

TITLE III

OTHER TRADE AND TRADE-RELATED PROVISIONS

ARTICLE 33 (SAA point 1 of Article 59) Transit traffic Definitions

(Protocol 5 SAA, Article 3(a) and (b))

1. For the purposes of this Article, the following definitions shall apply:

(a) "Community transit traffic" means the carriage, by a carrier established in the Community, of goods in transit through Albanian territory en route to or from a Member State of the Community;

(b) "Albanian transit traffic" means the carriage, by a carrier established in Albania, of goods in transit from Albania through Community territory and destined for a third country or of goods from a third country destined for Albania.

General Provisions (Protocol 5 SAA, Article 11(2), (3) and (5))

2. The Parties agree to grant unrestricted access to Community transit traffic through Albania and to Albanian transit traffic through the Community with effect from the date of entry into force of this Agreement.

3. If, as a result of the rights granted under paragraph 2, transit traffic by Community hauliers increases to such a degree as to cause or threaten to cause serious harm to road infrastructure and/or traffic fluidity on the axes mentioned in Article 5 of Protocol 5 on land transport to the Stabilisation and Association Agreement, and under the same circumstances problems arise on Community territory close to the Albanian borders, the matter shall be submitted to the Stabilisation and Association Council in accordance with Article 43 of this Agreement. The Parties may propose such exceptional, temporary, non-discriminatory measures as are necessary to limit or mitigate such harm.

4. The Parties shall refrain from taking any unilateral action that might lead to discrimination between Community and Albanian carriers or vehicles. Each Party shall take all steps necessary to facilitate road transport to or through the territory of the other Party.

Simplification of formalities (Protocol 5 SAA, Article 19(1) and (3))

5. The Parties agree to simplify the flow of goods by rail and road, whether bilateral or in transit.

6. The Parties agree, to the extent necessary, to take joint action on, and to encourage, the adoption of further simplification measures.

Implementation (Protocol 5 SAA, Article 21(1) and (2)(d))

7. Cooperation between the Parties shall be carried out within the framework of the Stabilisation and Association Committee in accordance with Article 43 of this Agreement. It shall, in particular, coordinate the monitoring, forecasting and other statistical work relating to international transport and in particular transit traffic.

ARTICLE 34 (SAA Article 60)

The Parties undertake to authorise, in freely convertible currency, in accordance with the provisions of Article VIII of the Articles of the Agreement of the International Monetary Fund, any payments and transfers on the current account of balance of payments between the Community and Albania.

ARTICLE 35 (SAA Article 67)

1. The Parties shall endeavour wherever possible to avoid the imposition of restrictive measures, including measures relating to imports, for balance of payments purposes. A Party adopting such measures shall present as soon as possible to the other Party a timetable for their removal.

2. Where one or more Member States or Albania is in serious balance of payments difficulties, or under imminent threat thereof, the Community or Albania, as the case may be, may, in accordance with the conditions established under the WTO Agreement, adopt restrictive measures, including measures relating to imports, which shall be of limited duration and may not go beyond what is strictly necessary to remedy the balance of payments situation. The Community or Albania, as the case may be, shall inform the other Party forthwith.

3. Any restrictive measures shall not apply to transfers related to investment and in particular to the repatriation of amounts invested or reinvested or any kind of revenues stemming therefrom.

ARTICLE 36 (SAA Article 69)

The provisions of this Agreement shall not prejudice the application by either Party of any measure necessary to prevent the circumvention of its measures concerning third-country access to its market through the provisions of this Agreement.

ARTICLE 37 (SAA Article 71)

Competition and other economic provisions

1. The following are incompatible with the proper functioning of this Agreement, insofar as they may affect trade between the Community and Albania:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Albania as a whole or in a substantial part thereof;

(iii) any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions.

3. The Parties shall ensure that an operationally independent public body is entrusted with the powers necessary for the full application of paragraph 1(i) and (ii), regarding private and public undertakings and undertakings to which special rights have been granted.

4. Albania shall establish an operationally independent authority which is entrusted with the powers necessary for the full application of paragraph 1(iii) within four years from the date of entry into force of this Agreement. This authority shall have, inter alia, the powers to authorise State aid schemes and individual aid grants in conformity with paragraph 2, as well as the powers to order the recovery of State aid that has been unlawfully granted.

5. Each Party shall ensure transparency in the area of State aid, inter alia by providing to the other Party a regular annual report, or equivalent, following the methodology and the presentation of the Community survey on State aid. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

6. Albania shall establish a comprehensive inventory of aid schemes instituted before the establishment of the authority referred to in paragraph 4 and shall align such aid schemes with the criteria referred to in paragraph 2 within a period of no more than four years from the date of entry into force of this Agreement.

7. For the purposes of applying the provisions of paragraph 1(iii), the Parties recognise that during the first ten years after the date of entry into force of this Agreement, any public aid granted by Albania shall be assessed taking into account the fact that Albania shall be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community.

Within five years from the date of entry into force of this Agreement, Albania shall submit to the Commission of the European Communities its GDP per capita figures harmonised at NUTS II level. The authority referred to in paragraph 4 and the Commission of the European Communities shall then jointly evaluate the eligibility of the regions of Albania as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the relevant Community guidelines.

8. With regard to products referred to in Chapter II of Title II:

- paragraph 1(iii) shall not apply;

- any practices contrary to paragraph 1(i) shall be assessed according to the criteria established by the Community on the basis of Articles 36 and 37 of the Treaty establishing the European Community and specific Community instruments adopted on this basis.

9. If one of the Parties considers that a particular practice is incompatible with the terms of paragraph 1, it may take appropriate measures after consultation within the Stabilisation and Association Council or after thirty working days following referral for such consultation.

Nothing in this Article shall prejudice or affect in any way the taking, by either Party, of antidumping or countervailing measures in accordance with the relevant Articles of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures or related internal legislation.

ARTICLE 38 (SAA Article 72)

By the end of the third year following the date of entry into force of this Agreement, Albania shall apply to public undertakings and undertakings to which special and exclusive rights have been granted the principles set out in the Treaty establishing the European Community, with particular reference to Article 86 thereof.

Special rights of public undertakings during the transitional period shall not include the possibility of imposing quantitative restrictions or measures having an equivalent effect on imports from the Community into Albania.

ARTICLE 39 (SAA Article 73)

Intellectual, industrial and commercial property

1. Pursuant to the provisions of this Article and Annex IV, the Parties confirm the importance that they attach to ensuring adequate and effective protection and enforcement of intellectual, industrial and commercial property rights.

2. Albania shall take all the necessary measures in order to guarantee no later than four years after the date of entry into force of this Agreement a level of protection of intellectual, industrial and commercial property rights similar to that existing in the Community, including effective means of enforcing such rights.

3. Albania undertakes to accede, within four years after the date of entry into force of this Agreement, to the multilateral Conventions on intellectual, industrial and commercial property rights referred to in paragraph 1 of Annex IV. The Stabilisation and Association Council may decide to oblige Albania to accede to specific multilateral Conventions in this area.

4. If problems in the area of intellectual, industrial and commercial property affecting trading conditions occur, they shall be referred urgently to the Stabilisation and Association Council, at the request of either Party, with a view to reaching mutually satisfactory solutions.

ARTICLE 40 (SAA Article 74)

Public contracts

1. The Parties consider the opening-up of the award of public contracts on the basis of non-discrimination and reciprocity, in particular in the WTO context, to be a desirable objective.

2. Albanian companies, whether established or not in the Community, shall be granted access to contract award procedures in the Community pursuant to Community procurement rules under treatment no less favourable than that accorded to Community companies as from the date of entry into force of this Agreement.

The above provisions shall also apply to contracts in the utilities sector once the government of Albania has adopted the legislation introducing the Community rules in this area. The Community shall examine periodically whether Albania has indeed introduced such legislation.

3. Community companies not established in Albania shall be granted access to contract award procedures in Albania pursuant to the Albanian Law on Public Procurement under treatment no less favourable than that accorded to Albanian companies at the latest four years after the date of entry into force of this Agreement.

4. The Stabilisation and Association Council shall periodically examine the possibility of Albania introducing access to contract award procedures in Albania for all Community companies.

Community companies established in Albania shall have upon the date of entry into force of this Agreement access to contract award procedures under treatment no less favourable than that accorded to Albanian companies.

ARTICLE 41 (SAA Article 97)

Customs

1. The Parties shall establish cooperation in this area with a view to guaranteeing compliance with the provisions to be adopted in the area of trade and to achieving the approximation of the customs system of Albania to that of the Community, thereby helping to pave the way for the liberalisation measures planned under the Stabilisation and Association Agreement and for the gradual approximation of the Albanian customs legislation to the *acquis*.
2. Cooperation shall take due account of priority areas related to the Community *acquis* in the field of customs.
3. Protocol 5 establishes the rules on mutual administrative assistance between the Parties in the customs field.