

Comparing EU free trade agreements Services



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The aim of this *InBrief* series is to provide a synthesis of various chapters of the ten free trade agreements (FTAs) recently concluded by the European Union with developing countries, as well as other relevant trade agreements when appropriate. Each *InBrief* offers a detailed and schematic overview of a specific set of trade and trade-related provisions in these agreements.

Services such as financial services, tourism, communication (including telecommunications, audiovisual services and postal services), transport, computer software, electronic commerce and environmental services (including energy and sewerage) have become increasingly vital to the development and strength of economies. Having experienced growth of over 10% in recent years, trade in services today accounts for over 60% of production and employment around the world. However, this growth has been somewhat disproportionate, with developed countries accounting for over 70% of the global trade in services during the 1990s (NCC; 2001: 7). This asymmetric growth is due in part to the structure of service sectors in these countries. While most of the services exported by developed countries relate to communication, transport, finance, information technology, construction and professional business services, developing countries' exports have generally been limited to tourism (i.e. 'consumption abroad' of incoming tourism) and labour-intensive services such as software design and call centres.

One of the distinguishing features of trade in services as compared with goods is that, rather than facing quantifiable barriers such as tariffs, services are affected by more opaque non-tariff barriers. These barriers include technical standards, qualification procedures and licensing requirements that

frequently result in highly regulated domestic markets. Thus, two of the primary objectives of liberalising trade in services are to reduce such barriers and increase the level of transparency among trading partners.

The first efforts to develop rules for the liberalisation of tradable services were made through bilateral and regional trade agreements, beginning within the European Community's Single European Market, which was created from 1987, followed by the Free Trade Agreement between Canada and the United States (CUSFTA), which took effect in 1989, and the North American Free Trade Agreement between Canada, Mexico and the United States (NAFTA), which entered into force in 1994. Given the growing global importance of trade in

services and the ensuing need for a multi-lateral framework for the further liberalisation of services, the General Agreement on Trade in Services (GATS) was negotiated as part of the Uruguay Round. The GATS took effect in 1995 within the newly established World Trade Organization (WTO).

Services in the GATS

The GATS contains the same definition of trade in services that is widely used in trade agreements, plus a number of general and specific obligations for WTO members, as well as provisions for the future liberalisation of trade in services. GATS Article I:2 outlines the four modes of trade in services (see Table 1).

Box 1 Services in the WTO

The WTO's General Agreement on Trade in Services (GATS) is set out in Annex 1b of the 1994 Agreement Establishing the World Trade Organization. The full GATS text and annexes can be found at: www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm

A summary of the provisions is available here: www.wto.org/english/docs_e/legal_e/ursum_e.htm#mAgreement

As part of the built-in agenda of the Uruguay Round Agreement, negotiations to further liberalise trade in services began on 1 January 2000. The ongoing WTO negotiations on services can be followed at: www.wto.org/english/tratop_e/serv_e/s_negs_e.htm

Table 1 Modes of trade in services as defined in the GATS

Mode	Type of service	Description
1	Cross-border Supply	The service is supplied from the territory of one member to that of another member (e.g. services supplied by means of telecommunications, postal services, or computer disks).
2	Consumption Abroad	Involves the supply of the service in the territory of one member to a consumer from another member (e.g. tourism, educational services or ship repair services).
3	Commercial Presence	The supply of a service through the commercial presence of a foreign supplier such as a corporation, branch office or joint venture (e.g. banking or telecommunications services).
4	Presence of Natural Persons	Involves admitting a national from one member into the territory of another member on a temporary basis for the purpose of providing a service (e.g. a foreign employee of a service-provider from one member has a commercial presence in the territory of another member or foreign nationals from one member operate as independent service-providers in the territory of another member).

In parallel with the General Agreement on Tariffs and Trade (GATT), which deals with the trade in goods, Article II of the GATS obliges all WTO Members to provide 'most favoured nation' (MFN) treatment to all other members. The principle of equality of treatment between members is thus established. However, unlike trade in goods, where it is a general principle, Article XVII:1 of the GATS allows members to 'opt-in' to the specific sectors and modes of supply to which the principle of national treatment for imports of services will apply. Thus, under the GATS, members may identify which sectors will or will not be subject to domestic preference. However, where specific commitments are made, Article VI:1 obliges members to implement them in a 'reasonable, objective and impartial manner'. Finally, as set out in Article XIX:1, members are committed to entering into a series of negotiating rounds to achieve a 'progressively higher level of liberalisation' in market access beginning no later than 1 January 2000. These negotiations are currently being held within the Doha Development Round.

Multilateral in nature and comprehensive in scope, the GATS sets out the rules guiding recent trade agreements between the European Union (EU) and third (i.e. non-EU) countries, whether these are currently WTO members or are in the process of becoming members. Additionally, the more advanced free trade agreements (FTAs), such as the Association Agreement between the EU and Chile, have incorporated the more recent GATS sectoral agreements, such as that on basic telecommunications.

Services in EU agreements¹

A comparison of FTAs concluded by the EU with third countries suggests there is a general trend towards liberalising trade in services. The ten agreements, or in some cases interim agreements, which the EU has signed with its Mediterranean (MED) partners, South Africa, Mexico and Chile

differ significantly in terms of their scope and contents. However, they all follow the provisions set out in GATS Article V:1 relating to the further liberalisation of trade in services within economic integration agreements. Critically, Article V:1(a) requires such agreements to provide 'substantial sectoral coverage', while Article V:1(b) adds that they must provide 'for the absence or elimination

Box 2

Where to find articles on services in EU trade agreements

Euro-Med Agreements

Title III of the agreements

http://europa.eu.int/comm/external_relations/euromed/med_ass_agreements.htm

TDCA (South Africa)

Liberalisation of Services: Articles 29-30

Cooperation: Articles 55-63

http://europa.eu.int/eur-lex/en/archive/1999/l_3119991204en.html

Global Agreement (Mexico)

Services: Articles 6-7

Cooperation: Articles 16-32

[http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=22000A1028\(01\)&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=22000A1028(01)&model=guichett)

Decision 2/2001 of EU-Mexico Joint Council (entered into force on 1 March 2001), implementation of Article 6:

Services: Articles 2-27

http://europa.eu.int/comm/trade/issues/bilateral/countries/mexico/index_en.htm

Association Agreement (Chile)

Cooperation: Articles 20, 22-23, 34, 37, and 39

Services: Articles: 95-129

http://europa.eu.int/comm/trade/issues/bilateral/countries/chile/euchlagr_en.htm

For other agreements, see the Trade Agreements Database and Archive by the Dartmouth Tuck School of Business. http://mba.tuck.dartmouth.edu/cib/research/trade_agreements.html

of substantially all discrimination [...] between or among parties’.

However, the MED agreements are limited in their provisions on services liberalisation and also vary in their ambitions, partly due to the fact that not all MED partners are members of the WTO (Algeria, Lebanon and the Palestinian Authority) and therefore are no signatories to the GATS, though Algeria and Lebanon have applied for WTO membership. The agreement between the EU and South Africa, although potentially broader in scope than the MED agreements, contains a postponement of liberalisation for a period of at least five years. In contrast to the MED agreements, the GATS provisions on special and differential treatment for developing countries (Art. V:3) are clearly reiterated for South Africa. The FTAs with Mexico and Chile include significant provisions on liberalisation, including in the financial services sector and, in the agreement between the EU and Chile, also in telecommunications.

The Euro-Mediterranean Agreements

Since the first Euro-Mediterranean Conference held in November 1995, the EU and 12 Mediterranean countries have been involved in talks on ‘Association Agreements’. The overall objective is to form, by 2010, a single Euro-Mediterranean Free Trade Area out of the separate agreements currently in place. To date, bilateral Association Agreements have been concluded with seven countries: Tunisia (1995), Israel (1995), Morocco (1996), Jordan (1997), the Palestinian Authority (1997), Algeria (2001), and Lebanon (2002).

The MED agreements are somewhat limited in scope in terms of both liberalisation (Title III) and cooperation in the trade in services. However, the EU agreements with Algeria and Jordan in particular contain national treatment clauses, albeit with exceptions, thus establishing deeper liberalisation than the other MED agreements.

WTO members

The agreements with partners who are WTO members (i.e. Israel, Jordan, Morocco and Tunisia) reaffirm their commitments under the GATS and commit the Association Council to assessing the aim of widening the liberalisation of trade in services within a period ranging between three and five

Box 3 Reservations to the national treatment principle

For Jordan, Annex V explicitly constrains EU ownership of public share-holding companies, construction, trading services and mining companies, and sets a minimum limit for non-Jordanian investment in any project. For the EU, Annex VI excludes agriculture, mining, fisheries, transport, telecommunications, news agency services and audiovisual services from this principle. These reservations are to be reviewed within two years of the agreement’s entry into force.

years. The EU-Jordan agreement grants rights of commercial presence and national treatment for international maritime transport (Art. 31.2), while the EU-Morocco agreement calls on the Association Council to study the international maritime transport sector in order to make recommendations for liberalisation (Art. 31.4). The EU-Jordan agreement also allows key personnel from each party to work in subsidiaries located in the other party’s territory (Art. 34). Both parties list reservations in the application of the national treatment principle, among others in investment and mining (see Box 3).

Non-WTO members

Agreements with countries which are currently observers rather than members of the WTO (i.e. Algeria and Lebanon) make subtle movements toward a further liberalisation of trade in services. Under the EU-Algeria Agreement, the EU agrees to extend its specific GATS commitments to Algeria, while Algeria agrees to grant limited national treatment in commercial presence (Art. 32.2) and international maritime transport (Art. 34.2) in return. Hence, if its agreement with the EU enters into force before WTO membership is obtained, Algeria will have imported certain WTO commitments without yet being a member.

Although Lebanon has agreed to provide the EU with a schedule of specific commitments, no date is specified. Unlike the commitments made by Algeria, Lebanon has agreed to recognise GATS commitments ‘from the moment Lebanon enters the WTO’ (Art. 30.1). The EU-Palestinian Authority Agreement does not contain any references to the liberalisation of trade in services.

Despite being very limited in terms of the actual liberalisation of the trade in services, the MED agreements all call for economic cooperation between the parties as a means of promoting the development of the Mediterranean partners. Cooperation related to trade in services covers such sectors as financial services, energy, information technology and telecommunications, transport and tourism. The EU-Palestinian Authority Interim Association Agreement and the EU-Lebanon Agreement also include cooperation in the audiovisual sector, although the EU-Lebanon Interim Agreement currently in force makes no reference to trade in services.

In general, the MED agreements contain only shallow provisions on the liberalisation of trade in services. However, the EU agreements with Algeria (a WTO observer) and Jordan (a WTO member) contain relatively deep commitments in the shape of their provisions on national treatment. At the same time, the main focus of the MED agreements is currently on economic cooperation between the parties in a wide range of service sectors. However, the MED agreements offer a significant potential for the further liberalisation of trade in services. The agreements with Israel, Jordan, Morocco and Tunisia (all of which are currently WTO members) contain requirements for reassessing the scope and speed of the liberalisation of trade in services within three to five years.

The EU-South Africa TDCA

The Trade, Development and Cooperation Agreement (TDCA) between the EU and South Africa was signed on 11 October 1999 and has been in force, provisionally and partially, since January 2000, and fully since May 2004.

‘In accordance with the level of development’

Like the MED agreements, the TDCA addresses the issue of the possible future additional liberalisation of trade in services, while pledging cooperation in several services sectors. The coverage of trade in services is limited to three articles. The parties stress the need for ‘strict observance’ of the GATS (Art. 29.1) and note the provisions of GATS Article V, especially paragraph 3(a) (Art. 29.2). GATS Article V:3(a) states that, within economic integration agreements whose signatories include developing countries, flexibility will be provided, in

particular regarding the reduction of discrimination (as discussed in Art. V:1 'in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors' (Art. V:3(a)). The parties also reaffirm their respective commitments to the fourth Protocol on basic telecommunications and the fifth Protocol on financial services (Art. 29.3).

In terms of the actual wording of the provisions on the further liberalisation of trade in services, the TDCA is less ambitious than the majority of MED agreements in that the parties only state that they will 'endeavour to extend the scope of the Agreement' (Art. 30.1, *emphasis added*), rather than establish a time frame for further liberalisation. However, if it is decided to extend liberalisation, the TDCA establishes the objective of preventing or eliminating 'substantially all discrimination' between the EU and South Africa in all four modes of supply (Art. 30.1). The Cooperation Council is to begin discussing whether trade in services should be further liberalised within five years of the date on which the Agreement entered into force, i.e. January 2005. As regards international maritime services, the parties agree to attempt to effectively implement the 'principle of unrestricted access to the international maritime market and traffic' and grant national treatment to both their citizens and vessels registered in their respective territories (Art. 31.1-2).

Cooperation

Economic cooperation between the EU and South Africa is regulated in Title IV, which seeks to benefit both parties as well as southern Africa in general. The provisions on economic cooperation are more detailed than in the MED agreements. Several sectors are included, such as information and communication technology (ICT); postal services; energy; mining and minerals; transport; and tourism, including promotion, development and training in the industry (Art. 55-60). Individual mention is made of cooperation in the services sector, particularly banking, insurance and other financial services, through such means as encouraging trade in services, including the exchange of information on 'rules, laws and regulations' (Art. 63(b)) and 'improving accounting, auditing, supervision and regulation of financial services and financial monitoring' (Art. 63(c)).

The TDCA is similar to the MED agreements in that more immediate activities in the realm of the trade in services focus on economic cooperation rather than on actual liberalisation. While only a small number of articles discuss the liberalisation of trade in services as such, there are more provisions concerning cooperation in such sectors as ICT, transport and tourism. In terms of liberalisation, the parties merely reaffirm their respective commitments under the GATS. The TDCA includes provisions on deeper liberalisation commitments in the future, with both parties pledging to 'endeavour' to work towards the elimination of 'substantially all discrimination' by January 2005.

The EU-Mexico Global Agreement

The Economic Partnership, Political Coordination and Cooperation Agreement, known as the Global Agreement, between the EU and Mexico, was signed on 8 December 1997 and entered into force on 1 October 2000. Although similar to the agreements discussed above in terms of pledges of cooperation in such areas as financial services, telecommunication and tourism (Art. 16, 20 and 25), as compared with the MED agreements and the TDCA, the aim of the Global Agreement is much more extensive in terms of the actual liberalisation of trade in services.

The objective of the Global Agreement in the area of trade is to create a bilateral framework for the 'preferential, progressive and reciprocal liberalisation of trade in goods and services' (Art. 4). Article 6 of the Global Agreement Final Act specifies that the necessary arrangements for implementing services liberalisation will be made by a decision of the EU-Mexico Joint Council, consisting of members of the Council of the European Union, the European Commission and the government of Mexico. Accordingly, Decision 2/2001, containing four chapters on trade in services, was adopted by the Joint Council on 27 February 2001 and entered into force on 1 March 2001.

GATS language

As with other FTAs, the Global Agreement conforms to the principles as set out in the GATS, specifically Article V. In terms of coverage, although it recognises all four modes of trade in services, audiovisual services, air services and maritime cabotage

are exempted from coverage, while no obligations apply to government procurement (Art. 2.1-2). Additionally, any subsidies granted by either party to their service industries do not fall within the scope of the Agreement (Art.2.5). In relation to the sectors and modes of supply that are liberalised, the articles on market access, MFN and national treatment are virtually identical to those in the GATS, with a few interesting exceptions in the case of MFN. Although MFN treatment is granted between the parties, it must not only take account of any harmonisation of regulations agreed with a third country (Art. 5.1). Where one party receives specific MFN treatment under an agreement with a third country, the other party must be given 'adequate opportunity [...] to negotiate the benefits granted therein' (Art. 5.3).

Standstill and liberalisation phases

The provisions on the further liberalisation of trade in services are set out in two phases and in far greater detail than in the MED agreements and the TDCA. The first phase is a standstill of discriminatory measures from 1 March 2001 (Art. 7.2) preventing the parties from introducing or increasing discrimination in this sector. For the second phase, to be initiated by March 2004 (extendable to one year after the conclusion of the current WTO services negotiations), the Joint Council must not only agree to remove a significant portion of any existing discrimination (see GATS Art.V:1(b)), but also establish a schedule of commitments that will be fully implemented by March 2011 according to an agreed timetable (Art. 7.3(a-b)) and in conformity with GATS Art. XVI:2(a-f) (Art. 4 (a-f)). However, the Joint Council is given the right to adjust both the schedule and timetable.

The Global Agreement stipulates that the EU and Mexico are entitled to regulate the supply of services in their territories as long as these regulations do not discriminate against the other party's services or service-providers (Art. 8). However, Article 9 instructs the Joint Council to set out, in conformity with GATS Article VII, the procedures needed to ensure the mutual recognition of 'requirements, qualifications, licences and other regulations [...] [necessary for the] authorisation, licensing, operation and certification of service-providers' by March 2004.

With regard to the specific area of international maritime transport services, due in part to the tortuous multilateral negotiations, where members have agreed in effect to a standstill until the end of the current Doha Development Round (See Art. 7 of the WTO Decision on Negotiations on Maritime Transport Services), the parties merely pledge to continue to grant unrestricted access as well as national treatment (Art. 10.3).

Financial services

The chapter on financial services reflects both the framework established by the GATS (Annex on Financial Services and the Understanding on Commitments in Financial Services), as well as the commitment to additional bilateral liberalisation. In fact, Article 11, containing the definitions, is taken more or less word for word from Article 5(a-b) of the GATS Annex, while Article 12(4), regarding the establishment of financial service-providers, is drawn from GATS Article XVI:2(a-f).

Following the entry into force of the Decision, no further discriminatory

procedures in the cross-border provision of services is allowed. However, it is possible for one of the parties to request that cross-border financial service-providers register (Art. 13.3). Although both parties must allow their residents to procure financial services from financial service-providers located in the other party's territory, 'this obligation does not require a Party to permit such suppliers to do business or carry on commercial operations [...] in its territory' (Art. 13.4). Additionally, neither party may place nationality quotas on key personnel employed by financial service-providers nor stipulate that boards of directors must consist of more than a simple majority of their nationals (Art. 16).

National treatment and MFN treatment in financial services are subject to the parties' commitments under GATS, as well as those listed in their specific schedules (Annex 1). However, like the other service sectors covered by the Decision, the Joint Council undertakes to agree to further commitments in financial services by March 2004 (Art. 17.3). The Council is to be assisted in drawing up the respective schedules by a Special Committee on Financial Services (Art. 17.2). This Special Committee, consisting

of financial services officials from the European Commission, individual EU Member States and Mexico, is to meet annually to oversee the implementation of the Financial Services Chapter, discuss issues referred to it by the other party and assist the Joint Council in their decisions concerning the liberalisation of financial services (Art. 23 and 24).

Transparency and arbitration in financial services

Parties may enact non-discriminatory regulations on the supply of financial services (Art. 18) and take measures for prudential reasons, including for the protection of investors and for assuring the security of financial service-providers, as long as they are 'not more burdensome than necessary' (Art. 19). To ensure transparency and effectiveness in the implementation of the Decision, parties must aim to make proposed measures public through either an official publication or other written or electronic means, provide requested information to applicants, as well as adhere to international financial services standards (Art. 20). Each party agrees to allow new,

Table 2 Characteristics of provisions in EU FTAs on the trade in services

	Economic cooperation	Liberalisation of trade in services			
		General provisions on liberalisation of trade in services (number of articles)	Financial services (number of articles)	Telecommunications services (number of articles)	International maritime services (number of articles)
MED Agreements	✓	Limited ^a	✓	✓	✓
TDCA South Africa	✓	Potential ^b	✓	✓	✓
Global Agreement with Mexico*	✓	✓ (9)	✓ (16)	Potential ^c	Limited
Association Agreement with Chile	✓	✓ (12)	✓ (14)	✓ (7)	✓ (3)

^a EU agreements with Algeria and Jordan include national treatment (with exceptions).

^b Further liberalisation will be examined by no later than January 2005 (Art. 30.4).

^c Schedules for further liberalisation, including in the telecommunications sector, will be discussed as from March 2004 (Art. 7.3).

* Decision No 2/2001 of the EU-Mexico Joint Council.

similar types of financial services to be supplied by the other party in their territory, but may determine the 'juridical form through which the service may be provided' (Art. 21). In cases of dispute settlement, arbitrators are required to be experts in the specific type of financial service being discussed (Art. 25). Regarding exceptions, Article 26 sets out specific exceptions in the Financial Services Chapter, including certain activities of public financial entities, while Article 27 (Chapter IV) lists general exceptions as set out in the GATS.

Compared with the MED agreements and the TDCA, the Global Agreement between the EU and Mexico offers the first real evidence of significant movement towards the further liberalisation of trade in services while setting out detailed provisions for economic cooperation in several service sectors. In terms of a time frame, the Global Agreement sets out a two-phase approach, with the first phase consisting of a standstill of discriminatory measures – in effect since 2001 – and the second phase of actual liberalisation to be agreed after the conclusion WTO services negotiations. Alongside this agenda for future liberalisation, institutional elements are deepened through the establishment of a Joint EU-Mexico Council and a Special Committee on Financial Services. Additionally, there are various provisions for guaranteeing transparency and effectiveness.

The EU-Chile Association Agreement

The most recent FTA concluded by the EU is that with Chile. Signed in November 2002, it has been provisionally in effect since 1 February 2003. Besides covering political dialogue and cooperation issues, it is the trade chapter in the Association Agreement that stands out as the most far-reaching in all EU regional agreements to date (see Table 2).

Regarding cooperation in trade in services, the Association Agreement differs from earlier agreements by emphasising the promotion of 'the development and diversification of productivity and competitiveness in Chile's service sector', with particular focus on the ability of small and medium-sized firms to trade with third countries (Art. 20). Separate articles cover cooperation by means including training programmes, the exchange of information and technical assistance in the fields of energy, transport, tourism, mining, audiovisual services, telecommunication and electronic commerce.

Regular review by Association Committee

The Association Agreement is similar to the Global Agreement in that it contains separate chapters on the liberalisation of financial and other services. However, there is greater coverage in the chapter on telecommunications. As with the other FTAs discussed above, the Association Agreement conforms to the principles as set out in the GATS, including its application of definitions, market access and national treatment. The schedule of each party's specific market access commitments are set out in Annex VI, which covers all the main sectors and their specific reservations by both parties. The Association Agreement resembles several of the other agreements in its commitment to further the liberalisation of services within three years of its entry into force (i.e. by 1 February 2006). Yet it is unique in its call for the Association Committee, consisting of representatives of the Council of the EU, the European Commission and the Chilean government, to regularly review the implementation of the services provisions (i.e. every three years) and to make recommendations to the Association Council meeting at ministerial level (Art. 100). Another distinctive feature is that, by February 2005, the EU and Chile are to seek the additional liberalisation of the movement of natural persons (Mode 4), an area which most developed countries have been reluctant to liberalise. Also, the parties will consider broadening the current definition of natural persons as set out in Article 96(g) (Art. 101).

Consideration of mutual recognition

The Association Agreement contains provisions for ensuring that industries in relation to which a party has undertaken commitments do not encounter any regulatory restrictions resulting in unnecessary barriers to trade in the other party's domestic market (Art. 102.1). It also regulates the recognition of each party's education and licences, and includes the possibility of eliminating citizenship or residency requirements (Art. 102.3/4). Similarly, the mutual recognition of requirements, certifications and other regulations is to be considered initially by the relevant authorities in each party, with a final decision to be taken by the Association Committee within a reasonable amount of time. The articles on domestic regulation and mutual recognition are subject to review every three years by the Association

Committee (Art. 102.2, Art. 103.6). In line with GATS Article III on transparency, the parties have agreed to assign a contact point in their respective territories to direct enquiries involving service-providers (Art. 105).

The Association Agreement addresses international maritime transport to a somewhat greater extent than the Global Agreement. In addition to pledging to continue unrestricted access, the parties also agree, apart from in exceptional cases, not to include 'cargo-sharing clauses in future bilateral agreements with third countries' and to eliminate unilateral procedures that could hinder the flow of international maritime services (Art. 108.2).

Telecommunication services

With regard to telecommunication services, the Association Agreement goes considerably beyond earlier EU FTAs and reflects the 1996 GATS Telecommunications Reference Paper leading to the Fourth Protocol to the GATS, that went into force in 1998. Article 110 states that telecommunications regulatory agencies will be both independent of any supplier of basic telecommunications services as well as non-discriminatory. In the event that licences are required, the parties agree to make the terms and conditions and the expected date of a decision publicly available (Art. 111.1). Alternatively, if a request for a licence is rejected, the reasons will be provided to the applicant if requested (111.2). 'Appropriate measures shall be maintained' to prevent anti-competitive practices among large telecommunication service-providers, including anti-competitive cross-subsidisation (Art. 112.2). Public suppliers of telecommunication transport networks or services must offer interconnection to other suppliers that are not discriminatory in terms of their rates, conditions and quality (Art. 113.2). Interconnection procedures and agreements must be publicly available (Art. 113.4). The Association Agreement grants each party the right to specify its universal service obligations as long as the provisions are 'transparent, objective and non-discriminatory', as well as 'neutral with respect to competition and no more burdensome than necessary' (Article 115.2).

Financial services

The Association Agreement contains general provisions on financial services that are similar to those of the Global Agreement in terms of their scope, definitions, rules on market access, and national treatment. The parties' specific commitments in relation to financial services are set out in Annex VIII. Both the EU and Chile undertake to allow the other party's financial service-providers to offer new financial services, provided that this does not require the law to be amended (Art. 121). As in the Global Agreement, the parties agree to be transparent in their activities pertaining to planned measures and undertake to ensure that their financial authorities provide relevant information to applicants (Art. 123). The provisions on confidentiality are similar to those in the Global Agreement. The Agreement states that prudential measures taken by one party may be recognised by the other party through agreements, arrangements or autonomously, and that if one party enters into such an agreement with a third party, the other party must be given an opportunity to accede to that agreement (Art. 126.1 and 2).

Built-in liberalisation

The Association Agreement provides for the formation of a Special Committee on Financial Services whose remit is similar to that spelled out in the Global Agreement (Art. 127.1), including receiving the results of consultations between the parties (Art. 128.1). However, in the EU-Chilean case, the Special Committee will 'consider actions with the aim of facilitating and expanding trade in financial services and further contributing to the objectives of this Agreement, and shall report to the Association Committee' within three years of the date of entry of the Agreement, i.e. by February 2006 (Art. 127.4). This provision thus incorporates an element of 'built-in' liberalisation in the financial services sector in the EU-Chile Agreement which the Global Agreement does not contain. The Chapter on Financial Services contains a number of specific provisions on dispute settlement, including that the chairperson of the arbitration panel must have expertise in financial services and that the names of at least five possible arbitrators who are not nationals of any EU member state or of Chile must be identified by the Association Committee within six months of the Agreement's entry into force (Art. 129.3 (a and b)).²

While building on many elements of previous agreements, the Association Agreement between the EU and Chile is the most complex of the FTAs examined in this brief. Like the earlier FTAs, the Association Agreement includes provisions on economic cooperation in several service sectors, as well as a time frame for a review so as to facilitate progress toward further liberalisation. However, it differs from the earlier FTAs in that such a review is an ongoing process within the Association Committee. The formation of this Committee and the Special Committee on Financial Services continues the trend of deeper institutionalisation set by the later FTAs.

Moving from potential to actual liberalisation in trade in services

The overall trend evident in the four types of agreement is a distinct movement from a significant potential for a future liberalisation of trade in services to actual, immediate and ever deeper reductions in the barriers to such trade. Although the MED agreements and the TDCA contain pledges of economic cooperation in various service sectors, they have triggered few immediate actions resulting in actual liberalisation. However, such economic cooperation, when coupled with the establishment of basic institutional structures such as Association or Cooperation Councils, is likely to foster both the economic and the political ties that are required for the further liberalisation of the trade in services.

In contrast, the more recent agreements with Chile, and, to a lesser extent, Mexico, clearly show a desire for more comprehensive, and at times immediate, liberalisation of trade in services. Besides having a more ambitious liberalisation agenda, they also establish procedures for transparency, consultations, and expanded institutional measures. Moreover, both agreements address the issue of further liberalisation through agreements with third parties. With respect to the GATS, alongside the various annexes and protocols to WTO rules, these FTAs may serve as guides for the further liberalisation of trade in services at both regional and multilateral levels.

Acronyms

ACP	African, Caribbean and Pacific
CUSFTA	The Canada - United States Free Trade Agreement
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ICSID	International Centre for the Settlement of Investment Disputes
ICT	Information and Communication Technology
MED	Mediterranean countries
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Cooperation and Development
TDCA	Trade, Development and Cooperation Agreement
TRIMS	Agreement on Trade-Related Investment Measures
UNCITRAL	United Nations Commission on International Trade Law
WTO	World Trade Organization

Notes

¹ Despite being distinctive areas, the provisions on services in EU FTAs are interrelated with the provisions on investment. For further information on the latter issue, see the *ECDPM FTA InBrief* on investment.

² See also the *ECDPM FTA InBrief* on investment.

Selected publications and information sources on services

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