

Expanding Trade and Investment in South Eastern Europe

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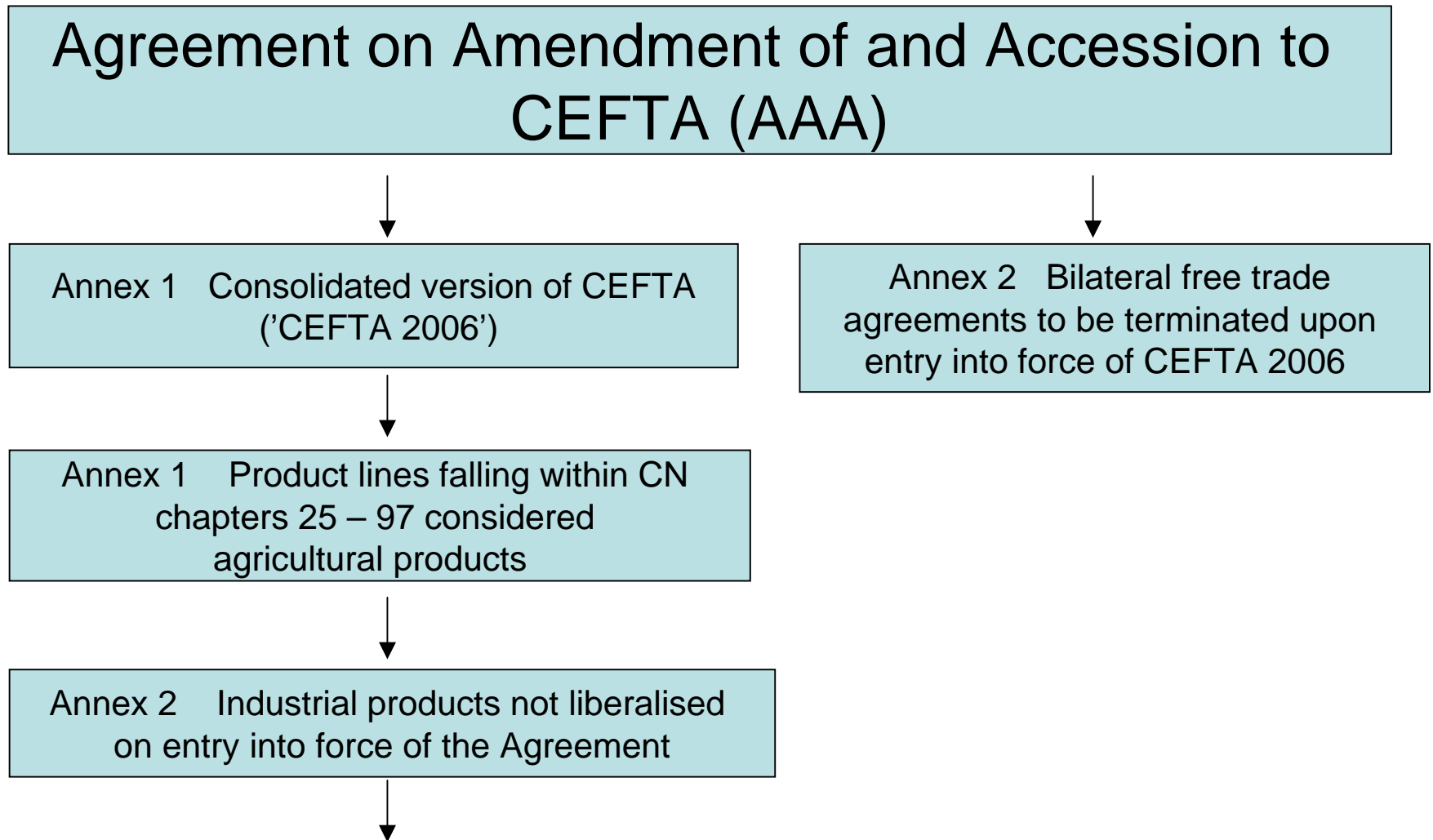
A Reader's Guide to 'CEFTA 2006'

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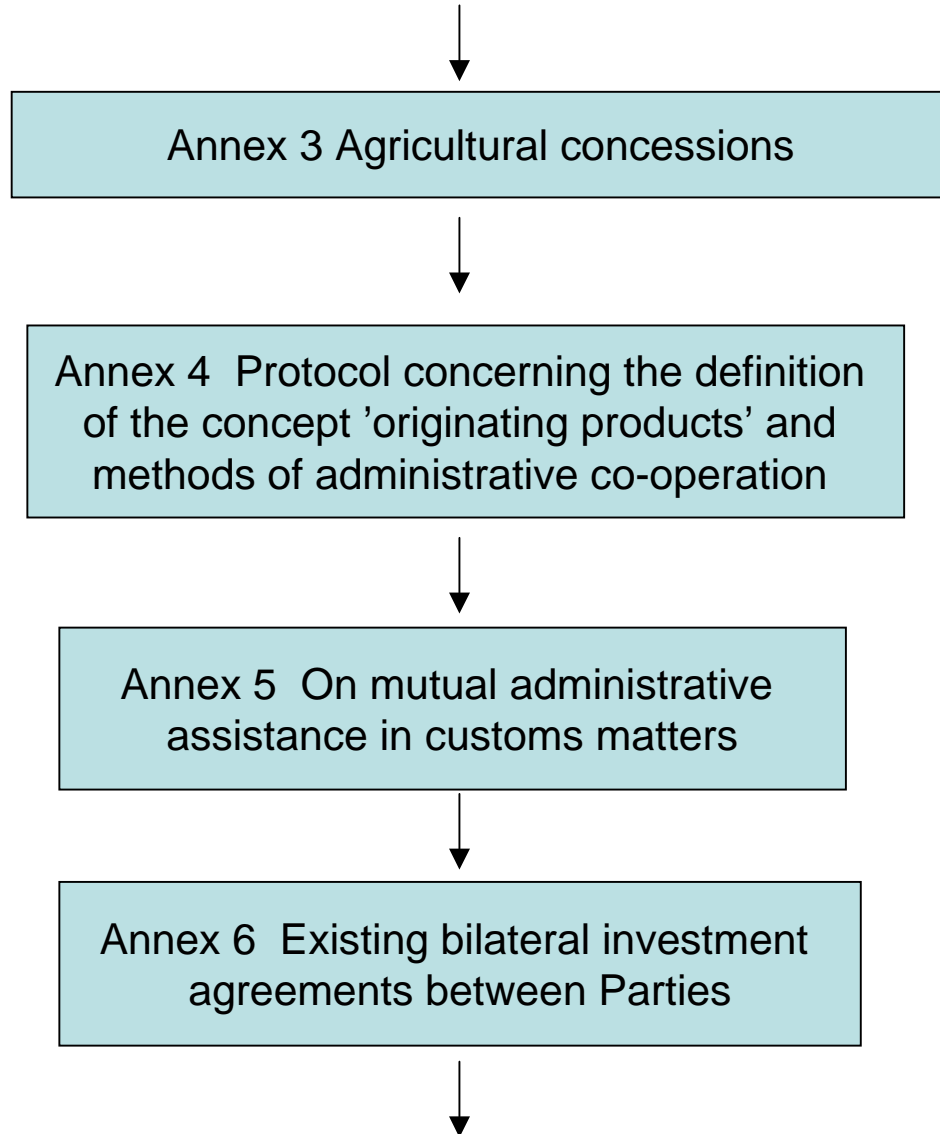
Elements of my presentation

1. Structure of the new Agreement
2. Reasons for a new Agreement
3. Start of the new Agreement
4. Contents of 'CEFTA 2006'
 - Liberalisation of trade in goods
 - Modernisation of trade rules
 - New trade issues
 - Functioning rules

1. Structure of new Agreement



1. Structure of new Agreement (following)



1. Structure of new Agreement (following)



Annex 7 Agreements and conventions
relating to the protection of intellectual
property rights



Annex 8 Appointment of a mediator



Annex 9 Constitution and functioning
of the Arbitral Tribunal

2. Reasons for a new agreement

A *single* agreement means:

- Greater transparency for business
- Easier administration for government
- Greater uniformity
- Better discipline

A *new* agreement means a more modern agreement

An *Agreement* called *CEFTA* means also

the Parties "Aim ... to accede to the EU" and that CEFTA is a proven route to accession.... (Preamble)

- ...because intra-regional free trade is part of pre-accession process to EU (SAAs).

Greater impact on regional trade and especially on foreign direct investments from outside the region

Regional free trade has significant economic potential

Source: Kaminski and de la Rocha, 'Trade Policies and Institutions in the Countries of South Eastern Europe' in *The EU Stabilisation and Association Process*, World Bank Document 2002.

Comparison base: 2000

- **Triple** intra-regional trade
 - **Quadruple** trade *between* Western and Eastern Balkans
 - **Double** trade *within* Western Balkans
- **CEFTA 2006 is an important economic means to a major political end**

3. The start of 'CEFTA 2006'

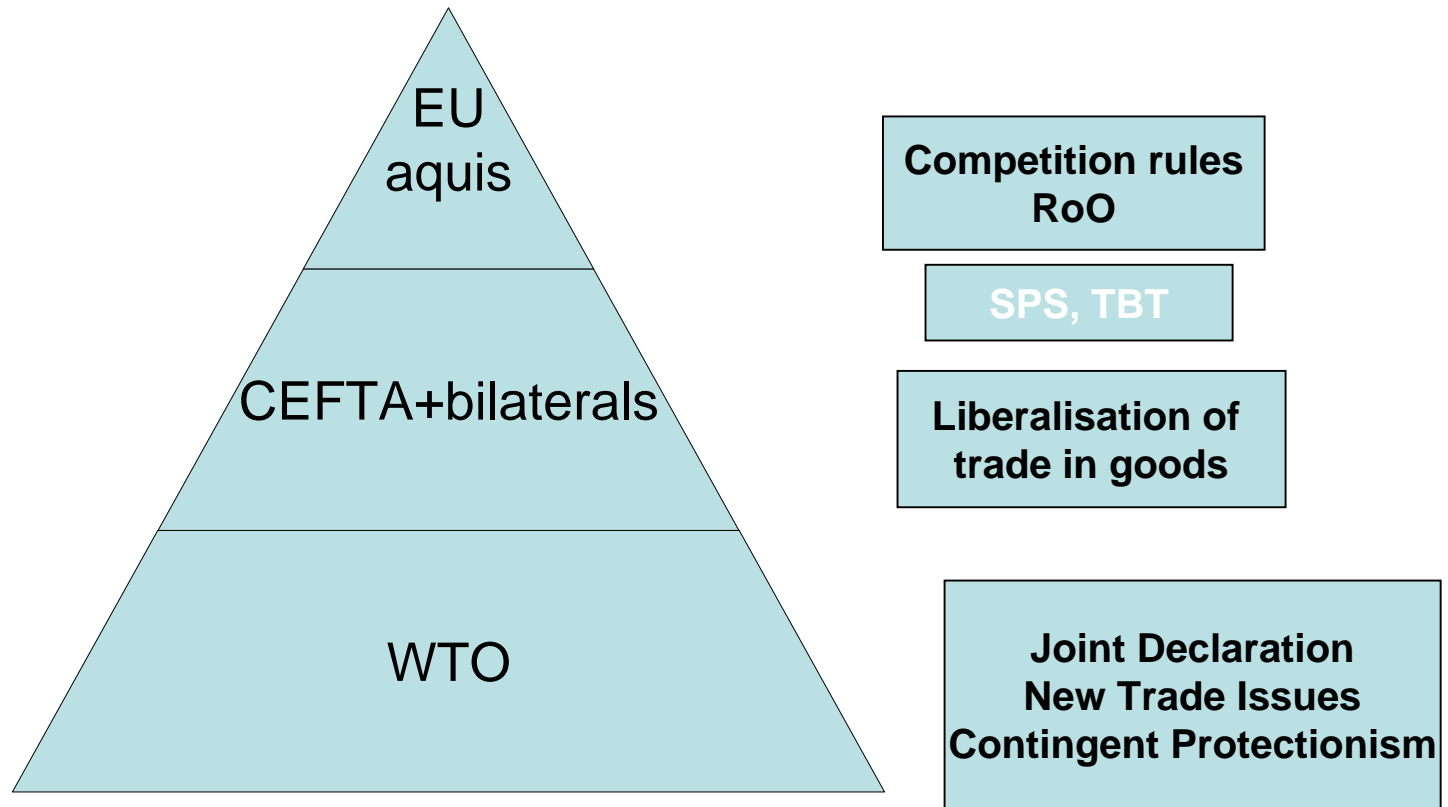
- By 1 May 2007, if all Parties have ratified it by 31 March (AAA Article 4.2).
- Otherwise entry into force 30 days after ratification by the fifth Party (AAA Article 4.3). Ratified to date by Albania, UNMIK/Kosovo, Montenegro.
- Each subsequent party enters 30 days after it has ratified Agreement (AAA Article 4.4)

→ Probable entry into force: summer/fall 2007

4. A reader's guide to 'CEFTA 2006'

- 4.1 Liberalisation of trade in goods
(Chapters I, II, III, IV) Existing CEFTA+Bilaterals
- 4.2 Modernisation of trade rules (rules of origin, competition rules)
Chapter V, EU acquis based
- 4.3 New trade issues (services, investment, government
procurement, intellectual property)
Chapter VI, WTO based
- 4.4 Functioning rules (Chapter VII)

Building blocks of CEFTA 2006



Time frame: on entry into force except for most new trade issues and competition rules

4.1 Liberalisation of trade in goods

General obligations (Chapter I) vis-à-vis Parties

- No quantitative restrictions on exports or imports (and measures having equivalent effect) between the parties. Article 3
- No customs duties on exports (incl charges having etc) (Article 4)
- Standstill of custom duties on imports (incl etc) (Article 5)

4.1 Liberalisation of trade in goods

Elimination of customs duties (preferential)

- All customs duties etc on all **industrial** products abolished on entry into force of Agreement except for products listed in Annex 2 (only three countries by 31 December 2008). Article 8
 - Customs duties etc on **agricultural** products listed in Annex 3 to be reduced or abolished as indicated. Article 10.1. Review further concessions by 1 May 2009. Article 10.3
- Preferential liberalisation of imports of all industrial products and of 1/3 to 1/2 of agricultural products. **NB!** "Substantially all trade" liberalised

4.1 Liberalisation of trade in goods

Concessions and Agricultural Policies (Article 11)

- No restrictions on domestic agricultural policies (11.1)
- Obligation to inform JC of changes in agricultural policies and to consult on request (11.2)
- Use of export subsidies in mutual trade prohibited (11.3)

4.1 Liberalisation of trade in goods

Sanitary and Phytosanitary Measures (Article 12)

- Rights and obligations governed by WTO Agreement on the Application of SPM (12.1)
- **Co-operate** to apply SPM in non-discriminatory manner. Obligation to **inform** (12.2)
- Negotiate agreements to **harmonise** and mutually **recognize** SPM in accordance with WTO (12.3)
- **Settle disputes** in accordance with Article 42

→ [WTO plus](#)

4.1 Liberalisation of trade in goods

Elimination of TBTs (Chapter IV, Article 13)

- Confirms rights and obligations under WTO (13.1)
- **Identify** and **eliminate** unnecessary existing TBTs. JC may set up special committee to oversee this (13.2)
- **Facilitate** and **harmonise** technical regulations, standards and mandatory conformity assessment procedures (13.3a)

4.1 Liberalisation of trade in goods

Elimination of TBTs (Chapter IV, Article 13) (following)

- Harmonise technical regulations, standards and procedures for conformity assessment **with those of EU** (13.3c)
- Negotiate agreements on harmonisation of technical regulations, standards and procedures for mutual recognition of conformity assessment by 31 December 2010 (13.4)
- **Inform** JC of draft text of new regulation or standard it plans to adopt and **notify** JC of possible unnecessary TBTs others plan to adopt (13.5)

→ WTO plus

4.2 Modernisation of trade rules

General Provisions (Chapter V)

- Rules of Origin (Article 14)
- Fiscal Discrimination (Article 15)
- Competition rules and contingent protection rules (Articles 19-25)

4.2 Modernisation of trade rules

Rules of origin and co-operation in customs administration

- **All** Parties adopt Pan-European and Mediterranean Rules of Origin (Pan-SEE diagonal cumulation of origin). JC may amend rules of origin. (14.1) Annexes 4 and 5
- Regular reviews by JC to ensure "effective and harmonised application" (14.3). Major task for customs and business essential for Pan-European diagonal cumulation.
- Simplify and facilitate customs procedures (14.4).

→ **NB!** Integrity of certificates of origin essential for FTA

4.2 Modernisation of trade rules

Fiscal Discrimination (Article 15)

- Taxes may not discriminate, directly or indirectly, between same product originating in different Parties.

4.2 Modernisation of trade rules

Competition Rules

- No discrimination between the Parties regarding the conditions under which products are marketed due to state monopolies/state-trading enterprises (Article 19.1)
- Undertakings may not **prevent, restrict or distort competition** by "agreements" or "concerted practices" or by "**abuse...of a dominant position**" (20.1)
- Such practices to be assessed on the basis of Treaty Establishing EC: Articles 81, 82 and 86 (20.2)
- Transition period: to apply by 1 May 2010 (20.3)
- An injured Party can take appropriate measures (20.7)

→ EU minus

4.2 Modernisation of trade rules

State Aid (Article 21)

- Profits aid that threatens to distort or distorts competition *and* affects trade between the Parties (21.1) [except agricultural products (21.2)]
- Practices to be assessed on the basis of EC Article 87 (21.4)
- An injured Party can take appropriate measures in accordance with Article 24 (21.5)
- Confirms rights to take countervailing measures in accordance to GATT and the WTO Agreement on Subsidies (21.6)
- Parties to report annually to JC on state aid (21.7)

→ EC minus

4.2 Modernisation of trade rules

Contingent Protection Rules

- Anti-Dumping Measures (Article 22) → WTO
- General Safeguards (Article 23)
 - Rights under GATT Article XIX and WTO Agreement on Safeguard Measures confirmed (23.1) → WTO
 - Right to take **bilateral** safeguard measures if imports due to regional trade liberalisation cause serious injury to domestic producers or serious disturbances to any sector which could seriously deteriorate the economic situation of the Party (23.2)
- Specific Safeguard (Article 23 bis)
 - Right to take **bilateral** measures in case increased imports of **agricultural** products from another Party cause serious disturbance to its markets or domestic regulatory mechanisms pending satisfactory solution through consultations

→ WTO minus

4.2 Modernisation of trade rules

Conditions and Procedures for Taking Measures (Article 24) – inter alia

- **Consult** directly to solve differences (24.1)
- **Inform** Parties of administrative procedures preparatory to safeguard measures (24.2)
- **Notify** intent to take protective measures (24.3)
- Restrict extent and duration of measures to what is "strictly necessary" to remedy problem (24.4)
- Bilateral safeguard measures not to exceed one year's duration, renewable two times at most and repeatable at earliest after two years (24.5)
- Immediate provisional measures may be taken in exceptional and critical circumstances (24.7)

4.3 New Trade Issues (Chapter VI)

- Services
- Investment
- Government Procurement
- Protection of Intellectual Property

4.3 Services

- Broaden co-operation aiming at progressive liberalisation and mutual opening of Parties' services markets **in the context of European integration** (Article 27)
- JC to review progress annually and may recommend launching negotiations to achieve progressively a high level of liberalisation in conformity with GATS

4.3 Investment

- Confirm existing bilateral investment agreements listed in Annex 6 (30.1)
- Create and maintain stable, favourable and transparent conditions for investors of other Parties (31.1)
- Promote investments made by investors of other Parties in accordance with domestic laws and regulations (31.2-3)
- Non-discrimination, national treatment and most-favoured-nation treatment (32.2-4)
- Parties to co-ordinate investment policies and facilitate investment conditions within the JC (33.2-3)

4.3 Government Procurement

- Government procurement to be **transparent, reasonable, non-discriminatory between Parties** and based on principle of open and efficient competition upon entry into force of Agreement (35.1)
- **National treatment** of all Parties no later than 1 May 2010 (35.2)
- JC to review on a regular basis progress in opening of government procurement markets. First review no later than 1 May 2008 (35.1). JC may recommend further actions to fulfil 35.2. (36.1)
- Provide Parties on reciprocal basis with same treatment as provided third party after entry into force of Agreement (36.2)

4.3 Protection of Intellectual Property

- Protect intellectual property rights in accordance with TRIPS (38.1)
- Implement the international conventions listed in Annex 7 no later than 1 May 2014 (38.2, 38.3)
- Provide Parties on reciprocal basis with same treatment as provided third parties after entry into force (39.1)
- Review IP no later than 1 May 2011 (39.2)

4.4 Functioning rules

- The Joint Committee
- Mediation
- Arbitration

4.4 Functioning rules (Chapter VII)

The Joint Committee (Article 40)

- JC supervises and administers implementation of the Agreement, supported by a secretariat located in Brussels (40.2)
- JC meets at least once a year. Any Party may request a meeting (41.1)
- JC acts by consensus (41.2)
- JC adopts its rules of procedure at first session (41.4)
- JC may set up appropriate organs (sub-committees, working groups etc) (41.5)
- JC must set up an agreed List of Mediators (41.6)

Mediation

- The Parties shall make every attempt through co-operation and consultations to resolve disputes concerning interpretation and application of the Agreement (42.1)
- A Party may request consultations within the JC and the JC may recommend appropriate measures (42.2)
- Consultations may take place in the presence of a mediator, who presents a final report to the JC. Annex 8. If this does not resolve the issue, the JC shall recommend appropriate measures (42.3)
- If no acceptable solution is found within 90 days, the Party concerned may take provisional rebalancing measures in accordance with Article 24 (42.4)

Arbitration

- A Party may refer an unresolved dispute to arbitration by written notification to the other Party (43.1)
- The constitution and functioning of the Arbitral Tribunal is governed by Annex 9. Its award is final and binding upon the Parties to the dispute (43.3)
- Disputes under arbitration can not be referred to WTO for dispute settlement and vice versa (43.4) (No forum shopping)

In summary, 'CEFTA 2006' provides

- full conformity with WTO
- free trade up-front in all industrial products and many agricultural products (>90%)
- modern provisions on trade-related issues
- evolutionary clauses on new trade issues
- mechanisms for implementation and dispute settlement
- harmonisation on EU-acquis and a pre-accession track

Congratulations on a good
agreement!

Best wishes to you in the hard
work ahead!