



4 September 2019

(19-5661)

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Committee on Regional Trade Agreements

Original: English/Spanish

CENTRAL EUROPEAN FREE TRADE AGREEMENT (GOODS)

QUESTIONS AND REPLIES

The following communication, dated 28 August 2019, is being circulated at the request of the delegations of Albania, Bosnia and Herzegovina, Kosovo¹, Republic of Moldova, Republic of Montenegro, North Macedonia and Republic of Serbia.

Questions from the delegation of Canada

Provisions on Trade in Goods

Technical barriers to trade

1.1. Paragraph 3.35 states: "The Parties shall identify and eliminate unnecessary existing technical barriers to trade within the meaning of the respective WTO Agreement and not to introduce new ones."

Canada would appreciate a description of what an 'unnecessary existing technical barrier to trade' is within the meaning of the WTO TBT Agreement. Could you please specify which article, in the TBT Agreement, provides that technical barriers to trade that are unnecessary are inconsistent with a WTO Members' obligations under the TBT agreement?

Parties of the CEFTA Agreement thank the delegation of Canada for the interest shown in the CEFTA Agreement.

Response from the delegations of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, the Republic of Moldova, North Macedonia and Serbia:

Article 13(1) of the CEFTA 2006 provides that the rights and obligations of the Parties relating to the application of technical barriers to trade, shall be governed by the WTO Agreement on Technical Barriers to Trade, except as otherwise provided for in that Article. Article 13(2) of the CEFTA 2006 provides that the CEFTA Parties undertake to identify and eliminate unnecessary existing technical barriers to trade within the meaning of the WTO Agreement on Technical Barriers to Trade.

Taking that into account, out of the current Parties, only Albania, North Macedonia and Moldova² were members of the World Trade Organization when the CEFTA Agreement entered into force, and taking into account the relationship of the Parties with the EU, the Parties additionally undertook the commitment to co-operate in relevant CEFTA structures to facilitate and harmonize technical regulations, standards and mandatory conformity assessment procedures with the aim of eliminating technical barriers to trade. CEFTA Parties were strongly encouraged to harmonize its

¹ All references to Kosovo in this document should be understood to be in the context of the United Nations Security Council resolution 1244 (1999).

² Montenegro joined the WTO in 2012.

technical regulations, standards and mandatory conformity assessment procedures with the relevant EU measures and they also undertook to enter into negotiations to conclude plurilateral agreements on harmonization. Consequently, the phrase "*eliminate unnecessary existing technical barriers to trade*" refers to the harmonization of measures and deepening of free trade in goods based on the above-listed principles.

General Provisions of the Agreement

Dispute settlement

1.2. Paragraph 4.17 states: "*Whenever the Parties concerned agree, the consultations may take place in the presence of a mediator. Unless they agree on a mediator within ten days of the request for mediation, he/she is to be appointed by the Chair of the Joint Committee within 20 calendar days of receipt of the initial written request.³ The mediator shall present a final report to the Joint Committee at latest 60 calendar days after being appointed. If no solution can be found on the basis of the mediator's report, and the Joint Committee fails to find a commonly acceptable solution, it shall recommend appropriate measures.*"

a. Is the final report of the mediator public?

b. Is the final report without prejudice to potential further dispute-settlement proceedings?

Response from the delegations of Albania, Bosnia and Herzegovina, Kosovo, the Republic of Moldova, Montenegro, North Macedonia and Serbia:

Disputes between CEFTA Parties may be resolved through consultations (including in the presence of a mediator, Article 42(3) of the CEFTA 2006), arbitration (Article 43 of the CEFTA 2006), and the WTO's Dispute Settlement Understanding.

Since the CEFTA 2006 entered into force, no Party has ever asked for the consultations to take place in the presence of a mediator. As the Agreement does not clearly prescribe if the final report of the mediator is to be made public, it is up to the Parties to decide on the publication of the report. The final report of the mediator serves to facilitate the settlement of possible disputes among the Parties. Should a dispute not be settled on the basis of the mediator report's recommendations, or by means of any other mutually agreeable solution through the consultations, the Parties may refer the dispute to arbitration.

Disputes between the Parties, which have not been settled through direct consultations in the Joint Committee (including consultations which took place in the presence of a mediator) within 90 calendar days from the date of receipt of the request for consultations, may be referred to arbitration by any Party. Article 43(3) of the CEFTA 2006 provides that the award of the Arbitral Tribunal is final and binding upon the Parties to the dispute. According to Article 43(4) of the CEFTA 2006, disputes under consultation or arbitration under CEFTA are not to be submitted to the WTO for dispute settlement, nor shall an issue or a dispute pending before WTO dispute settlement procedures be submitted for arbitration under the CEFTA Agreement.

Additional response from the delegations of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, and Serbia:

The CEFTA Parties are currently considering to strengthen the enforcement of CEFTA rules and making the existing CEFTA dispute settlement mechanism more effective. If any such developments were to occur, WTO Members would be informed accordingly.

Additional response from the delegation of North Macedonia:

The CEFTA Parties are currently considering to strengthen the enforcement of CEFTA rules and making the existing CEFTA dispute settlement procedures more effective with negotiations for

³ If the Chair is a national or resident of one of the Parties concerned – then the first of his/her predecessors who is not will be selected.

dispute settlement mechanism. If any such developments were to occur, WTO Members would be informed accordingly.

Questions from the delegation of Ecuador

Provisions on trade in goods

Rules of origin

1.3. Paragraph 3.24: *"Annex II of the PEM Convention lists the working or processing required to be carried out on non-originating materials for the product to obtain originating status. The rules are generally chapter-specific with exceptions at the tariff heading level. Origin is conferred according to four main criteria applied either independently or in combination with each other. These are: the "wholly obtained" criterion requiring that "all the materials of the chapter are wholly obtained"; the "change of tariff heading" criterion requiring non-originating materials to fall under headings other than that of the product; the import content test requiring the value of the non-originating materials not to exceed a given percentage of the ex-works price of the product; and the technical test rule which sets out the working processes that non-originating materials have to undergo. In some instances, a combination of different rules or choice between different rules is used"*.

Regarding cumulation of origin and the import content test, what is the given percentage that imported components must not exceed for the end product to be considered as originating in the country in which it was produced or assembled?

Parties of the CEFTA Agreement express their gratitude to the delegation of Ecuador for the interest shown in the CEFTA Agreement.

Response from the delegations of Albania, Kosovo, the Republic of Moldova, Montenegro, North Macedonia and Serbia:

The system of Pan-Euro-Mediterranean cumulation of origin allows for the application of diagonal cumulation between the EU, the EFTA States, Turkey, the Faroe Islands, the participants in the Barcelona Process, the participants in the EU's Stabilisation and Association Process, and the Republic of Moldova. It is based on a network of Free Trade Agreements with identical origin protocols which are being replaced by a reference to the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (PEM Convention). The Convention is published as *Council Decision 2013/94/EU of 26 March 2012 on the conclusion of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin* in the Official Journal of the European Union (OJ L 54, 26.2.2013, p. 3–158).

As noted in the Factual Presentation, Annex II of the PEM Convention lists the working or processing required to be carried out on non-originating materials for the product to obtain originating status. Requirements regarding the minimum obligatory operations or processing required on non-originating goods, including the percentage that imported components must not exceed for the end product to be considered as originating in the country in which it was produced or assembled, differ from product to product and are outlined in columns 3 and 4 of Annex II to the Origin Protocols.

Response from the delegation of Bosnia and Herzegovina:

According to the Title II Definition of the concept of "originating products" of the Appendix I The definition of the concept of "originating products" and methods of administrative cooperation of the PEM Convention, in cumulation of origin entirely originating materials are used. We first confirm if that good is not excluded from the cumulation according to the Free trade agreement in subject.

If we are talking about sufficiently worked or processed products, we can use originating and non-originating materials. In this case, non-originating materials which, according to the conditions set out in the list in Annex II of Appendix I, should not be used in the manufacture of a product may nevertheless be used, when the set out conditions in PEM Convention are fulfilled.

General provisions of the Agreement**Other provisions****Electronic commerce**

1.4. Paragraph 4.47 states: "*The Parties agree to promote the development of electronic commerce between them, by cooperating on market access and regulatory issues raised by electronic commerce, recognizing that the use of electronic means increases trade opportunities in many sectors (Article 28)*".

Do the countries have any joint methodology for recording information on transfers made through electronic commerce?

Response from the delegations of Albania, Kosovo, the Republic of Moldova, Montenegro, North Macedonia and Serbia:

The CEFTA Parties do not have any joint methodology on e-commerce statistics. Based on Article 28 of the CEFTA 2006, the Parties are about to launch a dialogue on regulatory issues on e-commerce. The matter of statistics may be addressed within this dialogue.

Response from the delegation of Bosnia and Herzegovina:

CEFTA 2006 Agreement regulates E-commerce only by Art 28. There is not any joint methodology for recording information on transfers made through electronic commerce between CEFTA Parties.

How are the companies that engage in electronic commerce in each country recorded?

Response from the delegation of Albania:

Pursuant the law no. 10128 dated 11.05.2009 "On the electronic commerce", service provider is a legal or natural person whom operate in the field of the electronic commerce and does not need a specific licence or authorisation. These companies are registered in the National Business Centre in accordance with the law no.9901 dated 14.04.2008 "On companies and entrepreneurs".

Response from the delegation of Bosnia and Herzegovina:

According to the Constitution of Bosnia and Herzegovina and the relevant laws of Bosnia and Herzegovina, the Entities and the Brčko District of BiH, the flow goods and services in BiH are free.

Pursuant to the Decision on the Classification of Activities of Bosnia and Herzegovina 2010, the conduct of trade via the Internet was classified in the area G - Wholesale and retail trade; repair of motor vehicles and motorcycles, branches 47.9 Retail sale not in stores, stalls or markets and class 47.91 - Retail sale via mail order houses or the Internet.

If a legal or natural person carries out e-commerce on their own web site and is engaged in information service activities, such activity is classified in branch 63.1 Data processing, hosting services and related activities; web portals, class 63.11 Data processing, hosting and related activities and 63.12 web portals.

The laws of BiH, the Entities and the Brcko District of BiH laws stipulate that the seller is obliged to make relevant information for customers available on the customer's website, which includes information about the seller, regulations, prices, conditions of sale, etc.

The laws of the Entities of BiH and the Brcko District of BiH stipulate that e-commerce can only be organized by a duly registered merchant (at competent court or municipal office by the place of business) for that type of trade, whether it is exclusive or one of several activities that performs.

There are no differences in founding. A trader organized as a legal entity may commence its business activity, perform its business activities and change the conditions of its business when it registers with the registration court for conducting commercial activities in accordance with the law

governing the registration of business entities, while a trader organized as an entrepreneur may commence business activities, to perform the activities and to change the conditions of its performance when it receives from the registration authority a decision on the registration of entrepreneurs in accordance with the law governing the performance of craft and entrepreneurial activities.

Regulations governing e-commerce in Bosnia and Herzegovina:

1. Law on Foreign Trade Policy of BiH ("Official Gazette of BiH", Nos. 7/98 and 35/04)
2. Law on Electronic Legal and Business Traffic ("Official Gazette of BiH", No. 88/07)
3. Law on Consumer Protection in Bosnia and Herzegovina ("Official Gazette of BiH", Nos. 25/06 and 88/15)
4. Law on Fiscal Systems ("Official Gazette of BiH", Nos. 22/16 and 48/18)
5. Law on Internal Trade of the FBiH ("Official Gazette of FBiH" No. 40/10)
6. RS Law on Trade ("Official Gazette of the Republika Srpska", Nos. 06/07, 52 / 11,67 / 13 and 106/15)
7. Law on Trade of the Brcko District of BiH ("Official Gazette of the Brcko District of BiH", Nos. 40/04 and 19/07)
8. Relevant Rulebooks at Entity and Brcko District level of BiH

Response from the delegation of Kosovo:

Kosovo does not yet have the Law on Electronic Commerce. But law no. 04/L-094 on the Information Society Services partially treats electronic commerce. These companies are registered in the Kosovo Business Registration Agency in accordance with the Law no.06/L-016 on Business Organizations.

Response from the delegation of the Republic of Moldova:

The companies that engage in the e-commerce in the Republic of Moldova are registered in conformity with the basic, general legal existent framework like any other legal entity dealing with any other type of economic activity. Thus, the state registration of legal entities, subsidiaries and representations shall be made in conformity with art. 2, art. 5, art. 7-15 of law 220/2007, art. 55-67 of the Civil code of the Republic of Moldova and article 9, Law 284/2004 on electronic commerce.

The right to conduct electronic commerce is obtained from the moment of the legal registration in the State Registration Chamber of the legal entities or of the individual entrepreneur under the conditions of the Law no. 220/2007 regarding the state registration of legal entities and individual entrepreneurs (and under article 9, Law 284/2004 on electronic commerce).

Additionally, it shall be mentioned that according to the legal framework, the right to work as a provider of services is not subject and limited to the condition of obtaining of special permits or to comply with other requirements with equivalent effect.

Response from the delegation of Montenegro:

The companies engaged in e-commerce in Montenegro are registered under the usual procedure in accordance with the Company Law and Law on the classification of activities, on the basis of which this activity is classified within the sector G: wholesale and retail trade. Namely, there are sub-sectors within this sector, as follows:

- 46.1 Wholesale trade, including a fee, which includes wholesale trade via the Internet and
- 47.91 Retail sale via mail order houses or via the Internet.

Response from the delegation of North Macedonia:

The e-commerce legal framework in North Macedonia is regulated by the:

- Law on Trade (OG RNM 16/04, 128/06, 63/07, 88/08, 159/08, 20/09, 99/09, 105/09, 115/10, 158/10, 36/11, 53/11, 148/13, 164/13, 97/15, 129/15, 53/16, 120/18);
- Law on Electronic Commerce (OG RNM 133/07, 17/11, 04/15, 192/15), Law for electronic communications (OG RNM 39/14, 188/14, 44/15, 193/15);

- Law for services for quick transfer of money (OG RNM 77/03, 54/07, 48/10, 67/10, 17/11, 135/11, 187/13, 154/15);
- Law for payments (OG RNM 113/07, 22/08, 159/08, 133/09, 145/10, 35/11, 11/12, 59/12, 166/12, 170/13, 153/15, 199/15, 193/17, 7/19);
- Law on Data in Electronic Form and Electronic Signature (OG RNM 34/01, 16/02, 98/08, 33/15), and other laws and bylaws.

At the Eleventh WTO Ministerial Conference in Buenos Aires (December 2017), recognizing the need to keep pace with the developments in the global economy, the Republic of North Macedonia co-sponsored the initiatives to continue work on e-commerce and on domestic regulation on services, as well as to create an informal Working Group on Micro, Small and Medium enterprises (MSMEs) at the WTO.⁴

The banks are offering e-banking services. E-commerce trading may be performed by legal entities and entrepreneurs. They are registering in one of commercial banks for performing e-commerce operations. The registration procedure is according the prescribed banking procedures and within this there is no difference compared to procedures for classic commercial activities.

Response from the delegation of Serbia:

Pursuant to the Law on Trade (OG RS, No. 52/19), trade (including e-commerce) may be performed by legal entities and entrepreneurs. They are registered by Business Registers Agency in accordance with the Law on Registration Procedure at the Agency for Business Entities (OG RS, No. 99/2011, 83/2014 and 31/2019). The registration procedure is short and fast and there is no difference to classic commerce.

Also, the Law on Electronic Commerce (OG RS, No. 41/2009, 95/2013 and 52/2019) provides that the information service provider is a legal or natural person. The provision of information services for commercial purposes (which may be e-commerce) may be performed by a legal or natural person, who is registered to perform a particular activity in accordance with the Law.

Questions from the delegation of Mexico

Intellectual property rights

1.5. Paragraph 4.33 states: Does Article 39 of the Agreement contain an obligation distinct from the most-favoured nation treatment obligation under Article 4 of the TRIPS Agreement?

Could the parties to the Agreement provide further information on the provisions of Part D, which are subject to the evolutionary clause?

Parties of the CEFTA Agreement thank the delegation of Mexico for the interest shown in the CEFTA Agreement.

Response from the delegations of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, the Republic of Moldova, North Macedonia and Serbia:

Under CEFTA 2006, the CEFTA Parties undertook to conduct their mutual trade relations in accordance with the rules and disciplines of the WTO, and no provision of the Agreement may be interpreted as exempting the CEFTA Parties from their obligations under other international agreements, especially the WTO agreements.

Article 39 of the CEFTA 2006 regulates the possibility of extending the rights and obligations of the CEFTA Parties in case any CEFTA Party, after entry into force of this Agreement, should offer a third party additional advantages or preferences with regard to intellectual property rights beyond what has been agreed under Part D of Chapter VI of the CEFTA 2006. It is recalled that out of the

⁴ Joint Ministerial Statements, WT/MIN(17)/60, WT/MIN(17)/61, and WT/MIN(17)/58, respectively, all dated 13 December 2017.

current CEFTA Parties, only Albania, North Macedonia and Moldova⁵ were Members of the World Trade Organization at the moment when the CEFTA Agreement entered into force.

It is important to note that, until now, no CEFTA Party has ever asked for consultations in line with Article 39 of the CEFTA 2006. Also, there have been no developments with regard to Part D of Chapter VI of the CEFTA 2006. If any related development were to occur in the future, WTO Members would be informed accordingly.

Comprehensive information on Part D of Chapter VI of the CEFTA 2006 on '*Protection of Intellectual Property*' (i.e., Articles 37 to 39 of the CEFTA 2006) is provided in paragraphs 4.31 and 4.32 of the Factual Presentation. Most notably, according to Article 38(1) of the CEFTA 2006, the CEFTA Parties "*shall grant and ensure adequate and effective protection of intellectual property rights in accordance with international standards, in particular with TRIPS, including effective means of enforcing such rights provided for in international conventions and treaties*".

⁵ Montenegro joined the WTO in 2012.