



BILATERAL TRADE RELATIONS

BETWEEN

KOSOVO AND SERBIA

WITH A **SPECIFIC REFERENCE** TO THE
CENTRAL EUROPEAN FREE TRADE
AGREEMENT (**CEFTA**)





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Abbreviations

BaH	Bosnia and Herzegovina
CEFTA	Central European Free Trade Agreement
EC	European Commission
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
IBM	Integrated Border Management
ICJ	International Court of Justice
NATO	North Atlantic Treaty Organisation
RCC	Regional Cooperation Council
ROSU	Regional Operations Special Unit
SAA	Stabilisation Association Agreement
SEE	South East Europe
SP	Stability Pact
UN	United Nations
UNMIK	United Nations Mission in Kosovo
VAT	Value Added Tax

Introduction

1. The aim of this background note/study is to critically analyse the bilateral trade relations between Kosovo and Serbia focussing on the Central European Free Trade Agreement.

2. The objectives of this background note/study include:
 - i) Critically review the historic facts about the bilateral trade relations between Kosovo and Serbia;
 - ii) Critically review the legal and economic implications of CEFTA membership for Kosovo;
 - iii) Critically review the legal and economic aspects of trade relations between Kosovo and Serbia within CEFTA;
 - iv) Critically review the activities undertaken so far by Kosovo in response to Serbia's continuous violations of CEFTA;
 - v) Critically review the impact on Kosovo imports resulting from Serbia's continuous violations of CEFTA; and
 - vi) To propose policy recommendations.

The structure of this background note/study is based on the chronological order of events taking place in Kosovo's trade relations with Serbia.

The Declaration of Independence and Bilateral Trade between Kosovo and Serbia 2008-2010

1. In 2008, the Kosovo Parliament declared Kosovo an independent and sovereign state. To date, the Republic of Kosovo is recognised by 116 countries. The National Assembly of Serbia, which still considers Kosovo as part of its sovereign territory, declared that the Declaration of Independence by the Kosovo Parliament was illegal on the grounds that “it was not in coordination with the UN Charter, the Constitution of Serbia, the Helsinki Final Act, Resolution 1244 (including the previous resolutions) and the Badinter Commission.” Seeking support for its stance, Serbia initiated a request from the International Court of Justice (ICJ) for an advisory opinion on the legality of the declaration of independence of Kosovo. The ICJ ruled that “*the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently, the adoption of that declaration did not violate any applicable rule of international law*”.¹
2. Following the decision of the ICJ, dated 22 July 2010², the United Nations General Assembly passed a resolution jointly drafted by the EU and Serbia, containing a request for an EU-facilitated dialogue between Kosovo and Serbia which would “be a factor for peace, security, and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people”.³
3. Upon the Declaration of Independence, although the overall security situation was considered to be relatively stable, two serious incidents were recorded in the north

¹ International Court of Justice (2010), ‘Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo’. Available at: <http://www.unmikonline.org/Documents/GA64298.pdf> [Accessed on: August 31, 2019].

² Ibid.

³ United Nations General Assembly (2010), ‘Resolution 64/298’. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/UNGA_Resolution_on_Brussels_Dialogue_on_9_September_2010.pdf [Accessed on: August 31, 2019].

of Kosovo. Local Serbs with the support of Belgrade set fire to and destroyed two border crossings between Kosovo and Serbia (Bernjak and Jarinje). A month later, local Serbs stormed into the courthouse in Mitrovicë, which led to clashes between them and UNMIK police. As a result, one UNMIK policeman was killed and several others were seriously injured. According to local Serbs, the key reasons for these two incidents were their refusal to live in an independent Kosovo and their refusal to pay VAT to the state budget of an independent Kosovo.⁴

4. The reaction of the Serbian government relating to its trade regime with Kosovo was prompt. Serbia decided to introduce tax exemptions for Serbian businesses exporting to the north of Kosovo. Accordingly, Serbian businesses did neither pay VAT in Serbia nor in Kosovo. This led to the further strengthening of the existing de facto (but not de jure) “free trade zone” in the north of Kosovo. This decision and Serbia’s supportive role in the incidents at the border crossings represented a direct infringement of Kosovo’s authority over its customs services and a violation of CEFTA.

5. The Kosovo Assembly adopted the Constitution of the Republic of Kosovo, which envisaged a significant role of EU in the country. In July 2008, UNMIK was ordered by the UNSG to cooperate with EU and assume a rather operational role relating to the rule of law under a 'UN umbrella'. This implied that the mandate of UNMIK was reconfigured. The Republic of Kosovo established the Kosovo Customs Service taking over the authority from UNMIK in that area and replaced all UNMIK symbols with Kosovo symbols. It also replaced the UNMIK customs stamps with Kosovo customs stamps, which contained Kosovo symbols. The Kosovo Customs Service started to administer border crossings as well. However, according to 2008 Six Point Plan of the UN, it was the mandate of the EU rule of law mission in Kosovo (EULEX) to administer the two border crossings in the north of Kosovo. Further, the

⁴ Kursani and Thaci (2015), ‘Regulation of Trade between Contested Borders. The Cases of China/Taiwan, Serbia/Kosovo and Cyprus’. Available at: https://www.international-alert.org/sites/default/files/Caucasus_RegulationOfTradeAcrossBorders_EN_2015.pdf [Accessed on: August 31, 2019].

customs revenues collected at these two points should be used for the development of the local communities in the north.

6. According to Resolution 1244, UNMIK as a *political trusteeship*, with its mission being to exercise sovereignty in the entire territory of Kosovo, has also been the signatory on behalf of Kosovo in several international organisations and agreements, including CEFTA. As per the constitution of the Republic of Kosovo, however, Kosovo authorities shall ensure its regional and international representation. The ongoing reconfiguration of UNMIK foresees it facilitating, where necessary and possible, arrangements for Kosovo's continued engagement in international agreements. Unfortunately, some signatories to international agreements refuse to accept Kosovo authorities as a successor of UNMIK.⁵ In this regard, irrespective of the new institutional reality in Kosovo and UNMIK's reconfiguration, owing to Serbia's and BaH's insisting, UNMIK continued to represent Kosovo in all CEFTA meetings. Apart from changing its customs stamps and documentation, Kosovo did not take any concrete actions in taking over full authority from UNMIK over CEFTA in order to be represented as an independent country with its constitutional name "Republic of Kosovo".

7. On 4th December 2008, even though Kosovo was represented by UNMIK in CEFTA, Serbia and BaH decided to block all imports from Kosovo and the transit of all goods, which were either exported from or imported into Kosovo (and thus used Serbia as the transit country). This was done on the grounds that replacing UNMIK documents and stamps with document and stamps containing Kosovo state symbols, was in breach of Resolution 1244 and CEFTA.

⁵European Commission (2008), 'Kosovo 2008 Progress Report'. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/press_corner/key-documents/reports_nov_2008/Kosovo_progress_report_en.pdf [Accessed on: August 31, 2019].

The blockade continued, irrespective of “assurances received from the UN SRSG confirming their compliance with UNSC 1244/99”.⁶ Due to the blockade, Kosovar businesses exported their goods to Serbia in the form of re-exports through third countries or found new export markets, and had to use other countries/ routes for transit. This increased their export-related transactions costs (monetary, procedural and time-related costs). KS-Serbian businesses, however, were issued documentation by the Serbian Tax Administration operating in the north of Kosovo. Serbia considered such trade as internal trade rather than export. Through these actions, Serbia again violated CEFTA on several accounts: (i) Serbia seized to legally recognise the Kosovo as an independent customs territory (a legal obligation it took over upon becoming a signatory of CEFTA); (ii) Serbia infringed Kosovo’s authority over its customs services (by interfering with Kosovo institutions in terms of issuing documentation); and (iii) in addition to breaching CEFTA in general, Serbia specifically violated CEFTA Article 8 on “Quantitative restrictions on imports and measures having equivalent effect”.

Table 1. Exports, Imports, Trade Balance, and Export to Import Ratio between Kosovo and Serbia, 2008-2010

	2005	2006	2007	2008	2009	2010
Imports (in mil €)	152.3	191.1	222.5	208.9	211.1	260.5
Exports (in mil €)	8.2	20.9	19.3	9.9	3.5	3.9
Trade balance (in mil €)	-144.1	-170.2	-203.2	-199	-207.6	-256.6
Export to import ratio (in %)	5.38	10.94	8.67	4.74	1.66	1.50

Source: Kosovo Statistical Agency (2019)

- 8.** The embargo imposed by Serbia and BaH in 2008 had a profound impact on Kosovo exports. According to Table 1, in 2008, the export value was halved compared to a

⁶European Commission (2010), ‘Kosovo* 2010 Progress Report’ p.33. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf [Accessed on: August 31, 2019].

year ago. As Serbia's ban on Kosovo exports continued, despite Kosovo's efforts to find a resolution to the dispute, Kosovo exports continued to decrease in the following years amounting to less than 4 million € annually; a value by four times lower than the export value in 2007. Further, the export to import ratio dropped to just above 1 percent during the period 2009-2010.

9. Pursuant to Article 34 of CEFTA, the Joint Committee consisting of representatives of the signatories (Ministers) shall be established. This committee is in charge of supervising and administering the implementation of CEFTA, and as per Article 35 it shall meet at least once a year as well as on an ad hoc basis as per the request of any of the Parties, and a common agreement is mandatory for its actions. Following the Decision No.1/2007 of the Joint Committee⁷, the permanent Secretariat was established to support the work of the committee. As per Article 34, Paragraph 3, signatories "shall exchange information and, at the request of any Party, shall hold consultations within the Joint Committee. The Committee shall keep under review the possibility of further removal of the obstacles to trade between the Parties".⁸ Further, according to Article 42, in case of disputes "the Parties shall make every attempt through co-operation and consultations, if necessary in the Joint Committee, to arrive at a mutually satisfactory resolution".⁹ Otherwise, as per the same article, the harmed Party shall provide all the information to the Joint Committee, which shall then recommend appropriate measures, or a mediator is assigned to resolve the dispute. In case mediation fails, again the Joint Committee shall recommend appropriate measures. Pursuant to Article 42, Paragraph 3 of CEFTA, if the abovementioned attempts to resolve the dispute, namely consultations between the Parties or mediation within the Joint Committee, or the Joint Committee, fail "to

⁷ CEFTA (2007), 'Decision of the Joint Committee of the Central European Free Trade Agreement No. 1/2007'. Available at: <http://cefta.int/legal-documents/#1463498451954-049a1331-0c1c> [Accessed on: August 31, 2019].

⁸ CEFTA (2007), 'Annex 1 to the Agreement on Amendment of and Accession to the Central European Free Trade Agreement'. Available at: <http://cefta.int/wp-content/uploads/2016/05/ANN1CEFTA-2006-Final-Text.pdf> [Accessed on: August 31, 2019].

⁹ CEFTA (2007), 'Decision of the Joint Committee of the Central European Free Trade Agreement No. 1/2007 – Article 42.1'. Available at: <http://cefta.int/legal-documents/#1463498451954-049a1331-0c1c> [Accessed on: August 31, 2019].

arrive at a commonly acceptable solution within 90 calendar days from the receipt of the notification referred to in paragraph 2, the Party concerned may take **provisional rebalancing measures** under the conditions and in accordance with the procedures laid down in Article 24.” In case of rebalancing measures, the Parties concerned and the Joint Committee “shall hold regular consultations with a view to their abolition. The measures shall be abolished when conditions no longer justify their maintenance in the view of the Joint Committee, or if the dispute is submitted to arbitration, ...” Further, if all of the foreseen resolution attempts fail, the dispute may be submitted by the concerned Party to an arbitral tribunal.¹⁰ Given the above, CEFTA lacks a properly defined effective, efficient and independent dispute resolution mechanism. This has hindered the adequate functioning of CEFTA and has created incentives for signatories to violate it, specifically Serbia in relation with Kosovo.

10. Kosovo authorities reported and complained several times to the Serbian authorities, the EU and the Secretariat of the Joint Committee about Serbia’s and BaH’s continuous violation of CEFTA, particularly that of 2008 regarding their ban on Kosovo exports and transit through their countries. There were, however, no attempts for the dispute to be resolved through consultations within the Joint Committee. So, the dispute remained unresolved.¹¹ Serbia and BaH continued to violate CEFTA in respect to trade with Kosovo, whereas Kosovo continued to import from these two countries without imposing any restrictions or reciprocity measures.

¹⁰ CEFTA (2007), ‘Decision of the Joint Committee of the Central European Free Trade Agreement No. 1/2007 – Article 43’. Available at: <http://cefta.int/legal-documents/#1463498451954-049a1331-0c1c> [Accessed on: August 31, 2019].

¹¹ Interviews with relevant officials at Ministry of Trade and Industry (MTI).

The Brussels Dialogue and Bilateral Trade between Kosovo and Serbia 2011-2018

- 11.** Following the 2010 UN General Assembly resolution, the EU-facilitated dialogue between Kosovo and Serbia containing both technical and political issues was launched in March 2011.¹² The dialogue, which was strongly supported by the US, aimed “to promote cooperation between the two countries, achieve progress on the path to the European Union, and improve the lives of the people.”¹³
- 12.** In the sixth round of negotiations, planned for July 2011, Kosovo and Serbia were supposed to resolve, inter alia, the issue of Serbia’s non-recognition of Kosovo customs stamps. This meeting was cancelled by Mr. Cooper on the grounds that “no agreement could be reached”, as Serbia informed him in writing that it was not ready to participate. Serbia’s reluctance to resolve this issue was driven by its interest in keeping the status quo in the north of Kosovo, as it ensured Serbia’s influence in Kosovo (infringement of Kosovo’s sovereignty).
- 13.** On 20 July 2011, considering that the bilateral consultations, the Joint Committee, and the EU facilitated dialogue failed to settle the trade-related dispute, the Government of Kosovo decided to apply reciprocity measures imposing an embargo on imports from Serbia and BaH. As per Article 42, Paragraph 3 of CEFTA, Kosovo institutions were in their full right to implement reciprocity measures against Serbia and BaH.
- 14.** The prerequisite for the Government of Kosovo to effectively and efficiently implement reciprocity measures was to prevent the illegal trade in the de facto free

¹²Kosovo Assembly (2012), ‘Resolution on normalization of relationships between Republic of Kosovo and Republic of Serbia’. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/Resolution_on_normalization_of_relationships_between_Republic_of_Kosovo_and_Republic_of_Serbia_18102012.pdf [Accessed on: August 31, 2019].

¹³United Nations General Assembly (2010), ‘Resolution adopted by the General Assembly No. 64/298’. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/UNGA_Resolution_on_Brussels_Dialogue_on_9_September_2010.pdf [Accessed on: August 31, 2019].

trade zone in the north. Given that the two border crossings in the north (Bernjak and Jarinje) were under the sole authority of EULEX, the Government of Kosovo requested from EULEX to effectively implement the Decision on reciprocity measures. Yet, EULEX refused to do so. Consequently, on 25 July 2011, the Kosovo Government decided to send the Regional Operations Special Unit (ROSU) to enforce the embargo at the two crossing points in the north.¹⁴ Local Serbs, supported by Serbia through parallel structures, reacted by blocking roads and firing on ROSU leading to clashes of ROSU and KFOR with local Serbs. The situation escalated and as a result one member of ROSU was killed. Soon afterwards, order was re-established and the security situation was under the control of KFOR. Still, local Serb criminal groups destroyed one of the crossing points. KFOR troops intervened and prevented the situation from further deteriorating. In the meantime, Serbia continued its destructive engagement in the north of Kosovo by sending the Serbian negotiator to meet with local Serbs and encourage them to resist the establishment of authority by Kosovo institutions in the north.

15. Until September 2011, the two crossing points remained under the control of KFOR. A specific trade regime was applied whereby “no revenue is collected and goods subject to excise, sanitary and phytosanitary controls are not allowed to enter via these two crossing points.”¹⁵ Kosovo customs validated the export-related certificates of origin for goods to be exported for the whole territory of Kosovo, including the north. Still, due to road barricades by local Serbs, it was almost impossible for Kosovo customs officers to access that part of Kosovo territory. Further, due to the inefficient customs surveillance, the grey economy continued.

¹⁴ GLPS (2013), ‘Kosovo-Serbia Dialogue: Windows of Opportunity or a House of Cards? Policy Analysis’. Available at: <http://www.legalpoliticalstudies.org/wp-content/uploads/2013/03/KOSOVO%E2%80%93SERBIA-DIALOGUE-Windows-of-Opportunity-or-a-House-of-Cards.pdf> [Accessed on: 31 August, 2019].

¹⁵ European Commission (2011) ‘Kosovo 2011 Progress Report’. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf [Accessed on: August 31, 2019].

- 16.** The EU only urged Kosovo and Serbia to continue with the EU facilitated dialogue in order to resolve the issue and to prevent the situation from further escalating.¹⁶
- 17.** In September 2011, the EU-facilitated dialogue between Kosovo and Serbia resumed and a customs agreement was negotiated. Kosovo removed its state emblems and the word Republic from its customs stamps, which were then accepted by Serbia. Consequently, both countries ended their embargoes and the movement of goods resumed. EULEX, rather than Kosovo Customs, continued to exercise executive power over the two concerned crossing points. Despite the agreement, local Serbs continued to express their contempt by establishing new blockades as a result of which Kosovo customs officers could only reach the two crossing points via helicopter.
- 18.** It was essential for Kosovo to implement a unified customs service and affirm its sovereignty throughout its entire territory. In December 2011, within the EU facilitated dialogue, Kosovo and Serbia reached an agreement on the Integrated Border Management (IBM). As per the agreement, six interim crossing points were to be established between the two countries. One crossing point had to be “manned by one EU official, one Serbian official and one official from Kosovo”.¹⁷ Accordingly, EULEX would continue to have executive power over the crossing points in Jarinje and Bernjak, while both Kosovo and Serbian officials have the role of observers. A prerequisite for the implementation of the 2011 IBM agreement was that Kosovo and Serbia sign the Technical Protocol for IBM.

¹⁶ ReliefWeb (2011), ‘Statement by High Representative Catherine Ashton on the situation in the north of Kosovo’. Available at: <https://reliefweb.int/report/serbia/statement-high-representative-catherine-ashton-situation-north-kosovo> [Accessed on: August 31, 2019].

¹⁷ GLPS (2013), ‘Kosovo-Serbia Dialogue: Windows of Opportunity or a House of Cards? Policy Analysis’ March 2013. Available at: <http://www.legalpoliticalstudies.org/wp-content/uploads/2013/03/KOSOVO%E2%80%93SERBIA-DIALOGUE-Windows-of-Opportunity-or-a-House-of-Cards.pdf> [Accessed on: August 31, 2019].

This act was delayed by Serbia for more than one year.¹⁸ In 2013, Serbia agreed to start with the implementation of the IBM agreement only after it received assurances from the then KS Prime Minister Thaci that revenues collected at crossing points in the north would benefit the development of local the community in the north. As per the IBM agreement, “revenues collected at the northern CPs [Crossing Points at Jarinje and Bernjak] for products imported and destined for the north will go (via Kosovo Consolidated State Budget) into the Development Fund for the North.” While Serbia benefited from the establishment of the Development Fund for the North, the Republic of Kosovo benefited in the sense of deploying Kosovo Police and Kosovo Customs officials and thus expanding its sovereignty in the north.¹⁹ Despite the IBM Agreement, Serbia refused to construct permanent crossing points on its territory. The Kosovo authorities, as usual, have respected the agreement, and thus have constructed two permanent crossing points and have established a Development Fund for the North.

19. The 2011 decision of the Kosovo Government to apply reciprocity measures on trade with Serbia had almost no impact on imports from Serbia; most probably owing to it being short-lived. Upon the political resolution of the trade dispute, in the same year, imports from Serbia continued to increase (Table 2). Although Kosovo’s exports almost doubled recording a value of 7 million € in 2011, they could not reach their value of ca. 20 million € prior to the 2008 export ban imposed by Serbia; it took Kosovo exports three years to recover and exceed their 2007 value. Despite the reestablishment of trade relations between the two countries, although Kosovo’s trade deficit with Serbia improved, it still remains high - Kosovo exports only cover ca. 10 percent of imports from Serbia. The asymmetry in trade flows is largely a result of Serbia’s continuous imposition of non-tariff barriers,

¹⁸ Kursani and Thaci (2015), ‘Regulation of Trade between Contested Borders. The Cases of China/Taiwan, Serbia/Kosovo and Cyprus’. Available at: https://www.international-alert.org/sites/default/files/Caucasus_RegulationOfTradeAcrossBorders_EN_2015.pdf [Accessed on: August 31, 2019].

¹⁹ Phillips (2017), ‘Implementation Review of the Kosovo-Serbia Dialogue’. Available at: https://www.humanrightscolumbia.org/sites/default/files/2017_09_05_Kosovo-serbia_report.pdf [Accessed on: August 31, 2019].

technical barriers and sanitary and phytosanitary standard/measures on Kosovo exports. Such trade barriers have de facto the equivalent effect of an embargo on Kosovo goods exported and/or in transit.

Table 2. Exports, Imports, Trade Balance, and Export to Import Ratio between Kosovo and Serbia, 2011-2018

	2011	2012	2013	2014	2015	2016	2017	2018
Imports (in mil €)	254.9	278.4	285.4	368.2	382.1	387.6	449.9	388.9
Exports (in mil €)	7.2	15	14.5	27.3	32.3	41.3	48.2	33.5
Trade balance (in mil €)	-247.7	-263.4	-270.9	-340.9	-349.8	-346.3	-401.7	-355.4
Export to import ratio (in %)	2.82	5.39	5.08	7.41	8.45	10.66	10.71	8.61

Source: Kosovo Agency of Statistics (2018)

20. An important conclusion from the analysis of the trade flows between Serbia and Kosovo is that the key beneficiary is Serbia. From entry into force of CEFTA in 2007 until the ban of Kosovo exports, imports from Serbia amounted at 3.7 billion €, while Kosovo exports reached a value of only 256 million € (that is, less than 7 percent). Given this, Serbia strongly benefited from CEFTA in that it became the biggest importer in Kosovo. In this regard, Serbia leaves behind even Germany - the key host country of the KS-Albanian migrants – with a total import value of 3.4 billion € for the same period.²⁰

21. Within the Kosovo-Serbia dialogue, the countries reached the “footnote agreement” on the representation and membership of Kosovo in regional organisations as a Party according to which UNMIK or other international actors would not be present or act on behalf of Kosovo. This agreement stipulated that Kosovo instead of its

²⁰ Gashi and Berisha (2019), ‘The Effect on Prices of the 100% Tariff on Goods from Serbia and Bosnia and Herzegovina. Technical Report’. Available at: https://www.researchgate.net/publication/333458356_The_Impact_of_100_Tariff_on_the_Import_of_Goods_from_Serbia_and_Bosnia_and_Herzegovina [Accessed on: August 31, 2019].

constitutional name would be designated as Kosovo* where the asterisk stands for the footnote reading that: “this designation [Kosovo*] is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on Kosovo declaration of independence”.²¹ As a result of this agreement, following an extensive political battle with Serbia, in 2014 Kosovo became a participant of the Berlin Process and a member of the Regional Cooperation Council (RCC). The RCC work is guided by its SEE 2020 Strategy, which aims at improving living conditions in the region and refocusing on competitiveness and development. Despite high expectations, Kosovo was not able to reap the benefits of RCC membership, because, owing mainly to Serbia’s lobbying, the Republic of Kosovo is still not part of 14 RCC initiatives.²² In sum, following this agreement, Kosovo’s efforts for representation and membership in regional and international initiatives were mostly unsuccessful.²³

22. In 2013, Kosovo and Serbia agreed on the “First Agreement of Principles Governing the Normalization of Relations”. This was also referred to as “The Brussels Agreement” and “provided a path for European integration to both Kosovo and Serbia (19 April 2013)”.²⁴ The negotiations continued without any serious progress. On 25 August 2015, the Brussels Agreement Package was developed aiming at reinitiating the Brussels Agreement. Among others, the package envisaged an agreement to normalise situation in Mitrovica and dismantle the parallel structures.

²¹ SAA Kosovo (2016), ‘Stabilisation and Association Agreement between the European Union, of the One Part, and Kosovo, of the Other Part’ 2016. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150430_saa.pdf [Accessed on: August 31, 2019].

²² KCSS (2014), ‘Kosovo’s Membership and Representation in Regional Security Initiatives’. Available at: http://www.qkss.org/repository/docs/Kosovo%E2%80%99s_Membership_and_Representation_in_Regional_Security_Initiatives_668693.pdf [Accessed on: August 31, 2019].

²³ Ibid.

²⁴ Phillips (2017), ‘Implementation Review of the Kosovo-Serbia Dialogue’. Available at: https://www.humanrightscolumbia.org/sites/default/files/2017_09_05_Kosovo-serbia_report.pdf [Accessed on: August 31, 2019].

23. On 1 April 2016, Kosovo started its first contractual relations with the EU by adopting the Stabilisation and Association Agreement.²⁵⁻²⁶ The agreement envisages tariff-free access to EU markets and financial and technical assistance. This “process will lead to progress in Kosovo’s European perspective and rapprochement with the EU”.²⁷ In exchange, Kosovo has committed itself to “implementing the SAA guided by the European Reform Agenda and to further strengthen its rule of law and reform its economy”.²⁸ Both Kosovo and Serbia have to contribute to developing good neighbourly relations according to their respective SAAs with the EU. As per the agreement, Kosovo should focus on “the development of regional cooperation and good neighbourly relations” (Article 7). Similarly, as per Article 6 of the SAA between the EU and Serbia, “Serbia commits itself to continue to foster cooperation and good neighbourly relations with the other countries of the region including an appropriate level of mutual concessions concerning the movement of persons, goods, capital, and services ...”²⁹ Further, both Kosovo and Serbia have to commit to normalising relations between them. Based on Article 13, Kosovo’s “Political dialogue and policy dialogue, as appropriate, contribute to the process of normalisation of relations between Kosovo and Serbia”.³⁰ As per Chapter 35, Serbia

²⁵ Following the Lisbon Treaty, the agreement was signed by the EU as a legal entity, and thus there was no need for it to be individually ratified by EU members, five of which have not recognized Kosovo an independent state.

²⁶ European Commission (2016), ‘Kosovo* 2016 Report’. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_Kosovo.pdf [Accessed on: August 31, 2019].

²⁷ SAA Kosovo (2016), ‘Stabilisation and Association Agreement between the European Union, of the One Part, and Kosovo, of the Other Part’. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150430_saa.pdf [Accessed on: August 31, 2019].

²⁸ European Commission (2016), ‘Kosovo* 2016 Report’. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_Kosovo.pdf [Accessed on: August 31, 2019].

²⁹ SAA Serbia (2013), ‘Stabilisation and Association Agreement between the European Union and its Member States of the One Part, and the Republic of Serbia, of the Other Part’. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/key_document/saa_en.pdf [Accessed on: August 31, 2019].

³⁰ SAA Kosovo (2016), ‘Stabilisation and Association Agreement between the European Union, of the One Part, and Kosovo, of the Other Part’. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150430_saa.pdf [Accessed on: August 31, 2019].

will not be granted EU membership until it normalises its relations with Kosovo.³¹ According to the Council of the EU, “Serbia should ensure that it completes its part of the work on implementation of 25 August 2015 agreements. The Commission and the High Representative will monitor closely and continuously Serbia's fulfilment of the first set of interim benchmarks included in the EU common position and report at least twice yearly, on this issue, to the Council.”³² Normalisation of relations encompasses normalisation of trade relations as well. Irrespective of its EU membership being conditioned by the normalisation of relations with Kosovo, Serbia continues with the imposition of non-tariff barriers, technical barriers and sanitary and phytosanitary standard/measures on Kosovo exports (see Annex 1 to this document).

The 100 % Tariff and Bilateral Trade between Kosovo and Serbia 2019

24. As per the Decision of the Government of the Republic of Kosovo, dated 8 November 2018, a 10% protection measure/ tariff was imposed on imported goods originating in Serbia and Bosnia and Herzegovina.³³ International brands' goods originating in these two countries were exempt from this tariff. This decision was due to the continuous economic and political obstructions of these two countries to the Republic of Kosovo and Serbia's violation of Brussels Dialogue agreements in relation to the normalisation of relations. As argued by the then Prime Minister of Kosovo Ramush Haradinaj, the decision was prompted by the continuous violations of CEFTA and mainly non-tariff barriers imposed on Kosovo exporters by these two

³¹ European Union (2014), 'Conference on the Accession to the European Union – Serbia. Accession Document'. Available at: <http://register.consilium.europa.eu/doc/srv?!=EN&t=PDF&gc=true&sc=false&f=AD+1+2014+INIT> [Accessed on August 31, 2019].

³² Council of the European Union (2015), 'Second meeting of the Accession Conference with Serbia at Ministerial level'. Available at: <https://www.consilium.europa.eu/media/21901/press-release-accession-conference-with-serbia.pdf> [Accessed on: August 31, 2019].

³³ KOSOVO Government (2018), 'Decision of the Government of the Republic of Kosovo No. 01/74'. Available at: <http://kryeministri-ks.net/wp-content/uploads/2018/11/Vendimet-e-Mbledhjes-s%C3%AB-74-t%C3%AB-t%C3%AB-Qeveris%C3%AB-s%C3%AB-Republik%C3%ABs-s%C3%AB-Kosov%C3%ABs-2018-1.pdf> [Accessed on: August 31, 2019].

countries, as well as by the direct infringement upon Kosovo's sovereignty. So, the measure was also a direct response to Serbia's extensive lobbying against Kosovo's membership in UNESCO and Interpol and lobbying for the withdrawal of recognition by countries that had already recognised Kosovo an independent state.³⁴

25. Without having in regard its violation of agreements reached through the Brussels Dialogue, its continuous infringement upon Kosovo's sovereignty and the lobbying against Kosovo's independence and membership in international organisations, particularly its continuous breach of CEFTA through imposing trade barriers on Kosovo exporters as well as Article 42, Paragraph 3 of CEFTA on **reciprocity measures**, Serbia claimed that the Decision was in violation of CEFTA and that it undermines the regional cooperation efforts for a peaceful and prosperous Balkans, rather than a rebalancing measure.

26. Owing to Serbia's reluctance to abolish the trade barriers, the Kosovo Government, on 21 November 2018 made a new Decision, which superseded that of 8 November 2018.³⁵ As per the new Decision, the tariff increased to 100%. Again, international brands were exempt from the tariff. The new Decision envisaged also that the Kosovo Customs ban all imports of goods and the Ministry of Trade and Industry orders and inspects the removal from the market of all goods not referring to Kosovo in its Constitutional name. Further, the Decision foresaw full reciprocity relating to administrative trade barriers imposed by Serbia. This Decision was

³⁴ In November, the Kosovo Prime Minister, Mr. Haradinaj expressed the deep disappointment of the Government of the Republic of Kosovo with the decision of the General Assembly of the Interpol against Kosovo's membership in this organisation.

³⁵ Kosovo Government (2018), 'Decision of the Government of the Republic of Kosovo No. 01/76'. Available at: <http://kryeministri-ks.net/wp-content/uploads/2018/11/Vendimet-e-Mbledhjes-s%C3%AB-76-t%C3%AB-t%C3%AB-Qeveris%C3%AB-s%C3%AB-Republik%C3%ABs-s%C3%AB-Kosov%C3%ABs-2018.pdf> [Accessed on: August 31, 2019].

supplemented by Decision No. 06/82, which envisaged the imposition of the tariff also to international brands.³⁶

27. According to the resigned Prime Minister of Kosovo, Mr. Haradinaj, the Decisions were legitimate and in response to Serbia's continuous violation of CEFTA in relation to Kosovo only, as a result of which Kosovo has not been able to enjoy the benefits of its CEFTA membership, and in response to Serbia's other activities against Kosovo which posed a threat to the national security of the Kosovo Republic.³⁷ The EU and the international community, in the spirit of the dialogue, pleaded the Kosovo Government to revoke the Decision or, at least, suspend it, so that issues are addressed and resolved through the Brussels Dialogue.³⁸ Following these Decisions, Serbia, ignoring its continuous infringements on the economy and sovereignty of Kosovo, reiterated that the Decisions were in violation of CEFTA. The Brussels Dialogue was brought to a halt due to Serbia declaring that it would not participate in the Brussels Dialogue until the Republic of Kosovo lifts the 100% import tariff on Serbian goods.³⁹ Mr. Haradinaj, however, insisted on the stance that the 100% tariff will be lifted only when Serbia recognises Kosovo as an independent state.⁴⁰

³⁶ Kosovo Government (2018), 'Decision of the Government of the Republic of Kosovo No. 06/82'. Available at: <http://kryeministri-ks.net/wp-content/uploads/2018/12/Vendimet-e-mbledhjes-82-t%C3%AB-Qeveris%C3%AB.pdf> [Accessed on: August 31, 2019].

³⁷ PM Office (2018), 'Prime Minister Haradinaj: 100% tariff to Serbia, due to blockade of country to enjoy CEFTA rights'. Available at: <http://kryeministri-ks.net/kryeministri-haradinaj-masa-prej-100-per-qind-ndaj-serbise-shkak-i-blokimit-te-vendit-per-ti-gezuar-te-drejtat-e-cefta-s/> [Accessed on: August 31, 2019].

³⁸ European Union External Action (2018), 'RemaKosovo by HR/VP Mogherini at the joint press conference following the 5th EU-Serbia Stabilisation and Association Council'. Available at: <https://eeas.europa.eu/headquarters/headquarters-homepage/55703/remakosovo-hrvp-mogherini-joint-press-conference-following-5th-eu-serbia-stabilisation-and-association-council> (Accessed on: August 31, 2019)

³⁹ EU Parliament (2019), 'EU Parliament Brief. Serbia-Kosovo Relations. Confrontation or Normalisation?'. Available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635512/EPRS_BRI\(2019\)635512_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635512/EPRS_BRI(2019)635512_EN.pdf) [Accessed on: August 31, 2019].

⁴⁰ Koha (2018), 'Haradinaj: The 100 percent tariff is only lifted when Serbia recognises Kosovo'. Available at: <https://www.koha.net/arberi/130390/haradinaj-taksa-100-per-qind-hiqet-vetem-atehere-kur-serbia-e-njih-kosoven/> [Accessed on: August 3, 2019].

The Kosovo Government has “slightly softened its stance, demanding instead 'an international guarantee' of talks leading to mutual recognition”.⁴¹

28. According to Gashi and Berisha⁴², the application of the 100 percent tariff has led to a decrease in the value and number of goods imported from Serbia to virtually zero. As shown in Table 3, the value of imports has dropped by 98 percent when comparing the first quarter of 2018 with the same quarter in 2019 (when the tariff was applicable). The comparison between these two quarters in terms of the number of goods imported from Serbia shows that there was a reduction by 1,239 which implies a decrease of ca. 90 percent. Further, the analysis indicates that Kosovo imports have been diverted from Serbia and BaH, and have been substituted by EU imports, most probably given the preferential trade relations with EU within the SAA.

Table 3. The implications of the 100% tariff on the value of imports and number of imported goods from Serbia to KOSOVO

Year/month	2018	2019		2018	2019	
Values/ change	Value (in mil €)	Value (in mil €)	Change (in %)	Number of lines	Number of lines	Change (in %)
January	30.93	0.79	-97.45	673	92	-86.33
February	30.11	0.48	-98.41	766	73	-90.47
March	36.56	0.53	-98.55	940	82	-91.28
April	37.04	0.64	-98.27			

Source: Kosovo Statistical Agency (January-April, 2019)

⁴¹ EU Parliament (2019), ‘EU Parliament Brief. Serbia-Kosovo Relations. Confrontation or Normalisation?’. Available at:

[http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635512/EPRS_BRI\(2019\)635512_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635512/EPRS_BRI(2019)635512_EN.pdf) [Accessed on: August 31, 2019].

⁴² Gashi and Berisha (2019), ‘The Effect on Prices of the 100% Tariff on Goods from Serbia and Bosnia and Herzegovina. Technical Report’. Available at:

https://www.researchgate.net/publication/333458356_The_Impact_of_100_Tariff_on_the_Import_of_Goods_from_Serbia_and_Bosnia_and_Herzegovina [Accessed on: August 31, 2019].

29. In their analysis of the impact of the 100 percent on prices in Kosovo market, Gashi and Berisha⁴³ show that for diesel fuel, gasoline, heating oil, maize/corn, wheat and sugar, the value-to-weight ratio followed the global prices in the period January-March 2019. Accordingly, there is “no indication that the tariff has triggered an increase in prices of these commodities.”

30. According to Points 28 and 29 of this document, the economy of Kosovo has managed to quickly adapt to the new situation in that it has substituted imports from Serbia and BaH with EU imports given the preferential trade relations with EU within the SAA. Further, there is no indication of price increases in Kosovo market owing to the imposition of the 100 percent tariff on imports from Serbia and BaH. In sum, while there is an asymmetric distribution of benefits from CEFTA membership in favour of Serbia, the asymmetry in the distribution of benefits from the 100 percent tariff, as indicated, is in favour of the Kosovo economy. Accordingly, in an open market, nobody is irreplaceable, hence everybody should play by the rules agreed upon.

Recommendations

The Republic of Kosovo has not been able to enjoy the benefits of being a member of CEFTA owing to Serbia’s continuous violation of the agreement relating to its trade with Kosovo and due to CEFTA lacking an independent, effective and efficient dispute resolution mechanism, whose decisions would be legally binding to the parties. To change the situation, the recommendations for the Kosovo Government listed below will mainly focus on achieving a full/complete resolution to the trade dispute and on requesting an independent, effective and efficient dispute resolution mechanism regarding trade disputes.

⁴³ Gashi and Berisha (2019), ‘The Impact of the 100% Tariff on Goods from Serbia and Bosnia and Herzegovina. Technical Report’. Available at: https://www.researchgate.net/publication/333458356_The_Impact_of_100_Tariff_on_the_Import_of_Goods_from_Serbia_and_Bosnia_and_Herzegovina [Accessed on: August 31, 2019].

1. As per the Kosovo Constitution, the dialogue on regional representation and cooperation encompassed in the Brussels Agreement between Kosovo and Serbia, as well as the Declaration by the SRSG,⁴⁴ the Government of Kosovo should sign CEFTA on its own behalf, and thus become a Signatory and a Party to CEFTA with full rights and obligations as all other Parties to CEFTA.
2. As per the Kosovo Constitution, the dialogue on regional representation and cooperation encompassed in the Brussels Agreement between Kosovo and Serbia and the Declaration by the SRSG⁴⁵, the Government of Kosovo should under no circumstances accept to be represented by UNMIK in CEFTA or any other regional or international agreements.
3. The Kosovo Government should participate in all initiatives within the RCC. In this regard, Serbia should not obstruct Kosovo from participating in any initiative or mechanism within the RCC.
4. The Kosovo Government should complete the implementation of the IBM Agreement and request that the IBM Agreement be respected in full by Serbia. On this matter, a deadline should be agreed within the EU-facilitated Dialogue.
5. The Kosovo Government should establish a technical working group with expertise in trade relations.
6. The Kosovo Government should mandate this technical working group, based on the Market Access Barriers Data-Base, to update the list of non-tariff barriers, technical barriers and sanitary and phyto-sanitary standard/measures imposed by Serbia (Annex 1 of this document) and the documents issued by Kosovo institutions not recognised by Serbia, as well as identify any additional violations of CEFTA or of

⁴⁴ UNMIK (2006), 'Declaration of the UNMIK Special Representative of the Secretary General on the Signing of the Amendment of and Accession to CEFTA'. Available upon request.

⁴⁵ Ibid.

other agreements regarding trade relations between Kosovo and Serbia, not included in Annex 1 of this document.

7. Upon updating the list on trade barriers (see Recommendation No. 6 above), the Kosovo Government should request that this technical working group cooperate closely with a Serbian technical working group of the same format in order to identify and work on all disputed issues and to provide detailed recommendations on how to effectively and efficiently resolve the same. The Kosovo Technical Working Group should also work with the list of existing barriers (see Annex 1 for details) and agree with the Serbian Technical Working Group that:
 - a. Serbia accepts all tests performed by laboratories in Kosovo or elsewhere (if this is the case), and that Serbia no longer requests additional tests to be done in Serbian laboratories on drinks exported from Kosovo to Serbia.
 - b. Serbia accepts all documents issued by Kosovo authorities and that Serbia seizes to request that documents be in the Serbian language.
 - c. Serbia reaches an agreement with Kosovo so that businesses that deal with old and scratch metals to export to and/or transit through Serbia until Kosovo becomes a Party o the “Basel Convention on the control of transboundary movements of hazardous wastes and their disposal”.
 - d. Serbia should refrain from banning the export and/or transit of goods from and/or to Kosovo based on discretionary verbal explanations, as is the case with the export of decorative trees.
 - e. Serbia should apply EU standards regarding working hours of the Serbian phytosanitary officials at the border crossings between Kosovo and Serbia.

- f. Serbia should as per Brussels Agreement, allow the export and/or transit of wine on glass bottles as well as products stemming from recycled plastic, which contain the label stating that the product is made in Kosovo.
- g. Serbia should recognise/ accept all certificates and documents issued by Kosovo authorities containing insignia related to the Republic of Kosovo. In this regard, Serbia should accept the certificates issued by Kosovo authorities for insulation materials used in construction. Further, Serbia should accept the Kosovar national stamp and not condition Kosovo exports, in particular, the transit of goods imported from EU countries, with provision of the so-called EUR 1 certificate and/or provision of certificates and documents issued by Serbian authorities.
- h. Serbia should not block but enable the registration of pharmaceutical producers and/or any other producers for whom registration with Serbian authorities is required prior to export.
- i. Serbia should not block, but issue licenses, whenever required, to Serbian companies interested in signing import contracts with Kosovo companies, as is the case with used and cardboard paper.
- j. Serbia, within the EU-facilitated Dialogue, should accept the vehicle license plates, so that Kosovo exporters can use local transporters for export to and/or transit of goods through Serbia.
- k. Serbia should respect in full CEFTA and the SAA, and allow Kosovo companies to apply for public procurement tenders in Serbia.
- l. Serbia should refrain from repeating its practice of imposing trade barriers ***from time to time*** on petroleum and gas transportation for imports from

Serbia. In this regard, it should recognise/accept the ADR certificates issued by companies accredited in Kosovo and/or North Macedonia.

- 8.** In order to make the process more dynamic, the Ministers of Trade and Industry of both Kosovo and Serbia, if needed, should also participate on an ad hoc basis in these technical working groups meetings. Upon the completion of the work by the groups of technical experts, the same should report to the respective Ministers of Trade. The latter should pass on the recommendations to the respective heads of the negotiation teams of Kosovo and Serbia who should reach agreements on normalising trade relations, as per CEFTA and the SAA.
- 9.** To ensure the effectiveness and efficiency in the implementation of the agreements reached on the normalisation of trade relations (as requested in Recommendation No. 8), Kosovo should only participate in the normalisation of trade relations if (i) the EU mediator is mandated to report on the implementation of the agreements to the EU and (ii) the process is conditioned upon the EU taking action against the Party breaching the agreements.⁴⁶ In case of breach of the trade agreements, the EU should halt its mediation, and freeze the IPA funds for and/or freeze negotiations on EU membership with the Party responsible for the violation.⁴⁷
- 10.** To ensure the effectiveness and efficiency in the implementation of the agreements reached on the normalisation of trade relations, Kosovo should request that the EU establishes an EU monitoring mechanism. The implementation report produced by the EU mediator should serve as the basis for monitoring. Further, the implementation report should be part of the comprehensive report on the implementation of the agreements stemming from the Brussels Dialogue. The latter should be shared with the Political Security Committee of the EU Council.

⁴⁶ A similar recommendation is offered in Phillips (2017) regarding the Kosovo-Serbia Dialogue.

⁴⁷ Phillips (2017), 'Implementation Review of the Kosovo-Serbia Dialogue'. Available at: https://www.humanrightscolumbia.org/sites/default/files/2017_09_05_Kosovo-serbia_report.pdf [Accessed on: August 8, 2019].

11. To ensure the effectiveness and efficiency in the implementation of the agreements reached on the normalisation of trade relations, Kosovo should request that the EU sets a deadline for reaching and implementing in full the agreements on the normalisation of trade relations.

12. In case Serbia agrees in principle on the above-listed recommendations relating to the normalisation of trade relations with Kosovo, the Kosovo Government should consider temporarily suspending the 100 percent tariff. But following Article 42, Paragraph 3 of CEFTA, Kosovo should keep in place **provisional rebalancing measures** “under the conditions and in accordance with the procedures laid down in Article 24”, until Serbia abolishes all the trade barriers, of any nature, that it has imposed on KOSOVO exports and goods in transit, within the deadline of the full implementation of agreements agreed upon through negotiations (as requested in recommendation No. 11). Likewise, Serbia in exchange for a temporary suspension of the 100 per cent customs tariff should immediately stop its 'de-recognition' campaign of Kosovo's independence.

Annexes

Annex 1. Non-Tariff Barriers, Technical Barriers and Sanitary and Phyto-sanitary Standards/Measures Imposed by Serbia on the Republic of Kosovo

According to a relevant official from the MTI, Serbia directly violates CEFTA by imposing the following non-tariff barriers, technical barriers and sanitary and phyto-sanitary standard/measures on Kosovo exports and goods in transit:

1. For the drinks exported to Serbia, on each export the Serbian authorities require additional tests. They take samples of the products and send them to the laboratories in Serbia. It takes a lot of time to complete these tests and sometimes the consignments are kept for more than 40 days in customs terminals before completing customs clearance. The cost for lab tests and for the terminal services made them not any more competitive and most of the interviewed companies stopped exporting to Serbia after the first experience.
2. Serbian authorities require that documents should always be prepared in Serbian language.
3. Companies, which collect old and scratch metals, are not allowed to sell to or transit these goods through Serbia. According to them, the Serbian authorities told them that Kosovo exporters could not export to Serbia or transit through, because KOSOVO is not a member of "Basel Convention on the control of transboundary movements of hazardous wastes and their disposal".
4. Export of decorative trees produced in Kosovo was refused based on a verbal explanation that decorative trees cannot be exported to Serbia.
5. At the border crossing between Kosovo and Serbia, the Serbian phytosanitary officials work on reduced working hours. After 14:00, no phytosanitary inspectors

are present at the border crossing which forces them to wait for inspection until the next day.

6. In Serbia, the wine producers cannot export wine on glass bottles, due to the label stating that the product is made in Kosovo. They export only not bottled and not labelled wine in large tankers.
7. All certificates issued by Kosovo authorities must be status-neutral, that is, they should not contain any insignia related to Kosovo.
8. Pharmaceutical producer from Kosovo is not able to export to Serbia, due to the requirement to be registered with the Serbian authorities as Kosovo exporters. Yet, they have told that the registration will not be approved by Serbian authorities on the grounds that they do not accept any document issued by Kosovo authorities which are not status neutral (they should not contain any insignia related to the Republic of Kosovo).
9. Producers of products from recycled plastics are not allowed to export to Serbia if in the package of their products is written declaration that these products are made by the company from Kosovo.
10. Serbia does not recognize a quality certificate issued by Kosovo Authorities for insulation materials used in construction.
11. Companies cannot export to Serbia using local transporters, because Serbia does not recognise the vehicle licence plates of Kosovo.
12. Kosovo Producers are not allowed to apply to the public procurement tenders in Serbia.

13. Companies, which collect used and cardboard paper, cannot export to Serbia, as importing companies from Serbia are not licensed by their authorities for importing from Kosovo.

