

Joint Committee Meeting

Sarajevo, 20 November 2013

**REPORT BY THE CHAIR
WORKING GROUP ON TRADE IN SERVICES**

November 2013

The purpose of this document is to report on the activities of the CEFTA Working Group on Trade in Service in the period of 1 January to 20 November 2013.

The Report gives an overview of the regular meetings of the Working Group in the reporting period and provides the information on other activities in the field of services cooperation under the framework of the CEFTA Agreement.

During the reporting period, two meetings have been held: seventh meeting on 8 February in Budapest and eight meeting on 17 June in Sarajevo. One tailor made workshop on the trade in services statistics was organised on 8-10 October in Sarajevo.

I. EXPLORING THE POTENTIALS FOR OPENING UP THE NEGOTIATIONS IN TRADE IN SERVICES

The fourth Regional Table on Elimination of NTBs and the Trade in Services Liberalization was held on 8 February in Budapest under the auspices of the OECD. At the session on trade in services, the OECD experts presented the final results of the trade restrictiveness assessment of professional services in CEFTA. The assessment covered four preselected sectors: the accounting and auditing, legal, architectural and engineering services. The Services Trade Restrictiveness Indices were calculated for each Party, type of service and a selected measure. The results highlighted mostly barriers in the areas of foreign ownership and market entry condition and in the area of movement of people. CEFTA representatives confirmed the accuracy of the results and validated them as final, agreeing to discuss the follow-up steps in the relevant CEFTA bodies. The OECD also introduced the similar methodology for another three service sectors - distribution, construction and transport, which will be a subject of a assessment envisaged for the autumn of 2013.

At the eighth meeting held on 17 June, the Parties welcomed the proposal to organize the workshop on trade in services statistics. Although the assistance from TAIEX is not certain, the Parties expressed their interest to have this seminar with the same agenda and the participants with the assistance of other potential donors.

II. MODEL OF NEGOTIATIONS ON TRADE IN SERVICES

The model of negotiations as well as establishment of the negotiating group was discussed at the seventh meeting of the CEFTA Working Group on Trade in Services held in Budapest on 8 February 2013. The meeting was attended by Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Serbia and Kosovo*.

The Chair confirmed that the model of negotiations was discussed and agreed last year, during the chairing of Albania. Once agreed, the Protocol on Trade in Services will allow Parties to have the same level of openness across the Region.

Regarding the harmonized minimum level of specific commitments, all Parties sent their positions, with exception of Croatia who had already declared that it would not negotiate due to their forthcoming accession to the EU.

The Parties agreed on the establishment of the Negotiating group, whose work is separated from the work of the Working Group. Under the framework of the Working Group, the members will continue to discuss the usual topics, such as STR indices of the OECD in professional and other services (e.g. transport), cooperation with the World Bank on Services Knowledge Platform, and improvement of trade in services statistics. Within this group, the text of the Protocol on Trade in Services should also be finalized.

Under the framework of the Negotiating Group, the Parties should focus only on negotiations, i.e. exchange of requests and offers and come to the agreement on harmonized minimum level of specific commitments of CEFTA Parties. The Secretariat explained that once the Parties enter the official negotiations, the preparation of positions should be exclusively within the mandate approved by the respective governments.

The Parties were invited to nominate officially the negotiating persons until the end of March. All the Parties sent the list of nominations.

At the eighth meeting held on 17 June, the Parties decided to hold the first round of negotiations in November either back to back with the Joint Committee meeting or as a separate meeting. It was agreed that the basis for the negotiation is the text of the Additional Protocol on Trade in Services and the harmonized minimum level of specific commitments.

Due to lengthy legal procedures, certain Parties were not able to secure the mandate for negotiations by their governments by mid November as earlier announced; therefore, the first round of negotiations on liberalization is postponed for the first quarter of 2014.

* This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo declaration of independence

III. COOPERATION IN THE FIELD OF TRADE IN SERVICES STATISTICS

During the Chairmanship of Bosnia and Herzegovina, the CEFTA Secretariat in cooperation with the WTO Secretariat and UNCTAD organized a two-day workshop on trade in services statistics. The third day was dedicated to the presentation of results of Services Trade Restrictive Index (STRI) in Construction Services by the OECD. The Workshop took place on 8-10 October 2013 in Sarajevo.

The purpose of this Workshop was to raise awareness of the importance of good quality of statistics, and in particular of statistics of trade in services, as well as to provide the participants with information on the latest developments in recording the specific services, such as professional, construction, etc. The targeted audience were the government officials engaged in the negotiations on liberalisation of trade in services together with the responsible statisticians. This subject has also an important significance for the forthcoming agenda of the CEFTA Parties in the period 2014-2020 (SEE Strategy 2020) where one of the identified cross cutting priorities is to improve the quality and availability of data in international trade.

The major topics at the agenda would included: (i) importance of statistics for international trade and negotiations on liberalisation, (ii) main methodological references used for the production of statistics on international trade; (iii) trade in services statistics by mode of supply; (iv) data sources and recording rules for professional services, etc.

The participants adopted the Conclusions from the Workshop where the accent was put on the need to: (i) follow the same guidelines to compile trade in services data according to BPM5 or BPM6 guidelines as well as FATS; (ii) identify priorities for further developing statistics for commonly agreed sectors to meet the needs of negotiations on trade in services within the CEFTA framework; (iii) regularly meet and discuss the topics of common interest in order to improve the cooperation in the field of trade in services statistics; (iv) identify the user needs; (v) establish the forum of exchange of experiences between compilers; (vi) identify needs for technical assistance and capacity building, in particular for FATS.

The participants agreed that the CEFTA Working Group on Trade in Services could serve as a forum for deepening further regional cooperation wherever it is applicable. The further activities in this area will be coordinated in relation to EUROSTAT for the IPA 2012 project for relevant Parties due to begin in January 2014, in particular for international trade in services.

The third day was dedicated to the presentation of STRI in Construction services. Since the results of the assessment were preliminary, Parties were asked to verify the findings and inform the OECD by 31 October. Also by the same deadline, the Parties agreed to communicate their preferences for the next sector services analysis, i.e. whether to have STRI analysis in distribution services or transport services. The majority of Parties at the spot expressed their preferences for distribution services (which would better link with the Strategy SEE 2020 and supply chains analysis) while the transport services, as a subject of bilateral agreements, provide for less potential to be negotiated multilaterally.

IV. THE ADDITIONAL PROTOCOL ON TRADE IN SERVICES

During the reporting period, the members of the Working Group have worked intensively on the text of the Additional Protocol on Trade in Services. At the eighth meeting, the Parties finalized the text which is expected to be endorsed at the Joint Committee meeting in November 2013.

The text of the Additional Protocol is attached to this Report.

ADDITIONAL PROTOCOL 4

TO THE AGREEMENT ON AMENDMENT OF AND ACCESSION TO THE CENTRAL EUROPEAN FREE TRADE AGREEMENT

Preamble

The Republic of Albania, Bosnia and Herzegovina, the Republic of Macedonia, the Republic of Moldova, Montenegro, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on behalf of Kosovo in accordance with United Nations Security Council Resolution 1244 (hereinafter called “the Parties”),

Bearing in mind the CEFTA 2006 Preamble, its Objectives (set out in Article 1), and Chapter VI (Articles 26 to 29) of the Agreements relating to the trade in services, including E-Commerce the Parties will gradually achieve a progressive liberalization of their services markets in accordance with Article V of GATS.

Recognising that liberalization of both goods and services in the framework of CEFTA 2006 shall act as avenues for achieving objectives of economic development and growth in the region by expanding intraregional investment and production opportunities;

Desiring to:

Create favourable conditions for the development and diversification of trade between the Parties and for the promotion of commercial and economic co-operation in services

Considering that:

The services sector is playing an increasing role in the economies and trade of the Parties, with great potential to augment intra-regional trade in services in a mutually beneficial manner;
No provision of this Protocol may be interpreted as exempting the Parties from their obligations in other international agreements, especially the WTO,

Mindful of:

The obligations of the Parties in terms of existing regional trade arrangements and bilateral trade agreements;

Article 28 “Electronic Commerce” of CEFTA 2006, the Parties will consider, inter alia, cross-border electronic supply of services, data privacy, encryption, data transfer, processing, storage and data mining.

Have agreed as follows:

Article 1

Scope and Coverage

1. This Protocol applies to measures introduced and implemented by Parties affecting trade in services. It applies to all services sectors, except as indicated in paragraphs 2 and 3 of this Article
2. In respect of air transport services, this Protocol shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services. The definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated and made part of this Protocol.
3. Articles 4, 5 and 6 of this Protocol shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.
4. This Protocol shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

Article 2

Incorporation of Provisions from the GATS

Wherever a provision of this Protocol provides that a provision of the GATS is incorporated into and made part of this Protocol the meaning of the terms used in the GATS provision shall be understood as follows:

- (a) "Schedule" means a Schedule referred to in Article 18. and contained in Annex [..];
and
- (b) "specific commitment" means a specific commitment in a Schedule referred to in Article 18.

Article 3

Definitions

For the purpose of this Protocol:

- (a) the following definitions of Article I of the GATS are incorporated into and made part of this Protocol:
 - (i) “trade in services”;
 - (ii) “services”; and
 - (iii) “a service supplied in the exercise of governmental authority”;
- (b) “measures by Parties” means measures taken by the Parties as defined in Article I paragraph 3 (a) (i) and (ii) of the GATS;
- (c) the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Protocol:
 - (i) “measure”;
 - (ii) “supply of a service”;
 - (iii) “measures by Parties affecting trade in services”;
 - (iv) “commercial presence”;
 - (v) “sector” of a service;
 - (vi) “service of another Party”;
 - (vii) “service supplier”;
 - (viii) “monopoly supplier of a service”;
 - (ix) “service consumer”;
 - (x) “person”;
 - (xi) “natural person of another Party”;
 - (xii) “juridical person”;
 - (xiii) “owned”, “controlled” and “affiliated”; and
 - (xiv) “direct taxes”;
- d) “juridical person of other Party” means a juridical person which is either:

- (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of any Party and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (d) (i) (aa);

or
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (aa) natural persons of that other Party; or
 - (bb) juridical persons of that other Party identified under subparagraph (d) (i).”

Article 4

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex [...], a Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of other Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.
2. Treatment granted under other existing or future agreements concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS shall not be subject to paragraph 1.
3. If a Party concludes or amends an agreement of the type referred to in paragraph 2, it shall notify the other Parties without delay and it shall negotiate upon request by other Parties the incorporation into this Protocol of treatment no less favorable than that provided under the agreement with the non-party.
4. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is hereby incorporated into and made part of this Protocol.

Article 5

Market Access

1. Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Protocol.

2. The Parties shall not introduce in their territories any new restrictions relating to the right of establishment of natural and juridical persons of the other Parties, except otherwise provided in this Protocol

3. A Party shall not introduce any new restrictions on the provision of services by natural and juridical persons of the other Parties, except as otherwise provided for in this Protocol.

Article 6

National Treatment

Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Protocol

Article 7

Additional Commitments

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Protocol.

Article 8

Domestic Regulation

The rights and obligations of the Parties in respect of domestic regulation shall be governed by Article VI of the GATS, which is hereby incorporated into and made part of this Protocol.

Article 9

Recognition

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford other Party adequate opportunity to negotiate its accession to such an agreement

or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the territory of that other Party should also be recognised.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

4. The Parties shall begin the necessary processes to develop mutual recognition agreements for the professions as provided for in GATS Article VII Recognition.

Article 10

Movement of Natural Persons

1. The rights and obligations of the Parties in respect of the movement of natural persons of a Party supplying services shall be governed by the GATS Annex on Movement of Natural Persons Supplying Services, which is thereby incorporated into and made part of this Protocol

2. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

Article 11

Transparency

1. The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1, 2 and 3 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Protocol

2. For the purposes of this Protocol the reference to contact points in CEFTA 2006 Article 44 Transparency, shall be deemed to be the Enquiry Points as defined in GATS Article III:4, for the Parties to communicate with each other.

3. Each Party shall, to the extent practicable, provide in advance information on any measure of general application that the Party proposes to adopt in order to allow an opportunity for other Parties to comment on the measure, and the Contact Points shall be the means for such communications.

4. Any Party may notify to the Sub Committee on Services Trade any measure by any other Party, which it considers affects the operation of this Protocol.

Article 12

Monopolies and Exclusive Service Suppliers

1. The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Protocol.
2. The Subcommittee on Trade in Services may, at the request of a Party which has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with paragraph 1 or 2, request the Party establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.
3. If after the date of entry into force of this Protocol a Party grants monopoly rights regarding the supply of a service covered by its specific commitments, that Party shall notify the Sub Committee on Services Trade no later than three months before the intended implementation of the grant of monopoly rights and the provisions of GATS Article XXI Modifications of Schedules shall apply.

Article 13

Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Protocol.

Article 14

Payments and Transfers

1. Except under the circumstances envisaged in Article 15, a Party shall not apply restrictions on international transfers and payments for current transactions with another Party.
2. Nothing in this Protocol shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (hereinafter referred to as the "IMF"), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 15 or at the request of the IMF.

Article 15

Restrictions to Safeguard the Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. Any restriction to safeguard the balance of payments adopted or maintained by a Party under and in conformity with Article XII of the GATS shall apply under this Protocol

Article 16

Denial of Benefits

A Party may deny the benefits of this Protocol to a service provider of another Party where it establishes that the service is being provided by an enterprise owned or controlled by persons of a non-Party who have no **substantive business operations** in the territory of the other Party.

Article 17

Exceptions

The rights and obligations of the Parties in respect of general exceptions and security exceptions shall be governed by Article XIV and paragraph 1 of Article XIV *bis* of the GATS, which are hereby incorporated into and made part of this Protocol.

Article 18

Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 4, 5, 6 and 7. With respect to sectors where such specific commitments are undertaken, each Schedule shall specify the elements set forth in subparagraph a-e of paragraph 1 of Article XX of the GATS.
2. Measures inconsistent with both Articles 5 and 6 shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.
3. The Parties' Schedules of specific commitments are set out in Annex [...] and shall form the integral part of this Protocol.

Article 19

Modification of Schedules

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of specific commitments. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of

specific commitments prior to such consultations is maintained. Modifications of Schedules are subject to the procedures set out in Articles 47 and 48 of the CEFTA 2006

Article 20

Review

1. With the objective of further liberalising trade in services between them, in particular eliminating substantially all remaining discrimination within a period of ten years, the Parties shall regularly review their Schedules of specific commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than three years after the entry into force of this Agreement.

2. The regular reviews of the level of liberalisation committed to by the Parties shall take into account the assessment of the degree of restrictiveness of measures affecting trade in services using methodologies provided by the World Bank and OECD.

Article 21

Sub Committee on Services Trade

The Sub Committee on Services Trade established pursuant to Article 41 paragraph 5 of the CEFTA 2006 shall facilitate and supervise the implementation and application of this Protocol with respect to Article 21, bearing in mind the principles of proportionality and subsidiarity.

Article 22

According to Article 47 paragraph 1 of CEFTA 2006, this Protocol is an integral part of CEFTA 2006.

Article 23

Annexes

The following Annexes form an integral part of this Protocol:

- Annex [X] (Schedules of Specific Commitments);
- Annex [X] (Lists of MFN Exemptions);

Article 24

Entry into force

1. This Additional Protocol is subject to ratification, acceptance or approval in accordance with the requirements foreseen by domestic legislation. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Additional Protocol shall enter into force on the thirtieth day upon depositing of the last instrument of ratification, acceptance or approval.

3. For each Party depositing its instrument of ratification, acceptance or approval after the date of the deposit of the third instrument of ratification, acceptance or approval, this Additional Protocol shall enter into force on the thirtieth day after the day on which it deposits its instrument of ratification, acceptance or approval.

4. If its constitutional requirements permit, any Party may apply this Additional Protocol provisionally. Provisional application of this Additional Protocol in accordance under this paragraph shall be notified to the Depositary.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto, have signed this Additional Protocol.

Done at Brussels on _____, in a single authentic copy in the English language, which shall be deposited with the Depositary of the Central European Free Trade Agreement, which shall transmit certified copies to all Parties.

For the Republic of Albania

.....

For Bosnia and Herzegovina

.....

For the Republic of Macedonia

.....

For the Republic of Moldova

.....

For Montenegro

.....

For the Republic of Serbia

.....

For the United Nations Interim Administration Mission in Kosovo on behalf of Kosovo in accordance with the United Nations Security Council Resolution 1244

.....