

FREE TRADE AGREEMENT BETWEEN MOLDOVA AND SERBIA AND MONTENEGRO

FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA AND THE COUNCIL OF MINISTERS OF SERBIA AND MONTENEGRO*

PREAMBLE

The Government of the Republic of Moldova and the Council of the Ministers of Serbia and Montenegro (hereinafter referred to as “the Contracting Parties”),

Reaffirming their desire to actively participate in the process of economic integration in Europe;

Admitting that Contracting Parties are willing to consolidate relations and to establish strong and durable relationships of cooperation and economic integration;

Reaffirming their commitment to pluralist democracy based on observance of the rules, rights and basic human liberties of the state governed by the rule of law;

Firmly convinced that this Agreement will promote intensification of commercial mutually advantageous exchange leading to creation of a wide zone of free trade, and contributing to the process of European integration,

Resolved for this purpose to progressively eliminate the barriers in mutual trade in general, in conformity with the Agreement establishing World Trade Organization (hereinafter referred to as “WTO “),

Have agreed as follows:

Article 1

Objectives

1. The Contracting Parties shall establish a free trade area in accordance with the provisions of this Agreement and in conformity with the definition, set out in Article XXIV of the GATT 1994 of the WTO.
2. The objectives of this Agreement are:
 - (a) to promote, through the expansion of mutual trade, of harmonious development of economic relations between the Contracting Parties, improvement of living standards and conditions of work, raising productivity and enhancing financial stability;
 - (b) to provide fair conditions for carrying out loyal competition for trade between the Contracting Parties;
 - (c) to gradually eliminate difficulties and restrictions on trade in goods, including also the agricultural products;

* The associated Annexes have been submitted to the Secretariat for consultation by interested Members (office 1174).

- (d) to create conditions for further encouragement of investments, particularly for the development of joint investments in both countries;
- (e) to contribute in this way, by the removal of barriers to trade, to the harmonious development and expansion of world trade.

CHAPTER I: INDUSTRIAL PRODUCTS

Article 2

Scope

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

Article 3

Basic Duties

1. For commercial exchanges covered by this Agreement, the Customs Tariffs of the Contracting Parties shall be applied to the classification of goods for imports into them.
2. For each product the basic duty to which the successive reductions set out in this Agreement are applied shall be the MFN duty on the date of entry into force of this Agreement.
3. If after the date of entry into force of this Agreement, any tariff reduction is applied on an *erga omnes* basis, in particular, reductions resulting from the tariff agreement concluded as a result of the WTO, such reduced duties shall replace the basic duties referred to in paragraph 2 of this Article as from that date when such reductions are applied.
4. The reduced duties, calculated in accordance with paragraph 2 of this Article, shall be rounded off to the second decimal place.
5. The Contracting Parties shall mutually exchange their basic duties.

Article 4

Customs Duties On Import And Charges Having Equivalent Effect

1. The Contracting Parties shall abolish all the customs duties on import and all charges having equivalent effect on date of the entry into force of this Agreement.
2. From the date of entry into force of this Agreement no new customs duties on imports or charges having equivalent effect shall be introduced, nor shall those already applied be increased in trade between the Contracting Parties.

Article 5

Customs Duties On Export And Charges Having Equivalent Effect

1. No new custom duties on exports, charges having equivalent effect to customs duties, and other export duties of a fiscal nature shall be introduced in trade between the Contracting Parties.
2. The Contracting Parties shall abolish all customs duties on exports or charges having equivalent effect to custom duties, and other export duties of a fiscal nature on the date of the entry into force of this Agreement.

Article 6

Quantitative Restrictions On Imports And Measures Having Equivalent Effect

1. No quantitative restrictions on imports or measures having equivalent effect shall be maintained or introduced between the Contracting Parties on the date of entry into force of this Agreement.
2. All quantitative restrictions on imports and measures having equivalent effect shall be abolished on the date of entry into force of this Agreement.

Article 7

Quantitative Restrictions On Exports And Measures Having Equivalent Effect

1. No quantitative restrictions on exports or measures having equivalent effect shall be maintained or introduced between the Contracting Parties as from the date of entry into force of this Agreement.
2. All quantitative restrictions on exports and measures having equivalent effect shall be abolished on the date of entry into force of this Agreement, except for products listed in Annex 2.

CHAPTER II: AGRICULTURAL PRODUCTS

Article 8

Scope

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

Article 9

Exchange Of Concessions

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

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

the Contracting Parties shall examine within the framework of the Joint Commission the possibilities of granting each other further concessions in trade in agricultural products.

Article 10

Agricultural Policy

1. Without prejudice to the provisions under Article 10 of this Agreement, the provisions of the Chapter II of this Agreement shall not restrict in any way the pursuance of the respective agricultural policies of the Contracting Parties or the taking of any measures under such policies, including the implementation of the provisions of the WTO Agreement on Agriculture.

2. The Contracting Parties shall notify to the Joint Commission changes in their respective agricultural policies pursued or measures which may affect the conditions of trade in agricultural products between them. On the request of either Contracting Party, prompt consultations shall be held within the Joint Commission, to examine the situation.

Article 11

Specific Safeguards

Notwithstanding other provisions of this Agreement, in particular Article 26 of this Agreement, given the particular sensitivity of the agricultural products, if imports of products originating in one Contracting Party, which are subject of concessions, granted under this Agreement, cause serious disturbances to the market of the other Contracting Party, the Contracting Party concerned shall enter into prompt consultations to find an appropriate solution. Pending such solution, the Contracting Party concerned may take appropriate measures it deems necessary.

Article 12

Sanitary And Phytosanitary Measures

1. The Contracting Parties shall apply their national regulations in veterinary, phytosanitary and sanitary matters, in particular in the exchange of information on infectious diseases of domestic animals, quarantine diseases, plant pests and weed, in a way that complies to the WTO Agreement on Sanitary and Phytosanitary Measures.

2. The Contracting Parties shall apply their regulations in veterinary, phytosanitary and sanitary matters in a non-discriminatory way and shall not introduce new measures that may have the effect of unduly obstructing trade.

3. The Contracting Parties undertake the obligations to exchange information on the level of the sanitary and phytosanitary protection of animals, plants and products.

4. The sanitary and phytosanitary measures and functioning of veterinary services shall comply with the Code of the International Epizootic Office and other international conventions in this area to which the Contracting Parties are part of.

CHAPTER III: GENERAL PROVISIONS

Article 13

Elimination Of Technical Barriers To Trade

1. The rights and obligations of the Contracting Parties relating to standards or technical regulations and related measures shall be governed in accordance with the WTO Agreement on Technical Barriers to Trade.

2. The Contracting Parties shall co-operate and exchange information in the field of standardization, metrology, conformity assessment and accreditation with the aim of eliminating technical barriers to trade.

3. Each Contracting Party, upon a request of the other Contracting Party, shall provide information on particular individual cases of standards, technical norms or related measures.

4. The Contracting Parties shall aim to reduce technical barriers to trade. To this end the Contracting Parties will enter, where appropriate, into negotiations for the conclusion of the Agreements for the mutual recognition in the field of conformity assessment, for the products subject to mutual trade between the Parties.

Article 14

Internal Taxation

1. The Contracting Parties shall refrain from any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products originating in the Contracting Parties.

2. Products exported to the territory of one of the Contracting Party may not benefit from repayment of internal taxation in excess of the amount of direct or indirect taxation imposed on them.

Article 15

Rules Of Origin And Co-Operation In Customs Administration

1. The Contracting Parties agree to apply the harmonized European preferential rules of origin in the mutual trade including all existing and further amendments thereto. In case the European rules of origin are amended, the Joint Commission shall make a decision on amending rules of origin.

2. Protocol 2 to this Agreement (hereinafter referred to as "Protocol 2") lays down the rules of origin and related methods of administrative co-operation.

3. The Contracting Parties shall take appropriate measures, including regular reviews by the Joint Commission and arrangements for administrative co-operation, to ensure that the provisions of Protocol 2 and Articles 3 to 7, 9, 10, 14, 26, 27 and 28 of this Agreement are effectively and

harmoniously applied, and to reduce, as far as possible, the formalities imposed on trade, and to achieve mutually satisfactory solutions to any difficulties arising from the operation of those provisions.

4. The Contracting Parties shall conclude separate Agreement for co-operation between their Customs Administration, as soon as possible.

Article 16

General Exceptions

1. The provisions of this Agreement shall not prevent from applying prohibitions or restrictions on import, export, or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and human life, animals or plants as well as environment protection; protection of national treasures possessing artistic, historical or archaeological value; the protection of intellectual property; regulations relating to gold or silver, or the conservation of exhaustible natural resources, if such measures are effectively applied in relation with domestic consumption or production restrictions.

2. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or disguised restriction on trade between the Contracting Parties.

Article 17

Security Exceptions

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

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

Article 18

State Monopoly

1. The Contracting Parties shall adjust progressively any State monopoly of a commercial character so as to ensure that no discrimination regarding the conditions, under which goods are procured and marketed, exists between natural and legal persons of the Contracting Parties. The Contracting Parties shall inform each other about the measures adopted to implement this objective.
2. The provisions of this Article shall apply to any body through which the competent authorities of the Contracting Parties, in law or in fact, either directly or indirectly supervise, determine or appreciably influence imports or exports between the Contracting Parties. These provisions shall likewise apply to monopolies delegated by the State to other bodies.

Article 19

Payments

1. Payments in freely convertible currencies relating to trade in goods between the Contracting Parties and the transfer of such payments to the territory of the Contracting Party where the creditor resides shall be free from any restrictions.
2. The Contracting Parties shall refrain from any exchange or administrative restrictions on the grant, repayment or acceptance of short and medium term credits to trade in goods in which person residing in one of the Contracting Parties participates.
3. Notwithstanding the provisions of paragraph 2, any measure regarding current payments related to flow of goods shall conform to the conditions stipulated in Article VIII of the Articles of the Agreement of the International Monetary Fund (IMF).

Article 20

Rules Of Competition Concerning Undertakings

1. The following are incompatible with the proper functioning of this Agreement insofar as they can affect trade between the Contracting Parties:
 - (a) all agreements between undertakings, decisions by associations of undertakings and concerted practices concerning undertakings which have as their objective or effect the prevention, restriction or distortion of competition;
 - (b) abuse by one or more undertakings of a dominant position in the territories of the Contracting Parties, as a whole or in substantial part thereof.
2. If one Contracting Party considers that a certain practice is incompatible with the provisions of paragraph 1, and if such a practice causes or threatens to cause serious prejudice to the interests of this Contracting Party or material injury to its domestic industry, it may take appropriate measures, upon consultations within the Joint Commission or after 30 days after a request for such consultations is made.

Article 21

State Aid

1. Any aid granted by one Contracting Party or through State resources in any form whatsoever, distorting or threatening to distort competition by favoring certain undertakings or the production of certain goods shall be incompatible with the proper functioning of this Agreement, insofar as it may affect trade between the Contracting Parties.
2. The Joint Commission, within three years since the date of the entry into force of this Agreement, shall set out the basic criteria to verify any practices contrary to this Article, as well as rules for their implementation.
3. The Contracting Parties shall ensure transparency of state aid measures, *inter alia* also through annual reporting to the Joint Commission on the whole volume of the state aid and its distribution and will provide, on the other Contracting Party's request, information on the schemes in specific cases.
4. If one Contracting Party considers that a given practice is incompatible with the provisions of this Article, it may take appropriate measures against this practice, which shall not be in excess of the injury caused, under the conditions and in accordance with the procedures laid down in Article 23 of this Agreement. Such measures may be taken only in accordance with the procedures and conditions set up by the WTO and any other negotiated instrument applicable between Contracting Parties.

Article 22

Public Procurement

The Contracting Parties consider the liberalization of their respective public procurement markets as an objective of this Agreement.

The Contracting Parties shall progressively develop regulations on public procurement for the purpose of ensuring mutual access to bidding based contracting on their public procurement markets.

The Joint Commission will examine the evolution of regulations in this area, aiming to meet the objectives of this Article, and shall recommend concrete ways to implement its provisions.

During the time of examination indicated in Paragraph 3, the Joint Commission may take into consideration, in particular, within the framework of international relations development, the possibility of extending the coverage or/and degree of openness of the market mentioned in paragraph 2.

Article 23

Procedure For The Application Of Safeguard Measures

Before initiating the procedure for the application of safeguard measures set out in the following paragraphs of the present Article, the Contracting Parties shall endeavor to solve any differences between them through direct consultations.

Without prejudice to paragraph 6 of the present Article, each Contracting Party, which considers resorting to safeguard measures, shall promptly notify the other Contracting Party and shall supply all relevant information. Consultations between the Contracting Parties shall take place without delay with a view to finding a solution.

3. (a) As regards Article 21, the Contracting Parties shall give the Joint Commission all assistance required in order to examine the case. If the Contracting Party fails to stop the practice objected to, within the period fixed by the Joint Commission, or if the Joint Commission fails to reach an agreement after consultations, or after 30 days following the referral for such consultations, the Contracting Party concerned may adopt the appropriate measures to deal with the difficulties resulting from the disputed practice.
 - (b) As regards Articles 25, 26 and 27, the Joint Commission shall examine the case or situation and may take any decision needed to put an end to the difficulties notified by the Contracting Party concerned. In absence of such a decision during 30 days of the matter being referred to the Joint Commission, the Contracting Party concerned may adopt the necessary measures in order to remedy the situation.
 - (c) As regards Article 29 the Contracting Party concerned shall supply to the Joint Commission with all relevant information required for a thorough examination of the situation with a view to seeking a mutually acceptable solution. If the Joint Commission fails to reach or if a period of three months has elapsed from the date of notification, the Contracting Party concerned may take appropriate measures.
4. The safeguard measures taken shall be immediately notified to the other Contracting Party. They will be restricted with regard to their extent and to their duration to what is strictly necessary in order to rectify the situation-giving rise to their application and shall not be in excess of the injury caused by the practice or the difficulty in question. Priority shall be given to such measures as will least disturb the functioning of the Agreement.
 5. The safeguard measures taken shall be the subject of regular consultations within the Joint Commission with a view of their re-applying, substitution or abolition as soon as possible.
 6. When exceptional circumstances requiring immediate action make prior examination impossible, the Contracting Party concerned may, in the cases of Articles 25, 26 and 27 apply forthwith the precautionary and provisional measures strictly necessary to remedy the respective situation. The measures shall be notified without delay and consultations between the Contracting Parties shall take place as soon as possible within the Joint Commission.

Article 24

Intellectual Property Protection

1. The Contracting Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, including measures for the enforcement of such rights against infringement, counterfeiting and piracy.
2. For the purposes of this Agreement, the protection of intellectual property rights includes mainly the protection of copyright, computer programs, databases and related rights, trademarks, geographic indications, industrial projects, patents, integrated circuits and drawings, as well as undisclosed information on know-how.
3. The Contracting Parties shall co-operate in intellectual property rights protection matters and, at the request of any Contracting Party, consultations on expert level regarding these problems shall be held, mainly in areas dealing with the existing and future international treaties on harmonization, administration and enforcement of intellectual property rights and international specialized organizations such as the WTO and World Intellectual Property Organization, as well as the relationships of the Contracting Parties with any other third country on the of intellectual property matter.

Article 25

Dumping

If one of the Contracting Parties finds that dumping, in the meaning of Article VI of GATT 1994, is taking place in the trade relations governed by this Agreement, the concerned Contracting Party may take appropriate measures against this practice under the conditions and in accordance with the procedure laid down in Article 23 of this Agreement, as well as in conformity with WTO Agreement on implementation of the WTO Agreement on Implementation of Article VI of the GATT 1994.

Article 26

General Safeguards

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

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

the Contracting Party concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 23 of this Agreement.

Article 27

Structural Adjustment

1. Exceptional measures of limited duration, which derogate from the provisions of Article 4 of this Agreement, may be taken in the form of increased customs duties.
2. These measures may only concern infant industries, or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems.
3. Export customs duties applied by one of the Contracting Parties for goods originating in other Contracting Party shall not exceed 25% *ad valorem* and shall contain a preference element in terms of the rate of customs duty for goods originating in other Contracting Party. The total value of imported goods subject to such measures cannot exceed 15% of the total amount of imports of industrial goods from the other Contracting Party during the last year for which statistic data is valid.
4. These measures shall apply for a period that will not exceed three years, otherwise the authorization of the Joint Commission is needed.
5. No measure can be applied to goods if more than two years passed since the removal of all customs duties and quantitative restrictions or measures having equivalent effect for such goods.
6. The interested Contracting Party shall inform the other Contracting Party of any exceptional measure it intends to take and, at the request of the other Contracting Party, consultations shall be held within the Joint Commission regarding such measures and sectors to which they apply, even before they are put into force. When taking such measures, the Contracting Party concerned shall provide the Joint Commission a schedule for the elimination of customs duties introduced under this Article.

Article 28

Re-Export And Serious Shortage

Where the compliance with the provisions of this Agreement leads to:

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

and where the situation referred to above gives rise or is likely to give rise to major difficulties for the exporting Contracting Party, that Contracting Party may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 23 of this Agreement. The measures shall be non-discriminatory and be eliminated when conditions justify no longer their maintenance.

Article 29

Fulfillment Of Obligations

1. The Contracting Parties shall take all necessary measures to ensure the fulfillment of their obligations under the provisions of this Agreement.
2. If either Contracting Party considers that the other Party has failed to fulfill an obligation under this Agreement, the Contracting Party concerned may take the appropriate measures under the conditions and in accordance with the procedure laid down in Article 23 of this Agreement.

Article 30

Balance-Of- Payments Difficulties

1. Where a Contracting Party is in serious balance-of-payments difficulties, or under imminent threat thereof, the Contracting Party concerned may adopt, in accordance with the conditions established by WTO, trade restrictive measures, which shall be of limited duration and may not go beyond what is necessary to remedy the balance-of-payments situation. The measures shall be progressively attenuated, as the balance-of-payments conditions improve, and they shall be eliminated when conditions no longer justify their maintenance. The Contracting Party in concerned shall inform the other Contracting Party and the Joint Commission forthwith their introduction and, whenever practicable, of a time schedule for their removal.
2. The Contracting Parties shall endeavor to avoid the imposition of restrictive measures base on balance-of-payments difficulties.

Article 31

The Joint Commission

1. The Contracting Parties agree to establish a Joint Commission composed of their representatives.
2. The implementation of this Agreement shall be supervised and administrated by the Joint Commission.
3. For the purpose of the proper implementation of this Agreement, the Contracting Parties shall exchange information and, at the request of any Contracting Party, shall hold consultations within the Joint Commission. The Joint Commission shall keep under review the possibility of further removal of the obstacles to trade between the Contracting Parties.
4. The Joint Commission may take decisions in the cases provide for in this Agreement. On other matters the Joint Commission may take recommendations.

Article 32

Procedures Of The Joint Commission

1. For the proper implementation of this Agreement, the Joint Commission shall meet whenever necessary but at least once a year. Either Contracting Party may request a meeting to be held.
2. For the purpose of this Agreement, the Joint Commission shall adopt its rules of procedure.
3. The Joint Commission may decide to set up such sub-committees and working parties as it considers necessary to assist it in accomplishing its tasks.

Article 33

Trade Relations Governed By Other Agreements

1. The provisions of this Agreement apply to all trade relationships between the Contracting Parties.
2. This Agreement shall not prevent the maintenance or establishment of customs unions, free-trade zones, economic unions or arrangements for frontier trade to the extent that these do not negatively affect the trade regime between the Contracting Parties and in particular the provisions concerning rules of origin provided for by this Agreement.

Article 34

Evolutionary Clause

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

Article 35

Annexes And Protocols

Annexes and Protocols of this Agreement shall form an integral part thereof. The Joint Commission may decide to amend Annexes and Protocols.

Article 36

Amendments

Amendments to this Agreement, including Annexes and Protocol, may be proposed by either Contracting Party and shall enter into force on the date of receipt of the last notification, through diplomatic channels, confirming that all internal legal procedures required by either Contracting Party for their entry into force have been fulfilled.

Article 37

Duration And Denunciation

1. This Agreement is concluded for an indefinite period of time.
2. Either Contracting Party may denounce this Agreement by a written notification to the other Contracting Party. The Agreement shall terminate on the first day of the seventh month following the date when other Contracting Party received the denunciation notice.
3. In the event of any Contracting Party to this Agreement becoming a member of European Union that Contracting Party will withdraw from this Agreement at the latest the day before membership takes effect.

Article 38

Entry Into Force

This Agreement shall entry into force on the first day of the second month following the date of the receipt of the last written notification by which the Contracting Parties inform each other through diplomatic channels that all necessary requirements foreseen by their internal legislation for the entry into force of this Agreement have been fulfilled.

DONE in Rome, on 13 of November 2003 in two original copies, each in Moldavian, Serbian and English languages, each being equally authentic. In case of different interpretation of provisions of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF MOLDOVA

FOR COUNCIL OF MINISTERS
OF SERBIA AND MONTENEGRO
