Technical Barriers to Trade (TBT)

35. EFTA’s approach on both TBT and SPS for Moldova is expressed in two dedicated articles integrated into the Trade in Goods chapter focusing primarily on enhanced cooperation, exchange of information and avoidance of unnecessary obstacles to trade. Since both EFTA and Moldova are closely aligned with the EU regulatory system, it also provides the opportunity to extend equal treatment that all Parties would have contracted with the EU.

36. More specifically, the proposed articles on SPS and TBT incorporate, *mutatis mutandis*, the SPS and TBT Agreements, and foresee the strengthening of cooperation in the fields of SPS and TBT, aiming at increasing the mutual understanding of each Party’s respective systems and facilitating market access.

37. Further, the articles provide for a binding consultation mechanism aimed at finding mutual solutions to any obstacle to trade, or if a Party has not fulfilled its obligations under this article. Consultations shall take place within 30 days from a Party’s request. Regarding perishable goods, consultations shall be held without undue delay.

38. Next, a provision is included allowing for, upon request, the possibility to extend to each other treatment related to sanitary and phytosanitary measures and technical barriers to trade each Party has granted to or agreed with the European Union.

39. Lastly, the articles commit the Parties to exchange contact points with sanitary and phytosanitary and technical regulations expertise to facilitate exchange of information.

VII. Annex on Trade Facilitation

40. Trade facilitation aims at simplifying and accelerating the clearance of goods which are to be imported or exported, thereby reducing costs for the business community. To ease the movement of goods and reduce costs in trade between the Parties, EFTA aims for expedited procedures, predictability and transparent rules for trade in goods and related services. EFTA aims for border and customs procedures in line with or exceeding relevant international standards and agreements. In particular, EFTA seeks to build on the WTO Agreement on Trade Facilitation (TFA) and go beyond that agreement where possible in order to ensure rapid release of goods and effective and transparent cooperation amongst authorities and agencies concerned. EFTA’s Annex on Trade Facilitation proposed to Moldova has the following articles:

41. Article General Principles sets out the principles for the adoption and development of the trade facilitation measures to be administered by relevant competent authorities, not restricted to customs.
42. Article WTO Agreement on Trade Facilitation incorporates the TFA into the Agreement as a basis which is then built upon in the Annex.
43. Article Transparency provides for the general publication of relevant information for traders on the internet in English, as far as practicable, as well as the establishment of free enquiry points.
44. Article Public Consultation and Information Before Entry into Force ensures that business communities, noting small and medium-sized enterprises especially, are consulted on the development and implementation of trade facilitation measures through the internet in a timely manner.
45. Article Advance Rulings provides for advance rulings regarding the importation or exportation of a product to an importer, exporter, or any person with a justifiable cause, or a representative, who submits a written request containing all necessary information. The rulings can relate, e.g. to classification and origin rules, determination of customs value, fees and charges and their calculation, border-crossing requirements and other matters the Parties may agree upon. Furthermore, the Parties agree to endeavour to publish advance rulings noting the need for protecting confidentiality.
46. Article Procedures for Appeal ensures the right to at least one level of administrative appeal (unless the decision was taken by the highest administrative entity) and one level of independent judicial appeal.
47. Article Fees and Charges limits fees and charges related to import, export or transit, to the approximate cost of services rendered and may not be calculated on an ad valorem basis. Furthermore, the article foresees the publication of information on the internet related to the service provided, the responsible authority, the fees and charges and their calculation and payment. Both customs and other competent authorities must provide information on their fees and charges related to imports, export or transit upon request.
48. Article Penalty Disciplines sets out that penalties for breaches of customs laws, regulations, or procedural requirements are imposed only on the person(s) legally responsible. Penalties for minor breaches shall not be greater than necessary to discourage a repetition of such errors and penalties shall not be inflicted for obvious formal errors. The article also stipulates that each Party shall specify in its legislation a limited period within which it may initiate penalty proceedings. Furthermore, the Parties shall avoid conflicts of interest in the assessment and collection of penalties ensuring that government officials do not benefit from any penalty or duties.
49. Article Release and Clearance of Goods foresees the application of simple, reasonable and impartial trade and border procedures with each Party undertaking to adopt or maintain

procedures such as advance electronic submission and processing of information before the physical arrival of goods, electronic payment for duties, taxes, fees and charges and to allow for the release of goods prior to meeting all import requirements. Furthermore, each Party undertakes to provide for the rapid release of perishable goods and, in case of delays provide an explanation of the reasons for the delay.

50. Article Risk Management foresees that the Parties' decisions on examination of persons, goods, or means of transport in their trade should be based on objective risk management and should not be more burdensome than necessary with relation to the risk identified.

51. Article Formalities Related to Importation, Exportation and Transit sets out obligations for limiting controls, formalities and documents required in the trade between the Parties to those necessary to ensure compliance. To minimise complexity of import, export and transit the Parties undertake to ensure that formalities aim for rapid release and clearance of goods, ensuring compliance in a timely and cost-effective least trade-restrictive manner possible. The article further foresees that the Parties attain these goals through the use of recognised international standards in the field.

52. Article Customs Brokers obliges the Parties to enable exporters and importers to submit their customs declaration without requiring the use of customs brokers.

53. Article Temporary Admission of Goods and Inward and Outward Processing obligates each Party to allow for temporary admission of goods as well as inward and outward processing in accordance with international standards.

54. Article Competent Customs Offices foresees that the designation of customs offices for clearance be taken factoring in the requirements of trade. Furthermore, that customs controls and procedures should be possible outside these offices and outside business hours if requested against a fee commensurate with the services rendered.

55. Article Authorised Economic Operator System foresees that a Party operating an Authorised Economic Operator System must allow for the possibility to negotiate mutual recognition agreements on authorisation. Furthermore, such systems should be based on relevant international standards.

56. Article Legalisation of Documents prevents the Parties from requiring legalisation or other authentication of any customs documentation in connection with the importation of goods from another Party.

57. Article Confidentiality commits the Parties to treat information related to the Annex as confidential and that such information shall not be disclosed by their authorities without express permission from the provider.

58. Article Cooperation opens up for the Parties to identify and discuss further trade facilitating measures in the Sub-Committee on Trade in Goods. Furthermore, the Parties

commit to promoting international cooperation and to follow international initiatives in which further joint action could contribute to their common trade facilitating objectives.

VIII. Trade Remedies

59. EFTA's proposals for provisions on trade remedies consist of four provisions integrated into the Trade in Goods Chapter centring on the Parties' rights and obligations with respect to subsidies and countervailing measures; the prohibition of anti-dumping measures as well as the rights and obligations of the Parties regarding global and bilateral safeguard measures.

60. Article Subsidies and Countervailing Measures provides that the rights and obligations of the Parties with respect to subsidies and countervailing measures shall be governed by the relevant WTO rules. It further obliges a Party considering initiating a subsidy investigation to notify the Party whose products are subject to an investigation and allow a 45-day period for consultations in the Joint Committee with a view to finding a mutually acceptable solution.

61. Article Anti-dumping prohibits the application of anti-dumping measures between the Parties.

62. Article Global Safeguard Measures sets out that the Parties' rights and obligations regarding global safeguard measures shall in principle be governed by the relevant WTO rules. However, consistent with its WTO obligations, a Party applying safeguards is obliged to exclude imports of an originating product from one or several other Parties if such imports do not in and of themselves cause or threaten to cause serious injury. It foresees a 45-day period for consultations between the Party intending to apply a global safeguard and the Parties affected by the global safeguard. Finally, it sets out the principle of proportionality, i.e. that a Party adopting global safeguard measures shall impose them in a way that least affects bilateral trade.

63. Article Bilateral Safeguard Measures allows for the Parties to temporarily suspend tariff concessions under the Agreement under certain circumstances. Such measures shall only be taken after an investigation in accordance with the procedures laid down in the WTO Agreement on Safeguards, and the Party intending to take a bilateral safeguard measure must notify the other Parties and offer compensation in the form of substantially equivalent trade liberalisation. The Article further defines maximum duty levels and durations for such measures. The Joint Committee shall facilitate a mutually acceptable solution, and a Party may apply bilateral safeguard measures only if such a solution has not been found. Further, the Party against whose product the bilateral safeguard measure is applied may take compensatory action. Lastly, the Parties shall review five years from the date of entry into force of the Agreement whether there is a need to maintain the possibility to take safeguard measures between them.

IX. Chapter on Trade in Services

64. In compliance with article V GATS, the chapter has a wide scope covering all modes of supply and an extensive range of sectors and volume of trade without any *a priori* exclusion. Structure and content of the chapter align with the GATS template and incorporate GATS

provisions where appropriate, including on market access, national treatment and other commitments. Improvements to GATS provisions are notably found in articles Most-Favoured Nation (MFN) Treatment, domestic regulation, and transparency. The chapter is supplemented by annexes containing sector-specific disciplines on financial services, telecommunications services, maritime transport and related services, and movement of natural persons providing services. These annexes are described further down.

65. Article Scope and Coverage applies the provisions of the chapter to measures affecting trade in services and all service sectors, but also specifies exceptions pertaining to air traffic rights. Further, reference is made to articles Most-Favoured Nation Treatment, Market Access and National Treatment, which do not apply to domestic laws and regulations governing the procurement by governmental agencies of services purchased for governmental purposes.

66. Article Incorporation of Provisions from the GATS adapts certain terms used in GATS to the free trade agreement, whenever provisions from GATS are incorporated.

67. Article Definitions contains the definitions of key terms used in the chapter and incorporates select definitions of articles I and XXVIII of the GATS.

68. Article Most-Favoured Nation Treatment looks to extend MFN treatment to the Parties, in respect of all measures affecting the supply of services, to services and service suppliers of another Party. The commitment is without prejudice to the Party-specific lists of MFN exemptions, which will be listed in a dedicated annex. Furthermore, existing or future free trade agreements with other partners are not covered (in accordance with article V GATS), but the article requires the Parties, upon request by an individual Party, to open negotiations for comparable preferential treatment as provided for in such agreements.

69. Article Market Access incorporates Article XVI of the GATS. The provision first commits each Party to accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule of commitments. Second, in sectors where market-access commitments are undertaken, GATS Article XVI defines the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, for example with respect to limitations on the number of service providers.

70. Article National Treatment incorporates Article XVII of the GATS. According to the national treatment principle enshrined in this provision, discrimination between domestic services and service suppliers and those of the other Parties is prohibited. Modified conditions of competition in favour of domestic service and service suppliers serve as the benchmark for determining discrimination.

71. Article Additional Commitments incorporates Article XVIII of the GATS and allows the Parties to negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII of the GATS, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's schedule of services commitments.

72. Article Domestic Regulation contains a set of enhanced GATS disciplines. For instance, all measures of general application affecting trade in services are to be administered in a reasonable, objective and impartial manner. In addition, parties are required to maintain or institute, as soon as practicable, independent tribunals or procedures for fairly and impartially reviewing and potentially remedying administrative decisions affecting trade in services. On qualification and licensing requirements and procedures as well as technical standards, objective and transparent criteria, such as the competence and ability to supply the service, serve as the benchmark. Parties are also required to provide for adequate procedures to verify the competence of professionals of any other Party. Looking ahead, reference is made to the aim of incorporating into the Agreement future disciplines developed in the WTO on services domestic regulation and the scope for the Parties to do likewise on a joint or bilateral basis.

73. Article Recognition seeks to commit each Party to give due consideration to requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may result from an agreement or arrangement with that other Party, or otherwise be accorded autonomously. The provision further looks to give the possibility to a Party to accede to or negotiate any comparable agreement with another Party entering into a mutual recognition agreement or an autonomous recognition arrangement with a non-Party.

74. Similarly to GATS, article Movement of Natural Persons sets out that natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment. It further delineates the scope of application of the chapter from matters of immigration such as nationality, residence, or employment on a permanent basis.

75. Article Transparency incorporates paragraphs 1 and 2 of Article III and Article III *bis* of the GATS. Paragraph 1 of GATS Article III obliges the Parties to promptly publish, except in emergency situations and at the latest by the time of entry into force, all relevant measures of general application which pertain to or affect trade in services. The same applies to international agreements pertaining to or affecting trade in services to which a Party is signatory.

76. Where publication as referred to in paragraph 1 is not practicable, paragraph 2 holds that such information shall be made otherwise publicly available. Lastly, Article III *bis* referring to disclosure of confidential information, underlines that nothing shall require any Party to provide confidential information which would be contrary to the public interest (incl. on law enforcement) or which would prejudice legitimate commercial interests of particular enterprises, public or private.

77. Article, Monopolies and Exclusive Service Suppliers incorporates paragraphs 1, 2 and 5 from GATS Article VIII. These provisions stipulate that each Party has to ensure that monopoly suppliers of a service do not act inconsistently with that Party's MFN obligations and specific commitments. Furthermore, if a monopoly supplier competes outside the scope of its monopoly rights in the supply of a committed service, the Party has to ensure that the supplier

does not abuse its monopoly position and run counter to the Party's specific services commitments. The provisions also apply to cases of exclusive service suppliers.

78. Article Business Practices incorporates Article IX of the GATS, which complements the aforementioned provisions on monopolies and exclusive service suppliers. The Parties recognise that business practices outside the scope of Article VIII GATS may restrain competition and hence trade in services. In these instances, they are further required to enter into consultations at the request of any other Party and to cooperate through the provision of non-confidential information.

79. Article Payments and Transfers aims to prohibit restrictions on transfers and payments for current transactions in relation to the supply of services, except under exceptional circumstances to safeguard the balance of payments.

80. Article Restrictions to Safeguard the Balance of Payments codifies the Parties' mutual endeavour to refrain from the imposition of restrictions, while subjecting the imposition of restrictions in case of necessity to GATS rules and requiring the Party in question to promptly notify the Joint Committee. The rules as enshrined in paragraphs 1 to 3 in GATS Article XII stipulate that restrictions inter alia shall not discriminate between the Parties and further be consistent with the Articles of Agreement of the International Monetary Fund and proportionate to the balance-of-payments and external financial difficulties or threat thereof.

81. Article Subsidies provides for a consultation mechanism for Parties adversely affected by subsidies of another party, and a review clause to incorporate GATS disciplines that may be developed on the matter in the future.

82. Article Exceptions incorporates GATS Article XIV and paragraph 1 of GATS Article XIV bis. The former provision exempts measures from being considered WTO violations based on various domestic policy goals, including protection of public morals and human, animal or plant life or health. Pertaining to security exceptions, the latter provision ensures that the Agreement does not require a Party to disclose information it considers contrary to its essential security interests or prevents a Party from taking any action in certain areas which it considers necessary for the protection of its essential security interests. The provision further provides exceptions relating to measures taken in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security.

83. Article Schedules of Specific Commitments is to be read in analogy to the corresponding GATS article and supplies the framework for application of the *Annex Schedules of Specific Commitments*. In said Annex, the commitments of each Party under the Articles Market Access, National Treatment and Additional Commitments are set out.

84. Article Modification of Schedules provides for a possibility to modify schedules and outlines the consultation mechanism for that purpose. During consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained.

85. Article Review holds a review clause for a specified time interval to review schedules and MFN exemptions with a view to further liberalising trade in services between the Parties. Autonomous liberalisation and on-going work under the auspices of the WTO serve as reference points in this regard.

86. Article Annexes sets out the list of annexes that are subject to the provisions in the chapter.

a. Annex Financial Services

87. Article Scope and definitions applies the annex to measures affecting trade in financial services, defines and exempts “services supplied in the exercise of governmental authority” in the case of financial services and contains a list of definitions that is specific to financial services.

88. Article Market Access for New Financial Services allows for the supply of any new financial service by established suppliers of another Party.

89. Article National Treatment grants non-discriminatory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities, while withholding access to lender of last resort facilities. The same non-discriminatory access to or participation in a self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association is also granted.

90. Article Transparency contains disciplines for promoting regulatory transparency, such as to make available to interested persons domestic requirements and procedures for completing applications relating to the supply of financial services and to make the requirements and time periods for obtaining licences publicly available.

91. Article Expeditious Application Procedures contains disciplines on application procedures related to the supply of financial services, including on expeditious processes, making information available, notifications, and the granting of licenses.

92. Article Domestic Regulation establishes disciplines on prudential measures taken, including where they do not conform with the provisions of the chapter, referencing relevant standards and principles where needed.

93. Article Recognition of Prudential Measures provides for the possibility to enter into mutual recognition arrangements on prudential measures, as well as to be afforded autonomous recognition of such measures.

94. Article Transfers of Information and Processing of Information establishes disciplines around the transfer and processing of financial information for facilitating the ordinary conduct of business while reaffirming the rights of the Parties to protect personal data, personal privacy and the confidentiality of individual records and accounts.

b. Annex Telecommunications Services

95. Article Scope and Definitions applies the annex to measures by Parties affecting trade in telecommunications services, while excluding measures by Parties relating to broadcasting or to cable distribution of radio or television programming. It further contains a list of definitions of key terms.

96. Article Competitive Safeguards establishes disciplines on anticompetitive practices for major suppliers of telecommunications services. It further specifies anti-competitive practices such as not making available to other service suppliers on a timely basis technical information about essential facilities.

97. Article Interconnection requires major suppliers to provide interconnection at any technically feasible point in the network. The obligation is supplemented by information requirements on relevant procedures, publication of interconnection agreements or reference interconnection offers. The article further provides for the opportunity for suppliers to have recourse to assistance from independent bodies in case of unresolved dispute.

98. Article Universal Service establishes that universal service obligations maintained by a Party shall be transparent, objective and non-discriminatory, neutral to competition and not unnecessarily burdensome.

99. Article Licensing Procedure sets disciplines on the granting of licenses where they are required for the supply of a telecommunication service, including transparency, notification and other procedural requirements.

100. Article Regulatory Authority enunciates some basic principles for the functioning of each Party's regulatory authority for telecommunication services, such as independence, impartiality, and possibility of recourse by suppliers to an independent body.

101. Article Scarce Resources disciplines the procedures for use of scarce resources, including frequencies, numbers and rights of way, to be objective, timely, transparent and non-discriminatory.

c. Annex Movement of Natural Persons Supplying Services

102. Article Scope applies the annex to measures by a Party affecting natural persons of another Party covered by its Schedule of Specific Commitments.

103. Article General Principles outlines the core aim of the Annex of easing entry, temporary stay and work of natural persons per the schedules of specific commitments.

104. Article Provision of Information contains transparency requirements specific to the movement of natural persons supplying services, with respect to information that is necessary for an effective application for the granting of entry, temporary stay, and work in a Party's territory.

105. Article Expeditious Application Procedures outlines key procedural requirements for applications for granting entry, temporary stay, or work, as well as extensions thereof. The requirements pertain amongst others to the expeditious processing of applications and the provision of information to applicants upon request without undue delay.

d. Annex Maritime Transport and Related Services

106. Article Scope applies the annex to measures by Parties affecting trade in maritime transport and related services.

107. Article Definitions defines a list of key terms.

108. Article Non-Discriminatory Market Access confers unrestricted access to international maritime markets and trades on a commercial and non-discriminatory basis. It outlaws any measures or other obstacles preventing the free supply of international maritime transport services, including with regard to access to ports, the use of infrastructure and services of ports, cargo-sharing arrangements, barriers to local presence, barriers to multi-modal service provision, barriers to repositioning owned or leased equipment between ports, and barriers to providing feeder services between ports. The article does not apply to Switzerland.

109. Article Applicability of National Laws codifies the applicable law aboard a vessel and during the stay in territorial waters, inland waters and ports of another Party.

110. Article Recognition of Vessel Documents reaffirms the applicability of international conventions for the recognition of vessel documents.

111. Article Identity, Documents, Entry and Transit of Seafarers regulates the mutual recognition of valid identification documents of seafarers and crew duly issued by the competent authorities of another Party or relevant non-party, as well as the rights of admitted crew members during their stay.

112. Article Recruitment and Training allows the establishment of representation and recruitment offices in the territory of another Party. The article does not apply to Liechtenstein and Switzerland.

113. Article Terms of Employment reaffirms the primacy of international conventions in force between the Parties when accepting crew members of another Party and requires the respect of the terms and conditions of employment established by employment contracts, collective bargaining agreements, social welfare standards and conditions of work for crew members on board the registered vessels of that Party.

114. Article Rules on Labour Disputes establishes that disputes or claims between a service provider of a Party and a crew member of another Party be referred for determination and resolution to the exclusive jurisdiction of the competent courts, tribunals or authorities, of the Party where the vessel is registered or of the Party of which the complainant is a national provided that the procedure does not conflict with domestic laws and regulations.

115. Article Assistance in Cases of Offences Committed by Crew on Board the Vessel outlines the competencies and procedures required to resolve cases of offence that might have taken place or have been suspected to have taken place on board of a vessel of a Party by a crew member of another Party.

X. Chapter on Investment

116. The aim of the EFTA approach to investment is to cover commercial presence in non-services sectors, complementing mode 3 of the services chapter to provide for a level playing field for all commercial presence. In this regard, EFTA's proposal on an investment chapter focuses on investment liberalisation notably by providing for national treatment obligations regarding the establishment of a "commercial presence" (subject to specific reservations set out in an Annex based on a negative-listing approach), along with necessary free flow of capital, payments and key personnel. Hence, the chapter primarily centres on the establishment phase of the investment life-cycle, providing for non-discriminatory market access for investments in non-services sectors. Investment protection is not part of the EFTA-Moldova FTA negotiation.

117. Article Scope and Coverage seeks a broad coverage, applying to "all sectors, with the exception of services sectors".

118. Article Definitions defines key terms, including "commercial presence", which has been adapted from the trade in services chapter to suit the needs of the EFTA investment chapter.

119. Article National Treatment represents the key substantive provision of the chapter by seeking non-discriminatory treatment no less favourable, in like situations, to another Party's own juridical and natural persons, and to the commercial presence of such persons.

120. Article Reservations sets out the substantive and procedural scope of the reservations lists, including on modifications and review.

121. Article Key Personnel aims to facilitate the movement of natural persons in connection to the investment activity, subject to domestic laws and regulations.

122. Article Right to Regulate reaffirms a Party's right to regulate for public policy objectives and prudential reasons and contains a commitment not to lower standards in order to attract, expand or retain investments.

123. Article Transparency contains publication requirements for matters of relevance to juridical and natural persons operating under the framework of the investment chapter, without requiring the disclosure of sensitive information that could prejudice commercial interests or be contrary to public interest.

124. Article Payments and Transfers aims to facilitate payments and transfers related to commercial presence activities in non-services sectors, subject to rights and obligations under the articles of Agreement of the IMF.

125. Article Restrictions to Safeguard the Balance of Payments disciplines the imposition of such restrictions, subjecting them *mutatis mutandis* to paragraphs 1 to 3 of article XII of the GATS and notification requirements to the Joint Committee.

126. Article General Exceptions applies GATS article XIV to the chapter *mutatis mutandis* (described in paragraph 82 above).

127. Article Security Exceptions applies paragraph 1 of article XIV bis of the GATS to the chapter *mutatis mutandis* (described in paragraph 82 above).

128. Article Review provides for a periodic review with the possibility to further develop the Parties' commitments.

XI. Chapter on E-commerce

129. EFTA's proposed chapter on electronic commerce recognises the rapidly rising importance of trade in goods and in services enabled by electronic means. Being cross-cutting in nature, the chapter includes provisions specifically tailored to such electronically-enabled trade, aligning with multilateral initiatives where appropriate and going beyond where needed, complementing provisions on trade in goods and trade in services found elsewhere in the FTA.

130. The chapter covers several provisions aiming at facilitating electronically-enabled trade, such as on electronic signatures and contracts, paperless trade administration, provisions to foster online consumer trust or a commitment to support the development of efficient, safe and secure cross-border electronic payments.

131. Further provisions relate to more fundamental preconditions related to electronic commerce, such as the commitment on open internet access for end-users and the general prohibition to require the transfer of, or access to, source code of software or parts thereof when doing business by electronic means. The chapter also encompasses strong commitments on the free flow of data and the prohibition of localisation requirements for computing facilities and data. These obligations are complemented by a strong commitment to the protection of personal data and privacy (and essential security interests for Norway), which requires each Party to adopt or maintain the appropriate safeguards to ensure a high level of such protection, complemented by further policy space under the general and security exceptions contained in the chapter.

132. Article Definitions defines some key terms used in the chapter.

133. Article Scope applies the chapter to measures of the Parties affecting all trade enabled by electronic means, establishes an interpretative hierarchy in case of inconsistency with the Annex Financial Services and exempts audio-visual services from the chapter's scope.

134. Article General Provisions establishes the general framework in which the chapter operates, outlining some general principles.

135. Article Right to Regulate reaffirms the right to regulate within the area of electronic commerce and in conformity with the chapter.

136. Article Customs Duties bans the imposition of customs duties on electronic transmissions on a permanent basis. This article reinforces the WTO principle of the “moratorium on customs duties related to electronic commerce”.

137. Article Electronic Authentication, Trust Services and Contracts by Electronic Means contains rules on the legal effect and validity of electronic documents and related items.

138. Article Paperless Trade Administration requires the Parties to make all trade administration documents publicly available in electronic form and to accept their legal equivalence with paper documents.

139. Article Open Internet Access requires each Party to adopt or maintain measures to ensure that end-users are able to

- Access, distribute and use services and applications of their choice available through the Internet;
- connect devices of their choice to the Internet; and
- have access to information on the network management practices of their Internet access service supplier.

140. Article Online Consumer Trust requires each Party to adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions. It further recognises some general principles for the functioning of consumer protection agencies and the importance of promoting effective policy frameworks relating to consumer product safety.

141. Article Unsolicited Commercial Electronic Messages commits the Parties to adopt or maintain measures to prevent spam messages and provide access to recourse against non-compliant suppliers of such messages.

142. Article Cross-border Data Flows outlaws certain restrictions to the principle of free cross-border data flows, containing a bilateral exceptions clause for Norway and the partner country for any action they consider necessary for the protection of their respective essential security interests. The article is subject to review under the Joint Committee.

143. Article Protection of Personal Data and Privacy classifies the issue as a fundamental right and commits the Parties to adopt or maintain safeguards it deems appropriate to ensure a high level of protection.

144. Article Electronic Payments and Invoicing recognises the pivotal role of electronic payments for e-commerce and contains an affirmation of relevant principles for the development of efficient, safe and secure cross-border electronic payments and e-invoicing.

145. Article Transfer of or Access to Source Code prohibits to require the transfer of, or access to source code of software or parts thereof, subject to specific exceptions.

146. Article Cooperation on Electronic Commerce provides scope for cooperation between the Parties on regulatory issues related to electronic commerce.

147. Article General Exceptions incorporates the relevant GATT and GATS articles *mutatis mutandis* (described in paragraph 82 above).

148. Article Security Exceptions incorporates the relevant GATT and GATS articles *mutatis mutandis* (described in paragraph 82 above).

XII. Chapter on Intellectual Property Rights

149. The intellectual property (IP) part of the Agreement is contained within a chapter, an annex and an appendix. The aim is to ensure adequate, effective and non-discriminatory protection of intellectual property rights (IPR). Compared to the multilateral minimum standards under the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other relevant international treaties, the FTA improves certain standards of protection and increases legal certainty. By doing so, the texts contribute to enhancing the framework conditions for trade and investment between the Parties.

150. The chapter contains one article Protection of Intellectual Property, setting out that the Parties shall grant and ensure adequate, effective and non-discriminatory protection of IPR and provide for measures for the enforcement of such rights against infringement thereof. Moreover, the principles of national treatment (NT) and most favoured nations (MFN) are provided for, in accordance with the relevant provisions of the TRIPS Agreement. The article also includes a provision on reviewing the IP provisions of the FTA.

151. Finally, the article contains a review clause, with the aim of, inter alia, further improving the levels of protection and avoiding and remedying trade distortions.

a. Annex on Protection of Intellectual Property

152. Section I, General Provisions, of the annex contains three articles:

153. Article Definition of Intellectual Property defines the term "intellectual property" for the purpose of the Agreement.

154. In the article International Conventions the Parties reaffirm their obligations set out under several international conventions, including TRIPS and several treaties administered by the World Intellectual Property Organisation (WIPO) which they have ratified or acceded to and are incorporated into the Agreement *mutatis mutandis*. The article lists additional agreements, which the Parties agree to ratify or accede to or comply with the substantive provisions thereof.

155. This article further sets out that the annex shall be without prejudice to the Doha Declaration on the TRIPS Agreement and Public Health.

156. Article Genetic Resources and Traditional Knowledge reaffirms the Parties' sovereign rights over their natural resources. The Parties recognise their respective rights and obligations as established by the Convention on Biological Diversity, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, the International Treaty on Plant Genetic Resources for Food and Agriculture and other relevant international agreements, to which they are a Party, related to genetic resources and associated traditional knowledge.

157. Section II, Standards Concerning the Availability, Scope and Use of Intellectual Property Rights is divided into seven articles, each dealing with substantive obligations relating to a specific IPR.

158. Article Copyright and Related Rights, builds upon existing international obligations incorporated into the agreement through the article on International Conventions. The article further focuses on phonograms, videograms and broadcasting organisations where international standards are not as developed as in other areas of copyrights and related rights. Articles 11, 12, 13 and 14 of the WIPO Performances and Phonograms Treaty (WPPT), are incorporated and applied *mutatis mutandis* to producers of videograms; ensuring a high standard of exclusive rights to Broadcasting Organisations (BCOs) as regards rebroadcasting, reproduction and retransmission; a protection term of 50 years granted to producers of videograms; and a term of 20 years to broadcasting organisations.

159. Article Trademarks sets out that the Parties shall grant adequate and effective protection of trademarks for goods and services. Further, that article sets out the rights granted to owners of registered trademarks, including for well-known trademarks. In this regard, the article ensures that for well-known trademarks the protection shall not be limited to identical or similar goods or services.

160. The article reaffirms the importance of the principles contained in WIPO Joint Recommendations.⁴

161. Finally, the article ensures that the Parties shall provide the legal means for trademark owners to require a publisher of a reference work, such as a dictionary, to include a note mentioning the fact that it is a registered trademark.

162. Article Patents, in line with the TRIPS Agreement, ensures that patents are available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Further, the article

⁴ Specifically the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 1999, and the WIPO Joint Recommendation Concerning Provisions on the Protection of Marks and other Industrial Property Rights in Signs, on the Internet, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 2001

sets out that importation and offering on the market of a product shall be deemed to be “working of the patent” in the country of importation.

163. As regards allowable exclusions from patentability, the article adopts the standard to patentability of inventions, products or processes set out in the European Patent Convention.

164. The article addresses procedural elements relating to amendments, corrections and observations of patent applications. Moreover, the Parties recognise the benefits of transparency in the patent system and included provisions to that effect.

165. Finally, the article includes a provision on compensatory terms of protection for pharmaceuticals and plant protection products.

166. Article Undisclosed Information addresses protection of undisclosed test or other data submitted as a condition of obtaining marketing authorisation of pharmaceutical or plant protection and biocidal products. The article requires such data to be protected against unfair commercial use. In addition, the article provides that the Parties shall protect such data against disclosure, except where necessary to protect the public or unless steps are taken to ensure that the data are protected from unfair commercial use. The article sets a number of timelines during which time undisclosed test data or other data submitted cannot be relied upon by a third party.

167. Finally, the article allows reliance or reference to relevant data to avoid unnecessary duplication of tests of plant protection and biocidal products involving vertebrate animals, provided that the first applicant is adequately compensated.

168. Article Industrial Designs aims at ensuring effective protection of industrial designs for at least 25 years in total but permitting for shorter periods of time for component parts used for the repair of a product.

169. Article Geographical Indications (GIs) provides that the Parties shall ensure adequate and effective means to protect geographical indications with regard to all goods. The article defines the meaning of GIs. Moreover, and without prejudice to article 23 of the TRIPS Agreement, it also addresses rights of interested parties to prevent misleading use of indications of geographical origin of goods or use which constitutes an act of unfair competition within the meaning of article 10*bis* of the Paris Convention. This article also ensures that Parties ought to provide legal means for interested parties to prevent the use of a GI for agricultural product and foodstuffs for identical or comparable goods not originating in the place indicated by the designation in question.

170. The article further requires the Parties to provide, in the context of trademark registrations, for opposition or invalidation processes when such a mark contains or consists of a GI of a Party with respect to goods not originating in the indicated territory and when it is misleading the public of the true place of origin of the goods.

171. Article Indications of Source and Country Names seeks to ensure adequate and effective protection of indications of source, names, armorial bearings and flags of countries about all goods and services.

172. Section III, Acquisition and Maintenance of Intellectual Property Rights provides that where the acquisition of an intellectual property right is subject to the right being granted or registered, the Parties shall ensure that the procedures for granting, or registration are at least the same level as that provided in the TRIPS Agreement.

173. Section IV, Enforcement of Intellectual Property Rights, deals with IPR enforcement, including border enforcement and civil and criminal measures. It also includes an article on cooperation.

174. In the article General it is stated that the Parties shall ensure enforcement provisions that are at least at the same level as what is provided for in the TRIPS Agreement.

175. Article Suspension of Release seeks to set out the scope of border enforcement procedures that are to be available in the context of suspending the release of goods into a Party. This includes permitting the authorities to act upon their own initiative. The Parties are permitted to exclude small quantities of goods contained in a traveller's personal luggage or sent in small consignments, not amounting to commercial scale import or export, from the article.

176. Article Right of Inspection seeks to ensure that an applicant for suspension of goods or other persons involved can inspect the relevant goods. In this context, the article addresses the procedure of examining goods and sharing samples of the goods with right holders.

177. Article Provisional Measures and Injunctions seeks to ensure that judicial authorities have the authority to order prompt and effective provisional measures; both, for the purpose of preventing the infringement of an IPR, as well as to preserve evidence with regard to the alleged infringement.

178. The article further requires Parties to ensure that in civil judicial proceedings a Party may be ordered to desist from an infringement, including to prevent entry of goods that involve the infringement of an IP right, into the channels of commerce.

179. Article Removal from Commerce requires that judicial authorities have the competence to remove infringing goods from commerce or order their destruction.

180. Article Civil Remedies seeks to ensure that right holders have access to civil judicial procedures concerning the enforcement of any IPR covered by the annex.

181. Article Criminal Remedies requires that a Party provides for criminal procedures and penalties for willful IPR infringement on a commercial scale.

182. Article Security or Equivalent Assurance provides that competent authorities shall be permitted to require, in justified cases, the provision of a security or equivalent assurance.

183. Article Final Judicial and Administrative Decisions seeks to ensure that final judicial and administrative decisions relating to IPR are in writing and contain both findings of fact and the reasoning of legal basis of the decisions, and that such decisions are published or otherwise made publicly available.

184. Article Cooperation in the Field of Intellectual Property reflects the importance of IPR and the Parties' willingness to enhance cooperation within that area.

XIII. Chapter on Government Procurement

185. All EFTA States and Moldova are Parties to the WTO Government Procurement Agreement (GPA), which EFTA therefore proposes to incorporate *mutatis mutandis* into the Agreement.

186. The Parties shall co-operate in the Joint Committee with the aim to increase their understanding of their respective procurement systems and achieve further liberalisation, as well as share information on the Parties' domestic laws, regulations, and practices in this field.

187. Article Sustainable Public Procurement recognises the importance of promoting sustainable procurement and allows Parties to include environmental, labour and social considerations in their procurement procedures if they are non-discriminatory. The Parties shall also take appropriate measures to ensure compliance with environmental, labour and social considerations, in particular the ones included in the chapter on Trade and Sustainable Development.

188. Article Facilitation of Participation of SMEs encourages the Parties to facilitate the participation of SMEs in public procurement, i.e. by sharing information and best practices.

189. An article Further Negotiations provides for further negotiations if a Party grants additional market access to a non-party with a view to extending these benefits to the EFTA States and Moldova on a reciprocal basis.

190. The market access in the WTO GPA is proposed to be incorporated *mutatis mutandis* into the free trade agreement. In the Annex Government Procurement EFTA therefore proposes to explore additional market access on a reciprocal basis reflecting possible commitments beyond the WTO GPA in the free trade agreement between them. The proposed Annex Government Procurement consists of two Appendices, one on market access for Public Work Concessions describing the additional market access offered by the EFTA States to Moldova on a reciprocal basis. A second appendix provides contact points in the EFTA States and in Moldova to facilitate discussions between the Parties.

XIV. Chapter on Competition

191. EFTA's proposed chapter on competition provides for disciplines, which ensure that trade liberalisation will not be impaired by anti-competitive practices of private or public undertakings that may prevent, restrict, or distort competition.

192. Article Rules of Competition provides the scope of the competition chapter.

193. The article proscribes the practices of enterprises which are incompatible with the EFTA-Moldova FTA in so far as they may affect trade between the Parties, namely:

- agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or effect the prevention, restriction, or distortion of competition; and
- abuse by one or more enterprises of a dominant position in a Party as a whole or in a substantial part thereof.

194. These rules also apply to the activities of public enterprises, and enterprises to which the Parties grant special or exclusive rights, in so far as the application of these provisions does not obstruct the performance of the particular public tasks assigned to them.

195. The competition chapter shall be without prejudice to the autonomy of each Party to develop, maintain and enforce its competition laws and regulations and it shall not create any direct obligations for enterprises.

196. Article Cooperation sets out the legal framework for cooperation among the Parties on anti-competitive practices. Such cooperation may include the exchange of pertinent information; however, no Party shall be required to disclose information that is confidential according to its domestic laws and regulations.

197. Article Consultations provides for consultations in the Joint Committee, if an anti-competitive practice continues to affect trade after cooperation or consultations in accordance with the article on cooperation. The Parties concerned shall provide the Joint Committee with all the support and available information in order to examine the case and, where appropriate, eliminate the practice objected to. Within 60 days from the receipt of the request, the Joint Committee shall examine the information provided in order to facilitate a mutually acceptable solution.

XV. Chapter on Trade and Sustainable Development

198. The chapter proposed builds on international commitments of the Parties undertaken in the competent multilateral fora. It addresses trade- and investment-related aspects of labour and environmental standards.

199. Article Context and Objectives refers to key international instruments in sustainable development and underlines the interdependence between economic development, social development, and environmental protection. The Parties commit to promote the development of international trade and investment, as well as their preferential economic relationship, in a manner that is beneficial to all and that contributes to sustainable development.

200. Article Right to Regulate and Levels of Protection underlines the Parties' right to set their own levels of environmental and labour protection and requires that the Parties seek to further improve them.

201. Article Upholding Levels of Protection in the Application and Enforcement of Laws, Regulations and Standards requires the Parties to effectively enforce their labour and environmental laws, regulations and standards. Furthermore, it requires the Parties not to weaken or reduce the existing levels of labour and environmental protection with the intention to seek a competitive trade advantage, or to waive or derogate from corresponding laws, regulations or standards, to encourage investment from another Party or seek a competitive trade advantage.

202. Article International Labour Standards and Agreements recalls the obligations of the Parties deriving from membership of the ILO. Those are notably to promote, realise and respect the ILO's fundamental principles and rights at work, to effectively implement the ILO conventions that they have ratified and to work towards ratifying other Conventions categorised as "up-to-date" by the ILO. The article also includes commitments about ILO's Decent Work Agenda such as developing measures for social protection and decent working conditions for all. The Parties shall also ensure that administrative and juridical proceedings are accessible to permit effective action to be taken against infringements of labour rights referred to in the provision.

203. In article Inclusive Economic Development and Equal Opportunities for All the Parties acknowledge the importance of incorporating a gender perspective in the promotion of inclusive economic development. They reaffirm their commitment to implement international agreements pertaining to gender equality or non-discrimination to which they are a party.

204. Article Multilateral Environmental Agreements (MEAs) and International Governance reaffirms the Parties' commitment to effectively implement the MEAs that they have ratified. The article also stresses the mutual supportiveness between trade and environment policies.

205. Article Sustainable Forest Management and Associated Trade recognises the importance of ensuring conservation and sustainable management of forests with the aim to reduce greenhouse gas emissions and loss of biodiversity resulting from deforestation and forest degradation. It foresees commitments *inter alia* to ensure effective forest law enforcement and governance; promote trade in products that derive from sustainably managed forests and related ecosystems; implement measures to prevent and combat illegal logging, as well as to promote the development and use of legality assurance instruments to ensure that only legally sourced timber and products thereof are traded between the Parties.

206. Article Trade and Climate Change underlines the importance of pursuing the objectives of the United Nations Framework Convention on Climate Change and the Paris Agreement to address the threat of climate change, and the role of trade and investment in pursuing these objectives. It contains commitments to effectively implement these instruments and to promote the transition to a low-carbon-economy and to a climate-resilient development within the context of trade.

207. Article Trade and Biological Diversity underlines the importance of the conservation and sustainable use of biological diversity, and the role of trade in pursuing these objectives. It contains commitments to effectively implement measures to combat transnational organised wildlife crime, to enhance efforts to prevent or control the introduction and spread of invasive alien species in connection with trade activities and to promote the inclusion of animal and plant species in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

208. Article Trade and Sustainable Management of Fisheries and Aquaculture underlines the importance of ensuring the conservation and sustainable management of living marine resources and ecosystems, and the role of trade in pursuing these objectives. It includes commitments to implement measures and policies to combat illegal, unreported, and unregulated fishing, to promote the use of relevant international guidelines and instruments, and to fulfil the aims set out in the United Nations 2030 Agenda for Sustainable Development concerning fisheries subsidies. The Parties also commit to promote the development of sustainable and responsible aquaculture.

209. Article Trade and Sustainable Agriculture and Food Systems underlines the importance of sustainable agriculture and food systems, and the role of trade in achieving this goal. Reiterating the Parties' commitment to achieve the 2030 Sustainable Development Goals, the article includes commitments to promote sustainable agriculture and food systems, to conduct a dialogue on their respective priorities and to report on progress made in achieving these objectives.

210. Article Promotion of Trade and Investment Favouring Sustainable Development underlines the role of trade and investment in promoting sustainable development. Specific undertakings by the Parties on the promotion of investment and trade contributing to sustainable development, sustainability certification schemes, and sustainable procurement practices are included. The Parties also undertake to address non-tariff barriers to trade in goods and services contributing to sustainable development.

211. Article Responsible Business Conduct foresees a commitment to promote responsible business conduct and refers in this context to examples of relevant internationally recognised principles and guidelines, notably the ones of the OECD, the ILO, and the UNO.

212. Article Cooperation foresees that the Parties strengthen their cooperation under the Chapter bilaterally and in international fora. It also opens the possibility of inviting social partners and other relevant stakeholders to identify possible areas of cooperation.

213. Article Implementation and Consultations foresees the possibility for the Parties to hold consultations in the Joint Committee and to use some of the mechanisms inscribed in the chapter on Dispute Settlement (good offices, conciliation, mediation, consultations, but not arbitration) for any matter arising under the chapter. In this context, the Parties may seek advice from relevant organisations, bodies or experts. The Parties are further required to provide their stakeholders with the opportunity to share comments and make recommendations on the implementation of the chapter.

214. If a dispute cannot be solved through the abovementioned mechanisms, article Panel of Experts provides for the possibility to establish a panel of experts competent to issue a report with recommendations towards the resolution of any matter or dispute. The panel's report shall be made publicly available and follow-up actions shall be monitored by the Joint Committee.

215. Article Review foresees a periodic review of the chapter in the Joint Committee, considering the Parties' respective participatory processes and institutions, as well as relevant international developments for possible further action.

XVI. Chapter on Legal and Horizontal Issues, including Dispute Settlement

a. Institutional Provisions

216. EFTA's proposed chapter on institutional provisions establishes a framework for cooperation between the Parties, namely a Joint Committee, which reviews the implementation and operation of the Agreement and further develops and expands it as deemed appropriate.

217. Article Joint Committee establishes the EFTA-Moldova Joint Committee, comprising representatives from the EFTA States and Moldova, in order to ensure the proper functioning and implementation of the FTA. The competences of the Joint Committee are, in particular, to supervise and review the implementation of the EFTA-Moldova FTA, to keep under review the possibility of further removal of barriers to trade and other restrictive measures concerning trade between the Parties, to oversee any further elaboration of the Agreement and to endeavour to resolve disputes that may arise regarding the interpretation or application of the Agreement. To this end, the Joint Committee may decide to establish sub-committees and working groups. The Joint Committee may further consider and recommend amendments to the EFTA-Moldova FTA to the Parties and decide to amend any Annexes or Appendices to the Agreement. It shall take decisions and make recommendations by consensus.

Final Provisions

b. Dispute Settlement

218. EFTA's proposed chapter on dispute settlement is based on the principles and rules of the WTO Dispute Settlement Understanding. It establishes procedures allowing for consultations and amicable solutions in the Joint Committee, and for arbitration in the event of disputes, which the Parties have not been able to resolve.

219. Article Scope and Coverage sets out that the chapter applies to the settlement of any disputes concerning the interpretation or application of the EFTA-Moldova FTA. The provision further foresees that disputes regarding the same matter arising under both the Agreement and the WTO Agreement, the complaining Party may decide to settle it either in the WTO or under the EFTA-Moldova FTA.

220. Article Good Offices, Conciliation or Mediation provides the Parties to the dispute with the opportunity of alternative proceedings involving good offices, conciliation and mediation, if they agree. Such proceedings may begin and, upon request of a party to the dispute, be terminated at any time. They may further continue in parallel with proceedings of an arbitration panel established in accordance with the chapter on dispute settlement.

221. Article Consultations states that the Parties shall make every attempt through cooperation and consultations to reach a mutually satisfactory solution of any matter concerning the interpretation or application of the Agreement. It sets out the proceedings and deadlines for the formal consultation to be held in the Joint Committee before the complaining Party may request the establishment of an arbitration panel in accordance with article Establishment of Arbitration Panel. Consultations shall be confidential and without prejudice to the rights of the Parties to the dispute in any other proceedings.

222. Article Establishment of Arbitration Panel provides that the complaining Party may request the establishment of an arbitration panel if the dispute may not be resolved through consultations within 60 days (or 30 days in urgent matters) from the receipt of the consultation request by the Party complained against. A copy of the request will be shared with the other Parties, which are not involved in the dispute so they may decide whether to participate in the arbitration process. The other Parties may participate through written submissions to the arbitration panel, receive written submissions from the Parties to the dispute, attend hearings and make oral statements.

223. The arbitration panel will consist of three members who will be appointed in accordance with the Permanent Court of Arbitration Rules 2012 (PCA Rules 2012).

224. According to article Procedures of the Arbitration Panel, the procedures shall be governed by the PCA Rules 2012 too. The language of the panel proceedings will be English, and the hearings of the arbitration will take place in The Hague and be open to the public, unless the Parties to the dispute agree otherwise. The panel will take decisions by majority vote but will not disclose which members are associated with majority or minority opinions.

225. Article Panel Reports foresees that the arbitration panel submits an initial report containing its findings and rulings to the Parties to the dispute for their consideration within 90 days from the date of establishment of the arbitration panel. The arbitration panel should then produce and communicate to all Parties a final report within 30 days from the receipt of the initial report. Unless the Parties to the dispute decide otherwise, the final report will be made public. The panel's ruling is final and binding for the Parties to the dispute.

226. Article Suspension or Termination of Arbitration Panel Proceedings provides that an arbitration panel may suspend the proceedings for a maximum of 12 months, if the Parties to the dispute agree. A complaining Party may withdraw its complaint at any time before the initial report has been issued. Further, the Parties to the dispute may agree at any time to terminate the arbitration panel proceedings.

227. Article Implementation of the Final Panel Report obliges the Party complained against to promptly comply with the ruling in the final report and to provide the complaining Party

with a notification and a detailed description of how the measure ensures compliance with the panel's ruling. In case of disagreement as to the existence of a measure complying with the ruling in the final report or to the consistency of that measure with the ruling, the arbitration panel will, upon request of either party to the dispute, decide about the disagreement.

228. Article Compensation and Suspension of Benefits provides that the complaining Party may suspend the application of benefits granted under the EFTA-Moldova FTA if the Party complained against does not comply with the arbitration panel's ruling and consultations with the complaining Party do not result in a mutually acceptable solution. Such suspended benefits must be equivalent to the benefits affected by the measure that the arbitration panel has found to be inconsistent with the Agreement (i.e., benefits in the same sector as that affected by the disputed measure) and compensation and suspension of benefits shall be temporary (i.e. only applied until the measure found to be inconsistent with the Agreement has been withdrawn or amended to bring it into conformity with the Agreement).

229. Article Time Periods sets out that any time period in the chapter may be extended by mutual agreement of the Parties to the dispute or, upon request of a Party, by the arbitration panel.

230. Article Costs provides that the Parties to the dispute will bear the arbitration costs in equal shares and that each Party to the dispute will bear its own legal and other costs.

c. Final Provisions

231. EFTA's proposed chapter on final provisions sets out horizontal rules regarding the entry into force, amendments and accession to the FTA.

232. Article Annexes and Appendices sets out that Annexes and Appendices constitute an integral part of the EFTA-Moldova FTA.

233. Article Amendments foresees that any Party may submit proposals for amendments to the Agreement to the Joint Committee for consideration and recommendation. Amendments are subject to domestic ratification, acceptance or approval procedures of the EFTA States and Moldova. Unless otherwise agreed, amendments shall enter into force on the first day of the third month following the date on which at least one EFTA State and Moldova have deposited their instrument of ratification, acceptance or approval with the Depositary of the Agreement. The article also provides that a Party may provisionally apply the EFTA-Moldova FTA, subject to its domestic legal requirements.

234. Article Accession regulates the accession of a new EFTA State to the Agreement, subject to the terms and conditions agreed on by the Parties and the acceding State.

235. Article Withdrawal and Expirations provides that a Party may withdraw from the EFTA-Moldova FTA by means of a written notification to the Depositary. If Moldova withdraws, the Agreement will expire when its withdrawal becomes effective. Further, any EFTA State, which withdraws from the EFTA Convention, will also cease to be a Party to this Agreement.

236. Article Entry into Force stipulates that the Agreement is subject to ratification, acceptance or approval by the Parties. It further provides for a staggered entry into force, i.e. the Agreement will enter into force after at least one EFTA State and Moldova have ratified it.

237. Finally, article Depositary establishes the Government of Norway as Depositary.
