

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).

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.³⁹

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 Agreement⁴⁰, 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>.

³⁹ 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.

⁴⁰ 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).

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,²⁸ real estate services, rental/leasing services relating to ships and aircraft; and some other business services that continue to be unbound.²⁹ 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.

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

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

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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 leasing services relating to other machinery and equipment, related scientific and technical consulting services, maintenance and repair of equipment services, and printing and publishing services. 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 tourism 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.

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