

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.