

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.