



**Republika e Kosovës
Republika Kosova-Republic of Kosovo
Qeveria –Vlada - Government
Kryeministri – Premijer -The Prime Minister**

MEMORANDUM

Imposition of Tariffs on Importation of Goods from Serbia and Bosnia & Herzegovina

General Background and Context

1. According to its Constitution, the Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state [Art. 1 (1)], which concludes international agreements and becomes a member of international organizations [Art. 17 (1)], and participates in international cooperation for promotion and protection of peace, security and human rights [Art. 17 (2)].
2. The Central European Free Trade Agreement (CEFTA) was signed in 2006 by the United Nations Interim Administration Mission in Kosovo. CEFTA applies to The Republic of Kosovo pursuant to Art 145 (1) of the Constitution which provides that:

“International agreements and other acts relating to international cooperation that are in effect on the day this Constitution enters into force will continue to be respected until such agreements or acts are renegotiated or withdrawn from [...]”

3. The Republic of Kosovo recognizes its obligations arising from CEFTA and has continuously executed in good faith all obligations deriving therefrom. The Republic of Kosovo has always considered CEFTA as the basis for establishing a free market economy based on international free trade standards and principles. Successive Governments of Kosovo have built a stable macroeconomic system, a solid banking system and have implemented reforms in customs and tax administration that meet international free trade standards. The Assembly of Kosovo has adopted numerous commercial laws *i.e.* Law on Business Organizations; Law on Obligational Relationships; Law on Enforcement Procedure; Law on Bankruptcy; Law on Trademark; Law on Intellectual property; and Law on Strategic Investments.
4. Government led reforms have resulted in higher rankings in the World Bank’s Doing Business reports. Today, Kosovo ranks ahead of other countries in the region in respect to simplified procedures for doing business – further evidence of a consistent commitment on the part of Kosovo to implement obligations arising from international law and CEFTA in readiness for membership in the European Union. The signing of the Stabilization and Association

Agreement was a significant milestone for establishing official economic relationship with the European Union. Kosovo remains committed to complying with international free trade standards.

5. While fully implementing its own obligations, Kosovo has experienced and has continuously reported failures by the Republic of Serbia and Bosnia & Herzegovina to adhere to their obligations deriving from CEFTA and other applicable international law. Both countries have perpetrated offensive acts that violate CEFTA obligations, interfere with domestic constitutional order, and threaten the sovereignty, security and public policy of Kosovo. In the case of the Republic of Serbia, these actions are also in violation of agreements reached within the dialogue for normalization of relations between the Republics of Kosovo and Serbia. The Republic of Serbia has also violated Chapter 35 of the EU Common Position On Normalization of Relations between Serbia and Kosovo, which requires Serbia's "*continued engagement toward a visible and sustainable improvement in relations with Kosovo*".
6. Following the 2008 Declaration of Independence, Kosovo businesses experienced greatly increased difficulties in exporting products to Serbia and Bosnia & Herzegovina. As a consequence, Kosovo exporters are excluded from certain markets by Serbia and Bosnia & Herzegovina as neither country allows Kosovo vehicles to cross their territory. Kosovo exporters are forced to find alternative means of access that result in additional travel, logistical and administrative costs. The perishable nature of some goods precludes any alternative route. The Government of Kosovo, Kosovo Chamber of Commerce, and individual Kosovo businesses regularly reported violations by Serbia and Bosnia & Herzegovina including failure to accept Kosovo custom stamps, arbitrary custom stops, undue technical and procedural barriers, and other non-fiscal measures. These complaints were recorded in CEFTA's database and were submitted to various CEFTA bodies including the Joint Committee for Consultation and Subcommittee on Non-Tariff Barriers. These complaints were also submitted to Serbia and Bosnia & Herzegovina authorities. No consultation or resolution ensued: Serbia and Bosnia & Herzegovina have persistently failed to adequately address these issues. In rare instances when complaints were addressed, the same barriers repeatedly reappeared.
7. The position of the Government of Kosovo is that the Republic of Serbia and Bosnia and Herzegovina is in violation of the following Articles of CEFTA:
 - Article 1 [Objectives] – see paragraph 15 (xi) below
 - Article 3 [Quantitative Restrictions] – see paragraph 15 (xii) below
 - Article 12 [Sanitary and Phytosanitary Measures] – see paragraph 15 (x. a.) below
 - Article 13 [Technical Barriers to Trade] – see paragraph 15 (x) below
 - Article 21 [State Aid] – see paragraph 13 below
 - Article 25 [Balance of Payment Difficulties] – see paragraph 14 below
 - Articles 30-32 [Investment related articles] – see paragraph 15 (xiii) below
8. The Government of Kosovo is mindful of its contractual obligations under the Stabilization and Association Agreement (SAA), Article 16 of which states that *'Kosovo shall continue to implement the*

Central European Free Trade Agreement. The position of the Government of Kosovo is that the Government is not in breach of CEFTA: it follows, therefore, that the Government is not in breach of Article 16 of the SAA.

Constitutional and lawful response of the Government of Kosovo

9. Due to the continuous violations of CEFTA by Serbia and Bosnia & Herzegovina, threats to national security, interference in domestic constitutional order, undermining by Serbia and Bosnia & Herzegovina of Kosovo's legitimate aspirations to membership of international organizations, Kosovo asserts the inviolability of its Constitution, which provides that *the sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all means provided in this Constitution and the law* [Art 2 (2)]. The Government of Kosovo, pursuant to Article 92 (4) and 93 (4) of the Constitution of the Republic of Kosovo, on November 21, 2018 adopted a decision that, among other things, establishes a tariff of 100% for products imported originating in Serbia or Bosnia & Herzegovina, and a ban on import on products that contain descriptions such as `Kosovo and Metohija`, `Kosovo UNMIK`, Kosovo 1244`, or any other title that is contrary to the proper constitutional designation of the Republic of Kosovo and international agreements.
10. The continuous and systemic acts of aggression by Serbia, violations of CEFTA obligations, and interference in the constitutional integrity of Kosovo have forced the Government of Kosovo to resort to **Article 17** (General Exceptions) and **Article 18** (Security Exceptions) of CEFTA for redress. **Article 17** confers a general right to restrict imports on grounds of public policy and public security. **Article 18** confers on a state the specific right to 'take any measure [...] for the protection of its essential security interests [...] in time of [...] serious international tension constituting threat of war.'
11. Serbia has persistently engaged in acts that create international tension, constitute a threat of war and a threat to public security. Serbia threatens to deploy its army in Kosovo, interferes in the internal affairs of Kosovo through support of illegal structures and criminal groups, and provokes inter-ethnic tensions by a variety of means including its support for convicted war criminals.
12. Serbia has consistently undertaken acts that threaten the territorial integrity of Kosovo through illegal entry of Serb-officials, illegal smuggling of products, and on one occasion attempting to deploy a train to Kosovo bearing offensive Serb nationalist slogans.
13. The Government of Kosovo has also relied on Article 21 (*State Aid*) of CEFTA as grounds for its decision. Article 21 prohibits Member States from granting any form of subsidies to local manufacturers. Goods originating from Serbia and Bosnia & Herzegovina - especially food and construction materials – receive unlawful state aid and are substantially dumped below their market price in Kosovo, further distorting fair competition in the domestic market.

14. CEFTA, Art. 25 “*Balance of Payments Difficulties*” also provides justification for the tariffs imposed “*where one of the parties is in serious balance of payments difficulties, or under imminent threat thereof, the party concerned may adopt restrictive measures [...]*”. Serbia and Bosnia & Herzegovina impose transport barriers blocking or precipitating long delays on the import and export of goods from Kosovo to Serbia and Bosnia and Herzegovina and vice versa. As a result, the volume of goods from Serbia and Bosnia & Herzegovina traded in Kosovo is exponentially higher than the volume of Kosovo goods traded in Serbia and Bosnia & Herzegovina, even when adjusted for market production and size. The plethora of barriers imposed by these two states against Kosovo companies has caused a grossly excessive trade gap such that Kosovo exports to Serbia and Bosnia & Herzegovina amount to less than 10% of imports from those countries.

Additional violations by Serbia and Bosnia and Herzegovina

15. There are a number of other hostile actions by Serbia and Bosnia & Hercegovina that have breached CEFTA and violated other applicable international law, which are not limited to:
- i. Serbia and Bosnia Herzegovina persistently pressure other countries to revoke their recognition of Kosovo, thus undermining the sovereignty and territorial integrity of Kosovo.
 - ii. Serbia and Bosnia & Herzegovina have sabotaged Kosovo’s attempts to join international agencies relevant to domestic and regional security, including membership of INTERPOL.
 - iii. Serbia, while violating obligations arising from the 2013 Brussels Agreement, continuously threatens and intimidates Kosovo Serb citizens who are members of Kosovo Police and Kosovo Security Force, and citizens who endorse the constitutional and legal authority of the institutions of Kosovo.
 - iv. Serbia, while violating obligations arising from the 2013 Brussels Agreement, illegally supports, funds and controls illegal parallel structures that interfere in Kosovo’s constitutional and legal order.
 - v. Goods originating from Serbia and Bosnia and Herzegovina are sold in the black market in northern parts of Kosovo, by economic entities that do not operate in compliance with Kosovo commercial requirements of business registration, fiscal reporting, and tax obligations.
 - vi. Serbia and Bosnia & Herzegovina have consistently violated the Brussels Agreement on regional representation by denying Kosovo representatives (including members of parliament, ministers, and senior government representatives) the right to take part in events organized in Serbia and Bosnia & Herzegovina.
 - vii. Kosovo sport federations and artists have been deprived of the right to take part in international contests and events.
 - viii. Serbia has blatantly and intentionally ignored the Brussels agreement on Integrated Border Management, requiring it to build permanent facilities in the border-crossing points with Kosovo.
 - ix. Serbia refuses to comply with agreements on customs procedures, including those related to customs stamps. As a result, Serbian products are entering Kosovo without paying custom fees and VAT, depriving Kosovo of revenue and enabling Serbian prices to be significantly

- lower than those of Kosovo products.
- x. Kosovar products do not have access to the market in Serbia and Bosnia & Herzegovina due to a multitude of “*Technical Barriers to Trade*” which are in open violation of CEFTA, Article 13 as well as World Trade Organization (“WTO”) Agreement on Technical Barriers to Trade. By way of example, the authorities of these two countries:
 - a) Abuse the sanitary and phytosanitary certification process, taking samples from every truck of beverage producer as opposed to the standard practice of inspecting 3-5 trucks for every 100. The practice of the authorities in Serbia and Bosnia and Herzegovina as to the sanitary and phytosanitary certification process has violated Art. 12 of CEFTA and the WTO Agreement on the Application of Sanitary and Phytosanitary measures.
 - b) Do not recognize Kosovar exporters’ testing analysis.
 - c) Refuse to grant licenses for specialty goods made in Kosovo, such as pharmaceuticals.
 - d) Refuse to recognize the certificate of origin issued by Kosovo authorities and demand a certificate of origin of goods to be issued by a Serbian authority, violating Kosovo law, Serbian and Bosnian law, and CEFTA.
 - xi. Kosovo trucks are not allowed to use Serbia for transit to EU markets. This measure is a blatant violation of CEFTA, Art. 1(d) and in contravention of EU norms on free movement of goods, services, labor and capital.
 - xii. Similarly, Bosnia & Herzegovina exports significant volumes to Kosovo while placing extreme limits on what is imported from Kosovo, in violation of article 3 (Quantitative Restrictions) of CEFTA.
 - xiii. Kosovo companies cannot legally compete in public bids in Serbia. In contrast, more than one hundred public bids have been awarded to Serbian companies in Kosovo. Serbia has violated CEFTA, Articles 30, 31 & 32 pertaining to Investment when it failed to provide an open, stable and fair investment environment for Kosovo investors.
 - xiv. Serbia has refused to implement the 2013 energy agreement, which was reaffirmed in 2015. As a result, the Kosovo government is suffering direct losses of an estimated 30 million Euros annually and Kosovo businesses are losing an estimated EUR 300 million annually.
- 16.** In accordance with the Constitution of the Republic of Kosovo and CEFTA, in consideration that Kosovo exhausted relevant legal remedies to address its concerns, and in light of the above facts, it became imperative for the Government of the Republic of Kosovo to adopt this decision.