

TITLE III

OTHER TRADE AND TRADE-RELATED PROVISIONS

ARTICLE 32 (SAA point 1 of Article 59)

Transit traffic

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

1. For the purposes of this Article, the following definitions shall apply:
 - (a) Community transit traffic: the carriage, by a carrier established in the Community, of goods in transit through the territory of Bosnia and Herzegovina "en route" to or from a Member State of the Community;
 - (b) Bosnia and Herzegovina's transit traffic: the carriage, by a carrier established in Bosnia and Herzegovina, of goods in transit from Bosnia and Herzegovina through Community territory and destined for a third country or of goods from a third country destined for Bosnia and Herzegovina.

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

2. The Parties hereby agree to grant unrestricted access to Community transit traffic through Bosnia and Herzegovina and to Bosnia and Herzegovina's 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 SAA Protocol 3, and under the same circumstances problems arise on Community territory close to the borders of Bosnia and Herzegovina, the matter shall be submitted to the Interim Committee in accordance with Article 41(1) of this Agreement. The Parties may propose 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 carriers or vehicles and carriers or vehicles from Bosnia and Herzegovina. Each Party shall take all steps necessary to facilitate road transport to or through the territory of the other Party.

Simplification of formalities (SAA Protocol 3, 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 (SAA Protocol 3, Article 21(1) and (2)(d))

7. Cooperation between the Parties shall be carried out within the framework of a special sub-committee to be created 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 33 (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 Bosnia and Herzegovina.

ARTICLE 34 (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 Bosnia and Herzegovina is in serious balance of payments difficulties, or under imminent threat thereof, the Community or Bosnia and Herzegovina, 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 Bosnia and Herzegovina, 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 there from.

ARTICLE 35 (SAA Article 69)

The provisions of this Agreement shall not prejudice the application by any 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 36 (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 Bosnia and Herzegovina:
 - (a) 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;
 - (b) abuse by one or more undertakings of a dominant position in the territories of the Community or of Bosnia and Herzegovina as a whole or in a substantial part thereof;
 - (c) 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 (hereinafter referred to as "EC Treaty") and interpretative instruments adopted by the Community institutions.
3. The Parties shall ensure that an operationally independent public authority is entrusted with the powers necessary for the full application of paragraph 1(a) and (b), regarding private and public undertakings and undertakings to which special rights have been granted.
4. Bosnia and Herzegovina shall establish an operationally independent public authority, which is entrusted with the powers necessary for the full application of paragraph 1(c) within two 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. Bosnia and Herzegovina 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 entry into force of this Agreement.

7. (a) For the purposes of applying the provisions of paragraph 1(c), the Parties recognise that during the first six years after the entry into force of this Agreement, any public aid granted by Bosnia and Herzegovina shall be assessed taking into account the fact that Bosnia and Herzegovina shall be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the EC Treaty.
- (b) By the end of the fifth year from the entry into force of this Agreement, Bosnia and Herzegovina shall submit to the European Commission its GDP per capita figures harmonised at NUTS II level. The authority referred to in paragraph 4 and the European Commission shall then jointly evaluate the eligibility of the regions of Bosnia and Herzegovina 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. Protocol 3 establishes the special rules on State aid applicable to the restructuring of the steel industry.
9. With regard to products referred to in Chapter II of Title II:
- (a) paragraph 1(c) shall not apply;
- (b) any practices contrary to paragraph 1(a) shall be assessed according to the criteria established by the Community on the basis of Articles 36 and 37 of the EC Treaty and specific Community instruments adopted on this basis.

10. 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 Interim Committee or after 30 working days following referral for such consultation.

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

ARTICLE 37 (SAA Article 72)

Public undertakings

By the end of the third year following the entry into force of this Agreement, Bosnia and Herzegovina shall apply to public undertakings and undertakings to which special and exclusive rights have been granted the principles set out in the EC Treaty, with particular reference to its Article 86.

Special rights of public undertakings during the transitional period shall not include the possibility to impose quantitative restrictions or measures having an equivalent effect on imports from the Community into Bosnia and Herzegovina.

ARTICLE 38 (SAA Article 73)

Intellectual, industrial and commercial property rights

1. Pursuant to the provisions of this Article and Annex VI, the Parties confirm the importance that they attach to ensuring adequate and effective protection and enforcement of intellectual, industrial and commercial property rights.
2. From entry into force of this Agreement, the Parties shall grant to each others' companies and nationals, in respect of the recognition and protection of intellectual, industrial and commercial property, treatment no less favourable than that granted by them to any third country under bilateral Agreements.
3. Bosnia and Herzegovina shall take all the necessary measures in order to guarantee no later than five years after 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.
4. Bosnia and Herzegovina undertakes to accede, within the period referred to above, to the multilateral conventions on intellectual, industrial and commercial property rights referred to in Annex VI. The Parties affirm the importance they attach to the principles of the Agreement on Trade Related Aspects of Intellectual Property Rights. The Interim Committee may decide to oblige Bosnia and Herzegovina to accede to specific multilateral conventions in this area.

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

ARTICLE 39 (SAA Article 97)

Customs

The Parties shall establish cooperation in this area with a view to guarantee compliance with the provisions to be adopted in the area of trade and to achieve the approximation of the customs system of Bosnia and Herzegovina to that of the Community, thereby helping to pave the way for the liberalisation measures planned under this Agreement and for the gradual approximation of the customs legislation of Bosnia and Herzegovina to the *acquis*.

Cooperation shall take due account of priority areas related to the Community *acquis* in the field of customs.

The rules on mutual administrative assistance between the Parties in the customs field are laid down in Protocol 4.