



**FREE TRADE AGREEMENT BETWEEN THE EFTA STATES AND BOSNIA AND HERZEGOVINA
(GOODS)**

QUESTIONS AND REPLIES

The following communication, dated 17 March 2016, is being circulated at the request of the delegations of the EFTA States and Bosnia and Herzegovina.

This document reproduces the questions addressed to the Parties and the responses submitted.

Questions from the delegation of Mexico

Technical Barriers to Trade (section 4.1)

1.1. Paragraph 4.1: Has a common mechanism for publishing regulations been established, i.e. a single official journal or website?

The provisions on technical barriers to trade (Article 14) do not establish a mechanism for publishing technical regulations. However, Article 6.1 of the Agreement requires each Party to publish or otherwise make publicly available its laws, regulations, judicial decisions, administrative rulings of general application and the international agreements to which it is a party that may affect the operation of this Agreement.

Safeguard mechanisms

Bilateral safeguards

1.2. Paragraph 3.34: Five years after entry into force of the Agreement, the Parties shall review in the Joint Committee whether there remains a need to maintain the possibility of taking bilateral safeguard measures. If after the first review, the possibility is maintained, there shall be biennial reviews of the matter in the Joint Committee thereafter.

Regarding paragraph 3.34, could the Parties clarify the connection between the need to maintain the possibility of taking bilateral safeguard measures and the taking of bilateral safeguard measures? In other words, if a bilateral safeguard measure were taken within the five-year period, would this negate the possibility of taking further measures, or, conversely, after the measure was taken, would it be considered necessary to maintain the possibility of taking such measures?

Article 22 of the Agreement serves as a "safety net provision" for a Party whose domestic industry is facing a sudden flood of imports from another Party due to tariff liberalization under the Agreement. Paragraph 5 foresees a maximum period of three years for the duration of a bilateral safeguard measure. According to the provisions set out in Article 22 of the Agreement, new bilateral safeguard measures cannot be applied if the Joint Committee decides to discontinue the possibility for the Parties to take bilateral safeguard measures. The review process ensures that bilateral safeguard measures would be available to the Parties only if a particular need to maintain them continues to exist.

Anti-dumping and countervailing measures

1.3. Paragraph 3.41: Anti-dumping measures, as provided for under Article VI of the GATT and the WTO Agreement on Implementation of Article VI of the GATT 1994, are not permitted under the Agreement for products originating in another Party (Article 20). This is affirmed for Bosnia and Herzegovina under Annex VIII of the Agreement. The Parties recognize that the effective implementation of competition rules may address economic causes leading to dumping.

- a. Regarding paragraph 3.41, in the event of imports of the same article from a trading partner and other origins as well, would these imports be cumulatively assessed pursuant to Article 3.3 of the Anti-Dumping Agreement, followed by exclusion of the trading partner's imports from the measure, or, conversely, would the imports not be cumulatively assessed?**
- b. Also, could the Parties indicate which are the specific competition rules being considered in order to address economic causes that may lead to dumping among the Parties?**

Article 20, paragraph 1 of the Agreement prohibits the application of anti-dumping measures between the Parties. This means that Party cannot open any investigation according to Article 3 of the WTO Anti-Dumping Agreement against imports of another Party to the Agreement. Thus, in the event of imports of the same article from a trading partner and other origins as well, imports would not be cumulatively assessed.

Article 18 of the Agreement provides for rules on competition regarding anti-competitive behaviours which affect trade between the Parties. The Parties to the Agreement maintain their own specific competition rules in their separate jurisdictions.

Trade and sustainable development

1.4. Paragraph 4.29: With regard to the promotion of cooperation between enterprises mentioned in this paragraph, are such cooperation activities already under way? If so, what are these activities and what do they involve?

The Agreement (Article 39) foresees that cooperation between enterprises in the area of sustainable development should be encouraged. Specific cooperation efforts have not yet been undertaken.

Questions from the delegation of Thailand**Investment**

1.5. Paragraph 4.26: Please explain why Norway did not join others in committing "to refrain from arbitrary or discriminatory measures regarding investments by investors of any of the other Parties"?

- As stated in Paragraph 4.26 that Norway has not agreed to refrain from arbitrary or discriminatory measures regarding investments by investors of any other parties. Is there any mechanism or provision existing in the agreement that prevent a Party from relying on Investment measures that are inconsistent with TRIMs or other WTO provisions?

Norway opted out of Article 26, paragraph 5 of the Agreement to avoid any uncertainty as to whether this provision would create any obligations related to investment protection, which has been a very sensitive issue in Norway since the mid-1990s.

The Agreement does not contain a provision that prevents a Party from relying on Investment measures that are inconsistent with TRIMs or other WTO provisions.

Competition

1.6. Under the Agreement, "the Parties shall cooperate in their dealings on anticompetitive practices with the aim of ending such practices: (1) all agreement between undertaking and (2) abuse one or more undertaking of a dominant position."

- a. Thailand would like to know the reason why this agreement does not cover mergers & acquisition and unfair trade practices.**
- b. Could you please elaborate on the procedure for consultations, which may be requested by a Party within the Joint Committee?**

The aim of the competition chapter is to prevent that the benefits of the Agreement are undermined by anti-competitive practices. However, the Parties to the Agreement maintain their own specific competition rules in their separate jurisdictions. The competition chapter focuses on the common denominators of the Parties' competition legislations. Anti-competitive behaviours, which are deemed incompatible with the proper functioning of the Agreement insofar as they may affect trade, are outlined in Article 18, paragraph 1 of the Agreement. Mergers and acquisitions are not considered per se as anti-competitive practices by the Parties.

The procedure for consultations under the Joint Committee is spelled out in Article 18 paragraph 4 of the Agreement, which reads as follows:

"If a Party considers that a given practice is incompatible [...], it may request consultations within the Joint Committee. The Parties concerned shall give to the Joint Committee all the assistance required in order to examine the case and, where appropriate, eliminate the practice objected to. If the Party concerned fails to put an end to the practice objected to within the period set by the Joint Committee, or if the Joint Committee fails to reach an agreement after consultations, or after 30 days following referral for such consultations, the Party requesting consultations may adopt appropriate measures to deal with the difficulties resulting from the practice in question."

Because of the plurilateral nature of the EFTA-Bosnia and Herzegovina FTA, a Joint Committee is established as the main forum for the Parties to discuss any issue arising under the Agreement (c.f. Article 43), including competition matters. It consists of representatives of the Parties. The rules of procedure of the Joint Committee are established pursuant to Article 43 of the Agreement. These rules are also applicable to consultations regarding competition matters. Consultations in the Joint Committee are not open to the public.
