Free Movement of Goods and Conformity Assessment

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American Chamber of Commerce in Kosovo

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Introduction

The signing of Stabilization and Association Agreement on October 27, 2015 represents a fundamental institutional step towards the harmonization of Kosovo’s policies with those of the European Union. The Agreement has been seen as a window of new opportunities in Kosovo, in terms of promoting economic, political and institutional stability, as well as stimulating regional cooperation in many areas. This document focuses on two central factors: free movement of goods and conformity assessment, which make up a big part of the agreement itself. The document also addresses the need to have the national legislation regulating these issues in line with the EU acquis, as a precondition to increase possible benefits resulting from SAA.

Free movement of goods is a very important element towards a vital economy that directly enables businesses to expand in foreign markets with their products, thus making the business competitive also outside the domestic market. Regional cooperation on the basis of mutual benefits and product specialization is also part of many advantages that are attributed to the free movement of goods.

In order for the free movement of goods to be a roadmap to achieving success in European markets, it is important that Kosovo improves its performance in quality infrastructure in accordance to EU standards. While looking at conformity assessment issues more closely, this document aims at informing the audience on a more focused approach towards quality infrastructure in general.

1. Free movement of goods in the context of Kosovo

The Stabilization Association Agreement is seen as a very important topic that has accelerated Kosovo’s path towards the harmonization of its policies with those of the EU. One of the most important pillars included in the Agreement that comprises Title IV is the topic of free movement of goods. According to Article 20 of the Agreement, the majority of Kosovo products are exempt from custom duties on exports to the EU, while on the other way around, EU products imported to Kosovo will go through a gradual liberalization in terms of import duties within a period of 10 years as depicted on the table below:

<table>
<thead>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>EU Industrial products (Annex Ia)</td>
<td>6%</td>
<td>4%</td>
<td>2%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>EU Industrial products (Annex Ib)</td>
<td>8%</td>
<td>7%</td>
<td>5%</td>
<td>3%</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>EU Agricultural products (Annex IIIa)</td>
<td>6%</td>
<td>4%</td>
<td>2%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>EU Agricultural products (Annex IIIb)</td>
<td>8%</td>
<td>7%</td>
<td>5%</td>
<td>3%</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>EU Agricultural products (Annex IIIc)</td>
<td>10%</td>
<td>9%</td>
<td>8%</td>
<td>7%</td>
<td>6%</td>
<td>5%</td>
<td>3%</td>
<td>1%</td>
<td>0%</td>
</tr>
<tr>
<td>EU Fishery products (Annex V)</td>
<td>6%</td>
<td>4%</td>
<td>2%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

While having a duty-free access to the European market is a great benefit, in order for the country to get the most out of SAA, it is important that government institutions and other stakeholders work on the development and implementation of legislative measures in alignment with those of the EU. Therefore, countries need to have national policies for the harmonization process. With regards to quality infrastructure, as one of the main enabling factors of free movement of goods, it is important that Kosovo makes substantial progress in a number of areas, including standardization, conformity assessment, accreditation, metrology and market surveillance.
The table below summarizes the trade report between Kosovo and European Union throughout the period of 2010-2017:

<table>
<thead>
<tr>
<th>Year</th>
<th>Exports</th>
<th>Imports</th>
<th>Export-to-import coverage ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td></td>
<td></td>
<td>15.20%</td>
</tr>
<tr>
<td>2011</td>
<td></td>
<td></td>
<td>13.80%</td>
</tr>
<tr>
<td>2012</td>
<td></td>
<td></td>
<td>10.45%</td>
</tr>
<tr>
<td>2013</td>
<td></td>
<td></td>
<td>10.93%</td>
</tr>
<tr>
<td>2014</td>
<td></td>
<td></td>
<td>9.07%</td>
</tr>
<tr>
<td>2015</td>
<td></td>
<td></td>
<td>9.53%</td>
</tr>
<tr>
<td>2016</td>
<td></td>
<td></td>
<td>5.82%</td>
</tr>
<tr>
<td>2017</td>
<td></td>
<td></td>
<td>6.32%</td>
</tr>
</tbody>
</table>

The graph below provides information on the impact of the free movement of goods in the economy:

Figure 1 Trade statistics Kosovo - EU (in '000 EUR)

The export-to-import coverage ratio with EU countries from the perspective of Kosovo clearly shows that there is plenty of room for improvement. The fact that this ratio has shown a decreasing trend also after SAA entered into force is discouraging, particularly when noting that the ratio was only 6.32% in 2017. It must be noted that this decline was also a result of the fact that one of the main exporters in the country decided to redirect exports from EU countries to the Asian market. However, the trend is more encouraging with regards to the export of processed and semi-processed products, which have a higher added value and a bigger influence on the gross domestic product.

In Kosovo’s perspective, the prospect of exporting products without being subject to custom duties should be seen as a stimulus for the domestic manufacturing industry. This free access to the EU market should serve as a signal to increase capacities and to improve the quality infrastructure in place, thus making Kosovo products more competitive in the European market.

The graph below provides information on the impact of the free movement of goods in the economy:
### 1.1. Legal framework in Kosovo

The harmonization of legislation with the EU acquis is a precondition for facilitating the access of Kosovo products in European markets. Some of the fields which directly correspond to the free movement of goods in the EU include standardization, conformity assessment, accreditation, metrology and market surveillance. This harmonized legislation needs to fulfill all requirements that correspond to EU’s New Approach, which defines specific requirements that products need to meet in terms of quality infrastructure, as well as the Old Approach which contains procedural measurements for product safety.¹

The legal framework in Kosovo for some of the relevant fields in the area of free movement of goods, namely on standardization, accreditation and metrology is composed of the following laws:

#### Law No. 06/L-019 on Standardization

This law defines the respective requirements for standardization in Kosovo. According to the law, standardization is defined as: “the freewill activity as a result of consensus realized by and to interesting parties themselves that have to do with processes of preparation, publishing, and implementation of standards, based on all-inclusion and transparency”(Article 3). The law is partially aligned with the Regulation (EC) 1025/2012 of European Parliament and European Commission of October 25th, 2012, which establishes the requirements for standardization.

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The law also regulates the functioning of Kosovo Agency of Standardization (KAS) as the main institution responsible for the field of standardization. Apart from its administrative scope, this agency also has a role in terms of research activities and raising the awareness on topics related to standardization.

Some of the key objectives which the law promotes are diversity, compatibility, interchange, health, safety, environment protection, product protection, mutual recognition, economic performance and trade, etc. Standardization helps in reducing trade barriers, facilitating access to international markets and increasing the competitiveness of domestic enterprises.

**Law No. 05/L-117 on Accreditation**

The law on Accreditation provides the framework for the registration and the functioning of accreditation bodies. The law designates the General Directorate of Accreditation (GDA) as the main state body for Accreditation in Kosovo. According to the law, accreditation for conformity assessment purposes is done on a voluntary basis and that GDA’s activities are non profit-based. Some areas in which accreditation is applicable are testing and medicinal laboratories, inspection bodies, product certification, etc.

Specifically, the law covers issues such as mutual assessment, rules of accreditation, procedures and steps for accreditation, and particular information related to GDA. The Law on Accreditation is in full compliance with the Regulation (EC) No. 765/2008 of the European Parliament and Council of 9th July 2008.

**Law No. 06/L-037 on Metrology**

The Law on Metrology elaborates the system for measurement units and procedures of assessment related to measurement units. Article (2) of the law states:

The provisions of this Law shall apply to the organization of metrological activities, usage of legal measurement units and traceability of measurement standards in the Republic of Kosovo, placing on the market and usage of the legal measuring instruments, assessment of conformity of legal measuring instruments with the described requirements, pre-packaged products, validity of foreign conformity documents and marks, as well as other metrology-related issues.

The Law also identifies Kosovo Metrology Agency as the only public institution on this field. According to the law, the country strategy on metrology is yet to be implemented and it includes:

- Consumer and environment safety, official measurements, industry’s support including the consultancy for technical regulations, fair trade, international recognition, declaration for infrastructure organization of metrology, declaration for laboratories competency related to responsible persons, education and/or training in metrology, mutual recognition of testing/calibration results or certifications.

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5 ibid.
Aside from these laws, another law that is closely related with quality infrastructure is the Law on Technical Requirements for Products and Conformity Assessment, which is elaborated in upcoming parts of this document.

**2018 European Commission report on Kosovo in the field of free movement of goods**

The 2018 EC report on Kosovo states that the country is at an early stage of preparations in the field of free movement of goods. The report assesses that Kosovo has not created a clear plan to implement completely Articles 34-36 of the Treaty on the Functioning of the European Union, and has fallen short on following the recommendations offered on the Progress Report of 2016.

**Recommendations for upcoming years in the Kosovo Report 2018**

> To ensure implementation of the Law of Standardization, the Law on Accreditation, the Law on Technical Requirements and Conformity Assessment and secondary legislation.
> To improve further cooperation among institutions towards the implementation of legislative measures and capacity increase of Kosovo Agency of Standardization, Kosovo Metrology Agency, and the General Directorate of Accreditation in Kosovo.
> To make more progress towards Registration, Evaluation, Authorization, and Restriction of Chemicals.⁶

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2. Free movement of goods in the EU

Free movement of goods refers to goods which can be legally sold in the European Union market, as long as they are in line with the rules of European market supporting the removal of custom barriers and other quantitative restrictions. The free movement of goods makes up the first chapter of the Acquis and is one of the four freedoms of the European Union internal market. According to Article (28) of the Treaty on the Functioning of the European Union:

The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.\(^7\)

Given Kosovo’s current status with regards to the European Union integration, Article (29) of the Treaty provides in general terms the entrance of goods from third countries in the EU, emphasizing that:

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.\(^8\)

While the issue of free movement of goods was initially conceptualized in terms of trade between EU Member States, the concept was extended to trade relations with third countries as well, and has led to the harmonization of economies, the result of which is the increase in trade, employment and efficient cooperation, in general. The legal basis through which the right of the free movement of goods in ensured are the Articles (26) and (28-37) of the Treaty on the Functioning of the European Union (TFEU).

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\(^8\) Ibid, Article 29
The internal market of the European Union is considered as a ‘zone of prosperity and liberty’ because it enables movement of goods in 28 Member States of the European Union with other states in Europe. The internal market includes four pillars: free movement of goods, free movement of services, free movement of capital, and free movement of people.

Established initially in 1958, the market was a key objective in the Treaty of Rome, and throughout that time it was presented as a ‘common market’. Among key principles of this market were custom facilitations namely those related to the exemption of quotas and the free movement of human capital. Because of some implications resulting from competition framework from the side of the public authorities, the free movement of goods could not be developed in the potential it has nowadays.

In 1987 the idea of a market towards the goal of the exemption of custom barriers was reformed, but this time its term was “internal market”

The internal market has had a very important effect in the European economic development, which could best be seen at the 15% increase of trade within Europe after its creation.9

2.1. Main principles for the implementation of Articles 34-36 of TFEU

Harmonization of national legislation

The harmonization of national laws paves the way towards the free movement of goods by preventing national provisions that are barriers to trade and setting the conditions for the movement of goods with norms and regulations that have a focus on “justified restrictions” such as the environment, consumer protection, and competition. Thus, for as much as the harmonization ensures freedom in terms of potential barriers imposed by national legislations, there’s a special focus on technical requirements that need to be taken into consideration according to Article 114(3) of TFEU. After the rule of the qualified majority, the harmonization is completed with the New Approach according to the Council resolution of May 7, 1985, for the purpose of reducing barriers and obstacles.

2.1.1. Non-harmonized area

Articles 34-36 of the Treaty are not the only legal provisions for measuring the degree to which national measures are in line with principles of the internal market. In particular industries, there can be technical specifications in place (that cannot be provided in treaty articles), which are set through different directives and regulations on a Union level. Having that in mind, member states should ensure that every national measure is analyzed in the context of harmonization with the EU secondary legislation, i.e. with applicable directives and regulations.10

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2.1.2. Goods

Considering that exported or imported goods have an economic value, there is no exact limitation as to what really constitutes a good (Articles 34 and 35 of TFEU). Therefore, goods need to have a monetary value to make trade exchange possible. In attempts to give a definition to the concept of goods, the Court of Justice focuses on the importance of distinguishing between goods and services, whereby although a particular item might be considered a good in general terms, it does not fall under the category covered by free movement of goods principles. As an illustrative example, EU considers fish and fisheries within the framework of the freedom of the movement of services, although in broader terms fish are considered as being tradable goods.\(^{11}\)

2.1.3. Cross border or transit element of trade

Articles 34-36 of the Treaty are applicable only on cases of a cross-border issue, meaning that the issue in some way or another is extended beyond the borders of a member state and affects the trade or industry of another European Union country. In case that a national measure affects only the local or domestic industry, then the same is not analyzed in the framework of these provisions of TFEU. However, thanks to globalization and increased level of digitalization, the cases where a measure could be analyzed as a measure that affects only the market of that particular country have decreased compared to previous years.\(^{12}\)

2.1.4. The audience / the addressed

The European Court in certain cases has given its interpretation to the term “Member State” in the implementation of Articles 34-36 of the Treaty. According to the Court of Justice, the measures taken from any institution that has a regulative role, but also actions undertaken by executive bodies could be part of the Article 34 of the TFEU. Thus, Member States include all the related authorities that in one way or another impact on the trade among member states. However, measures undertaken by individuals who do not possess legal power, are not considered part of public law, only based on the address. In contrast, the court has decided that even an announcement of an official of a member state can be interpreted as official position of that country, and thus analyzed under the framework of articles 34-36 of TFEU.\(^{13}\)

2.1.5. Active and passive measures

Article 34 of TFEU is considered as an important mechanism for the protection from unjustified barriers in cross-border trade created by national legislations, as well as implementing practices of different national bodies. One of the most famous cases in this regard is the case of French farmers, who in an

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\(^{11}\) Ibid.
\(^{12}\) Ibid.
\(^{13}\) Ibid.
effort to prevent the import of agricultural products from neighboring countries, stopped and attacked trucks filled with fruits and vegetables from other countries. In this case, the failure of French authorities to intervene and put a stop to these attacks was considered a violation of Article 34, because cross-border trade was impacted. This suggests that individual actions or failure to address such actions can be considered as a barrier to trade.\textsuperscript{14}

\textbf{2.1.6. Non-application of de minimis rule}

The \textit{de minimis rule} is not applicable in the context of articles 34-36 of the Treaty. This means that a trade barrier of any kind will not be considered as falling outside the scope of article 34 simply for the reason that the impact is small or insignificant, or limited to a particular geographical zone.\textsuperscript{15}

\textbf{2.1.7. Territorial application}

Article 34 of TFEU needs to be observed by all Member States and in certain cases also from other territories which a member state is responsible for or that is somehow related to a member state. Annex B of TFEU serves as a manual for the interpretation of territorial application.\textsuperscript{16}

\textbf{2.1.8. Quantitative restrictions}

Quantitative restrictions are partial or complete restrictions on the imports of goods, and the most common example on this area is the imposition of product quotas. They can be either legal provisions or administrative actions taken by national institutions. This part refers only to the applicability of non-tariff quotas.\textsuperscript{17}

\textbf{2.1.9. Measures with equivalent effect}

Measures of equivalent effect have a much broader application compared to quantitative restrictions. The Court of Justice in Dassonville has defined that “All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions”.\textsuperscript{18} Article 34 of TFEU is applicable on all national measures that discriminate against imported goods, be it a direct or indirect discrimination (which is not always noticeable at first sight).\textsuperscript{19}

\textbf{2.2. Pillars of free movement of goods}

\begin{itemize}
\item \textsuperscript{14} Ibid.
\item \textsuperscript{15} Ibid.
\item \textsuperscript{16} Ibid.
\item \textsuperscript{17} Ibid.
\item \textsuperscript{18} European Court. Case 8/74 Procureur du Roi v Benoît and Gustave Dassonville. July, 1974
\end{itemize}
Within European Union, free movement of goods works through a number of principles, including the functioning of a custom union, promotion of standardization, the principle of non-discrimination, mutual recognition, and justified restrictions.

2.2.1. Customs union

Customs union makes up the foundation of trade among member states of the European Union. Even if the product is not manufactured within Europe, or it is not imported within Europe, customs union enables trade without custom duties for the product within the borders of EU. In this Customs Union, tariffs are imposed only towards third countries—for which custom duties need to be paid when entering the border of the EU member state, after which the product can be further imported throughout the EU without any duties. According to the General Agreement on Tariffs and Trade, customs union is defined as:

the substitution of a single customs territory for two or more customs territories, so that i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories;

ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.

Thus, according to the Agreement, a ‘free trade zone’ implies a group of one or more territories whose custom tariffs are eliminated (aside from those of Articles XI, XII, XIII, XIV, XV and XX).

2.2.2. Promotion of standardization

Another principle which is crucial to the functioning of the internal market is standardization for product specifications and technical requirements. Standardization is a very important process which paves the way to product and service compatibility, and consequently leads to increased product safety and performance, energy efficiency gains, better consumer and environment protection, etc. By stimulating product compatibility, standardization serves as a valuable tool within the internal market and encourages cross-border trade in Europe. European Committee for Standardization is an organization gathering 34 national institutions on this area, and its main role is to develop standards for different business sectors and other users of these standards. As a result, a European standard replaces 34 national standards.

2.2.3. Principle of non-discrimination

The term discrimination refers to cases when a different treatment is reserved to certain individuals or groups based on their nationality, gender, religion, race, etc. The legal basis against discrimination is

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22 Ibid.
Article 18 of the Treaty on the Functioning of the European Union and Article 21 of the Charter for Fundamental Human Rights, where regardless of the country of origin, all regulations are applicable for every individual or enterprise in the same manner.  

2.2.4. Mutual recognition rule

Mutual recognition enables products that are not part of harmonized area of the EU legislation to have access to the European market. According to the EU Court of Justice, if a product is legally sold in one member state of the EU, that product can also be sold in other EU states as well. Because national technical rules can be extensive and can create obstacles to trade, the European Commission tries to stimulate free movement of goods by making sure that all member states allow a product to be sold in their territories, as long as that product fulfills the criteria of public safety, health, and environment protection.  

2.2.5. Justified restrictions

It needs to be noted that regardless of the general concept behind free movement of goods, there are still some restrictions which can be legally imposed in terms of being able to export in EU member states. Goods can be exported ‘freely’ only as long as companies fulfill their duties of doing business ethically and that they strictly abide to all norms and applicable regulations. Therefore, in order to have the opportunity to export, the goods need to be safe with regards to public safety, environment, animal wellbeing, and consumer rights.

2.3. Trade barriers from the perspective of the Treaty

The literature differentiates between different types of trade barriers, all of which can be interpreted as restrictions to the free movement of goods. Some of the most common trade barriers are explored in the following section.

2.3.1. National provisions related to imports

Because import licenses, inspections, and similar requirements in general tend to deter import activities by increasing costs and the time needed to complete procedures, they are considered to be against principles embodied in Articles 34 and 35 of TFEU. After the creation of the internal market, nowadays border control is not necessary on the trade between member states, and as such, the control can only take place as part of a more general system of control, whereby trade activities within that member

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24 European Commission. *Nondiscrimination: Know your rights.*
state are subject to the same treatment. However, if such inspections are conducted systematically on imports, they could be deemed as measures having equivalent effect.

2.3.2.  The request to open a business representation office or to have warehouses in the importing member state

The European Court of Justice has ruled that the request to open a business representation office or to have a customs warehouse in the destination country within the union is contrary to the provisions of the Treaty, and increases the costs of small and medium enterprises that seek to expand in the markets of member states. Also, whatever measure related to the storage and transportation of products is considered as being contrary to the provisions of the Treaty, if the same rules are not applicable for domestic products as well.

2.3.3.  National restrictions in products or specific substances

In particular cases, member states are able to ban the import of a certain product, having in mind the exceptions stipulated in Article 36 of the Treaty. In most cases, food products or food additives are subject to such restrictions. However, even in such cases, the European Court of Justice requires countries to present scientific and statistical arguments to support such restrictions, as well as arguments that the purpose of the total import restriction cannot be achieved with any lighter measures. For instance, in certain cases, if a member state wants to stop the import of a product which has a high content of some undesirable substance, the court can decide to declare the decision as being a violation of TFEU. On that case, the court would oblige importers to put adequate signs on products in order to show their content, thus giving the consumers the chance to make an informed decision for themselves.

2.3.4.  Type approval

The approval of the type means the requirements related to technical, regulative, and safety conditions that need to be fulfilled by a product. These requirements usually need to be fulfilled before the product is ready to be traded (i.e. the standard CE). The requirements in the EU internal market make trade flows easier, however, in non-harmonized areas, they could create restriction due to differences on national provisions from one state to the other. Because product standards increase costs to trade the product, they are considered as measures with an equivalent effect (in the case of non-harmonized areas).

2.3.5.  Prior authorization

When the authorization from national authorities is required for importing certain products, in principle, such action is considered as a measure with an equivalent effect of quantitative restrictions

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27 Ibid.
28 Ibid.
29 Ibid.
subject to Article 34 of TFEU, and as such is not allowed. However, according to Court of Justice, the cases upon which prior authorization is justified are:

- When the measure is based on objective criteria which have to be known in advance from enterprises
- Controls that have already been completed should not be repeated (in other contexts, in one member state or another)
- The procedure of prior authorization needs to be completed only if the subsequent control within the border cannot be effective
- The procedure should not prevent business plans as a result of extensive timeframes and increased costs.\(^{30}\)

### 2.3.6. Technical regulations containing requirements for the presentation of goods

In certain cases, different states could have different requirements on the trade of specific products, for instance the shape, size, weight, etc. However, according to the Court of Justice, such requirements are in violation to Article 34 of the Treaty, for the fact that they affect the trade between EU member states, while also obliging small and medium enterprises to increase their expenditures in order to have access to member states’ markets.\(^{31}\)

### 2.3.7. Advertisment restrictions

In certain cases, member states have restricted different types of advertising for the promotion of import products (such as the case of gifts for promotional purposes). In principle, the restrictions that come as a result of national legislations are in contradiction to Article 34 of TFEU. However, in special cases, the Court has also decided in favor of particular restrictions imposed by the member states.\(^{32}\)

### 2.3.8. Deposit obligations

For environmental purposes in the internal market, some products cannot be sold with the same packaging in all Member States, and this brings additional costs for importers who are obliged to adjust manufacturing processes for accessing specific markets. Although these obligations are considered to have been developed for the purpose of environment protection, they are undoubtedly qualified as trade barriers.\(^{33}\)

Member States are entitled to choose between one system of deposit/package return or a global system for the collection of packages (or a combination of both). The Court has supported the system for the return of deposits/package in the Case 302/86 (121), however, it has considered the standardized containers for usage and the requirements for authorization as excessive.\(^{34}\)

### 2.3.9. Indication of origin, quality marks, incitements to buy domestic products

\(^{30}\) Ibid.
\(^{31}\) Ibid.
\(^{32}\) Ibid.
\(^{33}\) Ibid.
\(^{34}\) Ibid.
State requirements for origin declaration are considered as measures of equivalent effect under the framework of Article 34 of TFEU. Promotional campaigns for certain products which encourage consumers to buy products based on the country of origin, according to the Court, are considered to have a restricting role for free movement of goods, because they encourage people not to buy imported goods.\textsuperscript{35}

The rules for origin marks could be acceptable only if the product contains characteristics of the geographical area in question, or reflects some tradition of the place of origin.

Therefore, measures which aim to stimulate the consumption of domestic products only for national purposes, are considered to be a violation of Article 34 of TFEU. For example, a campaign organized by Ireland for urging Irish people for the consumption of domestic products (Buy Irish), has been ruled to have violated Article 34 of the Treaty, because it has directly aimed to impact the reduction of imports from other member states.\textsuperscript{36}

\section*{2.3.10. Obligations to use national language}

Language requirements in non-harmonized areas can pose barriers to EU internal trade, which is prohibited by Article 34 of TFEU because labels bring additional costs for the packaging. Some forms of this kind of obligation are: technical instructions, declarations, advertisements, etc. Subject to the Case 85/94 Piageme, different factors have been identified—such as similarities among languages, global campaigns for which the consumer might already be informed about—which need to be taken into consideration with regards to the necessity for the use of national language.\textsuperscript{37}

The Court has tried to take into consideration the factor of proportionality with regards to the adequate information that consumers need about the product. Some of the general requirements are simple language that needs to be used, tools such as pictograms and designs and the translation in multiple languages when certain instruction cannot be explained in alternative ways.\textsuperscript{38}

\section*{2.3.11. Restrictions on distance selling (through the internet, post office, etc.)}

The restrictions on long-distance trade (for instance through internet or mail) in principle are in violation to the Treaty, given that in many industries and enterprises, these sales are seen as the easiest and most cost-effective way for accessing particular markets. The same applies for regulated markets where the sale of the products is subject to different conditions (which is the case of the medical products industry). For a particular case in the pharmaceutical industry, the Court of Justice has decided that such sales cannot be restricted, but rather, authentic documents need to be sent through electronic mail before the departure of the shipment.\textsuperscript{39}

\textsuperscript{35} Ibid.
\textsuperscript{36} Ibid.
\textsuperscript{37} Ibid.
\textsuperscript{38} Ibid.
\textsuperscript{39} Ibid.
2.4. EU legal sources

Figure 2.3.1. European Union legal sources

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40 European Union, *Eur-Lex: European Sources of Law*, 2017
2.5. Product conformity assessment

Conformity assessment implies the assessment of the product according to legal requirements of the legislation in power, before such products are sold. Conformity assessment includes the testing, inspection, and certification of the product, by applying these accordingly to the nature of the product and sector.

One of the basic criteria that the national legislation needs to fulfill towards the harmonization of the legislation with the EU is within conformity assessment. Domestic products need to be certified that they comply with safety requirements, in order to have proof that products are safe to use by European consumers. According to EC’s country report for Kosovo for 2018, the Commission assesses that while Kosovo has around 39 accredited bodies, they need to work further on the implementation of the legislation related to conformity assessment.

The legal basis in Kosovo for conformity assessment is the Law no. for Technical Requirements and Conformity Assessment for the Products. According to Article 1, the law:

This law regulates the manner of prescribing technical requirements for products and adoption of technical regulations based on this Law, assessment of conformity of products with required technical requirements (hereinafter referred to as: conformity assessment), obligations of suppliers of products and owners of products in use, validity of foreign documents of conformity and conformity markings, notification of technical regulations and conformity assessment procedures and inspection surveillance of the implementation of all laws and technical regulations dealing with compliance and safety of non-food products.

This law also makes up the New Global Approach of the legislation, where the established technical requirements contain essential specifications for products so that they don’t lack the necessary safety.

- Regulation no. 08/2014 on the Method of Sharing Information and Notification of Technical Regulations, Procedures for Assessment of Conformity and Standards, which partially transposes Directive 98/34/EC.
- Regulation no. 13/2012 on Notification on the Products that Pose a Risk to Consumers, partially transposes Directive 2001/95/EC.
- Regulation no. 08/2013 on the Modality of Establishment and Functioning of the Rapid Exchange of Information System for Hazardous Products, which partially transposes Directive 2001/95/EC.
- Administrative Instruction No. 04/2016 on the Mode for Authorization of Conformity Assessment Bodies, which transposes provisions of the Decision No. 768/2008/EC⁴¹

2.5.1. Case study: meat industry

Meat products in Kosovo, which are part of agricultural goods, are not directly exempted from the custom duties after the signing of the Stabilization Association Agreement. From around 2,564

agricultural products, of those that are not exempted from the tariffs are wines, sugar, and meat—namely lamb meat. Custom duties for these goods are in accordance to the combined nomenclature of 2014, which is the legislative document that identifies the product requirements based on the Tariff of the Common Custom and EU external statistics, by classifying them in the respective categories.

Chapters 7 and 8 of the Combined Nomenclature are the legal basis for the customs tariffs related to the import of meat products and other respective specifications.

However, regardless of the application of custom duties, meat products that are produced in Kosovo and other products of animal origins (such as milk) cannot be traded in the EU market as a result of shortcomings in the national quality infrastructure.

CONFORMITY ASSESSMENT- KEY FACTOR FOR EXPORTING IN MEAT INDUSTRY

Conformity assessment has a special significance for the meat industry, because meat products can be exported to the EU only if they have been assessed as completely safe for consumption. Safety of the imported goods is proved by the assessment authority of the exporting country. Thus, it is important that the respective authorities follow the procedures of conformity assessment in compliance with European standards.

Based on EU regulations, non-member states that are interested in exporting meat products and by-products in EU need to fulfill some basic criteria before beginning to export. First, the non-member state needs to have a competent authority for monitoring meat products, to fulfill some standards for animal health, as well as being part of the World Organization for Animal Health. It also has to ensure hygiene and public health, for example, in the tools used for slaughtering of animals. As an important criterion is, also to create and implement a monitoring plan for animals and animal products, that monitors potential residues of veterinary medicines, pesticides, hard metals and pollutants, and it also needs to be submitted in an annual basis for approval.  

According to the European Commission, non-member states need to pass the process summarized below, in order to export these kind of products in the EU:

- The competent authority of the non-member state needs to send a request to the European Commission and European Commission’s Directorate General for Health and Food Safety to export meat as long as the request confirms that the authority fulfills all the of the respective provisions according to EU applicable regulations.
- The European Commission’s Directorate General for Health and Food Safety sends the competent authority a questionnaire that provides information on the respective national legislation with regards to animal health and food hygiene.
- The competent authority needs to send to the Directorate an additional plan for monitoring which includes different ways through which the meat is to be exported. The plan needs to be approved from the Commission, and in case it is not approved, the meat cannot be exported to the EU even if the non-member state has fulfilled all of the other criteria for public and animal health.
- After the request is filed, the Commission’s Health and Food Audits and Analysis Directorate can audit to evaluate the situation.

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42 European Commission. EU import conditions for fresh meat and meat products.
If the results of the evaluation and guarantees of the non-member state are adequate, the Directorate-General for Health and Food Safety proposes to add the country to the list of the non-member states eligible for such exports. It also specifies conditions through which the authorization to export is enabled. The Directorate also forms a list of approvals, and all of these are then discussed with representatives of EU Member States.

In case that the Member States have a favorable opinion for the proposal, the Commission lists the non-member state as being eligible.  

Conformity assessment has also been reviewed by the European Commission in 2018 country report for Kosovo. It assesses the necessity for further harmonization of Kosovar legislation with that of the Acquis. Based on the report, special improvements need to be made in terms of market surveillance for the purpose of ensuring product safety. Although Kosovo has around 39 accrediting bodies, the Commission assesses that the performance needs to further improve and the capacities need to be increased further when it comes to the area of conformity assessment and market surveillance.

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43 Ibid.
2.4.2 Dispute Resolution within SAA

The effectiveness of the Stabilization Association Agreement is also reliant on the opportunity of different disputes and complaints to be resolved through legal mechanisms that enable the appropriate interpretation and implementation of provisions. This way, the Stabilization Association Agreement obliges the contracting parties to establish the Stabilisation and Association Council, which is composed of senior officials of the Republic of Kosovo and the European Union, and is responsible for monitoring the implementation of SAA provisions. Given that SAA includes and impacts different sectors of the economy, there are also other structures in place in addition to the Stabilisation and Association Council. Regulation (GRK) – No.13/2016 for the Functioning and Representation of Government Institutions of the Republic of Kosovo in the Stabilization and Association Structures provides the establishment of four (4) structures that play a key role on the implementation of SAA:

The Subcommittee for Trade, Industry, Customs and Taxes is the main body responsible for the topic of free movement of goods and for resolving disputes falling in this category. The Subcommittee is also responsible for providing recommendations to the Stabilisation Association Council on different topics including:

1. Free movement of goods
2. Industrial products
3. Trade issues
4. Standardization, Metrology, Accreditation, Certification, Conformity Assessment and Market Surveillance
5. Industrial cooperation
6. Small and medium enterprises
7. Tourism
8. Custom
9. Taxes
10. Rules of origin

Protocol V of the Stabilisation Association Agreement provides for dispute resolutions through arbitration, and cases which may be handled through this dispute resolution mechanism, as well as offering information on applicable procedures and how arbitral decisions are rendered.
Protocol V provides that dispute resolution is possible only when there is a different judgement or interpretation of provisions listed below, including cases when a signatory party considers that a measure taken from the other party, or simply the failure to act, is in violation of:

- Title IV (Free movement of goods), except Articles 35, 42, 43(1), (4) and (5)
- Title V (Establishment, service provision, and capital) Chapters I-V
- Harmonization of laws, implementation of laws and competition rules (Articles 78 and 79)

Given the key role on addressing disputes related to free movement of goods, Protocol V enables the initiation of arbitration procedures. In this regard, Protocol V provides that parties should initially refer to Article 137 of the Stabilisation Association Agreement, which provides on dispute resolution through the formal notice to the Stabilisation Association Council and the other Party, as well as entering consultations with the other Party.

How are dispute resolution procedures initiated?

- Delivery of a formal written request to the Stabilisation-Association Committee for the establishment of an arbitration panel
- The request should note the subject of the dispute and the potential failure of the other Party to address the concern or the violation of SAA provision/s

How is the arbitration panel formed?

- Arbitration panel is composed of three (3) arbitrators
- Within ten (10) days after the formal request is delivered to the Committee, the Parties need to be consulted on the composition of arbitration panel
- In case of disagreement between parties on the composition of arbitration panel, the Leader of the Committee chooses the arbitrators
- The selection of arbitrators should be made in the presence of both parties and the process should be fully transparent
- In case one of the Parties considers that an arbitrator does not act in accordance to the Code of Conduct, the Parties will be consulted for the selection of another arbitrator. In case they are not able to come to an agreement, the Leader will make a final decision
- In case an arbitrator withdraws, or cannot participate in a procedure, his/her replacement needs to be made within five (5) days

After the application of aforementioned procedures and the inclusion of the respective Stabilization-Association Committee in the resolution of disputes, the Parties are subject to the verdict of the arbitration panel whose primary purpose is dispute resolution with the aim of enabling free movement of goods.

How is the arbitration decision delivered?

- Arbitration panel needs to deliver its decision to respective Parties, as well as to the Stabilization-Association Committee within a time frame of ninety (90) days from the date of its establishment
- In case such decision is not possible to be taken within this period of time, the panel Leader needs to provide explanations. However, the decision needs to be delivered no later than 120 days after the panel is formed
• In urgent cases, such as cases with perishable goods, the arbitration panel is required to make a decision within 45 days, and if this is impossible, the decision needs to be made in no later than 100 days.

What should a decision of the arbitration panel include?

• The arbitration panel’s decision needs to include factual findings, application of respective provisions, and the appropriate rationale. As such, the decision can offer recommendations in accordance with SAA provisions.

Arbitration panel’s decision directly requires for the adoption of respective measures for dispute resolution and provides the Parties the opportunity to comply with regards to the deadlines for the implementation of the decision. Therefore, the manner of the application of the verdict is also specified in detail in Protocol V of the agreement, which also offers for the deadlines for taking appropriate measures for dispute resolution.

How is the decision of the arbitration panel enforced?

• Within a period of thirty (30) days, the Party towards which the complaint was filed, notifies the Party which filed the complaint on the appropriate time for the implementation of measures.
• In case there is no compliance on the side of the Parties with regards to the specified time, the complainant can request the panel to set a deadline within twenty (20) days.
• The Party towards which the complaint was filed, notifies the other Party and the Stabilization Association Committee before the deadline expires on the steps it has undertaken or initiated to in order to comply with the decision and other SAA provisions.

What if the decision is not implemented?

• In case the Party towards which the complaint was filed fails to act according to the decision and to put an end to the dispute, the complainant has the right to request an offer of temporary compensation.
• If the temporary compensation offer does not result in a mutual agreement, the complainant has the right to suspend various benefits provided through SAA provisions, at a level which is equivalent to the economic damage caused by the violation done by the other party.
• Such a suspension or reciprocal measure should be temporary and implemented until the other party remedies the situation and fully complies with SAA obligations.
Annex I: Private Sector Pulse on SAA

The American Chamber of Commerce in Kosovo has conducted a study titled Private Sector Pulse on SAA so that the state of doing business after the signing of the SAA could be analyzed from the perspective of businesses in Kosovo. The study included a survey with 500 businesses in 7 regions of Kosovo: Prishtina, Gjilan, Ferizaj, Prizren, Mitrovica, Gjakova, and Peja. Below you may find a number of graphs which depict businesses’ opinion on a number of issues related to the free movement of goods after the Stabilization and Association Agreement entered into force:

![Figure A1. SAA impact on Doing Business](image)

**Figure A1. SAA impact on Doing Business**

<table>
<thead>
<tr>
<th>Impact</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive impact</td>
<td>59.59%</td>
</tr>
<tr>
<td>Small positive impact</td>
<td>15.67%</td>
</tr>
<tr>
<td>Negative impact / small negative impact</td>
<td>21.86%</td>
</tr>
<tr>
<td>Other/ I don’t know</td>
<td>1.23%</td>
</tr>
<tr>
<td>No impact</td>
<td>1.65%</td>
</tr>
</tbody>
</table>

![Figure A2. Kosovo’s benefits from SAA](image)

**Figure A2. Kosovo’s benefits from SAA**

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase in the volume of trade and partnership with EU countries</td>
<td>39.57%</td>
</tr>
<tr>
<td>Investments in quality infrastructure</td>
<td>11.70%</td>
</tr>
<tr>
<td>Acceleration of doing business environment reforms</td>
<td>19.79%</td>
</tr>
<tr>
<td>Access to grants</td>
<td>19.79%</td>
</tr>
<tr>
<td>None of the above</td>
<td>23.62%</td>
</tr>
<tr>
<td>Other / I don’t know</td>
<td>12.77%</td>
</tr>
</tbody>
</table>

45 American Chamber of Commerce in Kosovo. Private Sector Pulse on SAA. August, 2018.
46 Ibid
The surveyed businesses have also selected the main challenges on exporting towards EU states. 58.97% of businesses believe that the lack of business networks for trading products is one of the biggest challenges for exports in the European market.

Figure A4. Challenges on exporting towards EU countries

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47 ibid
48 ibid
References

European Court. *Case 8/74 Procureur du Roi v Benoît and Gustave Dassonville*. July, 1974: European Court Reports.


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