

STABILISATION AND ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES OF THE ONE PART, AND THE REPUBLIC OF SERBIA, OF THE OTHER PART

CHAPTER III
COMMON PROVISIONS

ARTICLE 43

State monopolies

Serbia shall progressively adjust any state monopolies of a commercial character so as to ensure that, three years after the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States of the European Union and Serbia.

TITLE VI

APPROXIMATION OF LAWS, LAW ENFORCEMENT AND
COMPETITION RULES

ARTICLE 72

1. The Parties recognise the importance of the approximation of the existing legislation in Serbia to that of the Community and of its effective implementation. Serbia shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community acquis. Serbia shall ensure that existing and future legislation will be properly implemented and enforced.

2. This approximation shall start on the date of signing of this Agreement, and shall gradually extend to all the elements of the Community acquis referred to in

this Agreement by the end of the transitional period defined in Article 8 of this Agreement.

3. Approximation will, at an early stage, focus on fundamental elements of the Internal Market acquis, Justice, Freedom and Security as well as on other trade-related areas. At a further stage, Serbia shall focus on the remaining parts of the acquis.

Approximation shall be carried out on the basis of a programme to be agreed between the European Commission and Serbia. Serbia shall focus on the remaining parts of the acquis. Approximation shall be carried out on the basis of a programme to be agreed between the European Commission and Serbia.

4. Serbia shall also define, in agreement with the European Commission, the detailed arrangements for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken.

ARTICLE 73

Competition and other economic provisions

1. The following are incompatible with the proper functioning of this Agreement, insofar as they may affect trade between the Community and Serbia:

(i) all Agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or Serbia as a whole or in a substantial part thereof;

(iii) any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the EC Treaty and interpretative instruments adopted by the Community institutions.

3. The Parties shall ensure that an operationally independent authority is entrusted with the powers necessary for the full application of paragraph 1(i) and

(ii) of this Article, regarding private and public undertakings and undertakings to which special rights have been granted.

4. Serbia shall establish an operationally independent authority which is entrusted with the powers necessary for the full application of paragraph 1(iii) within one year from the date of entry into force of this Agreement. This authority shall have, inter alia, the powers to authorise State aid schemes and individual aid grants in conformity with paragraph 2, as well as the powers to order the recovery of State aid that has been unlawfully granted.

5. The Community on one side and Serbia on the other side shall ensure transparency in the area of State aid, inter alia by providing to the other Parties a regular annual report, or equivalent, following the methodology and the presentation of the Community survey on State aid. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

6. Serbia shall establish a comprehensive inventory of aid schemes instituted before the establishment of the authority referred to in paragraph 4 and shall align such aid schemes with the criteria referred to in paragraph 2 within a period of no more than 4 years from the entry into force of this Agreement.

7. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognise that during the first five years after the entry into force of this Agreement, any public aid granted by Serbia shall be assessed taking into account the fact that Serbia shall be regarded as an area identical to those areas of the Community described in Article 87(3) (a) of the EC Treaty.

(b) Within four years from the entry into force of this Agreement, Serbia shall submit to the European Commission its GDP per capita figures harmonised at NUTS II level. The authority referred to in paragraph 4 and the European Commission shall then jointly evaluate the eligibility of the regions of Serbia as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the relevant Community guidelines.

8. As appropriate, Protocol 5 establishes the rules on state aid in the steel industry. This Protocol establishes the rules applicable in the event restructuring aid is granted to the steel industry. It would stress the exceptional character of such aid and the fact that the aid would be limited in time and would be linked to capacity reductions within the framework of feasibility programmes.

9. With regard to products referred to in Chapter II of Title IV:

(a) paragraph 1(iii) shall not apply;

(b) any practices contrary to paragraph 1(i) shall be assessed according to the criteria established by the Community on the basis of Articles 36 and 37 of the EC Treaty and specific Community instruments adopted on this basis.

10. If one of the Parties considers that a particular practice is incompatible with the terms of paragraph 1, it may take appropriate measures after consultation within the Stabilisation and Association Council or after 30 working days following referral for such consultation. Nothing in this Article shall prejudice or affect in any way the taking, by the Community or Serbia, of countervailing measures in accordance with the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures and the respective related internal legislation.

ARTICLE 74

Public undertakings

By the end of the third year following the entry into force of this Agreement, Serbia shall apply to public undertakings and undertakings to which special and exclusive rights have been granted the principles set out in the EC Treaty, with particular reference to Article 86. Special rights of public undertakings during the transitional period shall not include the possibility to impose quantitative restrictions or measures having an equivalent effect on imports from the Community into Serbia.

PROTOCOL 5

ON STATE AID TO THE STEEL INDUSTRY

1. The Parties recognise the need that Serbia addresses promptly any structural weaknesses of its steel sector to ensure the global competitiveness of its industry.

2. Further to the disciplines stipulated by paragraph 1(iii) of Article 73 of this Agreement, the assessment of the compatibility of State aid to the steel industry as defined in Annex I of the Guidelines on national regional aid for 2007-2013 shall be made on the basis of the criteria arising from the application of Article 87 of the EC Treaty to the steel sector, including secondary legislation.

3. For the purposes of applying the provisions of paragraph 1(iii) of Article 73 of this Agreement with regard to the steel industry, the Community recognises that, during five years after the entry into force of this Agreement, Serbia may exceptionally grant State aid for restructuring purposes to steel producing firms in difficulties, provided that:

(a) it leads to the long-term viability of the benefiting firms under normal market conditions at the end of the restructuring period; and

(b) the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability, and aid is where appropriate progressively reduced;

(c) Serbia presents restructuring programmes that are linked to a global rationalisation which includes the closing of inefficient capacity. Every steel producing firm benefiting from restructuring aid shall, as far as possible, provide for compensatory measures balancing the distortion of competition caused by the aid.

4. Serbia shall submit to the European Commission for assessment a National Restructuring Programme and individual business plans for each of the companies benefiting from restructuring aid which demonstrate that the above conditions are fulfilled. The individual business plans shall have been assessed and agreed by the State aid monitoring authority of Serbia in view of their compliance with paragraph 3 of this Protocol.

The European Commission shall confirm that the National Restructuring Programme is in compliance with the requirements of paragraph 3.

5. The European Commission shall monitor the implementation of the plans, in close cooperation with the competent national authorities, in particular the State aid monitoring authority of Serbia.

If the monitoring indicates that aid to the beneficiaries which is not approved in the National Restructuring Programme or any restructuring aid to steel firms not identified in the National Restructuring Programme has been granted from the date of signature of this Agreement onwards, the State aid monitoring authority of Serbia shall ensure that any such aid is reimbursed.

6. Upon request, the Community shall provide Serbia with technical support for the preparation of the National Restructuring Programme and the individual business plans.

7. Each Party shall ensure full transparency with respect to State aid. In particular, as regards State aid granted to steel production in Serbia and the implementation of the restructuring programme and the business plans, a full and continuous exchange of information shall take place.

8. The Stabilisation and Association Council shall monitor the implementation of the requirements set out in paragraphs 1 to 4 above. To this effect, the Stabilisation and Association Council may draft implementing rules.

9. If one of the Parties considers that a particular practice of the other Party is incompatible with the terms of this Protocol, and if that practice causes or threatens to cause prejudice to the interests of the first Party or material injury to its domestic industry, this Party may take appropriate measures after Consultation within the Subcommittee dealing with competition matters or after thirty working days following referral for such consultation.