

INTERIM AGREEMENT**on trade and trade-related matters between the European Community, of the one part, and the Republic of Montenegro, of the other part**

THE EUROPEAN COMMUNITY,

hereinafter referred to as 'the Community',

of the one part, and

THE REPUBLIC OF MONTENEGRO,

hereinafter referred to as 'Montenegro',

of the other part,

together referred to as 'the Parties',

WHEREAS:

- (1) The Stabilisation and Association Agreement between the European Communities and its Member States, of the one part, and Montenegro, of the other part (hereinafter referred to as 'the Stabilisation and Association Agreement' or 'the SAA'), was signed in Luxembourg on the fifteenth day of October in the year 2007.
- (2) The Stabilisation and Association Agreement is intended to establish a close and lasting relationship based on reciprocity and mutual interest, which should allow Montenegro to further strengthen and extend the already established relationship with the European Union.
- (3) It is necessary to ensure the development of trade links by strengthening and widening the relations established previously.
- (4) To this end it is necessary to implement as speedily as possible, by means of an Interim Agreement (hereinafter referred to as 'this Agreement'), provisions of the Stabilisation and Association Agreement on trade and trade-related matters.
- (5) Some of the provisions included in Protocol 4 on land transport to the Stabilisation and Association Agreement, which are related to road transit traffic, are directly linked to the free movement of goods and should consequently be included in this Agreement.
- (6) In the absence of pre-existing contractual structures this Agreement establishes an Interim Committee for the implementation of this Agreement,

HAVE DECIDED to conclude this Agreement and to this end have designated as their plenipotentiaries:

THE EUROPEAN COMMUNITY:

Luís AMADO,

Minister for Foreign Affairs of the Portuguese Republic,

President-in-Office of the Council of the European Union

Olli REHN,

Member of the Commission of the European Communities (hereinafter referred to as 'European Commission') with responsibility for Enlargement

MONTENEGRO:

Željko ŠTURANOVIĆ,

Prime Minister

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

TITLE I

GENERAL PRINCIPLES

Article 1 (SAA Article 2)

Respect for the democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights and as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms, in the Helsinki Final Act and the Charter of Paris for a New Europe, respect for international law principles, including full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), and the rule of law as well as the principles of market economy as reflected in the Document of the CSCE Bonn Conference on Economic Cooperation, shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement.

Article 2 (SAA Article 9)

This Agreement shall be fully compatible with and implemented in a manner consistent with the relevant WTO provisions, in particular Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article V of the General Agreement on Trade in Services (GATS).

TITLE II

FREE MOVEMENT OF GOODS

Article 3 (SAA Article 18)

1. The Community and Montenegro shall gradually establish a bilateral free trade area over a period lasting a maximum of five years starting from the entry into force of this Agreement in accordance with the provisions of this Agreement and in conformity with those of the GATT 1994 and the WTO. In so doing they shall take into account the specific requirements laid down hereinafter.

2. The Combined Nomenclature shall be applied to the classification of goods in trade between the Parties.

3. For the purpose of this Agreement customs duties and charges having equivalent effect to customs duties include any duty or charge of any kind imposed in connection with the importation or exportation of a good, including any form of surtax or surcharge in connection with such importation or exportation, but do not include any:

- (a) charges equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994;
- (b) antidumping or countervailing measures;
- (c) fees or charges commensurate with the costs of services rendered.

4. For each product, the basic duty to which the successive tariff reductions set out in this Agreement are to be applied shall be:

- (a) the Community Common Customs Tariff, established pursuant to Council Regulation (EEC) No 2658/87 ⁽¹⁾ actually applied *erga omnes* on the day of the signature of this Agreement;
- (b) the Montenegrin applied tariff ⁽²⁾.

5. If, after the signature of this Agreement, any tariff reduction is applied on an *erga omnes* basis, in particular reductions resulting:

- (a) from the tariff negotiations in the WTO or,
- (b) in the event of the accession of Montenegro to the WTO or,
- (c) from subsequent reductions after the accession of Montenegro to the WTO,

such reduced duties shall replace the basic duty referred to in paragraph 4 as from the date when such reductions are applied.

⁽¹⁾ Council Regulation (EEC) No 2658/87 (OJ L 256, 7.9.1987, p. 1).

⁽²⁾ Official Gazette of Montenegro No 17/07.

6. The Community and Montenegro shall communicate to each other their respective basic duties and any changes thereof.

CHAPTER I

Industrial products

Article 4 (SAA Article 19)

Definition

1. The provisions of this Chapter shall apply to products originating in the Community or in Montenegro listed in Chapters 25 to 97 of the Combined Nomenclature, with the exception of the products listed in Annex I, paragraph I, (ii) of the WTO Agreement on Agriculture.

2. Trade between the Parties in products covered by the Treaty establishing the European Atomic Energy Community shall be conducted in accordance with the provisions of that Treaty.

Article 5 (SAA Article 20)

Community concessions on industrial products

1. Customs duties on imports into the Community and charges having equivalent effect shall be abolished upon the entry into force of this Agreement on industrial products originating in Montenegro.

2. Quantitative restrictions on imports into the Community and measures having equivalent effect shall be abolished upon the entry into force of this Agreement on industrial products originating in Montenegro.

Article 6 (SAA Article 21)

Montenegrin concessions on industrial products

1. Customs duties on imports into Montenegro of industrial products originating in the Community other than those listed in Annex I shall be abolished upon the entry into force of this Agreement.

2. Charges having equivalent effect to customs duties on imports into Montenegro shall be abolished upon the entry into force of this Agreement on industrial products originating in the Community.

3. Customs duties on imports into Montenegro of industrial products originating in the Community which are listed in Annex I shall be progressively reduced and abolished in accordance with the timetable indicated in that Annex.

4. Quantitative restrictions on imports into Montenegro of industrial products originating in the Community and measures having equivalent effect shall be abolished upon the date of entry into force of this Agreement.

Article 7 (SAA Article 22)

Duties and restrictions on exports

1. The Community and Montenegro shall abolish any customs duties on exports and charges having equivalent effect in trade between them upon the entry into force of this Agreement.

2. The Community and Montenegro shall abolish between themselves any quantitative restrictions on exports and measures having equivalent effect upon the entry into force of this Agreement.

Article 8 (SAA Article 23)

Faster reductions in customs duties

Montenegro declares its readiness to reduce its customs duties in trade with the Community more rapidly than is provided for in Article 6 if its general economic situation and the situation of the economic sector concerned so permit.

The Interim Committee shall analyse the situation in this respect and make the relevant recommendations.

CHAPTER II

Agriculture and fisheries

Article 9 (SAA Article 24)

Definition

1. The provisions of this Chapter shall apply to trade in agricultural and fishery products originating in the Community or in Montenegro.

2. The term 'agricultural and fishery product' refers to the products listed in Chapters 1 to 24 of the Combined Nomenclature and the products listed in Annex I, paragraph I, (ii) of the WTO Agreement on Agriculture.

3. This definition includes fish and fishery products covered by chapter 3, headings 1604 and 1605, and sub-headings 0511 91, 2301 20 and ex 1902 20 ('stuffed pasta containing more than 20 % by weight of fish, crustaceans, molluscs or other aquatic invertebrates').

Article 10 (SAA Article 25)

Processed agricultural products

Protocol 1 lays down the trade arrangements for processed agricultural products which are listed therein.

Article 11 (SAA Article 26)

Community concessions on imports of agricultural products originating in Montenegro

1. From the date of entry into force of this Agreement, the Community shall abolish all quantitative restrictions and measures having equivalent effect, on imports of agricultural products originating in Montenegro.

2. From the date of entry into force of this Agreement, the Community shall abolish the customs duties and charges having equivalent effect, on imports of agricultural products originating in Montenegro other than those of headings 0102, 0201, 0202, 1701, 1702 and 2204 of the Combined Nomenclature.

For the products covered by Chapters 7 and 8 of the Combined Nomenclature, for which the Common Customs Tariff provides for the application of ad valour customs duties and a specific customs duty, the elimination applies only to the ad valour part of the duty.

3. From the date of entry into force of this Agreement, the Community shall fix the customs duties applicable to imports into the Community of 'baby beef' products defined in Annex II and originating in Montenegro at 20 % of the *ad valour* duty and 20 % of the specific duty as laid down in the Common Customs Tariff, within the limit of an annual tariff quota of 800 tonnes expressed in carcass weight.

Article 12 (SAA Article 27)

Montenegrin concessions on agricultural products

1. From the date of entry into force of this Agreement, Montenegro shall abolish all quantitative restrictions and measures having equivalent effect, on imports of agricultural products originating in the Community.

2. From the date of entry into force of this Agreement, Montenegro shall:

- (a) abolish the customs duties applicable on imports of certain agricultural products originating in the Community, listed in Annex III(a);
- (b) reduce progressively the customs duties applicable on imports of certain agricultural products originating in the Community, listed in Annex III(b) in accordance with the timetable indicated for each product in that Annex;
- (c) reduce progressively the customs duties to 50 % applicable on imports of certain agricultural products originating in the Community, listed in Annex III(c) in accordance with the timetable indicated for each product in that Annex.

Article 13 (SAA Article 28)

Wine and Spirit drinks Protocol

The arrangements applicable to the wine and spirit drinks products referred to in Protocol 2 are laid down in that Protocol.

Article 14 (SAA Article 29)

Community concessions on fish and fishery products

1. From the date of entry into force of this Agreement, the Community shall abolish all quantitative restrictions and

measures having equivalent effect on imports of fish and fishery products originating in Montenegro.

2. From the entry into force of this Agreement the Community shall eliminate all customs duties on fish and fishery products originating in Montenegro other than those listed in Annex IV. Products listed in Annex IV shall be subject to the provisions laid down therein.

Article 15 (SAA Article 30)

Montenegrin concessions on fish and fishery products

1. From the date of entry into force of this Agreement, Montenegro shall abolish all quantitative restrictions and measures having equivalent effect on imports of fish and fishery products originating in the Community.

2. From the entry into force of this Agreement, Montenegro shall eliminate customs duties on fish and fishery products originating in the Community other than those listed in Annex V. Products listed in Annex V shall be subject to the provisions laid down therein.

Article 16 (SAA Article 31)

Review clause

Taking account of the volume of trade in agricultural and fishery products between the Parties, of their particular sensitivities, of the rules of the Community common policies and of the policies for agriculture and fisheries in Montenegro of the role of agriculture and fisheries in the economy of Montenegro, of the consequences of the multilateral trade negotiations in the framework of the WTO as well as of the eventual accession of Montenegro to the WTO, the Community and Montenegro shall examine in the Interim Committee, no later than 3 years after the entry into force of this Agreement, product by product and on an orderly and appropriate reciprocal basis, the opportunities for granting each other further concessions with a view to implementing greater liberalisation of the trade in agricultural and fishery products.

Article 17 (SAA Article 32)

Safeguard clause concerning Agriculture and Fisheries

Notwithstanding other provisions of this Agreement, and in particular Article 26, given the particular sensitivity of the agricultural and fisheries markets, if imports of products originating in one Party, which are the subject of concessions granted pursuant to Articles 10, 11, 12, 13, 14, and 15, cause serious disturbance to the markets or to their domestic

regulatory mechanisms, in the other Party, both Parties shall enter into consultations immediately to find an appropriate solution. Pending such solution, the Party concerned may take the appropriate measures it deems necessary.

Article 18 (SAA Article 33)

Protection of geographical indications for agricultural and fishery products and foodstuffs other than wine and spirits

1. Montenegro shall provide protection for the geographical indications of the Community registered in the Community under Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, in accordance with the terms of this Article. Geographical indications of Montenegro shall be eligible for registration in the Community under the conditions set out in that Regulation.

2. Montenegro shall prohibit any use in its territory of the names protected in the Community for comparable products not complying with the geographical indication's specification. This shall apply even where the true geographical origin of the good is indicated, the geographical indication in question is used in translation, the name is accompanied by terms such as 'kind', 'type', 'style', 'imitation', 'method' or other expressions of the sort.

3. Montenegro shall refuse the registration of a trademark the use of which corresponds to the situations referred to in paragraph 2.

4. Trademarks the use of which corresponds to the situations referred to in paragraph 2, which have been registered in Montenegro or established by use, shall no longer be used after 1 January 2009. However, this shall not apply to trademarks registered in Montenegro and trademarks established by use which are owned by nationals of third countries, provided they are not of such a nature as to deceive in any way the public as to the quality, the specification and the geographical origin of the goods.

5. Any use of the geographical indications protected in accordance with paragraph 1 as terms customary in common language as the common name for such goods in Montenegro shall cease at the latest on 1 January 2009.

6. Montenegro shall ensure that goods exported from its territory after 1 January 2009 do not infringe the provisions of this Article.

7. Montenegro shall ensure the protection referred to in paragraphs 1 to 6 on its own initiative as well as at the request of an interested party.

⁽¹⁾ OJ L 93, 31.3.2006, p. 12. Regulation as amended by Commission Regulation (EC) No 952/2007 (OJ L 210, 10.8.2007, p. 26).

CHAPTER III

Common provisions

Article 19 (SAA Article 34)

Scope

The provisions of this Chapter shall apply to trade in all products between the Parties except where otherwise provided herein or in Protocol 1.

Article 20 (SAA Article 35)

Improved concessions

The provisions of this Title shall in no way affect the application, on a unilateral basis, of more favourable measures by any of the Parties.

Article 21 (SAA Article 36)

Standstill

1. From the date of entry into force of this Agreement, no new customs duties on imports or exports or charges having equivalent effect shall be introduced, nor shall those already applied be increased, in trade between the Community and Montenegro.

2. From the date of entry into force of this Agreement, no new quantitative restriction on imports or exports or measure having equivalent effect shall be introduced, nor shall those existing be made more restrictive, in trade between the Community and Montenegro.

3. Without prejudice to the concessions granted under Articles 11, 12, 13, 14 and 15, the provisions of paragraphs 1 and 2 of this Article shall not restrict in any way the pursuit of the respective agricultural and fishery policies of Montenegro and of the Community and the taking of any measures under those policies insofar as the import regime in Annexes II-V and Protocol 1 is not affected.

Article 22 (SAA Article 37)

Prohibition of fiscal discrimination

1. The Community and Montenegro shall refrain from, and abolish where existing, any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products of one Party and like products originating in the territory of the other Party.

2. Products exported to the territory of one of the Parties may not benefit from repayment of internal indirect taxation in excess of the amount of indirect taxation imposed on them.

Article 23 (SAA Article 38)

Duties of a fiscal nature

The provisions concerning the abolition of customs duties on imports shall also apply to customs duties of a fiscal nature.

*Article 24 (SAA Article 39)***Customs unions, free trade areas, cross-border arrangements**

1. This Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade except insofar as they alter the trade arrangements provided for in this Agreement.

2. During the transitional periods specified in Article 3, this Agreement shall not affect the implementation of the specific preferential arrangements governing the movement of goods either laid down in frontier Agreements previously concluded between one or more Member States and Serbia and Montenegro or resulting from the bilateral Agreements specified in Title III concluded by Montenegro in order to promote regional trade.

3. Consultations between the Parties shall take place within the Interim Committee concerning the Agreements described in paragraphs 1 and 2 of this Article and, where requested, on other major issues related to their respective trade policies towards third countries. In particular in the event of a third country acceding to the Union, such consultations shall take place so as to ensure that account is taken of the mutual interests of the Community and Montenegro stated in this Agreement.

*Article 25 (SAA Article 40)***Dumping and subsidy**

1. None of the provisions in this Agreement shall prevent any of the Parties from taking trade defence action in accordance with paragraph 2 of this Article and Article 26.

2. If one of the Parties finds that dumping and/or countervailable subsidiation is taking place in trade with the other Party, that Party may take appropriate measures against this practice in accordance with the WTO Agreement on Implementation of Article VI of the GATT 1994 or the WTO Agreement on Subsidies and Countervailing Measures and the respective related internal legislation.

*Article 26 (SAA Article 41)***Safeguards clause**

1. The provisions of Article XIX GATT 1994 and the WTO Agreement on Safeguards are applicable between the parties.

2. Notwithstanding paragraph 1 of this Article, where any product of one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:

- (a) serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party or

- (b) serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region of the importing Party,

the importing Party may take appropriate bilateral safeguard measures under the conditions and in accordance with the procedures laid down in this Article.

3. Bilateral safeguard measures directed at imports from the other Party shall not exceed what is necessary to remedy the problems, as defined in paragraph 2, which have arisen as a result of application of this Agreement. The safeguard measure adopted should consist of a suspension in the increase or in the reduction of the margins of preferences provided for under this Agreement for the product concerned up to a maximum limit corresponding to the basic duty referred to in Article 3 paragraph 4(a) and (b) and paragraph 5 for the same product. Such measures shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest, and shall not be taken for a period exceeding two years.

In very exceptional circumstances, measures may be extended for a further period of maximum two years. No bilateral safeguard measure shall be applied to the import of a product that has previously been subject to such a measure for a period of, at least, 4 years since the expiry of the measure.

4. In the cases specified in this Article, before taking the measures provided for therein or, in the cases to which paragraph 5(b) of this Article applies, as soon as possible, the Community on the one part or Montenegro on the other part, shall supply the Interim Committee with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the Parties concerned.

5. For the implementation of the paragraphs 1, 2, 3 and 4 the following provisions shall apply:

- (a) The problems arising from the situation referred to in this Article shall be immediately referred for examination to the Interim Committee, which may take any decisions needed to put an end to such problems.

If the Interim Committee or the exporting Party has not taken a decision putting an end to the problems, or no other satisfactory solution has been reached within 30 days of the matter being referred to the Interim Committee, the importing Party may adopt the appropriate measures to remedy the problem in accordance with this Article. In the selection of safeguard measures, priority must be given to those which least disturb the functioning of the arrangements established in this Agreement. Safeguard measures applied in accordance with Article XIX GATT 1994 and the WTO Agreement on Safeguards shall preserve the level/margin of preference granted under this Agreement.

- (b) Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Party concerned may, in the situations specified in this Article, apply forthwith provisional measures necessary to deal with the situation and shall inform the other Party immediately thereof.

The safeguard measures shall be notified immediately to the Interim Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.

6. In the event of the Community on the one part or Montenegro on the other part subjecting imports of products liable to give rise to the problems referred to in this Article to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows, it shall inform the other Party.

Article 27 (SAA Article 42)

Shortage clause

1. Where compliance with the provisions of this Title leads to:
- (a) a critical shortage, or threat thereof, of foodstuffs or other products essential to the exporting Party; or
- (b) re-export to a third country of a product against which the exporting Party maintains quantitative export restrictions, export duties or measures or charges having equivalent effect, and where the situations referred to above give rise, or are likely to give rise to major difficulties for the exporting Party

that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. In the selection of measures, priority must be given to those which least disturb the functioning of the arrangements in this Agreement. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, or a disguised restriction on trade and shall be eliminated when the conditions no longer justify their maintenance.

3. Before taking the measures provided for in paragraph 1 or, as soon as possible in cases to which paragraph 4 applies, the Community or Montenegro, shall supply the Interim Committee with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties within the Interim Committee may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of the matter being referred to the Interim Committee, the exporting Party may apply measures under this Article on the exportation of the product concerned.

4. Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Community or Montenegro may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

5. Any measures applied pursuant to this Article shall be immediately notified to the Interim Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their elimination as soon as circumstances permit.

Article 28 (SAA Article 43)

State monopolies

With regard to any state monopolies of a commercial character, Montenegro shall ensure that, by the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States of the European Union and Montenegro.

Article 29 (SAA Article 44)

Rules of origin

Except if otherwise stipulated in this Agreement, Protocol 3 lays down the rules of origin for the application of the provisions of this Agreement.

Article 30 (SAA Article 45)

Restrictions authorised

This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property, or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 31 (SAA Article 46)

Failure to provide administrative cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and the control of the preferential treatment granted under this Title and underline their commitment to combat irregularities and fraud in customs and related matters.

2. Where a Party has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud under this Title, the Party concerned may temporarily suspend the relevant preferential treatment of product(s) concerned in accordance with this article.

3. For the purpose of this Article a failure to provide administrative cooperation shall mean, inter alia:

- (a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
- (b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- (c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

For the purpose of this Article a finding of irregularities or fraud may be made, inter alia, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party, which is linked to objective information concerning irregularities or fraud.

4. The application of a temporary suspension shall be subject to the following conditions:

- (a) The Party which has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud shall without undue delay notify the Interim Committee of its finding together with the objective information and enter into consultations within the Interim Committee, on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both Parties.
- (b) Where the Parties have entered into consultations within the Interim Committee as above and have failed to agree on an acceptable solution within 3 months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the Interim Committee without undue delay.
- (c) Temporary suspensions under this Article shall be limited to that necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the Interim Committee. They shall be subject to periodic consultations within the Interim Committee in particular with a view to their termination as soon as the conditions for their application are no longer given.

5. At the same time as the notification to the Interim Committee under paragraph 4(a) of this Article, the Party concerned should publish a notice to importers in its Official Journal. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud.

Article 32 (SAA Article 47)

In case of error by the competent authorities in the proper management of the preferential system at export, and in particular in the application of the provisions of Protocol 3 to the present Agreement where this error leads to consequences in terms of import duties, the contracting Party facing such consequences may request Interim Committee to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

Article 33 (SAA Article 48)

The application of this Agreement shall be without prejudice to the application of the provisions of Community law to the Canary Islands.

TITLE III

OTHER TRADE AND TRADE-RELATED PROVISIONS

Article 34 (SAA Article 61(1))

Transit traffic

Definitions (Protocol 4 SAA, Article 3(a) and (b))

For the purposes of this Agreement, 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 Montenegro 'en route' to or from a Member State of the Community;
- (b) Montenegrin transit traffic: the carriage, by a carrier established in Montenegro, of goods in transit from Montenegro through Community territory and destined for a third country or of goods from a third country destined for Montenegro;

General Provisions (Protocol 4 SAA, Article 11(2), (3) and (5))

1. The Parties hereby agree to grant unrestricted access to Community transit traffic through Montenegro and to Montenegrin transit traffic through the Community with effect from the date of entry into force of this Agreement.

2. If, as a result of the rights granted under paragraph 1, 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 defined in the Memorandum of Understanding for developing a core transport infrastructure network for South East Europe which was signed by ministers from the region, and the European Commission, in June 2004, and under the same circumstances problems arise on Community territory close to the borders of Montenegro, the matter shall be submitted to the Interim Committee in accordance with Article 45 of this Agreement. The Parties may propose exceptional temporary, non-discriminatory measures as are necessary to limit or mitigate such harm.

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

Simplification of formalities (Protocol 4 SAA, Article 19(1) and (3))

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

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

Implementation (Protocol 4 SAA, Article 21(1) and (2)(d))

Cooperation between the Parties shall be carried out within the framework of a special sub-committee to the Interim Committee in accordance with Article 46 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 35 (SAA Article 62)

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 Montenegro.

Article 36 (SAA Article 69)

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 Montenegro is in serious balance of payments difficulties, or under imminent threat thereof, the Community or Montenegro, 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 Montenegro, 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 37 (SAA Article 71)

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 38 (SAA Article 73)

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 Montenegro:

- (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 Montenegro 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 (hereinafter referred to as 'EC Treaty') and interpretative instruments adopted by the Community institutions.

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

4. Montenegro shall establish an operationally independent authority which is entrusted with the powers necessary for the full application of paragraph 1(iii) within one year 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. The Community on one side and Montenegro on the other side shall ensure transparency in the area of State aid, inter alia, by providing to the other Parties 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. Montenegro 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 4 years from the entry into force of this Agreement.

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

(b) Within four years from the entry into force of this Agreement, Montenegro 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 Montenegro 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. As appropriate, Protocol 4 establishes the rules on state aid in the steel industry. This protocol establishes the rules applicable in the event restructuring aid is granted to the steel industry. It would stress the exceptional character of such aid and the fact that the aid would be limited in time and would be linked to capacity reductions within the framework of feasibility programmes.

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

- (a) paragraph 1(iii) shall not apply;
- (b) 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 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 the Community or Montenegro, of countervailing measures in accordance with the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures and the respective related internal legislation.

Article 39 (SAA Article 74)

Public undertakings

By the end of the third year following the entry into force of this Agreement, Montenegro 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 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 Montenegro.

Article 40 (SAA Article 75)

Intellectual, industrial and commercial property

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. Montenegro shall take 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. Montenegro undertakes to accede, within the period referred above, to the multilateral conventions on intellectual, industrial and commercial property rights referred to in Annex VI. The Interim Committee may decide to oblige Montenegro 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 41 (SAA Article 76)

Public procurement

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

2. Montenegrin 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 entry into force of this Agreement.

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

3. Community companies established in Montenegro shall, upon the date of entry into force of this Agreement, be granted access to contract award procedures in Montenegro under treatment no less favourable than that accorded to Montenegrin companies.

4. Community companies not established in Montenegro shall be granted access to contract award procedures in Montenegro under treatment no less favourable than that accorded to Montenegrin companies as from the entry into force of this Agreement.

5. The Interim Committee shall periodically examine the possibility for Montenegro to introduce access to contract award procedures in Montenegro for all Community companies. Montenegro shall report annually to the Interim Committee on the measures they have taken to enhance transparency and to provide for effective judicial review of decisions taken in the area of public procurement.

Article 42 (SAA Article 99)

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 systems of Montenegro 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 Montenegrin customs legislation 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 5.

TITLE IV

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

Article 43 (SAA 119)

An Interim Committee is hereby established which shall supervise the application and implementation of this Agreement. It shall meet at an appropriate level at regular intervals and when circumstances require. It shall examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest.

Article 44 (SAA 120)

1. The Interim Committee shall consist of the members of the Council of the European Union and members of the European Commission, on the one hand, and of members of the Government of Montenegro on the other.

2. The Interim Committee shall establish its rules of procedure.

3. The members of the Interim Committee may arrange to be represented, in accordance with the conditions to be laid down in its rules of procedure.

4. The Interim Committee shall be chaired in turn by a representative of the Community and a representative of Montenegro, in accordance with the provisions to be laid down in its rules of procedure.

5. In matters that concern it, the European Investment Bank shall take part, as an observer, in the work of the Interim Committee.

Article 45 (SAA Article 121)

The Interim Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to take decisions within the scope of this Agreement in the cases provided for therein. The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decisions taken. The Interim Committee may also make appropriate recommendations. It shall draw up its decisions and recommendations by agreement between the Parties.

Article 46 (SAA Article 123)

The Interim Committee may create sub-committees.

Article 47 (SAA Article 126)

Within the scope of this Agreement, each Party undertakes to ensure that natural and legal persons of the other Party have access free of discrimination in relation to its own nationals to the competent courts and administrative organs of the Parties to defend their individual rights and their property rights.

Article 48 (SAA Article 127)

Nothing in this Agreement shall prevent a Party from taking any measures:

- (a) which it considers necessary to prevent the disclosure of information contrary to its essential security interests;
- (b) which relate to the production of, or trade in, arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;
- (c) which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Article 49 (SAA Article 128)

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein:

- (a) the arrangements applied by Montenegro in respect of the Community shall not give rise to any discrimination between the Member States, their nationals, companies or firms;
- (b) the arrangements applied by the Community in respect of Montenegro shall not give rise to any discrimination between nationals of Montenegro as well as between Montenegrin companies or firms.

2. The provisions of paragraph 1 shall be without prejudice to the right of the Parties to apply the relevant provisions of their fiscal legislation to taxpayers who are not in identical situations as regards their place of residence.

Article 50 (SAA 129)

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall ensure that the objectives set out in this Agreement are attained.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

3. Each Party shall refer to the Interim Committee any dispute relating to the application or interpretation of this Agreement. In that case, Article 51 and, as the case may be, Protocol 6 shall apply.

The Interim Committee may settle the dispute by means of a binding decision.

4. If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Interim Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Interim Committee and shall be the subject of consultations if the other Party so requests within the Interim Committee or any other body set up on the basis of Article 46.

5. The provisions of paragraphs 2, 3 and 4 shall in no way affect and are without prejudice to Articles 17, 25, 26, 27, 31 and Protocol 3 (Definition of the concept of originating products and methods of administrative cooperation).

Article 51 (SAA 130)

1. When a dispute arises between the Parties concerning the interpretation or the implementation of this Agreement, any

Party shall notify to the other Party and the Interim Committee a formal request that the matter in dispute be resolved.

Where a Party considers that a measure adopted by the other Party, or a failure of the other Party to act, constitutes a breach of its obligations under this Agreement, the formal request that the dispute be resolved shall give the reasons for this opinion and indicate, as the case may be, that the Party may adopt measures as provided for in Article 50, paragraph 4.

2. The Parties shall endeavour to resolve the dispute by entering into good faith consultations within the Interim Committee and other bodies as provided in paragraph 3, with the aim of reaching as soon as possible a mutually acceptable solution.

3. The Parties shall provide the Interim Committee with all relevant information required for a thorough examination of the situation.

As long as the dispute is not resolved, it shall be discussed at every meeting of the Interim Committee, unless the arbitration procedure as provided for in Protocol 6 has been initiated. A dispute shall be deemed to be resolved when the Interim Committee has taken a binding decision to settle the matter as provided for in Article 50, paragraph 3, or when it has declared that there is no dispute anymore.

Consultations on a dispute can also be held at any meeting of the Interim Committee or any other relevant committee or body set up on the basis of Article 46, as agreed between the Parties or at the request of any of the Parties. Consultations may also be held in writing.

All information disclosed during the consultations shall remain confidential.

4. For matters within the scope of application of Protocol 6, any Party may submit the matter in dispute for settlement through arbitration in accordance with that Protocol, when the Parties have failed to resolve the dispute within two months after the initiation of the dispute settlement procedure in accordance with paragraph 1.

Article 52 (SAA 131)

This Agreement shall not, until equivalent rights for individuals and economic operators have been achieved under this Agreement, affect rights ensured to them through existing Agreements binding one or more Member States, on the one hand, and Montenegro, on the other.

Article 53 (SAA 17)

Cooperation with other countries candidate to EU accession not concerned by the SAp

1. Montenegro should foster its cooperation and conclude a Convention on regional cooperation with any country candidate for accession to the European Union in any of the fields of

cooperation covered by this Agreement. Such Convention should aim gradually to align bilateral relations between Montenegro and that country to the relevant part of the relations between the Community and its Member States and that country.

2. Montenegro shall start negotiations with Turkey which has established a customs union with the Community with a view to concluding, on a mutually advantageous basis, an Agreement establishing a free trade area between the two Parties in accordance with Article XXIV of the GATT 1994.

These negotiations should be opened as soon as possible, with a view to concluding such Agreement before the end of the transitional period referred to in Article 3(1).

Article 54 (SAA 132)

Protocols 1, 2, 3, 4, 5 and 6 and Annexes I to V and VI shall form an integral part of this Agreement.

Article 55

This Agreement shall be applicable until the entry into force of the Stabilisation and Association Agreement signed in Luxembourg on the fifteenth day of October in the year 2007.

Either Party may denounce this Agreement by notifying the other Party. This Agreement shall terminate six months after the date of such notification.

Either Party may suspend this Agreement, with immediate effect, in the event of the non-compliance by the other Party of one of the essential elements of this Agreement.

Article 56 (SAA 134)

For the purposes of this Agreement, the term 'Parties' shall mean the Community, of the one part, and the Republic of Montenegro, of the other part.

Article 57 (SAA 135)

This Agreement shall apply, on the one hand, to the territories in which the EC Treaty is applied and under the conditions laid down in that Treaty, and to the territory of Montenegro on the other.

Article 58 (SAA 136)

The Secretary General of the Council of the European Union shall be the depositary of this Agreement.

Article 59 (SAA 137)

This Agreement shall be drawn up in duplicate in the Bulgarian, Spanish, Czech, Danish, German, Estonian, Greek, English, French, Italian, Latvian, Lithuanian, Hungarian, Maltese, Dutch, Polish, Portuguese, Romanian, Slovak, Slovene, Finnish and Swedish languages and in the official language used in Montenegro, each text being equally authentic.

Article 60 (SAA 138)

The Parties shall approve this Agreement in accordance with their own procedures.

This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that the procedures referred to in paragraph 1 have been completed. In the event of the procedures referred to in paragraph 1 not being completed in time to allow for its entry into force on 1 January 2008, this Agreement shall provisionally apply as from that date.

Съставено в Люксембург, на петнайсти октомври две хиляди и седма година.

Hecho en Luxemburgo, el quince de octubre de dos mil siete.

V Lucemburku dne patnáctého října dva tisíce sedm.

Udfærdiget i Luxembourg den femtende oktober to tusind og syv.

Geschehen zu Luxemburg am fünfzehnten Oktober zweitausendsieben.

Kahe tuhande seitsmenda aasta oktoobrikuu viieteistkümnendal päeval Luxembourgis.

Έγινε στο Λουξεμβούργο, στις δέκα πέντε Οκτωβρίου δύο χιλιάδες επτά.

Done at Luxembourg on the fifteenth day of October in the year two thousand and seven.

Fait à Luxembourg, le quinze octobre deux mille sept.

Fatto a Lussemburgo, addì quindici ottobre duemilasette.

Luksemburgā, divtūkstoš septītā gada piecpadsmitajā oktobrī.

Priimta du tūkstančiai septintųjų metų spalio penkioliką dieną Liuksemburge.

Kelt Luxembourgban, a kétézer-hetedik év október havának tizenötödik napján.

Magħmul fil-Lussemburgu, fil-hmistax-il jum ta'Ottubru tas-sena elfejn u sebgha.

Gedaan te Luxemburg, de vijftiende oktober tweeduizend zeven.

Sporządzono w Luksemburgu dnia piętnastego października roku dwa tysiące siódmego.

Feito em Luxemburgo, em quinze de Outubro de dois mil e sete.

Întocmit la Luxembourg, la cincisprezece octombrie două mii șapte.

V Luxemburgu dňa pätnásteho októbra dvetisícisedem.

V Luxembourg, dne petnajstega oktobra leta dva tisoč sedem.

Tehty Luxemburgissa viidentenätoista päivänä lokakuuta vuonna kaksituhattaseitsemän.

Som skedde i Luxemburg den femtonde oktober tjugohundrasju.

Sačinjeno u Luksemburgu petnaestog oktobra dvije hiljade i sedme godine.

Za Европейската общност
Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
az Európai Közösség részéről
Ghall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Pentru Comunitatea Europeană
Za Európske spoločenstvo
za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar
Za Evropsku Zajednicu



Za Република Черна гора
Por la República de Montenegro
Za Republiku Černá Hora
For Republikken Montenegro
Für die Republik Montenegro
Montenegro Vabariigi nimel
Για τη Δημοκρατία του Μαυροβουνίου
For the Republic of Montenegro
Pour la République du Monténégro
Per la Repubblica del Montenegro
Melnkalnes Republikas vārdā
Juodkalnijos Respublikos vardu
A Montenegroi Köztársaság részéről
Ghar-Repubblika ta' Montenegro
Voor de Republiek Montenegro
W imieniu Republiki Czarnogóry
Pela República do Montenegro
Pentru Republica Muntenegru
Za Čiernohorskú republiku
Za Republiko Črno goro
Montenegron tasavallan puolesta
För Republiken Montenegro
Za Republiku Crnu Goru

