



Factsheet

Free trade agreement between the EFTA states and Georgia

Summary

The free trade agreement (FTA) with Georgia was signed on 27 June 2016 at the EFTA-ministerial meeting in Bern. For Georgia, Iceland and Norway the agreement came into effect in September 2017; for Switzerland it will apply from 1 May 2018. The FTA contains obligations to liberalise trade in industrial products (including processed agricultural products and fish), in basic agricultural products, and in services and public procurement. It also contains provisions on trade facilitation, on removing technical barriers to trade including sanitary and phytosanitary measures, on investments, intellectual property, competition and trade and sustainable development. It also deals with statutory and institutional issues, including dispute resolution.

The agreement's importance

The agreement with Georgia extends the network of free trade agreements that the EFTA states have been developing since the early 1990s. Switzerland is an export-dependent country with globally diversified sales markets, and concluding free trade agreements - alongside membership of the World Trade Organization (WTO) and contractual relations with the European Union – is one of the three main pillars of its policy of open markets and improving the foreign economic environment.

The FTA negotiated between the EFTA states and Georgia improves market access and legal certainty for the Swiss export industry in a variety of ways. The FTA with Georgia exceeds the level of market access and legal certainty provided under the WTO agreements in several respects, thereby improving the competitiveness of the Swiss economy on the Georgian market. In addition, it will avert potential or effective discrimination that could arise in particular from Georgia's 2016 Association Agreement with the EU, which contains provisions on a closer and comprehensive free trade area.

The EFTA-Georgia FTA is a further step in Switzerland's policy of supporting economic reforms and integrating Georgia into the structures of economic cooperation at European and international level.

Main agreement provisions

The FTA with Georgia is broadly in line with EFTA's more recent FTAs concluded with third countries and applies in scope to many sectors.

The **preamble** sets out the general objectives between the contracting parties under the FTA. These underline and affirm their **commitment to fundamental rights and principles in the field of democracy and human rights** and economic and social development, to workers' rights, international law – in particular the Charter of the United Nations, the Universal Declaration of Human Rights and the Conventions of the International Labour Organization (ILO) –

and to the environment and sustainable development. They also recognise the importance of good corporate governance and corporate social responsibility, and confirm their intention to promote transparency and to fight corruption.

The provisions on the **trade in goods** apply to **industrial products**, fish and other marine products, and primary and processed agricultural products. When the agreement comes into force, customs tariffs on industrial products will be widely removed, with few exceptions. For the **main processed agricultural products** to which price compensation measures apply, Switzerland grants Georgia a discount equal to the industrial protection element. For products to which price compensation measures do not apply, free trade rules apply. In return, Georgia grants Switzerland duty-free market access for all processed agricultural products. In the case of **primary agricultural products**, Switzerland grants Georgia preferential market access within existing WTO quotas for products that are non-sensitive or only slightly sensitive in agricultural policy terms and which are of interest to Georgia (e.g. nuts). Switzerland benefits from duty-free market access for all major products with export potential, in particular for dried meat, milk and cream (fresh or powdered), cheese, bovine semen, wine, and feed preparations. Border protection is preserved for sensitive Swiss products. The EFTA states thus obtain comparable access to the Georgian market as their main competitors from the EU. The main export interests of Switzerland have been fully taken into account.

The **rules of origin** of the Pan-Euro Mediterranean Convention (PEM Convention) apply. This means the same rules of origin apply as in other FTAs in the pan-European area. This means that, in addition to having uniform declarations of origin, Swiss economic players have greater opportunities for cumulation of origin.

The agreement contains measures to **facilitate trade**. In particular, the parties are obliged to observe international standards in their customs procedures. The agreed rules foster transparency and smoother trade. For example, the parties are required to publish applicable regulations in English, to give the names and addresses of contact points and to release binding information on tariffs.

The chapters on **technical barriers to trade** (TBTs) and **sanitary and phytosanitary measures** (SPSs) are based on the corresponding WTO agreements. Georgia is currently aligning its legislation in these areas with that of the EU, as foreseen in its association agreement with the EU. EFTA and Georgia have agreed to extend to each other the measures to alleviate TBTs agreed by each party independently with the EU. Many products can already be exported to Georgia from the EU/EFTA states without undergoing additional conformity assessments. If measures to alleviate TBTs are to be introduced for further products from the EU, under the FTA products from the EFTA states will receive the same treatment as such products from the EU.

In terms of sanitary and phytosanitary measures (**SPSs**), the application of the regulations is also based on the FTA parties' agreements with the EU. For example, under the FTA Georgia will afford Swiss products the same treatment as products from the EU, provided any measures to alleviate TBTs agreed on by Georgia and the EU also exist between the EFTA states and the EU.

The provisions on **trade defence measures** (subsidies and countervailing measures, anti-dumping measures, safeguard clauses) go beyond those of the WTO rules in many instances; for example, the parties can choose not to participate in WTO safeguard measures and there are strict disciplines on the application of anti-dumping measures.

The chapter on **trade in services** adopts the definitions and provisions of the General Agreement on Trade in Services (GATS). Certain horizontal provisions have been made more precise and improved over those in GATS. In addition, the annexes pertaining to the chapter on trade in services contain specific rules that go beyond the existing GATS level. For example,

in the financial field, a priority area for Switzerland, the exemption for regulatory measures must be made more balanced, clear deadlines set for approving licences and greater transparency achieved in the criteria and procedures for dealing with applications for authorisation.

The **market access commitments for services** are recorded on the basis of positive schedules as in GATS. Switzerland's market access commitments are broadly in line with the level of commitment offered under previous free trade agreements and the WTO Doha round. Georgia has a level of market access commitment that is well above the commitment level set by the WTO, especially for installation and maintenance personnel, and catering and education services.

The provisions in the chapter on **establishment** apply to the establishment of companies in non-services sectors (i.e. market access for direct investments). The provisions in the chapter on trade in services apply to establishment of companies in the services sector, which also cover the mode of supply 'commercial presence'. The chapter on establishment provides that investors of the parties to the agreement have the right to establish or take over a business in another party under the same conditions as domestic investors. Any deviation from the principle of non-discrimination on grounds of nationality (unequal treatment of domestic and foreign investors) are only possible for measures and economic sectors listed in the parties' schedules of specific commitments in the annexes to the agreement. Switzerland's schedule contains limitations, as is usual, concerning the acquisition of real estate and domicile requirements under company law, and certain measures in the energy sector. Georgia, for its part, lists limitations relating to fishing, investments in agricultural cooperatives, the acquisition of agricultural land and the energy sector. The chapter on establishment also contains a provision on the right to regulate on measures that are in the public interest, including measures to meet health, safety or environmental concerns and measures for prudential purposes. A further article removes restrictions on current payments and capital movements.

The free trade agreement's provisions in the chapter on **establishment** complement the 2015 bilateral agreement between Switzerland and Georgia on mutual safeguards on funding and investment. This bilateral agreement regulates the phase following establishment and along with the FTA covers the entire investment cycle from market access through use to liquidation.

The chapter on **intellectual property** contains comprehensive provisions on the protection and application of intellectual property rights. The level of protection essentially corresponds to the European standard. The principles of non-discrimination on the grounds of nationality and of most-favoured-nation treatment apply according to the provisions in the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS). The agreed level of **patent protection** is equivalent to that in the European agreement on patents. The parties explicitly recognise that the importation of patented goods is deemed 'working of the patent'. The agreement also provides for a compensatory term of protection for pharmaceuticals and plant protection products in the case of drawn-out market authorisation processes; these partially compensate for the reduction in the effective useful term of patent. The agreement requires a six-year period of test data protection for pharmaceutical products (+1 year for new therapeutic indications) and of ten years for plant protection products. Plant varieties are protected under the International Convention for the Protection of New Varieties of Plants (UPOV 91). Furthermore, the parties confirm their obligations under a series of key agreements of the World Intellectual Property Organisation (WIPO). With regard to **trademarks**, the FTA requires the parties to protect 3D trademarks and well-known trademarks. A period of protection of at least 25 years is foreseen for **designs**. The agreement also provides for greater protection for geographical indications for agricultural products than the multilateral minimum standard, and for the protection of indications of source, names and flags of countries. **Effective customs support measures** permit the efficient prevention of counterfeiting and piracy in the import and export of all immaterial property rights. In civil judicial proceedings, preventive measures

may be requested and compensation for the infringement of intellectual property rights claimed.

During the negotiations, Georgia expressed an interest in including provisions on improved **protection of geographical indications** and relating schedules listing specific indications. Since the other EFTA states showed little interest, Switzerland concluded a separate agreement with Georgia on the protection of geographical indications.

With regard to **government procurement**, Georgia grants Swiss providers market access comparable to that granted to EU providers. In its association agreement with the EU, Georgia undertakes to implement the EU directive on government procurement. Georgia is not a member of the WTO Agreement on Government Procurement (GPA), but is currently considering relaunching negotiations on membership. The provisions in the FTA are based on the provisions of the revised GPA of 2012; extensive obligations regarding market access have also been agreed. Currently in Georgia, procurement entities such as energy and water suppliers are in private hands, and are thus not subject to the FTA. However, when EU sectoral guidelines are implemented, these areas will in future fall under this legislation and will therefore become accessible to Swiss providers. As the concessions over market access are based on the principle of reciprocity, the EFTA states currently reserve the right not to open up their water and electricity supply nor their ports to Georgian suppliers. The threshold levels are all in line with the GPA standard. Georgia covers all goods, services and construction services and in the case of services goes further than the EFTA states, which have more limited positive lists. With reference to its national legislation, Georgia demanded very few exceptions for such procurement entities that are not covered by the Georgian law on government procurement.

Under the **provisions on competition**, activities which might prejudice fair competition, in particular agreements between companies and the abuse of a dominant market position which may affect trade between the parties, are incompatible with the agreement. State and monopoly suppliers are also mentioned in the provisions. To ensure compliance with their own domestic laws and to prevent activities which might prejudice fair competition, the contracting parties undertake to cooperate and if necessary to conduct consultations in a joint committee.

The chapter on **trade and sustainable development** covers the environmental and labour-related aspects of trade. The EFTA states and Georgia recognise the basic principle that economic development, social development and environmental protection are interdependent and mutually supportive components of sustainable development. They reaffirm their commitment to conducting international and bilateral trade relations in such a way as to contribute to the objective of sustainable development. The parties also reaffirm their obligation to observe and effectively implement the multilateral agreements on the environment they have ratified as well as those of the International Labour Organization (ILO). Furthermore, they are committed to promoting high environmental and labour protection levels in their national legislation, and to applying these effectively. They also commit not to weaken these standards in order to attract investment or enhance a competitive trade advantage.

The agreement establishes a **joint committee** to supervise and review its implementation, administration and further elaboration. This comprises representatives of each party. Should any disputes arise over the application of the agreement, the parties will strive to settle these amicably through consultation. If this is not possible, they may have recourse to an **intergovernmental arbitration panel**.

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