

FREE TRADE AGREEMENT BETWEEN ROMANIA AND SERBIA AND MONTENEGRO

PREAMBLE

Romania and Serbia and Montenegro (hereinafter called "the Parties"),

Reaffirming their commitment to pluralistic democracy based on the rule of law, human rights and fundamental freedoms,

Recalling their intention to participate actively in the process of economic integration in Europe as an important dimension of the stability on the European continent and expressing their preparedness to co-operate in seeking ways and means to strengthen this process,

Reaffirming their commitment to the principles of a market economy, which constitutes the basis for their relations,

Recalling their firm commitment to the Final Act of the Conference on Security and Co-operation in Europe, the Paris Charter, and in particular the principles contained in the final document of the Bonn Conference on Economic Co-operation in Europe,

Resolved to this end to eliminate progressively the obstacles to substantially all their mutual trade, in accordance with the provisions of the General Agreement on Tariffs and Trade 1994 (hereinafter called "GATT 1994") and the Agreement establishing the World Trade Organization (hereinafter called "Agreement establishing the WTO"), having in mind that the Serbia and Montenegro has the priority to become a member of the WTO.

Firmly convinced that this Agreement will foster the intensification of mutually beneficial trade relations among them and contribute to the process of integration in Europe,

Determined to implement this Free Trade Agreement with the objective to preserve and protect the environment and to ensure an optimal use of natural resources in accordance with the principle of sustainable growth,

Considering that no provision of this Agreement may be interpreted as exempting the Parties from their obligations under other international agreements, in particular the Agreement establishing the WTO,

Have agreed as follows:

Article 1

Objectives

1. The Parties shall gradually establish a free trade area on substantially all their bilateral trade during a transitional period ending on December, 31 2006, in accordance with the provisions of this Agreement and in conformity with those of the GATT 1994, in particular Article XXIV and of the Agreement establishing the WTO, especially the Understanding on the Interpretation of Article XXIV of the GATT 1994.

2. The objectives of this Agreement are:

- to promote through the expansion of trade, the harmonious development of economic relations between the Parties and thus to foster the advance of their economic activity;

- to provide fair conditions of competition in trade between the Parties;
- to contribute by the removal of barriers to trade, to the harmonious development and expansion of the world trade;
- to enhance co-operation between the Parties.

CHAPTER I - INDUSTRIAL PRODUCTS

Article 2

Scope

1. The provisions of this Chapter shall apply to industrial products originating in the Parties.
2. For the purpose of this Agreement the term “industrial products“ means the products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System, with the exception of the products listed in Annex I to this Agreement.

Article 3

Basic Duties

1. For each product the basic duty to which the successive reductions set out in this Agreement are to be applied shall be the Most Favored Nation rate of duty in force on the date of entry into force of this Agreement.
2. If, after the date of entry into force of this Agreement, any tariff reduction is applied on an *erga omnes* basis, in particular reductions resulting from the GATT 1994 and the Agreement establishing the WTO, such reduced duties shall replace the basic duties referred to in paragraph 1 as from the date when such reductions are applied.
3. If a reduction of duties is effected by way of a suspension of duties made for a particular period of time, such reduced duties shall replace the basic duties only for the period of such suspension.
4. The reduced duties, calculated in accordance with paragraph 2, shall be applied rounded to the first decimal place.
5. The Parties shall communicate to each other their respective customs duties.

Article 4

Customs Duties On Imports And Charges Having Equivalent Effect

1. No new customs duties on imports or charges having equivalent effect shall be introduced in trade between the Parties as from the date of the entry into force of this Agreement.
2. All customs duties and charges having equivalent effect on imports of products originating in the Parties shall be abolished in accordance with the provisions laid down in Protocol 1 of this Agreement.

Article 5

Fiscal Duties

The provisions of Article 4 shall also apply to customs duties of a fiscal nature.

Article 6

Customs Duties On Exports And Charges Having Equivalent Effect

1. No new customs duties on exports or charges having equivalent effect shall be introduced in trade between the Parties as from the date of entry into force of this Agreement.
2. All existing customs duties on exports and any charges having equivalent effect shall be abolished on the date of entry into force of this Agreement.

Article 7

Quantitative Restrictions On Imports And Measures Having Equivalent Effect

No quantitative restrictions on imports or measures having equivalent effect shall be maintained or introduced in trade between the Parties as from the date of entry into force of this Agreement.

Article 8

Quantitative Restrictions On Exports And Measures Having Equivalent Effect

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Article 9

Elimination Of Technical Barriers To Trade

1. The rights and obligations of the Parties relating to technical barriers to trade shall be governed taking into account the WTO Agreement on Technical Barriers to Trade.
2. The Parties shall co-operate and exchange information in the field of standardization, metrology, conformity assessment and accreditation with the aim of reducing technical barriers to trade.

CHAPTER II - AGRICULTURAL PRODUCTS

Article 10

Scope

1. The provisions of this Chapter shall apply to agricultural products originating in the Parties.
2. For the purpose of this Agreement the term “agricultural products“ means the products falling within Chapters 1 to 24 of the Harmonized Commodity Description and Coding System, including the products listed in Annex I to this Agreement.

Article 11

Exchange Of Concessions

1. The Parties shall grant each other the concessions specified in Protocol 2 to this Agreement (hereinafter called "Protocol 2") as laid down in that Protocol and in accordance with the provisions of this Chapter.

2. Taking account of:

- the role of agriculture in their economies,
- the development of trade in agricultural products between the Parties,
- the particular sensitivity of the agricultural products,
- the rules of their agricultural policies,
- the results of the multilateral trade negotiations under the WTO,

the Parties shall examine within the framework of the Joint Committee referred in Article 34 of this Agreement (hereinafter called "Joint Committee") the possibilities of granting each other further concessions in trade in agricultural products.

Article 12

Concessions And Agricultural Policies

1. Without prejudice to the concessions granted under Article 11 of this Agreement the provisions of this Chapter shall not restrict in any way the pursuance of the respective agricultural policies of the Parties or the taking of any measures under such policies, including the implementation of the respective provisions under the WTO.

2. The Parties shall notify to the Joint Committee changes in their respective agricultural policies pursued or measures applied, which may affect the conditions of trade in agricultural products between them as provided for in this Agreement. On the request of any Party, prompt consultations shall be held to examine the situation.

Article 13

Specific Safeguards

Notwithstanding other provisions of this Agreement, and in particular Article 26 of this Agreement, and given the particular sensitivity of the agricultural products, if imports of products originating in a Party, which are subject to concessions granted under this Agreement, cause serious disturbances to the markets of the other Party, the Parties shall immediately enter into consultations to find an appropriate solution. Pending such solution, the Party concerned may take the measures it deems necessary. The type and duration of the measures should not go beyond what is strictly necessary to remedy the situation.

Article 14

Sanitary And Phytosanitary Measures

The Parties shall apply their regulations in sanitary and phytosanitary matters in a way corresponding to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

CHAPTER III - GENERAL PROVISIONS

Article 15

Rules Of Origin And Co-Operation In Customs Administration

1. Protocol 3 (hereinafter called "Protocol 3") to this Agreement lays down the rules of origin and related methods of administrative co-operation.
2. The Parties shall take appropriate measures, including regular reviews by the Joint Committee and arrangements for administrative co-operation, to ensure that the provisions of Protocol 3 and Articles 3 to 8, 11, 16 and 27 of this Agreement are effectively and harmoniously applied, and to reduce, as far as possible, the formalities imposed on trade, and to achieve mutually satisfactory solutions to any difficulties arising from the operation of those provisions.

Article 16

Internal Taxation

1. The Parties shall refrain from any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products originating in the Parties.
2. Producers and exporters may not benefit from repayment of internal taxation in excess of the amount of direct or indirect taxation imposed on products exported to the territory of one of the Parties.

Article 17

General Exceptions

This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of: public morality, public policy or public security; of the protection of health and life of humans, animals or plants; the protection of environment, of the protection of national treasures possessing artistic, historic or archaeological value; of the protection of intellectual property or of the rules relating to gold or silver or to the conservation of exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 18

Security Exceptions

Nothing in this Agreement shall prevent a Party from taking any measure which it considers necessary:

- (a) to prevent the disclosure of information contrary to its essential security interests;
- (b) for the protection of its essential security interests or for the implementation of international obligations or national policies:
 - relating to the traffic in arms, ammunition and implements of war, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes, and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment; or
 - relating to the non-proliferation of biological and chemical weapons, nuclear weapons or other nuclear explosive devices; or
 - taken in time of war or other serious international tension.

Article 19

State Monopolies

1. The Parties shall adjust progressively any state monopoly of a commercial character so as to ensure that by the end of the transitional period laid down in Article 1 of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Parties. The Parties shall inform each other about the measures adopted to implement this objective.

2. The provisions of this Article shall apply to any body through which the competent authorities of the Parties, in law or in fact, either directly or indirectly supervise, determine or appreciably influence imports or exports between the Parties. These provisions shall likewise apply to monopolies delegated by the State to other bodies.

Article 20

Payments

1. Payments in freely convertible currencies relating to trade in goods between the Parties and the transfer of such payments to the territory of the Party, where the creditor resides, shall be free from any restrictions.

2. The Parties shall refrain from any exchange or administrative restrictions on the grant, repayment or acceptance of short term international trade credits or financial credits in which a resident of a Party participates.

3. Notwithstanding the provisions of paragraph 2, any measures concerning current payments connected with the movement of goods shall be in conformity with the conditions laid down under Article VIII of the Articles of the Agreement of the International Monetary Fund.

Article 21

Rules Of Competition Concerning Undertakings

1. The following are incompatible with the proper functioning of this Agreement in so far as they may affect trade between the Parties:

- (a) 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;
- (b) abuse by one or more undertakings of a dominant position in the territories of the Parties as a whole or in substantial part thereof.

2. The provisions of paragraph 1 shall apply to the activities of all undertakings including public undertakings and undertakings to which the Parties grant special or exclusive rights. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly, shall be subject to provisions of paragraph 1 in so far as the application of these provisions does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. With regard to products referred to in Chapter II of this Agreement the provisions stipulated in paragraph 1 (a) shall not apply to such agreements, decisions and practices which form an integral part of a national market organization.

4. If a Party considers that a given practice is incompatible with paragraphs 1, 2 and 3 of this Article and if such practice causes or threatens to cause serious prejudice to the interest of that Party or material injury to its domestic industry, the Party concerned may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 30 of this Agreement.

Article 22

State Aid

1. Any aid granted by a Party or through state resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it may affect trade between the Parties, be incompatible with the proper functioning of this Agreement.

2. The provisions of paragraph 1 shall not apply to products covered by Chapter II of this Agreement.

3. The Parties shall ensure transparency in the area of state aid, *inter alia*, by reporting annually to the Joint Committee on the total amount and the distribution of the aid given and by providing to the other Party, upon request, information on aid schemes and on particular individual cases of state aid.

4. If a Party considers that a particular practice, including that in agriculture:

- is incompatible with the terms of paragraph 1 of this Article, and
- causes or threatens to cause serious prejudice to the interest of that Party or material injury to its domestic industry or agriculture,

it may take appropriate measures under the conditions of and in accordance with the provisions laid down in Article 30 of this Agreement.

Such appropriate measures may only be taken in conformity with the procedures and under the conditions laid down by the Agreement on Subsidies and Countervailing Measures, the GATT 1994 and by the Agreement establishing the WTO and any other relevant instrument negotiated under their auspices, which are applicable between the Parties.

Article 23

Public Procurement

1. The Parties consider the liberalization of their respective public procurement markets as an objective of this Agreement.
2. The Parties shall progressively adjust their respective rules, conditions and practices in the field of public procurement with a view to grant suppliers of the other Party access to contract award procedures on their respective public procurement markets.
3. The Joint Committee shall examine developments related to the achievement of the objectives of this Article and may recommend practical modalities of implementing the provisions of paragraph 2 so as to ensure free access, transparency, full balance of rights and obligations and mutual opening of their respective public procurement markets.

Article 24

Protection Of Intellectual Property

1. The Parties shall grant and ensure the protection of intellectual property rights on a non-discriminatory basis, including measures for granting and enforcing such rights. The protection shall be improved to a level corresponding to the substantive standards of the multilateral agreements which are specified in Annex II to this Agreement by the end of the transitional period of this Agreement.
2. For the purpose of this Agreement the term "intellectual property protection" includes, in particular, protection of copyright and related rights including computer programs and data bases, trade marks for goods and services, geographical indications, patents, industrial designs, new varieties of plants, topographies of integrated circuits, as well as undisclosed information on know-how.
3. The Parties shall co-operate in matters of intellectual property. They shall hold, upon request of any Party, expert consultations on these matters, in particular, on activities relating to the existing or future international conventions on harmonization, administration and enforcement of intellectual property and on activities in international organizations, such as the World Trade Organization and the World Intellectual Property Organization, as well as relations of the Parties with any third country on matters concerning intellectual property.

Article 25

Dumping

If a Party finds that dumping within the meaning of Article VI of the GATT 1994 is taking place in trade relations governed by this Agreement, it may take appropriate measures against that practice in accordance with Article VI of the GATT 1994 and with the WTO Agreement on Implementation of Article VI of the GATT 1994 under the conditions and in accordance with the procedure laid down in Article 30 of this Agreement.

Article 26

General Safeguards

Where any product is being imported in such increased quantities and under such conditions as to cause or threaten to cause:

- (a) serious injury to domestic producers of like or directly competitive products in the territory of the importing Party, or
- (b) serious disturbances in any related sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region,

the Party concerned may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 30 of this Agreement.

Article 27

Structural Adjustment

1. Exceptional measures of limited duration, which derogate from the provisions of Article 4 of this Agreement, may be taken by any of the Parties in the form of increased customs duties.

2. These measures may only concern infant industries, or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems.

3. Customs duties on imports, applicable in the Party concerned to products originating in the other Party, introduced by these measures may not exceed 25% *ad valorem* and shall maintain the element of preference for products originating in the Parties. The total value of imports of the products which are subject to these measures may not exceed 15% of total imports of industrial products from the other Party, as defined in Chapter I during the last year for which statistics are available.

4. The measures may be applied for a period not exceeding five years unless a longer duration is authorised by the Joint Committee. They shall cease to apply at the expiration of the transitional period.

5. No such measures may be introduced in respect of a product if more than three years elapsed since the elimination of all customs duties and quantitative restrictions or charges or measures having an equivalent effect concerning that product.

6. The Party concerned shall inform the other Party of any exceptional measures it intends to take and, at the request of the other Party, consultations shall be held in the Joint Committee on such measures and the sectors to which they apply before they are applied. When taking such measures the Party concerned shall provide the Joint Committee with a schedule for the elimination of the customs duties introduced under this Article. This schedule shall provide for a phasing out of these duties starting at the latest two years after their introduction, at equal annual rates. The Joint Committee may decide on a different schedule.

*Article 28*Re-Export And Serious Shortage

Where compliance with the provisions of Articles 6 and 8 of this Agreement leads to:

- (a) re-export towards a third country against which the exporting Party maintains for the product concerned quantitative export restrictions, export duties or measures or charges having equivalent effect, or
- (b) a serious shortage, or threat thereof, of a product essential to the exporting Party,

and where the situations referred to above give rise or are likely to give rise to major difficulties for the exporting Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 30 of this Agreement.

*Article 29*Fulfillment Of Obligations

1. The Parties shall take any general or specific measures required to fulfill their obligations under this Agreement. They shall ensure to it that the objectives set out in this Agreement are achieved.
2. If a Party considers that the other Party has failed to fulfill an obligation under this Agreement, the Party concerned may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 30 of this Agreement.

*Article 30*Procedure For The Application Of Safeguard Measures

1. Before initiating the procedure for the application of safeguard measures set out in the following paragraphs of this Article, the Parties shall endeavour to solve any differences between them through direct consultations.
2. In the event of a Party subjecting imports of products liable to give rise to the situation referred to in Article 26 of this Agreement to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows, it shall inform the other Party.
3. Without prejudice to paragraph 7 of this Article, a Party which considers resorting to safeguard measures shall promptly notify the other Party thereof and supply all relevant information. Consultations between the Parties shall take place without delay but not later than 30 days after requesting such consultations in the Joint Committee with a view to finding a solution acceptable to the Parties.
4. With regard to:
 - Articles 25, 26 and 28 of this Agreement, the Joint Committee shall examine the case or the situation and may take any decision needed to put an end to the difficulties notified by the Party concerned. In case of absence of such decision within thirty days of the matter being referred to the Joint Committee, the Party concerned may adopt the measures necessary in order to remedy the situation.

- Article 29 of this Agreement, the Party concerned may take appropriate measures after the consultations have been concluded or a period of three months has elapsed from the date of the first notification to the other Party.
- Articles 21 and 22 of this Agreement, the Party concerned shall give the Joint Committee all the assistance required in order to examine the case and, where appropriate to eliminate the practice objected to. If the other Party fails to put an end to the practice objected to within the period fixed by the Joint Committee or if the Joint Committee fails to reach an agreement within thirty working days of the matter being referred to it, the Party concerned may adopt appropriate measures to deal with the difficulties resulting from the practice in question.

5. The safeguard measures taken shall be immediately notified to the other Party. They shall be limited with regard to their extent and to their duration to what is strictly necessary in order to rectify the situation giving rise to their application and shall not be in excess of the injury caused by the practice or the difficulty in question. Priority shall be given to such measures as will least disturb the functioning of this Agreement.

6. The safeguard measures taken shall be the object of periodic consultations within the Joint Committee with a view to their relaxation as soon as possible or abolition when conditions no longer justify their maintenance.

7. Where exceptional circumstances requiring immediate action make prior examination impossible, the Party concerned may, in the cases of Articles 25, 26 and 28 of this Agreement, apply forthwith the provisional measures strictly necessary to remedy the situation. The measures taken shall be notified without delay and consultations between the Parties shall take place as soon as possible within the Joint Committee.

Article 31

Balance Of Payments Difficulties

1. The Parties shall endeavour to avoid the imposition of restrictive measures including measures relating to imports for balance of payments purposes.

2. Where one of the Parties is in serious balance of payments difficulties, or under imminent threat thereof, the Party concerned may, in accordance with the conditions established under the GATT 1994 and the WTO adopt restrictive measures, including measures related to imports, which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The measures shall be progressively relaxed as balance of payments conditions improve and they shall be eliminated when conditions no longer justify their maintenance. The Party concerned shall inform the other Party forthwith of their introduction and, whenever practicable, of a time schedule for their removal.

Article 32

Services And Investment

1. The Parties recognize the growing importance of certain areas such as services and investments. In their efforts to gradually develop and broaden their co-operation, in particular in the context of the European integration, they will examine the possibility of achieving a progressive liberalization and mutual opening of their markets for investments and trade in services, taking into account relevant provisions of the General Agreement on Trade in Services.
2. The Parties will discuss in the Joint Committee the possibilities to extend their trade relations to the fields of foreign direct investment and trade in services.

Article 33

Evolutionary Clause

1. Where a Party considers that it would be useful in the interests of the economies of the Parties to develop and deepen the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Party. The Parties may instruct the Joint Committee to examine such a request and, where appropriate, may make recommendations, particularly with a view to opening negotiations.
2. Agreements resulting from the procedure referred to in paragraph 1 will be subject to ratification or approval by the Parties in accordance with their internal legislation.

CHAPTER IV - INSTITUTIONAL AND FINAL PROVISIONS

Article 34

The Joint Committee

1. A Joint Committee is hereby established and shall be composed of representatives of the Parties.
2. The implementation of this Agreement shall be supervised and administrated by the Joint Committee.
3. For the purpose of the proper implementation of this Agreement, the Parties shall exchange information and, at the request of any Party, shall hold consultations within the Joint Committee. The Joint Committee shall keep under review the possibility of further removal of the obstacles to trade between the Parties.
4. The Joint Committee may take decisions in the cases provided for in this Agreement. On other matters the Joint Committee may make recommendations.
5. The decisions taken by the Joint Committee will be subject to approval by the Parties in accordance with their internal legislation.

Article 35

Procedures Of The Joint Committee

1. For the proper implementation of this Agreement the Joint Committee shall meet whenever necessary. Each Party may request that a meeting be held.
2. The Joint Committee shall act by consensus.
3. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfillment of internal legal requirements, the decision shall enter into force, if no later date is contained therein, on the day of the receipt of the notification about the fulfillment of such requirements.
4. For the purpose of this Agreement the Joint Committee shall adopt its rules of procedure which shall, *inter alia*, contain provisions for convening meetings and for the designation of the Chairperson and its term of office.
5. The Joint Committee may decide to set up subcommittees and working groups to assist it in accomplishing its tasks.

Article 36

Customs Unions, Free Trade Areas And Frontier Trade

This Agreement shall not prevent the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade to the extent that these do not negatively affect the trade regime of the Parties and in particular the provisions concerning rules of origin provided for by this Agreement.

Article 37

Territorial Application

This Agreement shall apply to the customs territories of the Parties.

Article 38

Annexes And Protocols

1. The Annexes and the Protocols to this Agreement are an integral part of it.
2. The Joint Committee may decide to amend the Annexes and Protocols to this Agreement in accordance with the provisions of paragraph 2 of the Article 35.

Article 39

Amendments

Amendments to this Agreement shall enter into force in accordance with procedure stipulated in Article 40 of this Agreement.

Article 40

Entry Into Force

This Agreement shall enter into force on the first day of the second month following the date of the receipt of the last notification by which Parties inform each other through diplomatic channels that the internal legal procedures for the entry into force of this Agreement have been fulfilled.

Article 41

Validity And Termination

1. This Agreement is concluded for an indefinite period of time.
2. Each Party may denounce it through diplomatic channels by a written notification to the other Party. In such case this Agreement shall cease to apply on the first day of the seventh month after the date on which the other Party received the notification.
3. The Parties agree that in case of accession of one of them to the European Union, the Agreement will be terminated without successive compensation for the other Party, at the latest the day before membership takes effect.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed the present Agreement.

DONE at this day of in two original copies, each of them in Romanian, the Serbian, English languages, all texts being equally authentic. In case of divergence in interpretation the English text shall prevail.

FOR ROMANIA

FOR THE SERBIA AND MONTENEGRO
