



Center for International Development
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INTEGRATION IN THE BALKANS: ALBANIA AND KOSOVO*

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Abstract

Despite their historic and ethnic ties, trade and investment between Albania and Kosovo remains underdeveloped. To be sure, even if fully developed, Kosovo is unlikely to play a major role in Albanian external economic relations. Nonetheless, increased economic integration between the two countries can serve as the basis not only for enhancing the ties between the two countries, but also for spurring the measures that could act as a springboard for Albania's integration with respect to other countries in the Balkans as well as with the EU.

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INTRODUCTION: WHY INTEGRATION?

When one thinks about advancing cooperation or deepening integration between Albania and Kosovo, it is helpful to contextualize it by identifying the following circles of integration. On the one hand, Albania has a free trade regime with Kosovo, in the framework of the Central European Free Trade Agreement (CEFTA) which regulates trade in goods between the two countries and other regional partners. And on the other hand, Albania's trade relations with most of the European countries are governed by the Stabilization and Association Agreement with the European Union and its Member States, whereas with the non- EU countries, through its membership in the World Trade Organization.

In this context, a deeper integration with Kosovo could go beyond what is already covered by CEFTA, and in particular by enlarging the scope of trade relations in order to include not only an expanded and deepened trade in goods, but also trade in services, movement of capital, and movement of workers. In other words, a deeper integration with Kosovo could consist in the creation of a common market between the two countries. This particular process is complementary to the other integration processes with regional countries, with the European Union, and within the WTO framework. Furthermore, as regional countries move separately towards accession in the EU, it is worth exploring the possibility of developing closer ties and a regional approach *vis á vis* the EU accession process.

The virtue of focusing on Kosovo is that beyond the obvious historical reasons and governments' intentions in brining the two countries closer to one another, a deeper integration with Kosovo could serve to launch proven mechanisms for deepening ties with the rest of regional countries, and ultimately to adequately create capacities and better prepare Albania for the eventual accession in the European Union. Hence, although our recommendations contained in this introductory report are addressed to trade with Kosovo, they also have application with regard to other countries and integration processes.

During our work in Albania, we noticed a sense of frustration that despite CEFTA's free trade regime or goodwill gestures from public officials, there wasn't much of a sense of connection between the two economies. When one looks at the number of Kosovar businesses in Albania, or Albanian businesses in Kosovo, as well as at the number of Kosovar workers in Albania and vice versa, it is difficult not to conclude that both countries are late in taking active steps to enhance business formation, late in creating conditions for labor mobility, and inactive when it comes to effectively dealing with trade or investment disputes.

The economic imperative for bringing the two countries closer to one another requires action to remove institutional barriers that could unlock the potential for greater synergy between them. A proactive approach towards creating a larger economy is premised on the idea that deeper integration between two

countries of similar socio-economic development could enhance welfare by creating economies of scale, increasing investments and improving the competitiveness of the business sectors, harnessing the intellectual capacities in both countries, and preparing the bureaucracies to effectively address challenges posed by the encounter with European or global markets.

Regarding the methods of integration, deeper regional integration could happen mainly through a vertical approach that would consist of formal international agreements between two countries, which in turn would need to be incorporated and implemented in the respective domestic legal systems, in or alternatively, through a horizontal, bottom up, project oriented, and systemic effort to create meaningful connection and access for users and consumers of deeper integration. These approaches are complementary but we favor an emphasis on the latter because we are of the opinion that horizontal networks of regulators, experts, and private actors, combined with infrastructure and public works projects, as well as with specific initiatives to connect and complement economic and social sectors can be more influential

In the following four sections of this report, we examine the state of play in the trade in goods, trade in services, movement of workers and movement of capital in order to identify potential issues and offer recommendations that could help unbind institutional constraints and as such facilitate the process of deeper integration between Albania and Kosovo. The scope of this type of endeavor is rather large, and with this introductory report, we would like to raise key questions and themes that we hope would generate feedback from the government, private actors and other public sector representatives in order to turn an idea into an action plan.

FREE MOVEMENT OF GOODS

I. State of Play

Trade in goods between Albania and Kosovo, and their regional partners, is governed by three main agreements:

1. CEFTA (Central European Free Trade Agreement – 2006): The CEFTA is an agreement which currently consists of seven member states: Albania, Serbia, Montenegro, Macedonia, Kosovo, Bosnia and Herzegovina, and Moldova, with the stated aim of facilitating the growth of these states towards EU accession. A prerequisite to EU accession is deeper regional integration and CEFTA aims to help the Balkan states achieve that goal.

Under CEFTA, the following points are salient with respect to trade in goods:

- Quantitative restrictions on imports and exports are to be abolished;
- Custom duties on exports are to be abolished;

- Custom duties on imports were to be placed at a standstill at the time of ratification. Existing duties would either be abolished or in some cases be reduced to zero within a transition phase ending in 2008. MFN duties would be applicable on agricultural imports which were allowed to have non zero duties in the transition;
- Custom fees are to be abolished;
- Cooperation and negotiation of agreements on sanitary and phytosanitary measures (SPS) are encouraged with the goal of eventually complying with EU standards (these will be discussed later in this report);
- Parties are to eliminate existing technical barriers to trade (TBT), and commit to arriving at negotiated agreements on the harmonization of technical standards and conformity assessment procedures;
- Parties agree to abide by WTO rules on issues such as SPS and TBT.

(These features of CEFTA with respect to trade in goods will be important cornerstones in navigating the roadblocks in trade between Albania and Kosovo.)

2. Stabilization and Association Agreement with EU: The Stabilization and Association Agreement (SAA) with the EU, which entered into force on April 1, 2009, contains obligations on a range of political, trade, and economic issues. Under this agreement, goods from EU are imported at zero tariffs and most Albanian goods, with a few exceptions, are traded freely with the EU.

The key provisions with respect to goods are as follows:

- Abolition of quantitative restrictions on imports (industrial, agricultural and fishery products) and exports (industrial products only);
- Abolition of any charges having an equivalent effect to customs duties on imports (industrial products). Customs duties on certain industrial products, to be phased out to zero gradually over a five-year period. Customs duties on certain agricultural products to be progressively reduced;
- Abolition of export duties (industrial products);
- Special safeguard for agriculture and fisheries products. Specific arrangements for iron and steel products and wines and spirits respectively.

3. Membership in the WTO: Albania acceded to the WTO in September 2000, and now grants MFN, or preferential treatment based on FTAs, to all its trading partners.⁴

⁴ WTO TRADE POLICY REVIEW: ALBANIA 2010 - II Trade and Investment Regime
http://www.wto.org/english/tratop_e/tpr_e/tp329_e.htm.

Policy reports and studies show that Albania has made considerable progress towards liberalizing and streamlining its trade regime in line with Albania's WTO obligations and with the *acquis communautaire*, in pursuance of its goal of EU accession.⁵ Customs procedures are streamlined and a centralized electronic system is in use. This has reduced customs clearance times. However the use of reference prices for calculation of VAT on imports remains a practice for some goods which is often a cause for contention.⁶

Regarding taxation, Albania applies a VAT at a general rate of 20%, on imported and domestically produced goods. Excise taxes are levied on certain goods, including coffee; fruit juices and other non-alcoholic beverages, beer, wine, alcohol, and other spirits; tobacco and tobacco products; petroleum by-energy products; incandescent bulbs; and perfumes and *eau de toilette*.⁷

There are few non-tariff measures that Albania applies to its trade. There are no prohibited imports, except for products considered to be hazardous to public health, and import licensing is used mainly for SPS purposes, security, protection of the environment, and for compliance with obligations under international conventions. Under the SAA (Article 75), Albania is committed to gradually conform with EU technical regulations and European standardization, metrology accreditation, and conformity assessment procedures. However, it often faces trade disputes over conformity of technical regulations and SPS standards, in the absence of bilateral mutual recognition agreements.⁸ No export taxes are applied and licenses must be obtained for only a handful of mostly sensitive products. Albania has a few special customs regimes that contain specific provisions or treatment for exports.⁹

⁵ See also WTO TRADE POLICY REVIEW: ALBANIA 2010 – III Trade policies and practices by Measure http://www.wto.org/english/tratop_e/tpr_e/tp329_e.htm.

⁶ *Id.*

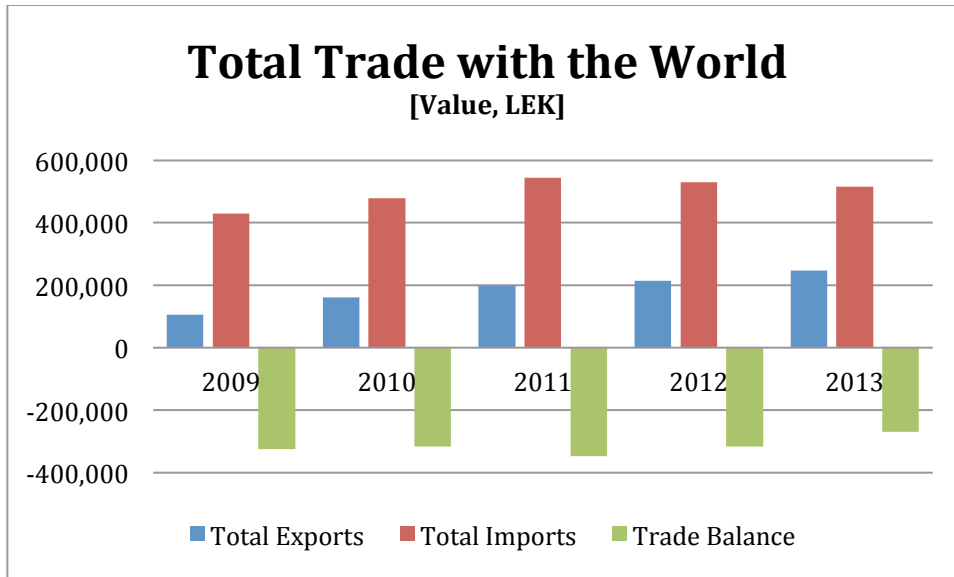
⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

II. Trade Trends

Albania has trade deficit in goods with the rest of the world, as seen in the graph below:

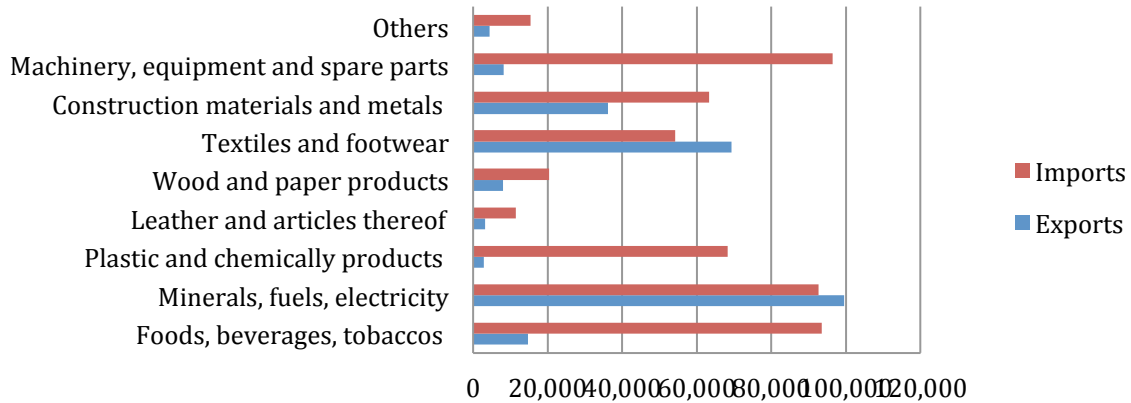


(Source: INSTAT)

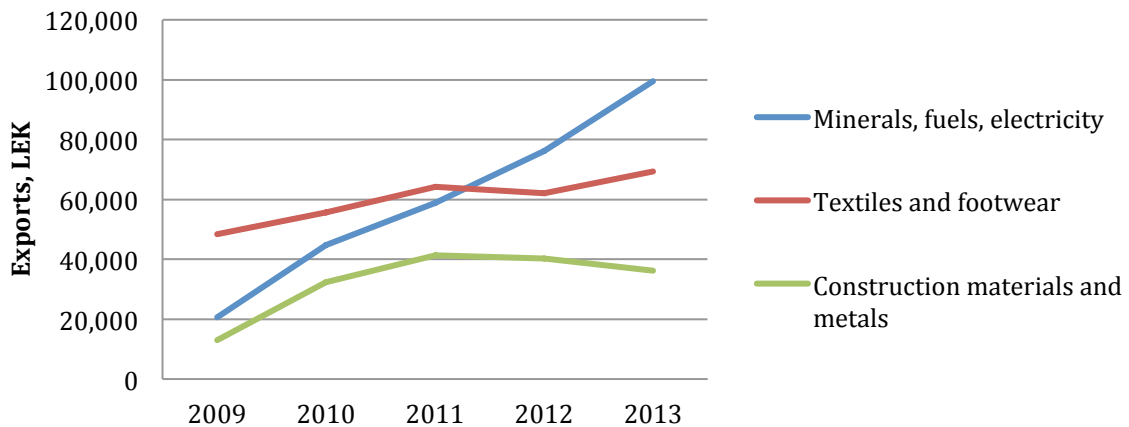
Minerals, Fuels and Electricity and Textiles and Footwear (also known as Fason), were the only product categories to have a positive external trade balance. These are also currently the leading export categories, followed by construction materials and metals.

A historical growth trend of these key export categories shows that while Minerals, Fuels and Electricity have shown steady growth, possibly due to high commodity prices, growth in the Fason sector has been slower, with Construction materials witnessing negative growth in exports in recent years.

Foreign Trade by Products, 2013 [Value in LEK]

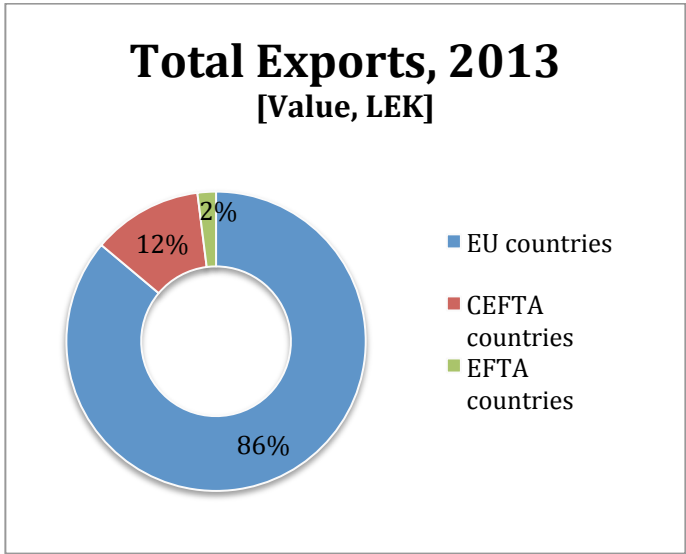


Growth Trend of Key Exports 2009 - 2013



(Source: INSTAT)

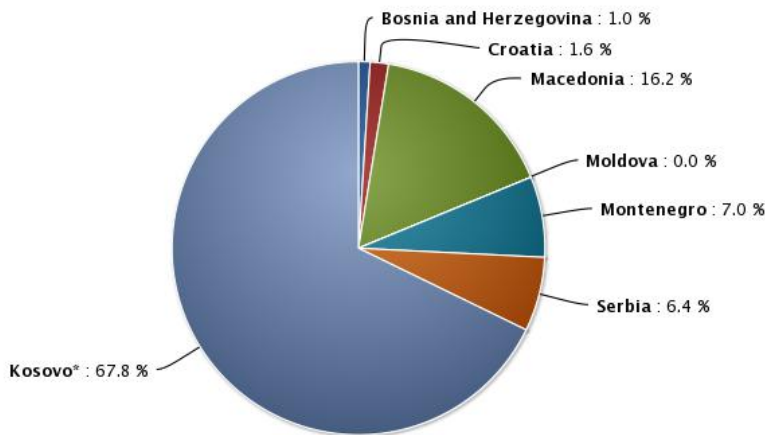
In terms of export destinations, Albania's key markets are EU countries, with CEFTA and EFTA following with smaller shares. In 2013, this distribution stood as follows:



(Source: INSTAT)

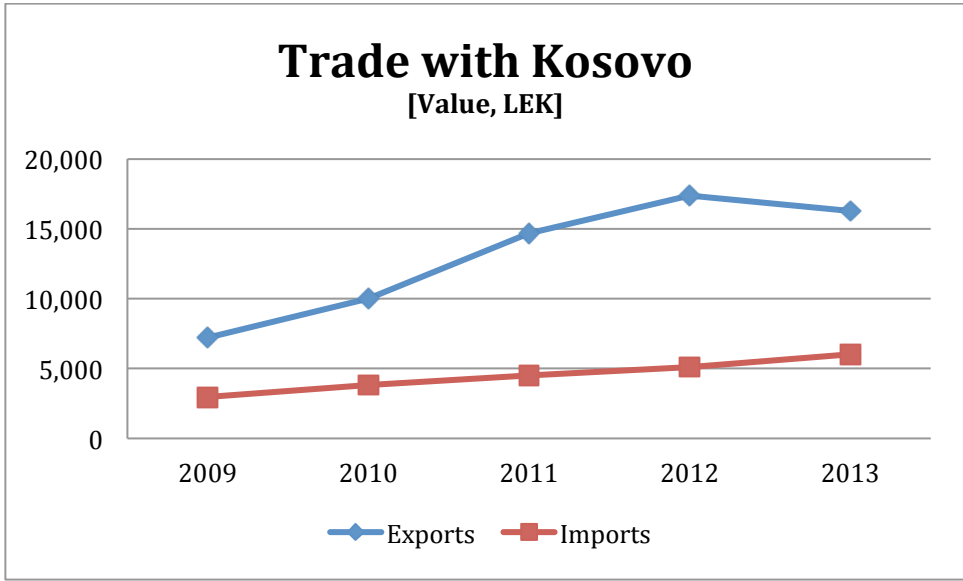
Albania's trade links with Kosovo, while small, are an exception to those with other countries. Within CEFTA, Kosovo holds the largest share of exports from Albania and this points to the importance of Kosovo as a leading regional market for Albanian exports. Among total exports, Kosovo is the third largest market of Albanian goods, after Italy and Spain.

CEFTA Parties exports Share in intraCEFTA in 2012 for ALBANIA



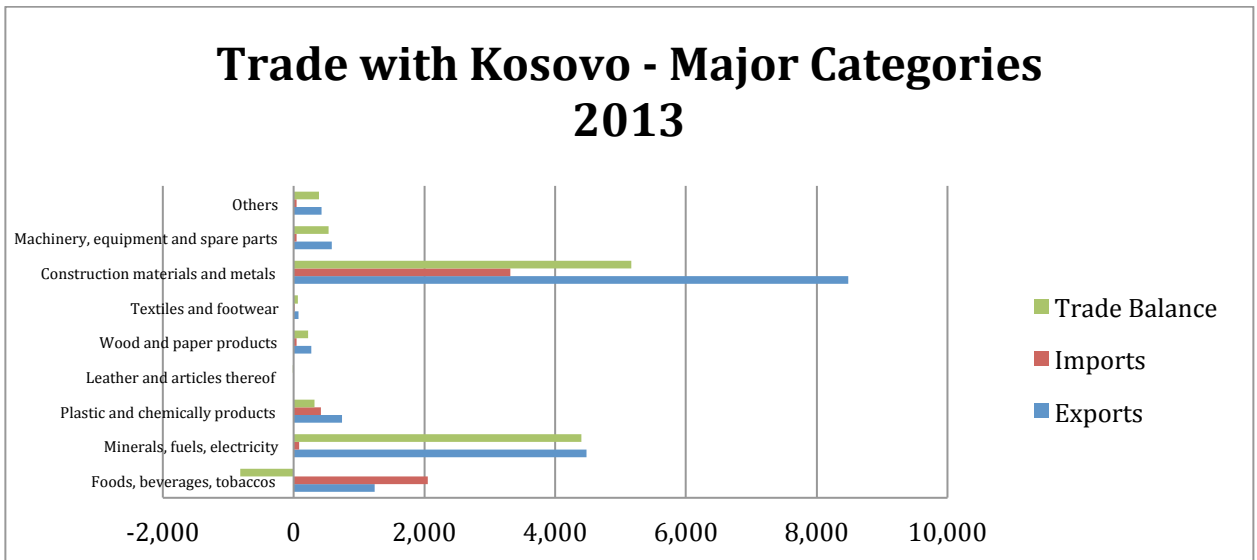
(Source: CEFTA website)

Trade with Kosovo has seen an increasing trend over the past five years, with Kosovo being one of the few trading partners with which Albania enjoys a favorable trade balance. Exports rose faster than imports, but leveled off in recent years. This helps highlight the importance of boosting exports to Kosovo through facilitation of integration.



(Source: INSTAT)

Albania has a trade surplus with Kosovo in most product categories, with the most important products being Construction Materials and Metals, Minerals, Fuels and Electricity, and Food, Beverages and Tobacco.



III. Problem areas

After reviewing the institutional frameworks that govern trade in goods, statistical data, and multiple consultations with government officials, private sector operators and field visits, we have outlined the following as key areas requiring attention to promote trade of goods between Albania and Kosovo:

- Cross-cutting issues:
 - o Customs: Inefficiencies in the customs system leading to restrictions in trade.
 - o Dispute Settlement: Ineffective dispute settlement mechanism under CEFTA, and concerns about unfair trade practices.
- Sector specific issues – Agriculture:
 - o Standards: Problematic mutual recognition of standards, especially in Food – Veterinary and Sanitary - Phytosanitary (SPS) regulations for agricultural products.

A. Customs: Inefficiencies in the customs system leading to restrictions in trade

Existing Institutional Framework

Under the CEFTA, all parties are required to simplify Customs administration procedures and minimize the barriers caused by lengthy procedures. (Albania is also a member of the World Customs Organization.) Albania has signed bilateral agreements on customs assistance with: Italy; Greece; Former Yugoslav Republic of Macedonia; the Interim Administration Mission in Kosovo (UNMIK); Moldavia; Bulgaria; Slovenia; Romania; Turkey; Croatia; and Cyprus.¹⁰

The following are a few salient features of the process:

- Customs legislation does not require importers and exporters to have a license, other than goods which have sensitive health or safety hazards.
- There is a simple import tariff structure, with either 0%, 2%, 5%, or 10% being levied on all imports.¹¹

¹⁰ WTO ALBANIA TRADE POLICY REVIEW 2010 – II Trade Policy and Measures.

¹¹ According to CEFTA's Secretariat, import into Albania is subject to customs tariff which are only "ad-valorem". Customs tariff apply on the 8-digit Combined Nomenclature of Classification of Goods. This Classification is fully in compliance with the European Community Combined Nomenclature. The tariff system is very simple. The most-favored-nation tariff system applicable is: 0%, 2%, 5%, 6%, 10% and 15%. Under FTA-s, Albania applies preferential import tariffs for CEFTA parties, EFTA parties, EU Member States and Turkey. In case of industrial products (chapters 25-97 of Classification of Goods Nomenclature) the tariff is 0%, while for agricultural products they are, as set out in the relevant agreements. *Available at*

- Along with tariffs, customs primarily administers the collection of VAT and Excise duty (On certain products) on imports.
- A centralized customs software monitors the flow of goods across Albania's borders. This system also conducts preliminary risk analysis and categorizes shipments according to risk level.
- Tariffs and duties are supposed to be applied on transaction cost of goods by law, however, in practice, customs officials continue to use reference prices as the basis for calculating taxes to be paid in some cases. The authorities cited under-invoicing as the key reason for this precaution.

In relation to trade with Kosovo, there is a strong will and commitment on both sides to further streamline the process of customs. For example, at the border crossing between Albania and Kosovo at Morina, a one stop – one check system has been implemented, with people and trucks only required to provide verification at one terminal instead of two. Transit requirements have been simplified. Export declarations for goods destined for Kosovo are made at the port of Durrës and trucks are sealed, which has reduced transit time at Morina by 4.5 hours according to customs authorities. However, smuggling and trafficking was cited by the authorities at Morina as a threat, largely due to divergence in VAT and Excise taxes being applied by Kosovo and Albania.

However, despite these improvements, there is much scope for further simplification of the process between Albania and Kosovo if they are to be viewed as one common market for practical purposes. In accordance with the framework agreement signed by the governments of Albania and Kosovo in January 2014, a joint action plan seeks to undertake measures to further simplify customs processes between the two countries. According to government officials, a working group is currently in place to address these issues in particular with their counterparts in Kosovo. However there is no concrete plan developed as of yet.

Recommendations

- *Inclusion of business community in the working groups.* There is currently in place a working group consisting of representatives from both countries which is developing a list of ways in which customs between Albania and Kosovo can be unified further. One way of strengthening the work of this group is to include representatives of key exporters and importers from both countries. This will add another very important dimension to the dialogue on customs unification and will bridge the gap between the reality and legislation.
- *Improve information flow and unification of processes* It is important to develop systems of information flow which facilitate the sharing of

http://www.ceftatradeportal.com/albania/index.php?option=com_k2&view=item&layout=item&id=51&Itemid=66&lang=en

information in order to reduce barriers. This could include the use of a single customs electronic system between Kosovo and Albania in which both authorities have access to the same data and requirements to avoid duplication of effort and delays of communication. It is also very important to reduce the paperwork required and make as many processes electronic as possible in order to avoid delays.

- *Remove reference prices.* In principle, the use of reference prices is unlawful according to GATT/WTO and has in the recent past been the source trade skirmishes between Albania and Kosovo. It is very important to work towards the elimination of this practice.
- *Facilitation of transit trade.* With the building of a highway on the Albania-Kosovo section of Corridor 8 of the Pan-European transport network has led to a drastic decrease in the time taken for goods and people to move between the two countries. Whereas previously it would take 10 hours to travel from Tirana to Prishtina, this journey can now be completed in just three and a half hours – cutting the transport time by about two thirds. This has serious implications for not only trade between Kosovo and Albania, but also transit trade destined for Kosovo, since transportation costs have significantly been reduced. (The highway has also the potential to link up with the highway system to Serbia.) Further, developing and increasing the processing capacities at the Port in Durres is a corollary of maximizing the use of the highway. Hence, the port in Durres could serve as a logistics hub for Kosovar and regional trade, and with improved capacities and highway network compete with Thessaloniki in serving regional markets, e.g., Montenegro, Macedonia, and Serbia.

According to customs authorities, this highway has led to the diversion of Kosovo bound transit goods from Montenegro to Albania. As a result, this is a great opportunity to strengthen the connections between the two economies, and transit trade should be facilitated further by reducing administrative requirements. The Customs working group should conduct an analysis regarding the transit process and eliminate nodes at which there is unnecessary hold up.

- *Possibility of harmonizing excise taxes and VAT.* During our meetings at the Customs, we were informed that differences in the VAT rates between Kosovo and Albania had lead to instances of tax evasion and smuggling. Moreover, differences in tax rates create conditions for distortions in the trade patterns. Therefore, the respective Ministries of Finance should examine the possibility for converging excise and VAT tax rates.

B. Dispute Settlement System

Existing Institutional Framework

The existing CEFTA framework provides that the parties to the free trade agreement ought to first attempt to solve disputes regarding the interpretation and application of CEFTA rules through cooperation and consultations.¹² The Joint Committee, which is the main decision making body of CEFTA, can be consulted at the discretion of parties in order to arrive at a mutually satisfactory resolution of disputes.¹³ Apart from involving the Joint Committee in dispute resolutions, CEFTA member states can conduct consultations in the presence of a mediator.¹⁴ When the parties to a dispute cannot agree to a mediator, the Joint Committee appoints one for them.¹⁵ In case the mediator fails to provide a solution, the Joint Committee then attempts to deal with the issue with a view to finding a commonly acceptable solution.¹⁶ If this approach also fails, the Joint Committee is entitled to recommend measures to the parties to a dispute.¹⁷

Arbitration is another vehicle by which CEFTA member states can solve trade disputes. Article 43 of the Agreement provides that arbitration can be used after consultations in the Joint Committee have failed to solve or settle trade disputes.¹⁸ Once a member state refers a dispute to arbitration it has to notify not only the other party to the dispute, but also it has to send copies of notifications to all CEFTA member states.¹⁹ The Arbitral Tribunal is tasked with settling disputes in accordance with CEFTA provisions and any other applicable rules of international law.²⁰ The Tribunal can consider *amicus curiae* briefs from a party not involved in the dispute.²¹ The award of the Arbitral Tribunal is meant to be final and binding upon the parties to the dispute.²²

CEFTA provides that disputes under consultation or arbitration are not be submitted to the WTO for dispute settlement.²³ Further, an issue or a dispute before the WTO Dispute settlement body is not to be submitted for arbitration under CEFTA's provisions on arbitration.²⁴

¹² See CEFTA Articles 24 and 42.

¹³ See CEFTA Article 42.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See CEFTA Article 43.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Issues

- According to CEFTA institutional framework, it is not clear whether there is any particular protocol or procedure for how consultations between two member states or among more than two are to be conducted, and what that decision making process looks like.
- Because the decisions in the Joint Committee are based on consensus among member states, the dispute settlement system contained in CEFTA is structurally problematic since any one of the member states can impose its veto in cases of conflicts of interests.²⁵
- Further, even in the case of Arbitration, the parties are left to their own devices in order to come up with procedures and a legal framework under which Arbitration could properly and effectively function.²⁶

Recommendations

In our view both the decision-making mechanisms and the enforcement of the rules on which dispute settlement is based need to be enhanced. This does not require additional agreements to CEFTA. The CEFTA allows for consultation prior to formal dispute resolution and it establishes that WTO rules should serve as the basis for undertaking measures relating to unfair trade. However, in practice, CEFTA members are stymied by the need for consensus with respect to dispute settlements and Albania has not actually developed the institutional mechanisms to implement the WTO rules. In our view, especially with respect to disputes with Kosovo, a protocol for binding arbitration should be reached, and in addition, Albania should develop the institutional capacity in the form of a Fair Trade Commission to employ the trade remedies it is entitled to use. There should be an understanding to resolve disputes bilaterally between Kosovo and Albania instead of seeking consensus in CEFTA.

During our interviews at the Ministry of Economy, Ministry of Agriculture, and at the Customs Authorities in Albania, as well as at the Trade Ministry in Kosovo, we have come to learn that there have been instances of unfair trade practices and disputes where parties, and especially Albania, could have benefited from an effective dispute settlement mechanism as well as from an efficient enforcement of remedies against unfair trade practices. If CEFTA's trade reports are an indicator of our assumptions about the ineffectiveness of CEFTA's dispute resolution procedures, Albania has only reported two cases to CEFTA's Joint

²⁵ See CEFTA Article 41.

²⁶ See Annex 9 to CEFTA Agreement.

Committee, and in total there are nine cases where Albania is a party to a dispute.²⁷ These statistics demonstrate a need for a robust dispute resolution mechanism and procedures. Therefore, we recommend that Albanian authorities focus on the following proposals:

- *A protocol for arbitration prior to the use of the CEFTA Dispute Settlement System* Because CEFTA has an ineffective dispute settlement system, it creates the opportunity for Kosovo and Albania to develop a more rigorous and effective protocol for resolving trade disputes, between the two of them.

Although CEFTA provides a role for mediation, for the intervention of the Joint Committee, and for arbitration, it does not exclude or prohibit other forms of dispute resolution systems.

Hence, we propose that Albania and Kosovo explore ways to come up with a bilateral arrangement for resolving and settling trade disputes. (Such an arrangement could take different forms, for instance, it could be a permanent body of trade experts and sectorial specialists, or *ad hoc* committees, with executive powers to solve and settle trade disputes.)

- *Effective Use of Existing Institutional Frameworks to Address Unfair Trade Practices.* CEFTA provides that if a party considers that another member state has failed to fulfill an obligation, and bilateral consultations, mediation or the Joint Committee have failed to arrive at a commonly acceptable solution, the party concerned may take provisional rebalancing measures.²⁸ According to the paragraph four of Article 42, measures taken ought to be notified immediately to the parties and to the Joint Committee, which ought to hold regular consultations with a view to their abolition.²⁹ The measures are to be abolished when conditions no longer justify their maintenance in the view of the Joint Committee (based on a consensual decision), or, if the dispute is submitted to arbitration, when an arbitral award has been rendered and complied with as decided by the Joint Committee.³⁰

According to Articles 22 and 23 of CEFTA, parties can use the WTO legal framework in order to respond to unfair trade practices.³¹ Therefore, where a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products in the territory of the importing Party, or serious disturbances in any sector of the economy which

²⁷ See CEFTA trade reports, available at http://192.232.255.119/~ceftamab/report_dcrp.php.

²⁸ See CEFTA Article 42.

²⁹ *Id.*

³⁰ *Id.*

³¹ See CEFTA Articles 22 and 23 on antidumping and general safeguards provisions, respectively.

could bring about serious deterioration in the economic situation of the importing Party, the importing Party may take appropriate bilateral safeguard measures against the other Party.³²

Regardless of whether an effective dispute settlement system is in place or not, in order to enforce Articles 23 and 24, the Albanian authorities are fully entitled to conduct their own investigations and apply those measures that in their judgment are consistent with the nature of the injury or disturbance in question. There is nothing in CEFTA, or in the WTO legal framework, to restrict the ability or discretion of Albanian authorities in responding to what they determine are unfair trade practices.

In this context, since there are no effective mechanisms for identifying when problems arise and for pursuing them, we propose the establishment of a Fair Trade Commission that would have the capacity to investigate and implement CEFTA on antidumping and countervailing duties.

- *Use of the European Court of Justice jurisprudence in order to evaluate the exceptions to the free trade arrangements provided for in Article 17.* Accordingly, CEFTA does not preclude the prohibition or restriction on imports, exports, or goods in transit justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animal or plants, the protection of national treasures possessing artistic, historic or archaeological value, protection of intellectual property or rules relating to gold or silver or the conservation of exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption.³³ However, such prohibitions or restrictions are not meant to constitute means of arbitrary discrimination or a disguised restriction on trade between the Parties.³⁴ The European Court of Justice has an extensive body of jurisprudence with respect to the definitions and interpretations of the exceptions to the free movement of goods. In light of the EU integration processes, both Albanian and Kosovar authorities could benefit from using the EU jurisprudence in order to come up with impartial, and recognized, standards of adjudication.

³² See CEFTA Articles 23 and 24.

³³ See CEFTA Article 17.

³⁴ *Id.*

C. Standards (Agriculture): Problematic mutual recognition of standards, especially in Food – Veterinary (FV) and Sanitary - Phytosanitary (SPS) regulations for agricultural products

Existing Institutional Framework:

With regard to agricultural products, CEFTA outlines certain requirements to approach the issue of FV and SPS regulations. These are:

- All members are required to ‘co-operate in the field of sanitary and phytosanitary (SPS) measures... with the aim of applying relevant regulations in a non-discriminatory manner’ and to ‘enter, where appropriate, into *negotiations to conclude agreements on harmonization or mutual recognition in these matters in accordance with the relevant provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and other relevant international agreements*’. Currently, there exists an SPS Committee which serves to address these concerns.
- Formation of a committee on technical barriers to trade to ‘*facilitate and harmonise technical regulations, standards and mandatory conformity assessment procedures with the aim of eliminating technical barriers to trade*’ and conforms to WTO requirements in this regard. If a change in regulation is being effected, this must be communicated by the parties involved in advance.
- CEFTA also stipulates that parties *enter into negotiations to conclude agreements on harmonization* of their technical regulations and standards, and the mutual recognition of conformity assessment procedures in accordance with the relevant provisions of the WTO Agreement on Technical Barriers to Trade and other relevant international agreements before 31 December 2010.

The SPS Agreement in the WTO referenced above requires that members of the World Trade Organization (WTO) shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations which, in the case of food safety, are those established by the Codex Alimentarius Commission. The SPS Agreement permits members to introduce or maintain a different standard of sanitary or phytosanitary measures if there is scientific justification, supported by assessment of risk based on appropriate scientific evidence³⁵.

Similarly, the Technical Barriers to Trade (TBT Agreement) cited by CEFTA covers all measures or regulations concerning technical, commercial, ethical or religious matters – except sanitary or phytosanitary measures - applied to all

³⁵ Mutual Recognition Agreements in International Foot Trade: Malik, Raj
<http://www.fao.org/docrep/w9474t/w9474t05.htm>.

industrial and agricultural products in international trade. When moving towards achieving any bilateral or multilateral agreement or a mutual recognition agreement, it is necessary that the requirements under the TBT Agreement are also fully taken into consideration as they concern quality characteristics, fraudulent practices and matters of consumer information through labelling which may not strictly be food safety issues.

There are two important things to note here. Firstly, that the CEFTA calls on the enforcement of WTO agreements and requirements on Technical Barriers to Trade and application of Sanitary and Phyto Sanitary measures. Secondly, and more importantly for our context, there is no clear cut specification, or road map for agreement, on mutual recognition and conformity assessment. This has led to a plethora of problems which keeps CEFTA trade below its potential, and also limits Albania's access to EU markets in agricultural products and live animals.

Issues

- *In relation to trade with Kosovo, there are numerous examples in which trade has been blocked due to problems with mutual recognitions of standards.* Problems arise when legislations on standards are not harmonized between the two countries. Since both countries are in the process of harmonizing all legislation with the *acquis*, problems arise when this process leads to changes in requirements which are unanticipated. For instance, in early 2013³⁶ milk from two Albanian producers was blocked by Kosovo due to concerns that levels of aflatoxin were higher than the EU acceptable standards. Upon investigation it was found that the levels of aflatoxin were indeed higher than EU standards, but that they were within the limits set by Codex Alimentarius as prescribed by the WTO. This sudden change in standards required by Kosovo has been cited as a commercially driven move, but it highlights the room for trade disruption provided by a lack of agreements of mutual recognition and conformity assessment.

In order to address concerns such as these, there has been a Framework Agreement reached by the Council of Ministers in Albania and the Government of the Republic of Kosovo on January 11, 2014, focused on cooperation for promotion and facilitation of trade. This agreement has culminated in a Joint Action Plan³⁷ which addresses in part the issue of standards in the area of food safety, veterinary and plant safety. This agreement has also led to the creation of three cross-country working groups, with a specific group dedicated to harmonization of legislation in the area of SPS standards and regulations. This group has so far developed a draft report on the process. However, there is some cause for concern regarding the future of these proposals, since the agreement does not specify

³⁶ <http://www.balkaninsight.com/en/article/albania-kosovo-trade-dispute-escalates>.

³⁷ Joint Action Plan: Draft, 20 February 2014.

what the implementation strategy will be and who will be the agencies or ministries responsible for overseeing the process.

- *Lack of established communication channels between relevant Ministries and private stakeholders is also a key constraint.* Through discussions held with different Ministries responsible for trade in goods, it also becomes apparent that there is a clear failure to communicate key concerns which leads to a misalignment of priorities and failure to act. As reported on CEFTA website's Market Access Barriers Database, Albania reports the least number of cases of trade barriers and this is largely owing to the gap in communication of the barriers faced to the relevant authorities within the government. Any attempt at reaching agreement on mutual recognition of standards between Albania and Kosovo must therefore overcome this barrier in order to identify the key areas of concern for the Albanian economy.

Recommendations

- *Augmentation of current Albania – Kosovo working groups on trade issues under the Framework Agreement.* The current cross-country working groups in place have developed a draft plan to harmonize legislation under SPS and Technical Barriers to Trade. However, it is important to modify the structures of these groups in order to maximize the potential to be gained from such a concerted effort between the two countries.

Firstly, it is important to establish clear mechanisms of implementation and feedback. It is necessary to identify which Ministry or Organization is providing oversight and taking responsibility for implementation. Additionally, there need to be pathways of feedback built into the system in order to hone and improve upon the implementation.

Secondly, it is imperative to bring private sector representatives into the policy dialogue. This will serve the purpose of both highlighting the real constraints on the ground to drive policy, and also to develop networks of private sector actors between the two countries which will have positive spillovers for integration in other markets.

In essence, these working groups will have a tripartite role:

1. Identify the concerns of stakeholders involved in the import and export of products whose trade suffers from barriers created through non-conformity in assessment and lack of recognition in standards
2. Undertake analysis and formulate a coherent strategy to resolve the highlighted concerns
Provide feedback on policy implementation to ensure that the policy is solving the problems it set out to address instead creating new ones.

- *Creation of Trade Policy Advisory Group, and in particular with a committee on agricultural trade issues.* While there appears to be political willingness to address existing challenges in both countries, informational asymmetries between different actors in Albania lead to failures in highlighting the important issues. To rectify this problem, we propose the development of an overarching Trade Policy Advisory Group. The primary aim of this group would be to serve as a cross-functional group of actors who will bring to light the critical issues and barriers to trade that exist. The group would be structured to include sub-groups created around specific areas. In the context of SPS standards and regulations in agriculture, there needs to a sub-group dedicated to issues revolving around trade in agricultural products. This group would consist of representatives of all the key stakeholders which conduct, regulate and facilitate this trade. These include: Trade Department, Ministry of Agriculture, Customs Department, Legal experts, Exporters of agricultural products, and Regulators of food and animal safety standards. This will help highlight the issues faced on the ground which are the binding constraints, and will provide a mechanism for the swift escalation of problems faced to the relevant authorities and channels. To serve its purpose, this group should convene on a regular basis to share insights and voice concerns and ensure that the right problems are being addressed.

While Kosovo and Albania, or other CEFTA member, could adopt the higher EU standards in this field, they should recognize that since they will move towards adopting such standards at their own pace, an early adoption of EU standards should not be an impediment to intra-regional trade. In this context, the WTO standards should continue to be acceptable until members formally accede to the European Union.

FREE MOVEMENT OF SERVICES

I. State of Play

CEFTA refers in passing to the trade in services as an area that needs to be addressed and liberalized by its members at a later stage (while pointing out to the General Agreement on Trade in Services (GATS) as the background set of norms and principles that govern trade in services for WTO Members). In this context, CEFTA is largely silent regarding specific areas of cooperation and the ways to bring about greater liberalization or deeper integration among regional countries. As a result, trade in services among the CEFTA members, and particularly between Albania and Kosovo (bearing in mind that Kosovo is not yet a WTO Member) could benefit from a more rigorous and holistic approach towards deeper integration.

Traditionally, trade in services consists of a bundle of specific elements, and WTO classifies it according to four different modes. These include:

1. Mode 1: Cross-border supply of services, including financial, transportation and professional services.
2. Mode 2: Trade in which consumption occurs abroad and the providers and consumers are geographically within the same boundaries, such as tourism, healthcare facilities etc.
3. Mode 3: Establishing a commercial presence or FDI.
4. Mode 4: Movement of individuals providing professional services.

Within these modes, there are further specific classifications consisting of business and professional services, communication services, construction and related services, distribution services, educational services, financial services, tourism services, health and social services, transport services, and movement of natural persons (workers).³⁸

The institutional framework in place that regulates Albania's relationship with other regional countries – apart from Kosovo, on the one hand, and the European Union Member States, on the other, regarding the trade in services is established either by the membership in the WTO, or by the Stabilization and Association Agreement with the EU and its Member States.

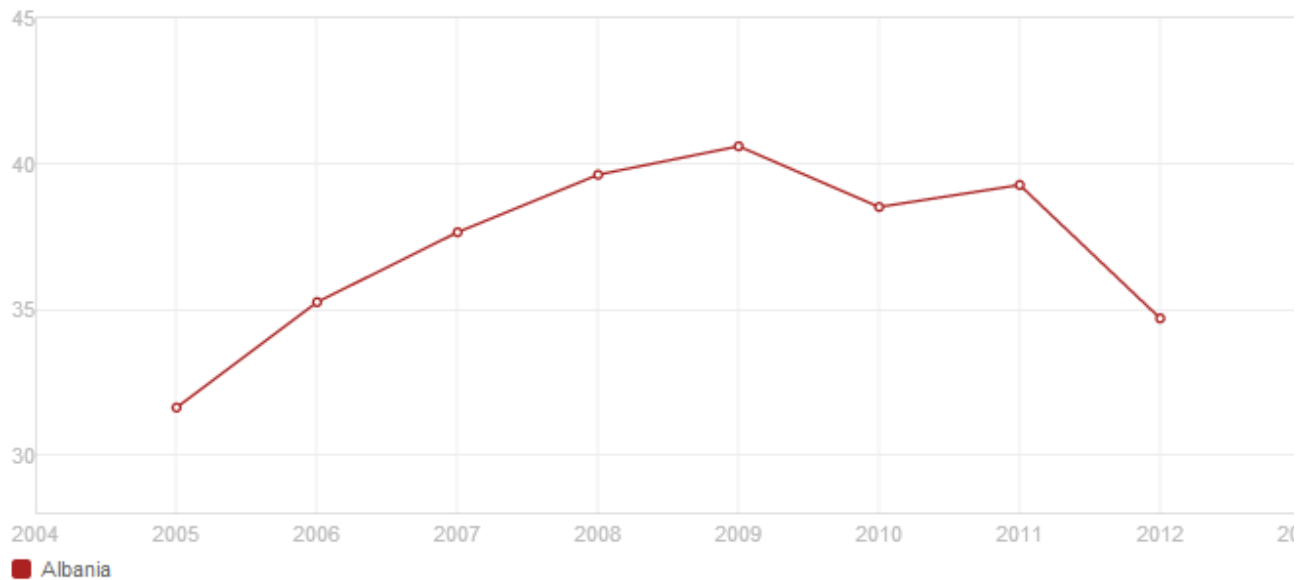
Since Kosovo is not a WTO member, and since trade in services falls outside the scope of CEFTA, there is therefore an institutional gap between Albania and Kosovo with regard to the movement of services between the two countries, which potentially puts Kosovo at a disadvantage *vis á vis* other regional countries and the EU Member States and *vice versa*. This gap could be filled out either by a framework agreement in services, or by sector-by-sector agreements that would contain simplification measures regarding establishment and operation of service providers, cross-border provision of services, the position of self-employed persons, the rights of service recipients, and measures that would lay out and strengthen mutual cooperation between regulatory agencies in both countries.

³⁸ WTO/GATS classification. The European Union generally classifies the trade in services as follows: distributive trades (including retail and wholesale of goods and services); regulated professions (such as legal and tax advisers, architects, engineers, accountants, surveyors); construction services and crafts; business-related services (such as office maintenance, management consultancy, event organization, debt recovery, advertising and recruitment services); tourism services (e.g. travel agents); leisure services (e.g. sports centers and amusement parks); installation and maintenance of equipment; information society services (e.g. publishing – print and web, news agencies, computer programming); accommodation and food services (hotels, restaurants and caterers); training and education services; rentals and leasing services (including car rental); real estate services; household support services (e.g. cleaning, gardening and private nannies); financial services; electronic communications services; transport services; healthcare services; temporary work agencies' services; private security services; audiovisual services; gambling; services provided by notaries and bailiffs (appointed by an official act of government).

The actual movement of services between Albania and Kosovo is far behind the governments' goals of the free trade in services. Considering the weight services have in the national GDP, it is important to ease the flow of services between the two countries in order to facilitate the creation of common business networks and supply chains, particularly focusing on Mode 3 and Mode 4. According to representatives from both the Kosovar and Albanian government, there is much to be done in this regard. For example, currently there are very few Albanian-run businesses in Kosovo and *vice versa*. In particular, there are 581 totally or partially Kosovar owned companies registered in Albania, out of a total of 4654 foreign or joint ventures companies.³⁹ Similarly, professionals from Kosovo face the same barriers and quotas as foreign nationals do when attempting to provide professional services in the Albanian market. These are important barriers towards to greater integration and must be addressed.

II. Data and analysis

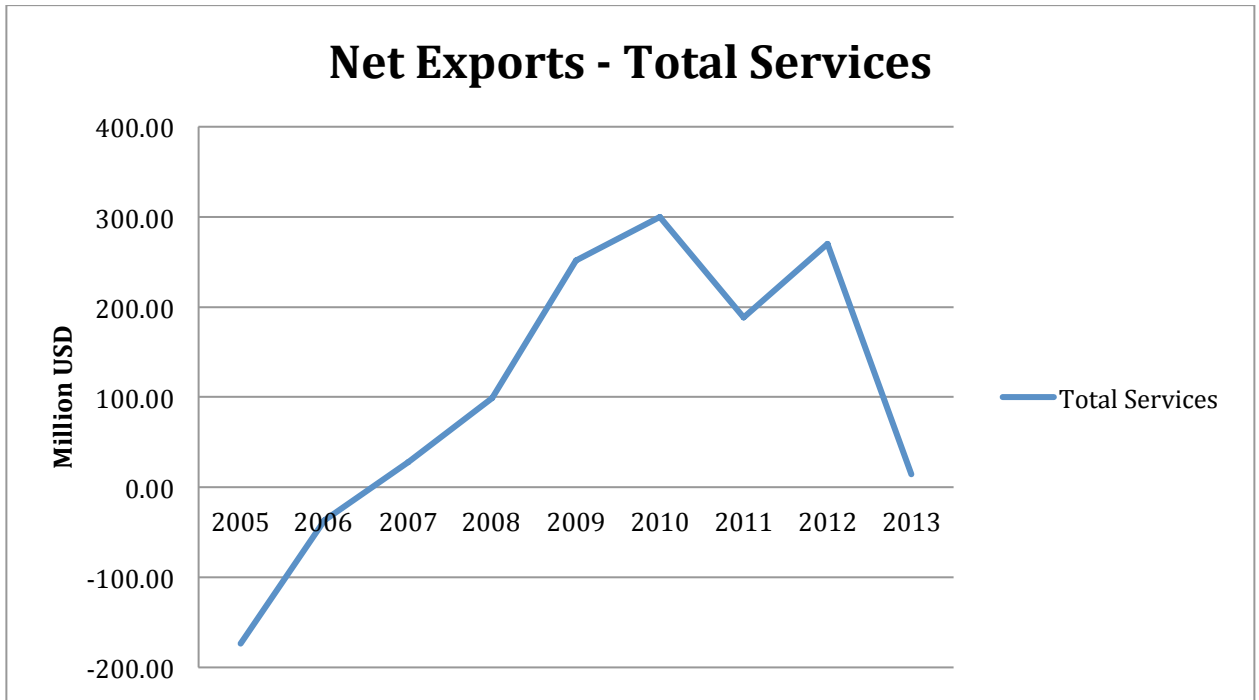
Trade in services forms a significant percentage of the GDP in Albania, measuring at 35% in 2012. However, in the same year, total trade in goods and services amounted to 85% of the GDP, indicating that a larger portion of the trade was in goods (50%).⁴⁰ Historic trends show that trade in services as a share of GDP has been decreasing in recent years, as shown in the graph of services imports (% GDP) over time below. It is worth investigating what the reasons for this decrease are.



³⁹ Source: INSTAT and National Registration Center.

⁴⁰ World Bank Data, retrieved from: <http://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?display=default>.

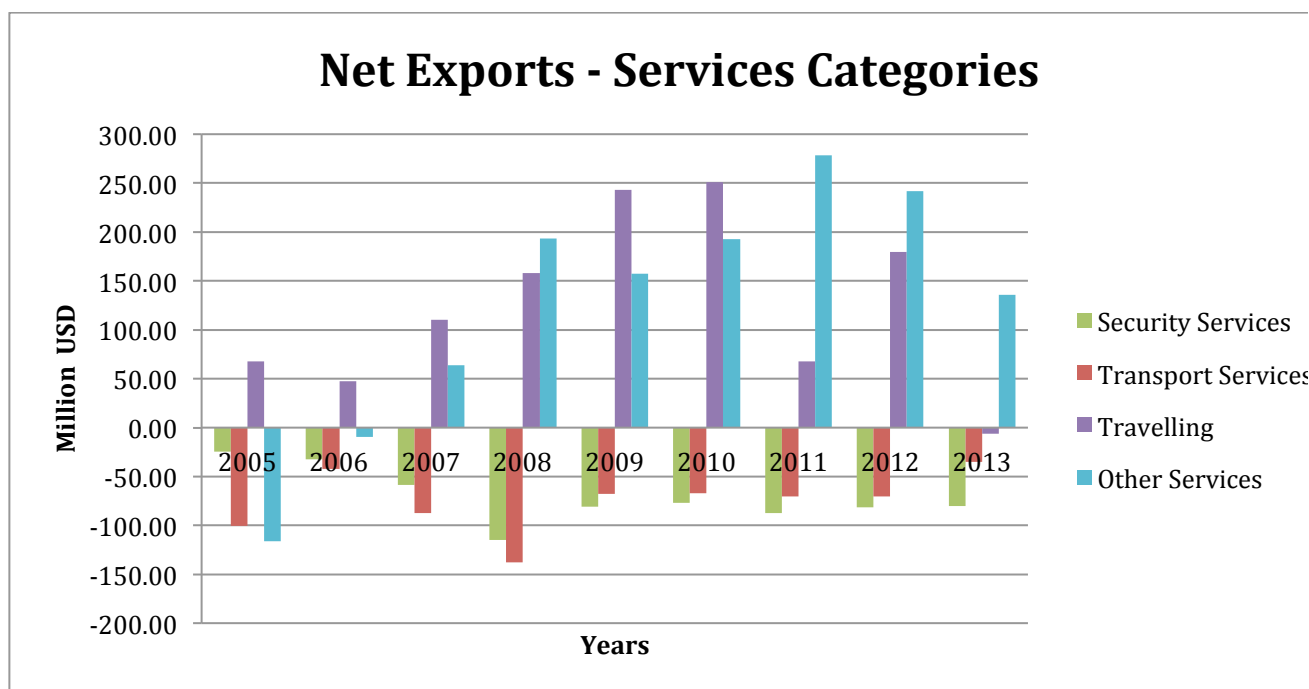
Based on data received from the National Statistics Institute INSTAT, net services exports have seen a drastic decrease even in absolute value terms:



One recurrent theme is that this was a fallout of the Global Recession into the Albanian economy. However, since the data is not indicating a recovery, it becomes even more important to focus on other ways in which this trade can be facilitated and boosted.

It is also informative to look at the breakdown of different service sectors and this data is depicted in the graph below:⁴¹

⁴¹ Based on data received from INSTAT.



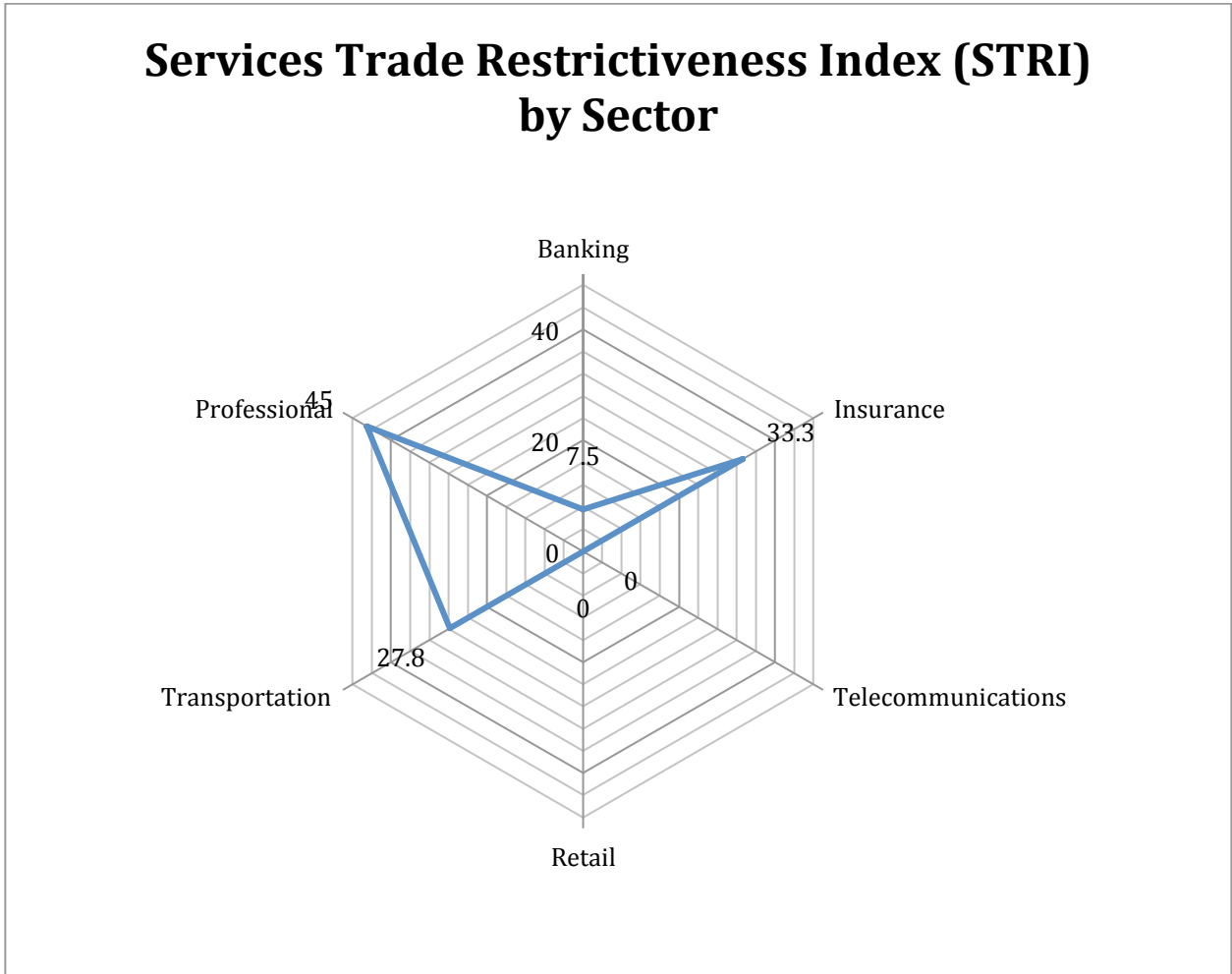
Based on this set of statistics, it is clear that Albania is and has been a net importer of Transport and Security Services. This is somewhat counter intuitive since Albania is uniquely positioned to act as an important transit location for regional and non-regional trade. It is likely that negative net exports in transport are due to a lack of adequate transport infrastructure. The building of the Durres – Pristina highway has helped create a favorable environment for Albania to exploit its geographical location, and this must be complemented by further policies to encourage transit trade⁴². Travelling has had positive net exports for Albania in the recent history, and this is driven mainly by high tourism demand. However, this data has some failings in that the largest sector in recent years is an unclassified ‘Other’ category. Additionally, there is no classification on professional services and other important contributors such as financial, communication and construction services. In order to assess these sectors, we turned to the World Bank’s Services Trade Restrictions Database (STRD).

In order to increase the knowledge and data which exists regarding services trade globally, the World Bank has developed a Services Trade Restrictions Database which catalogues the key barriers to services trade in place in 103 countries, and then categorizes them based on an index of restrictiveness.⁴³ According to this Index, Albania has an overall Services Trade Restrictiveness Index

⁴² These are covered earlier under the discussion of customs facilitation in the section on Free Movement of Goods

⁴³ More information about this database can be found here: <http://iresearch.worldbank.org/servicetrade/aboutData.htm>.

of 19.4,⁴⁴ which is lower than the median index for 103 countries of 23.7.⁴⁵ The Index is constructed such that a score on 0 signifies completely open trade in services, whereas an index value of 100 signifies complete restrictiveness. As per this characterization, Albania is virtually open with some barriers. If we break this down into the different sectors of services, this gives us the following mapping:



(Source: World Bank STRD)

According to the database of policies in place, while services trade is quite liberalized, there are some systematic barriers in place for foreign firms and individuals to provide services in Albania. For example, licensing requirements for foreign and domestic applicants are different for some services, with a limited number of licenses available. Foreign firms, in the financial and professional services sector, need to clear an Economic Needs Test (ENT) to be allowed to establish a commercial presence. They also face restrictions such as nationality

⁴⁴ Retrieved from the Services Trade Restrictiveness Database tool online: <http://iresearch.worldbank.org/servicetrade/default.htm>

⁴⁵ Brochert et al., Policy Barriers to International Trade in Services (2012).

requirements for their board of directors, and employee nationality requirements. However, there are no equity restrictions on foreigners looking to incorporate in Albania.

The diagram above makes it clear that the following are the key services sectors which impose the greatest amount of restrictions in trade across borders:

- *Professional Services.* This includes accounting, auditing and legal services, out of which accounting and auditing is more restrictive⁴⁶. Under Albanian Law it is not allowed for foreign corporations and professionals to offer accounting and auditing services in Albania unless they have an authorized commercial presence locally, hence Mode 1 of services trade is blocked. For most professional services, foreign firms are allowed to set up a business in Albania. However they face a domestic hiring condition⁴⁷ as well as restrictions on serving domestic state-owned firms. There are also differential licensing criteria for foreigners and nationals, and limited quota of foreign licenses available. For foreign professionals, foreign qualifications are at times recognized, but entrants must pass a local qualification exam in order to practice. Additionally, there is a quota in place for foreign nationals. This was corroborated by a senior representative of the Albanian Bar Association, who stated that foreign firms cannot practice law in Albania unless they enter into a partnership with a local firm, and foreign lawyers are not allowed to represent cases in a court of law unless they pass the Albanian Bar.

Legal services. According to representatives of the Albanian Bar Association there are a large number of law degree holders and professionals in Albania, nearly 7600. However, much fewer, around 1000, actually practice law. While several lawyers choose to take up other professions, there is also a considerable degree of informality in the market. A sizeable proportion of professional lawyers choose to practice informally in order to evade taxes, and these are focused on legal advisory in non-criminal and civil cases where chances of detection are low. Additionally, owing to the small market size, there is a lack of specialization among lawyers as well. Comparatively, Kosovo has a much smaller number of qualified lawyers, and liberalization of legal services to allow professionals to practice across the border will allow for competition and equalization of demand and supply of legal services.

Financial services. Within finance, banking is more liberalized, with several foreign banks in operation, than the insurance sector. According to the World Bank database, market entry is allowed, but 33% of the employees need to

⁴⁶ Accounting and Auditing has a higher STRI of 50 as compared to 41.7 for legal services.

⁴⁷ This is based on the World Bank STRD database which includes information on restrictive policies in place. This updated till 2008.

be Albanian. Similar to professional services, there are differential licensing requirements, with foreign quotas in place.

There has recently been a dialogue among CEFTA parties on regional mobility for professionals in the region and negotiating greater Mode 4 access.⁴⁸ This covered topics such as mechanisms of mutual recognition of professional qualifications and policies to enhance labor mobility at the regional level. However, there is no agreement in place to implement these mechanisms and this presents an area where Albania and Kosovo can made advancements.

Albania and Kosovo have deep linkages as far as tourism is concerned. According to data received from the Customs border post at Morina in Albania, nearly 1.5 million people cross the border post in both directions during the course of the year. This flow intensifies during the touristic summer months, when Kosovars flock to the Albanian coastline. Other reasons include education and accessing healthcare facilities. This indicates that movement under Mode 2 is relatively liberal between the two economies.

III. Issues

Based on the discussion above, movement of services is relatively open in Mode 2, with some restrictions placed in Mode 3 (establishing a commercial presence). Mode 4 is also problematic, with barriers in place in recognizing foreign qualifications. While negotiating a multilateral agreement under CEFTA is likely to be a long and painstaking process, there is scope for shorter-term gains by negotiating agreements between Kosovo and Albania.

The most important issues then are:

1. Lack of a Most Favored Nation status (MFN) and national treatment for Kosovar professionals and firms seeking to provide services in Albania either by setting up an establishment in Albania or by providing cross-border services.
2. Lack of a recognition system for foreign professional service providers.
3. No clear definition of trade in services. This means that there is very little data available on the movement of services, and this is inadequately categorized. As a result, we do not have a clear estimate of the magnitude of trade that occurs with Kosovo and other regional partners with respect to the different channels of movement that exist.

⁴⁸ CEFTA Website. Retrieved from: <http://192.232.255.119/~cefta/events/dialogue-regional-mobility-professionals-cefta> on 7/17/14.

IV. Recommendations

- *Framework agreement for services trade or sector-by-sector agreements.*
Although the two countries have recently negotiated a framework agreement to facilitate trade in goods between them, there is no such agreement in relation to services trade. Since a significant share of exports is taken up by services, this is an important area for cooperation.

The first step is to develop a mutual commitment towards liberalization of services. The most important channels are Modes 3 and 4, which will not only help tap into the potential of Albania-Kosovo as one bigger market but will also help the two countries move towards their greater aim of EU accession. As such, regardless of the format, an agreement, should commit to embody a principle of equal treatment when it comes to market access and conditions of operation in the market. In particular, the agreement should commit to:

- Give direct effect to the principle of freedom of establishment, which enables an economic operator (whether a person or a company) to carry on an economic activity in a stable and continuous way; as well as to the principle of the freedom to provide services, which enables an economic operator to offer services on a temporary basis without having to be established.
- Simplify procedures and formalities that service providers need to comply with.
- Granting most favorable nation status, market access, and national treatment with reference to the ability of natural and legal persons to provide services in Albania and *vice versa*, as well as to receive services.
- Remove barriers existing on both sides in establishing a commercial presence such that Kosovars should face the same regulations as an Albania national.
- Eliminate barriers towards the movement of professionals in the region and their ability to provide services.
- Set up single point one-stop shops through which service providers can obtain all relevant information and complete all procedures relating to their activities.
- Ensure that formalities and procedures could be complete in distance and via electronic means.
- Periodic review and evaluation of authorization and licensing requirements with a view to increase their transparency and simplification.

As a first task, this will involve defining the relevant sectors and identifying the policy constraints which are in place. It will be important also to hold

consultations with the private sector and individual service providers to map out issues faced on the ground.

The second task would be to identify modes of liberalization and harmonize the existing frameworks in both countries. An ongoing process will be to develop a feedback channel and a communication platform where issues can be highlighted on a continuous basis.

- *Mutual Recognition of Professional Qualifications between Albania and Kosovo.* It is useful to refer to the EU directive concerning recognition of professional services.⁴⁹ This provides three systems to enable mutual recognition of qualifications.
 - The first is automatic recognition. This is applicable in professions where harmonization of training and education has been achieved.
 - The second is the general system, which allows for some requirement to be fulfilled in order to harmonize qualifications. This could be an aptitude test or a training period.
 - The third case is one in which mutual recognition can be extended based on professional experience in the home country.

Instating a system like the one proposed by the EU will not only be crucial in the creation of an effective single market for services between Albania and Kosovo, but can also be seen as a joint move to prepare the two countries for eventual EU accession. This is especially true if harmonization of minimum training requirements is done to match the EU criteria. Such a system is particularly important for the case of legal services, where there are clearly opportunities to clear the market and function more efficiently.

- *Creation of a services sub-group in the trade policy advisory.* As part of the trade policy advisory group which will consist of private sector actors, it will be important to also have a services sub-group within this group. This will consist of professionals and individual service providers, corporations, along with regulators, who will convene on a regular basis to identify the next steps in the liberalization of services movement, specifically across the border with Kosovo. They will assess current policy barriers and help escalate these concerns to policy makers within the government.
- *Improved categorization and collection of services trade data.* There is a dearth of clear and useful data on the services sector data which is collected and maintained by the government. The categories of services included are few and do not cover important classifications such as professional services and ICT and communication. In addition, there is no classification according

⁴⁹ Directive 2005/36/EC
http://ec.europa.eu/internal_market/qualifications/directive_in_practice/index_en.htm.

the different modes of exchange. In particular, there is little or no information collection on Mode 4 – which is the movement of professionals to provide services. These data are essential in order to inform more relevant and effective policy making in this area.

FREE MOVEMENT OF WORKERS

I. Existing Institutional Framework

The residence and employment relations in Albania for foreigners are mainly regulated by the Statute on Aliens (No. 108/2013)⁵⁰ and the Labor Code.⁵¹ The Statute regulates the conditions of entry and residence of foreign citizens, as well as the conditions under which foreign citizens may enter into employment relations (including self-employment).⁵² The Statute provides for preferential treatment for EU and US citizens by excluding them from the need to obtain most of residence and work permits, as well as providing for them equal treatment with Albanian citizens regarding employment relations and conditions.⁵³ For instance, Article 147 provides that US citizens can stay in Albania for at least one year without a residence permit and after that period, the initial residence permit can be issued for up to five years.⁵⁴ Whereas, regarding employment, US citizens enjoy equal rights as Albanian citizens.⁵⁵ The Labor Code, on the other hand, provides the general normative framework that governs employment relations and conditions for Albanian and non Albanian citizens alike.

Currently, there are 462 work permissions for Kosovars, compared to 2712 work permissions for EU citizens, followed by 11 work permissions for Bosnians, 219 for Croatians, 321 for Macedonians, 68 for Montenegrins, and 151 for Serbians.⁵⁶ During 2013, there has been a 50 percent increase in work permissions for Kosovars.⁵⁷ This trend reflected a general increase in the number of work permits for foreigners during 2013 (a 75 percent increase, out of which the Kosovar ratio represented 7.5 percent of the total).⁵⁸ The general number of employees,

⁵⁰ Law on Foreigners, No. 108 (2013).

⁵¹ Labor Code, No. 7961 (1995). In addition to the Labor Code, there are a number of other regulations in the area, such as the Statute on Safety and Health at the Workplace, No. 10237 (2010).

⁵² In particular, the Statute regulates three main areas: residence permits including types of visas, work permits, and deportation and transportation of foreigners in Albania.

⁵³ Law on Foreigners, No. 108 (2013).

⁵⁴ Article 147, Law on Foreigners, No. 108 (2013).

⁵⁵ *Id.*

⁵⁶ Statistics from the Ministry of Social Welfare and Youth for the period 2006-2013.

⁵⁷ *Id.*

⁵⁸ *Id.*

including self-employed persons, in Albania is estimated to vary between approximately 850,000 to 955,000.⁵⁹

Recently, the Council of Ministers adopted a Decision to exclude Kosovo citizens and Albanians from Serbia from the obligation to obtain work permits or certificates of employment registration when they are lawfully residing in Albania and enjoying the right to employment and to self-employment.⁶⁰

II. Issues

The current state of play regarding the integration of labor markets suggests that there is room for institutional interventions in order to ensure the free movement of workers between Albania and Kosovo.

In particular, the principle of non-discrimination ought to underpin situations concerning offers of employment, remuneration, and work conditions. In this context, positive rights such as:

- the right to accept offers of employment,
- the right to move between Albania and Kosovo for that purpose,
- the right to stay in either country for the purpose of employment,
- and the right to remain (under certain conditions) in the State after employment has ended,

ought to satisfy the equal treatment of Albanian and Kosovar citizens respectively in Kosovo and Albania, as well as to accelerate labor mobility between the two countries.

III. Recommendations

In order to start and deepen the integration of labor markets and therefore provide for the free movement of workers between Albania and Kosovo, while maintaining a public service exception, we recommend that the Albanian authorities focus on the following proposals:

- *Extend the preferential treatment equal to that of EU citizens or US citizens to Kosovo citizens.* While the Statute on Aliens provides for a preferential treatment of EU and US citizens when it comes to excluding them from the obligations to obtain residence and work permits, it does not address the situation when Kosovo citizens want to reside in Albania in order to accept offers of employment, while at an employment relationship and to remain in

⁵⁹ INSTAT.

⁶⁰ Decision of the Council of Ministers No. 2655 (2014) Excluding Citizens of the Republic of Kosovo and of the Albanian Citizens of the Republic of Serbia from the Obligation to Obtain Work Permits and Certificates of Employment Registration.

the country in order to seek employment after their employment relationship has been terminated.

- *Extend the same treatment to family members of principal workers.* If a worker may face difficulties in bringing family members along, then the concept of free movement of workers becomes diluted, hence family members ought to be included in the measures that aim to liberalize and integrate labor markets between the two countries.
- *Remove work quotas for Kosovo citizens.* Article 82 of the Statute on Aliens provides for work quotas for foreign citizens in Albania, and as such it represents a barrier to the free movement of workers.
- *Broad interpretation of DCM No. 2655 (On the Work Permits for Kosovo citizens and Albanian nationals in Serbia).* The implementing authorities should take an expansive interpretation of the said Decision in order to address situations such as the duration of the work permit (whether the Decision is meant to regulate short term or long term permits), or the type of employment (whether the exclusion from obtaining a work permit is related to a specific job or whether the Decision authorizes job transfers).
- *Negotiate an agreement on pensions schemes.* The Ministry of Social Welfare and Youth has already negotiated and concluded a series of international agreements on retirement contributions with countries with large Albanian diaspora. Although at this time the number of Kosovo citizens in Albania and Albanians in Kosovo is minimal, an agreement on pensions with Kosovo would represent a symbolic gesture for deepening integration between the two countries.

FREE MOVEMENT OF CAPITAL/INVESTMENTS

I. Existing Institutional Framework

According to the UN Conference on Trade and Development, Albania has entered into 44 Bilateral Investment Treaties out of which 34 are in force⁶¹. It also has other Investment Agreements with regions, including an FTA with EFTA countries, an FTA with Turkey, CEFTA, and a SAA with the EU which also covers investment agreements.⁶²

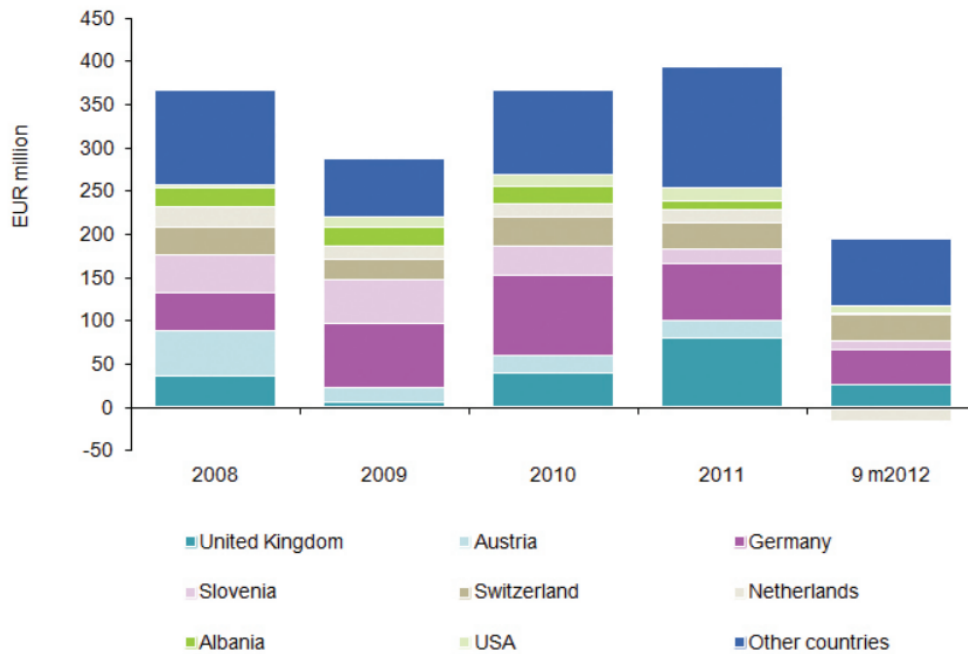
⁶¹ Retrieved from: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/2#iiaInnerMenu>.

⁶² Retrieved from: <http://investmentpolicyhub.unctad.org/IIA/CountryOtherIias/2#iiaInnerMenu>.

Albania has entered into a Bilateral Investment Treaty with Kosovo (BIT – 2004), which provides for fair and equitable treatment of respective investments.⁶³ The agreement grants domestic or MFN treatment to investors from each country, it stipulates against expropriations or takings, it provides for the free movement of capital between the two countries, as well as it addresses the questions of dispute settlements between the two Parties and between an investor and one of the Parties to the agreement.⁶⁴ Based on interviews at the Ministry of Economy, we have come to learn that negotiations are taking place between Albania and Kosovo aiming to conclude a new Bilateral Investment Treaty with Kosovo.

In terms of FDI, Albania is the most important contributor for Kosovo after EU states⁶⁵. This can be seen in the graph below:

Foreign direct investment by country (in percentage)



(Source: Investment in Kosovo 2013 – KPMG Report)

When analyzing the state of play in the movement of investment between Albania and the rest of the region, specifically Kosovo, it is useful to consider the following areas of cooperation and liberalization:

⁶³ Agreement between Albania and UNMIK on the Reciprocal Promotion and Protection of Investments (2004).

⁶⁴ *Id.*

⁶⁵ Investment in Kosovo 2013 – KPMG Report, available at: <https://www.kpmg.com/AL/en/IssuesAndInsights/ArticlesPublications/Brochures/Documents/2013-Investment-in-Kosovo-website.pdf>.

- *Entry and establishment:* This refers to the ability of foreign firms to establish a commercial presence in Albania. According to the World Bank Investing Across Borders (IAB) indicators⁶⁶, Albania fares better than both its regional partners as well as the global average. These indicators are illustrated below:

Indicators	Country score	IAB regional average	IAB global average
Procedures (number)	7	8	10
Time (days)	7	22	42
Ease of establishment index (0-100)	84.2	76.8	64.5

(Source: World Bank Investing Across Borders (IAB))

Ease of entry and establishment include the following criteria:

- *Ownership and control:* Based on our discussions with the representatives of the National Registration Centre, there is no discrimination between foreign and national citizens when it comes to setting up a commercial presence. The process of registration, whether as a natural person or as a company of two or more, has been greatly streamlined so that it is completed within the time frame of 24 hours. For foreign firms, there is an extra requirement of documents from their home country's registering authority, but there are no restrictions such as equity ownership requirements.
- *Access to land:* The WB IAB indicators on acquiring industrial land show that Albania does better than the global average in strength of ownership rights index, access to and availability of land information indices, and has a much shorter time to lease private land than the global average⁶⁷. Regionally, it appears to be at par with the regional averages. While there are clearly some strong assumptions which go into the construction of these indices, they give a good snapshot of the ease with which land is accessible relative to the region.

Indicators	Country score	IAB regional average	IAB global average
Strength of lease rights index (0-100)	80.7	82.9	82.1
Strength of ownership rights index (0-100)	100	97.6	92.2
Access to land information index (0-100)	47.4	50.3	41.4

⁶⁶ Retrieved from: <http://iab.worldbank.org/Data/Explore%20Economies/Albania#/Starting-a-foreign-business>

⁶⁷ *Ib.*

Availability of land information index (0-100)	85	78.9	70.6
Time to lease private land (in days)	36	43	61
Time to lease public land (in days)	129	133	140

(Source: World Bank Investing Across Borders (IAB))

- *Approval and admission:* While there are some restrictions in place in granting licenses to foreign professionals and companies looking in certain sectors, in general there is no preferential treatment given to nationals when according licenses according to representatives of the National Licensing Centre.
- *Treatment and operation:*
 - *Capital transfer and FOREX:* Based on our discussions for the Governor of the Bank of Albania, capital movement is very open and there are virtually no restrictions to the movement across the border with Kosovo.
 - *Dispute settlement:* As mentioned above, Albania has signed a BIT with Kosovo which mentions alternative dispute settlement alternatives in the case of investor-state disputes.

The World Bank IAB indicators for dispute settlement⁶⁸ are as follows:

Indicators	Country score	IAB regional average	IAB global average
Strength of laws index (0-100)	84	82.5	85.2
Ease of process index (0-100)	40.7	69.7	70.6
Extent of judicial assistance index (0-100)	68.5	64.4	57.9

(Source: World Bank IAB)

This shows that Albania is at par with the regional and global average with regards to strength of laws, but performs much lower than both the regional and global average index for ease of process.

⁶⁸ *Ib.*

II. Issues

Based on an investor survey conducted recently (Dec. 2011-Jan. 2012) on behalf of the Albanian Investment Development Agency (AIDA),⁶⁹ which theoretically includes also Kosovar businesses in Albania, the following areas need to be examined more closely in order to foreground problems and in turn to prepare, adopt and apply remedies:

- Review of licensing and authorization procedures with the aim of reducing and simplifying procedures and bureaucratic practices, as well as increasing the transparency and accountability;
- Improvement of capacities and management of fiscal administration in order to improve enforcement, increase transparency and accountability of tax collection procedures and practices;
- Establishment of mechanisms and processes to mobilize feedback from the private sector;
- Systematic implementation and enforcement of technical regulations;
- Access to land and land title reform;
- Financial incentives for R&D and training;
- Governance and public sector integrity;
- Judicial reform;
- Zoning regulations and procedures regarding construction permits;
- Setting up free economic or industrial zones;
- Creation of a skilled workforce;
- Clarity of legislation;
- Quality of infrastructure;
- Ability to source locally.

III. Recommendations

A meaningful and deep integration with Kosovo's markets demands the free movement of capital and investments whereby all restrictions on the movement of capital and payments between Albania and Kosovo and with third countries are prohibited except in circumstances where the movement of capital to and from third countries causes or threatens to cause serious difficulties for the operation of one of the respective economies of Albania or Kosovo.

Towards this end, an approach consisting of treatment no less favorable than Albanian persons (natural or legal), minimum harmonization, home country control, and mutual recognition could ensure that investors, as well as individuals, would face:

- a single set of rules concerning financial services;

⁶⁹ AIDA, Investors Survey (December 2011 – January 2012).

- have equal access to these services without discrimination;
- are treated equally when operating in the market.

In this context, the following measures could be taken with respect to the renegotiation of the Bilateral Investment Treaty with Kosovo:

- *Development of a mechanism of preliminary investigation and adjudication between Albania and Kosovo:* While the bilateral agreement with Kosovo (BIT) provides for the protection of respective investments as well as for the free movement of capital, we recommend that the Albanian authorities focus on setting up arbitration procedures or protocols in order to facilitate the resolution of investment disputes between Albania and Kosovo as well as disputes between investors and one of the Parties to the agreement.
- *Establishment of common business registries between Kosovo and Albania:* During the discussions with the National Registration Centre it became clear that while there is no clear discrimination between foreign and national applicants when formalizing registration, foreign applicants have an extra set of documentation to submit which is issued by registration authorities in their home country. One way to make the process easier for businesses from the other side of the border is to create a common registry between Albania and Kosovo. This would aid information flow and sharing, reduce verification requirements and reduce the registration requirements for applicants.

CONCLUSIONS

There are a few common themes (apart from the specific comments and recommendations that addressed issues in the areas of movement of goods, services, workers and capital discussed earlier in this report) that emerge from our analysis of the existing institutional framework in Albania. These themes are central to the next steps that could be taken in order to improve international trade policy, deepen regional integration, and contribute towards greater economic development.

In particular, we would like to draw attention to the following:

Inter-ministerial communication. International trade policy and regional integration are coordination intensive endeavors, and therefore improved coordination procedures among ministries are central in order to increase the effectiveness of policymaking and reflect the diverse institutional interests.

Feedback mechanisms. There is a need to set up concrete mechanisms to mobilize small actors (corporations and individuals) to alert relevant authorities

regarding trade related barriers, and provide input for general trade policy questions.

Trade Policy Advisory Group. Albania needs a central organization dedicated to preparing and monitoring the implementation of trade policies. The Trade Policy Advisory Group would streamline the input and feedback from a number of governmental and non-governmental actors and therefore take a holistic and comprehensive perspective when formulating trade policies and advice. This body could consist of area experts, governmental representatives, and representatives from the private and non-profit sectors.

Networks of expertise. What often makes integration work are horizontal networks of people. In this context, we propose that Albanian and Kosovar authorities set up formal and informal networks of experts and regulators from the public and private sectors, who through systematic interaction would come to share the same vernacular and sensitivities of the field, would identify barriers to trade and accordingly propose solutions, and in this way influence the decision-making process and make inroads towards deeper integration in more ways than simply relying on vertical or formal relationships between the respective governments, and agencies.

Links with regional and European markets. Both economies, i.e., Albanian and Kosovar, need to be linked not only with one another and other regional partners, but they need to tap into the resources of European Union public and private actors, and have access to the European Union markets in ways that would enable them to connect lagging with leading EU sectors. Linking up with European Union market segments and operators has the advantage of not only ensuring market access for Albanian and Kosovar suppliers, but also in assisting them with adopting higher EU standards, and as a result, with adequately preparing both countries for the eventual accession into the European Union.

Regional infrastructure projects. Developing a bilateral and regional approach towards infrastructure projects would posit Albania and Kosovo in an optimal place to make effective use of their geographical location to facilitate intra regional trade as well as trade with the European Union markets.

Dispute settlement system. Since Kosovo is not yet a WTO Member, and since CEFTA does not provide an effective dispute settlement system, it is indispensable for Albania and Kosovo to come up with their own alternative system to solve trade and investment disputes, which might increase in frequency as the two countries move towards deeper integration with each other.

On a last note, this report is prepared for the Albanian Government with a view to raise key questions that need to be discussed in the context of deepening integration with Kosovo but also with other regional countries. As such, we

welcome feedback from our partners in the government, from the private sector, as well as from other public sector organizations.

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