



Fact sheet

Free trade agreement between the EFTA States and Ecuador

Summary

On 25 June 2018, the EFTA States (Switzerland, Iceland, Liechtenstein and Norway) and Ecuador signed a free trade agreement (FTA) – the Comprehensive Economic Partnership Agreement (CEPA) - in Sauðárkrúkur, Iceland. The FTA will enter into force after ratification by the Parties. The Agreement covers trade in industrial, fishing and other sea products, processed and basic agricultural products, technical barriers to trade including sanitary and phytosanitary measures, rules of origin, trade facilitation, trade in services, investment, intellectual property protection, competition, government procurement, settlement of disputes as well as trade and sustainable development.

Scope of the Agreement

The EFTA-Ecuador FTA extends the network of FTAs established by the EFTA States since the beginning of the 1990s. Switzerland, whose economy is heavily dependent on exports and which offers broad market opportunities, has made the conclusion of FTAs one of the three pillars of its policy of opening up markets and improving the framework of international trade. The two other pillars are its membership of the World Trade Organisation (WTO) and its treaty relations with the EU.

The FTA between the EFTA States and Ecuador improves market access and legal certainty for the Swiss export industry on a broad basis, in particular as regards goods, services, public procurement and intellectual property. In various aspects, it exceeds the level guaranteed under the WTO agreements. The agreement with Ecuador will enable the EFTA States to strengthen their economic and trade with this partner and to anticipate potential or actual discrimination on the Ecuadorian market. This could result in particular from the agreement between the EU and Ecuador following the latter's accession, since 1 January 2017, to the agreement in force between the EU, Columbia and Peru. The FTA will also give Switzerland a competitive advantage over its main competitors that do not yet have a free trade agreement with Ecuador.

Main provisions of the Agreement

The **preamble** sets out the general framework for the FTA. The Parties confirm, inter alia, their commitment to respect for human rights, to democracy and the rule of law, and to the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Labour Organisation (ILO) Conventions. They also express their intention to implement the FTA in a manner consistent with environmental protection and sustainable development. They also recognise the importance of good corporate governance and corporate social responsibility, and state their intention to promote transparency and their willingness to act against corruption.

For **trade in goods** (industrial products, including fish, processed agricultural products and basic agricultural products), the FTA includes different GATT¹ provisions. In addition to the GATT provisions, the

¹ WTO General Agreement on Tariffs and Trade.

Agreement also provides for the prohibition of customs duties on exports, and additional provisions concerning import licences and a prohibition of quantitative restrictions.

For **industrial products**, **fish** and **other seafood products**, an asymmetrical tariff dismantling schedule has been agreed to take into account Ecuador's developing country status. The FTA provides for the immediate elimination of customs duties for 60% of current Swiss exports, after five years for a further 35% of current Swiss exports and longer periods for the remaining products. No product is excluded from complete tariff dismantling.

With regard to **processed agricultural products**, Switzerland grants Ecuador concessions identical to those it has granted its partners in recently concluded free trade agreements. It abolishes the protection of the industrial component of customs duties on its products, but retains the right to impose import levies to compensate for the difference between the prices of raw materials on the Swiss market and on world markets. As with other existing FTAs, Switzerland waives export refunds for products that benefit from customs preferences². Switzerland obtains concessions for important export products such as biscuits, beverages and food preparations.

In the **basic agricultural products** sector, Ecuador grants Switzerland the elimination or reduction of customs duties for certain agricultural products of importance to Switzerland. In particular, Switzerland obtained an annual duty-free tariff quota of 140 tonnes for cheese. Switzerland, for its part, grants concessions to Ecuador that are, as a whole, comparable to those granted to its other free trade partners and compatible with its agricultural policy. The concessions granted by Switzerland consist of the reduction or elimination of customs import duties for a series of agricultural products in which Ecuador has expressed a particular interest. These include certain fruit and vegetables such as bananas and broccoli, Andean cereals such as quinoa and chia, and some live plants and cut flowers. The concessions granted by Switzerland in the Agreement replaces those it grants autonomously in the framework of the Generalised System of Preferences (GSP). However, for sugar and jam, which benefit from preferential access under the GSP, Switzerland will extend the application of the GSP as long as it maintains this system and Ecuador qualifies for it.

The **rules of origin** that must be complied with for goods to benefit from the FTA's preferential tariff and safeguard rules largely correspond to the European model. However, they are much less restrictive, reflecting the interests of the Parties whose companies are dependent on third countries for large supplies of inputs. The FTA also provides for a 10% general outward processing relief in a third country.

The **provisions on cumulation** provide for diagonal cumulation (between the EFTA States and Ecuador) for the chapters on industrial products, according to which materials of other parties to the Agreement which have originating status may be used without affecting originating status. Cumulation of origin is also possible with raw materials from Colombia and Peru. The non-alteration rule makes it possible to divide shipments of goods in transit countries without the origin of the goods being lost. This provision increases the logistical flexibility of the Swiss export industry and thus facilitates exports. As regards certification of origin, an asymmetric approach has been agreed. This allows exporters from EFTA countries to use the declaration of origin, including the possibilities of the 'approved exporter' system, while Ecuador, which has introduced the declaration of origin as of 2018 for its main export products will continue to use the EUR.1 certificate of origin.

In the area of **trade facilitation**, the FTA contains measures that oblige the Parties to respect international standards when developing customs procedures. Exporters can also file their customs declarations electronically.

The chapter on **technical barriers to trade (TBT)** and the chapter on **sanitary and phytosanitary (SPS) measures** contain provisions which will help to reduce or avoid additional costs which may arise from national requirements. This will be achieved in particular by promoting the application of recognised

² Export contributions for processed agricultural products should be completely eliminated by the end of 2020 in accordance with the decision adopted by the 10th WTO Ministerial Conference.

international standards and by intensifying cooperation between the relevant authorities of the Parties. The level of health and safety protection in Switzerland remains unchanged.

The Agreement contains provisions on **trade remedies**, including on subsidies and countervailing measures, anti-dumping measures and safeguard measures. In particular, substantive disciplines are foreseen for the application of anti-dumping measures.

The chapter on **trade in services** includes with some modifications the most important scope, definitions and disciplines (four modes of supply, most-favoured nation treatment, market access, national treatment, etc.) of the GATS³. The chapter is supplemented by sectoral annexes with specific rules that go beyond those of the GATS. These annexes concern financial services, telecommunications services, energy services and maritime services as well as the movement of natural persons supplying services. As with the GATS, the market access obligations of the Parties to the Agreement are based on the positive list approach. Ecuador's level of market access commitments to Switzerland and other EFTA countries largely corresponds to the level Ecuador guarantees to the EU. In particular, Switzerland has succeeded in containing concessions in the areas of importance to it, in particular concerning financial services, installers and maintenance personnel for machinery and equipment. Switzerland's commitments to Ecuador go beyond the level of its commitments under the WTO GATS. It corresponds to Switzerland's commitments to other free trade partners.

The provisions on the chapter on **investments** apply to commercial presence in all sectors, with the exception of the services sectors covered in a specifically dedicated chapter. The chapter provides that investors one of a Contracting State may in principle establish or take over an enterprise in another Contracting State on the same terms as domestic investors. The principle of national treatment covers the creation, acquisition and maintenance not only of undertakings having legal personality (natural and legal persons), but also of branches or representations. Exceptions to the principle of national treatment (conditions of unequal treatment of domestic and foreign investors) are only possible for measures and economic sectors listed in the Parties' reserve lists (negative lists). Switzerland's reserves concern the acquisition of real estate, certain provisions of company law and the energy sector. Ecuador's reserves mainly concern fishing. The chapter also contains a provision on personnel according to which the host State must guarantee admission and temporary stay to the investor and key personnel. In this context, however, the legislation of the Parties to the Agreement remains explicitly reserved. The freedom of capital movements and payments is also provided for. Transfers may be limited only to certain conditions and if they cause difficulties for the balance of payments.

In the field of **intellectual property protection**, the Parties undertake to guarantee effective protection of intangible assets and to guarantee the enforcement of intellectual property rights. The principles of national treatment and most-favoured-nation treatment are applicable in accordance with the relevant provisions of the TRIPS⁴. The most-favoured-nation clause is reinforced by an additional provision in the event that the Parties enter into a trade agreement with a third party. The intellectual property provisions are based in part on TRIPS standards and go beyond them in several respects. This is the case in particular of provisions relating to patent protection which oblige States, inter alia, to explicitly treat imported patented goods in the same way as domestic patented goods and to provide for a supplementary protection certificate for patents in the pharmaceutical field in the event of a reduction in the effective term of protection as a result of a market authorisation procedure. This is also the case for the provisions on the protection of test data for pharmaceuticals (protection period of five years) and agrochemicals (protection period of ten years). The Agreement also commits the Parties to protect geographical indications (extension of the enhanced protection to agricultural products and foodstuffs) and country names of the Parties to the Agreement. The Parties are also obliged to protect coats of arms, flags and emblems against their misuse in trademarks, whether for goods or services. The Agreement also contains provisions on the protection of designs and, at Ecuador's request, rules on the protection of biodiversity (protection of genetic resources and traditional knowledge) with reference to the Convention on Biological Diversity in particular. The provisions on the

³ WTO General Agreement on Trade in Services

⁴ WTO Agreement on Trade-Related Aspects of Intellectual Property Rights

enforcement of intellectual property rights also go beyond the TRIPS minimum standard, in particular with regard to border measures and civil protection. Parties are obliged to grant their customs authorities jurisdiction to detain suspected counterfeited goods. They must be able to control not only the import but also the export of counterfeit products.

The chapter on **public procurement** incorporates the main provisions of the text of the 2012 WTO Plurilateral Agreement on Government Procurement (GPA). This applies in particular to scope, conditions of participation, qualification of suppliers, procedures for awarding contracts, appeal proceedings and exception clauses. The public procurement provisions of the Agreement provide the EFTA States and Ecuador with a degree of reciprocal market access broadly equivalent to that resulting from the WTO GPA, in particular as regards entities, goods, services and construction mandates. This result is all the more significant because Ecuador, unlike the EFTA States, is not a member of the GPA. The result achieved is also comparable with Ecuador's commitments to the EU. On the basis of reciprocity, the municipal level is subject to the provisions laid down. Switzerland's obligations correspond to those taken in other recently concluded FTAs. As regards threshold values, both the EFTA States and Ecuador the usual international thresholds corresponding to those of the GPA. The Agreement provides for transitional periods for Ecuador, respecting its special situation as a developing country.

The **competition** provisions provide that anti-competitive practices which hinder trade between the Contracting Parties, including agreements between undertakings, decisions by associations of undertakings, concerted practices and abuse of a dominant position, are not in conformity with the Agreement. The Parties undertake to apply these rules also to public undertakings in accordance with their competition laws, insofar as this does not prevent the performance of their public interest tasks.

On **trade and sustainable development**, the Parties reaffirm their commitment to promote the development of international and bilateral trade in accordance with the objective of sustainable development. They shall endeavour to provide for a high level of environmental protection and labour standards in their national legislation. To this end, they undertake to implement them effectively in accordance with the fundamental conventions of the International Labour Organisation (ILO) and the multilateral environmental agreements applicable to them, and in compliance with the environmental principles to which they have acceded. The Parties further undertake not to reduce the levels of environmental protection and labour standards provided for in their national legislation in order to attract investment or gain a competitive advantage in trade. They also undertake to facilitate and promote the dissemination of goods, services, investments and technologies conducive to sustainable development, including goods and services under programmes or labels promoting environmentally friendly production methods or fair trade.

As is the case in some EFTA FTAs with partners at different levels of development, this Agreement also includes provisions on **economic and trade cooperation and technical assistance** to support the implementation of the Agreement. The provisions of the chapter thus cover a variety of areas aimed at strengthening the proper functioning and the achievement of the objectives of the Agreement.

A **joint committee**, composed of representatives of each Party, is established to ensure the implementation, management and development of the FTA. As a joint body, it has unanimous status. In the event of a dispute concerning the application of the Agreement, the Parties shall endeavour to use consultations to reach an amicable solution. If they fail, they may request an **arbitration procedure** at the end of which an arbitral tribunal will decide. The decision of the court is final and binding on the parties to the dispute.

Economic relations between Switzerland and Ecuador

In 2017, Ecuador was Switzerland's sixth largest trading partner in South America after Brazil, Argentina, Peru, Colombia and Chile with a trade volume of CHF 200.8 million.

Swiss exports to Ecuador in 2017 amounted to CHF 124.2 million, with pharmaceutical products (59.6%), machinery (13.4%), precision instruments and apparatus (5.3%) and cosmetics (5%) being the main goods

exported. Also in 2017, Swiss imports from Ecuador amounted to CHF 76.6 million and consisted mainly of cocoa (38.4%), fruit (26.6%), flowers (12.9%) and meat, fish and shellfish preparations (3.5%).

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