

FREE TRADE AGREEMENT BETWEEN THE EFTA STATES AND MEXICO

SERVICES ASPECTS

Joint information from the EFTA States and the United Mexican States

This information is submitted in accordance with the “Standard Format for Information on Economic Integration Agreements on Services” as taken note of by the Committee on Regional Trade Agreements at its meeting on 2 May 1997.

To facilitate the examination by the Members, the relevant provisions on trade in services have been identified in this information. The full text of the Agreement, where these provisions can be found, in their original version, is available at the WTO Secretariat, on the EFTA web-site www.efta.int, in the EFTA States (input from the EFTA States, in Switzerland is published in French in Feuille Fédérale 2001/1744 (text and message) and FF 2001/2819 (decision)), and is published in the Mexican Gazette (Diario Oficial de la Federación) 29/junio/2001.

I. BACKGROUND INFORMATION ON THE AGREEMENT

1. Membership and dates of signature, ratification and entry into force

The Parties to the Agreement (hereinafter “the Agreement”) are the States of the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland) on the one hand, and the United Mexican States (hereinafter “Mexico”), on the other. The Agreement applies to the customs territories of the Parties.

The Agreement and the bilateral arrangements were signed on 27 November 2000 in Mexico City and entered into force on 1 July 2001.

The Agreement and the bilateral agricultural arrangements, as the instruments creating the Free Trade Area between the EFTA States and Mexico, were notified 25 July in accordance with Article XXIV:7(a) of GATT 1994 and Article V:7(a) of the GATS.

2. Type of agreement

The Agreement provides for a progressive and reciprocal liberalisation of trade in services in accordance with Article V of the General Agreement on Trade in Services (hereinafter “GATS”) or of GATS (Article 1 of the Agreement), the progressive liberalisation of investment (Article 1), ensuring an adequate and effective protection of intellectual properties rights (Article 1/69) and the establishment of a dispute settlement mechanism (Articles 71 to 78).

3. Scope

As regards the services sector, the Agreement covers in principle all services sectors with the exception of air transport, and all modes of delivery (supply). The Agreement contains separate sections on maritime and financial services.

II. PROVISIONS AFFECTING TRADE IN SERVICES

1. (a) Provisions in the Agreement which are relevant to the scope of the GATS:

- Chapter I – “General provisions”: Article 1 – Objectives
- Chapter III – Section I “Trade in Services”, Section II “Maritime transport”, Section III “Financial Services”, Section IV “General exceptions”, Section V “Investment”, Section VI “Balance of payments difficulties”
- Chapter VIII – “Dispute settlement”

(b) These provisions of the Agreement constitute a liberalisation of trade in services between the EFTA States, on the one part, and the United Mexican States, on the other part, in the sense of Article V, paragraph 1, given that:

- it provides for universal sectoral coverage of all service activities, subject to the exceptions under Article 19:2 (air transport), the specific exceptions to Financial Services under Article 43 and the general exceptions under Article 44. These exclusions are fully consistent with the exceptions provided for under the GATS Articles II, XIV and XIVbis and more particular with the Annex on Air Transport Services to the GATS, Article 1.3 and the Annex on Financial Services to the GATS, Article 2(a).
- it provides for the liberalisation of trade through all modes of supply: “cross border” trade, “consumption abroad”, “commercial presence” (with or without movement of natural persons) as well as “presence of natural persons” (Article 19:1).
- it provides for the absence or elimination of substantially all discrimination through elimination of existing discriminatory measures and prohibition of new or more discriminatory measures (see in particular Article 24:1)
- no later than three years following the entry into force of the Agreement, the Joint Committee shall adopt a decision providing for the elimination of the remaining discrimination between Parties in the regulated sectors and modes of supply; that decision shall contain a list of commitments and a liberalisation calendar for each Party. A transition period of 10 years (see Article 24:3 (a)) is foreseen.

(c) The EFTA States, on the one part, and the United Mexican States, on the other part, have negotiated their Schedule of Specific Commitments and list of MFN exemptions during the Uruguay Round. The entry into force of the Agreement did not imply any modification or amendment in these lists. The Agreement aims at facilitating trade between the Parties. No provisions of the Agreement aim at raising the level of restrictions of trade in services in respect of any other WTO Member.

2. Rules of origin

Article 20 of the Agreement contains the following definitions:

“commercial presence” means:

- (a) as regards nationals, the right to set up and manage undertakings, which they effectively control. This shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of another Party;
- (b) as regards juridical persons, the right to take up and pursue the economic activities covered by this Section by means of the setting up and management of subsidiaries, branches or any other form of secondary establishment.

“EFTA State juridical person” or **“Mexican juridical person”** means a juridical person set up in accordance with the laws of an EFTA State or of Mexico, respectively, and having its registered office, central administration, or principal place of business in the territory of an EFTA State or of Mexico, respectively.

Should the juridical person have only its registered office or central administration in the territory of an EFTA State or Mexico, respectively, it shall not be considered as an EFTA State or a Mexican juridical person, respectively, unless its operations possess a real and continuous link with the economy of an EFTA State or Mexico, respectively;

“national” means a natural person who is a national of one of the EFTA States or Mexico in accordance with their respective legislation;

“service supplier” of a Party means any person of a Party that seeks to provide or provides a service;

“subsidiary” means a juridical person that is effectively controlled by another juridical person.

“territory” means the geographical area referred to in paragraph 1 of Article 2.

3. Standards/Recognition

Within three years following the entry into force of this Agreement, necessary steps shall/will be taken for the negotiation of agreements providing for mutual recognition of qualifications and other regulations for the purpose of the fulfilment of the criteria applied for the authorisation, licensing, operation and certification of service suppliers, and, in particular, professional services (Article 26). Any such Agreement shall be in conformity with the relevant provisions of the WTO and, in particular, Article VII of the GATS.

4. Safeguards

Where a Party is in serious balance of payments difficulties, it may adopt restrictive measures with regard to transfers and payments relating to services and investment. (Article 50, cf. GATS Article XII.)

5. Subsidies and State-aid

Subsidies related to trade in services shall not be covered under Section III. The Parties shall pay particular attention to any disciplines agreed under the negotiations mandated by Article XV of the GATS with a view to their incorporation into this Agreement. (Article 19:5).

6. Government Procurement

Nothing provided in respect of the progressive liberalisation of the trade in services will be construed to impose any obligation with respect to government procurement (Article 19:4).

7. Sector-Specific Provisions

Maritime Transport/Financial Services

Chapter III, section II and section III of the Agreement govern the Maritime Transport and the Financial Services, respectively unless otherwise specified (Article 19:3).

III. GENERAL PROVISIONS OF THE AGREEMENT

1. Exceptions and reservations

Exceptions are provided for under Article 43 (specific for financial services) and Article 44 (general exceptions).

2. Accessions

According to Article 82 of the Agreement, any State may, upon invitation by the Joint Committee, become a Party to the Agreement. The terms and conditions are subject to an agreement between the Parties and invited States.

3. Dispute settlement procedures

The Agreement includes an arbitration procedure for disputes between the Parties relating to the understanding and interpretation of the Agreement (Articles 71-78). In a first step, the Agreement provides for consultations between the Parties. Disputes, which have not been settled within 45 days after consultations, may be subject to arbitration by means of written notification from one Party to the other. Provisions on the constitution and functioning of the arbitration panel are provided for in the Agreement. The panel is to settle the dispute in accordance with international law and the decisions of the arbitration panel are binding upon the Parties to the dispute.

Any dispute regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in either forum at the discretion of the complaining Party (Article 77).

5. Institutional framework

The Agreement establishes a Joint Committee which is to supervise and administer the Agreement. Information shall be exchanged and consultations can be held within the Joint Committee. The Joint Committee can take decisions in cases provided for by the Agreement or make recommendations. The Joint committee is to keep under review the removal of further barriers to trade between the EFTA States (Article 70).

The Section on Financial Services establishes a Sub-Committee on Financial Services (Article 40).

IV. OTHER

The full text of the Agreement is available from:

- the WTO Secretariat¹
- the EFTA Secretariat
- the EFTA States
- the United Mexican States (www.economia.gob.mx)

¹ The Agreement has been circulated in document WT/REG126/1.