

# Past Achievements and Future Challenges of the European Free Trade Association – Twenty Years of Trade Relations and Beyond (1991-2011...)

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*This thesis is dedicated to my dearest and beloved grandfather, Bhaskar Vasudev Rao.*

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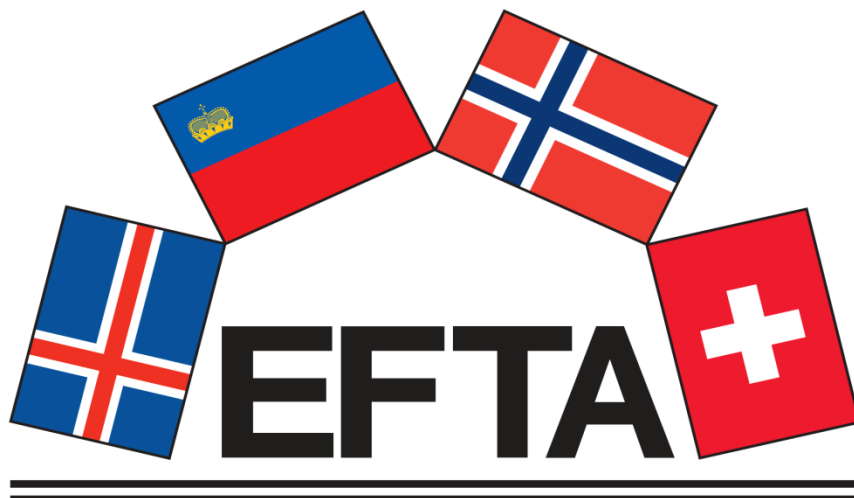
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## LIST OF ABBREVIATIONS

|                        |  |
|------------------------|--|
| <b>EC</b>              | European Communities   |
| <b>ECSC</b>            | European Coal and Steel Community  |
| <b>EEA</b>             | European Economic Area   |
| <b>EEC</b>             | European Economic Community  |
| <b>EFTA</b>            | European Free Trade Association  |
| <b>EU</b>              | European Union   |
| <b>FDI</b>             | Foreign direct investment  |
| <b>FTA / PTA / RTA</b> | Free Trade Agreement / Preferential Trade Agreement / Regional Trade Agreement |
| <b>GATS</b>            | General Agreement on Trade in Services   |
| <b>GATT</b>            | General Agreement on Tariff and Trade  |
| <b>GCC</b>             | Gulf Cooperation Council   |
| <b>GDP</b>             | Gross domestic product   |
| <b>GPA</b>             | Government Procurement Agreement   |
| <b>GSP</b>             | Generalized System of Preferences  |
| <b>HS</b>              | Harmonized Commodity Description and Coding System                             |
| <b>IPR</b>             | Intellectual property rights   |
| <b>JDC</b>             | Joint Declaration on Cooperation   |
| <b>Mercosur</b>        | Mercado Común del Sur (Southern Common Market)                                 |
| <b>MFN</b>             | Most-favoured nation   |
| <b>NAFTA</b>           | North American Free Trade Agreement  |
| <b>NTB</b>             | Non-tariff barrier   |
| <b>OECD</b>            | Organization for Economic Co-operation and Development                         |
| <b>PAPs</b>            | Processed agricultural products  |
| <b>PEM</b>             | Pan-Euro-Mediterranean partnership or process                                  |
| <b>ROO</b>             | Rules of origin  |
| <b>SACU</b>            | Southern African Customs Union   |
| <b>SPS</b>             | Sanitary and phytosanitary measures  |
| <b>Rubeka</b>          | Customs Union of Belarus, Kazakhstan and Russia                                |
| <b>TBT</b>             | Technical barriers to trade  |
| <b>TRD</b>             | Trade Relations Division of the European Free Trade Association                |
| <b>TRIPS</b>           | Agreement on Trade-Related Aspects of Intellectual Property Rights             |
| <b>WTO</b>             | World Trade Organization   |

## ABSTRACT

*From 1991 to 2011, the European Free Trade Association has become one of the central actors in the fierce arena of international trade. Whilst its Member States' economic and political leverages seem to be rather frail compared to giants such as the European Union, the BRICS, the United States or Japan, the EFTA States have managed to place themselves in the forefront of free trade agreements negotiations. With about 80% of its merchandise trade covered by preferential trade arrangements, EFTA's outlook in terms of preferential trade is anything but dark. Helped by a currently moribund multilateral setting, EFTA's future lies in its amazing capacity to surf with control on the trendy but potentially perilous wave of plurilateralism. This dissertation aims at providing concise background information about EFTA and its relations with third-countries, i.e. outside the European Union. It also endeavours to analyse EFTA's prospects with regard to its trade policy: which partners will be considered, what architecture of rules will be employed, under what impulse decision-making will be shaped and how EFTA will carry on within this increasingly globalised world where the emergence of new economic powerhouses may change the dynamics of international trade.*



*Note: this Master's thesis has been written in partial fulfilment of the Master of International Law and Economics programme at the World Trade Institute in Bern, Switzerland. The ideas and opinions expressed in this paper are made independently, represent my own views and are based on my own research. I confirm that this work is my own and has not been submitted for academic credit in any other subject or course. I have acknowledged all material and sources used in this paper.*



# INTRODUCTION

From ancient times until our era of globalisation, trade has always played a fundamental role in the history of mankind. Whether we reminisce about the thalassocracies of Phoenicia, Srivijaya or Venice, the salt caravans of the Sahara, the merchants of the Silk Road, the golden years of the Dutch VOC, or the more contemporary Argentine beef exporters, trade has constantly shaped the evolution of history. Whilst the overall nature of international trade has gradually shifted from, amongst others, expansionism to mercantilism, it is indubitable that nowadays, free trade is fuelling the motor of the world economy. The 20<sup>th</sup> century marked a change in the nature of international trade relations from mostly bilateral trade to the rise of multilateral trade after the Second World War. Such change was also accompanied by a structural change of tradable items from mainly commodities and industrial products to a broader spectrum of trade products and disciplines. With the advent of significant technological innovations, the beginning of the decolonisation process, the emergence of highly developed economies and the transformation of world politics, economic globalisation was on its way to root at the core of international relations.

Following the Second World War, the creation of the Bretton Woods institutions triggered the extensive liberalisation of international trade.<sup>1</sup> The inception of the European Free Trade Association (EFTA)<sup>2</sup> lies at the centre of this distinctive transformation. Such fact is nonetheless often overlooked, as the economic and political importance of the current EFTA States does not seem to be outstanding. For many, EFTA is viewed as the little mouse hiding behind the big elephant. This image is actually far from reality.

Indeed, counting the European Union (EU) as one entity, EFTA is the eleventh largest merchandise trader and the seventh largest services trader in the world.<sup>3</sup> It is also number twelve in the real gross domestic product (GDP) world ranking.<sup>4</sup> EFTA States' trade covered by preferential agreements reaches a market of approximately 1.2 billion people scattered in 64 countries throughout four continents. It has concluded 24 free trade agreements (FTAs) with 33 different countries and is part of the EU internal market through the European Economic Area (EEA).<sup>5</sup> Moreover, it is currently negotiating FTAs with eight different

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<sup>1</sup> Gardner, R., "The Bretton Woods-GATT System after Sixty-Five Years: A Balance Sheet of Success and Failure", in *Columbia Journal of Transnational Law*, Vol. 47(1), 2008.

<sup>2</sup> Comprised of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation.

<sup>3</sup> Source: WTO Secretariat.

<sup>4</sup> Source: IMF Data and Statistics

<sup>5</sup> With the exception of Switzerland, which manages its economic relations with the EU on a bilateral basis.

countries, notably India, Indonesia and the Customs Union of Belarus, Kazakhstan and Russia (Rubeka).

EFTA is essentially a free trade area between Iceland, Liechtenstein, Norway and Switzerland (hereinafter as the “Member States”). It was founded alongside the European Economic Community (EEC) in 1960 during the post-war period of frenetic European integration. EFTA started as an alternative against the larger European integration schemes. Throughout the second half of the 20<sup>th</sup> century, EFTA considerably evolved and has become one of the most effective and advanced trading forces of the world economy. Its relevancy is even strengthened in view of the moribund multilateral talks of the World Trade Organization (WTO) and the steady increase of regionalism patterns. However, such position is often criticised by many scholars and specialists, stating that the multiplication of regional and preferential trade agreements (PTAs) may undermine the benefits of an enhanced multilateral trade system where non-discrimination would prevail.

After more than fifty years, stock should be taken of past achievements and an assessment of the future perspectives should be conducted. So where does EFTA Member States stand in this increasingly intricate trade environment? Towards what direction is the organisation going to and what are the underlying reasons for maintaining such proactive preferential trade policy? This paper aims at shedding light on those issues whilst providing background information on EFTA’s history and functions. Even though the danger of the growing overlapping of PTAs rules may potentially undermine the functioning of the international trade system, the pragmatic approach that the organisation has applied for the past decades regarding FTAs will undoubtedly continue. And this does not seem so far to be detrimental to the Member States’ economic performances. Such success is therefore considered to go uninterrupted for the coming years but few dangers lie ahead.<sup>6</sup>

This research specifically focuses on the last twenty years of EFTA’s trade relations with third-countries outside of the European Union and provides a concise overview of the legal structure of EFTA’s FTAs, as well as their economic and political rationale. The methodology used for the research follows an interdisciplinary approach. The aim of employing qualitative as well as quantitative tools allows to fully comprehending the various aspects at stake. Some chapters mainly use general economic analyses whilst others focus on a juridical approach,

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<sup>6</sup> Amongst others: stability of the world economy; change in the global balance of power with a diminished EU; increasing legal complexity of future FTAs and the potential incapacity for developing countries to enforce them; the overlapping and juxtaposition of different trade rules due to high numbers of PTAs; EFTA’s viability if Iceland or another Member State joins the EU; and so forth.

especially regarding FTAs' structure. The objective is to employ a combination of approaches, which mirrors the complex framework and synergies of the Association's ambit. Of course, this needs to be done through a political, economic and legal prism, as using one single approach would not permit to obtain a comprehensive overview.

The first chapter succinctly summarises EFTA's history, describes its institutional framework, its functioning and provides some explanations regarding the reasons why EFTA continues to thrive. It also underlines the particular relationship between EFTA and the EU. The second chapter seeks to discuss the global state of the world economy and preferential trade so as to give a clearer picture of the Member States' economic position in 2011. It as well provides some general economic indicators about EFTA States. The third chapter portrays EFTA's trade policy in general and how it has evolved in the course of the last twenty years. The trade policy profile of each individual Member States is further analysed so as to understand later the rationale behind EFTA FTAs' scope. The fourth chapter lays out the general legal characteristics of EFTA FTAs and illustrate their application through flagship models. Last but not least, the fifth chapter elaborates questions on EFTA's prospects and strives to draw a picture of EFTA in the forthcoming years. Finally, a brief wrap-up of the previously mentioned topics will bring to a close the dissertation.

# **I. WHAT IS EFTA? ORIGINS, INSTITUTIONS, RATIONALE AND RELATIONS WITH THE EUROPEAN UNION**

## **A. Snippets of fifty years of history<sup>7</sup>**

### **1. Back to the basics: the origins**

The European Free Trade Association was founded in 1960 by what was called the Outer Seven<sup>8</sup> (in opposition to the term “Inner Six”, the founding members of the EEC).<sup>9</sup> In the context of the post-war period, economic and political integration in Western Europe was a sprawling concept embraced by numerous Europeans. The fear of facing again insecurity and instability impelled politicians to foster cooperation and to create common solutions in order to avoid future conflicts and consolidate a weakened Europe. The Schuman Declaration of 1950 embodied this idea of federating European countries into a strong community through an economic and political union. Following the formation of the European Coal and Steel Community (ECSC) in 1951, the powerhouses of Europe started to become interested in deepening partnership amongst themselves and their neighbours to forge new and stronger economic alliances. Alongside the General Agreement on Tariffs and Trade (GATT), which on one hand focused nearly exclusively on lowering tariff levels, and the Organisation for European Economic Cooperation,<sup>10</sup> which on the other hand concentrated on the gradual removal of quantitative restrictions on trade, the ECSC countries pressed for the idea of creating a customs union that would soon become the EEC. The EEC quickly became the main driver behind European integration.

The United Kingdom and other European nations, especially the ones with neutrality traditions, were not so keen on giving up some of their autonomy. London therefore proposed to create a wider free trade area, encompassing the whole range of West European countries.

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<sup>7</sup> Historical information is mainly sourced from: Bryn, K. & Einarsson, G. (eds), *EFTA 1960-2010: Elements of 50 Years of European History*, Haskolautgafan, Reykjavik, 2010; Ems, E., “The Role of EFTA in European Economic Integration”, in *Occasional Paper*, No. 40, EFTA, Geneva, 1992; European Free Trade Association, *EFTA – The European Free Trade Association*, EFTA, Geneva, 1987, 3<sup>rd</sup> edn; Pedersen, T., *European Union and the EFTA Countries: Enlargement and Integration*, Pinter Publishers, London, 1994.

<sup>8</sup> EFTA founding members were Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom. In 2011, only Norway and Switzerland remain with the addition of Iceland and Liechtenstein.

<sup>9</sup> The signatories to the Treaty of Rome establishing the European Economic Community were Belgium, France, Italy, Luxembourg, the Netherlands and West Germany.

<sup>10</sup> Established in 1948 and reformed in 1961 to become the OECD.

This proposal advocated for a looser commercial association, which would not entail any limitation of national sovereignty through a common external tariff or decision-making power by supranational institutions. With the countries of the Nordic Council considering the establishment of a Nordic Customs Union,<sup>11</sup> the United Kingdom hastened to propose EFTA as an alternative. As it constituted a more attractive arrangement for countries having reservations about certain aspects of the EEC, the Outer Seven signed the Stockholm Convention establishing the European Free Trade Association on 4 January 1960. Finland joined the organisation a year later as an associate member with the same rights and obligations over the trade and economic aspects of the Convention. At this time, the Stockholm Convention merely set out a free trade area consistent with the obligations of Article XXIV of the GATT. It aimed at removing internal trade barriers on industrial goods, processed agricultural products and fish and other marine products. Agricultural products were covered in bilateral arrangements between individual Member States, providing most-favoured nation (MFN) treatment amongst them.<sup>12</sup>

## **2. From Stockholm to the EEA Agreement**

Even though EFTA's creation could be considered to be a political reaction to the founding of the EEC, its *raison d'être* did not lie in competing against the latter.<sup>13</sup> The main reasons for establishing EFTA were the following. The first and foremost reason was retaining policy space, discretionary power and full sovereignty whilst mitigating the discriminatory effects of the newly formed EEC. The second reason was using the free trade area as a bridge designed for furthering economic cooperation between its members and the EEC. The third reason was to preserve the Member States competitiveness on a worldwide basis.<sup>14</sup>

From the 1960s until the formation of the EFTA-European Community (EC) single market in 1994, the EEA, EFTA went through various phases. By the end of 1966, the overwhelming majority of industrial products were tariff-free and quantitative barriers were lifted. EFTA States were two years ahead of the EC. As part of the European integration process, the

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<sup>11</sup> Composed of Denmark and its dependencies, Finland, Iceland, Norway and Sweden.

<sup>12</sup> Tuusvuori, O., "EFTA, relations with other countries and the EEA", in Tschäni, H. & Tuusvuori, O. (eds), *Principles and Elements of Free Trade Relations: 40 Years of EFTA Experience*, Verlag Rüegger, Zürich, 2000, pp. 72-74.

<sup>13</sup> On the contrary, cooperation with the EC was and is still one of EFTA's main tasks. See, for instance, the Preamble of the Stockholm Convention: "*Determined to facilitate the early establishment of a multilateral association for the removal of trade barriers and the promotion of closer economic cooperation between the Members of the Organisation for European Economic Cooperation, including the Members of the European Economic Community;*"

<sup>14</sup> Pedersen, T., *op. cit.*, pp. 20-21.

United Kingdom, Denmark and Norway applied for EC membership a year later and the first two became member in 1973, with Norway opting out as a result of a national referendum. Meanwhile, Iceland became a full member in 1971 and each individual Member States concluded bilateral FTAs with the EC. Thereafter, the progress towards economic integration with the EC was moving fast in view of the abolition of customs tariffs and quotas in 1984 between EFTA and the EC.

The year 1984 is widely viewed as landmark year in EFTA's history with the first EFTA-EC ministerial meeting held in Luxembourg.<sup>15</sup> The meeting laid down the foundation for the creation of the EEA in 1992 and basically sought to intensify cooperation between the two main West European blocs through reducing non-tariff barriers to trade (NTBs). This group effort culminated when Jacques Delors, then President of the EC Commission, declared in a speech before the European Parliament that it was time for "*a new, more structured partnership, with common decision-making and administrative functions*"<sup>16</sup>. For both entities, trade was of great importance and EFTA States realised that the removal of NTBs was crucial as the share of trade with the EC was increasing ceaselessly since the 1960s. Back in 1990, EFTA's exports to the EC represented 59.4 per cent of its exports share whilst EC's total trade with EFTA attained the size of trade with the United States and Japan combined.<sup>17</sup>

Consequently, negotiations for the EEA<sup>18</sup> started in 1990, aiming at achieving the "*fullest possible realization of free movement of goods, services, capital and persons [...]*"<sup>19</sup>. In this context, Liechtenstein joined EFTA a year later, although it was thus far indirectly under the coverage of the Stockholm Convention due to an attached Protocol providing that Vaduz's interests were represented through Bern. The collapse of the Iron Curtain unbound the nations, which hitherto were engaged in neutrality (except Switzerland).<sup>20</sup> The possibility of joining the EC became more and more attractive. EFTA States were aware that eschewing the EEA or the EC membership would generate economic losses.<sup>21</sup>

The EEA Agreement was signed in May 1992 in Porto but was ratified only two years later, delayed by the popular referendum in Switzerland that rejected the EEA membership. In the

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<sup>15</sup> Ems, E., *op. cit.*, pp. 3-5.

<sup>16</sup> Bryn, K. & Einarsson, G. (eds), *op. cit.*, p. 21.

<sup>17</sup> Pedersen, T., *op. cit.*, p. 30.

<sup>18</sup> For further explanations on the EEA, see *infra* section 1 of subchapter D of chapter II.

<sup>19</sup> See Preamble of the Agreement on the European Economic Area.

<sup>20</sup> This concerned specifically Austria, Finland and Sweden, which all joined the EC in 1995.

<sup>21</sup> Baldwin, R., "The Economic Logic of EFTA Countries Joining the EEA and the EC", in *Occasional Paper*, No. 41, EFTA, Geneva, November 1992; Krugman, P. "EFTA and 1992", in *Occasional Paper*, No. 23, EFTA, Geneva, June 1988.

same fashion, Norway did not join the new EU<sup>22</sup> as a result of a referendum in the late 1994.<sup>23</sup> With Austria, Finland and Sweden leaving the boat, EFTA remained with its current core, i.e. Iceland, Liechtenstein and Norway being part of the EEA and Switzerland dealing with the EU through bilateral agreements.

Table 1: EFTA membership

| Country                | Date of accession       | Date of withdrawal |
|------------------------|-------------------------|--------------------|
| Austria                | 3 May 1960              | 1 January 1995     |
| Denmark                | 3 May 1960              | 1 January 1973     |
| Finland*               | 1 January 1986          | 1 January 1995     |
| <b>Iceland</b>         | <b>1 March 1970</b>     |                    |
| <b>Liechtenstein**</b> | <b>1 September 1991</b> |                    |
| <b>Norway</b>          | <b>3 May 1960</b>       |                    |
| Portugal               | 3 May 1960              | 1 January 1986     |
| Sweden                 | 3 May 1960              | 1 January 1995     |
| <b>Switzerland</b>     | <b>3 May 1960</b>       |                    |
| United Kingdom         | 3 May 1960              | 1 January 1973     |

\* Finland was an associate member from 1961 to 1986.

\*\* Prior to 1991, Liechtenstein was part of a customs union with Switzerland, and still is.

### 3. 1994-2011: from the EEA until today<sup>24</sup>

Aside from setting up the biggest market in the world with the EU, EFTA's relations with countries outside the EU started to flourish in the 1990s out of the fear of facing discriminations vis-à-vis their competitors in the EU and elsewhere in the world. The first FTA signed by EFTA was with Spain back in 1979 but it was swiftly terminated when Spain joined the EC in 1986. The proper beginning of EFTA's proactive policy to connect with third-countries started in 1989 when the EC launched negotiations with Central and Eastern European countries. The Member States quickly decided to follow the trend and from 1992 to 1995, they concluded ten FTAs with all the countries that would be part of the EU enlargement in 2004 and 2007, with the exception of Cyprus and Malta.

Whilst the EEA was already a comprehensive arrangement covering a wide range of areas, the Stockholm Convention started to look outdated. In the context of the grand finale of the Uruguay Round and the entry into force of the WTO Agreements, it became an imperative for the EFTA States to broaden the scope of the Convention itself, which was merely conferring

<sup>22</sup> The entry into force of the Maastricht Treaty in 1993 transformed the European Communities into the three pillars of the European Union.

<sup>23</sup> It was the second time that Norwegians refuted to adhere to the EC, the first time being in 1972.

<sup>24</sup> The part related to the specificities of third-country relations is further explored in *infra* subchapter B of chapter III. For the reasons of clarity, the term "third-countries" signifies all States outside the EU.

preferences in addition to the GATT standards. Hence, the Member States decided to ameliorate the framework governing their free trade area through an update: the Vaduz Convention. It was signed on 21 June 2001 and entered into force on 1 June 2002. This brand new legal apparel radically expanded the scope of the free trade area between the Member States so as to include new policy areas such as trade in services, investment, competition policy, government procurement, intellectual property rights (IPR), free movement of persons and so forth.

Nowadays, EFTA continues to conduct a proactive free trade policy outside of the European realm. Since its inception, it was perceived that EFTA was only a temporary arrangement, and that all of its members would gradually join the EC after the United Kingdom's departure. EFTA is still here and as this paper will seek to demonstrate, it might still be around for quite a substantial amount of time.

Table 2: General information on EFTA States

|  | ICELAND                 | LIECHTENSTEIN                 | NORWAY                         | SWITZERLAND  |
|--|-------------------------|-------------------------------|--------------------------------|--|
| <b>Official name</b>                                       | Iceland                 | Principality of Liechtenstein | Kingdom of Norway              | Swiss Confederation                                      |
| <b>Government type</b>                                     | Constitutional republic | Constitutional monarchy       | Constitutional monarchy        | Federal republic   |
| <b>Official languages</b>                                  | Icelandic               | German                        | Norwegian (Bokmål and Nynorsk) | German, French, Italian (Romansh is a national language) |
| <b>Capital</b>   | Reykjavik               | Vaduz                         | Oslo                           | Bern   |
| <b>Area</b>  | 103 000 km <sup>2</sup> | 160 km <sup>2</sup>           | 384 802 km <sup>2</sup>        | 41 285 km <sup>2</sup>                                   |
| <b>Population (01.01.2011)</b>                             | 318 452                 | 36 157                        | 4 920 300                      | 7 870 100  |
| <b>Population density (inhabitants per km<sup>2</sup>)</b> | 3.1                     | 226.0                         | 12.8                           | 190.6  |
| <b>Currency</b>  | Icelandic króna (ISK)   | Swiss franc (CHF)             | Norwegian krone (NOK)          | Swiss franc (CHF)  |

## B. The skeleton of the beast: legal foundations and institutional framework

Taken from a bird's eye view perspective, EFTA relies on three pillars. The first is the Vaduz Convention, which essentially acts as a constitution for the organisation. The second pillar is the EEA Agreement, which regulates the EFTA-3<sup>25</sup> single market with the EU. The third pillar is the one that manages the relations with non-EU countries through FTAs and other formal and informal contacts. The first section of this subchapter focuses on the legal

<sup>25</sup> The term EFTA-3 relates to the Member States that are part of the EEA Agreement, i.e. Iceland, Liechtenstein and Norway. They are sometimes dubbed as the EEA EFTA States.



foundations of EFTA and its institutions. The second section describes EFTA's current functioning and the role of the Secretariat. The next subchapter will briefly discuss the particularities of the EFTA-EU relations.

## **1. Legal basis**

The European Free Trade Association is governed by its “constitution”: the Vaduz Convention, which role is twofold. As it has been stated previously, it is first and foremost a free trade agreement between Iceland, Liechtenstein, Norway and Switzerland. Despite the wide-ranging coverage of the Vaduz Convention, the latter does not establish EFTA as a common market, nor a customs union and does not provide a framework for formulating common trade and agricultural policy. Second, the Convention establishes EFTA as an international organisation with fully-fledged legal personality. With the signing of the revised Convention in 2001, the core of the Stockholm Convention was left untouched. EFTA's main governing body, the Council, retained its executive functions. The main difference was, in reference to the previous subchapter, the large expansion of the scope of the Convention in terms of policy areas and trade disciplines.

WTO law is a fundamental aspect of the legal configuration of the Vaduz Convention (and also, as we will see further, EFTA FTAs). An important number of provisions and trade disciplines are governed by or inspired from WTO law. Many direct references to specific articles or agreements of the WTO are applied. As all EFTA States are members of the WTO, it appears necessary for them to comply with their multilateral obligations. This means that the Convention and all FTAs concluded with partners must conform to a number of principles and obligations set out in the WTO Agreements.<sup>26</sup>

Several provisions also refer to other international legal instruments, especially in the field of IPR and rules of origin (ROO). For instance, a number of protocols and agreements of pan-Euro-Mediterranean (PEM) partnership are fully incorporated in the Convention so as to harmonise and provide identical ROO for the parties to the treaty.<sup>27</sup> The same occurrence is implemented with various IPR agreements governing the IPR regime of EFTA States.<sup>28</sup>

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<sup>26</sup> The implications of WTO-based law in EFTA's legal texts are explored in *infra* subchapter A of chapter IV.

<sup>27</sup> See Annex A to the Vaduz Convention.

<sup>28</sup> See Annex J to the Vaduz Convention.

Table 3: Policy areas covered by the past and current EFTA Conventions

| Stockholm Convention, 1960-2002   | Vaduz Convention, 2002-   |
|---|---|
| <ul style="list-style-type: none"> <li>• Trade in goods <ul style="list-style-type: none"> <li>→ Eliminations of customs duties for industrial goods, fish and other marine products</li> <li>→ Prohibition of quotas, export duties</li> <li>→ Improved market access for agriculture</li> <li>→ Cooperation on rules of origins and customs matters</li> <li>→ Basic provisions with soft obligations on subsidies, anti-dumping, safeguard measures, competition and investment</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Trade in goods <ul style="list-style-type: none"> <li>→ Free trade in industrial products, fish and other marine products</li> <li>→ Improved market access for agriculture and processed agricultural products</li> <li>→ Harmonised rules of origins</li> <li>→ Comprehensive rules on TBT, SPS, no antidumping and countervailing measures</li> </ul> </li> <li>• Trade in services and investment <ul style="list-style-type: none"> <li>→ General liberalisation of services with specificities on GATS Mode 4</li> <li>→ Reciprocal opening of the land and air transport markets</li> <li>→ Free movement of capital and related payments</li> <li>→ Restriction-free establishment of national companies or firms between all Members</li> </ul> </li> <li>• Intellectual property rights <ul style="list-style-type: none"> <li>→ TRIPS+ arrangements including application of a number of multilateral agreements related to IPR</li> </ul> </li> <li>• Rules on competition, monopolies and public undertakings</li> <li>• Government procurement <ul style="list-style-type: none"> <li>→ Non-discriminatory access to the Members' mutual markets</li> </ul> </li> <li>• Horizontal policies <ul style="list-style-type: none"> <li>→ Free movement of persons and workers</li> <li>→ Coordination on social security systems</li> <li>→ Mutual recognition of professional diplomas</li> </ul> </li> </ul> |

Looking at the institutional provisions of the Convention<sup>29</sup>, it becomes clear that EFTA carries a light institutional framework on its shoulders. The Council is the governing body of the Association and essentially manages the relations of the Member States under the Convention. It has a fairly broad policy-making mandate and serves as a forum for dialogue and cooperation between the Members. A number of complementary organs support the Council activities and specialise on specific issues, such as the advisory bodies<sup>30</sup> and various committees dealing with particular trade or institutional matters<sup>31</sup>.

## 2. Functioning

In essence, EFTA functions as a platform for managing intra-EFTA trade, the EEA Agreement and Free Trade Agreements with third-countries (these are the three pillars

<sup>29</sup> From Article 43 to Article 45 of the Vaduz Convention.

<sup>30</sup> I.e. the Parliamentary Committee and the Consultative Committee.

<sup>31</sup> E.g. committees on technical barriers to trade (TBT), trade facilitation, rules of origin and customs matters, third-country relations, budget and so on.

aforementioned). All these activities are serviced by the Secretariat, based in Geneva and Brussels.

A striking feature of the Association resides in its functioning regarding third-country relations. Curiously enough, even if Member States work closely together and coordinate their action to conduct joint negotiations (with few exceptions), the Convention does not mandate EFTA States to conclude international agreements, nor delegate any treaty-making powers to the Association. Only two references are made to free trade agreements<sup>32</sup> but they do not endow EFTA with the legal capacity to act on behalf of the Member States. Such similar case is found within most regional integration blocs such as, inter alia, the North American Free Trade Area (NAFTA), the Mercado Común del Sur (Mercosur) or the Gulf Cooperation Council (ECOWAS). Alternatively, intergovernmental organisations such as the Association of Southeast Asian Nations (ASEAN) or the Southern African Customs Union (SACU) have established common negotiating mechanisms to conduct external trade relations, although without entrusting full treaty-making powers.<sup>33</sup> Such practice clearly differs from the European Union, whose Commission holds the exclusive competence regarding all trade matters, as well as foreign direct investment (FDI) and commercial aspects of IPR.<sup>34</sup>

In this respect, the Secretariat founded the Trade Relations Division (TRD) in the mid-nineties.<sup>35</sup> Its main role consists of: coordinating negotiations with the Member States as well as acting as a mediator for resolving divergences between them; shaping, crafting and constructing the foundations of the legal content of the FTAs; participating in negotiations and therein providing expertise in different fields; reviewing and polishing draft texts; conducting economic research and exploratory processes on potential partners; and so forth. The Secretariat functions overall as an input receptacle, or as a facilitating platform for communication and collaboration between the Member States.

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<sup>32</sup> See the Preamble and paragraph 3 of Article 56 of the Vaduz Convention, stipulating respectively “[h]aving regard to the free trade agreements between the Member States on the one hand and third parties to the other [...]” and “[a]ny State acceding to this Convention shall apply to become a party to the free trade agreements between the Member States on the one hand and third states, unions of states or international organisation on the other”.

<sup>33</sup> For ASEAN, see paragraph 7 of Article 41 of the ASEAN Charter and for SACU, see Article 31 of the 2002 SACU Agreement.

<sup>34</sup> See Article 207 of the Consolidated version of the Treaty on the Functioning of the European Union.

<sup>35</sup> European Free Trade Association, *Thirty-sixth Annual Report of the European Free Trade Association*, EFTA, Brussels, 1997.

### C. EFTA's raison d'être

The underlying reasons for the Member States to maintain their privileged relationship through the Association hinges on the same foundations established by the Stockholm Convention. In addition to what has been said in chapter I,<sup>36</sup> EFTA's rationale is roughly reflected through two angles: political and economic. À propos of the political reasons, various justifications may explicate the underlying reasons of the membership: availability of ample policy space and preservation of full sovereignty due to the loose nature of the Association; as a group, strengthening the relatively feeble political leverage of the Member States; enhanced operative modes in negotiations; abating the Members' vulnerability to external fluctuations and exogenous shocks through their tight partnership; lesser degree of integration pursued by the Member States, which is definitely not as far-reaching as the one sought after by the 27 nations of the EU; other strategic and political considerations such as supporting emerging and developing countries or building stronger ties with potential partners.<sup>37</sup>

With respect to the economic reasons, the rationale behind the establishment and the continuity of an RTA such as EFTA is also multifaceted, for instance: securing and increasing market access for economic operators from EFTA countries, which is crucial for small-sized markets; enhancing the growth potential; further reducing trade barriers; taking advantages of economies of scale; avoiding discrimination on major markets;<sup>38</sup> promoting, securing investment and opening up opportunities for businesses; increasing competitiveness in world markets through improved efficiency and facilitation of access to sources of inputs (making the supply chain "coherent"); creating jobs; overriding the effects of a slowed down Doha Development Round through achieving liberalisation of sectors that are not covered by the multilateral framework (WTO-extra or WTO-X), and deepening the level of WTO standards (WTO-plus or WTO+).<sup>39</sup>

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<sup>36</sup> See *supra* section 2 of subchapter A of chapter I.

<sup>37</sup> Schwok, R., "Théories du « petit État » européen et pays originaires de l'AELE", in Dumoulin, M. & Duchenne, G. (eds), *Les petits États et la construction européenne*, PIE Lang, Bruxelles, 2002, pp. 111-114.

<sup>38</sup> This is particularly relevant concerning EU's FTAs network. Since its foundation, EFTA countries have continuously sought to achieve parallelism with the EU.

<sup>39</sup> Lynch, D. A., *Trade and Globalization: An introduction to Regional Trade Agreements*, Rowman & Littlefield Publishers, Plymouth, 2010, pp. 2-9; Damro, C., "The Political Economy of Regional Trade Agreements", in Bartels, L. & Ortino, F. (eds), *Regional Trade Agreements and the WTO Legal System*, Oxford University Press, New York, 2006, pp. 23-42.

## **D. Relations with the European Union**

### **1. The EEA as a whole**

Notwithstanding the fact that the EU is EFTA's most important partner, this paper focuses mainly on third-country relations. It is nevertheless crucial to briefly portray the privileged relationship operated between EFTA countries and the EU. In 2010, the European Union was EFTA's largest trading partner in 2010 and both entities are highly interconnected and integrated. For the European Union, EFTA countries were ranked number three in terms of total merchandise trade in 2010, right after the United States and China.<sup>40</sup> In 1994, the Agreement on the European Economic Area entered into force and established a single market (hereinafter as the "Internal Market") which scope covers a wide-ranging set of policies with, inter alia, the famous four freedoms. With the launch of the EEA, the EFTA-3 States decided to embed in the Internal Market through the most comprehensive agreement that Member States had ever signed. Even if the EEA has been considerably contested and questioned since its creation, it has proved to be an effective and stable accord.<sup>41</sup>

The EEA is a dynamic market with homogeneous rules in need for constant updates and developments. In order to guarantee equal conditions for economic actors, the EFTA-3 States have agreed to take over all pertinent EU legislation. It means that when the EU amends or adopts any act related to the EU Internal Market, the EEA States assess the relevancy of such acts so as to be incorporated into the EEA Agreement. Whereas the EFTA-3 countries basically decide which one of the *acquis communautaires* (EU legislation) will be adopted, they do not possess any decision-making power within EU institutions. The EEA Agreement only provides the possibility for EEA EFTA States to shape decision-making thanks to EFTA's participation in various expert groups and committees contributing to develop the EU policies.

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<sup>40</sup> Sourced from: European Commission, *Eurostat*, [accessed October 2011], available: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>

<sup>41</sup> Sverdrup, U., "15 Years of EEA 1994-2009: Some Experiences and Lessons", in Bryn, K. & Einarsson, G. (eds), *op. cit.*, pp. 159-163.

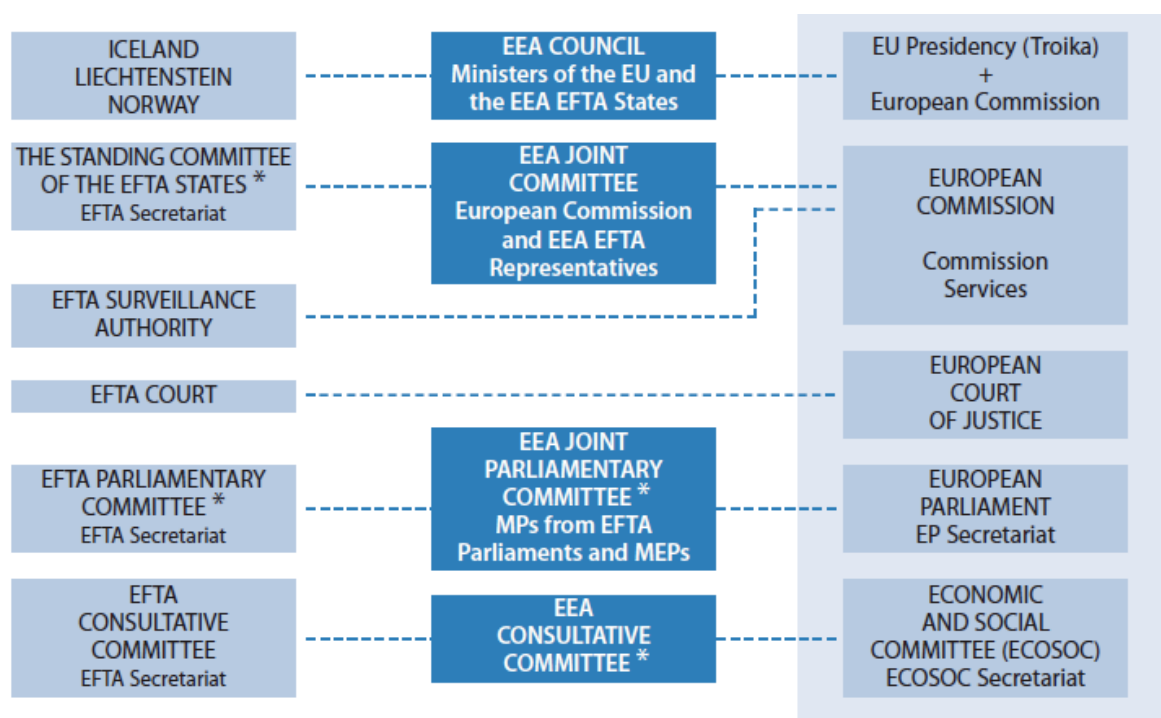
Table 4: Policy areas covered in the European Economic Area<sup>42</sup>

| Features of the EEA  | What the Internal Market is not for the EEA EFTA States   |
|--|---|
| <p><b><u>The four freedoms:</u></b></p> <p><b>Goods</b></p> <ul style="list-style-type: none"> <li>• Competition, state aid, public procurement, IPR</li> <li>• Customs matters and trade facilitation</li> <li>• Industrial goods</li> <li>• Technical cooperation, Standardisation and Mutual Recognition Agreements</li> </ul> <p><b>Services</b></p> <ul style="list-style-type: none"> <li>• Electronic communication, audiovisual services and information society</li> <li>• Financial services</li> <li>• Postal services</li> <li>• Transport services</li> </ul> <p><b>Persons</b></p> <ul style="list-style-type: none"> <li>• Free movement of persons</li> <li>• Recognition of professional qualifications</li> <li>• Social security schemes</li> </ul> <p><b>Capital</b></p> <ul style="list-style-type: none"> <li>• Company law</li> <li>• Financial services</li> </ul> <p><b><u>Horizontal policies:</u></b></p> <ul style="list-style-type: none"> <li>• Company law</li> <li>• Consumer protection</li> <li>• Environment</li> <li>• Social policies</li> <li>• Statistics</li> </ul> <p><b><u>Flanking areas:</u></b></p> <ul style="list-style-type: none"> <li>• Civil protection</li> <li>• Education, training and youth</li> <li>• Employment, enterprise and entrepreneurship</li> <li>• Energy</li> <li>• Information services</li> <li>• Public health</li> <li>• Research and technological development</li> <li>• Tourism, culture</li> </ul> | <ul style="list-style-type: none"> <li>• Area of freedom, security and justice (but Schengen Agreement and Dublin Regulation adopted by Iceland, Norway and Switzerland; Liechtenstein to join later)</li> <li>• Common Agricultural and Fisheries Policies (the EEA Agreement covers some aspects of agricultural and fisheries products)</li> <li>• Common external tariff (EU Customs Union)</li> <li>• Common Foreign and Security Policy</li> <li>• Common trade policy</li> <li>• Development policy</li> <li>• Economic and Monetary Union</li> <li>• Structural Funds and the Cohesion Fund</li> <li>• Tax Policy Strategy</li> </ul> |

In terms of the institutional framework, the EEA Agreement established a two-pillar structure, which reflects the executive, legislative and judiciary branches of the EU. The first pillar is constituted of bodies mirroring the functions of, amongst others, the EU Commission, the European Parliament or the European Court of Justice (respectively for EFTA: the EFTA Surveillance Authority, the EFTA Parliamentary Committee and the EFTA Court). The second pillar is composed of joint bodies following the same pattern (in the same order than the previous sentence: the EEA Joint Committee and the EEA Joint Parliamentary Committee).

<sup>42</sup> Some lists on the table are not exhaustive, such as the flanking areas or the policies not covered by the EEA Agreement. Information sourced from: Vahl, M. (ed), *European Economic Area, 1994-2009*, EFTA, Brussels, 2009; Grønningsæter, T. (ed), *This is EFTA 2011*, EFTA, Brussels, 2011.

Table 5: The two-pillar structure of the European Economic Area<sup>43</sup>



\* Switzerland is an observer

This figure illustrates the management of the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle.

## 2. Bilateral relations between Switzerland and the European Union

Following the rejection of the adoption of the EEA Agreement by the Swiss people in 1992, Switzerland decided to intensify the bilateral relations with the EU that was hitherto governed by the Free Trade Agreement of 1972 and the Insurance Agreement of 1989. In 2009, Switzerland was EU's fourth largest trading partner in merchandise products whilst the EU accounted for respectively 58.5 per cent and 19.2 per cent of Swiss exports and imports.<sup>44</sup>

Switzerland's neutral political stance has always determined the way Bern conducts its relations with the EU. The semi-direct democratic system somewhat limits the economic and political integration between the two. Swiss people have so far mostly favoured bilateral arrangements as supranational entities are viewed as a threat to Switzerland's zealously guarded sovereignty. In order to comply with such approach, Bern concluded a set of bilateral treaties encompassing comparable levels of the EEA coverage, therefore providing free movement of most goods, persons, services and capital. The first batch of seven agreements was concluded in 1999 (known as Bilaterals I) and focused on market opening issues concerning chiefly agriculture, free movement of persons, public procurement, technical

<sup>43</sup> Directly sourced from: Grønningsæter, T. (ed), *op. cit.*, p.20.

<sup>44</sup> Source: Eurostat.

barriers to trade (TBT), road and rail transport as well as air transport, and science and technology. The second batch of nine agreements was concluded in 2004 (known as Bilaterals II) and extended cooperation in diverse fields such as cooperation in the fields of justice, police and migration, environment, anti-fraud mechanisms, taxation of savings, processed agricultural products (PAPs), and so forth. In total, more than 260 legal acts have been so far adopted with 19 major treaties.<sup>45</sup>

Presently, the prospects of the Bilaterals appear to be progressing at snail's pace. The EU has shown signs of fatigue with respect to the preferential treatment the Swiss apparently receive. Some may view Switzerland's policy as a win+/win situation where Switzerland supposedly partakes the "good elements" of the EU's functioning without grabbing any "bad elements".<sup>46</sup> In addition to the fact that the Swiss government reaffirmed many times its commitment to preserve the bilateral way, a lot of uncertainties remain on whether the EU will continue to accept this form of special partnership.<sup>47</sup>

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<sup>45</sup> Bureau de l'intégration DFAE/DFE, Confédération suisse, *Les Accords bilatéraux Suisse-Union européenne, septembre 2011*, Bureau de l'intégration DFAE/DFE, Bern, 2011.

<sup>46</sup> *Ibid.*, pp. 13-16.

<sup>47</sup> For more information on the Swiss-EU relations, see Kraus, D. (et al.), *L'Union Européenne: ses institutions et ses relations avec la Suisse*, Schulthess, Genève, 2009; Rossi, M. (et al.), *Accordi bilaterali Svizzera – Unione Europea*, CFPG, Lugano, 2009.



## II. THE GLOBAL STATE OF PREFERENTIAL TRADE IN THE WORLD AND EFTA MEMBER STATES IN 2010-2011

In order to understand the overall context of EFTA's position within the realm of international trade, it is necessary to depict the current global state of the world economy and preferential trade. Nevertheless, this chapter does not aim at providing a comprehensive analysis but rather a general outline.

### A. Trends in the world economy in 2010-2011

In the aftermath of the worst economic crisis the world underwent through since the Great Depression of the 1930s, the global upturn of the world economy remains seriously fragile in 2011. In that same year, world GDP is foreseen to grow by approximately 3.1 per cent whereas the same rate was at 3.9 per cent in 2010.<sup>48</sup> Developed countries are again expected to be the most affected<sup>49</sup> whilst developing countries demonstrate better performances driven by steady growth in domestic demand.<sup>50</sup>

Regarding international trade, the recovery from 2008 rebounded spectacularly and offset its decline of 2009 (although without returning to the pre-crisis growth trend). World merchandise trade in nominal volume terms recorded a 14 per cent annual increase but is expected to go back to a single-digit figure at around 7 to 8 per cent for 2011.<sup>51</sup> Such revival in trade and output growth was distributed unevenly amongst developed and developing nations. With East Asia leading the pack, developing countries exceeded the pre-crisis peak in merchandise imports and exports whilst developed countries recovered only parts of the 2008 figures.<sup>52</sup> Trade in services closely followed the same pattern, although with relatively smaller fluctuations.<sup>53</sup>

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<sup>48</sup> UNCTAD, *Trade and Development Report – Post-crisis policy challenges in the world economy*, United Nations Publications, New York and Geneva, 2011, pp. 1-2.

<sup>49</sup> E.g. sovereign debt crisis-stricken countries such as Japan, the United States, Greece, Ireland, Portugal, Spain, Italy and so on.

<sup>50</sup> E.g. countries such as China, India, Brazil, South Korea, numerous regional leaders in Sub-Saharan Africa and so on.

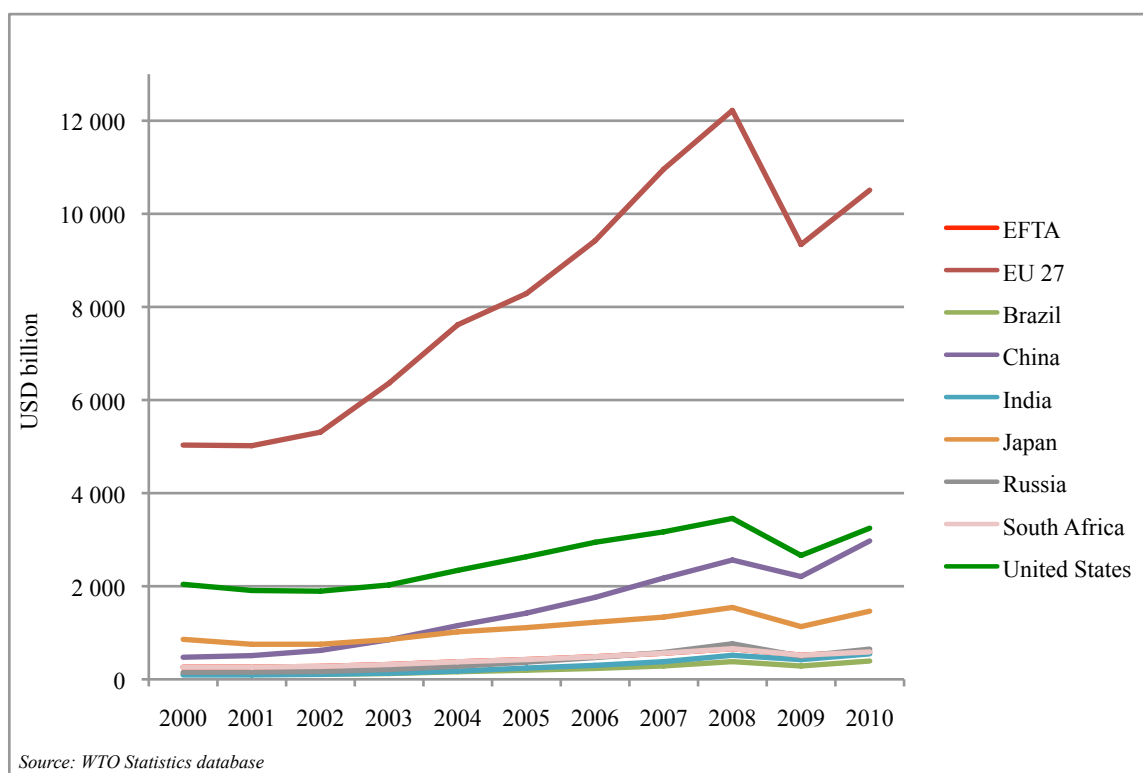
<sup>51</sup> UNCTAD, *op. cit.*, pp. 7-8.

<sup>52</sup> *Ibid.*, pp. 7-9.

<sup>53</sup> World Trade Organization, *World Trade Report 2011 – The WTO and preferential trade agreements: from co-existence to coherence*, WTO, Geneva, 2011, pp. 25-26.

Various factors explain those post-crisis dynamics. Amongst the countries that were the worst hit by the crisis, austerity measures put a halt to potential expansionary fiscal policies, thus not preventing the deflationary spiral amplified by a decrease in private spending combined with weak labour market indicators. Demand-led growth economies such as the United States or various powerhouses in Europe are suffering the consequences and, in addition to the dangerously low levels of debt sustainability, the outlook does not seem pretty optimistic. Moreover, the volatility of various markets, notably in finance and commodities, reinforces this unstable situation where investment and public spending are generally contracting. Finally, even if hydrocarbons prices were stabilised in 2010, oil prices were still high at around USD 78/barrel,<sup>54</sup> thus increasing energy costs with overall negative spillover effects on trade and many other areas.<sup>55</sup>

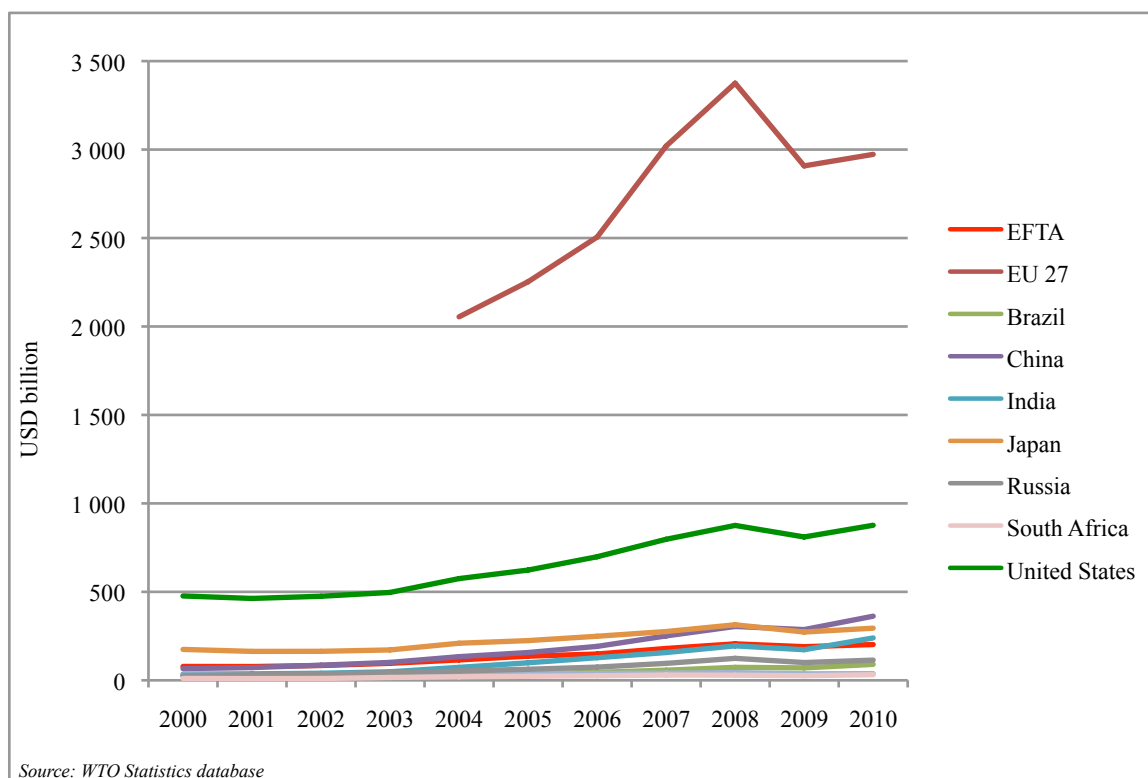
Chart 1: Total trade in merchandise goods, 2000-2010



<sup>54</sup> In comparison to an average of USD 31/barrel between 2000 and 2005. *Ibid.*, p. 21.

<sup>55</sup> For more information, see UNCTAD, *Trade and Development Report – Employment, globalization and development*, United Nations Publications, New York and Geneva, 2010, pp. I-XIII, 1-28; UNCTAD, *op. cit.*, 2011, pp. 1-28; World Trade Organization, *World Trade Report 2011 – The WTO and preferential trade agreements: from co-existence to coherence*, WTO, Geneva, 2011, pp. 20-29.

Chart 2: Total trade in commercial services, 2000-2010



## B. Evolution of global preferential trade in the late 2000s

As this paper focuses on one of the oldest Regional Trade Agreement (RTA), it is crucial to examine briefly what is the state preferential trade today and where it is going to. The history of regionalism can be divided in three major phases since the end of the Second World War.<sup>56</sup> The first phase (1950s-1980s) refers to the early forms of regionalism, with the European continent at the forefront. Since the establishment of the EEC in 1958 and its British-led alternative, the EFTA, in 1960, both blocs have followed distinctive path with one becoming the most advanced model of regional integration and the other one serving more as a vehicle for furthering economic opportunities. In those times, integration was mostly motivated to consolidate peace through trade liberalisation.

The second wave of regionalism<sup>57</sup> was characterised by the strengthening of regional trading systems within and outside of the framework of Article XXIV of the GATT. Indeed, the EC were expanding and deepening respectively to include new members such as Greece, Spain

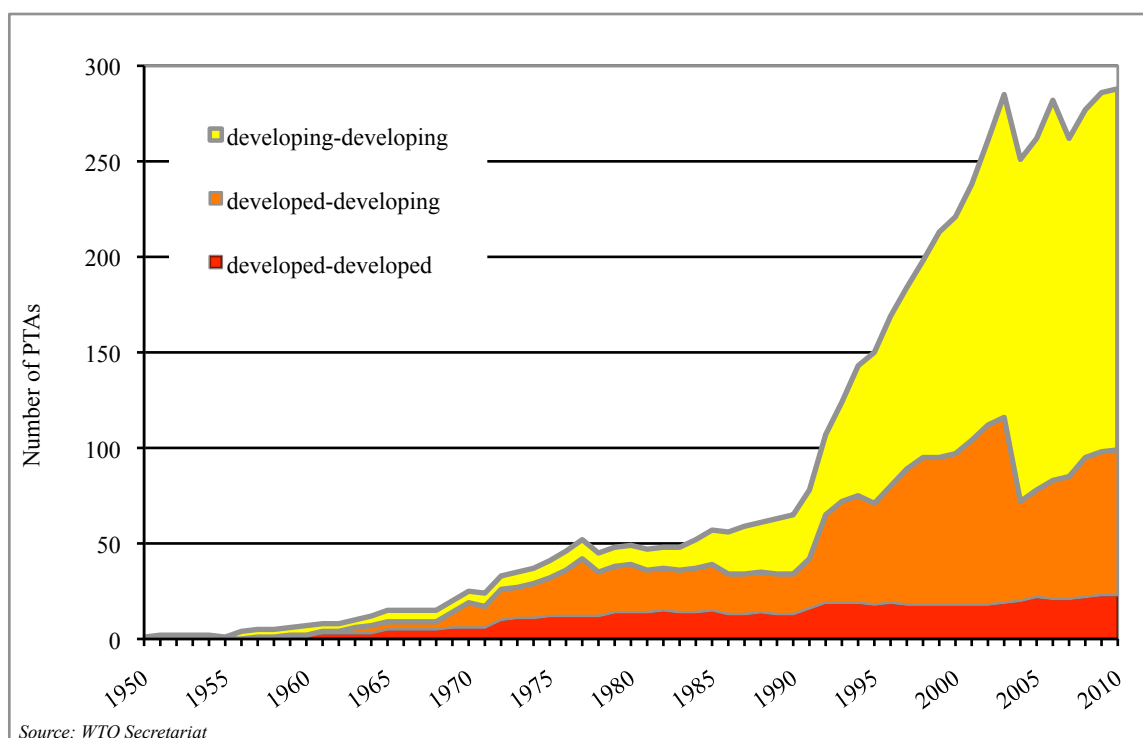
<sup>56</sup> Carpenter, T., "A historical perspective on regionalism", in Baldwin, R. & Low, P. (eds), *Multilateralizing Regionalism: Challenges for the Global Trading System*, Cambridge University Press, Cambridge, 2009, pp. 13-27.

<sup>57</sup> From roughly 1980 until 1995, see Bhagwati, J., "Regionalism and Multilateralism: An Overview", in Bhagwati, J., Krishna, P. & Panagariya, A. (eds), *Trading Blocs: Alternatives Approaches to Analyzing Preferential Trade Agreements*, MIT Press, Cambridge, MA, 1999, pp. 10-12.

and Portugal, and to progress to a Single European Market for goods, services, capital and labour under the umbrella of the EEC. The second wave was also accompanied by, amongst others, the foundation of Mercosur and the NAFTA, which latter proposed new sets of trade disciplines, going beyond the classic commitments related to trade in goods.

The third phase concerns the post-Uruguay Round period, which is marked by the emergence of a more complex multilayered global trading system bolstered by the tremendous proliferation of PTAs. From the 1990s onwards, the number of PTAs increased from approximately 70 to 300 in 2010.<sup>58</sup> As an illustration to this surge, an astounding number of 49 notifications of PTAs were made to the WTO between January 2008 and June 2009.<sup>59</sup> Nowadays, PTAs in force between developing countries represent about two-thirds of the total number; about a quarter for PTAs between developed and developing countries; and the rest concerns developed nations solely. Approximately half of those PTAs are intra-regional and the remainder cross-regional, with the share of cross-regional agreements increasing over the last years.

Chart 3: Cumulative number of PTAs in force, 1950-2010



<sup>58</sup> World Trade Organization, *World Trade Report 2011 – The WTO and preferential trade agreements: from co-existence to coherence*, WTO, Geneva, 2011, p. 54.

<sup>59</sup> Fiorentino, R. V., “The never-ending story of regional trade agreements”, in Jovanović, M. N. (ed), *International Handbook on the Economics of Integration, Volume I*, Edward Elgar Publishing, Cheltenham, 2011, p. 4.

In general, few essential observations can be extrapolated out the rising number of PTAs. First, it seems that trade preferences are becoming less and less important. Indeed, a significant portion of trade between PTA partners is duty-free and 51 per cent of global trade is already duty-free on MFN basis. Preferential trade<sup>60</sup> in goods only covers 16 per cent of the world trade (about 52 per cent of world trade is MFN zero) and the average MFN tariff amounts to about 4 per cent in 2009. Moreover, only 2 per cent of world trade is eligible for preference margins above 10 percentage points.<sup>61</sup> This generally means that there is little space for lowering tariffs within PTAs although certain sensitive sectors, mainly agriculture, remain substantially protected.

Second, PTAs have currently a high tendency to deepen and intensify the WTO Agreements standards (WTO+), and to go outside of the realm of the WTO multilateral framework (WTO-X). Combined with a stalled Doha Round, complex international production networks fostering deep integration and increasing market sizes, the classical approach of tariff liberalisation has become less attractive. In addition to WTO+ elements, new PTAs tend to include WTO-X “behind-the-border” areas such as investment, competition policy, environmental laws, movement of capital, labour and other social matters, anti-corruption instruments, human rights, economic cooperation clauses and so forth.<sup>62</sup> The reasons why countries conclude PTAs will be explained below in chapter III when EFTA’s trade policy will be discussed.

### **C. Overview of EFTA States’ macroeconomic environment in the late 2000s<sup>63</sup>**

Iceland, Liechtenstein, Norway and Switzerland are renowned for being four of the most advanced economies in the world. They are easily identifiable due to their high GDP per capita, high productivity levels, diversified economies, low unemployment rates, highly competitive industries and businesses, reliability on capital markets (except Iceland), prominence in education as well as research and development, and first-class living standards.

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<sup>60</sup> For the sake of this research, preferential trade means trade that receive preferential treatment within the scope of a FTA or RTA. This detail is important as we could rightfully assume that MFN trade amongst WTO Members is also preferential, as not all countries in the world are members of the organisation.

<sup>61</sup> World Trade Organization, *World Trade Report 2011 – The WTO and preferential trade agreements: from co-existence to coherence*, WTO, Geneva, 2011, pp. 54-86

<sup>62</sup> *Ibid.*, pp. 124-150; Mashayekhi, M. & Ito, T. (ed), *Multilateralism and Regionalism: The New Interface*, United Nations Publications, New York and Geneva, 2005, pp. 2-5.

<sup>63</sup> Economic data is sourced from Eurostat, OECD.Stat and national statistical offices.

For an insight on the specific economic features and trade patterns of each Member State, please refer to chapter III of this dissertation.

In 2010, the combined GDP of the EFTA States amounted to USD 959 billion with Iceland, Liechtenstein, Norway and Switzerland respectively accounting for 1.3 per cent, 0.6 per cent, 43.0 per cent and 55.0 per cent of the total. Per capita GDP (PPP) was, respectively, USD 34'828, USD 135'630, USD 56'648 and USD 46'815 for Iceland, Liechtenstein, Norway and Switzerland, ranking the EFTA States alongside countries with the highest GDP per capita globally.

Table 6: GDP (2010) and per capita GDP (PPP) (2010)

|                                      | ICELAND | LIECHTENSTEIN | NORWAY  | SWITZERLAND | EFTA<br>TOTAL |
|--------------------------------------|---------|---------------|---------|-------------|---------------|
| GDP (USD million)                    | 12' 594 | 5'927         | 412'989 | 527'919     | 959'428       |
| Per capita GDP (PPP, in current USD) | 34'828  | 135'630       | 56'648  | 46'815      | -             |

*Note: figures for Liechtenstein are from 2009 and are sourced from the Eurostat website.*

The global financial crisis of 2008-9 and the accompanying fall in world trade significantly impacted all the EFTA States. Real GDP growth across the EFTA States moved into negative territory in 2009. Iceland, which suffered the severest downturn owing to the collapse of its banking sector in late 2008, remained in negative growth territory in 2010, whilst growth resumed a positive trajectory in both Norway and Switzerland in that year. Looking ahead, the Organization for Economic Co-operation and Development (OECD) forecasts suggest positive growth rates across all EFTA States in 2011.

Table 7: Developments in real GDP (percentage change from previous year)

|                      | ICELAND | NORWAY | SWITZERLAND |
|----------------------|---------|--------|-------------|
| 2009                 | -6.9    | -1.7   | -1.9        |
| 2010                 | -3.5    | 0.3    | 2.7         |
| 2011 (OECD forecast) | 2.2     | 2.5    | 2.7         |
| 2012 (OECD forecast) | 2.9     | 3.0    | 2.5         |

*Note: figures for Liechtenstein are not available.*

Inflation in Iceland remained high through 2009 as a result of the marked decline in the exchange rate. It fell sharply last year, however, in line with the strengthening of the krona (Icelandic currency) and muted domestic demand. Projections point towards relatively low inflation in 2011-2012. Inflation in Norway, having risen in 2010, has weakened recently and is expected to remain at a moderate level. Inflation in Switzerland and Liechtenstein fell back

in 2009 in line with the fall in oil prices and the domestic slowdown, and is projected to remain in low, positive territory going forward, notably in light of the strong domestic currency.

Table 8: Inflation (consumer price index, percentage change from previous year)

|                      | ICELAND | LIECHTENSTEIN | NORWAY | SWITZERLAND |
|----------------------|---------|---------------|--------|-------------|
| 2009                 | 12.0    | -0.5          | 2.2    | -0.5        |
| 2010                 | 5.4     | 0.7           | 2.4    | 0.7         |
| 2011 (OECD forecast) | 2.7     | 0.7           | 1.7    | 0.7         |
| 2012 (OECD forecast) | 2.6     | 1.1           | 2.0    | 1.1         |

*Note: Liechtenstein has the same inflation rate as Switzerland as a result of the monetary union between the two countries.*

Unemployment rates rose slightly in Iceland, Norway and Switzerland in 2010. Expectations are for these to fall this year across the EFTA States and remain low through 2012. More generally, unemployment in the EFTA States continues to compare favourably with most OECD countries.

Table 9: Unemployment rates (percent of labour force)

|                      | ICELAND | LIECHTENSTEIN | NORWAY | SWITZERLAND |
|----------------------|---------|---------------|--------|-------------|
| 2009                 | 7.2     | 2.8           | 3.2    | 4.3         |
| 2010                 | 7.5     | 2.7           | 3.6    | 4.5         |
| 2011 (OECD forecast) | 7.0     | 2.6           | 3.4    | 4.1         |
| 2012 (OECD forecast) | 5.8     | --            | 3.2    | 3.9         |

*Note: the Liechtenstein unemployment rate is sourced from the Liechtenstein statistical office website.*

The government budget was in surplus in Norway in 2010 and will remain in surplus going forward. The Swiss government financial balance was also in positive territory in 2010 Swiss public finances will remain in comparatively good shape in the next years. Liechtenstein posted a deficit in 2010 and a small deficit is also expected this year. Iceland's government financial balance indicated a sharp deficit in 2008-2009 reflecting one-time recapitalisation costs. Significant fiscal consolidation is underway with the aim of achieving an overall budget surplus in 2013.

Table 10: General government financial balance and government gross debt (2010)

|   | ICELAND | NORWAY             | SWITZERLAND |
|---|---------|--------------------|-------------|
| Government financial balance (% of GDP) (OECD forecast) | -7.8    | 10.5               | 0.5         |
| Government gross debt (% of GDP) (OECD forecast)        | 120.2   | 49.5 <sup>64</sup> | 40.2        |

*Note: figures for Liechtenstein are not available.*

<sup>64</sup> Norway is a net creditor.

### III. TRADE POLICY PROFILE OF FOUR ALPINE AND NORDIC NATIONS

#### A. Trade and investment performances

##### 1. Overall data

Before immersing into the details of the Member States' specific trade policies, it is necessary to provide some background information about EFTA States' trade and investment performances. This allows additional comprehension on the reasons why EFTA countries are deeply committed in expanding their preferential trade horizons.

All the EFTA States are highly dependent on global trade, with trade to GDP ratios equal to 87.8 per cent, 74.2 per cent and 111.1 per cent for Iceland, Norway and Switzerland, respectively.<sup>65</sup> The liberal trade regime of those countries, plus their small-sized market and high level of development placed trade as one of the major catalysts generating economic growth, if not the most important. In 2010, the EFTA States together were the eleventh largest merchandise trader globally (counting the EU as one).<sup>66</sup>

Their total merchandise trade with the world was valued at USD 589 billion, with imports accounting for USD 257 billion (44 per cent) and exports for 332 billion (56 per cent). This represents a 13 per cent increase over trade in 2009, a year in which the EFTA States experienced a significant drop in their trade with the world due to the global economic turmoil.<sup>67</sup>

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<sup>65</sup> Source: WTO Statistics database. Trade to GDP ratios calculated for the years 2007 to 2009.

<sup>66</sup> *Ibid.*

<sup>67</sup> Source: Global Trade Information Services (GTIS), Global Trade Atlas.



Chart 4: EFTA total merchandise trade with the world, 2000-2010

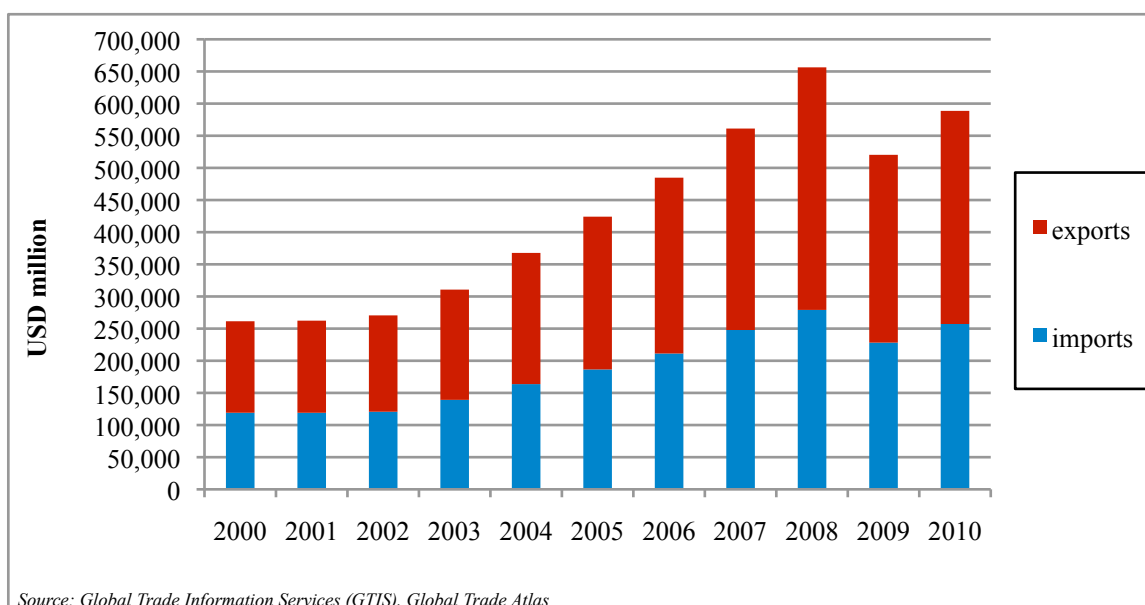


Table 11: Leaders in world merchandise trade in 2010 (in USD billion and %)

| Rank                                 | Country                  | Total         | Share (%) in world total | Exports       | Imports       |
|--------------------------------------|--------------------------|---------------|--------------------------|---------------|---------------|
| 1                                    | Extra-EU27               | 3,765         | 15.8%                    | 1,787         | 1,977         |
| 2                                    | United States            | 3,246         | 13.6%                    | 1,278         | 1,968         |
| 3                                    | China                    | 2,973         | 12.4%                    | 1,578         | 1,395         |
| 4                                    | Japan                    | 1,462         | 6.1%                     | 770           | 693           |
| 5                                    | South Korea              | 892           | 3.7%                     | 466           | 425           |
| 6                                    | Hong Kong                | 843           | 3.5%                     | 401           | 442           |
|                                      | retained imports         | 116           | 0.5%                     |               | 116           |
|                                      | domestic exports         | 18            | 0.1%                     | 18            |               |
|                                      | re-exports               | 383           | 1.6%                     | 383           |               |
| 7                                    | Canada                   | 789           | 3.3%                     | 387           | 402           |
| 8                                    | Singapore <sup>(1)</sup> | 663           | 2.8%                     | 352           | 311           |
|                                      | retained imports         | 142           | 0.6%                     |               | 142           |
|                                      | domestic exports         | 183           | 0.8%                     | 183           |               |
|                                      | re-exports               | 169           | 0.7%                     | 169           |               |
| 9                                    | Russian                  | 648           | 2.7%                     | 400           | 248           |
| 10                                   | Mexico                   | 609           | 2.5%                     | 298           | 311           |
| <b>11</b>                            | <b>EFTA</b>              | <b>589</b>    | <b>2.5%</b>              | <b>332</b>    | <b>257</b>    |
| 12                                   | India                    | 539           | 2.3%                     | 216           | 323           |
| 13                                   | Taiwan                   | 526           | 2.2%                     | 275           | 251           |
| 14                                   | Australia                | 414           | 1.7%                     | 212           | 202           |
| 15                                   | United Arab Emirates     | 405           | 1.7%                     | 235           | 170           |
| 16                                   | Brazil                   | 393           | 1.6%                     | 202           | 192           |
| 17                                   | Thailand                 | 378           | 1.6%                     | 195           | 182           |
| 18                                   | Malaysia                 | 364           | 1.5%                     | 199           | 165           |
| 19                                   | Saudi Arabia             | 356           | 1.5%                     | 254           | 102           |
| 20                                   | Turkey                   | 299           | 1.3%                     | 114           | 186           |
| 21                                   | Indonesia                | 290           | 1.2%                     | 158           | 132           |
| 22                                   | South Africa             | 176           | 0.7%                     | 82            | 94            |
| 23                                   | Iran                     | 164           | 0.7%                     | 101           | 63            |
| 24                                   | Vietnam                  | 157           | 0.7%                     | 72            | 85            |
| 25                                   | Chile                    | 128           | 0.5%                     | 70            | 58            |
| <b>Total of above <sup>(2)</sup></b> |                          | <b>21,066</b> | <b>1</b>                 | <b>10,435</b> | <b>10,632</b> |
| <b>World <sup>(2)(3)</sup></b>       |                          | <b>23,894</b> | <b>1</b>                 | <b>11,878</b> | <b>12,016</b> |

Source: WTO Statistics database  
 (1) Singapore's retained imports are defined as imports less re-exports.  
 (2) Includes significant re-exports or imports for re-export  
 (3) Excluding intra-EU27 trade

On the import side, the EU accounted for 72.9 per cent of EFTA's total imports in 2010, followed by the United States (5.4 per cent), China (4.9 per cent) and Japan (2.1 per cent). The joint share of EFTA's 24 FTAs partners (excluding the EU) represented 6.4 per cent of EFTA's total imports. The EU was also the EFTA States' main export destination in 2010, taking in 67.6 per cent of EFTA's total exports. EFTA's FTA Partners (excluding the EU) accounted for 10.6 per cent of exports, followed by the US (8.0 per cent). China overtook Japan as EFTA's third most important export destination in 2010 accounting for 2.9 per cent of EFTA's total exports to the world. With regards to total trade share with FTA partners, huge disparities sometimes characterise the variations of partners' share with EFTA. For instance, Canada is the most important third-country partner with 1.4 per cent of EFTA's total trade (USD 8.46 billion) whereas Montenegro is the least significant, representing only 0.002 per cent of EFTA's total trade (USD 14.1 million).<sup>68</sup>

Chart 5: Top EFTA import sources in 2010

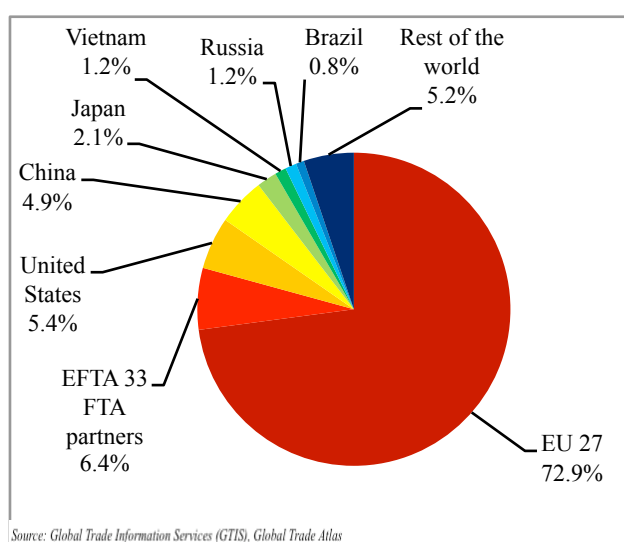
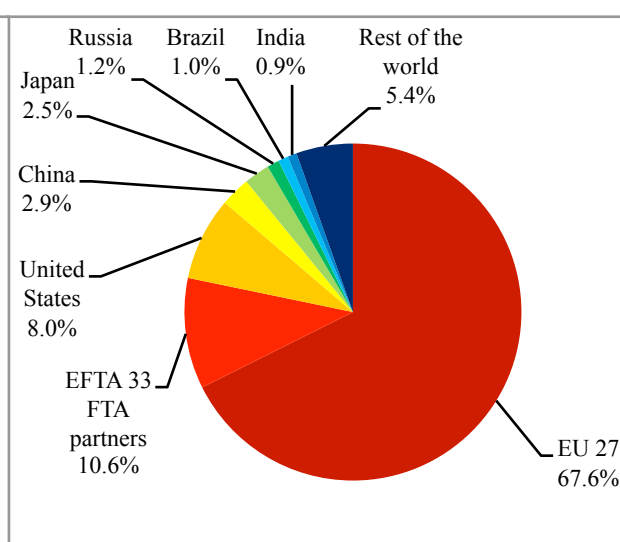


Chart 6: Top EFTA export destinations in 2010



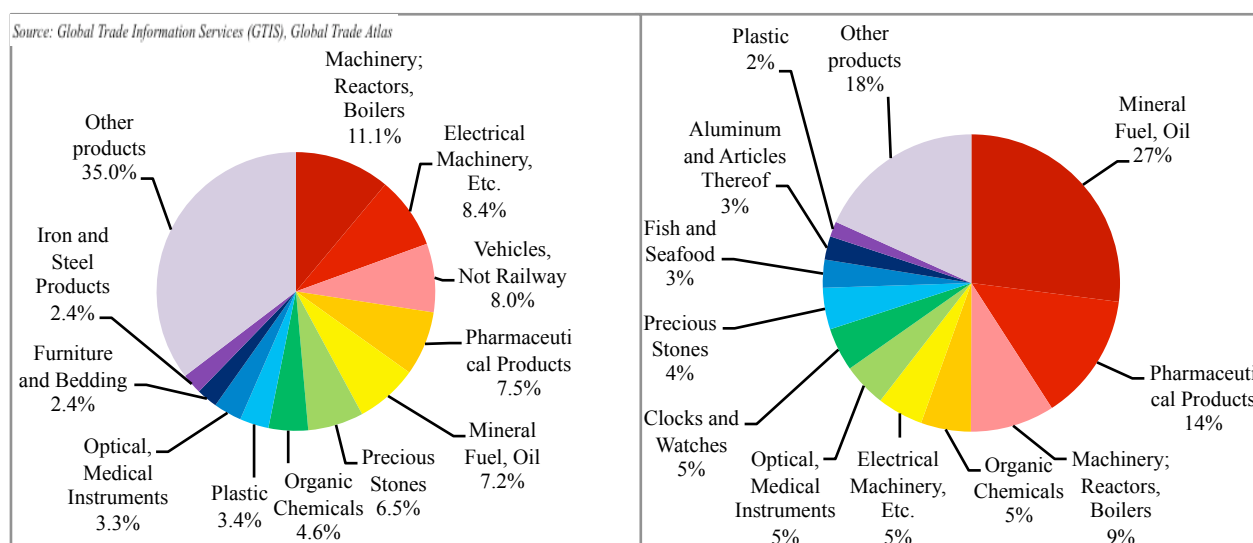
EFTA's main commodity exports to the world in 2010 included mineral fuels (27 per cent), pharmaceutical products (14 per cent), machinery (9 per cent), and organic chemicals (6 per cent), whilst the main commodity imports were machinery (11 per cent), electrical machinery (8 per cent), vehicles (8 per cent), pharmaceutical products (8 per cent) and mineral fuels (7 per cent). Moreover, EFTA States are net importers of food. Almost half (in calorific terms) of their domestic food consumption is imported. The main import items comprise fruits, nuts, vegetables, spices, juices and cereals.<sup>69</sup>

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

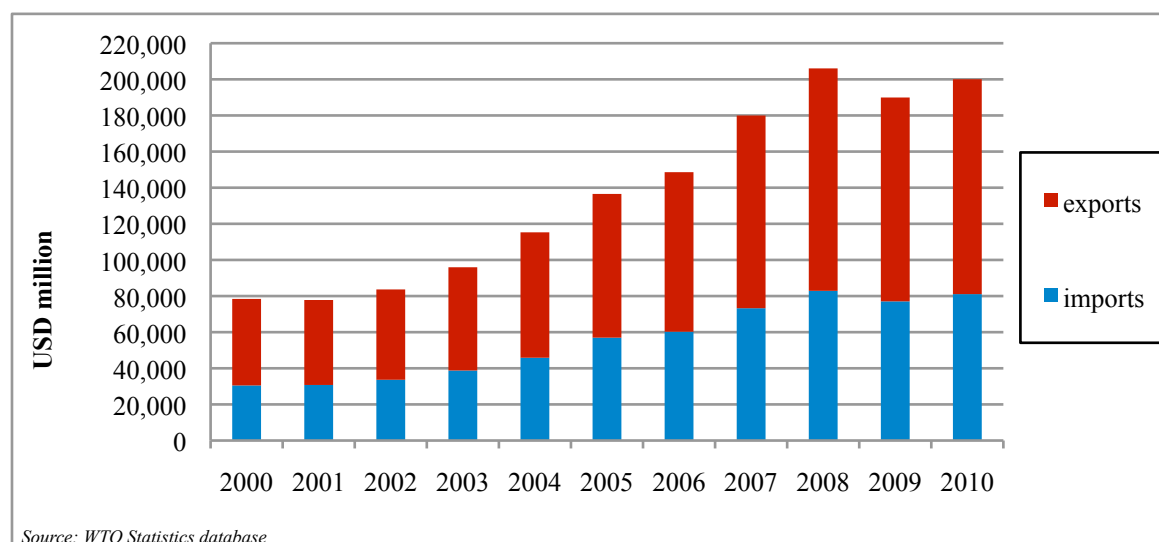
Chart 7: Top EFTA imports from the world in 2010

Chart 8: Top EFTA exports to the world in 2010



In terms of services, EFTA countries are significant players in commercial services trade. Together they ranked seventh in terms of global trade in commercial services in 2010. Switzerland exported USD 76.3 billion of commercial services to the world in that year, corresponding to approximately 2.1 per cent of the world's total exports, and imported an equivalent of USD 38.4 billion, or 1.1 per cent of the world's total imports. Norway also had substantive services exports and imports in that year, amounting to USD 40.2 billion and USD 40.6 billion respectively. Iceland exported USD 2.5 billion worth of commercial services, whilst importing for USD 2.0 billion. Switzerland and Norway are traditionally net exporters of services. Iceland has traditionally been a net importer of services but was a net exporter of services in 2009 and 2010 due to the bankruptcy in its banking sector.<sup>70</sup>

Chart 9: EFTA commercial services trade with the world, 2000-2010



<sup>70</sup> Source: WTO Statistics database.

Table 12: Leaders in world commercial services trade in 2010 (in USD billion and %)

| Rank                            | Country       | Total        | Share (%) in world total | Exports      | Imports      |
|---------------------------------|---------------|--------------|--------------------------|--------------|--------------|
| 1                               | Extra-EU27    | 1,281        | 23.3%                    | 684          | 598          |
| 2                               | United States | 873          | 15.9%                    | 515          | 358          |
| 3                               | China         | 362          | 6.6%                     | 170          | 192          |
| 4                               | Japan         | 293          | 5.3%                     | 138          | 155          |
| 5                               | India         | 226          | 4.1%                     | 110          | 117          |
| 6                               | Singapore     | 208          | 3.8%                     | 112          | 96           |
| 7                               | <b>EFTA</b>   | <b>200</b>   | <b>3.6%</b>              | <b>119</b>   | <b>81</b>    |
| 8                               | South Korea   | 175          | 3.2%                     | 82           | 93           |
| 9                               | Hong Kong     | 159          | 2.9%                     | 108          | 51           |
| 10                              | Canada        | 156          | 2.8%                     | 66           | 89           |
| 11                              | Russian       | 114          | 2.1%                     | 44           | 70           |
| 12                              | Australia     | 98           | 1.8%                     | 48           | 50           |
| 13                              | Brazil        | 90           | 1.6%                     | 30           | 60           |
| 14                              | Thailand      | 79           | 1.4%                     | 34           | 45           |
| 15                              | Taiwan        | 78           | 1.4%                     | 41           | 37           |
| 16                              | Malaysia      | 65           | 1.2%                     | 32           | 32           |
| 17                              | Turkey        | 51           | 0.9%                     | 33           | 18           |
| 18                              | Indonesia     | 49           | 0.9%                     | 17           | 33           |
| 19                              | Israel        | 42           | 0.8%                     | 24           | 17           |
| 20                              | Mexico        | 39           | 0.7%                     | 16           | 23           |
| 21                              | Egypt         | 36           | 0.7%                     | 24           | 13           |
| 22                              | Macao         | 33           | 0.6%                     | 28           | 5            |
| 23                              | South Africa  | 32           | 0.6%                     | 14           | 18           |
| 24                              | Ukraine       | 27           | 0.5%                     | 16           | 11           |
| 25                              | Argentina     | 26           | 0.5%                     | 13           | 14           |
| <b>Total of above</b>           |               | <b>4,792</b> | <b>87.1%</b>             | <b>2,518</b> | <b>2,276</b> |
| <b>World <sup>(1)</sup></b>     |               | <b>5,502</b> | <b>100.0%</b>            | <b>2,795</b> | <b>2,707</b> |
| Source: WTO Statistics database |               |              |                          |              |              |
| (1) Excluding intra-EU27 trade  |               |              |                          |              |              |

Turning to investment, the Member States are important investors abroad, with outward FDI accounting for 83 per cent, 41 per cent and 172 per cent of Iceland's, Norway's and Switzerland's GDP in 2010. The global stock of FDI originating from EFTA States amounted to USD 1'090 billion in 2010 whilst the global FDI stock into the EFTA States in that year was valued at USD 723 billion. Both Norway and Switzerland are net outward investors. Iceland has traditionally been a net outward investor, a trend that was reversed in 2010. FDI from the EFTA countries is concentrated in finance and banking (Switzerland), chemicals and plastics (Iceland and Switzerland), mining and oil and gas extraction (Norway), as well as manufacturing.<sup>71</sup>

<sup>71</sup> Source: UNCTADStat.

Table 13: EFTA's main trading partners in merchandise trade in 2010 (in USD billion and %)

| Rank No | Country                                    | Total trade USD mio | Share %     | Export USD mio | Share %     | Rank No     | Import USD mio | Share %     | Rank No     | Trade Balance |
|---------|--|---------------------|-------------|----------------|-------------|-------------|----------------|-------------|-------------|---------------|
|         | <b>World</b>                               | <b>588,694</b>      | <b>100</b>  | <b>331,509</b> | <b>100</b>  | <b>n.a.</b> | <b>257,185</b> | <b>100</b>  | <b>n.a.</b> | <b>74,324</b> |
|         | <b>Free Trade Partners</b>                 | <b>467,077</b>      | <b>79.3</b> | <b>261,503</b> | <b>78.9</b> | <b>n.a.</b> | <b>205,574</b> | <b>79.9</b> | <b>n.a.</b> | <b>55,928</b> |
|         | <b>EFTA's 33 FTA partners (excl. EU27)</b> | <b>51,623</b>       | <b>8.8</b>  | <b>35,249</b>  | <b>10.6</b> | <b>n.a.</b> | <b>16,374</b>  | <b>6.4</b>  | <b>n.a.</b> | <b>18,875</b> |
|         | <b>Intra-EFTA</b>                          | <b>3,816</b>        | <b>0.6</b>  | <b>2,089</b>   | <b>0.6</b>  | <b>n.a.</b> | <b>1,727</b>   | <b>0.7</b>  | <b>n.a.</b> | <b>362</b>    |
|         | <b>EU27</b>                                | <b>411,652</b>      | <b>69.9</b> | <b>224,178</b> | <b>67.6</b> | <b>n.a.</b> | <b>187,474</b> | <b>72.9</b> | <b>n.a.</b> | <b>36,703</b> |
| 1       | Germany                                    | 119,398             | 20.3        | 53,283         | 16.1        | 1           | 66,115         | 25.7        | 1           | -12,832       |
| 2       | United Kingdom                             | 59,028              | 10.0        | 47,448         | 14.3        | 2           | 11,580         | 4.5         | 7           | 35,868        |
| 3       | France                                     | 41,339              | 7.0         | 23,516         | 7.1         | 4           | 17,824         | 6.9         | 3           | 5,692         |
| 4       | United States                              | 40,293              | 6.8         | 26,405         | 8.0         | 3           | 13,889         | 5.4         | 4           | 12,516        |
| 5       | Italy                                      | 38,843              | 6.6         | 18,680         | 5.6         | 6           | 20,164         | 7.8         | 2           | -1,484        |
| 6       | Netherlands                                | 33,986              | 5.8         | 22,794         | 6.9         | 5           | 11,192         | 4.4         | 8           | 11,602        |
| 7       | Sweden                                     | 23,187              | 3.9         | 10,776         | 3.3         | 7           | 12,411         | 4.8         | 5           | -1,635        |
| 8       | China                                      | 22,112              | 3.8         | 9,476          | 2.9         | 8           | 12,636         | 4.9         | 6           | -3,160        |
| 9       | Austria                                    | 15,260              | 2.6         | 6,990          | 2.1         | 12          | 8,270          | 3.2         | 9           | -1,279        |
| 10      | Spain                                      | 14,530              | 2.5         | 8,750          | 2.6         | 9           | 5,780          | 2.2         | 13          | 2,970         |
| 11      | Belgium                                    | 13,667              | 2.3         | 7,272          | 2.2         | 11          | 6,395          | 2.5         | 11          | 878           |
| 12      | Japan                                      | 13,483              | 2.3         | 8,159          | 2.5         | 10          | 5,324          | 2.1         | 14          | 2,835         |
| 13      | Denmark                                    | 11,330              | 1.9         | 5,332          | 1.6         | 14          | 5,997          | 2.3         | 12          | -665          |
| 14      | Ireland                                    | 8,492               | 1.4         | 2,036          | 0.6         | 27          | 6,456          | 2.5         | 10          | -4,421        |
| 15      | Canada                                     | 8,464               | 1.4         | 4,989          | 1.5         | 15          | 3,474          | 1.4         | 15          | 1,515         |
| 16      | Hong Kong                                  | 8,403               | 1.4         | 6,582          | 2.0         | 17          | 1,821          | 0.7         | 16          | 4,760         |
| 17      | Poland                                     | 7,388               | 1.3         | 4,167          | 1.3         | 19          | 3,221          | 1.3         | 20          | 945           |
| 18      | South Korea                                | 7,017               | 1.2         | 4,227          | 1.3         | 16          | 2,790          | 1.1         | 23          | 1,437         |
| 19      | Russia                                     | 6,842               | 1.2         | 3,844          | 1.2         | 22          | 2,998          | 1.2         | 19          | 845           |
| 20      | Czech Republic                             | 5,531               | 0.9         | 2,681          | 0.8         | 24          | 2,850          | 1.1         | 17          | -169          |
| 21      | Finland                                    | 5,497               | 0.9         | 2,515          | 0.8         | 20          | 2,983          | 1.2         | 21          | -468          |
| 22      | Brazil                                     | 5,349               | 0.9         | 3,176          | 1.0         | 18          | 2,173          | 0.8         | 30          | 1,003         |
| 23      | Singapore                                  | 5,284               | 0.9         | 4,016          | 1.2         | 21          | 1,268          | 0.5         | 24          | 2,747         |
| 24      | India                                      | 4,283               | 0.7         | 2,907          | 0.9         | 23          | 1,376          | 0.5         | 26          | 1,531         |
| 25      | Turkey                                     | 3,881               | 0.7         | 2,575          | 0.8         | 51          | 1,307          | 0.5         | 18          | 1,268         |
| 26      | Vietnam                                    | 3,470               | 0.6         | 470            | 0.1         | 28          | 3,000          | 1.2         | 25          | -2,529        |
| 27      | Taiwan                                     | 3,216               | 0.5         | 1,891          | 0.6         | 25          | 1,325          | 0.5         | 35          | 566           |
| 28      | United Arab Emirates                       | 3,213               | 0.5         | 2,468          | 0.7         | 26          | 746            | 0.3         | 44          | 1,722         |
| 29      | Australia                                  | 2,778               | 0.5         | 2,349          | 0.7         | 29          | 430            | 0.2         | 34          | 1,919         |
| 30      | Portugal                                   | 2,568               | 0.4         | 1,820          | 0.5         | 33          | 748            | 0.3         | 28          | 1,071         |
| 31      | Thailand                                   | 2,505               | 0.4         | 1,268          | 0.4         | 35          | 1,237          | 0.5         | 27          | 30            |
| 32      | Hungary                                    | 2,248               | 0.4         | 995            | 0.3         | 37          | 1,253          | 0.5         | 29          | -259          |
| 33      | South Africa                               | 2,088               | 0.4         | 878            | 0.3         | 32          | 1,210          | 0.5         | 37          | -331          |
| 34      | Mexico                                     | 2,040               | 0.3         | 1,406          | 0.4         | 30          | 634            | 0.2         | 56          | 772           |
| 35      | Saudi Arabia                               | 1,836               | 0.3         | 1,669          | 0.5         | 31          | 166            | 0.1         | 50          | 1,503         |
| 36      | Greece                                     | 1,808               | 0.3         | 1,548          | 0.5         | 38          | 260            | 0.1         | 36          | 1,288         |
| 37      | Romania                                    | 1,664               | 0.3         | 885            | 0.3         | 34          | 779            | 0.3         | 41          | 106           |
| 38      | Malaysia                                   | 1,208               | 0.2         | 828            | 0.2         | 44          | 380            | 0.1         | 33          | 448           |
| 39      | Israel                                     | 1,503               | 0.3         | 1,023          | 0.3         | 36          | 480            | 0.2         | 40          | 542           |
| 40      | Slovakia                                   | 1,418               | 0.2         | 530            | 0.2         | 67          | 888            | 0.3         | 31          | -358          |
| 41      | Kazakhstan                                 | 1,346               | 0.2         | 255            | 0.1         | 77          | 1,091          | 0.4         | 32          | -836          |
| 42      | Azerbaijan                                 | 1,084               | 0.2         | 158            | 0.0         | 50          | 926            | 0.4         | 38          | -767          |
| 43      | Lithuania                                  | 1,011               | 0.2         | 414            | 0.1         | 42          | 597            | 0.2         | 51          | -183          |
| 44      | Nigeria                                    | 924                 | 0.2         | 664            | 0.2         | 39          | 259            | 0.1         | 77          | 405           |
| 45      | Egypt                                      | 884                 | 0.2         | 777            | 0.2         | 43          | 107            | 0.0         | 47          | 669           |
| 46      | Ukraine                                    | 883                 | 0.1         | 672            | 0.2         | 41          | 211            | 0.1         | 65          | 462           |
| 47      | Indonesia                                  | 879                 | 0.1         | 574            | 0.2         | 40          | 305            | 0.1         | 84          | 269           |
| 48      | Estonia                                    | 571                 | 0.1         | 32             | 0.0         | 68          | 539            | 0.2         | 39          | -507          |
| 49      | Iran                                       | 796                 | 0.1         | 727            | 0.2         | 53          | 69             | 0.0         | 45          | 658           |
| 50      | <b>Other countries</b>                     | <b>23,865</b>       | <b>4.1</b>  | <b>14,614</b>  | <b>4.4</b>  | <b>n.a.</b> | <b>9,250</b>   | <b>3.6</b>  | <b>n.a.</b> | <b>5,364</b>  |

Source: GTIS, Global Trade Atlas (October 2011)

EFTA 33 FTA Partners (excluding EU27) includes: Albania, Canada, Chile, Colombia, Croatia, Egypt, the Gulf Cooperation Council (comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates), Hong Kong, Israel, Jordan, Lebanon, Macedonia, Mexico, Montenegro, Morocco, Palestinian, Peru, South Korea, Serbia, Singapore, the Southern African Customs Union (comprising Botswana, Lesotho, Namibia, South Africa, Swaziland), Tunisia, Turkey and Ukraine.

## **2. Economic characteristics of Iceland, Norway, Switzerland and Liechtenstein**

As per the previous observations in chapter II, it seems obvious that the Member States, excluding Iceland, absorbed the shock of the Great Recession with relative efficiency and possess economic systems strong enough to rebound vigorously. This is partly due to good governance practices; specialisation in specific sectors (where the elasticity of the aggregate demand is quite rigid);<sup>72</sup> well-designed recovery plans; competitive exports; restraint in applying contractionary fiscal policies; and so on. The picture is not all rosy of course, especially for Iceland, which faces a lot of uncertainties and still suffers from the bankruptcy of its financial sector. Moreover, EFTA countries are highly integrated in the world economy and the tight interconnectedness woven with the EU and others exposes them seriously to the high volatility of current economic conditions.

### **(a) Iceland**

Apart from the Icelandic financial crisis in 2008-2009, Iceland's economy displayed strong growth in the last fifteen years due to a number of policy reforms such as the membership to the EEA, easing of foreign investment restrictions and increased diversification of the economy. Iceland is an export-driven economy, which depends on a handful of products. With non-tradable services representing the bulk of the country's GDP (around 66 per cent in 2009), the share of export industries in the economy is declining. Nevertheless, the strong dependence on the fish (35.3 per cent of total exports in 2010) and aluminium (41.5 per cent of total exports in 2010) industries,<sup>73</sup> combined with a small market size, has made Iceland's economy relatively volatile. In order to tackle this position of vulnerability, the island has strongly invested in a fast-growing pharmaceutical industry and has also gained a reputation in biotechnology. Moreover, its services industries are quickly expanding in the sectors of information technology and tourism.<sup>74</sup>

Following the banking sector crisis in Iceland, domestic demand and investment fell severely and continued to contract in 2010, presaging the fall in GDP in that year. A moderate pick-up in both private consumption and investment is expected in 2011. Combined with a positive

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<sup>72</sup> Such as, inter alia, oil and aluminium for Norway or pharmaceutical products and high technology products for Switzerland.

<sup>73</sup> Source: Global Trade Information Services (GTIS), Global Trade Atlas.

<sup>74</sup> Central Bank of Iceland, *Economy of Iceland 2010*, Central Bank of Iceland, Reykjavik, 2010, pp. 17-22; World Trade Organization, *Iceland Trade Policy Review, Secretariat Report*, WTO, Geneva, 2006, pp. 1-10.

contribution of the external sector to the economy, GDP growth is thus expected to return to positive territory this year. Government policy is, in line with the programme agreed with the International Monetary Fund, focused on currency stabilisation, banking sector restructuring and fiscal consolidation, and ongoing structural reforms in these areas are laying the basis for a sustainable recovery over the medium term.<sup>75</sup>

#### (b) Norway

Norway is one of the wealthiest nations in the world and enjoys one of the highest living standards in the world. It has a very open economy with a liberal trade regime. Its economy strongly depends on the vast hydrocarbons resources, which account for 63.9 per cent of total exports in 2010. The petroleum sector represented 24.4 per of the GDP in 2008.<sup>76</sup> Norway is endowed with rich and varied natural resources ranging from oil, natural gas, fish, forests and numerous minerals. Fisheries are an important sector too, ranking in the second position in export figures and accounting for 6.5 per cent of total exports. The predominant manufacturing industries are machinery, shipbuilding, oil-related equipment and infrastructure. Norway is also the most important service provider in the oil industry worldwide. Other major tradable services are in engineering, insurance and telecommunications. Large budget surpluses have allowed the country to stimulate the economy through expansionary fiscal policies, which play a significant role in the diversification of the economy. As in Iceland, the services sector continuously expands and its share in the country's GDP corresponded to more than two thirds of the total in 2009.<sup>77</sup>

The fall in output of the Norwegian economy in 2009 was less severe than that experienced in other developed markets. A strong government response to the recession helped sustain employment and supported domestic demand. However, investment continued to contract through 2010, leading to weak growth in that year. The Norwegian economy has now recovered from the downturn and growth is forecast to rise through 2012 on the back of increasing private consumption and investment, particularly in the petroleum sector. The

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<sup>75</sup> International Monetary Fund, *IMF Country Report No. 11/125 – Iceland*, IMF Publications, Washington D.C., 2011, pp. 4-13; The Economist Intelligence Unit, *Country Report – Iceland, October 2011*, Economist Intelligence Unit, London, 2011, pp. 10-13.

<sup>76</sup> Organization for Economic Co-operation and Development, *OECD Economic Surveys: Norway*, OECD, Paris, 2010, p. 7.

<sup>77</sup> Source: Statistics Norway.

external sector benefited from recovering demand as well as higher oil prices in 2010, and should continue to improve.<sup>78</sup>

#### (c) Switzerland

Switzerland boasts one of the strongest, most competitive and most stable economies in the world. Home to several major multinational corporations, notably in pharmaceutical, watchmaking, machinery or banking, its economy is dominated by the services sector, which accounted for 73.4 per cent of the GDP's share in 2010.<sup>79</sup> The secondary sector is characterised by capital-intensive high-technology industries using highly qualified labour. Financial services play a key role in the economy, drawing 12.9 per cent of the GDP's share in 2009.<sup>80</sup> The Confederation relies heavily on its foreign trade with pharmaceuticals, machinery, organic chemicals, watches and medical instruments representing respectively 23.1 per cent, 12.2 per cent, 8.8 per cent, 8.0 per cent and 7.2 per cent of the merchandise exports total.<sup>81</sup> Low levels of taxation (for a developed country), high standards of education, reliable infrastructure and flexible labour laws make the country particularly attractive to foreign investment, which in turn help the country to remain fiercely competitive.<sup>82</sup>

Switzerland's recovery in 2010 was driven by strong private consumption and fixed investment combined with a significant positive performance in the external sector. The most recent projections from the State Secretariat for Economic Affairs suggest decelerated growth for the country in 2012. The recent strengthening of the Swiss currency is widely expected to affect Swiss exports negatively, with a direct impact on Switzerland's growth performance. Furthermore, Switzerland remains vulnerable to economic developments in the euro zone and globally.<sup>83</sup>

#### (d) Liechtenstein

Liechtenstein's economy is quite similar to the Swiss economy, but rather in a microscopic version. It has the highest GDP per capita in the world. It is also export-oriented and

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<sup>78</sup> Organization for Economic Co-operation and Development, *op. cit.*, pp. 8-18; The Economist Intelligence Unit, *Country Report – Norway, October 2011*, Economist Intelligence Unit, London, 2011, pp. 6-14.

<sup>79</sup> Source: Office fédéral de la statistique, Suisse.

<sup>80</sup> *Ibid.*

<sup>81</sup> Source: Global Trade Information Services (GTIS), Global Trade Atlas.

<sup>82</sup> World Trade Organization, *Switzerland and Liechtenstein Trade Policy Review, Secretariat Report*, WTO, Geneva, 2008, pp. 13-16.

<sup>83</sup> Secrétariat d'État à l'économie, *Tendances conjoncturelles, automne 2011*, SECO, Berne, 2011, pp. 28-31.



possesses a highly efficient and competitive financial sector. In spite of its small size (approximately 36,000 inhabitants), it has a thriving capital-intensive manufacturing industry (notably in precision instruments such as Hilti or Ivoclar Vivadent).<sup>84</sup> Since 1923, the Principality tied itself to Switzerland with the establishment of a common customs union and is now deeply integrated into the Swiss economy through an economic and monetary union. In 2008, more than 50 bilateral treaties covering economic, social, educational and political areas were in force between Vaduz and Bern. The Customs Treaty stipulates that Switzerland is responsible for Liechtenstein in trade and customs-related matters and that trade treaties concluded by Bern also apply to Liechtenstein (with the exception of the Bilaterals).<sup>85</sup>

In the past few years, Liechtenstein has striven to undertake a combat against money-laundering issues. It is so far difficult to assess the impact of such reforms in the country. The global recession also had a negative effect on the Liechtenstein economy, directly impacting the two catalysts of its economy: the export industry as well as the financial services sector. Following more robust growth in 2010, the prospective outlook is positive while remaining dependent on the path of the global economy.<sup>86</sup>

## **B. EFTA's trade policy**

### **1. Why such an active third-country policy?**

As one of the three pillars governing the Association, EFTA's trade policy is remarkably prominent and relatively straightforward. With twenty-four Free Trade Agreements concluded and seven others ongoing, EFTA has the largest network of PTAs in the world right after the EU.<sup>87</sup> The increasing proliferation of preferential trade agreements became in the recent years one of the central issue of international trade. Economic integration does not occur anymore mostly on a multilateral basis but rather through intraregional and interregional trade agreements. Even though the Doha talks remain in limbo, EFTA countries have always been staunch supporters of the multilateral trading system. This does not prevent them from

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<sup>84</sup> World Trade Organization, *Switzerland and Liechtenstein Trade Policy Review, Switzerland and Liechtenstein Report*, WTO, Geneva, 2008, pp. 32-41.

<sup>85</sup> Duursma, J., "Micro-States: the Principality of Liechtenstein", in Ingebritsen, C. (ed), *Small States in International Relations*, University of Washington Press, Seattle, 2006, pp. 97-102.

<sup>86</sup> Amt für Statistik, Fürstentum Liechtenstein, *Konjunkturbericht Liechtenstein Herbst & Frühjahr 2011*, Amt für Statistik, Vaduz, 2011, p. 15.

<sup>87</sup> For more information on the EU's PTAs network of PTAs, see European Commission, *Trade*, [accessed October 2011], available: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/>

viewing the multilateral and bilateral ways as complementary and mutually supportive, where FTAs are conceived as building blocks towards global trade liberalisation.<sup>88</sup>

An interesting aspect of EFTA's trade policy lies in its paradoxical "inexistence". Indeed, following the rationale of preserving full sovereignty, a comparable common trade policy that is found in, for instance, the EU's framework, is not applied for EFTA. Regardless of such loophole, EFTA States closely coordinate their efforts to keep a dynamic comparative advantage and to lift more political weight in the eyes of the world.

EFTA's approach is guided by pragmatism.<sup>89</sup> This pragmatic paradigm pushes EFTA to drive on a two-track road: one with the EU and one with third-countries. It is indisputable that the European track is the most ample. EFTA countries aim primarily at European markets and will continue to do so for a very long time. The second track is narrower. It is where EFTA countries attempt testing their potential on a specific echelon. This echelon acts as a sort of laboratory, where Member States can work together and consolidate their competitiveness on a broader scale.

Realising that their major partner, the European Union, follows alternatively (side by side with multilateralism) but intensively the path of bilateralism, the Member States pursue a policy of "not lagging behind" or "catching up". Since its creation, EFTA has always been concerned to avoid discrimination in the European markets.<sup>90</sup> Non-discrimination was and still is the Association's adage. If economic operators do not face the same market conditions within the EU and its free trade partners, the risk of losing market access, thus growth potential, becomes evident.

In general, EFTA's trade policy has two core objectives. First, as it has just been explained, EFTA seeks to prevent trade diversion and discriminatory effects. It follows a policy of parallelism with the EU. Second, it aims at gaining the "first mover" advantage and helping its exporters to reach new markets as well as multiplying their trade prospects on a worldwide scale. Looking back in time, three major phases explain the evolution of EFTA's third-country policy to what it is today.

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<sup>88</sup> Grønningsæter, T. (ed), *op. cit.*, p. 12.

<sup>89</sup> European Free Trade Association, *In Commemoration of EFTA's 40<sup>th</sup> Anniversary*, EFTA, Geneva, 2000, p. 5.

<sup>90</sup> Haugland, H. G. & Tschäni, H., "Product coverage, customs duties and quantitative restrictions", in Tschäni, H. & Tuusvuori, O. (eds), *op. cit.*, p. 95.

## 2. The three main phases

### (a) First phase

Following the concept of parallelism with the EU, the first phase was marked by a free trade race to level the playing field in Europe. The sole philosophy driving EFTA's free trade policy followed the purpose of not being discriminated against the EC. The breakdown of the soviet and the communist regimes opened the path for the EC to start the negotiations on the European Agreements with the Central and Eastern European Countries, i.e., the new transition economies. From 1990 to 1992, EFTA launched negotiations with, first, Czechoslovakia, Hungary and Poland (in 1990); then Bulgaria, Estonia, Latvia, Lithuania and Romania (in 1991); and finally Slovenia (in 1992).<sup>91</sup> Besides the classical non-discrimination approach, political motivations pressed the Member States to support the transition economies to fully adopt market economy principles and to instil democratic practices. In addition to that, the first FTAs were concluded with so-called non-European nations: Turkey and Israel. Again, the main idea was to prevent discrimination that economic operators would face vis-à-vis their competitors from the EC or the United States.<sup>92</sup>

### (b) Second phase

The second phase relates to the extension of FTAs to countries surrounding the Mediterranean basin. Once more, parallelism was the key model. Such action was taken when the EU established the Euro-Mediterranean Partnership through the Barcelona Declaration. This partnership had and still has a number of different objectives: economic and commercial (securing market access as well as oil and gas supplies, enhance predictability in investment); security and peace (protection from mass immigration and prevention of internal and regional conflicts); and development (improvement of living standards, enshrining principles of human rights and democracy in regulatory and institutional frameworks).<sup>93</sup> For its part, EFTA solely focused on the economic facet of the Barcelona process, especially on the aspect of diagonal cumulation of ROO, which would allow EFTA countries and Euro-Med partners to use adjusted and identical ROO. In this context, EFTA signed Joint Declarations on Cooperation

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<sup>91</sup> All these agreements were concluded between 1992 and 1995, and were subsequently superseded by relevant agreements between the EU and EFTA when these countries joined the EU.

<sup>92</sup> Tuusvuori, O., *op. cit.*, p. 82.

<sup>93</sup> Pace, M., "Rethinking the Mediterranean: Reality and Re-Presentation in the Creation of a 'Region'", in Laursen, F. (ed), *Comparative Regional Integration: Theoretical Perspectives*, Ashgate, Aldershot, 2003, pp. 174-177.

(JDC)<sup>94</sup> with, in chronological order, Egypt, Morocco, Tunisia, the Palestinian Authority, Jordan and Lebanon from 1995 to 1997.

Furthermore, following the violent outburst of Yugoslavia, the EU implemented the Stabilisation and Association Process in the Western Balkans, which is composed of preferential trade agreements, financial assistance measures and other measures supporting the overall development of the Balkan countries.<sup>95</sup> EFTA thenceforth initiated FTA negotiations with Macedonia (signed in 2000), Croatia (signed in 2001), Albania, Serbia (both signed in 2009), Montenegro (signed in 2011) and Bosnia-Herzegovina (to be signed in early 2012). As with the Euro-Med scheme, EFTA countries were never formally part of the process, but decided to contribute in its own way without being politically committed, alongside the EU.<sup>96</sup>

### (c) Third phase

Whereas the first and second phases concerned FTAs covering trade in goods (with basic provisions on trade remedies, safeguard measures, competition and IPR), otherwise named “first generation FTAs”, the third and current phase brought “second generation FTAs” into the game, widening the FTAs’ scope to add substantive rules on services, government procurement and many WTO-X fields such as competition, investment and more recently sustainable development norms.

Starting with Canada in 1998, EFTA went overseas, if not global. The new motivation for geographical expansion and regulatory extension followed the worldwide upward trend in the burgeoning of PTAs, whether they are done intra or interregionally and whether they go deeper than mere tariff preferences. Globalisation brought new challenges and countries realised that liberalisation is not complete and efficient if it does not include fast-growing areas such as trade in services and foreign direct investment. For instance, as to underline an example of services’ importance, services are intermingled with provision of goods as input or as key elements of supply chains. Whilst certain services are disconnected from this chain and are therefore final products in their own rights (such as education or health services), even

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<sup>94</sup> Joint Declarations on Cooperation are the first stage towards negotiations of a PTA and set up a framework for closer economic relations between EFTA and the parties concerned. They address cooperation on trade-related issues and serve as a platform for dialogue and exchange of information on mutual interests.

<sup>95</sup> O’Brennan, J., *The EU and the Western Balkans: Stabilization and Europeanization Through Enlargement*, Routledge, London, 2011, pp. 168-173.

<sup>96</sup> European Free Trade Association, “EFTA’s Free Trade Policy”, in *EFTA Bulletin, EFTA Free Trade Relations*, July-August 2006, p. 10.

those services rely on goods at a certain point and in almost every case. Other challenges brought by globalisation include new and promising market access, outsourcing, race to FDI, increasing competitiveness and so on. Aside from globalisation, one of the major objectives behind furthering liberalisation through FTAs lies in the shadow of the WTO's deficiencies. The stalled Doha Round pushed EFTA countries to mitigate the adverse effects of a multilateral deadlock. In light of the Member States' policy, EFTA ameliorates the conditions of its second-best choice strategy.<sup>97</sup> Finally, far-reaching FTAs also mean increased complexity in negotiations and the risk of failure, especially with developing countries, which do not necessarily share the same commercial interests.

In order to fall within that general purview, EFTA countries indicated their willingness to get more involved and more integrated into the world economy through their proactive trade policy. The first "second generation" FTA was concluded with Mexico in 2000 and since then, signatures have been put on 18 FTAs spread throughout Africa, America, Asia and Europe. EFTA has concluded so far nine "second generation" agreements and five out of the seven ongoing negotiations enter in this category.

### **3. The three pillars**

In addition to EFTA's general trade policy, each Member States seek to acquire different although converging advantages with EFTA FTAs. Those different advantages sought reflect each of the Members' economic needs and structure as well as specific political motives. Maintaining and improving socioeconomic welfare within EFTA nations is pursued through the same shared fundamental objectives, which rest on three pillars: multilateral, European, and outer-European.<sup>98</sup>

The first pillar relates to Member States' unquenchable support to the multilateral trading system under the auspices of the WTO. All EFTA countries explicitly express their strong commitment to bring the Doha Round to a close. As export-oriented economies, universal trade liberalisation is set as an ultimate goal to raise economic growth domestically and globally. Of course such support is based on the principle of sharing equal trade opportunities

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<sup>97</sup> Kolsky Lewis, M., "The Prisoners' Dilemma and FTAs: Applying Game Theory to Trade Liberalization Strategy", in Buckley, R., Io Lo, V. & Boulle, L. (eds), *Challenges to Multilateral Trade: The Impact of Bilateral, Preferential and Regional Agreements*, Kluwer Law International, Alphen aan den Rijn, 2008, pp. 25-26.

<sup>98</sup> The threefold approach by EFTA States is stated in many different sources. See inter alia the various WTO Trade Policy Review reported by each EFTA countries and related governmental websites.

and avoiding a fragmentation of trade rules throughout the world. The systemic implications of the increasing number of PTAs is a serious concern, especially with regards to trade diversion effects, overlapping of ROO, increasing complexity of implementing different preferential tariff rates, application of different and incompatible standards in IPR, competition, labour law, environment, or even discriminatory political actions.<sup>99</sup> This is why EFTA countries participate actively in polishing and ameliorating the multilateral trading system through the WTO.

The second pillar relates to commercial relations with the EU, either through the EEA for Iceland, Liechtenstein and Norway or through bilateral means for Switzerland. Economic exchanges between the EU and EFTA countries have always been a top priority. EFTA trade mostly pivots around European markets and as the most powerful economic entity, such trend is not destined to change in the coming decades, if not many years. European integration will remain the centre of attention. As a matter of fact, EFTA's everlasting alignment with the EU has always been the main factor driving EFTA's third-country relations. If the WTO approach serves as the base of the pyramid, the EU pillar is the edifice itself.

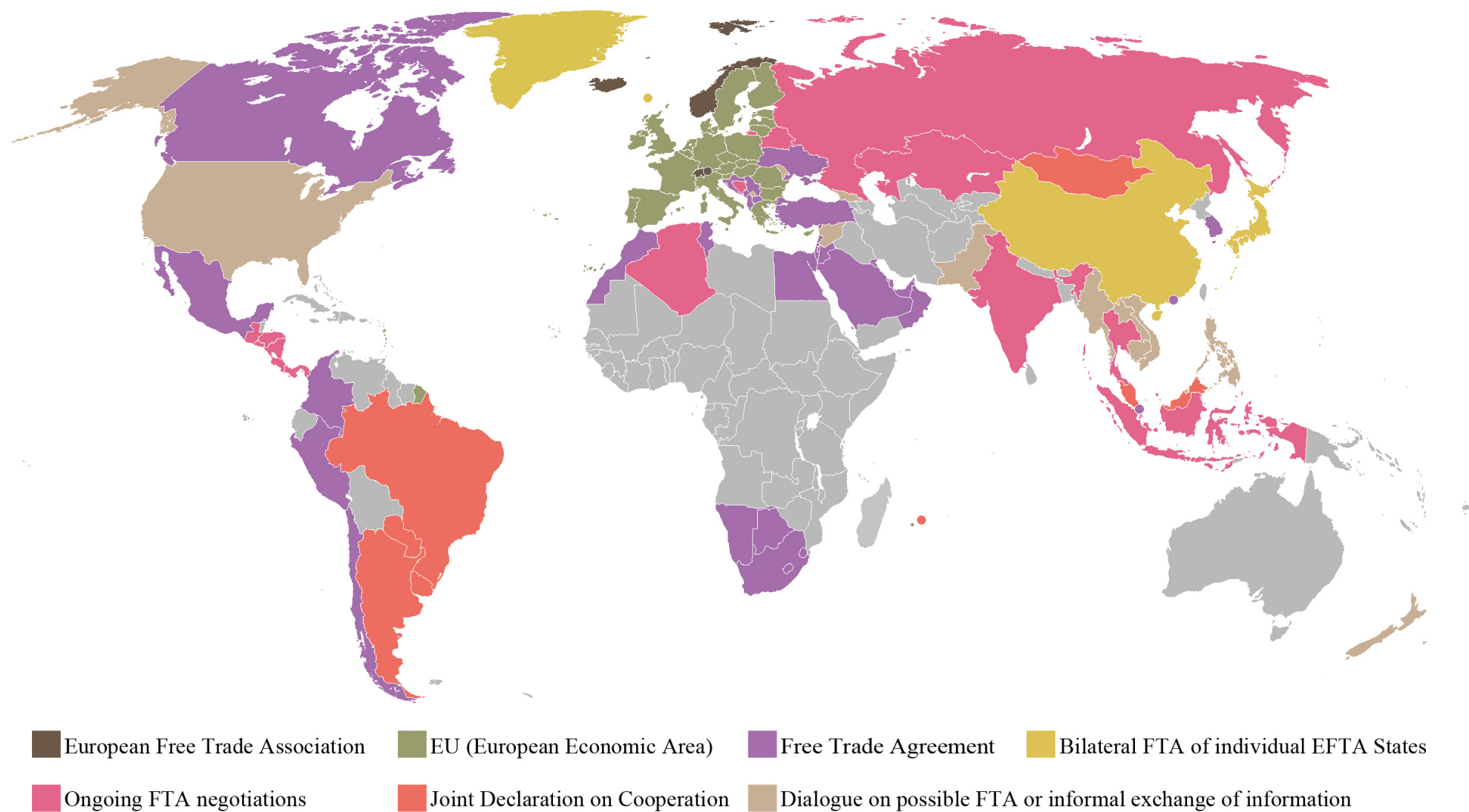
In that case, the third pillar, i.e. preferential relations with third-countries, is the lacquer or the finishing touch to the pyramid. The increasing number of FTAs concluded, especially in the third phase of EFTA's third-country relations history, mirrors this strong willingness to complement the multilateral setting and counteract its stalemate by entering into free trade deals with many different partners.

Within this triptych, EFTA States have a liberal trade policy advocating for free trade in all industrial products. Nevertheless, due to different sensitivities and interests in the agricultural sector, this latter is protected by border measures and supported by subsidies. This implies that EFTA follows separate track when it comes to the approach on industrial and agricultural products in its trade negotiations. Convergence generally re-emerges in "second generation" areas, where EFTA strives to eliminate as much as possible behind-the-border and cross-border barriers in services, investment and public procurement. Strengthening regulations in competition and intellectual property rights is also a matter of general concordance within EFTA. In view of such close cooperation, it is although necessary to briefly depicts each Member States' policy to understand where convergence and divergence may lure.

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<sup>99</sup> Bhagwati, J., *Termites in the Trading System: How Preferential Agreements Undermine Free Trade*, Oxford University Press, New York, 2008, pp. 49-81.

Figure 1: World map of EFTA's network of preferential trade relations



## C. Individual trade policy profiles

Given the fact that this paper focuses on EFTA's third-country relations, the following subchapter specifically deals with the Member States' policy with respect to EFTA FTAs in order to understand how rules governing the FTAs are formulated.

### 1. Iceland: not only about fish

Taking into account that Iceland's trade policy is shaped by its export-oriented economy, geographical location, scarce resources and reliance on specific services such as maritime and air services, it appears that the insular nation possess few protectionist features. However, it must be stressed that overall, it retains a liberal economic regime with 70 per cent of duty-free tariff lines, low applied MFN tariffs (5.9 per cent in 2006, with 2.5 per cent on non-agricultural products and 18.3 per cent on agricultural products)<sup>100</sup> and a generally foreigner-friendly investment environment (except in few sectors).

Iceland's trade policy with regards to EFTA FTAs follows simple guidelines. Reykjavik is keen on wide-ranging liberalisation of its economy except in few sectors. The main focus is on market access for its fish industry. The fishing industry is Iceland's most important economic activity, employing about 5 per cent of the labour force and accounting for 60 per cent of total merchandise export revenue in 2004.<sup>101</sup> Approximately 97 per cent of fisheries products output is exported and MFN concessions on fish are not sufficient alone to allow the Icelandic seafood sector to expand. All EFTA FTAs have an Annex on Fish and other Marine Products, which generally provides for reciprocal duty-free lines for seafood products. This is where Iceland preserves a quite active front when negotiating FTAs.

Agricultural products are also contentious. Even though Icelandic agriculture is a steadily dwindling sector of the economy and weighted only 1.4 per cent of the country's GDP in 2005, it is subject to one of the most substantial state intervention in the world.<sup>102</sup> Iceland maintains MFN tariff rates towards its FTA partners, mostly in sheep-related goods, dairy products and mineral waters.

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<sup>100</sup> World Trade Organization, *Iceland Trade Policy Review, Secretariat Report*, WTO, Geneva, 2006, p. 25.

<sup>101</sup> *Ibid.*, p. 72.

<sup>102</sup> *Ibid.*, p. 65.



With respect to non-tariff barriers, Iceland advocates for the avoidance of employing anti-dumping measures, countervailing duties and all forms of safeguards. The Icelandic government considers trade remedies as powerful trade-distorting tools and endeavours to bind FTA partners to not use them.<sup>103</sup>

In terms of services and investment, Iceland only keeps few barriers in its fisheries, energy, maritime and air transport sectors, and imposes slightly burdensome GATS Mode 3 (commercial presence) restrictions regarding the establishment of foreign companies and investors in those sectors. Reykjavik aims at acquiring more reciprocal commitments from the FTA partner in order to gain better market access conditions.<sup>104</sup>

## **2. Norway: not only about oil (and fish too)**

Even though Norway's geographical attributes as well as its economic traits are relatively different from Iceland's, Oslo's trade policy strongly resembles Reykjavik's, with notable exceptions. It also has a substantial fisheries industry (the second in the world in terms of value); a heavily assisted agricultural sector; multiple internal restrictions on foreign investment in fisheries, maritime and air transport; and determination to avoid anti-dumping, countervailing and safeguard measures.<sup>105</sup>

In general, Norway has a more open economy than Iceland with 95 per cent of tariff lines duty-free and an average of applied MFN tariff of 6.7 per cent (0.6 per cent for non-agricultural goods and 35.8 per cent for agricultural goods).<sup>106</sup> It retains high tariff barriers for agricultural products produced domestically (such as, inter alia, sheep, poultry, bovine meat, dairy products, spirits) and ranks second in amount of agricultural subsidies within OECD countries.<sup>107</sup> With FTA partners, Norway seek to open up partners' markets in fish and those abovementioned agricultural products whilst keeping their tariff rates high.

Moreover, the services sector is very liberal, limiting mostly sectors where national interests are salient such as postal services and health-related services. Few other limitations take place

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<sup>103</sup> *Ibid.*, pp. 35-37.

<sup>104</sup> *Ibid.*, pp. 79-95.

<sup>105</sup> World Trade Organization, *Norway Trade Policy Review, Secretariat Report*, WTO, Geneva, 2008, pp. i-x.

<sup>106</sup> *Ibid.*, p. 24.

<sup>107</sup> *Ibid.*, pp. 66-67

in financial services where EEA countries receive preferential treatment.<sup>108</sup> Accordingly to that, Norway generally extends the EEA advantages to FTA partners.

Besides the classical argument of gaining more market access and competitive edge, Norway has a specific emphasis on development issues in its trade policy, whether it is done through EFTA or the multilateral framework. Norway has a long tradition in cooperation and aid with developing countries, hence its position in granting deep preferences through their Generalized System of Preferences (GSP) scheme.<sup>109</sup> Under the pressure of many political and social movements in the Scandinavian country, Oslo is now pushing to include clauses in EFTA FTAs, which include soft obligations on labour or environment. Norway would like to follow the EU path by promoting norms of social justice and human rights within EFTA FTAs.<sup>110</sup> It is expected that such new trend in EFTA's trade policy formulation will become more and more important in the forthcoming years.

### **3. Switzerland: not only about cheese and chocolate**

Switzerland's trade policy is well defined and abides by clear and transparent guidelines. The Swiss threefold strategy is as follows: first, it seeks to secure market access for Swiss products (goods and services) and to increase certainty and predictability for productive factors abroad (IPR, investment, procurement); second, trade liberalisation aims at locking-in domestic reforms in sectors that are intensively protected, and thereby reinforcing sensitive portions of the Swiss economy in terms of competitiveness, i.e. mainly agriculture and the garment industry. Third, it seeks to spread positive spillover effects of trade liberalisation through strengthening economic growth and development in partner countries.<sup>111</sup> Contributing in assisting partner countries is perceived as a mutually beneficial action, where formulation of common interests lay down the basis for enhanced cooperation. Furthermore, Bern has also implemented a GSP scheme but is less vocal than Norway when it comes to advocacy of social provisions within EFTA FTAs.

Switzerland is the most protectionist country amongst EFTA. It is nevertheless a highly efficient open economy. All applied MFN tariff rates are specific, and have their ad valorem

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<sup>108</sup> *Ibid.*, pp. 89-104.

<sup>109</sup> World Trade Organization, *Norway Trade Policy Review, Norway Report*, WTO, Geneva, 2008, pp. 13-14.

<sup>110</sup> Yssen, I., "Social Clauses in Trade Agreements – EFTA Must Follow Up on EU Initiatives", in *EFTA Bulletin, EFTA Free Trade Relations*, July-August 2006, p. 40-41.

<sup>111</sup> Secrétariat d'État à l'économie, *The strategic focus of Swiss foreign economic policy*, DFE, SECO, Bern, 2004, pp. 1-6.

equivalents. Consequently tariff rates are highly dispersed and quite complex to administer. Only 18.4 per cent of MFN tariff lines are duty-free although the average rate for non-agricultural goods is 2 per cent (and 29.4 per cent for agricultural products).<sup>112</sup> Switzerland grants duty-free treatment to all FTA partners to 99.8 per cent of non-agricultural products and lowers agricultural tariff barriers by a 0.3 to 2.7 per cent margin only.<sup>113</sup>

As it can be expected, the agricultural sector is heavily subsidised. In the recent years, Swiss authorities have striven to reduce price support measures and phasing out subsidies. With regards to FTAs, Bern's export interests in agricultural products revolve around dairy products (especially cheese), sugar beet and sugar, tobacco, locally produced fruits and vegetables, processed cold meats, and wine.<sup>114</sup>

In the services sector, Switzerland seeks to open up financial services markets as much as possible. It also aims at gaining opportunities in the construction and tourism sectors, as Switzerland is an important international supplier of those services.<sup>115</sup> In terms of investment, The Helvetic nation has an attractive framework for FDI, as it combines a low taxation regime with a legally secure environment. Bern keeps few restrictions, most of them in sectors where the government is a major stakeholder (e.g. land transport, postal services and telecommunications). Switzerland is one the biggest recipient of FDI flows in Europe and has concluded the second largest amount of bilateral investment treaties in the world (118) in 2011, right after China (127).<sup>116</sup> Thus it appears obvious that Switzerland is a driving force within EFTA, pushing to include comprehensive provisions on investment.

Lastly, Bern is a major actor in promoting strengthened rules on intellectual property rights. IPR is a big issue in Switzerland, as many of its manufacturing products (e.g. pharmaceuticals, clocks, precision tools, etc.) and processed agricultural goods (cheese and other food products) are altogether vital elements of the economy. Therefore, a need for effective protection of these products with strict IPR rules is fundamental.<sup>117</sup>

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<sup>112</sup> World Trade Organization, *Switzerland and Liechtenstein Trade Policy Review, Secretariat Report*, WTO, Geneva, 2008, pp. 44-49.

<sup>113</sup> *Ibid.*, p. 50.

<sup>114</sup> *Ibid.*, pp. 91-101

<sup>115</sup> *Ibid.*, pp. 107-134.

<sup>116</sup> This number does not include investment chapters within bilateral, European and EFTA FTAs. See UNCTAD, *World Investment Report 2011: Non-Equity Modes of International Production and Development*, United Nations Publications, Geneva, 2011, p. 215.

<sup>117</sup> Secrétariat d'État à l'économie, *The strategic focus of Swiss foreign economic policy*, DFE, SECO, Bern, 2004, pp. 26-27.

#### **4. Liechtenstein: close ties with its alpine brother**

Pursuant the to 1923 Customs Treaty, Liechtenstein's trade policy is taken care by the Swiss authorities by all means. Bern usually wields Vaduz's sword in Geneva in front of the WTO and EFTA. The two countries have largely comparable economic environments and share common interests on virtually all fronts, excluding only a major one: the EEA. Of course, due its significant reliance on financial services, Liechtenstein often seeks to obtain further commitments from their FTA partners in this specific field. In most other fields mentioned in the Swiss section hereinabove, Liechtenstein does not take a divergent stance.<sup>118</sup>

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<sup>118</sup> World Trade Organization, *Switzerland and Liechtenstein Trade Policy Review, Switzerland and Liechtenstein Report*, WTO, Geneva, 2008, pp. 32-41.

## **IV. FREE TRADE AGREEMENTS: SCOPE, RULES AND FLAGSHIP EXAMPLES**

The preceding chapter have allowed us to understand EFTA States' trade policy from a general perspective. This following chapter shows how these trade policies are transposed into EFTA FTAs. It provides background information on the legal nature, the scope and the particularities of EFTA FTAs. Some relevant examples of FTAs will be further examined, especially in terms of their specific scope and eventually the political and economic rationale behind them.

### **A. Legal basis of EFTA Free Trade Agreements**

#### **1. WTO law**

First and foremost, a concise extrapolation of EFTA FTAs reveals the extent to which they are based and related to WTO Agreements. In numerous instances, direct or indirect references to the WTO Agreements are found. Semantics may change but the substance remains unchanged. As all EFTA States are members of the WTO as well as the overwhelming majority of their free trade partners<sup>119</sup>, using a WTO-based *modus operandi* greatly facilitate the conduct of negotiations. Reasons for employing the WTO model are evident as most of the parties to the FTAs are already bound to the same multilateral obligations. They mostly aim at following a WTO-consistent approach. EFTA and their partners do not have any interests in drafting their FTAs following a different approach. To the contrary, EFTA is diligent and serious when it comes to comply with their multilateral obligations. In sum, it can be argued that WTO law form a solid basis for all EFTA FTAs.

This means that EFTA FTAs are consequently guided by the two core principles of non-discrimination in WTO law and policy: the most-favoured nation treatment obligation and the national treatment obligation. The MFN treatment obligation basically prohibits a country from discriminating between other countries, or in other words, calls for equal treatment. When any preference is given to one country, such preference should be given to all other countries. The national treatment obligation basically prohibits a country from discriminating against other countries, i.e. if a country grants any particular right or preferences to its own

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<sup>119</sup> Excepted Lebanon, Montenegro, Palestine and Serbia.

products, it should act accordingly by granting similar treatment to foreign products whilst they are in the country.<sup>120</sup>

In that case, one may ask how can FTAs be legally compatible with WTO law if they purposely grant advantages that are not given to everybody else? Article XXIV of the GATT and Article V of the GATS allow for departing from non-discrimination obligations under the assumption that FTAs aim at deepening integration whilst providing trade creation effects prevailing over trade distortion effects. In order to do so, EFTA FTAs are WTO-consistent only if the outcome of the FTA is an elimination of trade barriers on substantially all trade without increasing barriers to non-parties.

As we have seen previously, EFTA countries perceive bilateralism as complementary to multilateralism and confirm their obligations in all the Preambles of their FTAs.<sup>121</sup> In general, relationship between WTO law and EFTA FTAs can be set out in three forms: first, FTA provisions sharing similar wording with, or referring to, or directly governed by WTO obligations; second, provision deepening and intensifying WTO obligations (WTO+); and third, obligations that go beyond the policy frame of WTO law (WTO-X).

## **2. International treaties**

A number of international treaties and conventions are mentioned in EFTA FTAs. The most recurring ones are the United Nations Charter and the Universal Declaration of Human Rights (both found as non-binding references in the Preambles) those administered under the auspices of the World Customs Organization (related to customs tariffication), the World Intellectual Property Organization (related to IPR) and the International Labour Organisation. EFTA FTAs include a growing number of international treaties for which EFTA does not establish any hierarchy of norms, or primacy of WTO law or domestic law. Even though this may cause some problems in terms of the application of EFTA FTAs law in the domestic realm (especially for the Nordic countries which have a monist traditions), this deliberate omission aims at allowing EFTA to include freely new conventions without generating

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<sup>120</sup> Van Den Bossche, P., *The Law and Policy of the World Trade Organization*, Cambridge University Press, Cambridge, 2005, 2<sup>nd</sup> edn, pp. 121-122.

<sup>121</sup> See, for instance, the Preamble of the EFTA-Serbia FTA: “*Determined to promote and further strengthen the multilateral trading system, building on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation [...]; [c]onsidering that no provision of this Agreement may be interpreted as exempting the Parties from their obligations under other international agreements, especially the Marrakesh Agreement establishing the WTO [...]*”.

automatic conflict of norms.<sup>122</sup> This alternatively signifies that conflict of norms should be established on a case-by-case basis.

## **B. Scope and Coverage**

EFTA FTAs have various and wide-ranging scopes. They set out free trade areas by firstly providing rules for tariff dismantling on goods, trade remedies (anti-dumping measures, countervailing duties and safeguard measures), trade disciplines on TBT and SPS, protection of intellectual property rights, competition, payments and transfer of capital, state trading enterprises and dispute settlement. These policy areas are included in all EFTA FTAs and concern the bulk of “first generation” agreements. Furthermore, “second generation” FTAs provide rules on services, investment, government procurement, and for the most recent FTAs, rules on sustainable development (mainly labour and environment). We will primarily have a look at “first generation” agreements as their coverage is similarly embedded in all “second generation” agreements.

Before going into the coverage details, it is important to describe the type of relationship established in EFTA FTAs. As EFTA is used as a platform for the coordination of distinctive trade policies, the legal texts include various elements of bilateral and plurilateral relationships.

First, plurilateral elements are established on the same level amongst all parties to the FTA. These elements are found throughout the general structure and the institutional framework of the agreements. They fall on EFTA countries as a group and the partner country. These are generally all aspects of the agreements, which do not concern market access on tariff concessions in goods, commitments in services, investment coverage and government procurement entities coverage. Typically, all trade remedies and trade disciplines, ROO, IPR, competition rules, dispute settlement clauses and institutional provisions are articulated on a common plurilateral basis.

Second, a number of bilateral elements emerge which basically mirrors the lack of common formulation of trade policy and agricultural policy amongst EFTA States so as to respect the

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<sup>122</sup> For more information on direct effect of international law for EFTA States, see Cottier, T., “Constitutional Trade Regulation in National and International Law: Structure-Substance Pairings in the EFTA Experience”, in Hilf, M. & Petersmann, E.-U., *National, Constitutional and International Economic Law*, Kluwer Law and Taxation Publishers, Deventer, 1993, pp. 409-442.

different sensitivities of each parties to the FTA. The substance on market access in goods, services, investment and government procurement is to a large extent defined bilaterally between each individual EFTA country and the partner(s). Schedule of commitments on services, reservations on investment and covered entities for procurement are all negotiated bilaterally and set out in the same form in annexes of the FTAs. The most prominent feature of bilateral relations can be observed with agricultural goods. All EFTA FTAs cover trade in basic agricultural products in three separate bilateral agreements concluded individually between Iceland, Norway, Switzerland/Liechtenstein and the partner country. As no common agricultural policy take place within EFTA, a single undertaking would mean that EFTA States could only grant concessions representing the lowest common denominator amongst them. The bilateral agricultural agreements are concluded simultaneously with the main agreement and form an integral part of the free trade area established.<sup>123</sup>

Lastly, in line with the concept of parallel alignment with the EU, an important aspect of EFTA FTA concerns the level of concessions and commitments granted. In general EFTA countries seek to grant to their FTA partners the same level of concessions given to the EU, and vice versa. Such EU-based national treatment principle encompasses specifically processed agricultural products.<sup>124</sup> This particularly concerns countries that are part of the Pan-Euro-Mediterranean Process.

Let us have a look now at what “first generation” and “second generation” FTAs cover.

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<sup>123</sup> See, for instance, paragraph 2 of the Article 6 of the EFTA-Serbia FTA: “*Each EFTA State and Serbia have concluded agreements on trade in agricultural products on a bilateral basis. These agreements form part of the instruments establishing a free trade area between the EFTA States and Serbia*”.

<sup>124</sup> See, for instance, Article 2 and 3 of the Annex II to the EFTA-Montenegro FTA on processed agricultural goods: “[...] *the EFTA States shall accord treatment no less favourable than that accorded to the European Union for products originating in Montenegro [...]*” and “[...] *the EFTA States shall be accorded the same treatment as the treatment Montenegro grants to the European Union as of 2012 [...]*”.



Table 14: Scope and coverage of EFTA Free Trade Agreements

| Free Trade Agreements concluded | Signing | Entry into force | Relations established | JDC         | WTO membership | SCM        | AD measures           | Safeguards | SPS measures  | TBT           | Government procurement | Competition | IPR         | Services           | Investment    | Dispute settlement | JC Decisions / Amendments | Other areas included / notes   |
|---------------------------------|---------|------------------|-----------------------|-------------|----------------|------------|-----------------------|------------|---------------|---------------|------------------------|-------------|-------------|--------------------|---------------|--------------------|---------------------------|--|
| Turkey                          | 1991    | 1992             | 1991                  | —           | ✓              | SCM basis  | GATT Art VI reference | elaborated | SPS basis     | TBT reference | basic                  | basic       | TRIPS basis | —                  | —             | —                  | 33                        | —  |
| Israel                          | 1992    | 1993             | 1992                  | —           | ✓              | SCM basis  | GATT Art VI reference | elaborated | very basic    | TBT reference | basic                  | basic       | TRIPS basis | very basic         | very basic    | very basic         | 24                        | —  |
| Morocco                         | 1997    | 1999             | 1995                  | ✓           | ✓              | SCM basis  | ADP reference         | elaborated | very basic    | TBT reference | basic                  | basic       | TRIPS basis | very basic         | very basic    | very basic         | 16                        | technical assistance   |
| Palestine                       | 1998    | 1999             | 1996                  | ✓           | —              | elaborated | ADP reference         | elaborated | very basic    | very basic    | very basic             | basic       | basic       | very basic         | very basic    | very basic         | 9                         | political references in the Preamble; technical assistance           |
| Macedonia                       | 2000    | 2002             | 1996                  | ✓           | ✓              | SCM basis  | ADP reference         | elaborated | very basic    | TBT reference | basic                  | basic       | TRIPS basis | very basic         | very basic    | very basic         | 12                        | technical assistance   |
| Mexico                          | 2000    | 2001             | 2000                  | —           | ✓              | SCM basis  | ADP basis             | elaborated | SPS basis     | TBT basis     | comprehensive          | elaborated  | TRIPS basis | comprehensive      | elaborated    | comprehensive      | 9                         | —  |
| Jordan                          | 2001    | 2002             | 1997                  | ✓           | ✓              | SCM basis  | ADP reference         | elaborated | very basic    | TBT reference | basic                  | basic       | TRIPS basis | very basic         | very basic    | very basic         | 6                         | —  |
| Croatia                         | 2001    | 2002             | 2000                  | ✓           | ✓              | SCM basis  | ADP basis             | elaborated | SPS reference | TBT reference | basic                  | basic       | TRIPS basis | very basic         | very basic    | very basic         | 7                         | technical assistance   |
| Singapore                       | 2002    | 2003             | 2001                  | —           | ✓              | SCM basis  | prohibited            | elaborated | SPS reference | TBT basis     | GPA basis              | basic       | TRIPS basis | very comprehensive | comprehensive | comprehensive      | 8                         | —  |
| Chile                           | 2003    | 2004             | 2000                  | —           | ✓              | SCM basis  | prohibited            | elaborated | SPS basis     | TBT basis     | comprehensive          | elaborated  | TRIPS basis | comprehensive      | elaborated    | comprehensive      | 6                         | —  |
| Lebanon                         | 2004    | 2007             | 1997                  | ✓           | —              | SCM basis  | ADP reference         | elaborated | SPS reference | TBT reference | basic                  | basic       | elaborated  | very basic         | very basic    | very basic         | 5                         | technical assistance   |
| Tunisia                         | 2004    | 2005             | 1995                  | ✓           | ✓              | SCM basis  | ADP basis             | elaborated | SPS basis     | TBT basis     | basic                  | basic       | TRIPS basis | very basic         | very basic    | very basic         | 0                         | technical assistance   |
| South Korea                     | 2005    | 2006             | 2004                  | —           | ✓              | SCM basis  | ADP basis             | elaborated | SPS basis     | TBT basis     | GPA basis              | basic       | TRIPS basis | comprehensive      | comprehensive | comprehensive      | 8                         | side Agreement on Investment (excluding Norway)                      |
| SACU <sup>(1)</sup>             | 2006    | 2008             | 2003                  | —           | ✓              | SCM basis  | ADP basis             | elaborated | SPS basis     | TBT basis     | basic                  | basic       | basic       | very basic         | very basic    | very basic         | 1                         | special treatment for BW, LS, NA and SZ; technical assistance        |
| Egypt                           | 2007    | 2007             | 1995                  | ✓           | ✓              | SCM basis  | ADP basis             | SG basis   | SPS basis     | TBT basis     | basic                  | basic       | TRIPS basis | basic              | basic         | very basic         | 2                         | technical assistance   |
| Canada                          | 2008    | 2009             | 1998                  | —           | ✓              | SCM basis  | ADP basis             | elaborated | SPS basis     | TBT basis     | GPA basis              | basic       | TRIPS basis | basic              | basic         | comprehensive      | 1                         | trade facilitation   |
| Colombia                        | 2008    | 2011*            | 2006                  | ✓           | ✓              | SCM basis  | ADP basis             | SG basis   | SPS basis     | TBT basis     | comprehensive          | elaborated  | TRIPS basis | elaborated         | elaborated    | very comprehensive | 0                         | e-commerce; biodiversity clause in IPR; trade facilitation           |
| GCC <sup>(2)</sup>              | 2009    | pending          | 2000                  | ✓           | ✓              | SCM basis  | ADP basis             | SG basis   | SPS basis     | TBT basis     | comprehensive          | basic       | basic       | elaborated         | basic         | comprehensive      | 0                         | Customs Valuation Agreement included; e-commerce; trade facilitation |
| Albania                         | 2009    | 2010             | 1992                  | ✓           | ✓              | SCM basis  | prohibited            | elaborated | SPS basis     | TBT basis     | basic                  | basic       | TRIPS basis | GATS reference     | basic         | basic              | 0                         | trade facilitation   |
| Serbia                          | 2009    | 2010             | 2000                  | ✓           | —              | SCM basis  | prohibited            | elaborated | SPS basis     | TBT basis     | basic                  | basic       | TRIPS basis | GATS reference     | basic         | basic              | 0                         | trade facilitation   |
| Ukraine                         | 2010    | pending          | 2000                  | ✓           | ✓              | SCM basis  | prohibited            | elaborated | SPS basis     | TBT basis     | elaborated             | basic       | TRIPS basis | very comprehensive | elaborated    | comprehensive      | 0                         | review clause on sustainable development; trade facilitation         |
| Peru                            | 2010    | 2011**           | 2006                  | ✓           | ✓              | SCM basis  | ADP basis             | SG basis   | SPS basis     | TBT basis     | comprehensive          | elaborated  | TRIPS basis | basic              | elaborated    | very comprehensive | 0                         | e-commerce; biodiversity clause in IPR; trade facilitation           |
| Hong Kong                       | 2011    | pending          | 2010                  | —           | ✓              | SCM basis  | prohibited            | SG basis   | SPS basis     | TBT basis     | GPA basis              | basic       | TRIPS basis | comprehensive      | elaborated    | comprehensive      | 0                         | side Agreement on Labour; trade and environment; trade facilitation  |
| Montenegro                      | 2011    | pending          | 2000                  | ✓           | —              | SCM basis  | prohibited            | SG basis   | SPS basis     | TBT basis     | basic                  | basic       | TRIPS basis | basic              | basic         | basic              | 0                         | trade and sustainable development; trade facilitation                |
| ongoing negotiations            |         |                  |                       |             |                |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Bosnia-Herzegovina              |         |                  | 2011                  | —           | —              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Central America <sup>(3)</sup>  |         |                  | 2010                  | only Panama | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Rubeka <sup>(4)</sup>           |         |                  | 2007                  | —           | —              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| India                           |         |                  | 2007                  | —           | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Indonesia                       |         |                  | 2005                  | —           | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| negotiations on hold            |         |                  |                       |             |                |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Algeria                         |         |                  | 2002                  | ✓           | —              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Thailand                        |         |                  | 2005                  | —           | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| potential negotiations          |         |                  |                       |             |                |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Malaysia                        |         |                  | 2010                  | ✓           | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Mauritius                       |         |                  | 2009                  | ✓           | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Mercosur <sup>(5)</sup>         |         |                  | 2000                  | ✓           | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Mongolia                        |         |                  | 2007                  | ✓           | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |
| Vietnam                         |         |                  | 2010                  | —           | ✓              |            |                       |            |               |               |                        |             |             |                    |               |                    |                           |  |

\* Colombia: entry into force not yet implemented by Iceland and Norway

\*\* Peru: entry into force not yet implemented by Norway

(1) Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, Swaziland)

(2) Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates)

(3) Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama)

(4) Customs Union of Belarus, Kazakhstan and Russia

(5) Mercado Común del Sur (Argentina, Brazil, Paraguay, Uruguay)

very basic = simple reference or very limited provisions

basic = provisions with limited coverage

elaborated = provisions with extensive coverage

comprehensive = provisions with comprehensive coverage

very comprehensive = provisions with highly comprehensive coverage

\*\*\* reference = the policy area is referred to or partially based on its related WTO provisions

\*\*\* basis = the policy area is governed by its related WTO agreement and often contains WTO+ elements

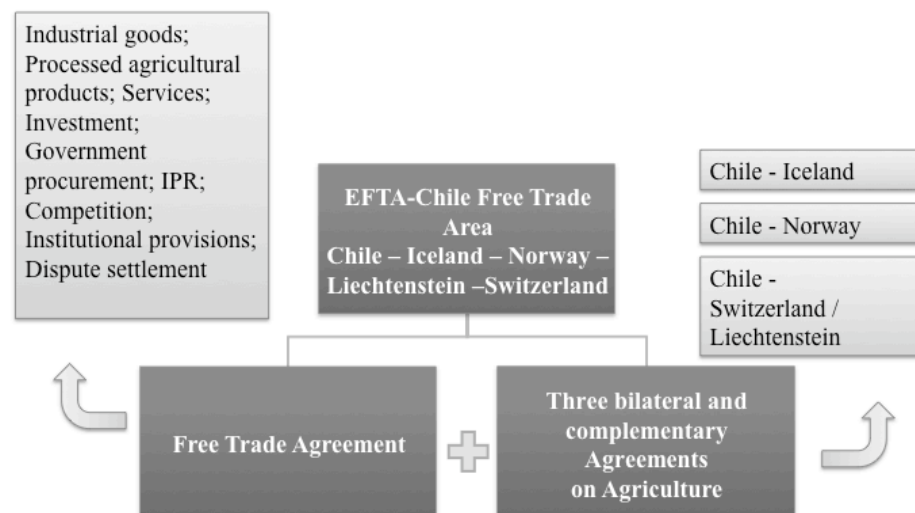
First generation FTA

Second generation FTA

Table 15: Basic scope and coverage of EFTA States' individual Free Trade Agreements

| Bilateral Free Trade Agreements concluded | Partner              | Entry into force or relations established | Scope of the agreement and particularities  |
|---|----------------------|---|---|
| <b>Iceland</b>                            | <b>Greenland</b>     | 1985                                      | Information not available   |
|   | <b>Faroe Islands</b> | 1993                                      | Second generation FTA named the Hoyvik Agreement: single market with the Faroe Islands; language is very basic but the Agreement covers the four freedoms of goods, services, capital and persons; free trade in agriculture (excepted in fish and marine products); provides a cooperation framework for culture, education, energy, environment, health services, research and development, resource management, telecommunication tourism and transport. |
|   | <b>China</b>         | ongoing since 2007                        | Second generation FTA   |
| <b>Norway</b>                             | <b>Greenland</b>     | 1985                                      | Information not available   |
|   | <b>Faroe Islands</b> | 1993                                      | Basic first generation FTA with basic elements on competition, subsidies, IPR, public procurement, dumping, safeguards and dispute settlement   |
|   | <b>China</b>         | ongoing since 2008                        | Second generation FTA   |
| <b>Switzerland<br/>Liechtenstein</b>      | <b>Faroe Islands</b> | 1995                                      | Extremely basic first generation FTA; only covers industrial goods without any trade discipline apart from safeguard measures based on the GATT   |
|   | <b>Japan</b>         | 2009                                      | Second generation FTA; arguably the most comprehensive Swiss FTA outside the EU; in addition to classical policy areas of second generation FTAs, it also includes comprehensive obligations on electronic commerce and movement of persons (without being comparable to CH-EU free movement of persons)  |
|   | <b>China</b>         | ongoing since 2011                        | Second generation FTA   |

Figure 2: Illustration of an EFTA Free Trade Agreement structure: EFTA-Chile



## 1. Free Trade Agreements of first generation type

### (a) Trade in goods

All EFTA FTAs<sup>125</sup> cover trade in goods comprehensively. They apply to all industrial goods falling within chapters 25 to 97 of the Harmonized Commodity Description and Coding System (HS), except for casein and certain albumins for Norway, Liechtenstein and Switzerland. The parties mutually grant total duty-free access, and asymmetric treatment is provided if needed, allowing partners in special and difficult economic conditions to maintain transitional period for the dismantlement of tariffs on sensitive products. The fisheries sector being of utmost importance, free trade in fish and seafood products is also applied with few minor exceptions. All EFTA FTAs contain an Annex on Fish and Other Marine Products.

Essential non-discrimination principles of national treatment are evoked so as to reiterate the parties' commitment to the WTO rules.<sup>126</sup> Quantitative restrictions are prohibited.<sup>127</sup> EFTA FTAs provides for the elimination of customs duties on imports and exports (including duties of fiscal nature) and charges having equivalent effects.<sup>128</sup>

### (b) Basic agricultural products and processed agricultural products

EFTA defines basic agricultural products as products ranging from HS chapter 1 to 24 minus fish and PAPs. The bilateral Agricultural Agreements list positively the concessions granted. The bilateral agricultural agreements and the main agreement are closely linked and for the majority of the EFTA FTAs (except the older ones), horizontal disciplines of the main agreement apply to basic agricultural goods.<sup>129</sup>

Due to its close trade relations and amount of trade with the EU, EFTA countries have chosen to use a similar distinction between basic and processed agricultural products. In principle, EFTA States grant duty-free access for PAPs, although a price compensation mechanism is

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<sup>125</sup> The full legal texts of EFTA FTAs are found in EFTA's website, see European Free Trade Association, *Free Trade Agreements – EFTA*, [accessed November 2011], available: <http://www.efta.int/free-trade/free-trade-agreements.aspx>

<sup>126</sup> See, for instance, Article 11 of the EFTA-Serbia FTA.

<sup>127</sup> See, for instance, Article 10 of the EFTA-Serbia FTA.

<sup>128</sup> See, for instance, Article 8 of the EFTA-Serbia FTA.

<sup>129</sup> Such as quantitative restrictions, SPS, TBT, anti-dumping and safeguard measures. See, for instance, Article 7 of the Agreement on Agriculture between Iceland and Serbia.

set out in order to reflect the higher raw material costs that the agricultural processing industries in EFTA countries face for their inputs in production due to their stringent national agricultural policies.<sup>130</sup>

### (c) Rules of origin

In order to harmonise and relax the rules of origin requirements and cooperation on customs matters, EFTA countries strive to apply a standardised model based on the cumulation system of the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin.<sup>131</sup> When FTA partners are parties to the PEM, the Convention directly governs the ROO between EFTA and the partners in order to provide diagonal cumulation of origins.<sup>132</sup> If an FTA partner is not part of the PEM, a bilateral cumulation system applies, also modelled on the PEM. Bilateral cumulation applies to trade between two parties and establishes that materials originating in one partner country are deemed as materials originating in the other partner country and vice versa. Diagonal cumulation allows for applying the same principles between all parties to different FTAs, providing that they use identical ROO.<sup>133</sup> The advantages of using cumulation are the increased gains in margins and the unlimited use of components originating within the free trade area, without affecting the origin status of the final product.<sup>134</sup>

### (d) Trade remedies and disciplines

The application of trade remedies in EFTA FTAs is rather straightforward. With the exception of the EFTA-Palestine FTA, the WTO Agreement on Subsidies and Countervailing Measures governs all subsidies-related issues, even for non-WTO partner countries.<sup>135</sup> Anti-dumping duties practices are not praised by EFTA countries, hence their prohibition in seven FTAs.<sup>136</sup> If not prohibited, anti-dumping practices are simply governed by their related WTO

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<sup>130</sup> See, for instance, Protocol A to the EFTA-Serbia FTA. For more information on the price compensation mechanism, see Folden, A.M., “Special arrangements for processed agricultural products”, in Tschäni, H. & Tuusvuori, O. (eds), *op. cit.*, pp. 97-106.

<sup>131</sup> Parties to the PEM are Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey, the EU States, the EFTA States and the Faroe Islands.

<sup>132</sup> See, for instance, paragraph 1 of Article 8 of the EFTA-Montenegro FTA or Protocol B to the EFTA-Serbia FTA.

<sup>133</sup> Gasioerek, M. Augier, P. & Lai-Tong, C., “Multilateralizing regionalism: lessons from the EU experience in relaxing rules of origin”, in Baldwin, R. & Low, P. (eds), *op. cit.*, p. 157

<sup>134</sup> European Free Trade Association, “Euro-Med Free Trade Area: The Benefits of Cumulation”, in *EFTA Bulletin, EFTA Free Trade Relations*, July-August 2006, p. 33.

<sup>135</sup> See, for instance, Article 17 of the EFTA-Serbia FTA.

<sup>136</sup> See, for instance, Article 19 of the EFTA-Montenegro FTA.

provisions.<sup>137</sup> The same doctrine is transposed with regards to SPS and TBT measures.<sup>138</sup> EFTA FTAs also provide safeguard measures, balance-of-payment difficulties measures, and general and security exceptions based or directly governed by the related WTO Agreements.<sup>139</sup>

#### (e) Intellectual property rights

IPRs are instrumental in the knowledge-based industries of the EFTA countries. Effective protection of intellectual property ensures that consumers and producers benefit from the adverse effects of counterfeiting, piracy and infringement. Developed countries such as EFTA States fight for increased harmonisation, broader coverage, stronger enforcement mechanisms and tighter flexibilities. The older “first generation” FTAs are not surprisingly based on the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and focus on confirming the parties obligations to it.<sup>140</sup> Only three FTAs include basic provisions that solely establish a framework for cooperation on IPR (Palestine, SACU, and GCC). “Second generation” and many “first generation” FTAs provide TRIPS+ clauses such as the elimination of options of flexibility available under the TRIPS or implementation of more extensive levels of standards of protection (e.g. liability declaration) or the inclusion of new areas of IPRs (sound trademarks, indication of source and country names,<sup>141</sup> measures related to biodiversity<sup>142</sup>). Special and differential treatment is applied to developing countries which do not have the capacity to enforce strong IPR rules or that could be discriminated from a non-adaptable IPR regime.

## 2. Free Trade Agreements of second generation type

#### (a) Services

Services are significantly covered in eight EFTA FTAs.<sup>143</sup> The GATS is used as a basis so as to fulfil EFTA’s legal consistency objectives and also as to facilitate the understanding and

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<sup>137</sup> See, for instance, Article 2.16 of the EFTA-Peru FTA.

<sup>138</sup> See for instance, respectively Article 12 and 13 of the EFTA-Serbia FTA.

<sup>139</sup> See *supra* Table 14 on the scope and coverage of EFTA FTAs.

<sup>140</sup> See, for instance, Annex V to the EFTA-Egypt FTA.

<sup>141</sup> See, for instance, respectively Article 3 and 7bis of the Annex XIII to the EFTA-Ukraine FTA.

<sup>142</sup> Only in the Colombia and Peru FTAs. See, for instance, Article 6.5 of the EFTA-Peru FTA.

<sup>143</sup> The first being Mexico, then followed by Singapore, Chile, South Korea, Colombia, GCC, Ukraine and Hong Kong.

the “user-friendliness”. Aside from the classical non-discrimination principles,<sup>144</sup> chapters in services introduce additional obligations in order to clarify and streamline obligations, in addition to tighten flexibilities and legal loopholes of the GATS.

As an illustration of those additional commitments, a number of GATS+ elements can be found in the legal texts. Regarding domestic regulation, all measures of “*general application affecting trade in services are administered in a reasonable, objective and impartial manner*”<sup>145</sup> and not solely in committed sectors. No restrictions on payments and transfers are also horizontally applied, thus not only in committed sector as Article XI of the GATS provides.<sup>146</sup> Parties endeavour to “*avoid the imposition of restrictive measures for balance-of-payment purposes*”<sup>147</sup> in reference to Article XII of the GATS. Market access for financial and telecommunication services are improved but air transport services are generally excluded (as well as maritime services, except in the EFTA-Mexico FTA). All EFTA FTAs impose tighter exceptions and less flexibility on prudential carve out.<sup>148</sup>

#### (b) Investment

Sometimes named establishment, chapters on investment have appeared first in the EFTA-Singapore FTA. They first aim at securing both access for EFTA and foreign investors in their respective markets. Again, non-discrimination principles based on MFN and national treatment bind the parties.<sup>149</sup> The numerous bilateral investment treaties that Switzerland has concluded shape the disciplines with respect to investment protection. Investment chapters generally include clauses on taxation issues, expropriation and compensation, primacy of domestic regulation, free flows of capital transfers and key personnel.<sup>150</sup> The parties usually insert reservations for sensitive sectors in an annex attached to the main agreement. An interesting aspect of investment chapters concerns dispute settlement. In the FTA with Singapore and the side Agreement on Investment with Korea, dispute settlement mechanism is open between a foreign investor and a party to the agreement. The disputes may be submitted to binding arbitration if parties agree beforehand.<sup>151</sup>

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<sup>144</sup> See, for instance, Article 23 to 25 of the EFTA-Singapore FTA.

<sup>145</sup> See, for instance, Article 28 of the EFTA-Singapore FTA.

<sup>146</sup> See, for instance, Article 3.14 of the EFTA-Hong Kong FTA.

<sup>147</sup> See, for instance, Article 35 of the EFTA-Singapore FTA.

<sup>148</sup> See, for instance, Article 36 of the EFTA-Mexico FTA.

<sup>149</sup> See, for instance, Article 40 of the EFTA-Singapore FTA.

<sup>150</sup> See, for instance, Article 41 to 45 of the EFTA-Singapore FTA.

<sup>151</sup> See Article 48 of the EFTA-Singapore FTA and Articles 16 to 18 of the Agreement on Investment between South Korea, Iceland, Liechtenstein and Switzerland.

EFTA States (except Norway) have concluded a side Agreement on Investment with the Republic of Korea alongside the main agreement in 2005. Besides the classical bilateral agricultural accords, it was the first time that EFTA signed a treaty outside of the main agreements' framework.<sup>152</sup> Such practice is not favoured by EFTA countries but was utilised in that case as Seoul wanted to keep a level of flexibility in amending investment provisions without going through the burdensome legal procedures of changing the whole main agreement.

#### (c) Government or public procurement

All EFTA States are signatories to the plurilateral Government Procurement Agreement (GPA) of the WTO. EFTA ensures that market access to public procurement markets is enhanced and that they obtain additional commitments on, for instance, lower value thresholds. EFTA has established government procurement legislation in certain FTAs in accordance with the binding provisions of the GPA. Government purchases must be made in compliance with that framework. Preferential access to the EFTA States' public procurement markets is provided to bidders from members of the GPA or from partner countries whose FTA covers market access in government procurement. The treatment is non-discriminatory (MFN and national treatment)<sup>153</sup> and includes the right to challenge decisions in court.<sup>154</sup> The FTAs with Singapore, South Korea, Canada (first generation) and Hong Kong are directly regulated by the GPA.

#### (d) Competition rules

Competition rules within EFTA FTAs are relatively simple and non-binding. Competition law is a very sensitive subject that is not comprehensively covered in any of EFTA FTAs. They aim at increasing cooperation regarding anti-competitive practices between the parties<sup>155</sup> and acknowledge their trade distortion effects.<sup>156</sup> They also apply to activities of monopolies and public enterprises.

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<sup>152</sup> The only other side agreement is found alongside the EFTA-Hong Kong FTA.

<sup>153</sup> See, for instance, Article 7.4 of the EFTA-Peru FTA.

<sup>154</sup> See, for instance, Article 7.27 of the EFTA-Peru FTA.

<sup>155</sup> See, for instance, Article 8.3 of the EFTA-Peru FTA.

<sup>156</sup> See, for instance, Article 8.1 of the EFTA-Peru FTA.

(e) Dispute settlement

Dispute settlement provisions are found in all EFTA FTAs. Procedures and legal structure of the provisions are inspired by the WTO Dispute Settlement mechanism. EFTA countries and their partners do not seek to establish far-reaching rules on dispute settlement so as to avoid an intricate overlap of jurisdictions before their domestic law and their commitment to the WTO Dispute Settlement system. In certain cases, it seems that the NAFTA dispute settlement rules have shaped the contents of certain EFTA FTAs, notably with Mexico and Chile.<sup>157</sup> Whilst “first generation” FTAs only foresees consultations<sup>158</sup> and later on binding arbitration,<sup>159</sup> “second generation” agreements go further and set out a threefold approach to disputes. First, bilateral consultations take place, then second, consultations with the Joint Committee<sup>160</sup> and finally, third, ad hoc and binding arbitration.<sup>161</sup>

(f) Trade and sustainable development

Following the global regionalist trend of including sustainable development provisions<sup>162</sup> and realising that economic development highly depends on adequate protection of social and environmental standards, EFTA States has recently decided to embed within new coming FTAs provisions on labour and environmental matters.<sup>163</sup> These new provisions are largely based on the Conventions of the International Labour Organisation, the Stockholm Declaration on Human Environment of 1972, the Rio Declaration on Environment and Development of 1992 and other treaties.<sup>164</sup> They are not enforceable nor impose any potential trade sanctions. These political soft obligations aim at guaranteeing the respect of sustainable development principles and improving the framework for cooperation. Trade hardliners may argue that they are good-looking, but artificial and senseless norms whilst other may claim that they pave the way towards an all-inclusive international trade regulation realm. So far, only the EFTA-Montenegro and the EFTA-Hong Kong FTAs have a chapter on sustainable development. In addition, a side Agreement on Labour complements the EFTA-Hong Kong

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<sup>157</sup> Ziegler, A., “Dispute Settlement in Bilateral Agreements: EFTA”, in Bartels, L. & Ortino, F. (eds), *op. cit.*, pp. 414-415.

<sup>158</sup> See, for instance, Article 25 of the EFTA-Turkey FTA.

<sup>159</sup> See, for instance, Article 34 and 35 of the EFTA-Serbia FTA.

<sup>160</sup> Joint Committees are institutional bodies whose role is to supervise, monitor and amend FTAs. They are established in every EFTA FTAs.

<sup>161</sup> See, for instance, Article 56 to 66 of the EFTA-Singapore FTA.

<sup>162</sup> For more information on trade and sustainable development in RTAs, see Cordonier Seger, M.-C., “Sustainable Development in Regional Trade Agreements”, in Bartels, L. & Ortino, F. (eds), *op. cit.*, pp. 313-339.

<sup>163</sup> Secrétariat d’État à l’économie, *Conclusion of EFTA work on trade, environment and labour standards*, DFE, SECO, Bern, 2010.

<sup>164</sup> See Article 31 of the EFTA-Montenegro FTA.



Trade and Environment chapter. The EFTA-Ukraine FTA has also a precursory review clause about sustainable development.<sup>165</sup>

### **3. Other types of rules**

A number of other rules are implemented throughout certain FTAs. Norms of economic cooperation and technical assistance are found in FTAs with certain developing countries in order to assist them in strengthening their institutions and enhancing their trade opportunities in specific sectors.<sup>166</sup> These types of provisions are bound to become a regular sight if EFTA continues to engage in trade negotiations with developing countries

Rules on trade facilitation have recently emerged, starting with the EFTA-Canada FTA. They are found in annexes and set out obligations to facilitate the flow of trade, increase transparency, simplify international trade procedures and limit transaction costs between the parties.

## **C. Flagship models of EFTA Free Trade Agreements**

With 24 Free Trade Agreements covering 33 countries on four different continents, EFTA has concluded trade deals with a rich diversity of partners on abundantly diverse trade topics. Some of these FTAs may resemble to each other, some staged outstanding issues and some others embody the complex nature of international trade. This subchapter screens the most interesting examples of EFTA FTAs. Enunciating the most relevant examples of EFTA FTAs allows getting a more acute insight on EFTA's achievements with third-countries over the past twenty years.

### **1. The EFTA-Singapore Free Trade Agreement**

At first sight, commencing with Singapore may not seem to be an obvious choice. Singapore is a trade nation par excellence, albeit tiny by its size, but nevertheless a powerful world leader in finances, business and trade. The EFTA-Singapore FTA could boast the fact of being the state-of-the-art of all EFTA FTAs. When EFTA started to introduce "second generation" rules with Mexico in 2000, looking eastward at new market opportunities in the

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<sup>165</sup> See Article 10.4 of the EFTA-Ukraine FTA.

<sup>166</sup> See, for instance, Article 34 to 36 of the EFTA-Egypt FTA.

fast growing Southeast Asian peninsula appeared to be an attractive sight. On 1 January 2003, the gateway to Asia opened: the EFTA-Singapore entered into force. EFTA had concluded its first preferential trade agreement with an Asian counterpart. The Agreement is one of the most, if not simply the most, comprehensive agreement EFTA countries have ever stepped into. Considered as “*pioneering agreement in terms of substance*”<sup>167</sup>, it covers all “second generation” policy areas with the exception of the coverage on competition rules, which remain quite basic.

Negotiating with Singapore proved to be challenging exercise. As the insular city-State is not a member of the OECD, it had not taken part of the long-lasting process of reforming and harmonising rules on services and investment. The structure of the Singaporean economy is complex and heavily relies on refinement of imported goods and re-exports. Its trade ratio to GDP is the second highest in the world (around 400 per cent) and it is one of the largest investor in FDI terms.<sup>168</sup> Such tremendous features also called for a relevant regulatory adaption to the trade conditions of Singapore. For instance, Singapore produces a substantial amount of its goods in neighbouring countries. Consequently, the FTA provides the possibility of granting originating status for a restricted number of products processed outward, as far their total added value (or value of non-originating input) does not exceed 50 per cent.<sup>169</sup> Moreover, it is EFTA’s first FTA to accept invoice declaration as an evidence of originating status.<sup>170</sup> Such new unrestrictive measures have set a trend in applying efficient and cost-friendly solutions to the rising challenges of worldwide globalisation. Since the successful conclusion of the EFTA-Singapore FTA, its model has been reproduced for other negotiations (e.g. Hong Kong) and EFTA workers often dub it as the “jewel of the crown” because of the high standards it established.

## **2. The EFTA-SACU Free Trade Agreement**

The Free Trade area set between the Association and the Southern African Custom Union was signed on 26 June 2006 and entered into force on 1 May 2008. It is a peculiar case within the large pool of EFTA FTAs and, as Singapore did although on another criteria, it set an unprecedented standard of preferential relations with developing countries. It is a “first generation” FTA covering all goods and containing all the traditional trade remedies and trade

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<sup>167</sup> Baldi, M., “In Focus: The EFTA-Singapore Free Trade Agreement”, *EFTA Bulletin*, *EFTA Free Trade Relations*, July-August 2006, p. 15.

<sup>168</sup> Source: UNCTADStat.

<sup>169</sup> See paragraph 1 of the Appendix 3 to Annex I to the EFTA-Singapore FTA.

<sup>170</sup> See paragraph 3 of Article 16 of the Annex I to the EFTA-Singapore FTA.

disciplines rules. It includes also precursory clauses on IPR, services, investment and government procurement, which lay the foundations for further liberalisation in the future. The major particularity of the Agreement is that it encompasses a broad range of nations with very diverse economies and levels of development. SACU States are composed of the major African powerhouse, i.e. the regional hegemony South Africa, its neighbouring resource-rich Botswana and Namibia, and the two kingdoms of Swaziland and landlocked Lesotho, the latter considered as a Least-Developed Country by WTO standards.

The main motivation for EFTA countries to initiate negotiations with SACU followed the perennial rule of EU parallelism. Indeed, the European Union concluded a comprehensive agreement with South Africa (only) in 2000, covering trade, aid and political cooperation. The ever-lasting fear of facing discrimination in South African market pushed EFTA to consider a preferential deal in the region. The effort was also powered by the will to foster development cooperation and to improve the capacity-building conditions in trade for developing countries.<sup>171</sup> On the SACU side, the objective was to complement the EU deal with further market access opportunities for SACU economic operators.<sup>172</sup>

Negotiations presented a number of difficult challenges. The main contentious areas of the negotiations concerned the asymmetrical dismantlement of industrial goods and agricultural products. EFTA countries were reluctant on lifting too many tariff lines on agricultural goods, which were one of the main focal point of SACU countries given their dependence on the primary sector. Switzerland could not obtain market preferences for PAPs such as chocolate and cheese and SACU States were granted a slightly more favourable treatment than the GSP scheme provide.<sup>173</sup> For countries like Botswana, liberalised EFTA markets are manna for their diamond industry. In 2010, approximately 11 per cent of Botswana's exports were destined to EFTA.<sup>174</sup> This merely shows the importance for SACU to acquire larger margins of preferences than on the GSP.

Another interesting feature of the EFTA-SACU FTA relates to Article 25 of the Agreement, which provides for special and differential treatment for Botswana, Lesotho, Namibia and Swaziland. The article stipulates that the concerned countries are allowed to temporarily levy

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<sup>171</sup> Draper, P. & Khumalo, N., "European Free Trade Association–Southern African Customs Union Free Trade Agreement", in Lester, S & Mercurio, B., *Bilateral and Regional Trade Agreements: Case Studies*, Cambridge University Press, Cambridge, 2009, pp. 99.

<sup>172</sup> *Ibid.*, p. 98.

<sup>173</sup> *Ibid.*, p. 102.

<sup>174</sup> Source: Botswana Central Statistics Office.

duty so as to protect infant industries and also to temporarily restrict the importation or exportation of goods that may endanger the food security situation, and the prospects of rural development and poverty alleviation. IPR have also been left rather untouched in order to give flexibility for developing nations which do not have the capacity to enforce strict IPR rules. Moreover, an extensive chapter on economic cooperation and technical assistance was incorporated in the agreement.<sup>175</sup> The EFTA countries committed in participating constructively to the socioeconomic growth of the SACU States providing technical assistance on all trade-related matters.

According to the EFTA chief negotiator<sup>176</sup> and other SACU negotiators, the outcome is largely satisfactory. On one hand, EFTA countries have managed to obtain the same treatment than the EU receives whilst fostering economic cooperation. On the other hand, SACU States seems *prima facie* satisfied even if the preferential access to agricultural goods did not meet the original expectations. The EFTA-SACU FTA is a relevant example of the difficulties met during negotiations of a PTA between two very different regions with, sometimes, conflicting interests. As EFTA will likely engage itself more frequently in negotiations with developing or even least-developed nations, it should take stock of the outcome of the EFTA-SACU FTA in order to find better solution for the mutual benefits of all parties.

### **3. Miscellaneous Free Trade Agreements**

Every EFTA FTA has its share of interesting story to tell. This section will very succinctly mention few of them worth of delivering. Some of the EFTA FTAs look like strange animals in the landscape of EFTA's third-country relations. The first case is the Interim Agreement Between the EFTA States and the PLO for the Benefit of the Palestinian Authority, or in other words, the EFTA-Palestine FTA.

In the midst of the post-Oslo Accords context, the Palestinians searched to gain international visibility whilst the EU was looking for helping in stabilising the region and, of course, gaining market access. The PTA between the EU and Palestine entered into force in July 1997. EFTA had to match and followed suit the next year. EFTA and the EU are the only established trade partners of the Palestinian territories with Israel. The latter, with which EFTA concluded an FTA during the pre-WTO era in 1992, restrict greatly all trade flows

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<sup>175</sup> See Article 30 to 32 of the EFTA-SACU FTA.

<sup>176</sup> Nordgaard, L.E., "Trade and Development – The EFTA-SACU Agreement", in *EFTA Bulletin, EFTA Free Trade Relations*, July-August 2006, p. 28.

between Palestine and other countries through blockades, stringent rules and outrageous duties. The EFTA-Palestine FTA is the least elaborated and least wide-ranging of all EFTA FTAs. Its existence is only due to the EU parallelism policy and supportive attitude by staunch supporters of the Palestinian cause (i.e. Norway and Iceland)

The EFTA-Canada FTA is quite peculiar too. It is the only “first generation” FTA concluded overseas with a developed country. Eleven rounds were necessary to conclude the negotiations that spanned over almost ten years (from 14 October 1998 till 26 January 2008). Negotiations were halted during seven years mainly because of disagreement over imports of Norwegian ships into Canada. When negotiations resumed in 2007, adding “second generation” areas would have undermined conclusion of the FTA. Besides providing the classical preferences in good, it is the only “first generation” with a comprehensive dispute settlement system and with a GPA-based rule on procurement. Moreover, the Agreement contains atypical provisions, such as on the exemption of applying national treatment on few measures and products (e.g. control on the export of logs or measures concerning the internal sale and distribution of wine and distilled spirits)<sup>177</sup> or on origin verifications.<sup>178</sup> The latter is also found in the EFTA-Korea FTA and it allows Canadian (or Korean) customs officers to come to EFTA countries as observers and “inspect” whether the goods are originating or not, provided that the concerned party is consenting. Such clause causes a lot controversy as it could entail, inter alia, industrial espionage or simply unwelcomed interference in domestic affairs.

Other interesting FTAs could be for instance the one with Hong Kong. The EFTA-Hong Kong FTA was concluded alongside an Agreement on Labour containing soft, non-binding and best-endeavour provisions for better protection of labour rights. Hong Kong did not want to fully include it in the main Agreement so as to have the flexibility to opt out of it without jeopardising the legal viability of the FTA.<sup>179</sup> Therewith, concerns have been raised that the loose ROO may indirectly open the access of EFTA markets for China and that EFTA countries did not protect their interests enough.

Last but not least, the EFTA-Turkey is worthy of note from a legal perspective. Indeed, similarly to the EFTA-Israel FTA, it was concluded during the Uruguay Round. Since then, the FTA had undergone a number of substantive changes thanks to the work of the Joint

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<sup>177</sup> See Annex B to the EFTA-Canada FTA.

<sup>178</sup> See Article 24 and 25 of the Annex C to the EFTA-Canada FTA.

<sup>179</sup> See Article 7 of the Agreement on Labour between the EFTA States and Hong Kong, China.

EFTA-Turkey Committee. The Agreement looks like a coherent legal patchwork and it is set to be upgraded to a “second generation” FTA. It has been amended about 33 times in order to make it conform to the “new” WTO obligations.

## V. PROSPECTS AND THE FUTURE SHAPE OF THE ASSOCIATION

### A. Brief assessment of EFTA Free Trade Agreements' impact: trade creation vs. trade diversion

Assessing whether EFTA FTAs have impacted negatively or positively international trade flows, and whether such fact has occurred on a global, plurilateral or bilateral level is an extremely complex question. In fact, a whole research could be dedicated to study that theme alone. Whilst this paper does not intend to dig deep into this important issue, it is necessary to visualise its contours and understand if EFTA FTAs has had a positive impact overall. Such analysis should not only be carried out from a purely economic perspective, but also a political perspective.

#### 1. Positive impacts

For EFTA countries, the fact that EFTA FTAs have positively contributed to enhance the growth potential of their economies is an indubitable fact. Switzerland has conducted few researches, which found out in statistical terms that EFTA FTAs beget positive outcomes on trade and investment flows between the parties. For the period from 1988 to 2008, Swiss total trade in goods grew by an annual average of 5.7 per cent while total trade with FTA partners grew on an annual average by more than 10 per cent. This is also reflected in the increase of FDI stock abroad, which grew by respectively 12.6 per cent and 18 per cent on average per annum in the world and FTA partner countries.<sup>180</sup> For Liechtenstein and its pocket-sized market, acquiring new market opportunities outside of the EEA zone has allowed to increasing substantially employment levels and to keeping Liechtenstein's competitiveness afloat.<sup>181</sup> Iceland and Norway share the same views and conceive EFTA as a vehicle spawning trade rather than diverting it.<sup>182</sup>

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<sup>180</sup> Abt., M., *The Economic Relevance of Free Trade Agreements with Partners Outside the EU*, DFE, SECO, Bern, 2010.

<sup>181</sup> Bryn, K. & Einarsson, G. (eds), *op. cit.*, pp. 33-36.;

<sup>182</sup> See European Free Trade Association, "Icelandic Chamber of Commerce", in *EFTA Bulletin, EFTA Free Trade Relations*, July-August 2006, pp. 42-44;

Unearthing trade diversion effects is a difficult exercise but EFTA's pragmatism have pushed the Member States to not worry too much about gravity models<sup>183</sup> and Viner's theories,<sup>184</sup> as their small market may not have a strong impact on international trade. Ultimately, it is unclear if FTA partners have enjoyed the same benefits but a preliminary answer may hint towards a yes, merely because FTA partners obtain extra preferences their neighbours may not possess (except in the European continent which is nearly fully covered by EFTA PTAs). Again, because of the small size of EFTA markets, FTAs may not distort enough trade patterns to worry the neighbours.

Other notable positive impacts – that are difficult to verify so far – relate to the diffusion of democratic values through FTAs. Any rule-based approach that parties intend to comply with may strengthen the rule of law and may help to embed practices of good governance. In the same vein, FTAs foster good entente, constructive partnership and rise of common interests between the parties. It would be naïve to say that EFTA FTAs have had such a tremendous influence in partner countries where democratic regimes are not well established, but they are nonetheless indispensable instruments that may have a negligible although positive impact in terms of results. Such results may flourish more often if EFTA decides to thoroughly follow the EU path of including social and human rights clauses in FTAs.

## **2. Negative impacts**

Negative impacts of EFTA FTAs seem to be so far mostly absent for EFTA countries. Sensitive sector where unemployment may be a risk are usually not affected by trade negotiations (e.g. in the agricultural sector). Potential negative effects fall rather on the side of the FTA partners, specifically those from developing countries. Indeed, concessions granted to developing countries such as Chile, Peru, Colombia, Mexico or SACU States only marginally improve market access. Developing countries tend to rely more on the primary sector than EFTA States do and are thereby more exposed than EFTA. For agricultural goods, tariff preferences in FTAs do not vary greatly compared to the level of protection granted through the GSP scheme. For instance, the average Swiss tariff for agricultural products is 27.2 per cent under the GSP and only 0.5 per cent lower in EFTA FTAs.<sup>185</sup> Lesotho is the

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<sup>183</sup> For more information on gravity models applied to RTAs, see Greenaway, D. & Milner, C., "Regionalism and gravity", in *University of Nottingham Research Paper Series*, 20, 2002.

<sup>184</sup> Viner, J., *The Customs Union Issue*, Carnegie Endowment for International Peace, New York, 1950.

<sup>185</sup> World Trade Organization, *Switzerland and Liechtenstein Trade Policy Review, Secretariat Report*, WTO, Geneva, 2008, p 50.



only FTA partner, which enjoys almost complete duty-free treatment due its least-developed country status.

Furthermore, tighter intellectual property rules prevent developing countries from commercialising cheap generic drugs that poverty-stricken populations could thereof benefit. The requirement to ratify the International Convention for the Protection of New Varieties of Plants (UPOV Convention) is also an issue as it removes the possibility for developing countries to elaborate a tailored varieties protection system with an equitable share of benefits. In terms of investment, EFTA countries manage to create a safer investment environment for their economic operators. This is however done without creating better protective conditions for the recipient country. In other words, investment clauses do not provide for distributive qualities of investment and protection of consumers in the host country, which may lead to abuse by EFTA investors.

Finally, EFTA FTAs may have a negative impact on intra-regional trade outside of the EU. If a country like Peru shifts some of its export flows towards EFTA countries because of higher barriers in Ecuador or Bolivia, this would have repercussions for those countries, especially if they do not benefit from any comparative advantage in the sectors concerned. Buying those Peruvian goods from more expensive markets may reduce consumers' welfare and regional integration dynamics would be affected adversely. The only winner would be Peru and EFTA countries, which for the latter would be unfair in terms of development policy and distributive equity. This is a typical illustration of trade diversion. In such case why would FTA partners decide to sidestep the multilateral trading system in order to engage themselves in preferential trade negotiations if it was not advantageous? States have a tendency to behave rationally, i.e. protecting their national interests at all costs, even though it may be at the expense of others. This may be a simplistic question but in terms of solely domestic interests, EFTA FTAs are perceived as creating trade (and they generally do).

## **B. EFTA's prospects and viability**

Going beyond 2011, one could ask about EFTA's future and its viability in an increasing globalised world. EFTA's position in the middle of the EU giant is questionable and many have believed and still believe that the Association is destined to fade away once the Member States will fully integrate the EU or when they will not foresee any advantages of being part

of such a loose organisation. Many other difficulties lie ahead for the small EFTA, which will have the difficult task to manage greater numbers of FTAs every coming year.

EFTA's prospects can be deducted on six major fronts. Some of them are purely speculative and others present more concrete elements about EFTA's directions in the short and mid run. These six points are: first, prospects on updating current FTAs; second, the emergence of new trade-related disciplines; third, new partners and related challenges; fourth, the potential risk for EFTA of a "self-destructive bilateralism" or a filled "spaghetti bowl"; fifth, the overall viability of the Association; and sixth, its (im)probable membership expansion.

### **1. Outlook in the updates of the Free Trade Agreements**

Aside from negotiating new Free Trade Agreements with partners all over the world, EFTA States face the humongous task of keeping all ratified FTAs under constant updates and tight surveillance. Many trade disciplines, whether they fall or not within the ambit of the WTO laws, need continuous revisions to adapt to the new realities and trends of international trade. EFTA has hitherto revamped 15 of its FTAs with 147 Joint Committee Decisions. Most of the amendments to the Agreements concerned the establishment of procedural rules for the Joint Committees, complete removals of remaining tariff barriers on industrial goods and fish, and updates on ROO. For instance, all countries part of the PEM process need to harmonise their regulatory framework on ROO. Israel and Turkey represent altogether a third of all JC Decisions as they had to substantively modify the structure of their EFTA FTAs to conform to WTO-based rules.

EFTA countries will be more and more interested in updating all "first generation" FTAs in order to include "second generation" scope. This may take a considerable amount of time, as all partners will have to go through negotiating processes again. EFTA runs the risk of lagging behind if it does not pursue an active policy on that front, especially if the EU levels up the game with PEM countries. Another option that is currently undertaken by EFTA is to start including the new rules on sustainable development and labour. Some partners may frown upon such initiatives (e.g. regional economic powerhouses) but others may welcome that EFTA seeks to elevate the substance, even if it is a soft one, to the same standards than the EU. In general, updating all FTAs constitutes a huge task but it is surely a realistic follow-up on EFTA's pragmatic approach.

## 2. Developing new trade rules

One of the major prospects for EFTA relates to the elaboration of new trade rules. As we have seen previously, EFTA FTAs' general coverage remains less far-reaching comparably to what is implemented in some other PTAs, namely the EU-CARIFORUM FTA, EU-Korea FTA or NAFTA. The inclusion of environmental and labour provisions in recent FTAs is a sign that EFTA has an inclination towards expanding further the scope of their FTAs. Such action suits perfectly the current context of increasing globalisation and economic interdependence, where the world economy evolves constantly and where actors confront new and complex challenges for which they must adapt adequately. New forms of PTAs and RTAs have started to insert additional WTO-X areas such as provisions on, inter alia, anti-corruption, financial assistance, labour market regulations, education and training, energy, human rights, immigration, regional cooperation, taxation and so forth.<sup>186</sup>

Human and social rights are widely considered as being universal standards and inherent public goods. With the advent of new trade disciplines in PTAs, interlinkages between human rights and trade law are now well established. Trade law itself should be examined from a broader angle.<sup>187</sup> Pressure from the civil society and some parts of the academia may influence EFTA to explore new ways of concluding FTAs, especially with developing countries.

EFTA is currently repositioning itself in this era of new trade disciplines. Will the inclusion of social and human rights spawn what we could call "third generation" FTAs? With the Hong Kong and Montenegro FTAs, EFTA is showing signs that it is willing to expand the scope of their agreements. Even though this new coverage remains largely normative and non-binding, it represents a first step in building stronger and more legitimate trade regimes. EFTA may as well be interested in scrutinising the possibility of enacting obligations on good governance, anti-fraud, financial assistance or even the movement of persons in future FTAs. In any case, it is certain that EFTA will continue on this road and we should expect from the Member States to adopt fresh ideas in the coming years.

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<sup>186</sup> World Trade Organization, *World Trade Report 2011 – The WTO and preferential trade agreements: from co-existence to coherence*, WTO, Geneva, 2011, pp. 128-132.

<sup>187</sup> Petersmann, E.-U., "International Economic Law and 'Public Reason': Why Do Governments Fail To Protect International Public Goods More Effectively?", in *EUI Working Paper, Law* 2010/17, pp. 30-31.

### 3. New partners and new challenges

EFTA is currently negotiating free trade agreements with economic heavyweights such as India, Indonesia and Russia and may be soon initiating negotiations with Mercosur. EFTA countries are also negotiating with China on an individual basis. To sum up, EFTA is entering into a whole new era where the political and economic nature of the new trade partners will increase the level of complexity during negotiations. EFTA FTAs have now a definite tendency to go overseas and to deal with emerging and powerful economies. Since the EFTA-Mexico FTA was signed, the course of the classical race to the top parallel to the EU has drastically changed. EFTA continues to consolidate its position in Europe and it has now concluded a number of EFTA-exclusive FTAs.<sup>188</sup> This calls for new approaches and Member States will have to adapt their policy formulation in order to determine where do they share mutual interests with these emerging economies.

The likelihood that EFTA FTAs negotiations run the risk of failure is augmenting. Even if the general outlook is positive, many new difficulties may emerge. Amongst others, the civil society will eventually start to be apprehensive of deals with countries where outsourcing could be a serious outcome. Losing jobs at the expense of a FTA is a regular concern expressed by citizens.<sup>189</sup> Lobbies and unions from certain portions of the manufacturing and agricultural sectors do not generally view the expansion of preferential deals from a optimistic viewpoint. With EFTA engaging itself into negotiations with countries that are infamous for their disregard towards human rights (e.g. Algeria, Belarus, Kazakhstan, Russia, Vietnam), demand for transparency and even refusal will be frequent.<sup>190</sup>

Moreover, negotiating with powerhouses will further bring challenges during negotiations. For instance, conflicts of interests will tend to be more prominent on IPR issues, investment, and market access on agricultural goods or sustainable development clauses. EFTA will also have to take into consideration that developing countries do not have necessarily the capacity to enforce the rules set out in the FTAs. A country such as India, which does not even have a common external tariff due to its federal fragmentation, may not be able to properly comply

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<sup>188</sup> In comparison with the EU, FTAs exclusive to EFTA are with Canada, the GCC, Hong Kong, SACU countries (except South Africa), Singapore and Ukraine.

<sup>189</sup> Bilaterals.org, *40,000 against the KORUS FTA*, [accessed November 2011], available: <http://bilaterals.org/spip.php?article20591>

<sup>190</sup> Swissinfo.ch, *Free trade talks with India hit stumbling block*, [accessed October 2011], available: [http://www.swissinfo.ch/eng/business/Free\\_trade\\_talks\\_with\\_India\\_hit\\_stumbling\\_block.html?cid=28263010](http://www.swissinfo.ch/eng/business/Free_trade_talks_with_India_hit_stumbling_block.html?cid=28263010)

with the FTA obligations. This is why EFTA will probably follow new concepts and new models so as to adapt to this new reality.

#### **4. Dangers of a spaghetti bowl**

The famous term coined by Jagdish Bhagwati, the “spaghetti bowl” of PTAs,<sup>191</sup> reflects the dangers of a dispersed regulatory framework of the international trade system. The growing concern shared by many scholars and professionals basically lays out that the proliferation of PTAs may gravely undermine the multilateral trading structure by turning it into an unfathomable mess. The crisscrossing of PTAs engenders a perilous overlapping of rules and increases legal uncertainty. For instance, the divergence of multiple ROO regimes may raise trade barriers, thus costs.<sup>192</sup> The incompatibility and overlaps of PTAs’ dispute settlement mechanisms with the WTO system could result in conflicting jurisdictions.<sup>193</sup> The erosion of the MFN principle could generate trade diversion effects.

EFTA States are unconditional supporters of the multilateral trading system and are looking actively in how can they avoid such overlaps of rules. As we have seen earlier, EFTA’s legal tradition is marked by an effective aim to ensure legal consistency amongst its FTAs as well as between them and the WTO Agreements plus other sources of international law. With respect to the increasing complexity of the FTAs coverage and also the increasing difficulty to administer them, EFTA States surely seeks to harmonise their laws with the EU and simplify their models so as to build blocks instead of stumbling them. EFTA has always been careful in drafting rules complying with WTO law. From a legal perspective, it does not seem so far that EFTA FTAs will jeopardise the good functioning of or enter into conflict with the multilateral regime.

Taking into account the pragmatic and realistic approach of EFTA’s trade policy, it seems likely that EFTA countries would not withdraw resources against the WTO, nor would they reallocate more resources for preferential talks. EFTA will certainly maintain status quo, even if the Doha Round would be buried. They would then undoubtedly pursue to revive it, whilst keeping FTA negotiations as a second-best choice strategy.

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<sup>191</sup> See Bhagwati, J., “U.S. Trade Policy: The Infatuation with Free Trade Agreements”, in Bhagwati, J. & Krueger, A., *The Dangerous Drift to Preferential Trade Agreements*, AEI Press, Washington DC, 1995.

<sup>192</sup> Estevadeordal, A., Harris, J. & Suominen, K., “Harmonizing preferential rules of origin regimes around the world”, in Baldwin, R. & Low, P. (eds), *op. cit.*, pp. 262-264.

<sup>193</sup> Kwak, K., & Marceau, G., “Overlaps and Conflicts of Jurisdiction between the World Trade Organization and Regional Trade Agreements”, in Bartels, L. & Ortino, F. (eds), *op. cit.*, pp. 497-499.

## **5. Viability of the Association without Iceland (and others?)**

One could if ask whether EFTA is a viable intergovernmental organisation and if it has a concrete future. Such interrogations have been raised since the birth of the Association. When the United Kingdom left EFTA along with Denmark in 1973, many thought the event sounded the death knell of the Association. The same questions arose in 1995 when Austria, Finland and Sweden left the boat. About fifteen years later, EFTA is still around and is well anchored on European soil. Its sustainability does not seem to be directly threatened, even if grounds could become shakier.

Indeed, the EFTA foundations have once more trembled when Iceland applied for EU membership on 16 July 2009. The Icelandic financial crisis demonstrated how the country could be exposed to external shocks and how internal mismanagement could lead to catastrophes. The application was, at the time of submission, considered by a narrow majority of Icelanders to be a natural extension of the EEA and the final stage in European integration. At the time of writing (October 2011), Iceland was already fully engaged in the negotiations process and could possibly become a EU member between 2012-2015.<sup>194</sup>

Would EFTA survive another amputation? Iceland may not be the most influential member of the Association but it certainly contributes actively to maintain it. Some people interrogated at the EFTA Secretariat claim that even if Iceland withdraws its EFTA membership, then it would be “business as usual”. It is however highly uncertain if Member States’ governments would be fond of continuing to use EFTA as a platform for administering the EEA and conducting free trade negotiations all around the world. The first EFTA pillar, i.e. the Vaduz Convention, would lose even more of its appeal, which is currently not so vivid if we take into account that intra-EFTA total trade represents only 0.6 per cent of total share in merchandise. On the other hand, if Liechtenstein, Norway and Switzerland decided to withdraw altogether from the Association, it makes logical sense that costs would outweigh the benefits. The remaining countries would lose political leverage in free trade negotiations, would also have to face legal difficulties regarding the transformation of EFTA FTAs (and the Convention) into bilateral FTAs. It would be overall a very burdensome process. In addition,

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<sup>194</sup> For more information on Iceland’s EU accession, see Ministry for Foreign Affairs of Iceland, *Iceland’s application for membership of the EU*, [accessed October 2011], available: <http://europe.mfa.is/phase-2---negotiation-process/>

the EEA Agreement would also take a serious hit but there would not be a priori any rational reasons for Norway nor Liechtenstein to break up with the EEA.

Therefore, in case of an Icelandic accession to the EU, it still seems quite improbable that the remaining EFTA States would lower the mast. Nonetheless, it is undeniable that they would be weakened on the international scene. Anyway, if we embrace an EFTA perspective, the outlook is up to this time rather encouraging. According to recent polls, Icelanders are not ready to join the EU and will certainly not be so inclined to until the European giant tackles its outstanding internal issues (e.g. euro zone crisis, sovereign debt crisis).<sup>195</sup> Switzerland and Liechtenstein are very far away from a EU membership and will certainly stay so for at least a decade or even more, and Norway does not show any sign of complacency towards the EU. The original EFTA rationale of saving policy space and keeping sovereignty intact is not destined to phase out soon.

## **6. Is the membership door wide open?**

Are there any prospects to open up EFTA membership to newcomers, or even former members? The Faroe Islands have explicitly expressed their desire to join the Association,<sup>196</sup> but such possibility would entail a number of difficulties: first the Faroes are not a fully independent State and relies on Denmark in many aspects of their economy and foreign relations, therefore EFTA would need to amend substantively Article 56 of the Vaduz Convention as it stipulates that only “States may accede” to the Convention. Second, renegotiating all FTAs to include the Faroe Islands would be costly and troublesome, plus EFTA countries could lose credibility as a demander for a semi-autonomous State. Third, Members like Switzerland or Liechtenstein would not favour another Nordic nation to obtain membership, as they do not share the same economic interests. The last two points are as well perfectly valid if other European micro-States such as Andorra, Monaco, San Marino or the Vatican decided to apply for EFTA membership. Thus far, there have been no signs of EFTA accession interests coming from other non-EU European or even non-European States (EFTA’s membership is legally open to all States).

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<sup>195</sup> See Gallup polls: [http://www.mbl.is/frettir/innlent/2011/06/16/57\\_3\\_prosent\\_segjast\\_andvig\\_esb\\_adild/](http://www.mbl.is/frettir/innlent/2011/06/16/57_3_prosent_segjast_andvig_esb_adild/) ; or [http://www.mbl.is/frettir/innlent/2011/06/30/meirihluti\\_vill\\_draga\\_esb\\_umsoknina\\_til\\_baka/](http://www.mbl.is/frettir/innlent/2011/06/30/meirihluti_vill_draga_esb_umsoknina_til_baka/) ; or [http://www.mbl.is/frettir/innlent/2011/08/11/vaxandi\\_andstada\\_vid\\_adild\\_ad\\_esb/](http://www.mbl.is/frettir/innlent/2011/08/11/vaxandi_andstada_vid_adild_ad_esb/)

<sup>196</sup> Ministry of Foreign Affairs of the Faroe Islands, *The Faroes and EFTA*, [accessed October 2011], available: <http://www.mfa.fo/Default.aspx?ID=6848>

Finally, is it also possible that any EU States would decide to (re)join EFTA? Some conservative politicians and citizens of the United Kingdom have expressed the view that their country should go back to lesser degrees of integration and greater levels of sovereignty, and that such action could be undertaken through EFTA.<sup>197</sup> Such schizophrenic points of view are becoming more popular in the face of the current EU depression, although they should not be taken seriously. EFTA will preserve its current composition for many years to come, if not will lose one member but will certainly not gain one.

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<sup>197</sup> Van Randwyck, H., *EFTA or the EU*, The Bruges Group, London, 2011.



## CONCLUSION

Since its inception, it was perceived that EFTA was only a temporary arrangement, and that all of its members would gradually join the EC after the United Kingdom's departure. Nowadays, EFTA still stands on its own two feet and has rarely looked so promising. Even a potential Icelandic secession does not restrain Member States to continue their proactive trade policy with third-countries. EFTA serves as an entry to Europe for third-country partners and this advantage is fully taken care of by the Member States. The EFTA economic microcosm is an attractive opportunity for potential FTA partners to test their abilities to dive into the European markets and will remain so as far as EFTA countries preserve their status as isles of stability and prosperity in a gloomy-looking Europe.

Future economic integration is currently occurring through intra-regional trading blocs or interregional agreements. Given that today, the number of PTAs is steadily increasing and that multilateral talks are ankylosed, EFTA is unlikely to disappear anytime soon. As an intergovernmental institution pooling the interests and resources of Iceland, Liechtenstein, Norway and Switzerland, EFTA is well suited to deal with future challenges regionalism and international trade.

EFTA countries have also a role to play in strengthening the multilateral trading system. They may do so only if they uphold their loyal support to the WTO. In order to avoid creating stumbling blocks through their numerous FTAs, EFTA should strive to multilateralise the preferences given to their FTA partners, if not harmonise the trade disciplines their FTAs cover with the EU (e.g. with ROO, sustainable development or agriculture) so as to create a uniform, predictable and solid bloc. The dangers of regionalism and an inextricable spaghetti bowl lure at EFTA's doors and the Association has the capacity to strike back in an efficient way.

If EFTA does not want to run the risk of losing relevancy, it should aim at expanding further the scope of their FTAs. To tag along with the policy of parallelism with the EU is a tradition that must be followed on larger grounds than on simple "second generation" areas. Immobilism is a serious issue but EFTA has succeeded in crafting rules that deepen as well as surpass their WTO commitments. EFTA States have equally succeeded in adapting their trade policy instruments to changing economic, institutional and political environments. The recalibration of the balance of powers in international relations brought new challenges for

which Member States are acclimatising quickly, specifically on the increasing worldwide competition for meaningful preferential trade agreements.

EFTA has not yet adopted a consensual approach on how they should manage relations with developing countries. EFTA States have recently articulated their will to examine free trade projects with potential partners in Sub-Saharan Africa.<sup>198</sup> In order to comply with their position as democratic nations eager to spread their values of good governance, equality of opportunities and respect of human rights, EFTA countries should look deeper at how their FTAs may generate positive growth in developing countries and how they could implement trade rules that would not be detrimental to the specific needs and interests of developing countries' economies. EFTA should be mandated to increase the technical assistance and economic cooperation provided by certain FTAs (for instance with PEM countries, SACU States and Latin-American partners). Like the EU, it should seek to include aid for trade provisions in FTAs and elaborate development programmes where conditions of domestic production and innovation in developing countries would be enhanced.

The participation of parliamentarians, trade unions, employer's organisation and other social partners from the advisory bodies of the Association has improved transparency, visibility and legitimacy before citizens of the Member States. EFTA remains a quite low profile and underrated organisation in the domestic and international spheres but it certainly stands out in terms of quantity and quality of its Free Trade Agreements. Support from the EFTA countries' civil society is in majority affirmative but efforts should be made in order to increase the dialogue between FTA partners and their respective nationals. It is difficult to assess whether public opinion has been taken into account when a FTA partner concludes an agreement and whether all options have been considered in order to avoid discriminatory situations. However, increasing transparency and interaction with the public may have downside effects on the efficacy of initiating and negotiating trade deals.

In conclusion, it can be rightfully argued that over the past fifty years, EFTA has done a remarkable job in adjusting to the ceaseless economic and political changes in Europe and around the world. EFTA's future does not necessarily look shiny but it certainly does not look dull. With respect to third-country relations, this is where prospects are the brightest. EFTA is engaged in seven exciting different negotiations with partners that pose a number of complex but very interesting challenges. The accession of Russia to the WTO will certainly facilitate

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<sup>198</sup> European Free Trade Association, *EFTA Ministerial meeting, Geneva, Switzerland, 14 November 2011*, [accessed November 2011], available: <http://www.efta.int/about-efta/news/2011-11-14-efta-ministerial-gva.aspx>

and smoothen the process of negotiations with Rubeka and the outlook with India is rather optimistic. Maybe EFTA could use the input from its Free Trade Agreements into the multilateral setting or inspire the WTO to follow their rules impregnated by pragmatism and realism? Maybe EFTA States could consider formulating their trade and even agricultural policy on common grounds so as give them better visibility and legitimacy as a united bloc? In fine, the future of EFTA countries lies substantially within the close partnership that they operate with the European Union, or, why not, full EU membership. As the European Free Trade Association steps into its sixth decade, it is expected to continue to thrive and prosper in its distinguishing fashion of flexibility and pragmatism.

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