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附件：如文（共107頁），請至本局附件下載區下載：<http://gdd.trade.gov.tw>

主旨：有關WTO區域貿易協定委員會(CRTA)將審查歐洲自由貿易區(EFTA)會員國與韓國自由貿易協定案，檢送該協定全文、WTO秘書處針對該協定製作之事實報告（貨品與服務）及各單位業務分工表各1份（如附件1、2、3），請 查照惠復。

說明：

- 一、依據我國常駐世界貿易組織代表團本(97)年12月19日世貿字第0970001159號函（如附件4）辦理。
- 二、CRTA預定於明(98)年3月舉行第52次例會審查旨述協定，WTO秘書處已公布旨述FTA事實報告(WT/REG217/2)，並請會員於明年1月23日提出書面問題。倘 貴單位欲對旨述FTA提出任何意見，惠請於明年1月16日前回覆本局，俾憑彙辦。
- 三、另旨述協定相關資料惠請逕至EFTA官方網站查詢，網址<http://www.efta.int/content/free-trade/fta-countries/the-republic-of-korea>。

正本：外交部、行政院農業委員會、行政院公共工程委員會、行政院公平交易委員會、行政院衛生署、行政院經濟建設委員會、行政院勞工委員會、行政院環境保護署、行政院金融監督管理委員會、國家通訊傳播委員會、法務部檢察司、財政部關稅總局、經濟部貿易調查委員會、經濟部工業局、經濟部標準檢驗局、經濟部智慧財產局、經濟部投資業務處、中華民國全國工業總會貿易發展委員會、本局雙邊貿易一組、本局雙邊貿易二組、本局貿易服務組

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**Committee on Regional Trade Agreements**

**FACTUAL PRESENTATION**

**Free Trade Agreement between  
the EFTA States and Korea  
(Goods and Services)**

**Report by the Secretariat**

This report, prepared for the consideration of the Free Trade Agreement between the EFTA States and Korea has been drawn up by the WTO Secretariat on its own responsibility and in full consultation with the Parties. The report has been drawn up in accordance with the rules and procedures contained in the Decision for a Transparency Mechanism for Regional Trade Agreements (WT/L/671).

Any technical questions arising from this report may be addressed to Ms. Juneyoung Lee (tel: +41 22 739 6791).

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| EFTA: | European Free Trade Association                                    |
| SACU: | Southern African Customs Union                                     |
| APTA: | Asia Pacific Trade Agreement                                       |
| GSTP: | Global System of Trade Preferences                                 |
| PTN:  | Protocol relating to Trade Negotiations among developing countries |

## G. GOVERNMENT PROCUREMENT

158. Chapter 6 reaffirms the Parties' rights and obligations in respect of government procurement under the WTO Agreement on Government Procurement (GPA) of which they are all Members (Article 6.1.1). Any liberalization concluded bilaterally between the Parties of their respective government procurement markets in the negotiations on the GPA, including provisions from the agreement amending the main part of the GPA in so far as they are relevant, shall be included in the Agreement. The Joint Committee shall take a decision to this effect within three months after conclusion of these bilateral negotiations. This decision shall be subject to ratification or acceptance by the Parties (Article 6.3). The Parties provide for the possibility of entering into negotiations in the case that after the entry into force of the Agreement, a Party grants additional market access on government procurement to a non-Party. The negotiations shall be conducted on a reciprocal basis (Article 6.3.2). Annex XII lists contact points of the Parties providing information on the rules and regulations on the respective government procurement regimes.<sup>39</sup>

## H. INTELLECTUAL PROPERTY RIGHTS

159. Recognizing the growing importance of intellectual property rights as a factor in social, economic and cultural development, Chapter 7 on intellectual property consists of three Articles and related Annex XIII containing seven Articles. The Parties reaffirm their obligation under the WTO TRIPS Agreement<sup>40</sup>, the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works (Article 1.1, Annex XIII). The Chapter restates national and MFN treatment obligations referring explicitly to Articles 3-5 of the TRIPS Agreement (Articles 7.1.2 and 7.1.3). The Parties that are not party to certain multilateral agreements (see Table VI.3) must ratify or accede to, or apply the substantive standards of these agreements, at the latest by 2008 (Article 1.2, Annex XIII). Korea plans to ratify or accede to those agreements by the end of 2008.

Table VI.3

|               | WIPO Performances and Phonograms Treaty | WIPO Copyright Treaty               | International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) |
|---------------|---|-------------------------------------|---|
| Iceland       | Not party yet                           | Not party yet                       | Entered into force on 15 June 1994  |
| Liechtenstein | Entered into force on 30 April 2007     | Entered into force on 30 April 2007 | Entered into force on 12 October 1999   |
| Norway        | Not party yet                           | Not party yet                       | Entered into force on 10 July 1978  |
| Switzerland   | Entered into force on 1 July 2008       | Entered into force on 1 July 2008   | Entered into force on 24 September 1993   |
| Korea         | Not party yet                           | Entered into force on 24 June 2004  | Not party yet   |

Source: WTO Secretariat based on information at <http://www.wipo.int>.

<sup>39</sup> For the EFTA States: Iceland – the Ministry of Finance; Liechtenstein – the Office of Foreign Affairs; Norway – the Ministry of Modernization; and Switzerland – the State Secretariat for Economic Affairs. For Korea: the Ministry of Strategy and Finance.

<sup>40</sup> The Chapter specifically mentions the reference of the TRIPS Agreement Article 3 (national treatment); Article 4 (MFN treatment); Article 5 (multilateral agreements on acquisition or maintenance of protection); Articles 27.1 and 27.2 (patent); Article 39 (undisclosed information); Articles 41 and 61 (enforcement of intellectual property rights); and Article 62 (acquisition and maintenance of intellectual property rights).

and wholesale trade in used cars and in gaseous fuels and related products. In addition, mode 2 which was unbound for market access has been bound and the requirement of an economic needs test under mode 3 have been removed for four services<sup>27</sup> with an indication of the main criteria for the test.

81. For educational services, for which Korea has no commitments in the GATS, it has taken commitments in certain higher and adult education services with a number of limitations. The institutions that are allowed to provide these services pursuant to the commitments are listed in attachments 1 and 2 to its services schedule under the Agreement.

82. For environmental services, Korea has taken commitments in sewage, refuse disposal as well as certain other environmental services. These go further than its GATS commitments in so far as an economic needs test and quantitative restrictions under mode 3 are not listed.

83. For financial services, like in the GATS Korea has commitments across a broad range of insurance and banking services. Commitments are typically unbound in modes 1 and 2, except for reinsurance-retrocession and for some insurance services. Mode 3 limitations under market access include restrictions on recruitment and employment of insurance professionals, residency requirement for top executive personnel, and pre-notification for representative offices.

84. For tourism and travel related services, it has replicated its GATS commitments (i.e. on travel agencies and tour operators services) while adding beverage serving services without entertainment (CPC 6431) under the sub-sector of hotels and restaurant and abolishing mode 3 limitations on market access for tourist guide services. For recreational sporting services which are uncommitted to under its GATS schedule, it has taken commitments in entertainment services provided by individual artists or groups such as musical, theatre, live bands and opera, etc.

85. In transport services, various commitments have been taken in international maritime transport, maritime auxiliary services, air, rail, road, and pipeline transport, and services auxiliary to all modes of transport, storage and warehouse services other than those in ports. Sub-sectors in which commitments were taken and are uncommitted to in the GATS include: renting of vessels with crew; pushing and towing services; tally, measuring and survey services; maintenance and repair of aircraft; rail transport of passengers and freight; and pipeline transport (of oil products excluding LPG). No commitments were made for internal waterways transport; and space transport services as under its GATS schedule. For some sectors in which Korea has GATS commitments, better treatment is guaranteed: for example, under maritime transport, the cargo preference system in mode 1, and additional limitations under mode 3 have been removed. For a number of maritime auxiliary services, improvements have been made under mode 3 with respect to the type of legal entity required. Further improvements under modes 1 or 3 have been made in computer reservation system services; selling and marketing under air transport services; and freight forwarding for rail transport.

## 2. Iceland

### (a) Horizontal commitments

86. Iceland's horizontal limitations on market access for all sectors are similar to its GATS schedule, except that its GATS commitments require that all foreign investment and currency transfers be reported to the Central Bank of Iceland, while the Agreement requires this only for the latter. In contrast to the GATS schedule which contains equity ceilings for investment by non-residents in certain sectors unless an exemption is granted, the Agreement merely requires service providers to inform the Ministry of Commerce of such investment. Limitations on the acquisition of

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<sup>27</sup> These are: wholesale markets with floor space of more than 3,000m<sup>2</sup>; large stores with floor space of more than 3,000m<sup>2</sup>; wholesale trade centres; and foreign trade services.

75. Each party has complex commitments in different services, thus common trends across the Parties' schedules cannot be described. However, all the Parties have not committed in health related and social services under the Agreement. Each party scheduled its services liberalization as below.

**1. Korea**

**(a) Horizontal commitments**

76. Korea has provided greater market access under mode 3 on market access by permitting the acquisition of outstanding<sup>26</sup> stocks in two existing domestic companies (in energy and aviation) subject to restrictions, in contrast to its GATS schedule which prohibits acquisition of outstanding stocks of existing domestic companies, with the exception of foreign portfolio investment. Mode 4 commitments on market access match those in its GATS schedule except that the Agreement adds contractual service suppliers (employees of juridical persons) for 11 service-supplying activities, with a maximum period of stay of one year. The commitment may be subject to numerical ceilings. In addition, national treatment is unbound for this new category of suppliers.

**(b) Sector- specific commitments**

77. For business services, Korea has undertaken commitments in sub-sectors uncommitted to its GATS schedule in legal services; veterinary services; research and development (R&D) services in natural sciences; interdisciplinary research and development services; real estate services; leasing or rental services for personal or household goods; other management services under other business services; testing and analysis services for integrated mechanical and electrical systems; services incidental to manufacturing (consulting services related to manufacturing technologies of new products); placement services of personnel; surface surveying services (excluding cadastral survey); map-making services (excluding cadastral maps); building cleaning services; publishing (excluding newspapers and periodicals); and specialty design services. In a number of other sub-sectors, where it had GATS commitments, Korea has improved the level of treatment bound in: research and development services in social sciences and humanities; rental/leasing services without operator relating to ships; market research and public opinion polling services; consulting services related to agriculture and animal husbandry; services incidental to forestry excluding aerial fire fighting and disinfection; services incidental to mining; and packaging services. For these services, Korea provides full commitments, which for modes 1 and 2, are unbound under market access in its GATS schedule.

78. For communication services, like at the multilateral level Korea undertakes no commitments in postal services; motion picture projection; radio and television services; radio and television transmission services. However, it has taken commitments in courier services, a sector uncommitted to in its GATS schedule. Korea has replicated its GATS commitments in telecommunications in the Agreement with some improvements in mode 3: it has abolished the requirement for each service supplier to be a licensed Korean juridical person and relaxed the foreign ownership ceiling.

79. For construction services, the scope of commitments was broadened by the inclusion of renting services related to equipment for construction or demolition of buildings or civil engineering works with operator (CPC 518). Some market access limitations under mode 3 have been withdrawn (i.e. time limit on the validity of new licenses; limitations on the value of contracts; and a requirement to form joint ventures with licensed local companies).

80. Under distribution services, Korea took GATS plus commitments in mode 1 for market access by limiting its unbound commitments only to pharmaceuticals, medical goods, functional foods,

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<sup>26</sup> According to Korea, "outstanding" means "publicly issued and sold".

modes 1-3 commitments on national treatment, the Agreement does not have limitations except those unbound in its GATS schedule. In particular under mode 3, a specific government-recognized professional qualification for an individual or a juridical person (including branches) to establish a commercial presence was not inscribed in the Agreement, whereas the GATS requires the qualification. According to Liechtenstein, the professional qualification is still required. However, due to discussions in the framework of the GATS negotiations, Liechtenstein found it necessary to list this requirement explicitly.

(b) Sector-specific commitments

✓ 96. For business services, commitments under the Agreement match Liechtenstein's GATS commitment including for some professional services,<sup>28</sup> real estate services, rental/leasing services relating to ships and aircraft; and some other business services that continue to be unbound.<sup>29</sup> Like Iceland, Liechtenstein does not provide preferential treatment for Korean architects whereas Norway and Switzerland do. For communication services, there are no commitments in postal and courier services either in the GATS or under the Agreement. However, seven different basic telecommunication services have been bound under the Agreement and except mode 4 are fully liberalized. Commitments under the Agreement in enhanced/value-added telecommunication services match those under the GATS. Commitments in educational, environmental, recreational, cultural and sporting, and transport services are unchanged as are construction and related engineering services which are not liberalized.

97. The Agreement lifts some requirements for mode 3, for example, sales area limitations in wholesale trade and retailing services; and economic needs test and examination for hotel and restaurants services. Limitations on insurance and insurance related services have been relaxed including that: the board of directors and administrators are no longer required to be citizens but to be resident; the economic needs test for accident insurance services is not required; the requirement that foreign insurance companies be supervised by the Swiss insurance authority in order to establish has been lifted; and the authorization required by the country of origin also has been eliminated.

4. Norway

(a) Horizontal commitments

98. Norway has lifted authorization requirements for acquisition/leasing of real estate for registered corporations (where more than one-third of the voting rights are held by non-nationals or foreign controlled companies or where the chairman and the majority of the board members are non-nationals), and foreigners and foreign controlled companies. Both the Agreement and the GATS provide for the possibility of not extending treatment accorded to subsidiaries of third-country companies to branches or agencies established in an EEA Member State. Residency requirements for the formation of legal entities are unchanged. However, in contrast to its GATS schedule which requires residency for at least two years prior to forming the legal entity, Norway has exempted founders of companies as well as citizens of EEA Member States from this requirement.

99. Horizontal commitments taken by Norway on subsidies are unchanged except that under the Agreement national treatment for education services (leading to the conferring of State recognized exams and/or degrees) is unbound. According to Norway, this limitation is necessary as different treatment may exist between public and private institutions.

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<sup>28</sup> Medical and dental services; veterinary services; services provided by midwives, nurses, physiotherapists and para-medical personnel.

<sup>29</sup> Services incidental to energy distribution; placement and supply services of personnel; and investigation and security.

(11)



real estate by non-residents have been lifted under the Agreement as has the requirement in Iceland's GATS schedule that non-resident natural persons that are self-employed or part of a business enterprise with unlimited liability obtain a concession from the Ministry of Commerce.

87. As regards horizontal limitations on national treatment, in contrast to in the GATS, the Agreement may extend treatment accorded to subsidiaries of third-country companies to branches or agencies established in an EEA or EFTA Member State. The Agreement requires that a majority of the founders of limited liability companies (except citizens of EEA and EFTA States) must be resident in Iceland unless exempted by the Ministry of Commerce. This limitation is not listed in Iceland's GATS commitments. Managers and the majority of the members of the board of directors and auditors must also be residents, as under the GATS, except EEA and EFTA citizens.

88. Under mode 4, horizontal commitments and limitations taken by Iceland for intra-corporate transferees (including executives, managers, specialists and service sellers), are the same as under the GATS. The same applies to subsidies.

(b) Sector-specific commitments

89. In general, there are few changes in Iceland's sector-specific commitments under the GATS.

90. For business services, the commitments are unchanged except for R&D services in natural sciences and printing and publishing services where research permit/nationality requirements are not required under the Agreement. Unlike Norway and Switzerland Iceland does not provide preferential treatment for Korean architects.

91. Iceland has replicated its GATS commitments in communication, distribution, environmental and tourism and travel related services and like in the GATS, took no commitments in educational services.

92. For financial services, under the Agreement the scope has not been modified except that EFTA States will enjoy the same treatment given to EEA Member States. The requirement in Iceland's GATS schedule that branch offices of non-EEA insurance undertakings be managed by a resident agent, has been lifted while the residency requirement for insurance brokers in mode 3 limitations on national treatment has been relaxed. As regards banking and other financial services, commitments under the Agreement match Iceland's GATS commitment except the authority in charge of credit institutions and undertakings in securities services has been changed from the Ministry of Commerce to the Financial Supervisory Authority.

93. In contrast with the other Parties, for recreational, cultural and sporting services, under both the Agreement and the GATS schedule, all four sub-sectors are covered. Both schedules are the same except that the Agreement distinguishes between professional and amateur boxing, with the latter being allowed under the Agreement.

94. For transport services, there are no changes in commitments but limitations on sales and marketing for air transport services have been lifted. Like in the GATS schedule, internal waterway, space, road, and pipeline transport services are not bound.

**3. Liechtenstein**

(a) Horizontal commitments

95. Liechtenstein's horizontal commitments on market access match those found in its GATS schedule. Mode 4 limitations on national treatment are same as those in its GATS schedule. For

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108. For transport services, Norway added some domestic freight transportation services<sup>30</sup>, domestic maritime towing and pushing services, ground handling under air transport services, pipeline transportation services, cargo-handling services, and storage and warehouse services under the Agreement. The scope of international transport (freight and passengers) services has been broadened and some criteria for these services, for example mode 3 ownership and headquarter requirements have been relaxed. Further, maintenance and repair services for aircraft and rail transport equipment have been fully opened for mode 1.

## 5. Switzerland

### (a) Horizontal commitments

109. Switzerland's horizontal commitments under modes 1-3 concerning limitations on market access and national treatment are along the lines of what it committed to in the GATS, with some improvement under mode 3. Its mode 4 commitments are generally similar; however, the Agreement provides some further liberalization, for example, i) foreign service suppliers are authorized to enter and stay in Switzerland subject to the overall numbers of work permits allocated; ii) the period of stay for intra-corporate transferees, initially for three years (as in the GATS schedule) can be extended to a maximum of five years (four years in the GATS schedule); iii) the minimum period of related experience for contractual service suppliers is three years compared to five years in the GATS schedule; iv) fifteen sub-sectors of contractual service suppliers are covered by the Agreement, as opposed to three under the GATS<sup>31</sup>; and v) mode 4 commitments are extended to 'installers and maintainers'.

110. For modes 1 and 2 commitments on national treatment, the Agreement removes limitations except those unbound in its GATS schedule while mode 4 commitments on national treatment are unchanged. Mode 3 commitments on national treatment are the same as in the GATS schedule except that the Agreement does not require the majority of the board of directors of joint stock companies and the administrators of a "co-operative society" to be Swiss citizens.

### (b) Sector-specific commitments

111. For business services, under the Agreement Switzerland has taken new commitments in some professional computer services<sup>32</sup>; real estate services; leasing or rental services concerning personal and household goods; security consultation services; and some other business services<sup>33</sup>, which are uncommitted to in its GATS schedule. Switzerland also has further committed in services incidental to fishing and manufacturing by expanding the scope of the services covered in its GATS schedule.

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<sup>30</sup> Transport feeder services related to international cargo, transport of empty containers for international trade, and maritime transport servicing offshore petroleum exploration and production.

<sup>31</sup> In addition to the three in the GATS (engineering services (CPC 8672), consultancy services related to the installation of computer hardware (CPC 841); and software implementation services (CPC 842)) the other 12 are: legal advisory services (in CPC 861); auditing services, excluding auditing of banks (in CPC 86211); accounting review services (CPC 86212); business tax planning and consulting services (CPC 86301); business tax preparation and review services (CPC 86302); architectural services (CPC 8671); urban planning services (CPC 86741); research and development services (CPC 851-853); management consulting services (CPC 865); technical testing and analysis service (CPC 8676); related scientific and technical consulting services (CPC 8675); and aircraft maintenance and repair (in CPC 8868).

<sup>32</sup> Training services for staff of clients; web-site design services; integrated consulting services on computerized systems and networks; other professional computer services foreseen under Swiss law without market access or national treatment limitation.

<sup>33</sup> Telephone answering services; duplication services; translation and interpretation services; mailing list compilation and mailing services; specialty design services; agency services on behalf of individual performers; design services for ergonomics of working place; and other business consulting services n.e.c.

100. Norway's horizontal commitments on the movement of personnel are unchanged except for a longer period of stay for intra-corporate transferees (managers, executives, and specialists) from two years in the GATS schedule to four years.

(b) Sector-specific commitments

101. For business services, Norway has taken commitments in services incidental to mining, convention services, and translation and interpretation services (except government authorized translators), sectors uncommitted to in its GATS schedule. It has broadened the scope for l/leasing services relating to other machinery and equipment, related scientific and technical ulting services, maintenance and repair of equipment services, and printing and publishing ces. No commitments were made in R&D services in natural sciences, interdisciplinary R&D services, and real estate services involving own or leased property. Unlike its GATS commitments, it permits the supply of architectural services by Korean architects through joint contracts with licensed architects in Norway. Mode 1 and 3 limitations, forbidding labour placement and hiring have been relaxed. In contrast, on real estate agency and agent services, Norway has full discretion in its mode 1 commitments compared to the full commitment in its GATS schedule.

✓ 102. For communication services, there are no changes including that postal services are not bound. Norway's GATS commitments in construction and related engineering services are unchanged except lifting residency requirements for building contractors and supervisors under mode 4 limitations on national treatment.

103. For distribution services, Norway added commission agents' services and retail sales of electricity to its commitments. Further, wholesale trade services for grain have been fully opened (except mode 4). For retailing services, prior residency requirements for branch managers of a foreign company and for the majority of the board members of a foreign controlled company for national treatment in modes 3 and 4 of have been lifted.

104. For educational services, there are no changes with the exception that limitations on financial assistance to educational institutions or to students have been lifted.

105. Norway has taken commitments in remediation and cleanup of soil and water services, a sector uncommitted to in its GATS schedule. Advisory services in sewage services and solid/hazardous waste management services are permitted under mode 1. Further, full commitments in modes 1-3 have been bound for services to reduce exhaust gases and other emission, noise abatement, nature and landscape protection, and other environmental protection services.

106. For financial services, under the Agreement Norway has committed, subject to approval, a higher ceiling for acquisition of share capital in a Norwegian insurance company in contrast to its mode 3 commitments in the GATS schedule. On banking and other financial services, the requirement that the manager, at least half the members of the board of directors and half the members of the corporate assembly be permanent residents has been removed from its mode 3 limitations under the Agreement.

107. GATS commitments in tourisms and travel related services and recreational, cultural and sporting services have been replicated. Like at the multilateral level, entertainment services; libraries, archives, museums and other cultural services; and sporting and other recreational services are not bound under the Agreement.

120. For tourism and travel related services, limitations have been eased such as economic needs tests and residency requirement for licence holders (except in the canton of Jura) for the commercial presence of hotels and restaurants. National treatment limitations on ski instructors have also been lifted.

121. There are no changes in commitments in recreational, cultural and sporting services.

122. Under transport services, Switzerland added maritime transport services; selling and marketing of air transport services; computer reservation system services (under air transport services); ground-handling services; airport management services; freight transportation (excluding cabotage); and other supporting services for road transport. It has also abolished commercial presence requirements for passenger and freight transportation; and rental of vessels with crew services. Further, mode 1 and 2 limitations on market access and national treatment for aircraft repair and maintenance services have been lifted. Like at the multilateral level, the Agreement does not bind pipeline transport services.

123. Switzerland also made additional commitments in washing, cleaning and dyeing services; hairdressing and other beauty services; pet-caring services; and saunas and spas services by opening them fully except in mode 4 where, for example, commercial presence is required for hairdressing and other beauty services.

## E. REGULATORY PROVISIONS ON TRADE IN SERVICES

### 1. Domestic regulation

124. The Agreement incorporates provisions on domestic regulations *mutatis mutandis* from Article VI of the GATS (Article 3.8).

### 2. Recognition

125. Annex IX on mutual recognition applies, *inter alia*, to education or experience, qualifications, licenses, certification or accreditation of service suppliers (Article 3.9.3 of Annex IX). It encourages the Parties to develop mutually acceptable standards and criteria on authorization, licensing, accreditation, operation and certification of service suppliers, in particular for professional services. The Parties are also encouraged to develop procedures for the temporary licensing of professional service suppliers from each other (Article 3.9.2 of Annex IX). They shall periodically report progress on and impediments to mutual recognition to the Joint Committee. Based on the review by the Joint Committee, the Parties shall be encouraged to determine measures for facilitating mutual recognition (Articles 1 and 3 of Annex IX).

126. Where a Party recognises education or experience obtained, requirements met or licenses or certificates granted by a non-Party, it shall accord adequate opportunity to negotiate the non-Party's accession to such an existing or future agreement or arrangement, or to negotiate a comparable agreement or arrangement with it. Where a Party accords autonomous recognition, it shall afford adequate opportunity to another Party to demonstrate that the education or experience obtained, requirements met or licenses or certification granted in its territory Party should also be recognized (Article 3.9.1). Such an agreement, arrangement or autonomous recognition shall conform to the relevant provisions of the WTO Agreement, particularly Article VII of the GATS (Article 3.9.2).

### 3. Monopolies and exclusive service suppliers

127. Provisions on monopolies and exclusive service suppliers incorporate Article VIII of the GATS in the Agreement (Article 3.11). The Parties confirm their rights and obligations on

No commitments were made (as in the GATS) on services provided by midwives, nurses, physiotherapists and para-medical personnel; services incidental to energy distribution; and personnel placement and supply services.

112. The Agreement has listed details of the four types of legal services contained in Switzerland's GATS schedule. The nationality requirement to practice in the canton of St. Gall has been lifted under the Agreement, whereas national treatment for legal advisory services on Swiss fiscal law is limited to commercial fiduciaries for all modes.

✓ 113. There has been some relaxation of limitations in auditing services (excluding auditing of banks); architectural services; engineering services; rental/leasing services for internal waterway transport on the Rhine; and maintenance and repair of equipment (excluding maritime vessels, aircraft or other transport equipment). For example, the requirement of prior professional practice in Lucerne has been lifted for architectural services. Further, the Agreement permits the supply of architectural services by Korean architects through joint contracts with Swiss architects without licensing (except in mode 3). (The mode 1 requirement of Swiss nationality for survey activities for official public purposes in engineering services has been reduced to a licensing requirement.)

114. In communication services, Switzerland has taken full commitments under modes 1 to 3 in express delivery services, a sector uncommitted to in its GATS schedule. It has also taken commitments across the full range of basic and value-added telecommunication services, with no limitations under modes 1 to 3 but no commitments in audiovisual services, like in the GATS.

115. Under construction and related engineering services, special trade construction work services and renting services related to equipment for construction or demolition of buildings or civil engineering works as well as five sub-sectors under general construction work for civil engineering have been added.<sup>34</sup> Mode 3 limitations on national treatment for installation and assembly work services have been lifted except for gas, water and electricity meters, gas pipelines, electricity and main water lines, which are reserved exclusively for cantons or municipalities or specific operators.

116. For distribution services Switzerland lifted mode 3 market access restrictions on sales areas maintained by some cantons. However, cantons and/or municipalities may still not authorize large-scale distribution facilities in wholesale trade services and retailing services.

117. For education services Switzerland has fully liberalized (except as indicated in the horizontal commitments for mode 4) foreign languages and cooking services which are not contained in its GATS schedule.

118. Mode 1 limitations on market access and national treatment were abolished in environmental services sub sectors sanitation and similar services and other environmental services.

119. There has been no change in the scope of financial services. However, existing commitments have been improved, for example, the commercial presence requirement for the underwriting of aircraft liability insurance and for Swiss franc denominated issues; and investment limits in real estate for foreign or foreign-controlled insurance companies have been lifted.

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<sup>34</sup> For waterways, harbours, dams and other waterworks (CPC 5133); for long distance pipelines, communication and power lines (cables) (CPC 5134); for local pipelines and cables (CPC 5135); for constructions for mining and manufacturing (CPC 5136); and for constructions for sport and recreation (CPC 5137).

paragraphs 1, 2 and 5 of this Article. The Parties reaffirm their rights and obligations under Article IX of the GATS (Article 3.12).

#### **4. Safeguard measures**

128. The Parties reaffirm their rights and obligations under paragraphs 1 to 3 of Article XII of the GATS. However, in the event of serious balance of payments and external financial difficulties or threat thereof, Article 3.14 encourages them to avoid the imposition of restrictions to safeguard the balance of payments in trade in services.

#### **F. SECTOR-SPECIFIC PROVISIONS ON TRADE IN SERVICES**

##### **1. Financial services**

129. A separate Chapter (Chapter 4) applies to measures affecting trade in financial services. As for other services, MFN, national treatment and market access provisions (Articles 4.4-4.6) do not apply to government procurement of financial services purchased for governmental purposes (Article 4.1.2). Article 3.2, incorporating provisions from the GATS, also applies to financial services (Article 4.2). The Chapter follows definitions in the GATS on "trade in services" and "services"; and in the GATS Annex on Financial Services on "services supplied in the exercise of governmental authority", "a financial service", "financial service supplier" and "public entity" (Article 4.3).

130. Chapter 4 mainly maintains the same structure and contents as Chapter 3, with some differences. While the provision on national treatment incorporates Article XVII of the GATS (like Article 3.6 on services), it requires each Party to grant to financial services suppliers of another Party established in its territory, access to payments and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. However, this does not confer access to the Party's lender of last resort facilities (Article 4.6.2). Where membership or participation in, or access to, a self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association is required by a Party for financial service suppliers of any other Party to supply financial services on an equal basis with its own financial services suppliers, or where the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, it shall ensure that such entities accord national treatment to financial service suppliers of any other Party established in its territory (Article 4.6.3).

131. The Chapter's domestic regulation (Article 4.8) and recognition (Article 4.9) provisions are in line with the relevant paragraphs in the GATS Annex on Financial Services. However, prudential measures can be extended to policy-claimants and any similar financial market participants in addition to those provided for in the GATS Annex on Financial Services (2.(a)) (Article 4.8.2).

132. In addition to transparency provisions in Chapter 3, Article 4.18 binds the Parties to promote regulatory transparency in financial services, taking into account: their work in the GATS and other fora relating to trade in financial services.

133. For the implementation and operation of Chapter 4, a Sub-Committee on Financial Services is established (Article 4.20). Korea and one of the EFTA States jointly chair the Sub-Committee, which acts by consensus (Article 4.20.4).

134. Financial services are governed by the relevant Articles in Chapter 9 on dispute settlement which applies to financial services as well, but with some modifications (Article 4.21). In particular, Article 9.4 on the establishment of an arbitration panel requires that, where the disputing Parties agree, the panel should meet qualifications in financial services law or practice possibly including the

regulation of financial institutions (Article 4.21.3. (a)). If the disputing Parties do not agree, each Party to the dispute may select individuals meeting such qualifications. Further, if the Party complained against invokes domestic regulation provisions (Article 4.8), the chair of the panel must meet both the qualifications provided in Article 9.5.5 (see paragraph 155) and the qualification above. Under Article 9.10.5 the suspension of benefits must be related to the sector affected. If the dispute affects: a) only financial services, the complaining Party shall first seek to suspend benefits only in the financial services; b) financial services and any other sector, the Party shall first seek to suspend benefits in the respective sectors with an effect equivalent to the effect of the measure complained against in each sector; or c) sectors other than financial services, the Party shall seek to avoid suspending benefits in the financial service sector (Article 4.21.5).

## 2. Telecommunications services

135. Annex X of the Agreement applies to telecommunications services (Article 3.16 of the Agreement). It contains obligations on issues touched upon in the WTO Reference Paper on Basic Telecommunications. Among other things, the Annex binds the Parties to ensure that its regulatory authority is separate from, and not accountable to, any supplier of basic telecommunication services (Article 2). It also contains obligations on licensing procedures (Article 3), the use of scarce resources (Article 4), the prevention of anti-competitive behaviour by major suppliers (Article 5), interconnection (Article 6), and universal service (Article 7).

## 3. Co-production in broadcasting services

136. Annex XI of the Agreement relates to cooperation on co-production of programmes such as animation and documentary productions, for broadcasting, including new media services (Article 1 of the Annex). Broadcasting programmes for television are recognized as national production of the Parties involved in that co-production, subject to their national legislation in force (Article 2 of the Annex). Restrictions on import, distribution and exhibition are not permitted for co-produced broadcasting, except those contained in the legislation and regulations in force in each of the parties involved (Article 3 of the Annex). Subject to the legislation and regulations in force, the Parties shall facilitate the temporary entry into their territories, of creative and technical personnel and performers engaged in the production (Article 4 of the Annex). When a co-production is exported to a country with a quota regime, it is counted in the quota of the Party of the majority co-producer or may be included in the quota of the Party that has the best export facilities (Article 7 of the Annex). Rules of procedure on co-production may be established after the first Joint Committee meeting (Article 8 of the Annex).

## V. INVESTMENT

137. A separate Investment Agreement (IA) between Iceland, Liechtenstein and Switzerland, on the one hand, and Korea, on the other (Article 1.4 of the Agreement), forms a part of the Agreement (Preamble of the IA). Norway is not a party.<sup>35</sup> As long as the IA is in force or remains effective, it replaces and suspends the "Agreement between the Government of the Swiss Confederation and the Government of Republic of Korea concerning the Encouragement and Reciprocal Protection of Investments" of 7 April 1971 (Article 27 of the IA).

138. The IA contains 28 provisions and five annexes indicating national treatment reservations by each Party. It applies to investors of a Party, and to their existing and future investments.<sup>36</sup> Non-

<sup>35</sup> According to Article 24 of the IA, Norway may accede to the Agreement, once the terms and conditions established by the Committee of the IA are agreed between Norway, and the existing Parties.

<sup>36</sup> Article 1.4 and 1.2 of the IA respectively define "investor of a Party" and "investment". Disputes arising out of events which occurred prior to the entry into force of the IA are excluded.